

V.

BAVLI GITTIN CHAPTER FIVE

FOLIOS 48B-62A

5:1

- A. [48B] As to compensation for damages – they pay out of the highest quality of real estate,
- B. and [they pay] a debt out of middling quality of real estate,
- C. and [they pay] the marriage contract of a woman out of the poorest quality of real estate.
- D. R. Meir says, “Also: The marriage contract of a woman do [they pay] out of middling quality of real estate.”

5:2

- A. They do not exact payment from mortgaged property in a case in which there also is unencumbered property,
- B. even if it is of the poorest quality.
- C. They exact payment from the property of an estate [“orphans”] only from the poorest quality [real estate].

5:3

- A. They do not exact indemnity for produce consumed [“food eaten by cattle”], or for the improvements made on land, or for the maintenance of a widow or daughters, from mortgaged property –

- B. for the good order of the world.
- C. He who finds a lost object is not subjected to an oath,
- D. for the good order of the world.

I.1 A. [Damages – they pay compensation for them out of the highest quality real estate:] *Is this really for the good order of the world? In point of fact, the rule derives from the Torah itself, for it is written: “The best of his field and the best of his vineyard he shall pay” (Exo. 22: 4)!*

B. *Said Abbaye, “Assigning the origin of the rule to the good order of the world is required only in line with the view of R. Ishmael, who has said, ‘On the basis of the law of the Torah, it is in accord with the property of the injured party that we make the assessment. So we are informed here that, for the good order of the world, we make the assessment on the basis of the property of the defendant.’”*

I.2 A. *What is the statement of R. Ishmael to which reference has been made?*

B. *It is in line with that which has been taught on Tannaite authority:*

C. *“Of the best of his field and of the best of his vineyard shall he make restitution” (Exo. 22: 4) –*

D. *[As to the reference of “his,”] “This refers to the field of the injured party or the vineyard of the injured party,” the words of R. Ishmael.*

E. *R. Aqiba says, “The purpose of Scripture is solely to indicate that damages are to be paid out of the real estate of the best quality [belonging to the defendant], even more so damages to property that has been consecrated to the Temple.”*

F. *And from R. Ishmael’s perspective, if the defendant has damaged the quality of the best property, he would pay from the best, but if he damaged real estate of the worst property, would he still pay from the best?*

G. *Said R. Idi bar Abin, “Here with what sort of a case do we deal? It would be one in which he damaged a furrow among several furrows, and it is not known whether the furrow that he damaged was the best or the worst. In that case he compensates for the best.”*

H. *Said Raba, “Well, if we knew for sure that he damaged the worst, he would pay only for the worst, and now that we don’t*

know for sure whether the furrow he damaged was of the best or the worst quality, why should he pay for the best? The one who bears the burden of proof is the plaintiff.”

- I. *Rather, said R. Aha bar Jacob, [49A] “Here with what sort of a case do we deal? It is one in which the best of the estate of the injured party is as good as the worst of the property of the defendant’s property, and what is at issue among the two Tannaite authorities is this: R. Ishmael takes the view that the quality of the land that is paid in compensation is valued in relationship to what is owned by the injured party, and R. Aqiba says that the quality of the real estate of the defendant is what has to be assessed in determining compensation.”*
- J. *What is the scriptural basis for the position of R. Ishmael?*
- K. *We find a reference to the word “field” in both parts of the verse [“Of the best of his field” (Exo. 22: 4), “If a man cause a field or a vineyard to be eaten” (Exo. 22: 4)]. Just as in the earlier usage reference is made to the property of the injured party, so in the latter clause it refers to the property of the injured party.*
- L. *And R. Aqiba?*
- M. *“Of the best of his field and of the best of his vineyard shall he make restitution” (Exo. 22: 4) clearly speaks of the person who does the paying.*
- N. *And R. Ishmael?*
- O. *The verbal analogy just now drawn and the sense of the verse of Scripture itself both serve to make the point. The verbal analogy makes the point [that the quality of the land is assessed in the context of the estate of the injured party], and the clear sense of Scripture makes its point as well, which is to deal with a case in which the defendant’s estate is made up of real estate of good quality and of bad quality, and the injured party’s estate likewise is made up of land of good and bad quality, but the worst of the defendant’s estate is not so good as the best of the property of the injured party; in this case, the defendant pays out of the real property of his estate that is of the better quality, since he has not got the right to say to him,*

“Come and be paid out of land of bad quality” [which is below the quality of the estate of the plaintiff], but he is entitled to the land of the better quality.

- P. R. Aqiba says, “The purpose of Scripture is solely to indicate that damages are to be paid out of the real estate of the best quality [belonging to the defendant], even more so damages to property that has been consecrated to the Temple”: *What is the purpose of that concluding clause*, even more so damages to property that has been consecrated to the Temple? *If we say that we speak of a case in which an ox belonging to a common person gored an ox consecrated to the sanctuary, in fact does not Scripture say*, “The ox of one’s neighbor,” so excluding liability for damage done to consecrated property?
- Q. Then it would deal with a case in which someone said, “Lo, incumbent on me is a maneh to be paid for the upkeep of the Temple,” *in which case the Temple treasurer may collect from land of the highest quality.*
- R. But the Temple treasurer should not be in a better position than an ordinary creditor, and an ordinary creditor collects only from land of middling quality.
- S. *And, moreover, should you maintain that R. Aqiba takes the view that a creditor may collect what is owing to him even from property of the highest quality, one may pose the following challenge then to the implicit analogy*: What characterizes the common creditor is that he also has a strong claim in the matter of torts, but will you say the same of the Temple treasury, which has no strong claim in the matter of torts?
- T. *In point of fact we really do deal with a case in which an ox belonging to a common person gored an ox consecrated to the sanctuary, and as to the question that you raised, namely, in fact does not Scripture say*, “The ox of one’s neighbor,” so excluding liability for damage done to consecrated property, R. Aqiba concurs with the position of R. Simeon b. Menassia, *for it has been taught on Tannaite authority*: R. Simeon b. Menassia says, “An ox belonging to the sanctuary that gored an ox of a common person – the sanctuary is exempt from paying damages. An ox of a common person that gored an ox

belonging to the sanctuary, whether the ox was assumed harmless or an attested danger – the owner pays full damages.”

- U. *If that is the case, then with reference to the dispute of R. Ishmael and R. Aqiba, how do you know that at issue between them is a case in which the best of the injured party's land is of the quality of the worst of the defendant's? Perhaps all parties concur that we make our estimate based on the quality of the property of the injured party, but what is at issue here is the dispute between R. Simeon b. Menassia and rabbis. R. Aqiba concurs with R. Simeon b. Menassia, and R. Ishmael agrees with rabbis?*
- V. *If so, then what is the meaning of the statement, R. Aqiba says, “The purpose of Scripture is solely to indicate that damages are to be paid out of the real estate of the best quality [belonging to the defendant]”? And, moreover, what is the sense of, “Even more so damages to property that has been consecrated to the Temple”?*
- W. *Furthermore, lo, said R. Ashi, [49B] “It has been explicitly stated in a Tannaite formulation in this regard: “Of the best of his field and the best of his vineyard shall he make restitution” (Exo. 22: 4) – it is to be the best of the field of the injured party, and the best of the vineyard of the injured party,’ the words of R. Ishmael. R. Aqiba says, “The best of the field” of the one who did the damage, and “the best of the vineyard” of the one who did the damage.”’ [So that proposal is null.]*

- I.3** A. *Rabina said, “In point of fact, our Mishnah paragraph accords with R. Aqiba, who has said, ‘On the strength of the law of the Torah, we estimate the relative value of property by reference to that of the party responsible for the injury, and the passage further accords with R. Simeon, who expounds the reasons that govern the law. In context, then, the sense of the passage is to explain the rule, that is, what is the operative consideration that with reference to **damages, they pay compensation for them out of the highest quality [real estate]**? It is for the good order of the world.*
- B. *“For it has been taught on Tannaite authority: Said R. Simeon, ‘How come they have said, **As to damages, they pay compensation for them out of the highest quality [real estate]**? On account of thieves or thugs, so that*

someone should say, “Why in the world should I steal? And why in the world should I grab? A day later a court will seize my property and take my best field. And they will, indeed, rely on what is written in the Torah: ‘From the best of his field and the best of his vineyard he shall make restitution!’” Therefore they have said, **As to damages, they pay compensation for them out of the highest quality [real estate].**

- C. “How come they have said, **[They pay] a debt out of middling quality [real estate]**? So that someone should not see that his fellow has a first-rate field or a fine house and say, “I’ll go ahead and get him to borrow from me, so that I can get them on account of the debt owing to me.” Therefore they have said, **[They pay] a debt out of middling quality [real estate].”**

I.4 A. *Well, then, a debt should be recovered out of land of niggardly quality!*

B. If so, you will lock the door before borrowers [limit available credit].

- II.1** A. “**And [they pay] the marriage contract of a woman out of the poorest quality [real estate],**” the words of R. Judah. **R. Meir says, “Also: The marriage contract of a woman do [they pay] out of middling quality [real estate]”:**

- B. Said R. Simeon, “How come they have said, **[They pay] the marriage contract of a woman out of the poorest quality [real estate]**? Because more than a man wants to marry, a woman wants to be married. Another matter: A woman goes forth willy-nilly, but a man expels a woman only willingly.”

C. *What’s the point of adding another matter?*

D. *And should you say, so how are the matters parallel? Just as he divorces her, so rabbis have ordained for her the protection of a marriage settlement from him, so, when she leaves him, they should provide for him a marriage settlement from her – if that’s what you say, then I point out: A woman goes forth willy-nilly, but a man expels a woman only willingly, for it’s possible for him to postpone issuing her writ of divorce.*

- II.2** A. **And [they pay] the marriage contract of a woman out of the poorest quality [real estate]:**

- B. *Said Mar Zutra b. R. Nahman, “We impose this rule only where collection is from the estate, but if it is from the husband himself, it is collected from real property of middling quality.”*

- C. *Well, why single out the woman's marriage settlement in the context of exacting payment for the woman's marriage settlement? The same rule applies to all payments made by an estate, as we have learned in the Mishnah: **They exact payment from the property of an estate ["orphans"] only from the poorest quality [real estate]**? Isn't it the case, therefore, that the rule pertains even to payment by the husband himself?*
- D. *In point of fact, the rule pertains only to collection of the marriage contract from the estate, and it was necessary to specify that that is so even in the case of the marriage settlement of a woman. For it might have entered your mind to suppose that, on account of making the whole prospect of marriage appealing to her, rabbis have imposed a lenient ruling in her case. So we are informed that that is not the case.*
- E. *Said Raba, "Come and take note: **R. Meir says, 'Also: The marriage contract of a woman do [they pay] out of middling quality [real estate].'** Now from whom is the collection made? If we should say, from the orphans, doesn't R. Meir concur with that which we have learned in the Mishnah, **They exact payment from the property of an estate ["orphans"] only from the poorest quality [real estate]**? So isn't it from the husband himself? Then it must follow that rabbis take the view that, even in the case of the husband himself, it is collected from land of the poorest quality!"*
- F. *Not at all. In point of fact, it involves collection from an estate, but the case of collecting the marriage settlement of a woman is exceptional, on account of making the whole prospect of marriage appealing to her, rabbis have imposed a lenient ruling in her case.*
- G. *Said Abbaye, "Come and take note: **Damages – they pay compensation for them out of the highest quality [real estate], and [they pay] a debt out of middling quality [real estate], and [they pay] the marriage contract of a woman out of the poorest quality [real estate].** Now from whom is the collection made? Should we say that it is from an estate? Then why make reference in particular to collecting a woman's marriage settlement, since all classifications of collections from an estate are in the same category, so is it not from the husband himself?"*
- H. *Said R. Aha bar Jacob, "Here with what situation do we deal? It is a case in which a man served as surety for compensation for damages due to be paid by his son or for his son's debt or for his daughter-in-law's marriage settlement. *Each item then is subject to its own rule. Compensation for damages and payment**

of debts, which ordinarily are paid in the lifetime of the responsible party, are paid in this case as if in the lifetime of the responsible party; the woman's marriage settlement is usually paid after the death of the responsible party, therefore by whom? By the estate, and that is paid in this case as if it were after the death of the responsible party."

- I. *But why not derive the rule from the simple fact that someone who is surety for payment of a marriage settlement is not responsible to pay it?*
- J. *We refer her to a go-between.*
- K. *Well, that poses no problem to the position of him who has said, "A go-between even though the borrower has no property [when the debt is contracted] is responsible [if he gets property later on and the debt is not paid], but what can you say to the one who holds the position that if at the time of the loan the borrower has property, he is responsible, but if the borrower at that point has no property, he is not responsible [Simon: since no one would guarantee a loan where it is known that the debtor has no means wherewith to repay; a guarantee in such a case cannot therefore be taken seriously]?"*
- L. *If you wish, I may say, in this case we assume the son had property, but it was later on blighted; and if you wish, I may say, in respect to a son, a man under all circumstances will obligate himself.*

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

- B. *As to one who is a pledge for payment of a marriage settlement, all parties concur that he is not obligated to pay [since the woman has not actually parted with any property]. [50A] As to a third party for a loan, all parties concur that he is responsible to cover the defaulted loan. As to a surety for a debt and a third party for the marriage settlement, there is a dispute:*
- C. *There is he who has said that, if the borrower has property, the pledge is held responsible, while if the borrower has no property, he is not held responsible.*
- D. *There is he who maintains that, even though he has not got any property, he is held responsible.*
- E. *And the decided law in all cases it is that even though [the debtor] has no property, the pledge or guarantor is held responsible, except in the case of one who serves as a pledge for payment of a marriage settlement, in which instance, even though the debtor has property, such a one is not held responsible.*
- F. *What is the reason [for this lenient ruling]?*

- G. *It is a religious duty that he has carried out [to help the two get married], and he has not caused a loss for the woman [since she has lent no money to her husband on the strength of the guarantee of the marriage settlement].*

II.4 A. *Said Rabina, “Come and take note: To begin with, the purpose of the ordinance was, more than a man wants to marry, a woman wants to get married. Now if it should enter your mind that the Mishnah rule refers to collection from the orphans when it speaks of her collecting the marriage settlement from land of the poorest quality, then the operative consideration should be that they are orphans. Doesn’t this refute the thinking of Mar Zutra?”*

B. *Yup.*

III.1 A. **They exact payment from the property of an estate [“orphans”] only from the poorest quality [real estate]:** Said Mar Zutra b. R. Nahman in the name of R. Nahman, “A bond issued by the deceased father that is brought for payment by an estate – even though written in the bond is a clause that the best land will be handed over in payment for the debt – the bond is paid out only of land of the poorest quality.”

B. *Said Abbaye, “You may know that that is the case, for, in general, while a creditor ordinarily collects from land of middling quality, from an estate he collects only from land of the poorest quality.”*

C. *Said to him Raba, “But what’s the point! By the law of the Torah, the creditor should collect from land of the poorest quality. That is in line with the explanation of Ulla, for said Ulla, ‘By the strict law of the Torah, a creditor should be paid out of land of the poorest quality, since it is said, “You shall stand outside, and the man to whom you lend shall bring forth the pledge outside to you” (Deu. 24:11). Now in general, people would bring outside the worst of his possessions. So how come the creditor for loans is paid out of land of middling quality? It is so as not to close the door in the face of borrowers.’ But with respect to an estate, rabbis confirmed the law as set forth in the Torah. Now here, since, in line with the law of the Torah, he can claim payment from land of the highest quality, I should say orphans also will have to pay out of land of the highest quality.”*

- D. *But from Raba's perspective, hasn't Abram of Khuzistan repeated as a Tannaite statement: "Collection is made from an estate only from land of the poorest quality, and that would be the case even for damages owing by the estate"? And lo, the law governing payment of damages derives from the Torah and the compensation should be paid from land of the highest quality!*
- E. *Here with what situation do we deal? It is one in which the land of the highest quality of the injured party is equivalent to the land of the lowest quality of the party responsible for the injury, and it represents the position of R. Ishmael, who has said, "On the basis of the law of the Torah, it is in accord with the property of the injured party that we make the assessment." But in respect to an estate, rabbis have confirmed the rule as the Torah has defined it.*
- F. *Well, is that really so? And hasn't R. Eliezer Niyyata stated as a Tannaite teaching: "Collection is made from an estate only from land of the poorest quality, and that would be the case even if it is the best"? Now what can the phrase mean, even if it is the best? Doesn't it mean, even though in the bond the promise was made to pay from land of the highest quality?*
- G. *Not at all, what is the meaning of even if it is the best? It is, strips of the best [Simon: strips of good land adjoining a river reserved for pasturage and therefore liable to be inundated, so of less real value than even the worst land]. For said Raba, "If one did damage to land of the poorest quality, the injured party still recovers from land of the best quality; but if damage was done to strips of the best, he recovers from land of medium quality. In the case of orphans, however, rabbis confirmed the law as it was set forth in the Torah."*

III.2 A. They exact payment from the property of an estate ["orphans"] only from the poorest quality [real estate]:

- B. *R. Ahadeboi bar Ammi raised this question: "As to the orphans of which they have spoken, does this mean minors, or does it include even adults? Did rabbis make this particular enactment only for minor orphans, but not for adults? Or perhaps, since it never entered the mind of the creditor that the debtor would die and leave his property to his estate, there is no consideration in play here of locking the door in the face of borrowers, with the result that the rule pertains also to adult orphans?"*

- C. *Come and take note of what Abbayye the Elder set forth as a Tannaite ruling: “[The rule that payment claimed from orphans on the father’s debt requires the claimant to take an oath refers] to adult [heirs], and it is hardly required to say that it covers minors as well.”*
- D. *But maybe that pertains to the oath, since, in relationship to the affairs of the father, even an adult heir is in the position of a minor, but as to the consideration of payment from land of the poorest quality, that would not be the case.*
 - E. *And the decided law is, [50B] [the rule refers] to adult [heirs], and it is hardly required to say that it covers minors as well – both with regard to an oath and with regard to payment from land of the poorest quality.*

III.3 A. They do not exact payment from mortgaged property in a case in which there also is unencumbered property, even if it is of the poorest quality:

- B. *R. Ahadeboi bar Ammi raised this question: “What is the rule in respect to a gift? This is a provision that rabbis have enacted on account of the loss that may accrue to purchasers [Simon: who bought land from a man after he had contracted a debt to a third party], and that would not apply to a gift, where there is no consideration of loss to purchasers of the land, or do we maintain that the same rule pertains even in the case of a gift, for, if the donor had not gotten some sort of benefit, he would never have given the land to him, and therefore the loss of the donee is the same as the loss of the purchaser?”*
- C. *Said Mar Qashisha b. R. Hisda to R. Ashi, “Come and take note: A dying man who said, ‘Give two hundred zuz to Mr. So-and-so, and three hundred to Mr. Such-and-such, and four hundred to Mr. So-and-such,’ they do not say, ‘The first named party in the deed takes precedence.’ Therefore, if a bond is produced against the donor after he died, the claimant can collect from all of those named. But if he said, ‘Give two hundred zuz to Mr. So-and-so, and then three hundred to Mr. Such-and-such, and then four hundred to Mr. So-and-such,’ they do say, ‘The first named party in the deed takes precedence.’ Therefore, if a bond is produced against the donor after he died, the claimant can collect first from the last one named; if he hasn’t got with which to pay, he collects from the one before him; if he doesn’t have with what to pay, he collects from the one before him. And that is the rule even though the first party got land of middling quality and the last, land of poor quality, so that the claimant has to collect from the poor before the medium [even though a creditor would collect from land of middling quality]. That then would yield*

the inference that, in the case of a gift as well, rabbis have made their ordinance.”

- D. *[Not at all!] Here with what situation do we deal? It is payment to a creditor [and not donations].*
- E. *But lo, the language that is used is, “Give”!*
- F. *The sense of the usage is, “Give in payment of my debt”!*
- G. *Well, then, why not just investigate whose bond bears the prior date?*
- H. *It’s a case in which there’s no bond.*
- I. *But lo, the language is used, “Whoever is mentioned earlier in the deed”!*
- J. *It is a deed that contains his instructions, or, if you prefer, I can say, it does make reference to a gift, but there’s no problem, since the language, ”He collects from the one before him,” means, only the last of the three is the ultimate loser. Or if you like, I shall say, the gifts of all parties were equal.*

IV.1 A. They do not exact indemnity for produce consumed [“food eaten by cattle”], or for the improvements made on land, or for the maintenance of a widow or daughters, from mortgaged property – for the good order of the world:

- B. *What is the operative consideration here?*
- C. *Said Ulla said R. Simeon b. Laqish, “Since these [crops, improvements] are not specified in the deed of sale.”*
- D. *Said R. Abba to Ulla, “But lo, there is the consideration of the maintenance of a woman and her daughters, which are treated as though they were written down in the marriage settlement, and lo, it is taught, **They do not exact indemnity!**”*
- E. *He said to him, “In that matter [the maintenance of the woman and the daughters] the rule is so set forth to begin with that they are treated as ‘written’ in regard to unencumbered assets but not in regard to property subject to a lien.”*
 - F. *And so said R. Assi said R. Yohanan, “Since these [crops, improvements] are not specified in the deed of sale.”*
- G. *Said R. Zira to R. Assi, “But lo, there is the consideration of the maintenance of a woman and her daughters, which are treated as though they were written down in the marriage settlement, and lo, it is taught, **They do not exact indemnity!**”*

- H. *He said to him, "In that matter [the maintenance of the woman and the daughters] the rule is so set forth to begin with that they are treated as 'written' in regard to unencumbered assets but not in regard to property subject to a lien."*
- I. R. Hanina said, "The reason is that they do not involve a fixed sum of money."
[Simon: The exact quantity of the produced to be raised hereafter could not be known when the field was first appropriated, and therefore subsequent purchasers could not be expected to allow a sufficient margin for their indemnification; on this view they would not be enforceable even if mentioned in the deed.]

IV.2. A. *The question was raised: In the opinion of R. Hanina, is it necessary that [for a debt to be collected from property subject to a lien] there should be both a fixed sum of money and also the provision should be written into the deed? [51A] Or maybe it would suffice if the sum were fixed, even though not written down?*

- B. *Come and take note of that which has been stated:*
- C. He who died and left two daughters and a son, and the first daughter went ahead and took a tenth of the estate, and the second did not suffice to take what was coming to her before the son died –
- D. said R. Yohanan, "The second daughter is in the position of having given up her right" [to half the estate, which would be coming to her absent a male heir to the same estate].
- E. Said R. Hanina, "More than this they have said: 'They seize property that has been sold or mortgaged in order to meet the obligation of a dowry, but they do not seize it for maintenance' – *and yet you say, 'The second daughter is in the position of having given up her right'!*" [Slotki: The first sister cannot possess a stronger claim on the estate than a buyer or creditor.]
- F. *Now the provision of support is a definite sum of money that is not written down, and we see that, from R. Hanina's perspective, it can be collected!*
- G. *The case of support is exceptional, for, since it is a generally public provision, it is as though it were written down.*
- H. **Objected R. Huna bar Manoah, "[If] they died, their daughters are supported from unencumbered property, and she is supported from encumbered property, for she is in the status of a creditor**

[**M. Ket. 12:2D-E**].” [Simon: The term of years was definite, although there was no written contract, contrary to Ulla’s view.]

- I. *Here with what situation do we deal? It is a case in which there was a formal transfer of title.*
- J. *If so, then the same rule should apply to the daughters!*
- K. *Well, it’s a case in which there was a formal transfer of title for the one but not the other.*
- L. *What makes you so sure?!*
- M. *Because the daughter of his wife, already born at the time of the formal transfer, can benefit from the transfer, but his own daughter, not yet born at the time of the transfer, cannot benefit from it.*
- N. *But aren’t we dealing with a case in which both of them were born at the time of the transfer, for instance, in a case in which he had divorced the woman and then remarried her?*
- O. *Rather, his own daughter, who is covered by the stipulation of the court and so is entitled to maintenance, gets no benefit from the former transfer of title, but the wife’s daughter, who is not covered by the stipulation of the court as to her maintenance, does get benefit from the transfer of title.*
- P. *So is his own daughter in an inferior position? Rather, in the case of his own daughter, since she was covered as to her maintenance by the stipulation of the court, I might suppose that at the time of his death, he handed over to her a purse of money [to cover her maintenance, and that’s why the transfer doesn’t concern her (Simon)].*
- Q. *Come and take note: Said R. Nathan, “Under what circumstances does the rule [**They do not exact indemnity for produce consumed or for the improvements made on land, or for the maintenance of a widow or daughters, from mortgaged property**] apply? In a case in which the purchase of the second party has taken place prior to the improvements made by the first party. But if the improvements made by the first party took place prior to the purchase by the second party, the former can recover damages from property subject to a lien.” Therefore the operative consideration is that he didn’t improve the field first of all [and not because produce is not mentioned in the deed or because a definite sum has not been specified].*

- R. *In point of fact it is a matter subject to dispute among Tannaite statements, for it has been taught on Tannaite authority:*
- S. **They do not exact indemnity for produce consumed [“food eaten by cattle”], or for the improvements made on land, or for the maintenance of a widow or daughters, from mortgaged property – for the good order of the world,** because they are not specifically written down in a deed.
- T. Said R. Yosé, “So what’s the relevance of **the good order of the world** here! It is because they are not subject to a definite sum of money.”

V.1 A. He who finds a lost object is not subjected to an oath, for the good order of the world:

- B. Said R. Isaac, “[If one party said to another,] ‘You found two purses tied together for me,’ and the other party says, ‘I found only one,’ he is required to take an oath. If one said, ‘Two oxen tied together you found for me,’ and the other says, ‘There was only one,’ he is not required to take an oath. *How come? Oxen can get free of one another, but purses can’t.*”
- C. “‘Two oxen tied together you found,’ and the other says, ‘I found them but I returned one of them to you,’ lo, this one takes an oath.”
- D. *But doesn’t R. Isaac affirm the view: **He who finds a lost object is not subjected to an oath, for the good order of the world?***
- E. **[51B]** *He rules in accord with R. Eliezer b. Jacob, for it has been taught on Tannaite authority:*
- F. R. Eliezer b. Jacob says, “There are occasions on which someone has to take an oath on his own claim [Silverstone: on his own admission that the other has a valid claim against him, though the other does not even know it]. How so? If he said to him, ‘In my possession is a maneh belonging to your father, of which I have paid back half,’ he takes an oath to that effect. This is then a case in which someone has to take an oath on his own claim.”
- G. And sages say, “He is only in the status of returning a lost object and is exempt from having to take an oath.”
- H. *But does not R. Eliezer b. Jacob also maintain that one who is in the status of returning a lost object is exempt from having to take an oath?*
- I. Said Rab, “He imposes the oath only if it is a minor who makes the claim.”

- J. A minor? *But have you not said, They do not take an oath in the case of a claim made by a deaf-mute, an idiot, or a minor. And they do not impose an oath upon a minor!*
- K. *In point of fact, it is an adult, but why is he called a minor? It is because in relationship to his father's business, he is a minor [since he may not know the business affairs of the deceased parent].*
- L. *Well, if that's the case, how can [Eliezer] regard it as his own claim, since it's the claim of others?*
- M. *True enough, it's the claim of others, but it contains also his own admission [admitting as he does that he owes half] on the matter.*
- N. *But all of them also fall into the category of a claim of others and an admission on one's own part!*
- O. *Rather, what is at issue is the statement of Rabbah. For said Rabbah, "On what account has the Torah imposed the requirement of an oath on one who confesses to only part of a claim against him? It is by reason of the presumption that a person will not insolently deny the truth about the whole of a loan in the very presence of the creditor and so entirely deny the debt. [He will admit to part of the debt and deny part of it. Hence we invoke an oath in a case in which one does so, to coax out the truth of the matter.]" Now this one really wanted to deny the whole claim of the creditor but did not have the balls to deny it in front of the creditor, and he really wanted to concede it all, but he did not admit it, trying to evade him with the notion, "When I've got the money, I'll pay him," so the All-Merciful has said, "Impose an oath on him so that he will admit to the whole truth." Now, R. Eliezer b. Jacob takes the view that there is no difference whether the claim is against him or against his son, he hasn't got the balls, and therefore he is not in the category of someone who returns a lost object [therefore when the minor makes the claim, it is as if the father is doing so, and since the defendant admits half, he takes an oath as would anybody else who admits part of a claim]. And rabbis maintain that, while if it were against the creditor himself he wouldn't have the balls, against the son he does, and since he is not being brazen, he is in the status of giving back something that is lost.*

5:4A-F

- A. [52A] Orphans who boarded with a householder,
 B. or for whom their father appointed a guardian –
 C. he [who provides for their keep] is liable to separate tithe from their produce.

D. A guardian whom a father of orphans has appointed is to be subjected to an oath.

E. [If] a court appointed him, he is not subjected to an oath.

F. Abba Saul says, “Matters are reversed.”

I.1 A. *An objection was raised on the strength of the following:*

B. “Thus you shall offer” (Num. 18:28) – you, not partners; you, not sharecroppers; you, not guardians; nor one who designates heave-offering for property that is not his own.

C. *Said R. Hisda, “No problem, the one speaks of produce meant for consumption, the other, of produce meant for storing [where tithing can wait], and so it has been taught on Tannaite authority.”*

D. Executors [guardians] separate heave-offering and give tithes on the property of orphans which is meant for eating but not for storing. They sell in their behalf houses, vineyards, cattle, male and female slaves, houses, fields, and vineyards; doing so in order to provide food for orphans but not merely to save the money. They may sell for them produce, wine, oil, and flour, to purchase other food with the money, but not to save it, and to prepare for them a hut for Tabernacles, a palm branch for the same purpose, and show fringes, and to perform for them every obligation that is stated in the Torah – to purchase for them a scroll of the Torah and Prophets, phylacteries, signs for doorposts, and everything that includes a defined outlay; that is, a duty the scope of which is clearly delimited in the Torah. But they may not redeem captives on their behalf, nor in the synagogue levy upon them charity to the poor, that is, any duty the scope of which is not clearly delimited in the Torah. Guardians are not permitted to enter into lawsuits concerning the property of orphans or to undertake obligations on the property or to secure benefit for it.

E. *Why not? Rather, entail obligations to secure benefits for the property of orphans.*

F. The guardians may not sell land at a distance belonging to their wards so as to redeem land that is nearby, or to sell in a bad year to redeem the land in a good year, since there is the possibility that the crops may be struck with blight.

G. The guardians may not sell fields and buy slaves with the proceeds, but they may sell slaves and buy fields with the proceeds.

H. Rabban Simeon b. Gamaliel says, “They may not sell slaves and buy fields, since there is a risk that they will not be able to hold onto the fields.”

- I. And they are not permitted to set the orphan's slaves free by letting the slave pay his value, but they may sell them to others, so that they may set them free.
- J. Rabbi says, "I say that the slave may pay his own purchase money and become free, since the owner is as though he were selling him to himself."
- K. The guardian must give an account of his guardianship when it terminates.
- L. Rabban Simeon b. Gamaliel says, "That is not necessary."
- M. Women, slaves, and minors may not serve as guardians. But if the father of the orphans chose to appoint one of these, he has every right to do so [cf. T. Ter. 1:10-11].

I.2 A. *There was a certain guardian in the vicinity of R. Meir, who sold land and bought slaves, but R. Meir did not allow him to continue to do so. They showed him in a dream [a voice that said], "I am destroying, and will you build?"*

B. *And even so, he paid no attention, saying, "What happens in dreams makes no difference."*

I.3 A. *There were two men whom Satan provoked so that they had a fight every Friday afternoon. R. Meir happened by. He stopped them from fighting there Friday afternoons, until he made peace between them. He heard a voice saying, "Woe for this man, whom R. Meir has driven from his house!"*

I.4 A. *A certain guardian was in the vicinity of R. Joshua b. Levi, who was selling land and buying oxen, and the rabbis said nothing to him at all. He accorded with the principle of R. Yosé.*

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

C. Said R. Yosé, "In my entire life I never called my wife, 'my wife,' or my ox, 'my ox,' but my wife I called 'my house,' and my ox I called 'my field.'"

I.5 A. *Certain orphans who boarded with an elder woman had a cow, which she took and sold. The relatives of the orphans came to R. Nahman and said to him, "What right did she have to sell it?"*

B. *He said to them, "We have learned in the Mishnah: **Orphans who boarded with a householder, or for whom their father appointed a guardian....** [This shows that the householder who boards the orphans is equivalent to a guardian.]"*

- C. *“But it has gone up in value.”*
- D. *“True, but that is in the domain of the purchaser.”*
- E. *“But they haven’t yet been paid.”*
- F. *He said to them, “If so, then we may invoke the rule of R. Hanilai bar Idi which Samuel said, for said R. Hanilai bar Idi said Samuel, ‘Property belonging to orphans – lo, it is classified as what has been sanctified, and title is transferred only on the payment of money.’”*

I.6 A. *Rabban Uqba the orphan’s wine was drawn as an act of possession for four zuz to the cask. But the price of wine went up so it was worth six. They came before R. Nahman. He said to them, “That is in line with the rule of R. Hanilai bar Idi which Samuel said, for said R. Hanilai bar Idi said Samuel, ‘Property belonging to orphans – lo, it is classified as what has been sanctified, and title is transferred only on the payment of money.’”*

- I.7** A. *If purchasers have acquired title by drawing the produce of orphans without paying the money, the decision is in line with the rule of R. Hanilai bar Idi which Samuel said. If the price goes down, then an ordinary person should not have more power than the sanctuary [the purchasers cannot nullify the sale, even if the seller was a commoner].*
- B. *If the sellers have sold produce to orphans, transferring title by an act of drawing, and the price went up, we invoke the rule, an ordinary person should not have more power than the sanctuary [the purchasers cannot nullify the sale, even if the seller was a commoner].*
- C. *If the price went down, then it was considered that at that point should be invoked the rule of R. Hanilai bar Idi which Samuel said. Said to them R. Shisha b. R. Idi, “But that would be bad for them, since sometimes they may need produce, and no one will give it to them until they actually pay the money [and they won’t have any credit at all].”*
- D. *If the orphans paid the money for produce and before they got it, the price went down, we invoke the rule, an ordinary person should not have more power than the sanctuary [the purchasers cannot nullify the sale, even if the seller was a commoner].*
- E. *If the price went up, then it was considered that at that point should be invoked the rule of R. Hanilai bar Idi which Samuel said. Said to them R. Shisha b. R. Idi, “But that would be bad for them, [52B] since the sellers may come to say*

to them, 'Your wheat has burned up in the storehouse.'” [The orphans couldn't claim they didn't own it and so get their money back.]

- F. *If the sellers paid the money to the orphans for the produce, and before delivery the price went up, we invoke the principle, an ordinary person should not have more power than the sanctuary [the purchasers cannot nullify the sale, even if the seller was a commoner].*
- G. *If the price went down, then it was considered that at that point should be invoked the rule of R. Hanilai bar Idi which Samuel said. Said to them R. Shisha b. R. Idi, “But that would be bad for them, since sometimes they may need ready cash, and no one will give it to them until they actually hand over the produce.”*

I.8 A. *Said R. Ashi, “R. Kahana and I signed as witnesses on the deed of sale of the mother of the orphan Zeira, who without calling for public bidding on the property sold some land to pay the poll tax.*

B. *“For the Nehardeans say, ‘To raise money to pay the poll tax, buy food, or bury a corpse, we sell land without calling for public bidding on the property.’”*

I.9 A. *Amram the dyer was guardian for some orphans. The relatives came before R. Nahman. They said to him, “He’s clothing himself out of the property of the orphans.”*

B. *He said to them, “That is so that he will be listened to with respect.”*

C. *“He’s eating and drinking out of the proceeds of the estate, since he’s not particularly well-to-do.”*

D. *“I might say he found something of value [to support his new life-style].”*

E. *“He’s causing them loss to their property.”*

F. *He said to them, “Bring proof that he’s causing them loss and I’ll remove him. For said R. Huna our colleague in the name of Rab, ‘As to a guardian who causes a loss – we remove him.’”*

G. *For it has been stated:*

H. *As to a guardian who causes a loss –*

I. *R. Huna said Rab [said], “We remove him.”*

J. *Members of the household of R. Shila say, “We do not remove him.”*

K. *And the decided law is, we remove him.*

II.1 A. A guardian whom a father of orphans has appointed is to be subjected to an oath:

B. *How come?*

C. *If he got no benefit from the job, he wouldn't accept the responsibility of guardian, and on account of having to take an oath, he won't hesitate to take the job.*

III.1 A. [If] a court appointed him, he is not subjected to an oath:

B. This is an assignment that he has taken on only to serve the court, and if he has to take an oath in that connection, he will hesitate to take the job.

IV.1 A. Abba Saul says, "Matters are reversed":

B. *How come?*

C. *If the court appoints him, he takes an oath, on account of that benefit that he gains in the reputation that he is a reliable person, for the court depends upon him; therefore he won't hesitate to take the job merely because he has to take an oath. If the father of the orphans appointed him, he should not have to swear, for this is a public service that he is carrying out between the two men, and if you impose an oath on him, he will hesitate to agree to do it.*

D. *Said R. Hanan bar Ammi said Samuel, "The decided law accords with Abba Saul."*

IV.2 A. It has been taught on Tannaite authority:

B. R. Eliezer b. Jacob says, "Both this party and that party have to take an oath."

C. And the decided law is in accord with his statement.

D. *R. Tahalipa the Westerner repeated as a Tannaite statement in the presence of R. Abbahu: "A guardian whom the father of the orphans appointed has to take an oath, since he is a paid guardian."*

E. *He said to him, "You brought a qab and measured it out for him? [How in the world do you know that he is actually paid a fee?] Rather: 'He is in the status of someone who is paid a fee.'"*

5:4G-I

G. He who imparted uncleanness [to the clean food of someone else], and he who mixed heave-offering into the produce of someone else, and he who mixed another's wine with libation wine –

H. if he did so inadvertently, he is exempt [from punishment].

I. And if he did so deliberately, he is liable.

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

B. **And he who mixed another's wine with libation wine –**

C. Rab said, "That is meant literally [that he made a libation with the wine to a god]."

D. And Samuel said, "He mixed [Israelite wine with libation wine]."

E. *As to him who said, "He mixed [Israelite wine with libation wine]," why didn't he take the view that he literally made a libation with the wine to a god?"*

F. *He will say to you, "Well, if he actually made a libation to a god, then he is subject to the more stringent penalty [which is for making an offering to a god, not for merely ruining the Israelite's wine]."*

G. *And the other party?*

H. *He accords with R. Jeremiah, for said R. Jeremiah, "From the moment the defendant lifted up the wine [before the act of pouring it out as an offering to an idol] he acquired title to it and so was liable to pay monetary damages, but he did not become liable to the death penalty until he actually poured it out for the idol."*

I. *And as to him who said, "He made a libation with the wine to a god," how come he didn't maintain, "He mixed [Israelite wine with libation wine]"?*

J. *He will say to you, "If he merely mixed it, [53A] it is the same as the case of one who mixed heave-offering into the produce of someone else."*

K. *And the other party?*

L. *But that is merely an extrajudicial penalty, and we do not derive an extrajudicial penalty from another such penalty.*

M. *Well, then, from the perspective of those who do maintain that we do not derive an extrajudicial penalty from another such penalty, what need do I have for all of the specified items?*

N. *Each one was necessary. For if the Tannaite authority had dealt only with the matter of imparting uncleanness, then, in the case of heave-offering, I should have supposed that the operative consideration was that the person caused the total loss of the crop, and if it was imparting uncleanness to unconsecrated produce, I might have thought that the reason is that it is forbidden to impart uncleanness to unconsecrated*

produce in the Land of Israel. But in the case of mixing in untithed with tithed produce, I might have thought that that was not the operative consideration.

O. *And if we had been informed of the case of mixing untithed produce into tithed produce, I might have thought that that is penalized because it is commonplace, but as to imparting uncleanness, which is uncommon, I might have thought that that is not the case.*

P. *And if we had been informed of the matters of imparting uncleanness or mixing untithed with tithed produce, I might have supposed that the reason these are specified is that we cannot invoke the principle of imposing the more severe penalty, but in the case of making a libation to a god, in which case we might have thought that we should have to impose the more severe penalty [and so not provide damages], I might have thought that that is the case.*

Q. *So we are informed that here we invoke the principle of R. Jeremiah.*

R. *Well, what if we accept the principle that was set forth as a Tannaite rule by the father of R. Abin: “In the beginning they maintained, ‘He who imparts uncleanness to someone’s food in the status of heave-offering or who imparts to the wine of someone else the status of libation wine [prohibiting its use, is liable to make it up].’ Then they ruled, ‘Also, he who imparts the status of doubtfully tithed grain to someone else’s grain’” – then what need do I have for all of the specified items?*

S. *Each one was necessary. For if the Tannaite authority had dealt only with the matter of imparting uncleanness, then, I should have supposed that that was included because in that instance there is no consideration of imposing the more stringent of two penalties, but in the case of performing an act of libation to a god, in which case I do invoke the principle of imposing the more stringent penalty, I might have thought that that is not the case.*

- T. *And if we had been given the case of performing an act of libation, I might have supposed that that was because he has caused the total loss of the wine, but as to imparting uncleanness, in which case it is not a total loss, I might have thought that that is not the case.*
- U. *And if we were informed of these two items, I might have supposed that that is the rule because the loss is substantial, but as to mixing untithed produce into tithed produce, I might have supposed that the loss is minor, so there would be no penalty. So we are informed that that is not the case.*

- I.2** A. Said Hezekiah, “By the law of the Torah, all the same are the one who does such a thing inadvertently and the one who does it deliberately: Each is liable. *How come? This falls into the category of damage that is not readily discernible, and damage that is not readily discernible is classified as actionable.* So how come they have said that if it is done inadvertently, one is exempt from having to pay compensation? It is so that in such cases people will inform the owner.”
- B. *If that is the operative consideration, then even if it is done deliberately, the same rule should apply!*
 - C. *Well now, since the person has deliberately intended to do damage to the other, do you think that he isn't going to go and tell him? [Of course he will, so we don't have to encourage him to do so anyhow.]*
- D. And R. Yohanan said, “By the law of the Torah, all the same are the one who does such a thing inadvertently and the one who does it deliberately: Each is exempt from liability. *How come? This falls into the category of damage that is not readily discernible, and damage that is not readily discernible is classified as not actionable.* So how come they have said that if it is done deliberately, one is liable to having to pay compensation? So that people won't run around and impart uncleanness to the foods belonging to others that require preservation in a state of cultic cleanness, thinking, ‘I'm exempt anyhow.’”
- E. *We have learned in the Mishnah: **Priests who deliberately imparted the status of refuse to a sacrifice in the sanctuary are liable [M. 5:4J].** And in that connection it is taught as a Tannaite statement: **It is on account of the good order of the world.** Now, if you maintain that damage that is not readily discernible is classified as actionable,*

then those who do so inadvertently obviously are exempt from all penalty, *so why is it necessary to specify that this is on account of the good order of the world?*

- F. *But that is precisely the intent of the statement, namely, **priests who deliberately imparted the status of refuse to a sacrifice in the sanctuary are liable** – lo, if they did it inadvertently, they are exempt on account of the good order of the world.*
- G. *Objected R. Eleazar, “He who performs an act of labor with water set aside for the preparation of purification water or with a red cow that has been designated for the purification-offering is exempt under the laws of humanity but liable under the laws of Heaven. Now if you maintain that damage that is not readily discernible is classified as actionable, then he should be liable also under the laws of humanity.”*
- H. *He raised the objection, but he also resolved it: “The act of labor under discussion is one in which he brought it into a stall planning to let it give suck and threshing with it [there was no work done for which a court could punish him, but he is punished by Heaven for his intention (Simon)]; in the case of the water, the work that he did was to balance weights against its weight.”*
- I. But didn’t Raba say, “Purification water **[53B]** that one used for balancing against weights remains valid”?
- J. *No problem, the one refers to weighing against the water, the other, weighing in it.*
- K. *But when he weighs in it, he is performing an act of labor with it, and if damage that is not discernible is classified as actionable, then he should be liable also at the hands of an earthly court! Rather, both rules refer to doing so by weighing against the water, but there still is no problem, and [Eleazar] speaks of a case where he momentarily lost sight of the fact that it was purification water [in which case the water is disqualified, but he is not liable], and the other speaks of a case in which he was well aware of what it was.*
- L. *Objected R. Pappa, “[If he stole] (1) a coin, and it was declared invalid, (2) heave-offering, and it became unclean, (3) leaven, and the festival of Passover passed [making it no longer available for Israelite use], (4) a beast, and a transgression was committed upon it, or (5) [a beast] which was invalidated for use on the altar, or (6)*

which was going forth to be stoned, [the robber] says to him, 'Here is what is yours right in front of you!' [M. B.Q. 9:21-J]. *Now if you take the position that damage that is not readily discernible is classified as actionable, then this party is nothing other than a robber and has to pay back good money!"*

M. *That is a valid refutation.*

I.3 A. *May we say that the same issue is what is at stake in the following Tannaite conflict:*

B. **"He who imparted uncleanness [to the clean food of someone else], and he who mixed heave-offering into the produce of someone else, and he who mixed another's wine with libation wine – all the same is he who did so inadvertently and he who did it deliberately, he is liable,"** the words of R. Meir.

C. R. Judah says, "If he did so inadvertently, he is exempt; if he did so deliberately, he is liable."

D. *Is this not what is at issue between them, namely, the one authority takes the view that damage that is not discernible is actionable, and the other holds that it is not actionable?*

E. *Said R. Nahman bar Isaac, "All parties concur that damage that is not discernible is not actionable, but here what is at issue is whether or not we impose an indemnity upon one who acts inadvertently on account of the indemnity that is imposed on one who acts deliberately. For the one authority takes the view that sages have imposed an indemnity on one who acts inadvertently on account of one who does so deliberately, and the other authority maintains that sages have not imposed an indemnity on one who acts inadvertently on account of one who does so deliberately."*

F. *Then one must contrast what R. Meir has said with another statement of R. Meir, and one must further contrast a statement of R. Judah's with another statement that R. Judah has made, for it has been taught on Tannaite authority: "One who tithes [his produce], or who cooks on the Sabbath – [if he does so] unintentionally, he may eat [the food he has prepared]; [but if he does so] intentionally, he may not eat [the food]*

[**M. Ter. 2:3D-F**],” the words of R. Meir. R. Judah says, “If he did so inadvertently, he may eat the food at the end of the Sabbath, if it was done deliberately, he may never eat it.” R. Yohanan the Sandal Maker says, “If he did so inadvertently, at the end of the Sabbath he may give to others to eat, but not to himself; if he did so deliberately, it may never be eaten either by him or by others.” *So one must contrast what R. Meir has said with another statement of R. Meir, and one must further contrast a statement of R. Judah’s with another statement that R. Judah has made.*

- G. *There is no conflict between what R. Meir has said and another statement of R. Meir, for when rabbis imposed such an extrajudicial indemnity, it involved a ruling of rabbis, but as to a ruling of the Torah, they imposed no such indemnity.*
- H. *Yes, but the prohibition against making libations derives from the Torah, and there an indemnity has been imposed!*
- I. *That is because of the strict enforcement that is generally imposed upon the laws against idolatry.*
- J. *There is no conflict between a statement of R. Judah’s and another statement that R. Judah has made, for when rabbis imposed such an extrajudicial indemnity, it involved a ruling of the Torah, but as to a ruling of the rabbis, they imposed no such indemnity.*
- K. *But lo, the prohibition against making a libation derives from the Torah, and they imposed no such indemnity!*
- L. *Because of the stringent character of the prohibition against idolatry, people themselves avoid doing such things [and no further stringency is needed].*
- M. *There is a contrast to be drawn between two teachings of R. Meir with respect to the enforcement of the rules of the Torah, for it has been taught on Tannaite authority: **“One who plants [a tree] on the Sabbath – [if he does so] unintentionally, he may leave it [to grow]; [but if he does so] intentionally, he must uproot [it]. But in the Seventh Year [of the sabbatical cycle], whether [he has planted the tree] unintentionally or intentionally, he must uproot it,”** [M. Ter. 2:3Gff.] the*

words of R. Meir. R. Judah says, “In the Seventh Year, if he planted it inadvertently, he may let it grow, but if he did so deliberately, he must uproot it; if he did so on the Sabbath, whether it was inadvertent or deliberately, he must uproot it.”

- N. *Well, according to your reasoning, the passage itself should present problems to you, for both categories – the Sabbatical Year, the Sabbath – derive from the Torah, so what’s the difference between the Sabbath and the Sabbatical Year? But, in point of fact, in that very context, R. Meir explains the operative consideration behind his ruling, namely, said R. Meir, “How come I maintain, **One who plants [a tree] on the Sabbath – [if he does so] unintentionally, he may leave it [to grow]; [but if he does so] intentionally, he must uproot [it]. But in the Seventh Year [of the sabbatical cycle], whether [he has planted the tree] unintentionally or intentionally, he must uproot it?** Because the Israelites reckon from the Sabbatical Year [Simon: they will remember if a tree was planted in the Sabbatical Year, and if it is allowed to remain, they may take it as a precedent, so it was necessary to impose an indemnity in this case], **[54A]** but they don’t reckon from the Sabbath. Another matter: The Israelites are suspect of neglecting the Sabbatical Year but they are not suspect of neglecting the Sabbath.”*
- O. *What’s the point of “another matter”?*
- P. *This is the sense of his statement: Should you say that, in regard to the Sabbath, too, sometimes the thirtieth day prior to the New Year at the commencement of the Sabbatical Year coincides with the Sabbath, so if he plants a tree on that day, he will have a year before the next New Year, but otherwise, not, then I shall give you the alternative consideration, namely, the Israelites are suspect of neglecting the Sabbatical Year but they are not suspect of neglecting the Sabbath.*
- Q. *The two statements of R. Judah don’t conflict, for where R. Judah lived, the Seventh Year was taken very seriously, for someone would say to another by way of insult, “Stranger son of a woman who is a stranger,” to which the other would*

retort, *“Well, for my part, I don’t eat produce of the Seventh Year the way you do.”*

- I.4** A. *Come and take note:* If unwittingly someone ate unclean priestly rations, he pays back unconsecrated food that is cultically clean. If he paid back unconsecrated food that was cultically unclean, Sumekhosh says in the name of R. Meir, “If he did so inadvertently, his restitution is valid. If he did so deliberately, his restitution is not valid.” Sages say, “All the same one way or the other, his act of restitution is valid, but he has to go and pay in addition unconsecrated food that is cultically clean.” *And we reflected on this matter: If he made restitution deliberately why should it not be valid? He should be blessed. For he has eaten something of the priestly ration which a priest cannot eat when he is unclean but paid him back with something that the priest may eat when he is clean! And said Raba, and some say, Kadi, “The formulation is flawed, and this is how it should read:* If unwittingly someone ate unclean priestly rations, he pays back anything at all. If he ate priestly rations that was cultically clean, he must pay back unconsecrated food that is cultically clean. If he paid back unconsecrated food that was cultically unclean, Sumekhosh says in the name of R. Meir, ‘If he did so inadvertently, his restitution is valid. If he did so deliberately, his restitution is not valid.’ Sages say, ‘All the same one way or the other, his act of restitution is valid, but he has to go and pay in addition unconsecrated food that is cultically clean.’” *And said R. Aha b. R. Iqa, “Whether or not they have imposed an extrajudicial penalty on the basis of doing so inadvertently on account of the case of doing so deliberately is at issue between them.”*
- B. *But how are the cases parallel? There, the man has every intent of paying back what he has done, so should we go and impose an indemnity on him?*
- C. *Come and take note:* If the blood of an offering was made unclean and inadvertently was sprinkled, it is acceptable; if this was done deliberately, it is not accepted.

- D. *R. Meir will say to you, “But how are the cases parallel? There, the man has every intention of effecting atonement. Now should we go and impose an indemnity on him?”*
- E. *Come and take note: **One who tithes [his produce], or who cooks on the Sabbath – [if he does so] unintentionally, he may eat [the food he has prepared]; [but if he does so] intentionally, he may not eat [the food] [M. Ter. 2:3D-F].***
- F. *But how are the cases parallel? There, the man has every intention of properly preparing his food. Now should we go and impose an indemnity on him?*
- G. *Come and take note: **One who immerses [unclean] utensils on the Sabbath – [if he does so] unintentionally, he may use them; [but if he does so] intentionally, he may not use them [M. Ter. 2:3A-C].***
- H. *But how are the cases parallel? There, the man has every intention of purifying his utensils. Now should we go and impose an indemnity on him?*

I.5 A. *In respect to rulings that derive from the authority of rabbis, a contrast should be drawn between one teaching of R. Judah and another such teaching, for it has been taught on Tannaite authority: [54B] [If] (1) **the nuts were split [M. Orl. 3:8]**, (2) the pomegranates cut open, (3) the jars [of wine] opened, (4) the gourds cut into, or (5) the loaves broken into, all the same if this happened inadvertently or deliberately, they are not neutralized in [a ratio of] one [part of forbidden produce] to two hundred [parts of permitted produce],” the words of R. Meir. R. Judah, R. Yosé, and R. Simeon say, “If this happened inadvertently, they are neutralized; if it happened deliberately, they are not neutralized.” Now here is a case in which the prohibition derives from the Torah, which maintains that what is forbidden is neutralized in a proportion of one to two, and rabbis decreed that the proportion must be less than one to two hundred, and yet R. Judah*

imposes an indemnity in the case of one's doing the deed inadvertently!

- B. *Well, in that case R. Meir has a special consideration in mind, namely, without such an indemnity, someone may act with deceit.*

I.6 A. *Now there is a conflict among teachings assigned to R. Yosé, for we have learned in the Mishnah: [As for] a sapling [subject to the restriction] of orlah, or [a sapling prohibited under the laws] of diverse kinds in a vineyard, which was mixed together with [permitted] saplings – behold, this one may not pick [fruit from any of the trees]. If he picked, [the forbidden produce] is neutralized in [a ratio of] one [part of forbidden fruit] to two hundred [parts of permitted fruit]. And this is so provided that he does not purposely [pick the produce in order to have it neutralized]. R. Yosé says, “Even [if] he purposely picks [the produce], it is neutralized in two hundred and one” [M. **Orl. 1:6**].*

- B. *Lo, in this connection it has been stated, said Raba, “It is taken for granted that someone will not invoke a prohibition for his entire vineyard by reason of a single sapling.”*
- C. *And so, too, when Rabin came, he said R. Yohanan [said], “It is taken for granted that someone will not invoke a prohibition for his entire vineyard by reason of a single sapling.”*

5:4J

J. **And priests who deliberately imparted the status of refuse to a sacrifice in the sanctuary are liable.**

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

- B. **If someone was working with another on foods requiring cleanness and [during the work] said to him, “The food requiring cleanness that I prepared with you were made unclean,” or if he was working with him in**

making offerings and said to him, “The offerings that I prepared with you have been given the status of refuse,” he is believed.

- C. But if [when the work was all done,] he said to him, “The foods requiring cleanness that I prepared with you on such-and-such a day were made unclean,” “The offerings that I prepared with you on such-and-such a day were rendered refuse,” he is not believed [T. **Ter. 2:2F-G**].

D. *So what’s the difference between the former and the latter situation?*

E. Said Abbayye, “In any case in which someone had the power to do such a thing [again, which he says he did], he is believed.”

F. *Raba said, “It would be, for example, a situation in which he came across him and he said nothing to him, but later on, he came across him again and he made such a statement to him [so we assume that he said so just to annoy him; otherwise we believe him, even after the fact].”*

I.2 A. *There was someone who said to his fellow, “The foods requiring cleanness that I prepared with you on such-and-such a day were made unclean.”*

B. *The case came before R. Ammi. He said to him, “By the strict measure of the law, he is not believed.”*

C. Said before him R. Assi, “My lord, that’s what you say. But this is what R. Yohanan said in the name of R. Yosé, ‘What can I do? For the Torah has accorded him credence.’”

D. So where did the Torah declare that he is to be believed?

E. Said R. Isaac bar Bisna, “The high priest on the Day of Atonement proves the point. For if he said that the offering has been rendered refuse, he is believed. *And how on the basis of Scripture do we know that fact [that he made it refuse in an act of service]? The fact is that it is written in Scripture, ‘And there shall be no man in the tent of meeting’ (Lev. 16:17). So isn’t it because of the fact that he is believed when he makes such a statement?”*

F. *Yeah, but maybe someone heard him make a statement that imparted to the offering the status of refuse?*

- G. *So if it weren't the fact that he is believed, we wouldn't believe him even if we heard him, since he could well claim that this statement was made after he actually performed the rite itself.*
- H. *Well, maybe someone saw him through the small gateway [make the statement while sprinkling the blood]?*
- I. *So that's a fair question.*
- I.3**
 - A. *There was someone who came before R. Ammi. He said to him, "The scroll of the Torah that I wrote out for Mr. So-and-so – as to the names of God that I wrote therein, I did not write them with proper intentionality."*
 - B. *He said to him, "So who has the scroll of the Torah now?"*
 - C. *He said to him, "They're in the possession of the purchaser."*
 - D. *He said to him, "Well, you are believed so far as to lose the fee that he paid you, but you're not believed so far as to cause the loss of the scroll of the Torah."*
 - E. *Said to him R. Jeremiah, "Granted that he loses the fee for writing the names of God, but should he lose the entire fee for writing out the whole of the scroll of the Torah?"*
 - F. *He said to him, "You're damn right! The entire scroll of the Torah in which the names of God that are written are not done for the proper intention is simply worthless."*
 - G. *So why not have someone go through with a stylus and write over the names of God and so sanctify them properly?*
 - H. *In accord with what authority might that be done? One must say that it is not in accord with R. Judah, for it has been taught on Tannaite authority: "Lo, if, when copying a scroll of the Torah, the scribe intended to write the name of God and had the intention of writing the name, Judah, but in error he omitted the letter D [and so wrote the name of God] – one may go over it with a quill and so properly consecrate it," the words of R. Judah. And sages say, "That would not be the most desirable manner of writing the name of God." Now even if you invoke the name of R. Judah, R. Judah takes the position that he does only with reference to a single mention of the name of God, but as to the entire scroll of the Torah, he would surely not take*

that position, because it would appear like a leopard skin [all spotty].

- I.4** A. *There was someone who came before R. Abbahu. He said to him, "As to the scroll of the Torah that I wrote out for Mr. So-and-so, I did not tan the parchments used for that scroll with the proper intentionality."*
- B. He said to him, "So who has the scroll of the Torah now?"
- C. He said to him, "They're in the possession of the purchaser."
- D. He said to him, "Well, since you are believed so far as to lose the fee that he paid you, you're believed so far as to cause the loss of the scroll of the Torah."
- E. **[55A]** *So what's the difference between the case involving R. Ammi and this one?*
- F. *In that case, there is the possibility of saying that the scribe erred in taking the position of R. Jeremiah, but here, since he loses the whole of the fee and comes and makes the statement that he does, I say that he is telling the truth.*

5:5

- A. **Testified R. Yohanan b. Gudegedah concerning (1) a deaf-mute, whose father married her off, that [if she should be divorced], she goes forth with a writ of divorce;**
- B. **and (2) concerning a minor Israelite girl who was married to a priest, that she eats heave-offering,**
- C. **and if she died, her husband inherits her estate;**
- D. **and (3) concerning a stolen beam which one built into his house, that the original owner collects its value –**
- E. **on account of the good order of those who repent;**
- F. **and (4) concerning a stolen sin-offering, that was not publicly known, that it effects atonement –**
- G. **for the good order of the altar.**

- I.1** A. Said Raba, "From the testimony of R. Yohanan b. Gudgeda [it follows that, if the husband] said to witnesses, 'See, this is a writ of divorce that I am handing over,' and he said to her, 'Receive this bond of indebtedness,' lo, this woman is validly divorced. *For has not R. Yohanan b. Gudgeda said that we do not*

require the woman's knowledge and consent? So here, too, we do not require her knowledge and consent."

B. *Yeah, so what else is new?*

C. *What might you otherwise have supposed? Since the man said to her, "See, this is a writ of divorce that I am handing over," he has nullified the writ of divorce thereby. So we are taught that the writ remains valid, for if he had nullified the writ, he would have made that statement to the witnesses. And since he did not make the statement to the witnesses, he in no way has nullified the writ. The reason he made the statement to her was only to conceal his embarrassment.*

II.1 A. **And (2) concerning a minor Israelite girl who was married to a priest, that she eats heave-offering, and if she died, her husband inherits her estate:**

B. *But as to a deaf-mute woman, she cannot eat food in that classification. How come? It is a precautionary decree, lest a deaf-mute priest give a deaf-mute woman food in the status of priestly rations to eat.*

C. *So what if she does? She's merely in the status of a minor who eats carrion.*

D. *It is a precautionary decree lest a deaf-mute priest feed a woman of sound senses food in the status of priestly rations.*

E. *So let her eat food in the status of priestly rations as defined merely by rabbinical decree.*

F. *It is a precautionary decree lest she come about to eat food in the status of priestly rations by the definition of the Torah.*

III.1 A. **And (3) concerning a stolen beam which one built into his house, that the original owner collects its value – on account of the good order of those who repent:**

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

C. *If someone stole a beam and built it into a house –*

D. *the House of Shammai say, "Let him tear down the whole house and return the beam to its owner."*

E. *And the House of Hillel say, "The owner has a claim only for the value of the beam alone, on account of the good order of those who repent."*

IV.1 A. **And (4) concerning a stolen sin-offering, that was not publicly known, that it effects atonement – for the good order of the altar:**

- B. Said Ulla, “By the law of the Torah, whether the fact is known or otherwise, the offering does not effect atonement. *How come? The owner’s despair of recovering the object [and so renunciation of ownership] entirely on its own does not transfer title.* Then why did sages say, **that was not publicly known, that it effects atonement?** So that the priests won’t be upset [by the experience of eating a secular beast in the holy place].”
- C. *Said rabbis to Ulla, “But lo, in the Mishnah we have learned the language, for the good order of the altar!”*
- D. *He said to them, “Since the priests are distressed, the altar will turn out to be neglected.”*
- E. And R. Judah said, “By the law of the Torah, whether the fact is known or otherwise, the offering does effect atonement. *How come? The owner’s despair of recovering the object [and so renunciation of ownership] entirely on its own does transfer title.* [55B] Then why did sages say, that was publicly known, that it does not effect atonement? So that people won’t say that the altar is consuming stolen animals.”
- F. *Now there is no problem from Ulla’s perspective in understanding why reference is made in particular to a sin-offering. But from the view of R. Judah, why specify sin-offering, when the same consideration applies as well to a burnt-offering?*
- G. *The formulation is meant to move from a more obvious to a less obvious case. There is no need to say that that is so in the case of the burnt-offering, which is wholly consumed on the altar, but even a sin-offering, too, the fat and blood of which go up onto the altar, but the rest the priest eats – even here, it is a decree so that people won’t say that the altar is consuming stolen animals.*
- H. *We have learned in the Mishnah: **concerning a stolen sin-offering, that was not publicly known, that it effects atonement – for the good order of the altar.** Now that poses no problems to Ulla. But to R. Judah, we ought to phrase matters in reverse [a stolen sin-offering, that was publicly known, that it does not effect atonement]!*
- I. *That’s precisely the intent of his statement, namely, a stolen sin-offering, if that fact was not publicly known, that it effects atonement, if it was publicly known, it does not effect atonement, for the good order of the altar.*

- J. *Objected Raba, “ If one stole and then consecrated [the animal] and afterward slaughtered or sold it, he pays twofold restitution and does not pay fourfold or fivefold restitution [M. B.Q. 7:4G-H]. And in that connection it has been taught as a Tannaite statement: If after the consecration he killed the animal outside the Temple area, he is subject to extirpation. Now, if you maintain, that despair on its own does not transfer title, then as to extirpation, what in the world has he done to deserve such a penalty?” [Simon: When he consecrated the animal, it wasn’t his, and when he killed it, it wasn’t sacred.]*
- K. Said R. Shizbi, “It is extirpation decreed on the authority of scribes.”
- L. *Everybody roared at that statement: Is there any such thing as extirpation decreed on the authority of scribes?*
- M. *Said to them Raba, “When an eminent authority makes a statement, you shut up and listen to what he has to say! Extirpation based on the authority of scribes does come about, for it was, after all, rabbis who declared it to be in his domain, on which basis he is liable for the beast!”*
- N. *Said Raba, “This is what really troubles me: When rabbis assigned ownership to his domain, is it from the moment of the theft or the moment of the act of consecration?”*
- O. *So what difference does it make?*
- P. *With regard to the fleece and the offspring. [If he owns the beast from the moment he steals it, then the fleece or offspring are assigned to his domain, and he doesn’t have to make restitution for them.]*
- Q. *Then said Raba, “It stands to reason that it is from the time that he consecrated the beast, so that a sinner shouldn’t make a profit.”*

5:6

- A. **The law concerning the usurping occupant did not apply in Judah in the case of those slain in the war.**
- B. **From the time of those slain in the war and thenceforward the law of the usurping occupant did apply.**
- C. **How [does the law apply]?**
- D. **[If] one purchased a property [first] from the usurping occupant and [then] went and [also] purchased it from the householder,**

- E. his purchase is null.
- F. [If he purchased it first] from the householder and [then] went and purchased it from the usurping occupant, his purchase is confirmed.
- G. [If] a man purchased it from a man and then purchased it from a woman, his purchase is null.
- H. [If] he purchased it from a woman and then purchased it from a man, his purchase is confirmed.
- I. This is the first Mishnah. The court after them ruled:
- J. He who purchases a property from a usurping occupant pays the owner a fourth of the value.
- K. Under what circumstances?
- L. When he [the original owner] has not got the means to buy it.
- M. But [if] he has got the means to buy it, he takes precedence over all other people.
- N. Rabbi called a court into session and they voted that if the property had remained in the hands of the usurping occupant for twelve months, whoever comes first has the right to purchase it.
- O. But he pays the owner a quarter of the value.
- I.1** A. *Well now, if the law concerning the usurping occupant did not apply in Judah in the case of those slain in the war, then from the time of those slain in the war and thenceforward the law of the usurping occupant did apply?!*
- B. *Said R. Judah, "The sense of the statement is, they didn't enforce the rule of the usurping occupant."*
- C. *For said R. Assi, "Three decrees did they make: the first decree, whoever didn't kill would himself be killed; second, whoever killed should pay four zuz; the third, whoever killed should be put to death. Therefore, in the case of the first and the second decrees, the owner, being in danger of his life, would act on account of danger to his life and so decide to transfer title to the usurping occupant, but in the third, he would say to himself, 'Today he can take it, tomorrow I'll sue him for it.'"*

Topical Appendix on the Wars against Rome

- I.2** A. *Said R. Yohanan, "What is the meaning of the verse, 'Happy is the man who fears always, but he who hardens his heart shall fall into mischief' (Pro. 28:14)? On account of Qamsa and Bar Qamsa Jerusalem was destroyed, on account of a cock and a hen Tur Malka was destroyed, on account of a shaft of leather Betar was destroyed."*
- I.3** A. *On account of Qamsa and Bar Qamsa Jerusalem was destroyed:*
- B. *There was a man whose friend was Qamsa and whose enemy was Bar Qamsa. He made a party and said to his slave, "Go, invite Qamsa." He went and brought Bar Qamsa." The host came and found him seated. He said to him, "Since you're the one who tells stories about me, what in the world are you doing here. Get up, get out."*
- C. *He said to him, "Since I've come, let me stay, and I'll pay you for whatever I eat and drink."*
- D. **[56A]** *He said to him, "No."*
- E. *He said to him, "Then I'll pay you half the cost of your whole banquet."*
- F. *He said to him, "No."*
- G. *He said to him, "I'll give you the whole cost of your banquet."*
- H. *He said to him, "No." He grabbed him by the hand and took him and threw him out.*
- I. *The man thought, "Since the rabbis were sitting right there and they didn't object, it follows that they're perfectly happy with such a thing. I'll go and report them to the government."*
- J. *He went and told Caesar, "The Jews are rebelling against you."*
- K. *He said to him, "How shall I know?"*
- L. *He said to him, "Send them an offering. See if they offer it up!"*
- M. *He went and sent with him a third-grown calf. On the way, he made a blemish on its upper lip – some say, in the white of the eye – in a place that we regard as a blemish but they don't.*
- N. *Rabbis considered offering it up, to keep peace of the government. Said to them R. Zechariah b. Abequlos, "People will say, 'They're offering blemished animals on the altar.'"*
- O. *They considered killing him, so that he wouldn't go and report what had happened.*

P. Said to them R. Zechariah, “They will say, ‘One who makes a blemish on Holy Things is to be put to death.’”

Q. Said R. Yohanan, “The excess of scruples of R. Zechariah b. Abequlos is what destroyed our house, burned our Temple, exiled us from our land.”

I.4 A. *The emperor sent against them Caesar Nero. As he was coming, he shot an arrow to the east and it went and fell on Jerusalem; he shot it to the west, and it came and fell on Jerusalem, and so in the four directions of the heavens, the arrow came and fell on Jerusalem.*

B. *He said to a child, “Tell me, what verse you are learning just now?”*

C. He said to him, “‘And I will lay my vengeance upon Edom by the hand of my people Israel’ (Eze. 25:14).”

D. *He said, “It is the Holy One, blessed be He, who wants to destroy his house and then go and lay the blame on me.” He ran away and fled and converted to Judaism, and from him came forth R. Meir.*

I.5 A. *He sent against them Caesar Vespasian. He came and besieged Jerusalem for three years. There were in the city three nobles, Naqidmon ben Gurion, Ben Kalba Sabua, and Ben Sisit Hakkeset.*

B. Naqidmon ben Gurion: For the sun shown for him.

C. Ben Kalba Sabua: For whoever entered his house as hungry as a dog would go out stuffed.

D. Ben Sisit Hakkeset: For his show fringes would trail on cushions.

E. *There are those who say:* Because his seat was set among the nobles of Rome.

F. *One of them said to them, “I shall provide food for them in wheat and barley,” the next, “I will provide wine, oil, and salt” and the third, “I’ll provide wood.”*

G. *Rabbis praised most of all the offer of wood, for R. Hisda would hand over all his keys to his slave except for the key to the woodshed, for R. Hisda would say, “A storehouse of wheat needs sixty storehouses of wood.”*

H. *So these men had enough food for the city for twenty-one years.*

I.6 A. *There were zealots [biryonim] there. Said to them rabbis, “Let’s go out and make peace with them.”*

B. *They wouldn’t let them.*

C. *They said to them, “Let’s go out and make war with them.”*

D. *Rabbis said, “Nothing good will come of it.”*

- E. *They went and burned the stores of wheat and barley, so there was a famine.*
- I.7** A. *Marta bar Beitos was one of the richest women in Jerusalem. She sent for her messenger and said to him, "Go, bring me some fine flour." But by the time he went, it sold out.*
- B. *He came and said to her, "There's no fine flour, but there's white flour."*
- C. *She said to him, "Go bring that to me." But by the time he went, it sold out.*
- D. *He came and said to her, "There's no white flour, but there's dark flour."*
- E. *She said to him, "Go bring that to me." But by the time he went, it sold out.*
- F. *He came and said to her, "There's no dark flour, but there's barley flour."*
- G. *She said to him, "Go bring that to me." But by the time he went, it sold out.*
- H. *In the meantime she had taken off her shoes. She said, "I'll go out and see whether I can find something to eat." Some dung stuck to her foot and she died.*
- I. *Rabban Yohanan ben Zakkai recited in her regard the verse, "The tender and delicate woman among you, who would not venture to set the sole of her foot upon the open ground..." (Deu. 28:57).*
- J. *There are those who say, "She ate a date left by R. Sadoq and got sick and died."*
- I.8** A. *For R. Sadoq sat in fasts for forty years that Jerusalem not be destroyed. When he ate something, the food could be seen as it passed through his throat. When he wanted to get well, they would bring him a fig, and he would suck the juice and toss out the rest.*
- I.9** A. *When she was dying, she brought out all the gold and silver and threw it into the marketplace, saying, "What in the world do I need this for?"*
- B. *That is in line with the verse, "They will throw their silver into the streets" (Eze. 7:19).*
- I.10** A. *Abba Siqara was the chief of the zealots in Jerusalem. He was the son of Rabban Yohanan b. Zakkai's sister. He sent word to him, "Come to me in secret."*
- B. *He came.*
- C. *He said to him, "How long are you going to act in this way and kill everybody through famine?"*
- D. *He said to him, "What should I do? If I say anything to them, they'll kill me, too."*
- E. *He said to him, "Find some sort of remedy for me to get out of here, maybe there will be the possibility of saving something."*

- F. *He said to him, "Pretend to be sick, and have everybody come and ask about you; have something bad smelling and put it by you, so people will think you're dead. Then let your disciples carry you – but nobody else – so that no one will feel that you're still light, since people know that a living being is lighter than a corpse."*
- G. *They did so. R. Eliezer came in at one side, and R. Joshua at the other. When they got to the gate, they wanted to stab him. He said to them, "People will say they stabbed their master." They wanted to shove him over the wall. He said to them, "People will say they shoved their master [over the wall]." They opened the gate for him, and he got out.*
- H. *When he got there, he said, "Peace be unto you, O king, peace be unto you, O king."*
- I. *He said to him, "You are subject to the death penalty on two counts; first of all, I'm not a king, and you called me king; second, if I really am king, then how come you didn't come to me up till now?"*
- J. *He said to him, "As to your statement, 'I'm not king,' [56B] the truth is you really are king, because if you weren't king, then Jerusalem wouldn't have been handed over to you, for it has been written, 'Lebanon shall fall by a mighty one' (Isa. 10:34), and 'mighty one' refers only to a king, in line with the verse, 'And their mighty one shall be of themselves' (Jer. 30:21). Not only so, but Lebanon speaks of the Temple, 'This goodly mountain and Lebanon' (Deu. 3:25). And as to what you have said, 'If I really am king, then how come you didn't come to me up till now?' up to now, the zealots among us wouldn't let me come."*
- K. *He said to him, "So if there's a jar of honey, with a lizard wrapped around it, wouldn't you break the honey to get rid of the lizard?"*
- L. *He shut up.*
- M. *R. Joseph, and some say, R. Aqiba, recited in his regard: "'God turns wise men backward and makes their knowledge foolish' (Isa. 44:25). He ought to have said to him, 'We would take a pair of tongs and grab the lizard and kill it but leave the jar whole.'"*
- N. *In the meantime an agent [parastak/frestak] came to him from Rome. He said to him, "Arise, for the Caesar is dead, and the citizens of Rome propose to enthrone you at the head."*

- O. *At that moment he had finished putting on one boot. He wanted to put on the other, but it wouldn't go on. He wanted to take off that one, but it wouldn't go off. He said, "What's going on?"*
- P. *He said to him, "Don't be distressed. Good news has come to you, for it is written, 'Good news makes the bone fat' (Pro. 15:30). So what's the solution? Bring someone you despise and let him walk before you: 'A broken spirit dries up the bones' (Pro. 17:22)." He did so and the boot went on.*
- Q. *He said to him, "Well, if you're so smart, how come you didn't come to me before now?"*
- R. *He said to him, "Well, didn't I already tell you?"*
- S. *He said to him, "So I told you, too!"*
- T. *He said to him, "Now I'm going away, and I'm sending someone else. So ask something from me, which I'll give you."*
- U. *He said to him, "Give me Yavneh and its sages, and the chain of Rabban Gamaliel, and a physician to heal R. Sadoq."*
- V. *R. Joseph, and some say, R. Aqiba, recited in his regard the verse, "'God turns wise men backward and makes their knowledge foolish' (Isa. 44:25). He ought to have said to him to leave the place alone this time." But he thought that maybe that much he won't do, and there would not be the possibility of saving anything at all.*

I.11 A. *What was the healing that the physicians brought to R. Sadoq? On the first day they gave him to drink water in which bran had been soaked, on the next, water in which coarse meal had been soaked, on the next day, water in which flour had been mixed, so that his stomach grew little by little.*

- I.12** A. *He went and sent Titus, who said, "'Where is their God, the rock in whom they trusted?' (Deu. 32:37)."*
- B. *This is that wicked Titus, who blasphemed and raged against Heaven. What did he do? He took a whore by her hand, and went into the house of the Holy of Holies; he spread out a scroll of the Torah, and on it he fucked her.*
 - C. *He took a sword and slashed the curtain.*
 - D. *A miracle was done, and blood spurted out. He thought he had killed himself: "Your adversaries have roared in the midst of your assembly, they have set up their ensigns for signs" (Psa. 74: 4).*

- E. Abba Hanan said, “‘Who is a mighty one like you, O Lord’ (Psa. 89: 9) – who is like you in having so thick a skin that you could hear the blaspheming and raging of that wicked man and keep dumb?”
- F. The household of R. Ishmael set forth this Tannaite statement: “‘Who is like you among the gods’ (Exo. 15:11) – who is like you among the dumb [the word for dumb and gods sharing the same consonants].”
- G. What did he do? He took the veil and made it into a kind of basket, and he brought all the utensils that were in the sanctuary and put them in it, and he set them onto a boat to go to serve in his triumph his city: “And withal I saw the wicked buried, and they that come to the grave and they that had done right went away from the holy place and were forgotten in the city’ (Qoh. 8:10) – don’t read the letters that spell buried in that way, but rather, as ‘collected’; don’t read the letters that spell ‘and were forgotten’ in that way, but rather, ‘and served as a triumph.’”
- H. *There are those who say, “They were literally buried. For even things that were buried were revealed to them.”*
- I. A gale arose at sea, to swamp him. He said, “It appears to me that the god of these people is mighty only through water. Pharaoh came along, and he drowned him in water. Sisera came along, and he drowned him in water. So he’s now standing against me to drown me in water. So if he’s so mighty, let him come up onto dry land and make war with me there.”
- J. An echo came forth and said to him, “Wicked man, son of a wicked man, son of the wicked Esau, I have a small creature in my world, called a gnat.”
- K. *Why is it called a gnat? Because it has a little aperture for taking in but not for excreting.*
- L. “Disembark on dry land and go, make war with it.”
- M. He disembarked on dry land. A gnat came and entered his nostril and picked away at his brain for seven years.
- N. *One day he was going by the gate of a smithy, the gnat heard the sound of the hammer and stopped gnawing. He said, “So I see, there’s a solution.” So every day they brought a smithy, and he hammered before him. To a gentile smithy they gave four zuz, to an Israelite he said, “Just enjoy the satisfaction of seeing your enemy’s suffering.”*
- O. *This went on for thirty days. From that point, the creature got used to it [following Simon].*

I.13 A. *It has been taught on Tannaite authority:*

- B. Said R. Phineas b. Aroba, "I was among the nobles of Rome, and when he died, they split his skull and found in it something like a sparrow that weighed two selas."
- C. *In a Tannaite statement it was repeated:* like a young dove that weighed two pounds.
- I.14** A. *Said Abbaye, "We hold in hand a tradition that its beak was made of brass and its talons of iron."*
- I.15** A. *When he died, he said to them, "Burn me and scatter my ashes over the seven seas so that the God of the Jews will not find me and bring me to trial."*
- I.16** A. *Onqelos bar Qalonimos was the son of the sister of Titus. He wanted to convert. He went and raised Titus from the dead through witchcraft. He said to him, "Who is important in that world?"*
- B. He said to him, "Israel."
- C. "So what about joining them?"
- D. *He said to him, "Their requirements are many, and you won't be able to carry them out. Go, attack them in that world, and you will be on top, for it is written, 'Her adversaries have become the head' (Lam. 1: 5) – whoever gives distress to Israel is made head."*
- E. *He said to him, "So what is the punishment meted out to you?"*
- F. *He said to him, [57A] "It is precisely what I decreed on myself. Every day they collect my ashes and they pass sentence on me, and I am burned and my ashes are spread over the seven seas."*
- G. *He went and called up Balaam by witchcraft. He said to him, "Who is important in that world?"*
- H. He said to him, "Israel."
- I. "So what about joining them?"
- J. *He said to him, "'You shall not seek their peace nor their prosperity all your days, ever' (Deu. 23: 7)."*
- K. *He said to him, "So what is the punishment meted out to you?"*
- L. *He said to him, "With boiling semen."*
- M. *He went and with witchcraft raised up Israelite sinners. He said to them, "Who is important in that world?"*
- N. They said to him, "Israel."
- O. "So what about joining them?"

- P. *They said to him, "Seek their peace, but don't seek evil for them. Whoever touches them is as though he touched the apple of his eye."*
- Q. *He said to them, "So what is the punishment meted out to you?"*
- R. *They said to him, "With boiling shit."*
- S. For a master has said, "Whoever ridicules the teachings of sages is punished by boiling shit."
 - T. *Come and notice the difference between Israelite sinners and gentile prophets, idolators.*

I.17 A. *It has been taught on Tannaite authority:*

- B. Said R. Eleazar, "Come and take note of how great is the power of humiliation. For lo, the Holy One, blessed be He, sided with Bar Qamsa and on that account destroyed his house and burned his Temple."

I.18 A. *On account of a cock and a hen Tur Malka was destroyed:*

- B. *The custom was that when they brought forth a groom and bride, they would pass before them a rooster and a hen, as if to say, "Be fruitful and multiply like chickens." One day a troop of Romans soldiers passed by and grabbed the birds from them, so the Jews fell on them and beat them. They went and told Caesar, "The Jews are rebelling against you." He came up against them.*
- C. *Among them [the Jews] here was a Roman who could jump a mile and kill them. Caesar took his crown and put it on the ground and said, "Lord of the world, may it please you not to deliver me and my kingdom into the power of a single individual."*
- D. *The mouth of this Roman is what made him stumble, for he said, "Have you not, God, cast us off and you don't go forth, God, with our hosts" (Psa. 60:12).*
- E. *But didn't David say this?*
- F. *David said it in astonishment [as though such a thing might be possible, while this man said it as fact].*
- G. *He went to the privy. A lizard came. He dropped his guts and died.*
- H. *He said, "Now, since a miracle has been done for me, this time I'll let them off." So he left them and went his way.*
- I. *He went. They danced, ate, and drank, and lit lamps, so that the outlines of a seal could be discerned by that light a mile away. He said, "The Jews are having a good time at my expense." He came back and attacked them.*
 - J. *Said R. Assi, "Three hundred thousand men with drawn swords invaded Tur Malka and they killed in the town for three days and three*

nights, while on the other side of town there was dancing and feasting, and the one side didn't know what was going on on the other side."

- I.19** A. "The Lord has swallowed up all the habitations of Jacob and has not pitied" (Lam. 2: 2):
- B. *When Rabin came*, he said R. Yohanan [said], "This refers to the six hundred thousand towns that belonged to king Yannai in the Royal Mountain."
- C. For said R. Judah said R. Assi, "King Yannai had six hundred thousand towns in the Royal Mountain, and in each one of them were as many people as went forth from Egypt, except for three of them, in which dwelt twice the number of those that went forth from Egypt, and these are they: Kefar Bish [Bad Town], Kefar Shihelayyim [Watercress Town], and Kefar Dikhraya [Man Town]."
- D. *Kefar Bish: For they never gave a room to a guest;*
- E. *Kefar Shihelayyim: For they made their living from watercress.*
- F. *Kefar Dikhraya:*
- G. Said R. Yohanan, "For their wives would produce boys first and then girls, and then they would stop bearing."
- H. *Said Ulla, "I personally have seen that place, and even six hundred thousand reeds it would not hold."*
- I.20** A. *Said a certain Sadducee to R. Hanina, "You people are a bunch of liars."*
- B. *He said to him, "In regard to the Land it is written, 'A land of the deer' (Jer. 3:19) – just as the flayed skin of a deer cannot hold all of its meat, so the Land of Israel, when it is inhabited has plenty of room, but when it is not inhabited, it shrinks."*
- I.21** A. *R. Minyumi bar Hilqiah, R. Hilqiah bar Tubiah, and R. Huna bar Hiyya were in session together. They said, "If there is someone here who has heard anything about Kefar Sikhnayya in Egypt, let him tell it."*
- B. *One of them commenced, saying, "There was a case there of a bride and groom from there, who were kidnapped by gentiles, who paired them up. She said to him, 'I ask you, don't touch me, for I have no marriage contract from you,' and he didn't touch her until the day of his death. And when he died, she said to them, 'Mourn for this one, who kept better control of his desire than Joseph. For Joseph had only one hour of temptation, but this one had it every single day, and Joseph wasn't in the same bed with the woman, but this man was; and in Joseph's case, she wasn't his wife, but here she was.'"*

- C. *The next one of them commenced, saying, "There was a case in which forty bushels of grain went for a denar, but the price went down to one for one, and they looked into the matter and discovered that a father and his son had sexual relations with a betrothed girl on the Day of Atonement. They brought them to court and stoned them. Then the price returned to where it had been."*
- D. *The next one of them commenced, saying, "There was a case of a man who thought of divorcing his wife, but her marriage settlement was enormous. What did he do? He went and invited his groomsmen and fed them and gave them plenty to drink and got them drunk and then he laid them all in one bed, and he brought egg white and spread it among them. He set up witnesses against them and came to court. But there was an elder there who was one of the disciples of Shammai the Elder, and his name was Baba ben Buta. He said to them, 'This is what I have as a tradition from Shammai the Elder: "Egg white contracts when brought near fire, but semen grows faint near fire."' They looked into the matter and found it was as he had said. They brought them to court and flogged them and collected her marriage settlement from them."*
- E. *Said Abbaye to R. Joseph, "Well, if they were so righteous, how come they were punished?"*
- F. *He said to him, "Because they didn't really mourn for Jerusalem: 'Rejoice with Jerusalem and be glad for her, all you that love her, rejoice for joy with her, all you that mourn over her' (Isa. 66:10)."*

I.22 A. *On account of a shaft of leather, Betar was destroyed:*

- B. *For they had the custom that, when a boy was born, they planted a cedar tree, and when a girl was born, they planted a pine tree, and when they got married, they cut down the trees and made a canopy of the branches. One day Caesar's daughter was going by, and the shaft of her litter broke; they cut off some branches of a cedar tree and brought them to her, so the Jews fell on them and beat them. They went and told Caesar, "The Jews are rebelling against you." He came up against them.*

I.23 A. "He has cut off in fierce anger all the horn of Israel" (Lam. 2: 3):

- B. Said R. Zira said R. Abbahu said R. Yohanan, "This refers to the eighty thousand battle trumpets that assembled in the city of Betar when they took it, and men, women, and children did they kill in it, until their blood flowed and fell into the Great Sea. And should you say that it was near by, it was in fact a mile away."

I.24 A. *It has been taught on Tannaite authority:*

B. R. Eliezer the Great says, “There are two streams in the Valley of Hands, one of them flows in this direction, the other in that direction, and sages made the estimate that they ran with two parts of water to one of wine.”

C. *In a Tannaite statement it was repeated:*

D. For seven years the gentiles fertilized their vineyards with Israelite blood, rather than manure.

I.25 A. [57B] Said R. Hiyya bar Abin said R. Joshua b. Qorha, “A certain elder from the people of Jerusalem told me:

B. ““In this valley Nebuzaradan, chief slaughterer, killed two million one hundred thousand, and in Jerusalem, nine hundred forty thousand on one stone, until their blood went and mixed with that of Zechariah, carrying out the verse, “Blood touches blood” (Hos. 4: 2).”

C. *[Nebuzaradan] saw the blood of Zechariah boiling. He said to them, “What is this?”*

D. *They said to him, “It is the blood of the sacrifices, that has been poured out.”*

E. *He said to them, “Come and let us bring [animal blood to make a comparison to see whether they are alike or not alike].” He slaughtered an animal and the blood was not like [that which was boiling].*

F. *He said to them, “Explain it to me, and if not, I shall comb your flesh with iron combs.”*

G. *They said to him, “What should we tell you! This one was a prophet among us, and he rebuked us on account of matters having to do with Heaven. We ganged up against him and killed him. And lo, for many years his blood has not come to rest.”*

H. *He said to them, “I shall be the one to appease him.” He brought the great sanhedrin and the lesser sanhedrin and killed them over him, but [the blood] did not come to rest. He brought young men and women, but the blood did not come to rest. He brought schoolchildren and killed them over him, but still the blood did not come to rest. He drew near [the blood] and said, “Zechariah, Zechariah, I have destroyed the best of them. Do you want me to kill them all?”*

I. *When he said this to him, forthwith the blood came to rest.*

- J. *He said to himself, "Now if they, who killed only a single person, were treated in such a way, that man [I] – what will come of him?"*
- K. *He fled, sent his instructions to his household [giving over his property to his family], and then converted [to Judaism].*

I.26 A. A Tannaite statement:

- B. Naaman was a resident proselyte.
- C. Nebuzaradan was a righteous proselyte.
- D. Grandsons of Haman studied Torah in Bene Beraq.
- E. Grandsons of Sisera taught children in Jerusalem.
- F. Grandsons of Sennacherib taught Torah in public.
- G. And who were they? Shemaiah and Abtalion.

I.27 A. *So Nebuzaradan carried out that which is written: "I have set her blood upon the bare rock that it should not be covered" (Eze. 24: 8).*

I.28 A. "The voice is the voice of Jacob, and the hands are the hands of Esau" (Gen. 27:22):

- B. "The voice": This refers to Caesar Hadrian, who in Alexandria of Egypt killed six hundred thousand on top of six hundred thousand, twice as many as went forth from Egypt.
- C. "The voice of Jacob": This refers to Caesar Vespasian, who in the city of Betar killed four million, and some say, ten times that number.
- D. "And the hands are the hands of Esau": This refers to the wicked empire, which destroyed our house, burned our sanctuary, and exiled us from our land.

I.29 A. Another teaching concerning, "The voice is the voice of Jacob, and the hands are the hands of Esau" (Gen. 27:22):

- B. "The voice is the voice of Jacob": You have no prayer that works unless the seed of Jacob is involved in it.
- C. "And the hands are the hands of Esau":
- D. You have no war unless the seed of Esau is involved in it.
- E. That is in line with what R. Eleazar said, "'You shall be hid from the scourge of the tongue' (Job. 5:21):
- F. "You will be protected from slander."

I.30 A. Said R. Judah said Rab, "*What is the meaning of the verse of Scripture: 'By the rivers of Babylon there we sat down, yes, we wept when we remembered Zion' (Psa. 137: 1)?* This teaches that the Holy One, blessed be He, showed

David the destruction of the first Temple and the destruction of the second Temple.

- B. "The destruction of the first Temple: 'By the rivers of Babylon there we sat, yes we wept.'
- C. "And the destruction of the second Temple: 'O Lord, against the children of Edom, remember the day of Jerusalem, for they said, Destroy it, destroy it, down to the very foundations' (Psa. 137:11)."

I.31 A. *Said R. Judah said Samuel, and some say, R. Ammi, and some say, in a Tannaite statement it has been taught:* "There was the case of four hundred boys and girls, who were taken captive for immoral purposes and realized the purpose for which they were desired. They said to themselves, 'If we drown ourselves in the sea, we shall reach the life of the world to come.'

- B. "The eldest among them expounded the verse, 'The Lord said, I will bring you again from Bashan, I will bring you again from the depths of the sea' (Deu. 26:17, 18):
- C. "'I will bring you again from Bashan': from between the lion's teeth.
- D. "'I will bring you again from the depths of the sea': those who drown in the sea.
- E. "When the girls heard this, all of them jumped and fell into the sea. The boys then argued a fortiori for their own case, saying, 'If these, for whom this kind of sex is at least natural, have done so, all the more so should we do the same!' They, too, jumped into the sea.
- F. "In their regard Scripture says, 'Yes, for your sake we are killed all day long, we are counted as sheep for the slaughter' (Psa. 44:23)."

I.32 A. And R. Judah said, "The verse ['Yes, for your sake we are killed all day long, we are counted as sheep for the slaughter' (Psa. 44:23)] refers to the woman and her seven sons."

- B. *They brought the first of them before Caesar. They said to him, "Bow down to the idol."* He said to them, "It is written in the Torah, 'I am the Lord your God' (Exo. 20: 2)." *They took him out and killed him.*
- C. *They brought the next before Caesar. They said to him, "Bow down to the idol."* He said to them, "It is written in the Torah, 'You shall have no other gods before me' (Exo. 20: 3)." *They took him out and killed him.*
- D. *They brought the next before Caesar. They said to him, "Bow down to the idol."* He said to them, "It is written in the Torah, 'He who

sacrifices to the gods, except to the Lord only, shall be utterly destroyed' (Exo. 22:19)." *They took him out and killed him.*

- E. *They brought the next before Caesar. They said to him, "Bow down to the idol." He said to them, "It is written in the Torah, 'You shall not bow down to any other god' (Exo. 20: 5)." They took him out and killed him.*
- F. *They brought the next before Caesar. They said to him, "Bow down to the idol." He said to them, "It is written in the Torah, 'Hear O Israel, the Lord our God, the Lord is one' (Deu. 6: 4)." They took him out and killed him.*
- G. *They brought the next before Caesar. They said to him, "Bow down to the idol." He said to them, "It is written in the Torah, 'Know therefore this day and lay it to your heart that the Lord he is God in the heaven above and on the earth beneath, there is no other' (Deu. 4:39)." They took him out and killed him.*
- H. *They brought the next before Caesar. They said to him, "Bow down to the idol." He said to them, "It is written in the Torah, 'You have affirmed the Lord this day...and the Lord has affirmed you this day' (Deu. 26:17-19). Long ago we have taken an oath to the Holy One, blessed be He, that we shall not exchange him for any other god, and he took an oath to us that he will not exchange us for any other people."*
- I. *Said to him Caesar, "So I'll throw you my seal, and you can bend over and pick it up, so people will say that all you did was obey the order of the king."*
- J. He said to him, "The hell with you, Caesar, the hell with you, Caesar – if the honor that is owing to you is so important, how much more important is the honor owing to the Holy One, blessed be He!"
- K. *They took him out to kill him. Said his mother to them, "Give him to me, so I can kiss him one more time."*
- L. She said to him, "My child, go and tell your father, Abraham, you bound on the altar only one child, but I bound seven altars." Then she, too, went up to the roof and threw herself down and died. An echo came forth and said, "A joyful mother of children" (Psa. 113: 9).

I.33 A. R. Joshua b. Levi said, "The verse ['Yes, for your sake we are killed all day long, we are counted as sheep for the slaughter' (Psa. 44:23)] refers to circumcision, which is assigned to the eighth day."

- B. R. Simeon b. Laqish said, "The verse ['Yes, for your sake we are killed all day long, we are counted as sheep for the slaughter' (Psa. 44:23)] refers to disciples of sages, who demonstrate the rules of ritual slaughter on themselves."
- C. *For said Raba, "Anything a man may demonstrate on himself except for the rules of ritual slaughter and 'something else.'"*
- D. R. Nahman bar Isaac said, "The verse ['Yes, for your sake we are killed all day long, we are counted as sheep for the slaughter' (Psa. 44:23)] refers to disciples of sages, who kill themselves for teachings of the Torah."
- E. *That is in accord with what R. Simeon b. Laqish said, for said R. Simeon b. Laqish, "The teachings of the Torah endure only with someone who is ready to kill himself over them: 'This is the Torah, when a man shall die in the tent' (Num. 19:14)."*

I.34 A. Said Rabbah bar bar Hannah said R. Yohanan, "Forty seahs of phylacteries were found on the heads of those who were killed in Betar."

- B. R. Yannai b. R. Ishmael said, "Three chests, each with forty seahs."
- C. *In a Tannaite statement it was repeated: forty chests each containing three seahs.*
- D. *There is no real difference among these statements, the one refers to the phylactery of the head, the other, of the arm.*

I.35 A. Said R. Assi, "Forty qabs of brains were found on a single rock."

- B. Ulla said, "Nine qabs."
- C. *Said R. Kahana, and some say Shila bar Mari, "What verse of Scripture is fulfilled? 'O daughter of Babylon, you that are to be destroyed, happy shall he be that rewards you, happy shall he be that takes and brains your infants on a rock' (Psa. 137: 8-9)."*

I.36 A. "You precious sons of Zion, comparable to fine gold" (Lam. 4: 2):

- B. *What is the meaning of "comparable to fine gold"? Shall I say that they were gilded with fine gold? But didn't a member of the household of R. Shila say, "Two stater-weights of fine gold came down into the world, one to Rome, the other to the rest of the world"? Rather, it means that they would eclipse fine gold by their beauty.*
- C. *Before that time, the nobles of Rome would tie an amulet set in a ring before them when they had sexual relations. Now they brought in Israelites and tied them to the foot of the bed and had sexual relations looking at them. One said to another, "Where is there a verse of Scripture behind this?"*

- D. *He said to him, "Also every sickness and every plague that is not written in the book of this law" (Deu. 28:61).*
- E. *He said to him, "And how far am I from that place?"*
- F. *He said to him, "Not far, a page and a half."*
- G. *He said to him, "If I had gotten that far, I shouldn't have needed you."*

- I.37** A. R. Judah said Samuel said in the name of R. Rabban Simeon b. Gamaliel, *"What is the meaning of the following verse of Scripture: 'My eye affects my soul, because of all the daughters of my city' (Lam. 3:51)?"*
- B. *"There were four hundred synagogues in the city of Betar, and in each one, four hundred teachers of children, and each had four hundred students. And when the enemy entered there, they stabbed them with their spears, and when the enemy triumphed, they took them and wrapped them in their scrolls and burned them up in fire."*

- I.38** A. *Our rabbis have taught on Tannaite authority:*
- B. There was the case of Joshua b. Hananiah, who went to Rome.
 - C. He was told that there was a boy in prison, kept there for pederasty.
 - D. He went and saw there a youngster of beautiful eyes, a lovely face, curly locks, who was used for pederasty.
 - E. He stood by the door to find out his character, reciting to him this verse, "Who gave Jacob for a spoil, and Israel to the robbers" (Isa. 42:24).
 - F. The boy responded, "Did not the Lord? He against whom we have sinned, and in whose ways they would not walk, neither did they obey his Torah" (Isa. 42:24).
 - G. He said, "I am confident that this boy will one day be a teacher in Israel. I swear that I will not budge without ransoming him at any price they demand."
 - H. They say that he did not budge without ransoming him at any price they demanded.
 - I. And not much time went by before he became a teacher in Israel.
 - J. And what was his name? R. Ishmael b. Elisha.

- I.39** A. Said R. Judah said Rab, "There was the case of the son and daughter of R. Ishmael b. Elisha who were taken captive by two masters. In a time the two of the masters met in the same place. This one says, 'I have a slave boy, the like of whose beauty is nowhere in the world.' And that one says, 'I have a slave girl, the like of whose beauty is nowhere in the world.'"
- B. "They said, 'So let's marry them off and divide up the children.'"

- C. “They brought them together into a room. This one sat in one corner and that one sat in the other corner. This one says, ‘I am a priest, son of high priests, and should I marry a slave girl?’
- D. “And that one says, ‘I am a priest woman, daughter of high priests, and should I marry a slave boy?’
- E. “And they cried all night long.
- F. “But when the morning star came up, they recognized one another and fell on one another and broke out into tears until their souls departed, and in their regard Jeremiah mourns, ‘For these I weep, my eye, my eye drops water’ (Lam. 1:16).”

I.40 A. Said R. Simeon b. Laqish, “There was the case of a woman, named Safenat daughter of Peniel – Safenat, because everybody looked at her beauty [the letters for her name appearing in the word for gaze], the daughter of Peniel, because she was daughter of the high priest who ministered in the inner shrine.

- B. “One of the conquerors fucked her a whole night. The next day he wrapped her in seven garments and took her out to sell her. Somebody came along who was genuinely ugly. He said to him, ‘Show me how pretty she is.’ He said to him, ‘Idiot! If you want to buy, buy, for there is no beauty like hers in the whole world.’ He said to him, ‘Nonetheless.’ So he took off six of the veils, and she herself tore off the seventh, and then she wallowed in the dust, saying before him, ‘Lord of the world, if you don’t have any pity at all for us, then at least have some regard for the sanctification of your own mighty name!’ For her Jeremiah laments: ‘O daughter of my people, gird yourself with sackcloth and wallow in ashes, make a mourning as for an only child, for the spoiler shall suddenly come upon us’ (Lam. 1:16). What it says is not ‘upon you’ but ‘upon us,’ for the spoiler has come, as it were, upon me and upon you.”

I.41 A. Said R. Judah said Rab, “What is the meaning of the verse, ‘And they oppress a man and his house, even a man and his heritage’ (Jer. 6:26)?

- B. “There was the case of a man who desired his master’s wife; he was a carpenter’s apprentice. Once his master fell into need of borrowing money. He said to him, ‘Send your wife to me, and I’ll lend the money.’
- C. “He sent his wife to him. She stayed with him for three days. The man then took the initiative and came to him.
- D. “He said to him, ‘My wife, whom I sent to you, where is she?’ He said to him, ‘I sent her off right away, but I heard that the boys had some fun with her on the way.’

- E. “He said to him, ‘What should I do?’
- F. “He said to him, ‘If you want to take my advice, divorce her.’
- G. “He said to him, ‘Her marriage settlement is huge.’
- H. “He said to him, ‘I’ll lend you the money, and pay off her marriage settlement.’
- I. “This one went and divorced her, and the other went and married her.
- J. “When the time came and he had no money to pay off the loan, he said to him, ‘Come and work for me in exchange for your debt.’
- K. “So they would sit and eat and drink, and he would stand and pour for them. And the tears would flow from his eyes into their wine cups. And from that moment the doom was sealed.”
- L. Some say, “It was because of two ‘wicks’ in one ‘lamp’.”

II.1 A. **[If] one purchased a property [first] from the usurping occupant and [then] went and [also] purchased it from the householder, his purchase is null. [If he purchased it first] from the householder and [then] went and purchased it from the usurping occupant, his purchase is confirmed:**

- B. Said Rab, “This rule pertains only if the original owner said to the purchaser, ‘Go and occupy the field and acquire title to it.’ But if it was with a deed, the other has acquired title to the field.”
- C. Samuel said, “Even if it was with a deed, too, he has not acquired title to the field, unless the original owner gives him a lien on the rest of his property [in which case we know for sure that this is a willing transaction and not under duress].”

D. **[58B]** *It has been taught on Tannaite authority in accord with the position of Samuel:*

E. **R. Simeon b. Eleazar says, “If one has purchased the field from the woman and then gone and purchased it from the husband, his purchase is valid. If he purchased it from the husband and then he purchased it from the wife, his purchase is null, unless she gives him a lien on the rest of her property” [T. Git. 3:11D-F].**

F. *May we then say that this refutes the opinion of Rab?*

G. *Rab may say to you, “What is the meaning of unless she gives him a lien on the rest of her property? This refers to giving a deed.”*

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

- B. He who acquired property from a usurping occupant and had the usufruct for three years in the presence of the original owners, and then went and sold it to a third party – the original owners have no claim on the second purchaser.

II.3 A. *Now how are we to imagine such a case? If the second purchaser should plead, “He bought it from you,” then even if he bought it from the first, the rule would be the same. If he pleads, “He bought it from you,” then the rule would not apply to the second party either!*

B. *Said R. Sheshet, “In point of fact he does not advance this plea. But the rule pertains, because in such a case, the court proposes the plea to the heir and proposes the plea to the purchaser, but while if the first on his own makes such a plea, he can acquire, but otherwise he cannot.”*

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

- B. **If a gentile seizes Israelite land by reason of a debt or by reason of an installment payment of a tax that has not been paid, that does not fall under the law of the usurping occupant.**

- C. **As to the collection of the tax itself, they wait for the owner to redeem the field for a period of twelve months [T. Git. 3:11B-C].**

II.5 A. *But didn’t you just say, that does not fall under the law of the usurping occupant?*

B. *This is the sense of the statement: “The usurping occupant himself has to wait for twelve months.”*

II.6 A. *Said R. Joseph, “We hold a tradition: There is no installment payment of a tax in Babylonia.”*

B. *Yeah, but we see that there most certainly is!*

C. *Rather say, “The law of collecting installment payments of a tax does not apply in Babylonia.” How come? Since there is a court, and the victim doesn’t go and register an objection, we assume he has waived his rights.*

II.7 A. *Giddal bar Reilai took a field from owners of a certain plot of ground on condition that he would pay the taxes on it. He paid the tax in advance for three years. The original owners finally came back after one year, and they said to him, “Well, you’ve paid the tax for one year and you’ve had the usufruct. Now we’ll pay the tax and will have the usufruct.”*

- B. *They brought the case before R. Pappa, He considered issuing a writ against the owners of the land [covering the two years' tax that he had paid in advance]. Said R. Huna b. R. Joshua to R. Pappa, "If so, you will have enforced the law of the usurping occupant" [Simon: by making the other owners pay him, just as the purchaser of a field from the usurping occupant pays the original owner a quarter, and this is not right, since there is no question of a usurping occupant here, since no one forced him to pay the three years' tax in advance].*
- C. Rather, said R. Huna b. R. Joshua, "This man has put his money on the horn of a deer [and lost it]."

III.1 A. This is the first Mishnah. The court after them ruled: He who purchases a property from a usurping occupant pays the owner a fourth of the value:

- B. Said Rab, "A quarter in real estate or a quarter in cash."
- C. And Samuel said, "A quarter in real estate, which is equivalent to a third in cash."
- D. *So what's at stake?*
- E. *The one master [Samuel] maintains that he buys real estate for a quarter less than its true value, and the other that he buys real estate for a fifth less than its true value [Simon: he buys land worth five manehs for four, hence he returns either a fifth of the land which is the equivalent of the quarter of the purchase price, or one maneh].*
- F. *An objection was raised: This is the first Mishnah. The court after them ruled: He who purchases a property from a usurping occupant pays the owner a fourth of the value – a quarter of the value to be paid in real estate, a quarter in ready cash, and the claim of the owner is uppermost decided which he prefers [T. Git. 3:9L-N]. Under what circumstances? When he [the original owner] has not got the means to buy it. But [if] he has got the means to buy it, he takes precedence over all other people. Rabbi called a court into session and they voted that if the property had remained in the hands of the usurping occupant for twelve months, whoever comes first has the right to purchase it. But he pays the owner a quarter of the value.*
- G. Said R. Ashi, "When that Tannaite statement was taught, it pertains to the case after the money has come into the hands [Simon: it is a fourth

of the total sum paid by the purchaser both to the usurping occupant and to the owner].”

Topical Appendix on How Decisions Were Reached

- III.2** A. *Said Rab, [59A] “I was present at the vote at the household of Rabbi, and it my vote that they took first.”*
- B. *But lo, we have learned in the Mishnah: In cases involving questions of property or of uncleanness and cleanness they begin [voting] from the eldest. In capital cases they begin from the side [with the youngest] [M. San. 4:2A]!*
- C. *Said Rabbah b. Raba, and some say, R. Hillel b. R. Vallas, “Counting votes in the household of Rabbi is exceptional, because in all instances they started the count from the side [with the youngest].”*
- III.3** A. *And said Rabbah, son of Raba, and some say, R. Hillel, son of R. Vallas, “From the time of Moses to Rabbi, we do not find the combination of foremost status in learning in Torah and preeminence in worldly greatness joined in a single person.”*
- B. *And is that not so? And there was the case of Joshua?*
- C. *With him was Eleazar [equal in learning].*
- D. *There was Phineas? With him were the elders.*
- E. *There was Saul? With him was Samuel.*
- F. *But lo, [Samuel] died before him? We refer to the entire lifetime [of such a unique figure].*
- G. *There was David? With him was Ira the Jairite [2Sa. 20:26].*
- H. *But lo, [Ira] died before him? We refer to the entire lifetime [of such a unique figure].*
- I. *There was Solomon? With him was Shimei, son of Gera [2Sa. 19:18].*
- J. *But lo, [Solomon] killed [Shimei]? We refer to the entire lifetime.*
- K. *There was Hezekiah? With him was Shebnah.*
- L. *But he was killed [during Hezekiah’s lifetime]? We refer to the entire lifetime.*
- M. *There was Ezra? No, with him was Nehemiah, son of Hachaliah.*
- N. *Said R. Aha b. Raba, “I, too, say, ‘From the time of Rabbi to R. Ashi, we do not find the combination of learning in Torah and worldly greatness joined in a single person.’”*
- O. *Do we not? And lo, there was Huna bar Nathan.*

P. *Huna bar Nathan was subordinate to R. Ashi.*

5:7

A. **A deaf-mute makes signs and receives signs.**

B. **And Ben Beterah says, “He communicates by movements of the mouth and receives communication by movements of the mouth,”**

C. **in the case of movables.**

D. **And as to little children: Their purchase is valid and their sale is valid in the case of movables.**

I.1 A. **[A deaf-mute makes signs and receives signs. And Ben Beterah says, “He communicates by movements of the mouth and receives communication by movements of the mouth, in the case of movables”:]** Said R. Nahman, “The dispute pertains to movables, but as to writs of divorce, all parties concur that this may be done with gestures.”

B. *Well, that’s pretty obvious, since the language of the Mishnah is explicitly, in the case of movables!*

C. *But what might you otherwise have supposed? That the sense is, also with respect to movables! So we are informed that that is not the case.*

D. *There are those who say, “Said R. Nahman, ‘As is the dispute with respect to movables, so is there a dispute with regard to writs of divorce.’*

E. *“‘But we have learned as the language of the Mishnah, in the case of movables!’*

F. *“Say: ‘also with regard to movables.’”*

II.1 A. **And as to little children: Their purchase is valid and their sale is valid in the case of movables:**

B. From what age is that the case?

C. *R. Judah pointed to R. Isaac his son, “At about six or seven.”*

D. *R. Kahana said, “At about seven or eight.”*

E. *In a Tannaite statement it is repeated: at about nine or ten.*

F. *But there is no conflict among these statements, each child varies in accord with his wit.*

II.2 A. *Why is this the rule?*

B. Said R. Abba bar Jacob said R. Yohanan, “Because of the need for getting them what they need to live.”

- II.3** A. “And he said to him that was in charge of the wardrobe, bring out the vestments for all the worshippers of Baal” (2Ki. 10:22):
- B. *What is the wardrobe?*
- C. Said R. Abba bar Jacob said R. Yohanan, “This refers to something [Simon:] that is drawn out thin by fingering.”
- II.4** A. *When R. Dimi came*, he said R. Yohanan [said], “Bonias b. Nonias sent to Rabbi [Simon:] head coverings of fine linen and various other things of fine linen. *The first two were folded into the size of a nut and a half, the second two, into the size of a pistachio nut and a half.*
- B. “What is one of the things of fine linen called a malmela? This refers to something [Simon:] that is drawn out thin by fingering.”
- II.5** A. Up to what point [will an error of a child in selling something for less than true value be permitted]?
- B. Said R. Jonah said R. Zira, “Up to a sixth of true value, just as in the case of an adult.”
- II.6** A. *Abbayye raised the question, “What is the rule governing a gift that a minor may make?”*
- B. R. Yemar said, “A gift that he makes is null.”
- C. Mar bar R. Ashi said, “A gift that he makes is valid.”
- D. *They reversed the attributions and sent the saying before R. Mordecai. He said to him, “Go, say to the son of the master [Ashi], ‘This is not how the facts of the case are.’ When the master was once standing with one foot on the ground and one on the steps, we said to him, ‘What is the rule governing a gift that a minor may make?’ And he said to us, ‘A gift that he makes is valid, all the same being a gift of a dying man and a gift of a healthy man, a large gift and a little gift.’”*

5:8

- A. **And these rules did they state in the interests of peace:**
- B. **A priest reads first, and afterward a Levite, and afterward an Israelite – in the interests of peace.**
- C. **They prepare an meal of commingling for purposes of the Sabbath in the house where it was first placed – in the interests of peace.**
- D. **[59B] A well nearest to the stream is filled first – in the interests of peace.**

- E. Traps for wild beasts, fowl, and fish are subject to the rules against stealing – in the interests of peace.
 - F. R. Yosé says, “It is stealing beyond any doubt.”
 - G. Something found by a deaf-mute, an idiot, and a minor is subject to the rule against stealing – in the interests of peace.
 - H. R. Yosé says, “It is stealing beyond any doubt.”
 - I. A poor man beating the top of an olive tree –
 - J. what is under it [the tree] is subject to the rule against stealing – in the interests of peace.
 - K. R. Yosé says, “It is stealing beyond any doubt.”
 - L. They do not prevent poor gentiles from collecting produce under the laws of Gleanings, the Forgotten Sheaf, and the Corner of the Field – in the interests of peace.
- I.1**
- A. A priest reads first, and afterward a Levite, and afterward an Israelite – in the interests of peace:
 - B. *What is the scriptural basis for this rule?*
 - C. *Said R. Mattenah, “Said Scripture, ‘And Moses wrote this Torah and gave it to the priests, the sons of Levi’ (Deu. 31: 9). Now don’t I know that the priests are sons of Levi? But it means that the priest comes first, then the Levite.”*
 - D. *R. Isaac Nappaha said, “Proof derives from here: ‘And the priests the sons of Levi shall draw near’ (Deu. 21: 5). Now don’t we know that the priests are sons of Levi? But it means that the priest comes first, then the Levite.”*
 - E. *R. Ashi said, “Proof derives from here: ‘The sons of Amram were Aaron and Moses, and Aaron was separated to sanctify him as most holy’ (1Ch. 23:13).”*
 - F. *R. Hiyya bar Abba said, “Proof derives from here: ‘And you shall sanctify him’ (Lev. 21: 8) – for every matter having to do with sanctification [give him precedence].”*
 - G. *A Tannaite member of the household of R. Ishmael [stated], “‘You shall sanctify him’ – in every matter that has to do with sanctification, to open the reading of the Torah first, to recite the Grace after Meals first, to receive a good helping first.”*
- I.2**
- A. *Said Abbayye to R. Joseph, “...in the interests of peace!?” It derives from the law of the Torah!”*
 - B. *He said to him, “It indeed derives from the Torah, but it is also in the interests of peace.”*

- C. “But the entirety of the Torah is also in the interests of peace, for it is written, ‘Its ways are ways of pleasantness and all her paths are peace’ (Pro. 3:17).”
- D. *Rather, said Abbayye, “It is in accord with this master, as has been taught on Tannaite authority:*
- E. **“If there are two persons at one dish, they wait for one another; if there are three, they don’t need to; the one who breaks bread helps himself to the dish first, but if he wishes to show regard to his master or to a person of superior rank, he may do so [T. Ber. 5:7D-E].** And the master said in this regard, ‘That has been taught only with regard to a meal, *but as to a synagogue, that is not the case, for it might bring about controversy.*’”
- F. *Said R. Mattenah, “That which you have said with respect to the synagogue applies only for the Sabbath and festival days, when there is a large attendance, but as to services on Monday and on Thursday, that is not the case.”*
- G. *Well is that so? And lo, R. Huna read in the status of priest even on Sabbaths and festival days!*
- H. *R. Huna was exceptional, because even R. Ammi and R. Assi, prominent priests in the Land of Israel, deferred to him.*
- I.3** A. *Said Abbayye, “We hold a tradition: If there is no priest present, then the arrangement is annulled.”*
- B. *And said Abbayye, “We hold a tradition: If there is no Levite there, a priest reads.”*
- C. *Well is that so? And lo, didn’t R. Yohanan say, “One priest does not read in succession after another priest, because of the injury thereby done to the first of the two; one Levite does not read in succession after another Levite, because of the injury thereby done to the two of them”?*
- D. *What we meant to say is, the same priest should replace the Levite.*
- E. *And what makes the case of one Levite after another exceptional, in that in such a case there is injury done to both of them?*
- F. *People will say, “One of them isn’t a Levite.”*
- G. *Well, if one priest reads after another, people will say one of them is not a priest!*
- H. *It would be a case in which it is an established fact with us that the father of the second of the two is a priest.*

- I. *Well, here, too, it can be an established fact with us that the father of the second was a Levite.*
- J. *Rather, people will say, "He [the father] was married to a mamzer woman or a netinah woman and so has invalidated his offspring."*
- K. *Here, too, they can say, "He was married to a divorcée or a woman who had performed the rite of removing the shoe and had so secularized his offspring."*
- L. *Well, in the end, if he were suspect, would he read as a Levite?*
- M. *So who would call him into suspicion? Those who are left in the synagogue? They see that [he is counted as one of the seven called to the Torah, so the reason another priest or Levite was called was not that he was disqualified (Simon)]!*
- N. *Well, the point is, those who leave early [may reach such a conclusion].*

I.4 A. *The Galileans sent word to R. Helbo, "After the priest and Levite, [60A] who are called to read?"*

B. *He didn't have the information in hand, so he came and asked R. Isaac Nappaha. He said to him, "After them are called to read disciples of sages who are appointed as authorities for the community, after them are called disciples of sages who are suitable to be appointed authorities in the community, after them are called sons of disciples of sages, whose fathers are appointed authorities in the community, after that are called heads of the community and anybody else."*

I.5 A. *The Galileans sent word to R. Helbo, "What is the law about reading in the synagogue in public separate scrolls of the books of the Torah [rather than out of one complete scroll of the Pentateuch]?"*

B. *He didn't have the information in hand, so he came and asked R. Isaac Nappaha, who didn't have the information in hand, so he came and asked in the schoolhouse, and they settled the question on the basis of what R. Samuel bar Nahmani said R. Yohanan said, "A scroll of the Torah that lacks a single flap may not be read."*

C. *But that is not so. In that case, something required was missing, in this case, nothing required is missing.*

D. *Rabbah and R. Joseph both said, "They do not read in the synagogue in public separate scrolls of the books of the Torah [rather than out of*

one complete scroll of the Pentateuch], on account of respect for the community.”

I.6 A. *And Rabbah and R. Joseph both said, “A scroll that contains only the prophetic lections may not be read on the Sabbath. How come? Because it is improper to write [the lections of the prophets separately].”*

B. *Mar b. R. Ashi said, “To carry them about also is forbidden. How come? Because it is not appropriate to read in such a scroll.”*

C. *But that is not so. It is permitted to carry them about and it also is permitted to read in them. For lo, R. Yohanan and R. Simeon b. Laqish would study in a scroll of lore on the Sabbath, even though it is not supposed to be written down. But the operative consideration was, since it was not possible to do otherwise, “when it is time to work for the Lord, they annul your Torah” (Psa. 119:126), and here, too, the same consideration is invoked, namely, since it is not possible to do otherwise, “when it is time to work for the Lord, they annul your Torah” (Psa. 119:126).*

I.7 A. Abbayye asked Rabbah, “What is the law concerning writing out a scroll [with a passage of the Torah] for a child’s practice? Now that question may be addressed to him who maintains that the Torah was given scroll by scroll [and only joined up later on], and it also is a problem for him who takes the position that the Torah was handed down whole and complete.

B. “Now that question may be addressed to him who maintains that the Torah was given scroll by scroll [and only joined up later on]: Since it was given scroll by scroll, it also may be written out in separate scrolls, or maybe, since in the end it was all joined together, that is how it must stay?

C. “It also is a problem for him who takes the position that the Torah was handed down whole and complete: Since it was given whole and complete, it is not to be written in any other way, or perhaps, since there is no alternative, we do write it bit by bit for the present purpose?”

- D. He said to him, "It is not to be written in that way. And what is the reason? Because they do not write [it that way; the rule is what it is]."
- E. *An objection was raised: She also made a golden tablet, on which was written the pericope of the accused wife [M. Yoma 3:10E].*
- F. Said R. Simeon b. Laqish in the name of R. Yannai, "It was written only with the first letters of the words."
- G. *An objection was raised: As the priest writes [the passage on the accused wife], he looks at the tablet and writes what is written in the tablet.*
- H. *Say: He writes as though it were written in the tablet.*
- I. *An objection was raised: As he writes, he looks at the tablet and writes what is written in the tablet, for example, "If one lay...if one did not lie..." (Num. 5:19, 20).*
- J. *Here, too, with what case do we deal? It is that it was written only partially [Simon: the beginnings of the verses were in full, and the later words were written with the first letter only].*
- K. *Let us say that there is a counterpart conflict of Tannaite opinion on this very question:*
- L. They do not write out a scroll [with a passage of the Torah] for a child's practice, but if one intends to complete the document, he may do so.
- M. R. Judah says, "He may do so in Genesis from the beginning up to the generation of the flood; he may do so in the Torah of the Priests [Leviticus] up to 'And it came to pass on the eighth day' (Lev. 9: 1)."
- I.8** A. Said R. Yohanan in the name of R. Benaah, "The Torah was given scroll by scroll: 'Then I said, Lo, I am come, in the roll of the book it is written of me' (Psa. 40: 8)."
- B. R. Simeon b. Laqish said, "The Torah was given whole and complete: 'Take this scroll of the Torah' (Deu. 31:26)."
- C. *And as to the other party, isn't it written, "Take this scroll of the Torah"?*

- D. *That refers to the situation after the scrolls had been pasted together.*
- E. *And as to the other party, isn't it written, "...in the roll of the book it is written of me"?*
- F. *That shows that the whole of the Torah is called a scroll: "And he said to me, what do you see? And I answered, I see a flying scroll" (Zec. 5: 2).*
- G. *Alternatively, the answer accords with R. Levi, for said R. Levi, "Eight passages were stated on the day on which the tabernacle was set up, and these are they: the section on the priests [Lev. 21], the section on the Levites [Num. 8: 5-26], the section on uncleanness [Num. 9: 9-14], the section on dismissing the unclean from the camp [Num. 5: 1-4], the section 'after the death...', [Lev. 16] [60B] the section on the priests' not drinking wine [Lev. 10: 8-11], the section on the lights [Num. 8: 1-4], and the section on the red cow [Num. 19]."*

- I.9** A. Said R. Eleazar, "As to the Torah, the larger part is in writing, and the smaller part is oral: 'Though I wrote for him the major portion of my law, they were counted a strange thing' (Hos. 8:12)."
- B. And R. Yohanan said, "The larger part was oral, the smaller part in writing: 'For orally, these words...' (Exo. 34:27)."
- C. *And as to the other party, isn't it written, "Though I wrote for him the major portion of my law"?*
- D. *That is an expression of astonishment, namely, should I have written down for him the major portion of my law?! Even now, isn't it regarded by him as a strange thing?!*
- E. *And as to the other party, isn't it written, "For orally, these words..."?*
- F. *That is because it is a formidable task to learn them.*

- I.10** A. R. Judah bar Nahmani, the interpreter of R. Simeon b. Laqish, expounded, "One version of Scripture says, 'Write these words' (Exo. 34:27), and another verse of Scripture says, 'For in accord with these words' (Exo. 34:27). [Since the word 'in accord' can be translated, 'by the oral version...',] it means

to tell you, matters that are to be memorized you have not got the right to state in writing, and those that are to be in writing you have not got the right to state from memory.”

- B. *And a Tannaite authority of the household of R. Ishmael [states], “Scripture says, ‘Write these words for yourself,’ meaning, these are the words that you may write, but you may not write down laws.”*
- C. Said R. Yohanan, “The Holy One, blessed be He, made a covenant with Israel only on account of words that are memorized: ‘For by memorizing these words, I have made a covenant with you and with Israel’ (Exo. 34:27).”

II.1 A. They prepare an meal of commingling for purposes of the Sabbath in the house where it was first placed – in the interests of peace:

- B. *On what consideration? Should I say that it is in regard to the honor owing to the owner of the room? Then what about the shofar, which first was kept in the household of R. Judah, then in the household of Rabbah, then in the household of R. Joseph, then in the household of Abbaye, and finally in the household of Raba?*
- C. *It is so as not to arouse suspicion [Simon: if people come into the room where they are used to seeing the meal and miss it, they will think that the residents of the courtyard have neglected to prepare it].*

III.1 A. A well nearest to the stream is filled first – in the interests of peace:

- B. *It has been stated:*
- C. *Where fields all adjoin a canal –*
- D. *Rab said, “The ones down below draw water first.”*
- E. *Samuel said, “The ones up above draw water first.”*
- F. *In a case in which the water continues to flow, all parties concur that there is no issue anyhow. Where they differ, it is on whether or not one may dam the canal to water the fields.*
- G. *Samuel said, “The ones up above draw water first”: For they say, “We’re nearer to the source.”*
- H. *Rab said, “The ones down below draw water first”: For they say, “The river should be allowed to flow normally.”*
 - I. ***We have learned in the Mishnah: A well nearest to the stream is filled first in the interests of peace. In respect to the position of Rab,***

Samuel explained this to speak of a watercourse that passes close to the man's well.

J. *Yeah, yeah – so what's the point?*

K. *What might you otherwise have supposed? That they say to him, "Close up the mouth of your well, so as to take in your share of water only in due proportion"? So we are told that that is not the case.*

III.2 A. *Said R. Huna bar Tahalipa, "Now that it has not been stated that the law follows either this or that authority, whoever has the power will prevail."*

III.3 A. *R. Shimi bar Ashi came before Abbaye. He said to him, "Will the master permit us to go into session [for study] for a time?"*

B. *He said to him, "I have time only for my own studies."*

C. *He said to him, "Then will the master go into session with me at night?"*

D. *He said to him, "I have water to draw [for irrigation]."*

E. *He said to him, "I'll draw the water for the master by day, and then let the master go into session with me by night."*

F. *He said to him, "Well and good."*

G. *He went to the farmers higher up on the canal and said to them, "The ones down below draw water first." He went to the farmers down below on the watercourse and said to them, "The ones up above draw water first." So in the interim, he made a dam in the canal and irrigated [Abbaye's fields].*

H. *When he then came before Abbaye, he said to him, "You have acted in accord with two contradictory authorities in my behalf," and Abbaye would not taste the produce for that entire year.*

III.4 A. *Some farmers in Be Harmak went and dug a trench from the upper waters of the Shanwata canal and diverted the water around their fields to the lower waters. The farmers higher up came and complained to Abbaye, "They are ruining our canal."*

B. *He said to them, "Deepen the bed a bit."*

C. *They said to him, "If we do so, our ditches will dry up."*

D. *He said to the first group, "Get out of there."*

IV.1 A. **Traps for wild beasts, fowl, and fish are subject to the rules against stealing – in the interests of peace. R. Yosé says, "It is stealing beyond any doubt":**

B. *If the nets that are used are loose or closed, [61A] there is no difference between rabbis and R. Yosé. Where they differ is when fishhooks or traps are used.*

V.1 A. **Something found by a deaf-mute, an idiot, and a minor is subject to the rule against stealing – in the interests of peace. R. Yosé says, "It is stealing beyond any doubt":**

B. R. Hisda has said, **"It is stealing beyond any doubt** [so far as Yosé is concerned] only on the authority of scribes [but not by the law of the Torah]. *At stake is what, then?* Merely the possibility of the court's removing the object from the possession of the minor."

VI.1 A. **A poor man beating the top of an olive tree – what is under it [the tree] is subject to the rule against stealing – in the interests of peace. R. Yosé says, "It is stealing beyond any doubt":**

B. *A Tannaite statement:* If the poor man had with his own hands collected the produce and put it on the ground, lo, taking it is stealing beyond any doubt.

VI.2 A. *R. Kahana was en route to Husal, when he saw someone tossing sticks at a tree and dropping the dates. He went and picked some up and ate them. He said to him, "See, sir, that I'm tossing them down with my own hands."*

B. *He said to him, "You come from R. Josiah's town. He recited in this regard: 'The righteous man is the foundation of the world' (Pro. 10:25)."*

VII.1 A. **They do not prevent poor gentiles from collecting produce under the laws of Gleanings, the Forgotten Sheaf, and the Corner of the Field – in the interests of peace:**

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

C. **They support gentile poor with Israelite poor, and they visit gentile sick with Israelite sick, and they bury gentile dead with Israelite dead, in the interests of peace [cf. T. Git. 3:13-14].**

5:9

- A. A woman lends a sifter, sieve, handmill, or oven to her neighbor who is suspected of transgressing the law of the Seventh Year,
 - B. but she should not winnow or grind wheat with her.
 - C. The wife of an associate meticulous about cultic purity at home [haber] lends the wife of an outsider a sifter and sieve.
 - D. She sifts, winnows, grinds, and sifts wheat with her.
 - E. But once she has poured water into the flour, she may not come near her,
 - F. for they do not give assistance to transgressors.
 - G. And all of these rules they stated only in the interests of peace.
 - H. They give assistance to gentiles in the Seventh Year but not Israelites.
 - I. And they inquire after their welfare – in the interests of peace.
- I.1**
- A. [...but she should not winnow or grind wheat with her....She sifts, winnows, grinds, and sifts wheat with her:] *What differentiates the former from the latter case?*
 - B. Said Abbaye, “Most common folk tithe [but the issue of the Sabbatical Year is different].”
 - C. *Raba said, “Here we deal with a common person as defined by R. Meir, and with cleanness and uncleanness as defined by the regulations of rabbis. For it has been taught on Tannaite authority: Who is deemed an ignoramus? ‘It is anyone who does not eat his unconsecrated food in conditions of cultic cleanness,’ the words of R. Meir. And sages say, ‘It is anyone who does not properly separate tithes’ [T. A.Z. 3:10C-E].”*
 - D. *Yes, but, since it is stated as the Tannaite rule in the concluding clause, But once she has poured water into the flour, she may not come near her [for at that point, the flour is susceptible to uncleanness, having been wet down], it must show that the earlier clause does not address the problem of cleanness and uncleanness!*
 - E. *Both the opening and the concluding clauses are concerned with uncleanness and cleanness. The opening clause addresses the case of the uncleanness of unconsecrated food, and the concluding clause is concerned with the uncleanness of dough-offering [which is subject to the rule by reason of the law of the Torah].*

- II.1** A. [She...grinds...wheat with her.] *An objection was raised: [61B] They grind grain and deposit it with those who eat produce of the Seventh Year and with those who eat their produce in a state of cultic uncleanness, but not for those who eat the produce of the Seventh Year or for those who eat their common produce in a state of cultic uncleanness!*
- B. *Said Abbaye, "That latter rule addresses the case of a priest who is suspect of eating priestly rations in a state of cultic uncleanness, in which case the uncleanness derives from the law of the Torah."*
- C. *If so, how can it be permitted to deposit grain with him? And by way of objection: They deposit priestly rations with an Israelite who is unobservant, but not with a priest who is unobservant, because the latter treats it in an arrogant manner.*
- D. *Said R. Ilai, "Here with what situation do we deal? With a clay utensil that is tightly covered" [and so unaffected by his touch].*
- E. *But one should take account of the possibility that his wife will move it about when she is menstruating [which would impart uncleanness to the contents even though they are sealed up].*
- F. *Rather, said R. Jeremiah, "There is no difficulty. The one rule speaks of produce that has been rendered susceptible to uncleanness, the other, produce that has not been rendered susceptible to uncleanness."*
- G. *A further objection was raised: **He who brings [his tithed] wheat to a Samaritan miller or to a miller not observant of the laws of cultic cleanness or of tithing meticulously – lo, [the wheat remains] in its presumed status with regard to tithes and with regard to Seventh Year produce [M. Dem. 3:4A-C] – but not with respect to uncleanness [so it should be regarded as unclean, but the former of the two statements says it is permitted]!***
- H. *What's going on here! Haven't you just established the fact that we speak of produce that is not susceptible of becoming unclean? So what's the point of the objection!*
- I. *Well, it is because he wanted to offer another objection, as follows: **Lo, [the wheat remains] in its presumed status with regard to tithes and with regard to Seventh Year produce [M. Dem. 3:4A-C] – and we do not take account of the possibility that he has changed the condition thereof. But by way of contradiction: He who gives [his tithed produce] to his mother-in-law tithes that which he gives to her and that which he receives from her, since she is suspected of exchanging that which is spoiled [M. Dem. 3:6A-D].***

- J. *But there the operative consideration is spelled out: Said R. Judah, “She desires the well-being of her daughter and feels shame before her son-in-law [viz., she is ashamed to feed her son-in-law spoiled food]” [M. Dem. 3:6E]. So in general we do not take account of that possibility.*
- K. *Then have we not learned on Tannaite authority: He who gives produce to the mistress of his boardinghouse tithes what he gives her and what he gets back from her, because she is likely to exchange it for other produce?*
- L. *There she finds a reason for herself, saying, “Well, let the student of the master eat his hot, and I’ll eat mine cold.”*
- M. *Still, in general do we not take account of that possibility? And hasn’t it been taught on Tannaite authority: The wife of a person meticulous about cultic cleanness may grind grain with the wife of a person not meticulous about such matters when she is unclean but not when she is clean. R. Simeon b. Eleazar says, “Also when she is unclean she should not grind with her, since her girlfriend [62A] may give her something that she may eat” [T. Toh. 8:4A-C]? Now, if she is capable of stealing won’t she exchange what is hers for what belongs to the other?*
- N. Said R. Joseph, “Here, too, there is a special consideration, namely, she will give as an excuse, ‘The ox can eat while he’s threshing.’”

- II.2** A. **Gave testimony R. Yosé b. Hammeshulam in the name of R. Yohanan his brother, who spoke in the name of R. Eleazar b. Hisma, “They do not prepare in conditions of cleanness dough-offering for a person not observant of the rules of cultic cleanness, but one may prepare the dough as unconsecrated in a state of cultic cleanness and then take out of it enough dough for dough-offering and leave it in a double basket or tray, and then, when the outsider comes to take it, he takes both of them, and one does not have to scruple [as to any negative result]. So, too, they do not prepare heave-offering from his olives in a state of cultic cleanness, but they prepare his olives when they are unconsecrated in a state of cultic cleanness, then taking from it enough oil for heave-offering, which is left in the utensils that belong to the observant party, and when the outsider comes along to take it, he takes both of them, and does not scruple” [T. Dem. 3:1]. Now what is the operative consideration here?**
- B. *Said R. Yohanan, “To allow the baker or the olive presser to make a living.”*
- C. *And both kinds of job had to be spelled out. For if we had been informed only about the rule on the baker, I might have supposed that*

the reason he may do what he is permitted is that he doesn't get such a good salary, but that would not apply to an olive presser, who gets a fine salary. And if I had been given only the rule governing the olive presser, I might have thought that the reason is that he does not have regular employment, but that would not apply to a baker, whose employment is not seasonal. So both cases were necessary.

- II.3** A. The master has said: **“and leave it in a double basket or tray, and then, then the outside comes to take it, he takes both of them, and one does not have to scruple [as to any negative result]”**:
- B. *But one surely should take account of the possibility that he may touch the dough-offering [and make it unclean]!*
- C. *They tell him, “Notice! If you touch it, it returns to its status of being subject to the offering but not yet properly prepared.”*
- D. *So why not take account of the possibility that it won't matter to him!*
- E. *Well, since his purpose is to see to it that the dough is properly prepared, won't it matter to him? [Sure it will.]*

- II.4** A. The master has said: **“Then taking from it enough oil for heave-offering, which is left in the utensils that belong to the observant party, and when the outsider comes along to take it, he takes both of them, and does not scruple”**:
- B. *But one surely should take account of the possibility that he may touch the dough-offering [and make it unclean]! For in the other case, to be sure, there is some distinguishing mark [for example, in a special kind of utensil], but here, what distinguishing mark is there anyhow?*
- C. *He leaves it in a utensil made of baked cowshit or stone or earth [which do not receive uncleanness].*
- D. *If so why specify that these must belong to an observant party, even if they belong to an observant party the same rule would apply!*
- E. *That's the point of his statement, for what he meant to say is, in utensils belonging to a person not meticulous about cultic cleanness which nonetheless can be used by someone who is meticulous.*

III.1 A. They give assistance to gentiles in the Seventh Year but not Israelites:

- B. **They give assistance?!** And didn't R. Dimi bar Shishna say in the name of Rab, “They don't hoe with gentiles in the Sabbatical Year, nor give a warm greeting [“peace...peace...”] to gentiles”?

- C. *The rule was necessary to indicate that it is all right to say to them some sort of off-hand "hello."*
- D. *That is in line with what R. Judah would say to them, which was, "Best wishes."*
- E. *R. Sheshet would say to them, "Good luck."*

- III.2** A. *Nor give a warm greeting ["peace...peace..."] to gentiles:*
- B. *But R. Hisda would greet them first and say to them, "Peace."*
- C. *R. Kahana would say to them, "Peace to you, sir."*

IV.1 A. And they inquire after their welfare – in the interests of peace:

- B. *Well, if we give assistance to gentiles, can there be any question that we also inquire after their welfare?*
- C. *Said R. Yeba, "It was necessary to make that point only in connection with a day on which they celebrate their holiday. For it has been taught on Tannaite authority: 'One should not enter a gentile's home on his holiday and greet him. But if he came across him in the marketplace, he greets him in a mumbling manner with downcast eyes.'"*

- IV.2** A. *R. Huna and R. Hisda were in session. Geniba went by them. One said to the other, "Let's get up to pay our respects to him, for he is a master of the Torah."*
- B. *The other said to him, "Should we get up before a contentious man?"*
- C. *In the meantime he came up to them. He said to him, "Peace to you, kings, peace to you, kings."*
- D. *They said to him, "How do you know that rabbis are called kings?"*
- E. *He said to them, "For it is written, 'By me [Torah] kings rule' (Pro. 8:15)."*
- F. *"And how do you know that when they greet kings, they offer a double greeting?"*
- G. *He said to them, "For said R. Judah said Rab, 'How do we know on the basis of Scripture that they give a double greeting to a king? As it is said, 'Then the spirit came upon Amasai who was chief of the thirty...peace, peace be to you' (1Ch. 12:19)."*
- H. *They said to him, "Will the master taste something with us?"*
- I. *He said to them, "This is what R. Judah said Rab said, 'It is forbidden to anyone to eat a thing before giving food to his beast, as it is said,*

“And I will give grass in your field for your cattle,” and only then,
“You shall eat and be full” (Deu. 11:15).”