

IX

BAVLI TRACTATE BEKHOROT

CHAPTER NINE

FOLIOS 53A-61A

The tractate concludes with a yet another distinct subject, the tithe of cattle: *And all the tithe of herds and flocks, every tenth animal of all that pas under the herdsman's staff, shall be holy to the Lord. A man shall not inquire whether it is good or bad, neither shall he exchange it; and if he exchanges it, then both it and that for which it is exchanged shall be holy; it shall be redeemed* (Lev. 27:32-33). The beast which turns out to be the tithe of the herd is brought to Jerusalem. In the Temple its blood and fat are offered up, and, as in the case of peace-offerings, the owner receives the meat and eats it in the city. If, however, it should be blemished, it is no longer sanctified and may be eaten outside of the city.

9:1

- A. [The law concerning] tithe of cattle applies (1) in the Land and outside of the Land,
- B. (2) in the time of the Temple and not in the time of the Temple,
- C. (3) in the case of unconsecrated beasts but not in the case of consecrated beasts.
- D. (1) And it applies to the herd and to the flock,
- E. but they are not tithed one for another;
- F. (2) to sheep and to goats,
- G. and they are tithed one for another;
- H. (3) to what is new [born after new year] and to what is old [born before new year (M. 9:5-6)],
- I. but they are not tithed one for another.

- J. For it might have been logical [to conclude as follows]: Now if that which is new and that which is old, which are not prohibited as mixed kinds with one another, are not tithed one for another, sheep and goats, which are prohibited as mixed kinds with one another, logically should not be tithed one for another.
- K. Scripture [accordingly is required] to state, “And of the flock,” (Lev. 27:32) — implying that all flock is one [and tithed together].

- I.1** A. *May we say that the Mishnah-paragraph does not accord with the view of R. Aqiba? For it has been taught on Tannaite authority:*
- B. R. Aqiba says, “Might one suppose that one may offer a beast designated as tithe that derives from abroad? Scripture to the contrary states, ‘And there you shall bring your burnt-offerings and your sacrifices and your tithes’ (Deu. 12: 6). Scripture speaks of two classifications of tithes, the tithe of the herd and the tithe of grain. From the place from which you offer up tithe of grain, you also offer up tithe of the herd, and from the place from which you do not tithe of grain, you also do not offer up tithe of the herd.”
- C. *You may even maintain that R. Aqiba accords with the rule at hand. The one statement [just now cited] pertains to offering the animal up as a sacrifice, the other [the Mishnah’s] speaks of the sanctification of the beast by designating it as tithe.*
- D. *A close reading yields that very result, for R. Aqiba derives his lesson from the text, “And there you shall bring your burnt-offerings and your sacrifices and your tithes.”*
- E. *That is decisive.*
- F. *If that is so, then, since it is not offered up, why should it be deemed sanctified?*
- G. To allow the owner to eat it when it is blemished.

II.1 A. in the time of the Temple and not in the time of the Temple:

- B. *If that is the rule, then even today the law of tithing the herd should apply!*
- C. *The law accords with the opinion of R. Huna, for R. Huna said, “It is a precautionary decree to take account of the case of the animal the mother of which died [indicating that such a beast should not be brought into the corral for tithing]. [An animal that is orphaned is not subject to the law of tithe.]”*
- D. *If so, to begin with [when the Temple still stood] the same prohibition should have applied.*

- E. *Rather, it is possible for an announcement to be made by the court [that one should not tithe an orphaned animal].*
- F. *Then nowadays too it is possible for an announcement to be made by the court [that one should not tithe an orphaned animal].*
- G. Rather, said Rabbah, “It is on account of the possibility of confusion [since there is no altar, and people have to keep the animal until it is blemished, there may be chaos].”
- H. *And how do we know that we take account of the possibility of confusion?*
- I. *It is in line with that which has been taught on Tannaite authority:*
- J. In this age people do not sanctify anything, nor do they take vows of valuation, nor do they declare anything herem, and if one has consecrated something, taken a vow of valuation, or declared something to be herem, in the case of a beast, it is to be disposed of; in the case of produce, clothing, and utensils, they are to be left to rot; in the case of coins and metal utensils, they are to be brought to the Dead Sea.
- K. And what is meant by “to be disposed of”?
- L. One locks the beast away and it dies on its own of starvation.
- M. *If so, then a firstling also should not be deemed sanctified?*
- N. *But does the status of firstling depend upon anything we do? The firstling is consecrated from the womb.*
- O. *This is what the question is meant to ask: let him convey to gentiles the ears of the mothers of the prospective offspring, so that the offspring will not be sanctified from the womb [for if a gentile owns a share in the firstborn, it does not have to be redeemed at all].*
- P. **[53B]** *It is possible even to act in accord with R. Judah, for said R. Judah, “It is permitted for a farmer to blemish his firstling before it comes forth into the air of the world.”*
- Q. *But in the case of an animal designated as tithe, is it possible to cause a blemish to begin with? For who knows which animal will come out to be the tenth [so we should know which one to begin with to maim]? Scripture states, “And he shall not investigate whether it be good or bad” (Lev. 27: 5) [so the whole procedure must be carried on without the farmer’s intervention].*
- R. *And should you propose that it is possible to blemish the whole heard of beasts, it is possible that, in the interim, the Temple — may it be rebuilt speedily — will require an animal for a sacrifice and there will be none!*

- S. *But the same argument applies to the firstling, namely, it is possible that, in the interim, the Temple — may it be rebuilt speedily — will require an animal for a sacrifice and there will be none!*
- T. *In such a case one may use a non-firstling.*
- U. *But in the case of animals for tithing, it is possible to sacrifice animals that are bought [or presented as gifts, and these are not subject to the law of tithing and do not have to be maimed].*
- V. *Since it is the farmer that blemishes the whole herd of animals, and blemishes that in any event disqualify animals that have been consecrated are common, for even a cataract will disqualify, animals that are suitable for sacrifice are not all that easy to get.*

III.1 A. in the case of unconsecrated beasts but not in the case of consecrated beasts:

- B. *But it is self-evident that the law of tithing the herd does not apply to consecrated beasts, since they belong to God anyhow!*
- C. *The passage speaks of Lesser Holy Things, within the premise of R. Yosé the Galilean, who has said, “Lesser Holy Things constitute the property of the owner.”*
- D. *For it has been taught on Tannaite authority:*
- E. *“‘And commit a sacrilege against the Lord’ (Lev. 5:21) — this encompasses Lesser Holy Things, which are regarded as the property of the owner,” the words of R. Yosé the Galilean.*
- F. *So I might have thought that they are to be tithed too, but the Mishnah’s law informs us that that is not the case.*
- G. *Then why is it not the case?*
- H. *“The tenth shall be holy” (Lev. 27:32) — and not what is already holy.*
- I. *So the operative consideration is that the All-Merciful has written, “The tenth shall be holy” (Lev. 27:32). But if it were not for that statement, I might have thought that sanctification that pertains to an animal designated as tithe would have applied to consecrated animals. But if a most substantial classification of holiness does not apply to a Lesser Holy Thing, will a lesser classification of holiness apply to a Lesser Holy Thing?*
- J. *What is at stake here? It is in accord with that which we have learned in the Mishnah: **All the same are [animals] sanctified for the altar and things sanctified for the upkeep of the house. (1) They do not change them from***

one status of sanctification to another status of sanctification. (2) They sanctify [in the case of animals sanctified for the altar] their estimated value as a sanctified thing [= value dedication, M. Ar. 8:7]. (3) And they declare them devoted [=herem. assigned solely for the benefit of the priesthood] [M. Tem. 7:3A-B]. [Objects consecrated for the upkeep of the house cannot be rededicated for the altar, thus a sanctification of a higher classification cannot be imposed on what is already sanctified.]

- K. *What might you have thought, therefore? The operative consideration for the rule [at M. Tem. 7:3] is that not every beast is suitable for a burnt offering, but here, since every animal is subject to tithing, therefore, although one had sanctified it for use as a peace offering, he does not thereby exempt the beast from the prohibition that applies to an animal that is to be tithed. [But that is not the case.]*
- L. *What difference does it make?*
- M. One would be liable for violating the commandments, “It shall not be sold” and “It shall not be redeemed” (Lev. 27:28). *The texts says, “Shall be holy” to say that that is not the case.*

IV.1 A. And it applies to the herd and to the flock, but they are not tithed one for another; to sheep and to goats, and they are tithed one for another: to what is new born after new year and to what is old born before new year, but they are not tithed one for another. For it might have been logical to conclude as follows: Now if that which is new and that which is old, which are not prohibited as mixed kinds with one another, are not tithed one for another, sheep and goats, which are prohibited as mixed kinds with one another, logically should not be tithed one for another. Scripture accordingly is required to state, “And of the flock,” (Lev. 27:32) — implying that all flock is one and tithed together:

- B. Why not take the position that what is born after the new year and what is born beforehand ought to be tithed one for another, with the following argument *a fortiori*: if sheep and goats, which are treated as diverse species in regard to one another, are tithed one for the other, then old animals, born prior to the new year, and new animals, born afterward, ought to be tithed one for the other!
- C. Scripture states, “Tithing, you shall tithe” (Deu. 14:22) — Scripture speaks of two kinds of tithing, one for animals, the other for grain, and in that way it treats as analogous the case of an animal and the case of grain: just as, in the matter of tithing grain, tithe cannot be separated from the new crop for the old crop, so in

the case of tithing beasts, tithe cannot be designated from the new-born beasts in behalf of the superannuated ones.

- D. *If that is the case, then why ought sheep and goats also not to be tithed one for the other! Thus one might argue:* Scripture speaks of two kinds of tithing, one for animals, the other for grain, and in that way it treats as analogous the case of an animal and the case of grain: just as, in the matter of tithing grain, tithe cannot be separated from one species in behalf of another, so in the case of tithing beasts, one may not designate as tithe a beast in behalf of a species other than its own.
- E. *Scripture includes all beasts when it says “flock”* (Deu. 14:22) [meaning, all animals within a flock are tithed together, without regard for speciation].
- F. *If so, then why not encompass new and old together?*
- G. Scripture states, “Tithing, you shall tithe” (Deu. 14:22).
- H. *How come* [you compare tithing of new and old beasts with tithing grain, why not compare tithing lambs and goats with tithing grain (Miller & Simon)]?
- I. Said Raba, “Said Scripture, ‘year by year’ (Deu. 14:22), meaning, ‘I have compared tithing animals with tithing grain in regard to the differentiation of what is to be tithed by years, but I have not compared the one to the other in any other aspect.’”

IV.2. A. *We have learned in the Mishnah: They may not separate heave offering from [produce of one] kind for [produce] which is not of its same kind. And if he separated heave offering [in this way] — that which he has separated is not [valid] heave offering [M. Ter. 2:4A-B].*

- B. *What is the scriptural basis for this rule?*
- C. Said R. Ammi said R., Yannai, and some say, said R. Ammi said R. Simeon b. Laqish, “‘All the best of the oil and all the best of the wine and of the wheat’ (Num. 18:12) — give the best of this for its own species, and the beast of that for its own species. [54A] *Thus we have found the rule for wine and oil. How do we know that the same rule applies to wine and grain or grain and other grain [in this context, wheat for barley, barley for wheat]? That is derived from an argument a fortiori: if wine and oil, which are not regarded as mixed species in relationship with one another, are not tithed one in behalf of the other, wine and grain, or grain and grain, which are regarded as mixed species in relationship with one another, all the more so should not be tithed one in behalf of the other.*”
- D. *And from the viewpoint of R. Josiah, who has said, “The law of diverse kinds is not violated unless one has sowed a wheat-seed, barley-seed, and grape kernel, with one and the same throw,” how are we to prove the same proposition?*

- E. One may prove the same proposition in the following way: if wine and oil, which are not classified as diverse kinds in relationship to one another even through being sown with another seed [a third one, either wheat or barley; they will be so classified only if there are two different kinds of grain], are not tithed one for the other, wine and grain, or grain and grain, which are regarded as mixed species in relationship with one another through the sowing of another seed [e.g., in the case of two kinds of grain, by sowing a vine, and in the case of a vine and grain, by sowing barley or wheat (Miller & Simon)], all the more so should not be tithed one in behalf of the other!
- F. *And how do we know that, in general, one must not tithe any other two kinds one for the other [besides the species just now mentioned]?*
- G. *The [prohibition governing] these other species derives from the authority only of rabbis, but whatever rabbis have ordained is of the same order as that which derives from the Torah: just as two kinds that are forbidden by the law of the Torah to be tithed one for the other, so also two species ordained only by rabbis must not be tithed one for the other.*

- IV.3.** A. [In light of the statement, “‘All the best of the oil and all the best of the wine and of the wheat’ (Num. 18:12) — give the best of this for its own species, and the beast of that for its own species — *thus we have found the rule for wine and oil*], said Raba bar R. Hanan to Abbaye, “*But then with regard to the designation of the tithe of beasts, in which Scripture does not say, ‘And concerning the tithe of the herd and the tithe of the flock,’ [54B], it should be permitted to tithe one for the other.*”
- B. He said to him, “Scripture has said, ‘The tenth,’ meaning, give the tenth of this species, and give the tenth of that species.”
 - C. “*If so, then how about lambs and goats? These too should not be tithed one for the other.*”
 - D. “‘...and of the flock’ — *all kinds of flock are classified as one.*”
 - E. “*Then here too, ‘and of the wheat,’ bears the sense that all kinds of grain are classified as one?*”
 - F. Said Abbaye, “‘The firstfruits of them’ (Num. 18:12) [Miller & Simon: this occurs near the text, ‘of the wheat,’ to intimate, ‘give the first fruit of each kind of grain’].”
 - G. And so said R. Ilai, “‘The firstfruits of them’ (Num. 18:12).”
 - H. *Raba said, “Even without ‘The firstfruits of them’ (Num. 18:12) you also cannot say that ‘and of the grain’ means ‘all kinds of grain are classified as*

a single species.’ *For with respect to ‘and of the flock,’ we may well say that all kinds of flock are classified as one, for if it should enter your mind to suppose that Scripture wanted lambs and goats not to be tithed one for the other, then Scripture ought to have said, ‘and concerning the tithe of animal’ [Miller: instead of ‘of the herd,’ and I should have known that one must not tithe one kind of animal for the other, as I would have inferred this a fortiori from new and old]. And should you say that, if it had written, ‘and concerning the tithe of animal,’ I might have supposed that the rule encompassed even wild beasts, I should have been able to reply that we have an analogy between the expressions ‘under’ [‘under the rod,’ Lev. 27:32, used in connection with tithing] and ‘under’ [‘under the mother,’ Lev. 27:27] [in which the wild beast is not included, so the wild beast is excluded here as well]. Further, we could have derived a fortiori from the prohibition of tithing the new in behalf of the old beasts that one must not tithe one kind of animal for another. So why does Scripture state, ‘of the herd and of the flock’? It must be to indicate that only with respect to the herd [large cattle] and the flock one must not tithe one for the other, but in regard to lambs and goats, you may tithe one for the other. But here, Scripture had to say, ‘of the wheat,’ in order to exclude the other kinds [that, biblically, are not subject to the law of tithes].”*

- I. *R. Huna b. Nahman objected to this statement, “Perhaps I might say that the text, ‘of the herd and of the flock’ bears the meaning that one may form a mixture of [and tithe] large cattle for the flock?”*
- J. *Said to him Mar Zutra b. R. Nahman, “Raba also takes the view that ‘the tenth’ [means that one may not tithe one kind of animal for the other].”*
- K. *Some report the discussion in the following way:*
- L. *Raba said, “Even without ‘The firstfruits of them’ (Num. 18:12) you also cannot say that large cattle and sheep may be tithed one for the other. For tithing the herd and tithing grain are treated as comparable. Just as in the case of tithing grain, one may not give from one species tithe in behalf of a different species, so in the case of tithing beasts, one may not give from one species tithe for some other species.”*
- M. *But lo, it is Raba who has said, “Said Scripture, ‘year by year’ (Deu. 14:22), meaning, ‘I have compared tithing animals with tithing grain in regard to the differentiation of what is to be tithed by years, but I have not compared the one to the other in any other aspect’?”*

- N. *Raba retracted that statement.*
- O. *And if you prefer, I shall say that one of these statements was made by R. Pappa.*

I.1 by asking about the authority behind our rule elucidates the potentialities of the law. II.1 raises fundamental questions about the applicability of the law before and after the destruction of the Temple, so making clear what is at stake in the Mishnah's statement. III.1 goes through the same process as I.1. IV.1 compares the rules of tithing animals and those of tithing grain. No. 2 pursues the same theme, but addresses a different Mishnah-rule altogether; it is not therefore tacked on, however, since the argument of No. 2 runs along the lines of that of No. 1, so from the redactor's perspective, he was joining coherent materials; and I think he was right. No. 3 forms a footnote to No. 2.

9:2

- A. [For purposes of] tithe of cattle [those cattle which are found] within the radius of pasturing cattle are included together.
- B. And how much is the radius of pasturing cattle?
- C. Sixteen miles.
- D. [If] there was between these and those [cattle] thirty-two miles, they do not join together [for the purposes of tithing].
- E. [If] he had [cattle] in the middle, he brings and tithes them [with those which are] in the middle.
- F. R. Meir says, "The Jordan is a boundary [to a herd for purposes of] tithe of cattle."

I.1 A. *What is the scriptural basis for this rule?*

- B. Said Rabbah b. Shila, "Said Scripture, 'shall the flocks pass again under the hands of him who tells them' (Jer. 33:13) [Miller & Simon: implying that if they can be numbered by one shepherd, we apply to them the expression 'passed under the rod]."
- C. *And rabbis?*
- D. *[They took for granted that] in a radius of sixteen miles the shepherd can oversee the flock."*

II.1 A. [If] there was between these and those [cattle] thirty-two miles, they do not join together [for the purposes of tithing]:

- B. *If the distance from flock to flock was thirty-two mils, the animals do not form a single flock for the purposes of tithing, thus bearing the implication that if the space between them is less than that distance, they do form a single flock. But does not the Mishnah state that the distance within which animals are treated as a single flock is sixteen mils, but no more?*
- C. *The reason that the Mishnah refers to sixteen mils is that it wishes to make the point later on, [If] there was between these and those [cattle] thirty-two miles, they do not join together [for the purposes of tithing]. [If] he had [cattle] in the middle, he brings and tithes them [with those which are] in the middle.*

- II.2.** A. And how many [animals are to be in the diameter of thirty-two mils, so that the herd in the middle forms the nucleus around which all the beasts are formed into a single herd for tithing]?
- B. Said Rab, “Five on one side, five on the other, five in the middle, *so that the five in the middle can serve to form a herd of ten beasts for tithing in the one direction and can serve the same purpose in the other direction.*”
 - C. And Samuel said, “Even if there were only five on one side and five on the other, with one in the middle, *for we regard the shepherd as standing in the middle, and we apply the text, ‘shall the flocks pass again under the hands of him who tells them’ (Jer. 33:13).*”
 - D. **[55A]** *An objection was raised: [If he had] five in Kefar Hananiah and five in Kefar Otenai — these do not join together, unless he had at least one in Sepphoris [T. 7:3]. Is this not a refutation of Rab’s view?*
 - E. *Samuel explained the matter within the position of Rab, “For example, he had nine on this side and none on that and one in the middle, so that the middle animal is suitable to be joined with one group of the other.”*
 - F. Said R. Pappa, “In Samuel’s view, even the shepherd himself can serve to form the animals into a single herd for purposes of tithing, and even the shepherd’s staff can serve.”
 - G. *R. Ashi raised the question, “Then what about the sheep dog? Since, when the shepherd calls the dog, he comes, the dog cannot serve as a beast to form the sheep into a single herd for purposes of tithing? Or perhaps since the dog does not always come, he has to go and get it [and therefore the dog counts as merely another beast]?”*
 - H. *The question stands.*

III.1 A. R. Meir says, “The Jordan is a boundary [to a herd for purposes of] tithing of cattle:”

- B. Said R. Ammi, “That is the rule only when there is no bridge. But if there is a bridge, the bridge serves to form the animals into a single herd for the purposes of tithing. *It follows that the operative consideration is that the animals on opposite sides of the stream are not in contact with one another.*”
- C. *An objection was raised from the following rule: [If] he had [cattle] across the Jordan on both sides, for example, Hashulmi and Nemuri, or two autonomous cities, they do not join together with one another. And one need not say [the same rule applies to those] in the Land and outside of the Land [T. Bekh. 7:3].* Lo, the category “in the Land and outside of the Land” falls into the classification of a place in which there is a bridge [since the division is not a physical one], *and yet it is stated that the herds on both sides do not join together to form a single herd for purposes of tithing!*
- D. *Rather, said R. Hiyya bar Abba said R. Yohanan, “This is the scriptural basis for the position of R. Meir: ‘And the Jordan was the border of it on the east side’ (Jos. 18:20). Scripture has treated it as a border in its own right.”*
- E. *But what about the following: “And the border was drawn there, ...and the border went up” (Jos. 18:12, 14). Here too has Scripture treated it as a border in its own right [Miller & Simon: so that the animals in the territory of one tribe and those in that of another do not combine even within sixteen miles? Why then make explicit reference to the Land and outside the Land as areas that do not combine, since that relationship among acreage may occur even within the Land of Israel itself]?*
- F. *That case is exceptional, for Scripture states, “This shall be to you the land according to the borders round about” (Num. 34:12) — the whole of the Land of Israel has a single border.*
- G. *If so, then is not the Jordan within the Land of Israel?*
- H. [When Scripture says,] “land” it is not with reference to the Jordan.
- I. *Now that poses no problem to the position of R. Hiyya b. Abba [who says Meir takes the position that he does because the Jordan is described as a border], and that is why the Mishnah mentions the Jordan, but as to the view of R. Ammi, why not mention all the rivers [as forming dividing points for purposes of tithing, and not only the Jordan]? [Miller & Simon: from his view the only reason that the Jordan forms a division is that there is no contact between animals on one side and the shepherd on the other; but then all rivers and not only the Jordan serve the same purpose.]*

J. *That indeed is a problem.*

III.2. A. *[Whether or not the Jordan is part of the Land of Israel] is subject to dispute among Tannaite authorities:*

B. “‘When you pass over the Jordan into the Land of Canaan’ (Num. 35:10) — the land is the land of Canaan, and the Jordan is not within the land of Canaan,” the words of R. Judah b. Batera.

C. R. Simeon b. Yohai says, “Lo, Scripture states, ‘On this side of the Jordan near Jericho eastwards towards the sun rise’ (Num. 34:15) — just as Jericho is in the land of Canaan, so the Jordan is in the land of Canaan.”

III.3. A. Said Rabbah b. b. Hana said R. Yohanan, “**The Jordan is only from Jericho and below [T. Bekh. 7:4].**”

B. *For what purpose is such a law set forth? Might I suppose that it concerns one who takes a vow [against deriving benefit from the Jordan? Then may he drink water from the Jordan above Jericho?] But then we are guided by common usage, and wherever people call the river, “the Jordan,” then it would be subject to a prohibition for that man.*

C. Rather, it has to do with tithing a herd.

D. *So too it has been taught on Tannaite authority: **The stream which emerges from the cave of Pamias [Paneos] and crosses the lake of Sopni [B. Bekh. 55a: Sibkay] and the lake of Tiberias, [even though it is called Jordan, is not reckoned with the Jordan], and the Lake of Sodom, and runs into the Mediterranean Ocean. The Jordan is only from Jericho and below [T. Bekh. 7:4E-F].***

III.4. A. Said R. Hiyya bar Abba said, R. Yohanan, “Why is it called ‘Jordan’? Because it goes down [the letters of the word ‘go down’ are YRD] from Dan [hence, Yarden].”

B. *Said R. Abba to R. Ashi, “You derive the explanation from the name, we derive it from the following verse: ‘And they called Leshem Dan after the name of Dan their father’ (Jos. 19:47), concerning which R. Isaac said, ‘Leshem is Paneas,’ and it has been taught on Tannaite authority, **The stream which emerges from the cave of Pamias.**”*

III.5. A. Said R. Kahana, “The principal source of the Jordan is the cave of Paneas. When someone says, ‘I shall not drink water from the cave of Paneas, forbidden to him is the whole of the Jordan river.’”

- B. *The principal source of blood is the liver, as R. Isaac said. For, said R. Isaac, "A liver that is crushed imparts corpse-uncleanness in the volume of a quarter of a log."*
- C. *The principal source of water is the Euphrates, for said R. Judah said Rab, "He who takes a vow not to drink the water of the Euphrates is forbidden to drink any of the water in the world."*
- D. *What sort of case can be in mind? If we should say that the man said, "I shall not drink of the water of the Euphrates," then is his meaning not, "I shall not drink water of the Euphrates but from the water of other rivers I shall drink"? Rather, he said, "I shall not drink from water that comes from the Euphrates."*
- E. For said R. Judah said Rab, "All rivers are lower in level than three rivers, and three rivers are lower in level than the Euphrates [which consequently flows downward into all of them]."
- F. *And are there no [55B] springs higher than the Euphrates?*
- G. *Said R. Mesharshayya, "They are upper parts [and sources] of the Euphrates."*
- H. *But is it not written, "And as to the fourth river, it is the Euphrates" (Gen. 2:10)?*
- I. Said R. Nahman b. Isaac — others say, R. Aha b. Jacob, "It is the Euphrates that comes first."

III.6. A. *It has been taught on Tannaite authority:*

- B. R. Meir says, "[The Euphrates] is called Yubal: 'For he shall be like a tree planted by the waters and that spreads the roots by the Yubal' (Jer. 17: 8). And why is it called Perat [Euphrates]? Because its waters are fructifying [using the same letters as the name] and cause increase."
- C. Sages say, "It is called Euphrates."
- D. *This supports the view of Samuel, for Samuel said, "The river grows from water that comes down its banks" [not from rain].*
- E. *He differs from what Rab said, for Rab said, "That there is rain in the West is strongly attested by the Euphrates."*
- F. *Samuel's father made for his daughters immersion pools in Nisan [Slotki: when the flowing river, swollen by rainwater, could not be used for the purpose, since immersion may not be performed in rainwater that is not*

collected and stationary], and he made mats for them in the days of Tishré [so as to protect their feet from the river mud].

- G. *...made for his daughters immersion pools in Nisan: he concurred with the position of Rab. For said R. Ammi said Rab, "That there is rain in the West is strongly attested by the Euphrates." We take account of the possibility that the water that drips will be more than the water that flows, and the greater part then will consist of rain water [which does not serve as an immersion pool when it flows as a stream].*
- H. *...and he made mats for them in the days of Tishré: and that forms a conflict between two opinions attributed to him [by Samuel], for Samuel said, "Flowing water does not serve as a source of purification, except for the Euphrates in Tishré."*

I.1 opens with the standard question. II.1 raises a basic question. No. 2 complements No. 1, and Nos. 3, 4, 5, 6 add footnotes to No. 2.

9:3A

A. That which is purchased or that which is given to one as a gift is exempt from [the law to] tithe cattle.

I.1 A. What is the scriptural basis for this rule?

- B. Said R. Kahana, "Said Scripture, 'The firstborn of your sons you shall give to me. Likewise you shall do with your oxen and with your sheep' (Exo. 22:28-29): **[56A]** just as 'your sons' would not involve any that is purchased or that comes as a gift, so 'your oxen and your sheep' would not involve that that **is purchased or that which is given to one as a gift.**"
- C. *But is the reference here not to a firstborn?*
- D. *What Scripture states is, "likewise you shall do," and if this has no bearing on the firstborn, to which "doing" [through an act of sanctification] does not pertain, for the firstborn is sanctified from the womb, then apply it to the tithe of cattle.*
- E. *But might I say that it should be applied to the sin-offering or guilt-offering [that is, animals for such purposes may not be gotten by the farmer by purchase or as a gift]?*
- F. *We can draw an inference only from what resembles the case of "your son:" just as your son is not an issue of atonement for a sin so "your oxen and your sheep" must be such as are not brought in atonement for a sin.*
- G. *But might I say that it should be applied to an offering brought in fulfillment of a vow or a freewill offering?*

- H. *We can draw an inference only from what resembles the case of “your son:” just as your son is not presented by reason of a vow or as a freewill offering, so “your oxen and your sheep” must be such as are not brought in fulfillment of a vow or as a freewill offering.*
- I. *But might I say that it should be applied to an offering brought as a burnt offering on the occasion of the pilgrim’s appearance on a festival?*
- J. *We can draw an inference only from what resembles the case of “your son:” just as your son is not presented at a fixed time, so “your oxen and your sheep” must be such as are not brought at a fixed time.*
- K. *If you maintain, just as the reference to “your first-born son” does not apply at all if he is purchased, so “your oxen and your sheep” does not apply at all if they are bought, then how come R. Assi said in the name of R. Yohanan, “If one has purchased ten embryos in their mother’s wombs, all of them are to be brought into the corral to be tithed”?*
- L. *Said Raba, “Said Scripture, ‘You shall do’ — only when doing an act of sanctification is possible does Scripture impose restrictions [that the animal that is tithed is not one that is bought or received as a gift].”*

I.2. A. *Reverting to the substance of the previously-cited passage:*

- B. *Said R. Assi said in the name of R. Yohanan, “If one has purchased ten embryos in their mother’s wombs, all of them are to be brought into the corral to be tithed.”*
- C. *But lo, we have learned in the Mishnah: **That which is purchased or that which is given to one as a gift is exempt from [the law to] tithe cattle!***
- D. *Said R. Eleazar, “Since R. Yohanan appeared in a dream to me, I shall say an exceptionally valuable statement, specifically, ‘Scripture says, “You will do...,” intimating that only when doing an act of sanctification is possible does Scripture impose restrictions [that the animal that is tithed is not one that is bought or received as a gift].”*
- E. *R. Simeon b. Eliaqim objected to R. Eleazar, “[If one] bought [an animal prior to the seventh day from its birth, it is not going to go into the corral for tithing by reason of having been purchased; [that is certainly the case if he bought it as a full-grown beast. Such a beast is too young to be sacrificed, but it is not too young to be subjected to the restriction that a beast that is bought is not subject to the law of tithing. That then contradicts the specific claim that only when doing an act of sanctification is possible does Scripture impose restrictions of the kind under discussion here].”*

- F. He said to him, “That is not a Mishnah-law! And if you claim that it is, then it must stand for the opinion of R. Simeon b. Judah stated in the name of R. Simeon, who has said, ‘An animal that is within a week of birth does enter the corral to be tithed [and may be offered on the altar, and so the law of an animal that has been purchased likewise applies; but he will admit that if an embryo is inside the womb, the law of an animal bought does not apply to it]. So it is comparable to a firstling. Just as a firstling is sanctified even prior to its reaching its time [seven days before birth, since it is holy from the moment of birth] and its offered after its time, so that which is younger than its proper time [to be offered] still may be sanctified prior to its time but will be sacrificed when it has reached the proper age.’”

Another discussion in which Assi-Yohanan’s statement figures is now introduced. It has no bearing on the foregoing but is joined thereto for the obvious reason. Not only so, but 3.C refers us to our rule.

I.3. A. *A Tannaite authority repeated the following Tannaite version before Rab:*

- B. “What is the definition of the ‘hire of a harlot’ [Deu. 23:19] that may nonetheless enter the corral for tithing? It is any that is given to the whore but then bought back from her [and if one has nine animals and this one, all are to be tithed; if one of the fit ones come out, well and good; if the beast paid to a harlot comes out as tenth, it is eaten by the owner when it is blemished (Miller & Simon)].”
- C. *But lo, is not the animal disqualified because it has been bought back?*
- D. *That which R. Assi said R. Yohanan said has escaped the attention of the one who asked that question, namely, “If one has purchased ten embryos in their mother’s wombs, all of them are to be brought into the corral to be tithed.” [Miller & Simon: here too we are dealing with a case in which she was given an embryo inside the mother’s womb.]*
- E. **[56B]** *But why should the whore herself not tithe the beast [since it is regarded as a gift; why should the farmer buy it back from her]?*
- F. *We deal with a gentile whore.*
- G. *But does the passage not deal with an Israelite whore, so let her tithe it herself?*
- H. *What the framer of the passage indicates by implication is that in the case of an Israelite whore, the animal is not classified as “the hire of a harlot.”*
- I. *That is in line with what Abbaye said, for said Abbaye, “What is paid as the hire of a harlot to a gentile whore is forbidden for the altar, and a priest who has sexual relations with her is not liable for flogging on the count of violating the commandment, ‘Neither shall he profane his seed among his people’ (Lev. 21:15). But the beast paid as the hire of an Israelite harlot is permitted for use on the altar,*

and the priest who has sexual relations with her is liable for flogging on the count of violating the commandment, ‘Neither shall he profane his seed among his people’ (Lev. 21:15).”

- J. “What is paid as the hire of a harlot to a gentile whore is forbidden for the altar:” we form an analogy among references to “abomination” that pertain to a whore [Deu. 23:19] and that pertain to consanguineous marriages [Lev. 18:26]. Just as in the case of consanguineous relationships, betrothal is null, so a harlot is one in whose case betrothal has no effect [and likewise her offering is forbidden from the altar on grounds of a harlot’s hire].
- K. “And a priest who has sexual relations with her is not liable for flogging on the count of violating the commandment, ‘Neither shall he profane his seed among his people’ (Lev. 21:15):” his seed he must not profane, but this is not his seed [for the offspring follows the status of the gentile mother].

I.1 is predictable. No. 2 is a footnote, but it also permits us to discuss our Mishnah-rule in a more systematic way. No. 3 continues the exposition of the Mishnah-rule, but it is pertinent to M. 9:4; it is included here because of the question at C, which introduces our Mishnah’s law.

9:3B-G

- B. Brothers in partnership who are liable to a surcharge are exempt from tithe of cattle.**
- C. And those who are liable to tithe of cattle are exempt from surcharge [M. Sheq. 1:7].**
- D. [If] they acquired [cattle] from the property of the estate [of their father], they are liable.**
- E. And if not, they are exempt.**
- F. [If] they divided [the estate] and then went and formed a partnership,**
- G. they are liable to surcharge and exempt from tithe of cattle.**

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

- B. “...shall be yours...” (Num. 18:15) — and not the property of a partnership.
- C. Might one suppose that the exemption from tithing applies even if the beast are acquired from the estate?
- D. Scripture states, “...shall be....”

- E. *But is this not written in connection with the firstling?*
- F. Since it has no point of relevance to the firstling, for lo, he may be held in partnership, since it is written, “and the firstlings of your [plural] herds and of your flocks” (Deu. 12: 6), interpret it to apply to the case of beasts that are subject to be tithed.

I.2. A. Said R. Jeremiah, “In some instances [partners] are liable for both tithe and surcharge, sometimes exempt from both, sometimes pay the surcharge but animals owned in partnership are exempt from tithing, and sometimes they are obligated to tithe the animals but exempt from paying the surcharge:

- B. “In some instances [partners] are liable for both tithe and surcharge: if they divided up the money [and became partners afterwards, in which case they pay the surcharge] but did not divide the animals [and they still are classified as the father’s inheritance and subject to tithing];
- C. “sometimes exempt from both: if they divided the animals but not the money;
- D. “sometimes pay the surcharge but animals owned in partnership are exempt from tithing: if they divided both;
- E. “and sometimes they are obligated to tithe the animals but exempt from paying the surcharge: if they divided neither.”
- F. *So what’s new!* [The rules of the Mishnah yield all this.]
- G. *The point that he found necessary to make explicit was the rule governing when they divided the beasts but did not divide the money. This he found it required to make explicit, for it might have entered your mind to suppose that since they had already divided the beasts, they had shown their intention to divide the rest, and therefore they should have to pay the surcharge; he informs us that that is not the case.*

II.1. A. [Supply: **If they acquired cattle from the property of the estate of their father, they are liable. And if not, they are exempt. If they divided the estate and then went and formed a partnership, they are liable to surcharge and exempt from tithe of cattle:** As to the rule that when they divided the estate and then became partners they are exempt from tithing the beasts,] said R. Anan, “That rule applies only when they had divided up kids against he-goats [in accord with their value] and he-goats against kids [Miller & Simon: for in that case one cannot say that this is the part that was due from his father’s inheritance to begin with, because at the death of the father, each brother acquired a half of the kids and a half of the goats. So the animals available at the time of the division of the estate are not subject to tithe as they come under the law of animals bought, while those

born subsequently are exempt because of the brothers' forming a partnership]. But if they had divided kids against kids and he-goats against he-goats, one can say, 'This is the part that was his to begin with' [Miller and Simon: and each brother's share is still regarded as an inheritance, even after the brothers became partners again; so the animals born before dividing up the estate are not considered as though bought to be exempted from tithing; those that are born subsequently are not considered as born to brothers who are classified as partners]."

- B. But R. Nahman said, "Even if they had divided kids against kids and he-goats against he-goats, we do not invoke the claim, 'This is the part that was his to begin with.'"
- C. And R. Eleazar said, "The rule [that when they divided the estate and then became partners they are exempt from tithing the beasts] applies only if they divided nine large animals against ten small ones [that is, according to value], or ten small ones against nine big ones. But if they divided nine against nine or ten against ten, one can say, 'This is the part that was his to begin with.'"
- D. R. Yohanan says, "Even if they divided nine against nine or ten against ten, one cannot say, 'This is the part that was his to begin with.'"
- E. **[57A]** *And R. Yohanan is consistent with views expressed elsewhere, for* said R. Assi said R. Yohanan, "Brothers who have divided up the estate are classified as purchasers and they return to one another their portions in the year of the Jubilee [Miller & Simon: and they divide up the estate after the year of Jubilee]."
- F. *And it was necessary to have rulings on both subjects, for had R. Yohanan stated only the ruling that concerns the animal that is tithed, one might have thought that it is in particular in this case that R. Yohanan rules as he does, because of the analogy to "your firstborn son" (Exo. 22:28, 29: "the firstborn of your sons you shall give to me; likewise you shall do with your oxen"), holding that just as your firstborn sons deals with a case in which you are certain [that your son was born in your domain], so the same rule applies to your herd and your flock, which also are subject to the law when you are certain. But with respect to a field, only in the case of a sale does the All-Merciful maintain that it should revert to the original owner in the Jubilee, but not in the case of an inheritance or a donation. And had we been informed of the law only with reference to a field [that the field returns in the Jubilee and there is no consideration of certainty involved], I might have supposed that in that case it is because of a greater strictness involved in the law [Miller & Simon: for as there is a doubt, we adopt the more stringent view that the brothers are considered as buyers and the field returns in Jubilee, while in the*

case of tithing animals, if you say that the animals are considered as bought, you adopt a more lenient view]. *[So both rulings were absolutely necessary.]*

- G. *Alternatively, the field is to return in the Jubilee because after it reverts, it is as it was before the beginning, that is, before the division, but here I might have said that that is not the case* [Miller & Simon: because in the case of animals to be tithed, since the law of the Jubilee does not apply, I might have said that we hold the principle that what each of the brothers receives now is the same part that was his originally]. *So both rulings were absolutely necessary.*
- H. *An objection was raised: And so two partners who divided [property] — one took ten [lambs], and one took nine [lambs] and a dog, [all] those which are set over against the dog are prohibited, [but] those which are with the dog are permitted. [The hire (rental fee paid for use) of a dog and the price (paid for the purchase, e.g., as a slave) of a prostitute, lo, they are permitted, since it is said, “Even both these two” (Deu. 23:19) — but not four. Their offspring — that is, of animals paid for such — are permitted, since it is said, “They” — and not their offspring] [M. Tem. 6:3C-H]. Now if you adopt the principle of retrospective clarification of the facts, then let him identify one lamb as the counterpart of the dog and the rest should be permitted for the altar* [since we can leave it to the man’s judgment and assume that to begin with it was his intention that the lamb he would choose would be the equivalent of the dog (Miller & Simon)].
- I. *Said R. Ashi, “If all of them were of the same value, that would be quite true. But here with what situation do we deal? It is one in which all of them were not of the same value, and this dog is equal in value to one lamb and a bit, and the bit covers all the others.”* [Miller & Simon: where the nine lambs of the ten are worth more than the nine which are together with the dog, and the dog worth the tenth plus a little left over, a portion of the value of the dog is to be found in all the counterpart lambs, and so they are all forbidden for the altar.]

I.1 as usual begins with an account of the scriptural source of the law. No. 2 complements No. 1’s reference to the surcharge. II:1 moves on to the next clause.

9:4

- A. Every [sort of beast] enters the corral to be tithed,
- B. except for (1) hybrid-beasts,
- C. and (2) terefah-beasts.

- D. and (3) beasts born from the side,
- E. and (4) that which is not yet old enough,
- F. and (5) the orphan.
- G. What is the orphan?
- H. Any, the dam of which has died or been slaughtered.
- I. R. Joshua says, “Even if its dam is slaughtered, but the hide is whole, this is not deemed an orphan.”

I.1 A. *What is the scriptural source for this ruling?*

- B. *It is as our rabbis have taught on Tannaite authority:*
- C. “When a bullock of a sheep” (Lev. 22:27) — excluding a hybrid; “or a goat” (Lev. 22:27) — excluding a beast that looks like a hybrid. “when it is brought forth” — excludes the offspring born by caesarean section. “Then it shall be seven days: excludes the animal too young to be offered up on the altar. “under the dam” excludes the case of an orphan.
- D. R. Ishmael b. R. Yohanan b. Beroqah says, “Here we have a reference to ‘under the rod’ (Lev. 27:32, on tithing animals) and elsewhere we have the same language (Lev. 22:27). Just as in that other passage all the listed categories are excluded, so here all the stated classifications are excluded; just as here, a terefah-animal is excluded, so there a terefah-animal is excluded.”

I.2. A. *What does the language “all” [Every [sort of beast] enters the corral to be tithed] encompass?*

- B. *It is to encompass that which our rabbis have taught:*
- C. **A beast with which a human has had sexual relations, and one set aside for idolatrous worship, and one which has been worshipped, and the hire of a harlot and the price of a dog and a beast of doubtful sex and one of double sex — all enter the corral to be tithed [= M. 9:4A].**
- D. **R. Simeon bar Judah says in the name of R. Simeon, “A beast of doubtful sex and a beast of double sex do not enter the corral to be tithed. For whenever *Male* is said, Scripture means to exclude from consideration a beast of doubtful sex and one of double sex” [T. [Bekh. 7:7](#)].**
- E. *And as to the Tannaite authority of our Mishnah-paragraph, if he draws the analogy between the usages of “under” here and in connection with Holy Things, then these classes also should not be tithed, and if he does not draw that analogy, then whence does he infer that these [animals too young for sacrifice or an orphan are not to be tithed]?*

- F. *In point of fact he does draw that analogy, but with reference to these in particular, the All-Merciful has encompassed them, for it is written, "Because their corruption is in them and blemishes be in them, they shall not be accepted for you" (Lev. 22:25).*
- G. *And a Tannaite authority of the household of R. Ishmael [stated], "In any passage in which the word 'blemish' [as in 'corruption'] occurs, the reference is to lewdness or idolatry: 'lewdness:' 'For all flesh had corrupted its way' (Gen. 6:12) [and the same Hebrew letters occur here and in the cited verse of Lev. 22:25 for blemish]; 'idolatry:' 'lest you corrupt yourselves and make a graven image the similitude of any figure' (Deu. 4:16). Wherever a blemish disqualifies an animal for the altar, 'lewdness' and 'idolatry' therefore will also disqualify them from the altar, and wherever a blemish does not disqualify, then an act of lewdness and idolatry do not disqualify."*
- H. *Now, in the case of an animal to be tithed, since a blemish does not disqualify, since Scripture states, 'He shall not search whether it be good or bad, neither shall he change it' (Lev. 27:33), the act of lewdness or idolatry also will not disqualify the animal from being tithed.*
- I. *As to a beast with which a human has had sexual relations, that is covered on the count of lewdness; and one set aside for idolatrous worship, and one which has been worshipped come under the count of idolatry; and the hire of a harlot comes under the count of lewdness; and the price of a dog is comparable to the hire of a harlot. And as to the matter of the beast with indistinct sexual traits and the one with the sexual traits of both genders, he holds that these are subject to doubt.*

I.3. A. R. Simeon bar Judah says in the name of R. Simeon, "A beast of doubtful sex and a beast of double sex do not enter the corral to be tithed. For whenever *Male* is said, Scripture means to exclude from consideration a beast of doubtful sex and one of double sex:"

- B. *He takes the view that it is a matter of doubt. In the case of Holy Things, the All-Merciful has limited an acceptable beast to one that is certainly male or certainly female; with regard to animals that are suitable to be tithed, we then form the analogy on the basis of the use of the term 'under' in connection with Holy Things.*

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

- B. "All lambs enter the corral to be tithed, except for hybrids and terefah-beasts," the words of R. Eleazar b. Judah of Kefar Bartota, which he stated in the name of R. Joshua.

- C. Said R. Aqiba, "I heard from him also: 'the beast born by caesarean section and the best that is not yet old enough and the beast that is an orphan.'"
- D. *Now the initial authority [B], if he derives a lesson from the analogy formed by the use of "under" with reference to both Holy Things and firstlings, should concur with R. Aqiba that these items also should not be tithed. And if he does not derive that lesson, then while one can understand his view of the terefah-beast, since Scripture says, "All that shall pass under the rod," excluding the terefah-beast, which does not "pass" [e.g., it cannot walk under the rod], but on what basis does he exclude hybrids?*
- E. *In point of fact he does concur, and in regard to the beast born from the side [57B] he takes the position of R. Simeon, who has said, "[‘But if she bear’ (Lev. 12: 5) — encompassing] the child born by caesarean section [who is classified as a valid offspring] and not with the reading of that opinion by R. Yohanan [who says Simeon excludes such beasts from use on the altar]. As regards the beast that is too young, he takes the position of R. Simeon b. Judah. In respect to the orphan, he assumes that the hide is still in tact, and R. Joshua is consistent with the opinion he has stated elsewhere, namely, "Even if its dam is slaughtered, but the hide is whole, this is not deemed an orphan."*

- II.1** A. [Supply: R. Joshua says, "Even if its dam is slaughtered, but the hide is whole, this is not deemed an orphan:"] R. Ishmael b. Satriel of Arqat Libnah [Arca Caesarea Libani] testified before Rabbi, "In our locale they flay the hide from the dead mother and put it on the living offspring."
- B. Said Rabbi, "That reveals the reason behind the rule in our Mishnah now."
 - C. [He continued to testify,] "The lettuce in our locale has [Miller & Simon:] six hundred thousand peelings of small leaves around their core.
 - D. "One time in our locale a cedar fell down and sixteen wagons side by side passed along its width.
 - E. "One time the egg of a *bar yokani* -bird fell, and it swamped sixty towns and broke three hundred cedars."
 - F. *But does it drop its egg? Is it not written, "The wing of the ostrich beats joyously" (Job. 39:13) [it lays the egg gently on the ground without smashing it (Miller & Simon)]?*
 - G. *The egg was a rotten one.*

The opening question is absolutely standard, I.1. No. 2. proceeds to one standard mode of Mishnah-exegesis. No. 3 is a footnote to No. 2. No. 4 then goes on to pursue the issue considered at No. 3. II.1 serves M. 9:4I in its own terms.

9:5-6

- A. There are three seasons ["threshing-floors"] for the tithe of cattle [in which one takes the tenth of animals born in the stated period, at which point one may not use the animal until the tithing process is complete]:
- B. "Peras [that is, half a month] before Passover, Peras [half a month] before Pentecost [Hebrew: Aseret], and Peras [half a month] before the Festival [Sukkot]," the words of R. Aqiba.
- C. Ben Azzai says, "On the twenty-ninth of Adar, on the first of Sivan, and on the twenty-ninth of Ab."
- D. R. Eleazar and R. Simeon say, "On the first of Nisan, on the first of Sivan, and on the twenty-ninth of Elul."
- E. And why did they say on the twenty-ninth of Elul and they did not say on the first of Tishré?
- F. Because it is a festival, and it is not possible to tithe on the festival.
- G. Therefore they pushed it up to the twenty-ninth of Elul.
- H. R. Meir says, "On the first of Elul is the New Year for the tithe of cattle."
- I. Ben Azzai says, "[Cattle born in] Elul are tithed by themselves.

M. 9:5

- A. "All beasts born from the first of Tishré to the twenty-ninth of [the following] Elul, lo, they join together [for purposes of tithe].
- B. "Five [born] before New Year and five [born] after New Year do not join together [to form the requisite herd of ten beasts for tithing].'
- C. "Those born five days before the tithing season and those born five days after the tithing season do join together."
- D. If so, then why have they said, "There are three seasons for tithe of cattle"?
- E. For: until the season has come, it is permitted to sell and to slaughter.
- F. Once the season has come, one should not slaughter.
- G. But if he has slaughtered, he is exempt [from penalty].

M. 9:6

- I.1** A. [There are three seasons for the tithe of cattle:] *Why are there three seasons in particular?*
- B. *Said Rabbah bar Shila, “This corresponds to [the three periods when animals give birth]: some early [prior to Passover], some late [between Passover and Pentecost], some in summer [Pentecost to Tabernacles].*
- C. *And what distinguishes these particular times [and why not some other month prior to Passover, Pentecost, and Tabernacles (Miller & Simon)]?*
- D. *Said R. Tanhum b. R. Hiyya of Kefar Akko, [58A] “So that there will be a large supply of beasts for those who come up on the pilgrimage to the Temple on pilgrim festivals.”*
- E. *And even though we have learned in the Mishnah, ...until the season has come, it is permitted to sell and to slaughter, [once the season has come, one should not slaughter], people prefer to carry out a religious duty with their own property first of all [taking the animal designated as tithe and eating it as a peace offering on the festival], and then to go and sell or eat the animals.*
- F. *And why is the tithing season called “threshing floor”?*
- G. *Because when the tithing season has come, like the threshing season, it imparts to the untithed beasts the status of untithed produce which is now liable to be tithed [and may not be utilized by the farmer until God’s share has been designated and separated], [and the season of threshing, hence, “threshing floor” does the same to the produce of the fields].*
- H. *And how long is the period of a peras?*
- I. *R. Yosé b. R. Judah explained, “A peras is no less than fifteen days.”*
- J. *And what is the meaning of the word?*
- K. *Said R. Abbahu, “It means, a half.”*
- L. *Half of the period of instruction required to learn the laws of Passover, in accordance with that which has been taught on Tannaite authority:*
- M. *People raise questions and expound the laws of Passover prior to Passover for thirty days.*
- N. *Rabban Simeon b. Gamaliel says, “Two weeks.”*
- II.1** A. [**“Peras [that is, half a month] before Passover, Peras [half a month] before Pentecost [Hebrew: Aseret], and Peras [half a month] before the Festival [Sukkot],” the words of R. Aqiba.**] **Ben Azzai says, “On the twenty-ninth of Adar, on the first of Sivan, and on the twenty-ninth of Ab:”**

- B. *[Since Ben Azzai concedes that fifteen days prior to Passover the animal becomes liable to tithing, for the twenty-ninth of Adar and fourteen days of Nisan add up to fifteen days before Passover] what is the point at issue between R. Aqiba and Ben Azzai?*
- C. *R. Aqiba takes the view that the month of Adar which precedes Nisan sometimes runs a full thirty days [prior to the appearance of the new moon of Nisan] and sometimes runs short, for twenty-nine days, and therefore, sometimes the peras, or half-month, prior to Passover occurs on the thirtieth of Adar and sometimes on the twenty-ninth of Adar, and therefore he does not fix the time for the advent of the half-month. Ben Azzai maintains that the month of Adar that is prior to Nisan always runs short, consequently, he fixes the time for the half-month prior to Nisan on the twenty-ninth of Adar.*
- D. *And the reason that he chooses the first of Sivan [rather than fifteen days prior to Pentecost, as he says fifteen days prior to Passover] is that, since animals are not plentiful between Passover and Pentecost, if you rule that the farmer should tithe the beasts earlier, then by the time the festival arrives, he will have finished eating the animals.*

III.1 A. [Ben Azzai says, “On the twenty-ninth of Adar, on the first of Sivan,] and on the twenty-ninth of Ab.”

- B. *Ben Azzai is consistent with his other views when he says, “Cattle born in Elul are tithed by themselves.” [Miller & Simon: we cannot tithe those born in Elul for those born in Ab, in case the first of Elul is the New Year for tithing of animals, and we should thus be tithing the new for the old. We also cannot tithe animals born in Tishré for those born in Elul, in case the first of Tishré is the New Year for tithing purposes. Since there is a doubt whether the first of Elul or the first of Tishré is the New Year for tithing, those born in Elul are tithed by themselves. And for this reason the tithing period of those born in summer is not fixed for the twenty-ninth of Elul, that is, the half-month prior to Tabernacles, so as not to combine animals born in Ab with those born in Elul, which would be tithing the new for the old. On the other hand we do not fix the period earlier than the twenty-ninth of Ab, because we must defer the period of tithing to as near to the Festival as possible.]*
- C. *And how about tithing them on the thirtieth of Ab?*
- D. *Sometimes Ab runs short, and sometimes the month runs a full thirty days [prior to the appearance of the new moon of Tishré], so as to make a clear distinction between the new and the old beasts.*

IV.1 A. R. Eleazar and R. Simeon say, “On the first of Nisan, on the first of Sivan, and on the twenty-ninth of Elul.”

- B. **On the first of Nisan:** this is in accord with Rabban Simeon b. Gamaliel, who has said, “Two weeks” fourteen days are the time for preparing for Passover].
- C. **on the first of Sivan:** *as we have already explained.*
- D. **and on the twenty-ninth of Elul:** R. Eleazar and R. Simeon are consistent, for they have said, “The first of Tishré is the New Year so far as tithing animals is concerned” [Miller & Simon: and therefore we could not defer the tithing period later than to the last day of Elul, for we require a distinction between the new and the old].

V.1 A. And why did they say on the twenty-ninth of Elul and they did not say on the first of Tishré? Because it is a festival, and it is not possible to tithe on the festival:

- B. *And why not give as the reason that we require a distinction between the new and the old?*
- C. *The intention here is to say, first for this reason, and then for another reason. First of all, because we require a distinction between the new and the old. And furthermore, Because it is a festival, and it is not possible to tithe on the festival.*
- D. *That is because of the necessity of marking the tenth animal with paint [which may not be done on the festival day, since it would mark a form of writing]. [Miller & Simon: and the reason it was fixed on the twenty-ninth day of Elul, not on the thirtieth, is that in most years Elul runs short and lasts for only twenty-nine days before the new moon makes its appearance.]*

VI.1 A. R. Meir says, “On the first of Elul is the New Year for the tithe of cattle.” Ben Azzai says, “[Cattle born in] Elul are tithed by themselves:”

- B. *It has been taught on Tannaite authority:*
- C. **Said [R. Simeon] b. Azzai, “Since these rule, ‘On the first of Elul,’ and these rule, ‘On the first of Tishré,’ those born in Elul are tithed by themselves.”**
- D. *But let us see which authority presents the more reasonable position? And should you say that Ben Azzai could not uncover the operative considerations for the several authorities respectively, has it not been taught on Tannaite authority, “Ben Azzai says, ‘All the sages of Israel by comparison with me are as thin as a peel of garlic, except for that baldy over there’ [Joshua b. Qorha, that is son of a bald man, was son of Aqiba, who therefore is meant]”?*

- E. Said R. Yohanan, "They gave their opinions solely on the authority of Haggai, Zechariah, and Malachi."
- F. *It has been taught on Tannaite authority:*
- G. **How did Ben Azzai make his ruling that those born in Elul are tithed by themselves? [If] there were born five in Ab and five in Elul, five in Elul and five in Tishré, then those five born in Ab and those five born in Tishré do not join together. The five born in Tishré and the five born in [the subsequent] Ab, lo, these do join together to form ten for purposes of tithing.**
- H. *But that is self-evident [that those born in Tishré and those born in the next Ab combine together, since the first of Tishré marks the New Year for tithing the herd, and therefore all were born in the same year]!*
- I. *What might you have supposed? That just as the change in the years forms a division [so that animals born prior are not tithed with those born afterward], so too the seasons of tithing likewise form a division [and there would therefore be three interruptions between the birth of the one group and that of the other]? So we are informed that that is not true.*
- J. *And this is as we have learned in the Mishnah: Five [born] before New Year and five [born] after New Year do not join together [to form the requisite herd of ten beasts for tithing]. Those born five days before the tithing season and those born five days after the tithing season do join together.*

VI.2. A. Said Raba, "In accord with the view of Ben Azzai, if five beasts were born to the former in Ab, five in Elul, and five in Tishré, he collects them into the corral to be tithed. **[58B]** He may take one from the group born in Elul, and the rest will be exempt. *For whichever way you go, you get the same result: If the first of Elul is the New Year that marks the division for tithe of cattle, then the animals of Elul and Tishré will join together in a single corral for tithing, and those of Ab are exempt; and if the first of Tishré is the New Year for the purpose of tithing cattle, then the animals of Ab and Elul will form a single group, and the ones of Tishré are exempt. What might you have said? That the five of Tishré should be joined with those born in a later tithing period? The All-Merciful speaks of a certain 'tenth,' and not to a 'tenth' that is subject to doubt.*"

- B. *But is this not self-evident?*
- C. *What might you have supposed? That we should impose a prohibition, lest the farmer should take some born in Ab and in Tishré [and would end up bringing unconsecrated beasts to the Temple, e.g., if he takes one of the animals born in Ab as tithe for the others. If Elul is the New Year, it will turn out that these cannot*

combine for tithing and so the one taken is not tithe, and he will end up eating unconsecrated meat in the Temple; the same is so if he took one lamb from those born in Tishré (Miller & Simon)]. *So we are informed that that is not the case.*

I.1 explains the basic point of the Mishnah and spells out the meaning of its language and rules. II.1 provides a detailed explanation of the reasoning and language of the Mishnah's authorities. III.1 does the same for Ben Azzai's position, so explaining rather fulsomely the connection between one ruling and the other. IV.1 systematically glosses the language of the Mishnah. V.1 provides the reasons behind the Mishnah's rule. VI.1 augments the Mishnah with further Tannaite materials. No. 2 expands on the preceding.

9:7

- A. **How does one tithe them?**
- B. **He brings them into a corral and makes a small chute, so that two cannot exit simultaneously.**
- C. **And he counts [using] a staff: One, two, three, four, five, six, seven, eight, nine.**
- D. **And the one which exits tenth does he mark with a red mark, saying, "Lo this is tithe."**
- E. **[If] (1) one did not mark it with a red mark, or (2) did not count them with a staff,**
- F. **or (3) if one counted them while they were crouching or standing, lo, these are deemed tithed.**
- G. **[If] he had a hundred and took [any] ten [of them], or had ten and took [any] one of them, this is not deemed tithe.**
- H. **R. Yosé bar Judah says, "Lo, this is tithe."**
- I. **[If] one of those which had already been numbered jumped among them [which had not been numbered], lo, these are exempt.**
- J. **[If one of those which was marked as] tithe [jumped] into their midst, all of them must pasture until they are blemished.**
- K. **And by reason of their blemish they may be eaten by their owners.**

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

- B. **How does one tithe them? He brings them into a corral and makes a small chute, so that two cannot exit simultaneously. One sets up the mothers outside, and they low, and the offspring go out to meet their mothers.**
- C. *But why should he not bring them out himself?*
- D. It is written, "...shall pass..." (Lev. 27:32) — *and not that he should make them pass.*
- E. *Then let him throw some greens and so induce them to go out?*
- F. Said R. Huna, "This is a decree on the count of not tithing the animal that has been bought or one that is orphaned [and hence we rely on the mothers' lowing, since neither of these classes of animals will respond.]"

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

- B. Scripture states, "Even of whatever passes under the rod" (Lev. 27:32) — excluding the terefah-beast, which cannot pass under the rod [on its own, having lost the physical capacity to do so].
- C. It is a religious duty to count them with the rod. If one counted them when they were crouching, or standing around, how do we know that what he has done is valid? Scripture states, "The tenth is holy" (Lev. 27:32) — under all circumstances.
- D. I know only that the beast that he has called the tenth is deemed so. How do I know that if he did not call it the tenth, it gains the status of the tithe?
- E. Scripture says, "The tenth is holy" (Lev. 27:32) — under all circumstances.
- F. Might one suppose that **If he had a hundred and took [any] ten [of them], or had ten and took [any] one of them, this is deemed tithe?** Scripture says, "The tenth is holy" (Lev. 27:32) —and this is not the tenth.

II.1 A. **R. Yosé b. R. Judah says, "This is deemed tithe:"**

- B. *What is the scriptural basis for the position of R. Yosé b. R. Judah?*
- C. *He takes the position of Abba Eleazar b. Gomel, for it has been taught on Tannaite authority:*
- D. Abba Eleazar b. Gomel says, "'And this heave-offering of yours shall be reckoned to you as though it were the grain of the threshing floor' (Num. 18:27) — Scripture speaks of two classifications of heave-offering, the one is the great heave-offering, the other, the heave offering that is separated from the tithe.
- E. "Just as the great heave offering may be designated by the priest by mere estimation, without measuring the exact quantity, and by merely making a mental

decision, [59A] so heave offering of the tithe is designated by a mere estimation without an exact measurement, and by a mental action.

- F. “We moreover find that tithe is called by Scripture heave-offering, since it is written, ‘But the tithes of the children of Israel which they offer as a heave offering to the Lord I have given to the Levites to inherit’ (Num. 18:24).
- G. “And, furthermore, the tithing of animals is treated as comparable to the tithing of grain. So just as the tithe of grain is designated through a mere act of estimation, without an exact measurement of the quantity, and by a mere mental action, so the herd is tithed by a mere estimation and by a mere mental action.”

III.1 A. [Supply: **If one of those which had already been numbered jumped among them which had not been numbered, lo, these are exempt. If one of those which was marked as tithe jumped into their midst, all of them must pasture until they are blemished. And by reason of their blemish they may be eaten by their owners:**] Said Raba, “The tenth is holy eo ipse” [of its own accord, so that, if one counted nine lambs and one remained in the corral, though not counted, it is sacred of itself (Miller & Simon)].”

- B. *How does Raba derive that rule? Shall I say that his position derives from that which has been taught on Tannaite authority:*
- C. I know only that the beast that he has called the tenth is deemed so. How do I know that if he did not call it the tenth, it gains the status of the tithe? Scripture says, “The tenth is holy” (Lev. 27:32) — under all circumstances.
- D. *But perhaps the sense is that if he did not call it the tenth but still called it holy [then it is holy]? Rather, the rule comes from that which has been taught on Tannaite authority:*
- E. If the farmer called the ninth tenth, and when the tenth came out, he said nothing, the ninth is eaten only if it is blemished, and the tenth is the tithed beast [so the tenth is tithe automatically, without having been designated as such].
- F. *But perhaps that case is exceptional, because it was then clarified that it was indeed the tenth [since it followed the ninth, so it is like other tithe though not designated.] Or perhaps she did make a gesture to indicate that it is to be the tenth.*
- G. *Rather, his position derives from that which has been taught on Tannaite authority:*
- H. If he called the ninth the tenth, and then the beast that would have been tenth died in the corral, the ninth is eaten only when it is blemished, and all the rest [of the eight that had already gone through the chute] are exempt [as having been tithed]. *Now*

why should this be the case? Is it not because the tenth is sacred on its own [without the farmer's action at all]?

- I. *Perhaps the operative consideration is that they were exempted on the count that it was an interrupted count that began properly* [Miller & Simon: when the ninth went out through the chute, it was the right number for tithing, for the tenth was still alive and in condition to follow in order to exempt the prior eight; since the counting was properly begun, it is as if the tenth had actually passed through and the lambs already counted are now exempt]. For has Raba not said, "An interrupted count that began properly exempts the beasts that have already been counted."
- J. *Rather, his position derives from that which has been taught on Tannaite authority:*
- K. If he called the ninth beast the tenth, and the tenth remained in the corral, the ninth, nonetheless, is eaten when it is blemished, and the tenth is classified as tithe. [That would prove Raba's point.]
- L. *But has it not been taught on Tannaite authority:* the ninth is unconsecrated entirely?
- M. *A Tannaite authority recited before R. Sheshet, "Who is the authority behind that statement? It is R. Simeon b. Judah. For it has been taught on Tannaite authority: R. Simeon b. Judah says in the name of R. Simeon, [59B] "Even the ninth is not consecrated unless the designation 'tenth' is removed therefrom [so that he called the tenth ninth]."*
- N. And reason provides support for that view, for if the eleventh, is sufficiently holy to be sacrificed, and yet is holy only when the designation 'tenth' is removed therefrom, the ninth, which does not enjoy sufficient holiness to be sacrificed, surely should be such that, if the designation of the tenth is eliminated therefore, it will be holy, but if the designation of the tenth is not removed therefore, it is not holy at all.
- O. But reason provides exactly the opposite argument: the eleventh is sufficiently holy to be sacrificed; if the designation of the tenth has been removed therefrom, it should require that level of holiness, but if not, not; but the ninth is not capable of becoming sufficiently holy to be sacrificed, and it should therefore become holy even if the tenth has not been eliminated therefrom. *Or, further: since the eleventh is not reached until the tenth has already established itself as the tithe, then if the designation of the tenth was eliminated therefrom, the eleventh becomes holy, if not, it does not become holy. But as to the ninth, which comes along prior to the*

tenth's establishing itself as the tithe, is holy even if the designation of the tenth has not been eliminated therefrom. And there is nothing more to be said against this proposition.

- III.2.** A. Said Raba, "An interrupted count that began properly exempts the beasts that have already been counted."
- B. *How does he know this? If we say it derives from that which we have learned in the Mishnah: [If] one of those which had already been numbered jumped among them [which had not been numbered], lo, these are exempt, how are the lambs that have already been counted themselves exempted? Is it not through the count that had begun properly?*
- C. *But perhaps they [the ones that the Mishnah calls "already counted"] in fact had already been tithed?*
- D. *That is a claim you cannot make, for the Mishnah further states, [If one of those which was marked as] tithe [jumped] into their midst, all of them must pasture until they are blemished.*
- E. *But perhaps the meaning of those that were marked as tithe means, those that have already been designated themselves as tithe of the herd? The analysis of the formulation yields that result, since it states, all of them must pasture until they are blemished.*
- F. *Rather, said Raba, "Scripture said, '...shall pass...' (Lev. 27:32) — and not that which has already passed. And what does 'not that which has already passed' mean? If it means, those already tithed, then what need is there to say so [since there is no question that animals already tithed do not have to be tithed again or redeemed]?! Rather, does this not mean that they have been rendered exempt by a count that began properly [but only later on was interrupted and spoiled]?"*
- G. *That proves the point.*
- H. *It has been taught on Tannaite authority in accord with the position of Raba:*
- I. **[If] he had ten lambs and he drove them into the corral, and after he had counted five, one of those which had been counted died, lo, this one completes them [with others] from those which had not been counted. But if one of those that died was not among those that had been counted, the counted ones are exempt, but those not yet counted combine with others born in the next season of tithes [T. Bekh. 7:12].**

- III.3.** A. Raba further said, "If one had fourteen lambs and drove them into the corral, and six of them went out one chute, and four another chute, and four remain there

— if the four that remained eventually went through the same chute as the six, he takes one of them as tithe, and the rest [the four that went through the other chute] combine in one corral with those born in a later tithing period. But if not, the six are exempt, and the four together with the other four join together with those born in a later tithing period. If four pass through one chute, and then six through another chute, and four remain in the corral, if the four eventually pass through the same chute as the six, he takes one as tithe and the rest are exempt. If not, the first four and the six are exempt, and the last four combine with those born in a later tithing period. If four went through this chute and four through another chute, and six remained in the corral, if the remaining six passed through the chute taken by one or the other of them, he takes one as tithe, and the rest are exempt. And if not [if the six did not go through the chute of the first four or the other four, remaining in the corral or going through a third chute (Miller & Simon)], the first four and the second four are exempt, and the remaining six combine with those born in a later tithing period.”

- B. *What does Raba propose to have us infer from this statement? Is it merely, “An interrupted count that began properly exempts the beasts that have already been counted”? But he has already said that once!*
- C. *What might you have said? We invoke the principle, “An interrupted count that began properly exempts the beasts that have already been counted,” in particular where it is certain that there is a proper count [Miller & Simon: where he counted five or six and there were sufficient lambs in the corral to combine for tithing purposes, and there is only one chute in the shed; the rest are certainly fit to pass through that door and to combine in order to be tithed with those already counted]. But where there is doubt that there is a proper number, since it is possible to combine the six either with one set or the other, we do not invoke that principle. So he informs us that that is not the case.*

- III.4.** A. And said Raba, “If a farmer had fifteen lambs, he cannot say, ‘I shall choose ten, drive them into the corral, select one as tithe from the group, and the rest are exempt.’ He must drive them all into the corral and lead ten of them down through the chute and select one of them, and the remainder, left in the corral, will join together with another group at the next season for tithing.”
- B. *So too it has been taught on Tannaite authority:*
 - C. If a farmer had fifteen lambs, [60A] he cannot say, ‘I shall choose ten and select one as tithe from the group, and the rest are exempt.’ He must drive them all into the corral and lead ten of them down through the chute and select one of them, and

the remainder, left in the corral, will join together with another group at the next season for tithing.”

- D. *But has it not been taught on Tannaite authority:* If a farmer had nineteen lambs, he may not say, “I shall select ten and take one of them, and the rest will be exempt,” but he drives them all into the corral and sends ten through the chute and so selects one of them, and the rest of them are exempt?
- E. *R. Huna b. Sehorah interpreted this before Rab on the Sabbath preceding a Festival, “This rule pertains to a corral that has two chutes, and nine of the beasts went out one chute, and nine through the other, and the remaining lamb is suitable to combine either with the one group or the other [Miller & Simon: and it exempts the rest since a counting that began properly serves its purpose].*
- F. *But why not explain [that the corral had only one chute, and we deal with a case in which] when the farmer reached the tenth, he called it “one,” as though from the beginning [Miller & Simon: therefore the nineteenth was the tenth in the second counting of the animals, and the last ten are exempt through the nineteenth that is tithe; the first nine already counted are exempt since it was a counting that began properly].*
- G. He takes the view that the tenth is holy eo ipse.
- H. *But why not explain [that the corral had only one chute, and we deal with a case in which] the farmer counted them in pairs?*
- I. *R. Huna takes the view that the tenth is rendered holy only by the actual number [and not by how one counts; therefore, as soon as he counted five pairs, one of the lambs becomes the tithe, and the remaining nine are not exempt, since the counting of them had not properly begun (Miller & Simon)].*
- J. *Said R. Nahman bar Isaac, “The mother of R. Huna bar Sehorah had the merit to have a son who explained that ruling of Raba on the Sabbath prior to a Festival in line with Raba’s teaching.”*

I.1 complements the Mishnah with the Tosefta’s minor amplification, which is glossed. No. 2 then goes over the rules of the Mishnah, now discovering their foundations in Scripture. II.1 does the same. III:1ff. sets forth a sequence of statements assigned to Raba, which take up problems relevant to the supplied passage of the Mishnah.

9:8

- A. [If the first] two exited simultaneously, he counts them two by two.
- B. [If] he counted them as one, then the ninth and the tenth are spoiled.

- C. [If] the ninth and the tenth exited simultaneously, the ninth and the tenth are spoiled.
 - D. [If] he called the ninth, tenth, and the tenth, ninth, and the eleventh, tenth, all three are sanctified: (1) the ninth is eaten by reason of its blemish; (2) the tenth is tithe; (3) and the eleventh is offered as peace-offerings.
 - E. “And it [the eleventh] is subject to the law of the substitute,” the words of R. Meir.
 - F. Said R. Judah, “And is there a substitute which imparts the status of a substitute to another?”
 - G. They said in the name of R. Meir, “If it had been a substitute, it could not have been offered.”
 - H. [If] he called the ninth, tenth, and the tenth, tenth, and the eleventh, tenth —
 - I. the eleventh is not sanctified.
 - J. This is the general principle: In any case in which the tenth was not deprived of its proper designation, the eleventh is not sanctified.
- I.1** A. [If the first two exited simultaneously, he counts them two by two:] Said R. Yohanan, “If he counted them out in pairs or in hundreds, the tenth in the count becomes holy.”
- B. *The tenth in what counting?*
 - C. R. Mari said, “The man’s counting is what dictates the sanctification of the tenth.”
 - D. R. Kahana said, “The sanctification of the tenth is dictated by the actual sequence of the animals themselves.” [Miller & Simon: we are not concerned with his counting, and therefore in the case of pairs, the tenth animal becomes holy as tithe on its own, and even tenth animal of the hundred becomes holy, making ten animals as tithes in every hundred; if the tithes can be recognizes it is no problem, but if not, all are condemned to pasture until blemish].
 - E. *We have learned in the Mishnah: [If the first] two exited simultaneously, he counts them two by two. [If] he counted them as one, then the ninth and the tenth are spoiled. Now from the perspective of him who has said, “The man’s counting is what dictates the sanctification of the tenth,” that is why the ninth and the tenth are spoiled. For he calls the tenth the ninth and the eleventh the tenth. But from the perspective of him who has said, “The sanctification of the tenth is dictated by the actual sequence of the animals themselves,” it is as if he called the one that was certainly the ninth ninth, and tenth tenth* [Miller & Simon:

for it makes no difference what he has called them. Why should the tenth not be tithe, and the eleventh a peace offering?]

- F. *R. Yohanan will say to you, "When I say [that the holiness of the tenth depends on the actual count of animals] it is where he planned to bring them out in pairs. But in a case, such as the Mishnah's, where they came out of the corral on their own, that is not the case."*
- G. *Came and take note: if he counted them backward, the tenth in the counting is holy.*
- H. *Now from the perspective of him who has said, "The sanctification of the tenth is dictated by the actual sequence of the animals themselves," there is no problem here. But from the perspective of him who has said, "The man's counting is what dictates the sanctification of the tenth," has he not called the tenth animal "one"?*
- I. *Said Raba, "Since in Persian numbers, they call 'ten' 'one,' [therefore what he calls the first is in fact the tenth]."*

II.1 A. [60B] [If] he called the ninth, tenth, and the tenth, ninth, and the eleventh, tenth, all three are sanctified:

- B. *Our rabbis have taught on Tannaite authority:*
- C. **How on the basis of Scripture do we know that, [if] he called the ninth, tenth, and the tenth, ninth, and the eleventh, tenth, all three are sanctified?** Scripture states, "And concerning the tithe of the herd or of the flock, even of whatever passes under the rod, the tenth shall be holy" (Lev. 27:32) — including all [and whatever the farmer calls the tenth is holy, whatever its ordinal position].
- D. **Might one then suppose that I may include the eighth and the twelfth as well?**
- E. **You may argue to the contrary: since the tenth is holy and the animal the farmer erroneously called the tenth is holy, just as the tenth is only consecrated when it is next in position, so animals the farmer erroneously called the tenth must be next in position [juxtaposed to the tenth, that is, ninth or eleventh, before or after tenth].**
- F. *But has it not been taught on Tannaite authority:*
- G. **Just as it is only one beast, so the animal erroneously called the tenth can only be one [and if he called the ninth and the eleventh tenth, only one of them is consecrated, not both]?**
- H. *A Tannaite authority recited before R. Yohanan, "But who is the authority for this position? It is R. Eleazar b. R. Simeon," for it has been taught on Tannaite authority:*
- I. **The eleventh can be deemed holy only if the farmer is silent at the ninth [and says nothing, not calling it the tenth], calling the tenth ninth, and the eleventh tenth."**

J. *[Eleazar] further concurs with R. Judah, who said, “A mistake in counting out animals for tithes means the animal called tenth is classified as a substitute [and the ninth is a tenth, so the eleventh cannot be a substitute], for [Eleazar] further agrees with his father [Simeon] who says, “An animal classified as a substitute does not impose the status of substitute [on an animal that is declared to be its substitute].”*

II.2. A. Said Raba, “If two animals came out of the corral at the ninth, and he called them the ninth, the tenth and unconsecrated beasts are treated as a single group [‘mixed together’] [and may not be eaten until blemished, but are otherwise classified as unconsecrated]. The tenth is sanctified *eo ipse* [even though not called ‘tenth’], and the ninth is unconsecrated, *having been designated, correctly, as ninth*. If he called them the tenth, the tenth and the ninth are treated as a group. *How come? He has called both of them tenth*. If two of them came out simultaneously as tenth, and he called them tenth, the tenth and the eleventh are treated as a group together [the tenth is actually tithe, the eleventh is a peace offering].

B. “If he called [the two lambs that came out when the tenth was to make its appearance] the eleventh, the tenth and unconsecrated beasts are deemed to have formed a single group [and both are eaten by the owner when blemished].”

C. *Why did Raba give this further case? Isn't it pretty much the same as the others [and I could have inferred that the tenth and eleventh mixed together are classified just as are the tenth and the nine that are mixed together]?*

D. *He therefore lets us know that, whenever the two came out simultaneously and have been called “tenth,” they are consecrated, and that is so even though the tenth was not deprived of its proper designation.*

E. *R. Kahana, in session, stated this tradition. Said R. Ashi to R. Kahana, “But the proper designation of tenth has not been removed from this beast, and yet we have learned in the Mishnah: **This is the general principle: In any case in which the tenth was not deprived of its proper designation, the eleventh is not sanctified!** [If he called the tenth the tenth, how can the eleventh be holy, when the tenth has been correctly designated?]”*

F. *That applies, in point of fact, when the lambs have gone out sequentially, but if they have gone out simultaneously, both of them are sanctified.*

G. *But the case of their going out sequentially [where he called the tenth and the eleventh tenth] is explicitly covered in the Mishnah: **[If] he called the ninth, tenth, and the tenth, tenth, and the eleventh, tenth — the eleventh is not sanctified.** And what does the statement, **This is the general principle: [In any***

case in which the tenth was not deprived of its proper designation, the eleventh is not sanctified,] mean to encompass? Is it not the case in which he called the tenth and the eleventh simultaneously the tenth [and even so, the eleventh is not consecrated]?

- H. *No, it means to encompass the case in which the tenth came out, and the farmer said nothing; here is a case in which the tenth was not deprived of its proper designation. And if you do not take that position [that if they came out simultaneously, they are holy], then what will you make of that which has been taught on Tannaite authority: If two came out at the tenth slot, and one did not come out prior to the other, and he called them tenth, the tenth and the eleventh are treated as forming a single group [the one tithe, the other a peace offering]. But how can this be the case, since, after all, the tenth was not deprived of its proper designation! Rather, is it not because we take the position that in any case in which both came out of the corral simultaneously, they are consecrated?*
- I. *If this were the only consideration, it would not follow, because the case here [where if the tenth and eleventh are mixed together, we regard the eleventh as consecrated, even though the farmer designated the tenth as the tenth] is one in which one of them came out prior to the other, putting out its head, and he called it the eleventh, and then it was mixed with the other,s and two animals came out together, and he called them the tenth; here, then, the designation of tenth has been removed from the animal that should have been the tenth.*
- J. *But does the passage not state explicitly, and one did not come out prior to the other?*
- K. *But the language, “and one did not come out prior to the other” means, it was afterward mixed with the others. And whose authority is represented here? It is not in accord with the view of Rabbi, for if it were Rabbi, has he not stated, “Calling the eleventh before the tenth is not considered as removing the designation of the tenth from the beast that should have been tenth”?*
- L. *You may even say that this represents the opinion of Rabbi, for when Rabbi makes that ruling, it is only in a case in which the farmer has many animals to tithe, for when we say that his meaning was, “one group of ten.” But here we are speaking of a case in which he has no more animals to tithe.*

II.3. A. *What is the ruling of Rabbi to which reference has been made?*

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

C. *“If one has called the tenth eleventh, and the eleventh tenth, the eleventh is not holy,” the words of Rabbi.*

- D. R. Yosé b. R. Judah says, "The eleventh is holy."
- E. A governing principle did Rabbi state: **In any case in which the tenth was not deprived of its proper designation, the eleventh is not sanctified.**
- F. *Said Raba, "What case is subject to discussion here? It is in a case in which the farmer has many animals to tithe, for when we say that his meaning was, 'one group of ten.'"*

- II.4.** A. [Said Raba,] "If two animals came out of the corral at the ninth, [and he called them the ninth, the tenth and unconsecrated beasts are treated as a single group ['mixed together'] [and may not be eaten until blemished, but are otherwise classified as unconsecrated. The tenth is sanctified *eo ipse* even though not called 'tenth, and the ninth is unconsecrated, *having been designated, correctly, as ninth.* If he called them the tenth, the tenth and the ninth are treated as a group"] —
- B. *One Tannaite version states, "Let them be put out to pasture."*
 - C. *Another Tannaite version states, "They are to be left to die."*
 - D. *There is no contradiction between these conflicting versions, for the one who says, "Let them be put out to pasture" represents the view of rabbis, who say, "People must not deliberately bring Holy Things to a place designated for unfit beasts." And the one who says, "They are to be left to die," takes the position of R. Simeon who has said, "People may deliberately bring Holy Things to a place designated for unfit beasts." The one who teaches as the Tannaite version, "Let them be left to die," represents the view of R. Judah, who has said, "A beast that erroneously has been designated as tithe is treated as a substitute," and he assumes that R. Judah takes as his premise that the beast designated as a substitute for tithe is left to die.*
 - E. *But is it the fact that R. Judah takes as his premise that the beast designated as a substitute for tithe is left to die. And have we not learned in the Mishnah: **They said in the name of R. Meir, "If it had been a substitute, it could not have been offered."** It follows that, from the position of R. Judah, it could have been sacrificed. And should you claim that R. Meir says this only within his own premises, has it not been taught on Tannaite authority: "The sole difference between the beast that was eleventh but was designated as tenth and a peace offering is that the latter will confer on an animal for which it is substituted sufficient sanctification actually to be offered up, while the former does not confer on an animal that is declared its substitute sufficient sanctification to be offered up," the words of R. Judah. So the issue is solely whether or not the beast designated as a substitute for it can be offered up, but as to the beast itself, it can*

be offered up. And furthermore it has been taught on Tannaite authority: "If he offer it of the herd" (Lev. 3: 1) — this encompasses the beast that was eleventh in the line but called tenth as a peace offering. Might one suppose that I could also include the beast that was ninth and called tenth as a peace offering as well? But there is the following contrary argument: does a beast that is sanctified confer sanctity on a beast for which it is declared a substitute prior to the point at which the beast itself is sanctified or after that point? It can only be after that beast has been consecrated. [Here too, is it possible that the tenth, which is not yet holy itself, can confer sanctity on the ninth in line? Obviously not!] One must say, it can only confer sanctification on a beast for which it is substituted after it itself has been sanctified. And a teaching, such as this one, presented anonymously in Sifra, represents the position of R. Judah. And note that it has been taught as the Tannaite statement here, "If he offer it of the herd" (Lev. 3: 1) — this encompasses the beast that was eleventh in the line but called tenth as a peace offering. [Miller & Simon: we see therefore that Judah holds that the eleventh that was marked the tenth is sacrificed. How can we explain the version that says, "Let them be left to die" as the opinion of Judah?]

- F. *Rather, R. Simeon b. R. Abba explained the matter before R. Yohanan, "We deal here with the tithe of the herd that is carried out at this time, and the consideration is that an offence may be committed [for instance, by deliberately maiming the beast or eating it without its having been blemished; we leave the animals to die rather than let them pasture until blemished]."*
- G. *If so, then why speak of two animals having been called tenth, the tenth and the eleventh, since the same considerations would pertain even to a single animal so designated?*
- H. *The formulation means to frame matters in this way: not only in the case of a single animal, where there is not much loss, do I say that the animal must be left to die, but even in the case of two animals, where I might have said that since the loss is considerable, we should keep them until blemished and then eat them, does the rule inform us that the beasts must be left to die.*

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

- B. He who says to his agent, "Go and tithe my herd for me" —
- C. R. Pappi in the name of Raba said, "If he called the ninth tenth, it is holy; and if he called the eleventh tenth, it is not holy." [In the former case, the owner loses nothing; he can wait until the animal is blemished and then can it eat. In the latter case, since it is a peace offering, the owner loses the breast and right shoulder,

which goes to the priest; so the man can say, “I didn’t send you to cause me a loss,” and the agency is null (Miller & Simon)].

- D. R. Pappa said, “Even if he called the ninth tenth, it is not holy, for he says to him, ‘It is to arrange matters properly for me that I sent you, and not to arrange matters wrongly.’”
- E. *And how does this rule differ from that which we have learned in the Mishnah: One who says to his agent, “Go and separate heave offering [for me]”— he [the agent] separates heave offering in accordance with the disposition of the householder. [And] if he does not know the disposition of the householder, he separates the average amount, one-fiftieth. [If the agent unintentionally] separated one-tenth less or more [than the percentage he needed to separate] — that which he separates [still] is [valid] heave offering. If he purposely added even one-hundredth — that which he has separated is not [valid] heave offering [M. Ter. 4:4A-G].*
- F. *This is the answer: in that case, since there are people who designate a liberal proportion of the crop as heave offering and others who designate only niggling proportion, the agent can say to you, “This is what I reckoned would be what you wanted. But here there was a mistake, and the owner can say to him, “You should not have made a mistake.” [Miller & Simon: You should have marked the one that certainly was tenth as tenth. Pappa says that in every case the agency is void and the animal is not sacred.]*

I.1 amplifies the Mishnah’s rules, and the amplification yields an exegesis of the rules themselves. II.1 proceeds to locate the scriptural foundations for the Mishnah’s rule. No. 2 has a further, pertinent rule of Raba, extending the rule of the Mishnah to a new case. No. 3, 4 form footnotes to the end of No. 2. The effect in both cases, however, is to clarify the dimensions of the Mishnah’s laws and their implications. No. 5 raises a fresh question, one involving agency both here and in a comparable case, and distinguishes the one from the other.