

Bavli Baba Qamma

Chapter Seven

Folios 62B-83A

7:1

- A. More encompassing is the rule covering payment of twofold restitution than the rule covering payment of fourfold or fivefold restitution.
- B. For the rule covering twofold restitution applies to something whether animate or inanimate.
- C. But the rule covering fourfold or fivefold restitution applies only to an ox or a sheep alone,
- D. since it says, “If a man shall steal an ox or a sheep and kill it or sell it, he shall pay five oxen for an ox and four sheep for a sheep” (Exo. 22:1 [21:37]).
- E. The one who steals from a thief does not pay twofold restitution.
- F. And the one who slaughters or sells what is stolen does not pay fourfold or fivefold restitution.

- I.1** A. *The principle is not presented here* that the penalty of having to pay a double indemnity applies both to a thief and to an unpaid bailee who falsely said the bailment was stolen, the indemnity of a fourfold or fivefold payment applies only to the thief alone. *That omission then sustains the position of R. Hiyya bar Abba, for said R. Hiyya bar Abba said, R. Yohanan, “He who falsely claims that a bailment has been stolen on that account pays the double indemnity that a thief pays. If he sold or slaughtered the animal, he has to pay the fourfold or fivefold indemnity.”*

B. *There are those who say:*

C. *May we say that the omission of such an allegation sustains the view of R. Hiyya bar Abba, for said R. Hiyya bar Abba said R. Yohanan, "He who falsely claims that a bailment has been stolen on that account pays the double indemnity that a thief pays. If he sold or slaughtered the animal, he has to pay the fourfold or fivefold indemnity."*

D. *But is there a reference to "there is no difference between this... and that...except..."? What it says is only, **More encompassing is the rule covering payment of twofold restitution than the rule covering payment of fourfold or fivefold restitution!***

E. *The Tannaite framer of the passage left out further pertinent examples, [and this is one of them].*

- II.1** A. **For the rule covering twofold restitution applies to something whether animate or inanimate: What is the source in Scripture for this statement?**
- B. *It accords with that which our rabbis have taught:*
- C. "For all manner of trespass, for ox, for ass, for sheep, for garment, for every manner of lost thing which another challenges to be his, the cause of both parties shall come before the judges, and the one whom the judges shall condemn shall pay double to his neighbor" (Exo. 22: 9)"
- D. "For all manner of trespass": — here we have a generalization.
- E. "For ox, for ass, for sheep, for garment": — Here we have the particularization.
- F. "For every manner of lost thing which another challenges to be his": — Here we find Scripture reverting and offering a generalization.
- G. In the case of a generalization, a particularization, and another generalization, you draw an analogy only within the limits defined by the particularization.
- H. In this case, just as in the particular cases, we deal with something that is movable and that contains intrinsic value, so whatever is movable and contains intrinsic value is covered,
- I. excluding then real estate, which is not movable; slaves, which are comparable to real estate [Lev. 25:46 treating slaves and real estate as forming a single category within the rules of inheritance]; deeds, which, while movable, bear no intrinsic value.

J. As to consecrated things, Scripture says, “He shall pay double to his neighbor” (Exo. 22: 9) — to his neighbor, but not to the sanctuary.

K. *How about the following:* Just as the particularization speaks of a living thing the carcass of which would impart uncleanness to someone who touched or carried it, why not say that covered under the law is any living thing the carcass of which would impart uncleanness to one who touched or carried it, so excluding birds?

L. *You really can’t say that, since there is an explicit reference in the verse to for garment!*

M. *Say: We are speaking of animate creatures. So how about the following:* In respect to living creatures, something the carcass of which would impart uncleanness to someone who touched or carried it is covered under the law, and something the carcass of which would not impart uncleanness to one who touched or carried it is not covered under the law. **[63A]** *For lo, each item that occurs in a construction of a generalization followed by a particularization is to be interpreted in its own terms. So in any event birds would not be covered by the law.*

N. *Well, if that were the case, then Scripture should have made reference to only a single particularization [among animate creatures, “for ox, for ass, for sheep”].*

O. *Well, which one among them should Scripture have used as its single particularization? Had Scripture made reference only to the ox, I might have supposed that what is offered on the altar is covered by the law, and what is not offered on the altar is not covered by the law. And if Scripture had spoken of the ass, I would have supposed that a beast the firstling of which is sanctified is covered by the law, and one the firstling of which is not sanctified is not covered by the law.*

P. *Say: So then let Scripture have made reference only to ox or ass. What need do I have for the specification of sheep? It serves to encompass fowl.*

Q. *Might I not say that it serves to encompass only fowl that are held to be clean, comparable to the sheep, the carrion of which would impart uncleanness to the garments of one who ate the meat when the meat was located in the esophagus, but as to unclean fowl, which do not convey uncleanness, for example, which do not impart uncleanness*

to the clothing of someone eating the carrion when it is located in the esophagus, should not be encompassed under the law?

R. *The word “all” serves as an augmentation and extension of the coverage of the law.*

Composite on the Exegetical Rules of Amplification and Extension as against Those of Generalization, Particularization, and Generalization

II.2 A. *Is it the fact, then, that wherever Scripture uses the language, “all,” it serves for the purpose of amplification and extension of the law? And lo, with reference to tithe, we find the word “all” used, but it is read as an example of generalization and particularization? For it has been taught on Tannaite authority:*

B. *“And you shall bestow that money for all that your soul desires” (Deu. 14:26) — that is a generalization; “for oxen, or for sheep, or for wine, or for strong drink” is then a particularization of the foregoing; “or for all that you desire” is a generalization. Now what we have here is a generalization, a particularization, and a generalization, and you cannot encompass under the generalization anything except what bears the indicative traits of the specified items. Just as here, the particularization involves products that derive from produce and that grow from the ground, so anything that derives from produce and that grows from the ground [may be purchased with funds of this character]. [Here, therefore, “all” serves as a generalization, and not an amplification and extension of the law.]*

C. *Say: “All” is a generalization, but “with all” is an extension.*

D. *And if you prefer, I shall say, “all” ordinarily serves as a generalization, but “all” used here still serves as an extension.*

C. *Now, since to begin with we have a formulation of a generalization, a particularization, and a generalization, as it is written, “When a man hands over to his fellow” is a generalization, “money or utensils” is a particularization, “to keep,” thus reverting and generalization — now if you should claim that the verse, “for any matter of trespass,” has been*

inserted to give us a generalization prior to a particularization and followed by another generalization, then why did the All-Merciful not insert items of particularization along with the items of the prior generalization, particularization, and generalization [at Exo. 22: 6]? So as to the clause, “for any matter of trespass,” what need do I have for it, except to prove that it serves as an amplification.

II.3 A. *Now that you have alleged that the word “all” serves as an extension or an amplification, then what do I need all of these particularizations for anyhow?*

B. *One is to exclude real estate, one to exclude slaves, and one to exclude deeds.*

C. *“Raiment” serves to exclude something that is not a particular item [with its own distinctive traits].*

D. *“Or any manner of lost thing” is in line with what R. Hiyya bar Abba said, for said R. Hiyya bar Abba said R. Yohanan, “He who falsely claims that a bailment has been stolen [63B] on that account pays the double indemnity that a thief pays, as it is said, ‘For all manner of trespass, for ox, for ass, for sheep, for garment, for every manner of lost thing which another challenges to be his, the cause of both parties shall come before the judges, and the one whom the judges shall condemn shall pay double to his neighbor’ (Exo. 22: 9). [If he sold or slaughtered the animal, he has to pay the fourfold or fivefold indemnity.]”*

II.4 A. *We have learned in the Mishnah: [If one said], “Where is my bailment?” he said to him, “It got lost.” “I impose an oath on you!” and he said, “Amen” — then witnesses come along and give testimony against him that he had eaten it up — he pays back the principal. [If] he had confessed on his*

own, he pays back the principal, the added fifth, and a guilt-offering. “Where is my bailment?” He said to him, “It was stolen.” “I impose an oath on you!” And he said, “Amen” — then witnesses come along and testify against him that he stole it, he pays twofold restitution. [If] he had confessed on his own, he pays the principal, an added fifth, and a guilt-offering [M. B.Q. 9:7-8]. *Now in any event, the passage makes it clear that it is when the bailee has falsely claimed that the bailment was stolen that he has to make double payment; but if he falsely claims that it is lost, he does not have to make double payment. And even if he claimed that the bailment was stolen, it is only if he has taken an oath that he has to pay the double indemnity, but if he did not take a false oath, he would not have to pay a double indemnity. Now what is the scriptural basis for this rule?*

B. *It is in line with that which our rabbis have taught on Tannaite authority:*

C. “If the thief be found” (Exo. 22: 7) — this verse refers to the bailee who has falsely alleged theft.

D. But maybe that is not the case, but the verse refers to the thief himself?

E. But the verse goes on to say, “If the thief not be found” (Exo. 22: 8) — so the whole of the verse deals with a bailee who claims that the bailment has been stolen.

F. *It has further been taught on Tannaite authority:*

G. “If the thief be found” (Exo. 22: 7) — this verse refers to the thief himself.

H. But maybe that is not the case, but the verse refers to the bailee who has falsely alleged theft?

I. But the verse goes on to say, “If the thief not be found” (Exo. 22: 8) — so the whole of the verse deals with the bailee who has falsely alleged theft.

J. So how am I to interpret “If the thief be found” (Exo. 22: 7)?

K. This verse refers to the thief himself.

L. *So both readings concur, in any event, that the verse, “If the thief not be found” (Exo. 22: 8) speaks of the bailee who has falsely alleged theft. On what basis is this exposition accomplished?*

M. Said Raba, ““If it does not come out as he [the bailee] had said, but he himself had stolen the object, he has to pay double.””

N. *And how on the basis of Scripture do we know that that is the rule only if he has falsely taken an oath?*

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

P. “If a man shall deliver to his neighbor money or stuff to keep [without fee, that is, we deal with an unpaid bailee] and it be stolen...if the thief is not found, then the master of the house shall be brought to the judges” (Exo. 22: 7) — to take an oath.

Q. You say that it is to take an oath. But perhaps it is only for a trial [to enter the plea that the beast was stolen, and merely making that plea would suffice to impose upon the bailee the penalty of a twofold repayment]?

R. Here we find a reference to unlawful use, and there we find the same matter [the paid bailee, Exo. 22:10, the unpaid bailee, Exo. 22: 7]. Just as in the latter passage, the purpose is for the bailee to take an oath [the paid bailee: “then an oath of the Lord shall be between them both”], so in the former passage, it is for the purpose of taking an oath.

S. *Now from the perspective of him [who formulated the first of the two proofs] who says that one verse refers to the thief and the other to a bailee who falsely claims that the bailment has been stolen, that explains why two distinct*

verses of Scripture are required here, but within the premise of him who maintains that both verses address the case of a bailee who falsely claims that the bailment has been stolen, what need do I have for two verses of Scripture [Exo. 22: 7, 8]?

T. Say: One serves to exclude the case of one who falsely claims that the bailment has been lost [and such a one will not have to pay double payment].

U. And from the perspective of him [who formulated the second of the two proofs,] who says that one verse speaks of a thief and the other of a bailee who falsely claims that the bailment has been stolen, there being no superfluous text then to prove the point that if one has falsely alleged the bailment was lost, he does not have to pay double payment, how will he know that fact?

V. It is because the definite article is used, when it says not “thief” but “the thief” [Kirzner: thus pointing out that liability for double payment is only where it was a plea of theft that was proved false].

W. From the perspective of him who says that both of the verses deal with a bailee who has falsely claimed the bailment was stolen, so that Scripture excludes a bailee who has falsely alleged loss, how is the use of the definite article, “the thief” in place of “thief” to be explained?

X. He will say to you, “It is required to prove the point that R. Hiyya bar Abba said R. Yohanan said. For said R. Hiyya bar Abba said, R. Yohanan, ‘He who falsely claims that a bailment has been stolen on that account pays the double indemnity that a thief pays. If he sold

or slaughtered the animal, he has to pay the fourfold or fivefold indemnity.”

Y. *In the premise of the one who maintains that one verse addresses the case of a thief and the other of a bailee who has falsely alleged that the bailment was stolen, and, further, that the use of “the thief” instead of “thief” serves to exclude from the requirement of the payment of double indemnity one who falsely claims the bailment has been lost, then whence would we derive from Scripture the position of R. Hiyya bar Abba?*

Z. *He will say to you, “It derives from a verbal analogy, since a thief and a bailee who has falsely alleged that the bailment was stolen are treated as analogies in Scripture [in that both are subject to the law of double payment and may be subject also to liability on the fourfold or fivefold payment], and there can be no further argument once a verbal analogy has been set forth by Scripture.”*

AA. *Now that poses no problem to him who maintains that one verse deals with a thief and the other with a bailee who has falsely claimed that the bailment was stolen. But if both of the verses deal with a bailee that has falsely claimed the bailment was stolen, who can we show that in the case of a thief himself, double indemnity [for stealing either an animate or an inanimate thing] must be paid? And should you allege that it derives from an argument a fortiori from the case of one who claims that the bailment was stolen, I should reply by invoking the principle of sufficiency: namely, it is sufficient for that which derives from a logical analogy to share the traits of the analogous item: just as in the other case, the penalty is invoked*

only if an oath has been taken, so here, too, the penalty has to be invoked only when an oath has been taken.

BB. *He would derive the law in line with that which the household of Hezekiah taught as a Tannaite statement, for the household of Hezekiah taught as a Tannaite statement:*

CC. Could not Scripture as well have made reference only to “ox” and “theft” [in Exo. 2:3], and therein would everything else have been encompassed?

DD. But if that were the case, I would have said, “Just as the particularization of the rule pertains to something that is offered on the altar, so I should say that anything that is offered on the altar is covered by the rule.

EE. What then would be encompassed? The sheep [and that, too, would be subject to double indemnity].

FF. **[64A]** And when Scripture makes reference to a sheep anyhow, so lo, there is a reference to sheep in explicit language. How then should I explain the language of “theft”? It serves to encompass everything.

GG. Then let Scripture mention only ox, sheep, and theft, and everything else would have been included?

HH. If that were the case, I might have supposed, just as the particularizations are things that can be sanctified as firstborn, so everything that can be sanctified as firstborn would be covered by the law.

II. What then do you have to include through that reasoning? It would be the ass, as subject to double indemnity.

JJ. But then the text goes on and explicitly refers to the ass, and what am I to make of theft? It is to include any object. But if so, Scripture could as well have mentioned only ox, ass, sheep, and theft, so everything would have been covered? I might then say that just as the particularizations speak only of objects that are animate, so all animate things are included.

KK. What would be included? Anything animate? But the text goes on to “alive,” so that is an explicit reference to all animate objects.

LL. And how am I to explain “theft”? It must serve to include every object. [Kirzner: Hence the derivation of double payment in the case of the thief himself.]

II.5 A. The master has stated: “Could not Scripture as well have made reference only to ‘ox’ and ‘theft’ [in Exo. 2: 3], and therein would everything else have been encompassed?”

B. *But does it say “ox, then theft? What is written is “theft” then “ox.”* [Kirzner: This is a generalization followed by a particularization, in which case the former includes only what is contained in the latter.] *And if you should say, the sense of the passage is, “...if Scripture had said,” namely, “if it were written first ox, then theft,” then how could you have said, just as the particularization mentions..., since “ox” would stand in the position of the particularization, and “theft,” of the generalization, so the generalization would here serve to add to the particularization, with the effect of including just everything! And if the*

argument was based on the actual order of the text, that is, theft then ox, how would you be able to say, as you do, “Everything would have been included,” or “Just as the particularization mentions...,” since “theft” would constitute the generalization and “ox” the particularization, and when you have a generalization followed by a particularization, covered in the generalization is only what is explicit in the particularization, so here only “ox” would be covered by the law, and absolutely nothing else!

C. Said Raba, “The Tannaite authority [of Hezekiah’s household] relies for his argument on the term ‘alive’ that follows the particularization, so he has argued on the strength of a generalization followed by a particularization followed by another generalization.”

D. Yeah, but the generalization at the end is not really comparable to the initial generalization! [Kirzner: “Theft” is more comprehensive than “alive.”]

E. Lo, the Tannaite authority of the household of R. Ishmael in such a circumstance does indeed propound an exegesis based on generalizations and particularizations of this kind.

F. And this is the problem that troubled him: What need do I have for the language, “If finding, it be found” (Exo. 22: 3) [“if the theft be certainly found in his hand”]? Let Scripture say simply “ox and theft and alive,” and all

things would have been encompassed therein! [Why the duplicated verb?]

G. If that were the way it was presented, then I might have supposed, “Just as in the case of the particularization, it is clearly something that is offered on the altar, so everything that is offered on the altar is covered by the law. What does that cover? Sheep.” So when Scripture refers to “sheep,” lo, there is a clear reference to sheep, so how am I to interpret “theft”? It is to encompass everything.

H. Then let Scripture refer to theft and ox and sheep and life, and everything will be covered.

I. If that were the case, I might have supposed, “Just as the particularization is explicitly something that is holy as to its firstborn, so anything that is holy as to its firstborn is covered by the law. What would that then encompass? The ass.” So when Scripture refers to “ass,” lo, there is a clear reference to ass, so how am I to interpret “theft”? It is to encompass everything.

J. Then let Scripture refer to theft and ox and sheep and ass and life, and everything will be covered.

K. If that were the case, I might have supposed, “What is articulated in the particularizations concerns animate beings? So all animate beings are covered by the law. What else is there to include? Other animate beings.” But when Scripture says, “living,” lo, it has covered all animate beings. So how am I

to interpret “theft”? It includes everything [inanimate as well]. So what, in the end, do I need with the language, “If finding, it be found” (Exo. 22: 3) [“if the theft be certainly found in his hand”]?

L. **[64B]** *Well, if that’s how things are, then that is quite a problem!*

M. *But there is a solution to the problem, so we can understand why the verb is duplicated,] namely, there is the following problem: How do I know that I should encompass under the law of theft and double indemnity all things? It derives from the concluding language of generalization and inclusion, but with reference to that concluding generalization, there is reference to “living,” so what good is this generalization, particularization, and generalization anyhow? It can’t add to my list all inanimate objects, since the word alive used there bears the meaning, only objects that are animate but nothing else. On that account it was necessary to use the duplicated verb, “If finding, it be found” (Exo. 22: 3) [“if the theft be certainly found in his hand”].*

N. *Say: But we have here two generalizations that are closely contiguous [namely, the duplicated verb, finding, be found].*

O. *Said Rabina, “It is in accord with what they say in the West: In any passage in which are found two generalizations that are adjacent to one another, place a particularization between them and then explain them under the rule of the*

generalization, then the particularization. *In this case, place 'ox' between the two verbs, 'if to be found it be found.'* And what additional thing would this usage introduce? *If it is something that is animate, it is covered by 'alive.'* So it must be something that is inanimate, and this is the consequent exposition: Just as in the case of the particularization, we deal with something that is movable and in itself is of monetary value, so anything that is movable and in itself is of monetary value is covered by the law. *And further, place 'ass' between the two verbs, as before. And what new thing would this usage introduce? If it is to introduce something that is not animate, this is covered by putting 'ox' between the two generalizations. So it must introduce something with distinctive traits."*

P. *But what need do I have then for the word "sheep"?*

Q. *Then what we have is a case of augmentative followed by exclusionary followed by augmentative language, in line with what has been taught by the Tannaite authority of the household of R. Ishmael. For thus it has been taught by the Tannaite authority of the household of R. Ishmael: "...in the waters, in the waters' (Lev. 11: 9) — two times: this does not represent an encompassing rule followed by an exclusionary particularization, but rather, an inclusionary and exclusionary usage."*

So what is added? That serves to encompass everything.

R. So if everything is in, what do I need for all these particularizations?

S. One serves to exclude real estate, the second, slaves, the third, deeds, and “theft” and “alive” support the position of Rab, who said, “The value of the principal is restored as it was when the object was stolen.”

II.6 *A. Now from the perspective of him who has maintained that one verse (Exo. 22: 7) deals with the thief himself, the other (Exo. 22: 8) with a bailee who falsely claims that the bailment has been stolen, liability for the thief himself to pay the double indemnity derives from the verse, “If the thief be found.” But then what does the duplicated verb yield, from this perspective?*

B. He requires it to deal with that which Raba bar Ahilai said, for said Raba bar Ahilai, “What is the scriptural basis for the position of Rab, who has said, ‘If someone has conceded a crime, for which the penalty is a fine [and hence, upon his confession, he is exempt from having to pay the fine], and against whom afterward witnesses came, the one who was guilty and has confessed remains exempt from having to pay the fine’? ‘If to be found it be found,’ meaning, if to begin with, witnesses are found, then it will ‘be considered found’ in the view of the judges, except in a case

in which the defendant incriminated himself.”

C. *And from the perspective of him who has said that both of the cited verses refer to someone who claims that the bailment left with him was stolen, and who swore falsely to that effect, then how are we going to know the rule that the defendant who incriminates himself to a fine, as Rab has explained, does not have to pay it if after his confession witnesses show up?*

D. *It is on the strength of, “Whom the judges shall condemn” (Exo. 21: 8) — but not him who condemns himself.*

E. *Now according to the opinion that one verse deals with a thief and the other with a bailee who claims under oath that the bailment was stolen, and that “if to be found it be found” gives us the law concerning a case in which the defendant incriminates himself, then what is the meaning of the verse, “Whom the judges shall condemn” (Exo. 21: 8)?*

F. *He will say to you, “That is necessary to make the point to begin with that one who confesses a crime for which the penalty is an extrajudicial fine is exempt from having to pay the fine.”*

G. *And from the perspective of him who says that both of the cited verses deal with a case in which one has claimed that a bailment left in his care was stolen?*

H. *He will have to take the view that one who confesses a crime for which the*

penalty is an extrajudicial fine but afterward witnesses come along and testify that he has indeed committed the crime has to pay the fine."

I. According to the view of him who holds that one verse deals with a thief and the other with a bailee who has claimed in a false oath that the bailment was stolen, so that the case of a thief derives from the verse there ["if the thief be found"], there is no problem with the text, "if to be found it be found," which is implied for Raba b. Ahilai's statement. But what need do I have then for all these particularizations?

J. It is in line with that which the Tannaite authority of the household of R. Ishmael stated, for stated the Tannaite authority of the household of R. Ishmael, "Any passage that is stated and then repeated is repeated only to make some new point."

K. But might one say that even the thief himself should have to pay the double indemnity only if he has taken a false oath? [Kirzner: Since the law in this case is derived from the section dealing with the unpaid bailee who is not subject to pay double unless where he first took a false oath on the plea of alleged theft.]

L. Perish the thought, for it has been taught on Tannaite authority: R. Jacob says, "'He shall pay double' (Exo. 22: 3) — even if he did not take a false oath in that connection."

M. You say that that is the case even if he took no oath, or perhaps it means that that is so only if he took an oath?

N. *You may say that that cannot be so.*

O. *Why may you say that that cannot be so?*

P. *Said Abbayye, "Let Scripture not state, 'he will pay double' in the case of the thief, and by an argument a fortiori, one could prove the same fact on the basis of the law covering the bailee who under oath claims the bailment has been stolen, namely: if the bailee who claims the object was stolen, into whose possession the object came under wholly permissible conditions, has to pay double, the thief himself, into whose hands the object has come only under prohibited conditions, all the more so should have to pay double. So why then did Scripture find it necessary to refer to 'he shall pay double' in the case of the thief himself? it is to say that he is liable even if he has taken no oath."*

II.7 A. *But how can the language, "If to be found it be found" serve to prove any of these allegations, when it is not required in line with that which has been taught on Tannaite authority as follows:*

B. "If the theft be found at all in his hand" (Exo. 22: 3) —

C. **[65A]** I know only that the law pertains when the theft is located in "his hand."

D. How do I know that the same rule applies if it is found on his roof, in his courtyard, or in his corral?

E. Because Scripture states, “if the theft be found at all” — wherever it may be found.

F. *Well, if it were limited to that purpose, Scripture should have said either, “if to be found it be found” or “if it be found it be found.” The variation yields two points.*

II.8 A. *Reverting to the body of the foregoing:*

B. Said Rab, “When it comes to restoring the principal of what has been stolen, it is valued as it was at the time that it was stolen. As to assessing the double indemnity and the four- and five-time payment, the evaluation is made as of the time that the court trial takes place.”

C. *What is the scriptural basis behind the position of Rab?*

D. Scripture has used the language, “theft” and “alive,” and why does Scripture use the language “alive” in the case of theft? It is to indicate that I restore the principal as it was at the time of the theft [when the beast was alive].

E. *Said R. Sheshet, “Well, I would say that Rab made a statement of this kind only when he was dozing or asleep in bed.*

For as a matter of fact, it has been taught on Tannaite authority: If the beast was scrawny when it was stolen and the thief fattened it, he pays the double payment or the four- or five-time payments according to the value of the animal at the time of the theft. [Does this not mean that Rab is wrong?]

F. Say: The thief may claim, "Should I fatten it and you grab it?"

G. Come and take note: If the beast was fat when it was stolen and got scrawny, he pays the double payment or the four- or five-time payments according to the value of the animal at the time of the theft. [Does this not mean that Rab is wrong?]

H. There, too, the reason is that we say to him, "What difference does it make to me whether you killed it entirely or only half killed it." [Kirzner: The liability began at the time that the thief caused the animal to become lean.]

I. Well, the ruling that Rab made [that four- and fivefold payments are reckoned on the basis of the value of the beast when it is actually in court] referred to the price's rising or falling.

J. *What can that possibly mean? If we say that to begin with it was worth a zuz, but at the end, four zuz, then the position that the principal is reckoned as at the time of the theft would yield a disagreement between Rab and Rabbah. For said Rabbah, "Someone who stole a barrel of wine from his fellow which to begin with was worth a zuz but in the end four zuz, if he broke it or drank it, has to pay four zuz but if it broke of its own, he has to pay one zuz."*

K. *[Well, Rab would not disagree with that position,] for Rab's ruling pertains to a case in which to begin with it was worth four, but then was worth one; here is a case in which the principal is assessed as at the time of the theft, and the double indemnity or the fourfold or fivefold payments are reckoned at the value when the case was in court.*

L. R. *Hanina repeated a Tannaite formulation in support of the position of Rab: "A householder who in the case of a bailment lodged with him claimed that it had been stolen [and so is not responsible, being an unpaid bailee], took an oath, and then confessed that he really had the object, and witnesses to the facts*

came along — if he had confessed before the witnesses came along, he pays the principal, the added fifth, and presents a guilt-offering; if this was the case after the witnesses came along that he confessed, he [being classified now as a thief] pays double and presents a guilt-offering; but the added fifth is replaced by the double indemnity,” the words of R. Jacob. [65B] And sages say, “Scripture says, ‘In its principal and the fifth part thereof’ (Lev. 5:24), meaning, where money is paid as principal, then the added fifth is required, but where the money is not paid as principal, then the added fifth is not required.” R. Simeon b. Yohai says, “There is no payment of an added fifth and there is no trespass-offering in a case in which there is double payment.” *Now, in any event, we find here “...but the added fifth is replaced by the double indemnity,” the words of R. Jacob. And how are we to imagine such a situation? If we say that, to begin with, it was worth four and later on worth four, then how could the fifth be replaced by the doubling of the payment, when the double indemnity amounts to four and the fifth to one?* [Kirzner: The

fifth is 25 percent of the general sum that will have to be paid as principal, plus a fifth thereof, amounting thus to a fourth of the principal.] *So does it not refer to a case in which at the beginning the value was four, but then it fell to one, so that the doubling of the payment is one zuz and the fifth of the payment also will be one zuz?* [Kirzner:] That then proves that the principal is reckoned as at the time of the theft, while the double payment or fourfold or fivefold payments are reckoned at the value at the time that the case came to court!

M. Said Raba, *"In point of fact to begin with it was worth four and now it is worth four, and as to your question, And how are we to imagine such a situation? If we say that, to begin with, it was worth four and later on worth four, then how could the fifth be replaced by the doubling of the payment, when the double indemnity amounts to four and the fifth to one? As a matter of fact, we deal with a case in which the man took an oath and repeated it four times, and then confessed. The Torah says, 'and its fifths,' so one principal may bear in its wake many fifths, one for each false oath."*

II.9 A. The master has said, “Sages say, ‘Scripture says, “In its principal and the fifth part thereof” (Lev. 5:24), meaning, where money is paid as principal, then the added fifth is required, but where the money is not paid as principal, then the added fifth is not required””:

B. *In any event the guilt-offering must be presented. Now how come?*

C. *If he does not have to pay the added fifth because of the verse, “In its principal and the fifth party therefore,” should he also not have to pay the guilt-offering, since it is written, “in its principal and the fifth part thereof...and his trespass-offering” (Lev. 5:24-25)?*

D. *Rabbis will say to you that since the augmentative particle, et, occurs before the term that refers to his guilt-offering, Scripture distinguishes between them [so the condition that operates for the one*

does not apply to the other].

E. And R. Simeon b. Yohai?

F. *[He does not bring a guilt-offering, because] the “and” placed before the particle, et, serves to combine the two [and imposes the same law on them both].*

G. And rabbis?

H. *If so, Scripture should have put in neither the “and” nor the accusative particle, [and it would have produced the same result].*

I. And R. Simeon b. Yohai?

J. *He will say to you, “It would not have served for Scripture not to put in the accusative particle, so as to distinguish property due to Heaven [the guilt-offering] and property due to mortals [the added fifth], so it was necessary to add the “and” so as to combine the verses.”*

How Compensation is Assessed

- II.10** A. Said R. Ilai, “If one stole a lamb and it grew up into a ram, or a calf and it grew up into an ox, since the article has undergone a change while in his domain, he would acquire title to it. If then he slaughters or sells it, he is slaughtering or

selling his own property [and does not any longer have to pay the indemnity that has been specified, four or five times the value].”

- B. *Objected R. Hanina to R. Ilai, “‘If one stole a lamb and it grew up into a ram, or a calf and it grew up into an ox, he has to pay the double indemnity and the four or five times payment as well, in accord with the value of the beast when he stole it.’ Now, if it should enter your mind that, with the change in the character of the beast, he has acquired title to it, why should he have to pay such indemnities, when it is his own beast that he is slaughtering and it is his own beast that he is selling?”*
- C. *He said to him, “So what do you think? A change in the character of the object doesn’t transfer title? Then why should he pay on the basis of the value at the time of theft and not at the present value?”*
- D. *He said to him, “He doesn’t pay in accord with the value of the beast at this time, since he can say to him, ‘So did I steal an ox from you or did I steal a ram from you?’”*
- E. *He said to him, “May the All-Merciful protect us from this view!”*
- F. *He said to him, “To the contrary, may the All-Merciful protect us from that view [of yours]!”*
 - G. *Objected R. Zira, “Well, why can’t the thief not acquire title because of the change in the classification of the thing that he has stolen?”*
 - H. *Said Raba, “An ox a day old is called an ox, and a ram a day old is called a ram.*
 - I. *“An ox a day old is called an ox: ‘When an ox or a sheep or a goat is born’ (Lev. 22:27).*
 - J. *“And a ram a day old is called a ram: ‘And the rams of your flocks I have not eaten’ (Gen. 31:38) — now he can’t possibly mean that only the rams he didn’t eat but he ate the sheep. So this shows that an ox a day old is called an ox, and a ram a day old is called a ram.”*
- K. *So in any event there is a problem with the position of R. Ilai [deriving from Hanina’s citation of the rule that fourfold or fivefold payments are due]!*
- L. *Said R. Sheshet, “Who is the authority behind that formulation? In fact the teaching accords only with the view of the House of Shammai, who say, A change in the character of an object leaves the object as it was and does not transfer ownership. For it has been taught on Tannaite authority:*

- M. **“If one gave her wheat for making into flour, grapes for making wine, olives for making oil, a cow that became pregnant while in her domain and gave birth [T. Tem. 4:7A] —**
- N. “One Tannaite version states, ‘They are forbidden.’”
- O. “And another Tannaite version states, ‘They are permitted.’”
- P. Said R. Joseph, “Gurion of Aspora recited on Tannaite authority: The House of Shammai prohibit [use of these things on the altar] and the House of Hillel permit.”
- Q. “The House of Hillel permit.”
- R. *For the House of Hillel reason, Scripture says, ‘them,’ meaning, ‘them but not their offspring’; ‘them,’ but not the things made from them. The House of Shammai prohibit [use of these things on the altar], for the House of Shammai maintain that Scripture says, [66A] ‘them,’ but not their offspring; but the word ‘even’ means to encompass what is made of them.”*
- S. And the House of Hillel?
- T. *They derive two rules from that: “Them” and not things that they turn into, “them” and not their offspring.*
- U. *But the House of Hillel surely must deal with this same “even”!*
- V. *The use of the word “even” does present a problem to the House of Hillel.*
- W. *In any event, the masters differ only in the following: [Ilai] takes the view that a change in the object effects a transfer of title, and [Hanina] maintains that a change in the character of the object does not effect transfer of title. But as to payment, both parties concur that the payment is assessed in accord with the value of the thing to begin with, as is taught as part of the Tannaite formulation: He has to pay the double indemnity and the four- or five-times payment as well, in accord with the value of the beast when he stole it.*
- X. *May one then say this represents a refutation of the position of Rab, for said Rab, “When it comes to restoring the principal of what has been stolen, it is valued as it was at the time that it was stolen. As to assessing the double indemnity and the four- and five-time payment, the evaluation is made at as of the time that the court trial takes place”?*

Y. Said Raba, “Where he pays with sheep, he pays in accord with the initial value, but if he pays with money, he pays in accord with the present value.”

II.11 A. Said Rabbah, “The fact that a change in the character of an object effects a transfer of title is shown both by Scripture and also repeated as a rule in the Mishnah:

B. “The fact that a change in the character of an object effects a transfer of title is shown both by Scripture: ‘He shall restore the misappropriated object which he violently took away’ (Lev. 5:23) — What is the sense of ‘which he violently took away’? If it is like what he violently took away, he shall restore it; if not, then it is the value that he must pay.

C. “The fact that a change in the character of an object effects a transfer of title is also repeated as a rule in the Mishnah: **He who steals wood and made it into utensils, wool and made it into clothing, pays [compensation in accord with the value of the wood or wool] at the time of the theft [M. B.Q. 9:1A-C].**

D. “And further: If the farmer did not have time to give the first of the fleece to the priest before it was dyed, he is exempt [from having to give him the first fleece] — which proves that a change in the character of an object effects a transfer of title.”

E. “Now, as a matter of fact, it is therefore clear that once the owners despair of getting the object back, that constitutes a transfer of ownership. But what we don’t know is whether this is by the authority of the Torah or merely by the decree of rabbis. If it is by the authority of the Torah, then it is equivalent to finding a lost article. For is it not the law that if someone has found a lost object, and the owner has despaired of getting it back before the object came into the hands of the finder, then title is transferred to the finder? So here, too, the thief acquires title to the object as soon as the owner renounces his claim. It would then follow that the transfer of title is by the authority of Scripture. Or perhaps there is no real parallel to the matter of the lost object, since the lost object comes to the hands of the finder under licit conditions, while as to this, since the object came illicitly to the thief, the transfer of title

can be only by the authority of rabbis, for rabbis will have said, 'Let the thief acquire title, for the benefit of those who wish to repent.'

F. And R. Joseph said, "Despair of the owner does not effect transfer of title *even on the authority of rabbis.*"

G. R. Joseph objected to Rabbah, "'If someone stole leaven and [it became illicit by reason of the] advent of Passover, [66B] the robber can say to the victim, 'Here is yours before you.' Now here is a case in which the plaintiff has renounced ownership as soon as the prohibition against leaven took effect. If you assume that renunciation effects transfer of title, how come the priest can claim, 'Here is yours before you,' when he should pay the real value?'"

H. [Rabbah] said to him, "When I maintain the position that I do, it is only in a case in which the owner renounces ownership at the time that the thief wants to acquire ownership, while in this case, while the owner renounced ownership, the thief didn't want the thing either."

I. Abbaye objected to Rabbah's position: "'His offering' (Lev. 1: 3) — but not an offering that has been stolen. Now how are we to imagine such a case [as is covered by the rule prohibiting the presentation as an offering of a beast that is stolen]? If I say that this is prior to the owner's having despaired of recovering the beast, then why do I need a verse of Scripture to tell me that the animal cannot be presented? It is obvious! Rather, this is after the owner has despaired of recovering the beast, and it proves that the owner's despair of recovering the stolen object does not transfer ownership to the thief."

J. Rabbah said to him, "Well, from your perspective, with respect to that which has been taught on Tannaite authority, "'his bed" Lev. 15: 5) — but not one that has been stolen' — how are we to imagine such a case? If the wool was stolen and turned into a bed? But is there anyone who maintains that if one actually changes something as to its substance, that act does not effect transfer of title? So you have to say that the rule refers to a situation in which someone has stolen someone

else's bed. Here, too, we deal with a case in which someone has stolen someone else's offering" [Kirkner: in which case the sacrifice is not acceptable even if offered after renunciation on the part of the original owner].

K. *Abbaye raised an objection to R. Joseph: "The hides of the householders — intention makes them susceptible to uncleanness. And of the tanner — intention does not make them susceptible to uncleanness. If they are [stolen by] thief — intention makes them susceptible to uncleanness. And [stolen by] robber — intention does not make them susceptible to uncleanness. R. Simeon says, "Matters are reversed: [Hides] of the robber — intention makes them susceptible to uncleanness. And of the thief — intention does not make them susceptible to uncleanness" [M. Kel. 26:8]. That yields the inference that the owner's despair effects the transfer of title to the thief."*

L. *[Joseph] said to [Abbaye], "With what sort of a case do we deal here? It is one in which he had trimmed the skins [and so effected a change in the character of the hide, so the issue no longer is settled by the mere attitude of the original owner]."*

M. *Objected Rabbah bar R. Hanan, "But have we not learned in this regard that we are dealing with a cover, and skins used as a cover do not have to be trimmed [to be used for their ultimate purpose], as we have learned in the Mishnah: [In] any situation [involving leather] in which no [part of the] work is lacking, intention renders unclean. And in any situation in which there is work lacking, intention does not render unclean, except for the fur skin [M. Kel. 26:7]."*

N. *Rather, said Raba, "For twenty-two years Rabbah addressed this question to R. Joseph, without getting a solution to the problem, until R. Joseph went into session [and stated as follows]: changing the classification of an object is equivalent to changing the substance of the object. What is the reason that a change in the character of the object effects a change in its ownership? Because what was formerly wood is now utensils.*

So a change in the name should produce the same effect, in that what was formerly called a hide is now called a cover.”

*O. But lo, there is the case of a beam, which involves a change as to its name, for to begin with it was called a post and it is now called a ceiling, but we have nonetheless learned in the Mishnah: **Testified R. Yohanan b. Gudegedah concerning...a stolen beam which one built into his house, that the original owner collects its value for the sake of the regeneration of those who repent [M. Ed. 7:9D]!** So the operative consideration is **for the sake of the regeneration of those who repent, [67A]** but lo, but if it were not for that consideration, it would have to be given back intact [Kirzner: in spite of the fact that a change in name took place].*

P. Said R. Joseph, “As to a beam, it is called by that name no matter what, for it has been taught on Tannaite authority: ‘The sides of the house’ (Eze. 41:26) — this refers to the casings; ‘and the thick planks’ — these are the beams’ [Kirzner: even after it became part of the ceiling it is still called a beam.]”

Q. R. Zira said, “If there is a change so that the object can go back to its original condition, in the case of a change in name that is null and not classified as a change at all.” [Kirzner: A beam part of the ceiling has not really been changed, since it can be taken out and revert to its original state.]

R. But then, is a change in name in which the object cannot revert to its original state considered a valid change? Then lo, take the case of a trough. The material was called a plank, it is now called a trough, and yet it has been taught on Tannaite authority: A pipe that one has hollowed out and then fixed — water from it invalidates an immersion pool. [Fixing the pipe to the soil does not make it part of the soil; it remains a utensil unto itself; but if it were hollowed out after being fixed to the ground, it is part of the ground, and hence water flowing through it remains in its natural, undrawn state, in the latter, but not in the former case.] Now if you maintain that changing the name affects the status of the object, then even if one has affixed it and only then hollowed it out, it also should be unacceptable!

S. *The matter of drawing water is exceptional, since it derives merely from the authority of rabbis.*

T. *If so, then even the initial clause should take the same view [and permit its use]?*

U. *At that point, it fell into the category of a receptacle when it was yet detached, but here it never fell into the class of a receptacle while it was still detached.*

V. *An objection was raised: A thief, robber or land-grabber — what they have declared consecrated is indeed consecrated; what they have designated as heave-offering is indeed heave-offering; what they have designated as tithes is indeed tithes. [Kirzner: Does this not prove that renunciation transfers ownership, for otherwise what right have they to consecrate what belongs to someone else?]*

W. *Say: In that case there is a change in the name of the object, for to begin with it was in the status of what was subject to tithing but not yet tithed, while now it is classified as heave-offering; as to what was sanctified, to begin with it was unconsecrated, but now it is sanctified.*

II.12 A. Said R. Hisda said R. Jonathan, “How on the basis of Scripture do we know that a change effects the transfer of title? ‘He shall restore the misappropriated object [which he violently took away]’ (Lev. 5:23). Now what is the point of the language, ‘which he violently took away’? The meaning is, if the object is still the way it was when he violently took it away, he shall restore the object, *but if not, he then pays the value of what he has taken away.*”

B. *But this language, “which he violently took away,” is needed to exclude the case of robbery that a father has committed, in which case, if the son restores the object, he does not have to add a fifth to the value of what the father has stolen [if he makes restitution after the father has died]!*

C. *If that were the case, Scripture needed to say only, “He shall restore the misappropriated object [which he violently took away]” (Lev. 5:23). What need was there to add the language, “which he violently took away”? It was to make two points [as now specified].*

D. Some say, said R. Hisda said R. Jonathan, “How on the basis of Scripture do we know that a change does not effect the transfer of title? ‘He shall restore the misappropriated object [which he violently took away]’ (Lev. 5:23) — under any circumstances!”

E. *But is it not written*, “which he violently took away”?

F. That is to make the point that, for what he himself has stolen, he has to add a fifth, but in the case of a robbery that his father has committed, in which case, if the son restores the object, he does not have to add a fifth to the value of what the father has stolen [if he makes restitution after the father has died]!

II.13 A. Said Ulla, “How on the basis of Scripture do we know that the despair of the owner does not effect the transfer of title to the thief? As it is said, ‘And you brought that which was stolen and the lame and the sick’ (Mal. 1:13). *That which was stolen is treated as equivalent to that which was lame. Just as that which was lame is beyond all remedy, [67B] so that which is stolen is beyond all remedy. And that is without regard to whether this is before or after the original owner has despaired of getting the object back and so renounced ownership.*”

B. Said Raba, “Proof derives from here: ‘His offering’ (Lev. 1: 3) — but not an offering that has been stolen. *Now how are we to imagine such a case [as is covered by the rule prohibiting the presentation as an offering of a beast that is stolen]? If I say that this is prior to the owner’s having despaired of recovering the beast, then why do I need a verse of Scripture to tell me that the animal cannot be presented? It is obvious! Rather, this is after the owner has despaired of recovering the beast, and does it not therefore prove that the owner’s despair of recovering the stolen object does not transfer ownership to the thief?*”

C. *Sure does.*

D. *But didn’t Raba himself say that the passage refers to one who has stolen an offering of his fellow?*

E. *Well, if you want, I’ll say he changed his mind, and if you want, I’ll say that one of the statements before us was said by R. Pappa.*

- III.1 A. But the rule covering fourfold or fivefold restitution applies only to an ox or a sheep alone, since it says, “If a man shall steal an ox or a sheep and kill it, or sell it, he shall pay five oxen for an ox and four sheep for a sheep (Exo. 22:1 [21:37]):**
- B. *But why not draw the analogy to the matter of “ox” as the term “ox” is used in the setting of the Sabbath [at Deu. 5:14], with the result that, just as beasts and birds are regarded as equivalent in that context to the ox and the ass [and so are given the Sabbath day for rest], so in the present context beasts and birds are comparable to oxen and sheep [and compensated in the same way]?*
- C. Raba said, “Said Scripture, ‘an ox and a sheep,’ ‘an ox and a sheep’ (Exo. 21:37) — two times. *The meaning therefore is that the law applies to an ox or a sheep, but not to anything else.*”
- D. *Say: well, which of the two references to an ox and a sheep is the one that is superfluous? Shall we say that it is the reference to “ox and sheep” in the concluding clause, so that Scripture could as well have written, “If a man steal an ox or a sheep and slaughter it or sell it, he should restore five oxen instead of it and four sheep instead of it”?*
- E. *Well, if that is the formulation that Scripture had presented, then I would have supposed he has to pay nine in place of each. And if you point out that it is written two times, “instead of it,” one of which would still have been superfluous, then I may point out that that duplication is needed for a further interpretation, as has been stated on Tannaite authority: Might one suppose that if one stole an ox worth a maneh, he may pay back five frail oxen? Scripture twice says, “instead of it.”*
- F. *Well, [if the “ox and sheep” of the concluding clause is thus required,] “ox and sheep” in the initial clause is the one that would have been superfluous, so Scripture could have written, “If a man shall steal and slaughter it or sell it, then he shall restore five oxen for the ox and four sheep for the sheep.”*
- G. *But Scripture’s saying that would have led me to suppose that it was only where he stole both kinds of animals and slaughtered them that he would be liable!*
- H. *But Scripture uses the singular when it says, “and slaughtered it” — thus meaning one animal.*
- I. *Still, one might suppose that only if he stole two animals and sold them would he be liable.*

- J. *But Scripture uses the singular when it says, “and sold it” — thus meaning one animal.*
- K. *Still, I could imagine that it was only if he stole two animals and slaughtered one and sold the other that the liability would be as set forth?*
- L. *But Scripture uses the singular when it says, “or sold it” — thus meaning one of two alternative actions.*
- M. *Yeah, well then I might maintain that only if he stole two animals and slaughtered one and left the other, or sold one and left the other, would someone be liable!*
- N. *Then what is superfluous is “ox” in the concluding clause and “sheep” in the opening clause, for the All-Merciful could as well have written, “If someone steal an ox and slaughter it or sell it, he shall restore five oxen instead of it and four sheep instead of the sheep.” What need do I have for “ox” in the concluding clause and “sheep” in the initial clause? It is to prove that only ox and sheep are subject to the additional indemnity, but nothing else.*

IV.1 A. The one who steals from a thief does not pay twofold restitution:

- B. Said Rab, “This rule applies only if the theft took place before the owner had given up hope of getting the object back, but if this was afterward, the first thief acquires title, and the second thief has to pay the double payment to the first thief [now the owner of title to the object].”
- C. *Said R. Sheshet, “I must say, Rab must have made this statement only when he was dozing or sleeping, for it has been taught on Tannaite authority: Said R. Aqiba, ‘How come the Torah has said that the thief who slaughtered or sold the ox or the sheep would have to make fourfold or fivefold payments? It is because through that action, sin became rooted in his very being.’ Now when can this have taken place? If we say that it was before the owner had given up hope of getting the object back, [68A] then at such an early point, will sin have taken root in the thief’s very being? So it must refer to the point after which the owner had given up hope of getting the object back! And if you maintain that the owner’s despair is what transfers title, then why does he have to pay fourfold or fivefold indemnity, when what he has slaughtered belongs to him and what he has stolen belongs to him!”*
- D. *Say: it is in accord with what Raba said, “It is because through these acts he has doubled the original sin that he committed.” Here, too, it is because he has doubled the original sin that he committed.*

- E. *Come and take note: “He slaughtered it and he sold it” (Exo. 21:37) — just as if he slaughtered it, the animal cannot be restored, so if he sold it, it cannot be restored. Now at what point does this rule take effect? If we say it is prior to the owner’s giving up hope of getting the beast back, why cannot the animal be restored? So it must refer to the point after the owner has given up hope of getting the animal back. And if you maintain that the thief has acquired title to the beast, then why should he have to pay the fourfold or fivefold indemnity, when the beast has slaughtered what is his own or has sold what is his own?*
- F. *The answer is in conformity to what R. Nahman said, “This excludes a case in which he transferred the answer for thirty days,” and here, too, this serves to except a case in which he transferred the beast for thirty days [in which case the law of the fourfold or fivefold indemnity does not apply].*
- G. *An objection was raised: If someone stole a beast, and someone else came along and stole it from him, the first is obligated to pay the double indemnity, and the second pays back only the principal of the beast alone. If someone stole a sheep or an ox and sold it, and someone else came along and stole it, the first pays the fourfold or fivefold indemnity, and the second pays the double payment. If one stole such a beast and slaughtered it, and someone else came along and stole it, the first pays the fourfold or fivefold payment, and the second pays not the double indemnity but only the principal. So, in any event, in the middle clause, the Tannaite formulation states, If someone stole a sheep or an ox and sold it, and someone else came along and stole it, the first pays the fourfold or fivefold indemnity, and the second pays the double payment. Now when would this be the case? If we say that this is prior to the owner’s having given up hope of getting the beast back, then why in the world should the second party pay the double indemnity? Does any authority take the view that change in possession where the owner has not renounced ownership transfers title to the object? So it must be after renunciation. But if you take the view that if the owner despairs, title is transferred to the thief, then why does the thief have to pay a fourfold or a fivefold indemnity, since what he has sold is what he owns. And further, the opening clause states, If someone stole a beast, and someone else came along and stole it from him, the first is obligated to pay the double indemnity, and the second pays back only the principal of the beast alone. Now since we deal with the period after the owner has given up hope of getting the beast back and so renounced ownership, then, if you assume that title has been transferred through the*

owner's despair of getting the beast back, then why should the second party pay nothing more than the principal? Doesn't this prove that renunciation does not transfer title, which then would contradict the position of Rab?

- H. *Said Raba, "Well, do you really suppose that that is so? Lo, the concluding clause states: If one stole such a beast and slaughtered it, and someone else came along and stole it, the first pays the fourfold or fivefold payment, and the second pays not the double indemnity but only the principal. Now is there any authority who takes the view that changing the character of an object does not effect transfer of title? [Of course not.] So the whole of the passage speaks of a situation prior to the owner's despairing of recovering the object. But we have then to transpose the ruling of the concluding clause to the middle, and the ruling of the middle to the concluding, and this is how the whole is to be read: If someone stole a beast, and someone else came along and stole it from him, the first is obligated to pay fourfold or fivefold indemnity, and the second pays back only the principal of the beast alone, since changing the domain in which the beast is located without the owner's despairing of recovering the beast in no way transfers title to the beast. If someone stole a sheep or an ox and slaughtered it, and someone else came along and stole it, the first pays the fourfold or fivefold indemnity, and the second pays the double payment, since he has acquired title to the beast by an action that has changed the character of the beast."*
- I. *R. Pappa said, "In point of fact, you need not transpose anything. The concluding clause represents the position of the House of Shammai, which has held that even though the character of the object has been changed, the object remains in its prior status."*
- J. *If so, then there still is, from the perspective of Rab's position, an obvious contradiction in the premises of the opening and the middle clauses.*
- K. *Said R. Zebid, "Well, in point of fact, the whole of the passage refers to the time prior to the owner's having abandoned hope of regaining his beast, and here, with what case do we deal? It is one in which the owner has given up hope of gaining the beast back from the purchaser, but has not given up hope of regaining it from the thief, so we have a case in which there was renunciation [Kirzner: as well as change in possession]. And you should not take the view that that is the case because we require both renunciation of ownership and also change in possession to transfer ownership. Even renunciation alone would have the effect of transferring title to the thief. But it is not possible to find a case in which both the first thief and the second*

thief in the same case would have to pay except in the way that is laid out here."

IV.2 A. *It has been stated:*

- B. He who sells a beast prior to the owner's having despaired of getting it back and so renouncing ownership —
- C. R. Nahman said, "He is liable."
- D. R. Sheshet said, "He is exempt."

E. R. Nahman said, "He is liable:" *What Scripture said was, "and sold it," and lo, this one has sold it, there being no point of differentiation between doing so before the owner has despaired of getting the beast back or afterward.*

F. R. Sheshet said, "He is exempt:" *He is liable if this has taken place after the owner has despaired of getting the beast back, in which case, the deed of the thief has produced an effect, but if this was prior to the owner's having given up hope, in which case the deed of the beast has not proved effective, he is not liable; the case is comparable to a case of slaughtering the beast, in which the deed has proved to be an effective one.*

- G. *Said R. Sheshet, "On what basis do I make such a statement? It is in line with that which has been taught on Tannaite authority: Said R. Aqiba, 'How come the Torah has said that the thief who slaughtered or sold the ox or the sheep would have to make fourfold or fivefold payments? It is because through that action, sin became rooted in his very being.' Now when can this have taken place? If we say that it was before the owner had given up hope of getting the object back, then at such an early point, will sin have taken root in the thief's very being? So it must refer to the point after which the owner had given up hope of getting the object back! And if you maintain that the owner's despair is what transfers title, then why does he have to pay fourfold or fivefold indemnity, when what he has slaughtered belongs to him and what he has stolen belongs to him!"*
- H. Said Raba, "It is because through these acts he has doubled the original sin that he has committed."
- I. *Come and take note: "He slaughtered it and he sold it" (Exo. 21:37) — just as if he slaughtered it, the animal cannot be restored, so if he sold it, it cannot be restored. Now at what point does this rule take effect? If we say it is prior to the owner's giving up hope of getting the beast back, why cannot the animal*

be restored? So it must refer to the point after the owner has given up hope of getting the animal back. And if you maintain that the thief has acquired title to the beast, then why should he have to pay the fourfold or fivefold indemnity, when the thief has slaughtered what is his own or has sold what is his own?

- J. *Explained R. Nahman, "This excludes a case in which he transferred the answer for thirty days."*

- IV.3** A. *Also R. Eleazar took the view that liability would be incurred only after renunciation, for said R. Eleazar, [68B] "You may know that in the case of any routine theft, the owner gives up hope of getting the beast back, for lo, the Torah has said that if the thief has slaughtered or sold the beast, he has to pay a fourfold or fivefold indemnity. But is there any possibility that the owner has not given up hope of getting the beast back? But is this not because we say that in the case of any routine theft, the owner gives up hope of getting the beast back?"*
- B. *But why should the thief not be liable even if the owner has abandoned hope of getting his beast back?*
- C. *Say: don't even think that thought! For there is an analogy to be drawn to slaughtering the beast. Just as in the case of slaughtering the beast, the action produces an effect, so if he has sold the beast, it must be a case in which the action has produced an effect, but if this is before the owner has given up hope of getting the beast back, then what good has the action accomplished?*
- D. *Well, maybe it's only applicable to a case in which we have actually heard that the owner has given up hope of getting the beast back?*
- E. *Say: don't even think that thought! For there is an analogy to be drawn between selling and slaughtering the beast. Just as the liability is incurred in the case of slaughter as soon as the action has been done after the theft, so selling would involve liability forthwith after the theft. [Kirzner: Eleazar thus inferred from this that even in ordinary thefts there is immediate renunciation on the part of the owner.]*
- F. *Said R. Yohanan to [Eleazar], "The rule governing a case in which one has stolen a man would prove that even if the owner has not given up hope of getting the stolen thing back, liability is incurred."*

- IV.4** A. *Then it must follow that R. Yohanan takes the view that prior to renouncing ownership, the thief incurs liability. What is his position on the rule that pertains after the owner has renounced ownership?*
- B. R. Yohanan said, "The thief is liable."
- C. R. Simeon b. Laqish said, "He is exempt."
- D. R. Yohanan said, "The thief is liable": *He imposes liability whether before or after the owner has given up hope of recovering the stolen goods.*
- E. R. Simeon b. Laqish said, "He is exempt": *The liability pertains to the period prior to the owner's abandoning ownership, but after the owner has renounced ownership, the thief has acquired title to the beast, with the result that when he slaughtered or sold it, he slaughtered or sold what was his own.*
- F. *An objection was raised by R. Yohanan to R. Simeon b. Laqish: "...stole and then consecrated [the animal] and afterward slaughtered or sold it, he pays twofold restitution and does not pay fourfold or fivefold restitution [M. 7:4G-H]. Now at what point can this have taken place? If we say that it was prior to the owner's having given up hope of getting the beast back, then will the beast have actually been sanctified by the act of the thief? What Scripture says, is, 'when a man shall sanctify his house to be holy' (Lev. 27:14), meaning, a house that belongs to him, and so, just as it must be a house belonging to him, so anything that belongs to him [may he sanctify, but he obviously cannot sanctify what is not his to sanctify to begin with]. So, obviously, this must have been after the owner has given up hope of getting the beast back [and so mentally renounced ownership]. The operative consideration then is that he sanctified the beast. Lo, if he had not sanctified the beast, then he would have had to pay the fourfold or fivefold indemnity. But if you assume that renunciation transfers ownership, then why should the thief have had to pay fourfold or fivefold indemnity, since what he slaughtered and sold was his own beast!"*
- G. *[Simeon b. Laqish] said to [Yohanan], "What situation confronts us here? It is one in which it was the owner who consecrated the animal, even while it was in the possession of the thief [and obviously this must have been prior to his renouncing ownership of the beast]."*
- H. *But would the beast then be holy at all? And has not R. Yohanan himself said, "If one has stolen a beast and the owner has not yet abandoned hope of*

recovering the beast [and so retains title] — neither party has the power to consecrate the beast, this one because it does not belong to him, and that one because it is not now in his domain”?

- I. *Say: [Simeon b. Laqish] spoke concerning the practice of the people of a meticulous spirit, for we have learned in the Mishnah: [As regards a vineyard in its fourth year [of growth] — they mark it off with clods of earth. And [a vineyard] in its first three years of growth [they mark off] with clay. And [an area] of graves [they mark off] with lime which they dissolve in water and pour out [along the boundary]. Said Rabban Simeon b. Gamaliel, “To what [case] does this apply? During the Sabbatical Year. And those who are conscientious set aside coins and say, ‘Let whatever is plucked [from this vineyard which is in its fourth year] be deconsecrated with these coins” [M. M.S. 5:1] [Kirzner: so fruits already misappropriated could also be redeemed by the owner and thus also consecrated].”*
- J. *And lo, [if the owner can consecrate the beast] hasn’t the principal reverted to the owner? [Why should the thief pay the double indemnity at all?]*
- K. *It is a case in which the owner had already come to court [Kirzner: and evidence had already been given against the thief].*
- L. *How so? If the judges had said to him, “Go and pay the owner,” why should he be exempt only if he had consecrated the beast? Even if the owner had not consecrated the beast, the thief should be liable. For didn’t Raba say, “If after the judges said, ‘Go, pay him,’ the thief slaughtered or sold the animal, he would be exempt, the operative consideration being that, once the judges gave their final sentence, when he sold or slaughtered the animal, he became a robber, and a robber does not have to pay the fourfold or fivefold indemnity? [69A] If they had said to him, ‘You are liable to pay him,’ and then the thief went and slaughtered or sold the animal, he is liable to pay the fourfold or fivefold indemnity. What is the operative consideration? Since the matter has not yet been wrapped up, he still is classified as a thief [and so subject to liability for those payments].”*
- M. *The rule pertains to a case in which the court has only said, “You are liable to pay him.”*

IV.5 A. *Reverting to the body of the above text: R. Yohanan said, “If one has stolen a beast and the owner has not yet abandoned hope of recovering the beast [and so retains title] — neither party has the*

power to consecrate the beast, this one because it does not belong to him, and that one because it is not now in his domain.”

B. *Now did R. Yohanan make any such statement at all?! And has not R. Yohanan said, “The decided law accords with the unattributed statement in the Mishnah, and we have learned in the Mishnah: **As regards a vineyard in its fourth year of growth — they mark it off with clods of earth.** This signals that it is like dirt. Just as in the case of dirt, one may derive benefit from it [Kirzner: after tilling, sowing, and reaping], so in the case of this, when it is redeemed, it is available for enjoyment. **And [a vineyard] in its first three years of growth [they mark off] with clay.** This signals that it is like clay. Just as in the case of clay, one may not derive benefit from it [for example, no crop will come from it], so these are not available for any sort of benefit at all. **And [an area] of graves [they mark off] with lime....** This signals that it is white, like corpse matter. ...which they dissolve in water and pour out [along the boundary]. This is to make its color even whiter. Said Rabban Simeon b. Gamaliel, “To what [case] does this apply? During the Sabbatical Year.” For in that case, the produce is deemed ownerless. But so far as the other years of the Sabbatical cycle are concerned, let the wicked stuff it down their throats until they choke. And those who are conscientious set aside coins and say, ‘Let whatever is plucked [from this vineyard which is in its fourth year] be deconsecrated with these coins’” [M. [M.S. 5:1](#)] [Kirzner: so fruits already misappropriated could also be redeemed by the owner and thus also consecrated]. Now if you should say, “Who is the Tannaite authority who has pointed to the practice of the meticulous folk? It is Rabban Simeon b. Gamaliel,” has not Rabbah bar bar Hannah said R. Yohanan said, “In any passage in which R. Simeon b. Gamaliel in our Mishnah has repeated a law, the decided law accords with him except in the matters involving suretyship, Sidon, and the last evidence”? [So we really do have a contribution against Yohanan’s position.]*

C. *Say: do not read the text of the Mishnah as, “whatever has been gleaned” [in the past] but rather, “whatever will be gleaned” [Kirzner: in the future, so that redemption will take effect retrospectively from the moment the statement was made, when the gleanings were still in the possession of the owner].*

D. *But did R. Yohanan make any such statement anyhow? And did not R. Yohanan say, "...the virtuous..." and did not R. Dosa make the same statement, and, as it happens, R. Dosa read the passage as, "Whatever has been gleaned in the past"? For it has been taught on Tannaite authority: R. Judah says, "In the morning the householder stands and says, 'Whatever the poor will gather today will be deemed ownerless property.'" R. Dosa says, "In the evening he says, 'Whatever the poor have gleaned today will be ownerless property [retrospectively]' [T. [Pe. 2:9](#)]."*

E. *Exchange the position of R. Judah with that of R. Dosa and that of R. Dosa with that of R. Judah.*

F. *Well, why transpose these rulings in the Tannaite formulation, rather transpose the position of R. Yohanan in such a way as to say, And did not R. Yohanan say, "...the virtuous..." and did not R. Judah make the same statement.*

G. *Say: It really would not be possible not to transpose the teaching [in which Judah and Dosa differ], since in the present version, it is held that R. Judah adopts the principle of retroactive clarification of the facts of a case, while we find that in other passages, R. Judah takes the position that we do not adopt the principle of the retroactive clarification of the facts of a case. For it has been taught on Tannaite authority: [\[69B\]](#) He who purchases wine among the Samaritans [in a situation in which he cannot presently separate tithes but wishes to drink the wine,] says, "Two logs [out of one hundred] which I shall separate, behold, these are [made] heave-offering, and [the following] ten [logs are made first] tithe, and [the following] nine [logs are made] second tithe." He regards [the wine] as unconsecrated produce, and drinks it [[M. Dem. 7:4](#)]," [T. [Dem. 8:5](#):] the words of R. Meir. But R. Judah. R. Yosé, and R. Simeon prohibit this procedure [Kirzner: maintaining that retrospective designation is not acceptable; they maintain no retrospective designation that would make the wine drunk unconsecrated and that which remained would be the part that was originally consecrated, and this shows that Judah does not hold the principle of retrospective clarification of the facts of the matter, thus necessitating the transposition of the cited passage].*

H. *Say: well, the bottom line is still the same. Why have you proposed to transpose the views? It is because R. Judah would be placed in the position of contradicting R. Judah. But anyhow, now we have R. Yohanan contradicting R. Yohanan. For you have said that from the perspective of R. Yohanan, we do not read the text of the Mishnah as, “whatever has been gleaned” [in the past] but rather, “whatever will be gleaned.” That then would prove that he takes the view that the facts of the matter may be retrospectively clarified. But in fact, R. Yohanan does not affirm the principle of retrospective clarification of the facts of the matter! For has not R. Assi said R. Yohanan said, “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 and Simon: and they divide up the estate after the year of Jubilee]”? It follows that we have to read the passage in the language, “whatever has been gleaned,” but R. Yohanan found another pertinent formulation of the Mishnah that was not assigned to a named authority [and that sustained his point], in line with that which we have learned in the Mishnah: **The one who steals from a thief does not pay twofold restitution.** Now why should this be the rule? Now, it is clear, he does not have to pay to the original thief for Scripture says, “And it be stolen out of the man’s house” (Exo. 22: 6) — but not out of the house of the thief. But why should he not pay the owner? Does this not then bear the implication that this one [is not paid] because it does not belong to him, and that one [is not paid] because it is not now in his domain?*

I. *Well, what made him identify as his paradigmatic Mishnah teaching that unattributed formulation? Why not adopt as his indicative formulation the unattributed statement concerning the practice of the meticulous people?*

J. *He found support in this verse: “And when the man shall sanctify his house to be holy unto the Lord” (Lev. 22:14) — just as his house is in his domain, so whatever is in his domain [is subject to his power of consecration].*

K. *Said Abbaye, “If R. Yohanan had not said, ‘...the meticulous...,’ and R. Dosa had not said the same thing, I might have said the meticulous affirm the position of R. Dosa but R. Dosa did not affirm the position of the meticulous. The*

meticulous affirmed the position of R. Dosa: If the rabbis provided a remedy for the thief, all the more so did they provide a remedy for the poor [Kirzner: who are not out to commit theft and should consequently be safeguarded from eating produce that has not been tithed]. But R. Dosa did not affirm the position of the meticulous: for it was only for the poor that the rabbis adopted such a remedy, but for the thief they provided no such remedy.”

L. Said Raba, “If R. Yohanan had not said, ‘...the meticulous...,’ and R. Dosa had not said the same thing, I might have said, who was the Tannaite authority who was guided by the meticulous? It was R. Meir. For has not R. Meir said, ‘Tithe belongs to the Most High,’ and nonetheless, in regard to redeeming it, it has been assigned to the owner: ‘And if a man will redeem ought of his tithe, he shall add unto it the fifth part thereof’ (Lev. 27:31) — so Scripture has referred to tithe as ‘his’ and then assigned him the obligation of adding a fifth. The same is so, moreover, in the case of produce of the vineyard in the fourth year of its growth, since the term ‘holy’ occurs in that context and in the context of tithe [Lev. 19:24, 27:30, respectively]. Here is it written, ‘shall be holy to praise’ (Lev. 19:24), and there, ‘and all the tithe of the land, whether of seed of the land or of the fruit of the tree, is holy’ (Lev. 27:30). Just as, in the case of tithe, it is called holy and is divine property, but assigned by the all-Merciful to the domain of the owner for him to redeem, so holy mentioned in connection with the produce of a vineyard in the fourth year of its growth, though not the householders, has been assigned by the All-Merciful to his domain for the purpose of redemption. Now, even though it is not his, he may redeem it, so he may be able to redeem it also when it is not in his actual possession. But in the case of gleaning, which is his own property, only when it is still in his own possession he is able to declare it ownership, but if he does not have it in hand, he is not able to declare it ownerless.” [Kirzner: Thus had not Yohanan and Dosa said the same thing, we could argue that the virtuous would not apply their principle to the gleaning.]

M. *Said Rabina, "If R. Yohanan had not said, '...the meticulous..., ' and R. Dosa not said the same thing, I might have said, who was the Tannaite authority who was guided by the meticulous? It was R. Dosa. That would then have served the purpose that the unassigned Mishnah paragraph would not refute the position of R. Yohanan. For R. Yohanan would not have maintained [70A] that the decided law accords with the unassigned statement of a single Tannaite authority."*

IV.6 A. *The Nehardeans say, "We do not write out a private authorization [to a creditor to collect or take possession of one's debt] when it comes to movables."*

B. *Said R. Ashi to Amemar, "How come?"*

C. *He said to him, "It is because of R. Yohanan. For said R. Yohanan, 'If one has stolen a beast and the owner has not yet abandoned hope of recovering the beast [and so retains title] — neither party has the power to consecrate the beast, this one because it does not belong to him, and that one because it is not now in his domain.'"*

D. *Some say, the Nehardeans say, "We do not write out a private authorization [to a creditor to collect or take possession of one's debt] when it comes to movables, if the bailee has denied the claim." The operative consideration then is that the claim has been denied, in which case the deed of assignment would appear to be a fraud, but if it were not denied, we would execute such a document.*

E. *And say the Nehardeans, "In the case of a private authorization [to a creditor to collect or take possession of one's debt], such a document in which it is not written, 'Go and take action so that you may acquire title and secure the claim for yourself,' is null." The operative consideration is that the defendant may say to*

him, "But you of all people have no claim against me anyhow."

F. Said Abbayye, "If it is written, 'You will be entitled to a half or a third or a fourth of the claim,' it is valid, since, if he can litigate for half, he can litigate for the whole."

G. Said Amemar, "If the assignee has seized articles belonging to the defendant, we do not grab them back from him."

H. Said R. Ashi, "Since the language is written in his document, 'Whatever will be imposed by the court of law I accept upon myself,' he is serving merely as an agent of the court."

I. And some say, "He is a partner."

J. What difference does it make?

K. Whether he can keep half.

L. And the law is he is appointed only as an agent.

I.1 simply notes the omission of a candidate for inclusion and draws a conclusion from the formulation of the Mishnah. **II.1** finds the scriptural source of the Mishnah's rule. No. 2 then is tacked on for obvious reasons. No. 3 then concludes the exercise. No. 4, with a massive, but quite coherent appendix at Nos. 5-7+8, 9, then reverts to our opening point, the conditions in which the law of the double payment pertains to a bailee who has taken a false oath, thus extending the inquiry with which we began. Finally, at No. 10, we return to a theoretical problem, one that intersects with our Mishnah's theme. Then Nos. 11-13 proceed to a secondary development of the principle just now discussed. **III.1** finds a scriptural basis for the Mishnah's framing of the law. **IV.1** explains the limits that govern the application of the rule of the Mishnah, now reverting to a familiar question. No. 2 carries forward the issue of No. 1, framing a problem in a more subtle way than the foregoing. No. 3, footnoted by No. 4, which itself bears a footnote at No. 5, then goes over the ground covered by No. 1. No. 6 is tacked on because Yohanan's operative statement occurs; it has no pertinence to this context.

7:2

- A. [If] one stole [an ox or a sheep] on the evidence of two witnesses,
- B. and [was convicted of having] slaughtered or sold on the basis of their testimony,
- C. or on the basis of the testimony of two other witnesses,
- D. he pays fourfold or fivefold restitution.
- E. (1) [If] he stole or sold [an ox or a sheep] on the Sabbath,
- F. (2) stole and sold [an ox or a sheep] for idolatrous purposes,
- G. (3) stole and slaughtered [an ox or a sheep] on the Day of Atonement,
- H. (4) stole [an ox or a sheep] belonging to his father and slaughtered or sold it, and afterward his father died,
- I. (5) stole and slaughtered, and afterward consecrated [an ox or a sheep],
- J. he pays fourfold or fivefold restitution.
- K. (1) [If] he stole and slaughtered [an ox or a sheep] for use in healing or for food for dogs,
- L. (2) he who [steals and] slaughters [an ox or a sheep] which turns out to be terefah,
- M. (3) he who slaughters unconsecrated beasts in the Temple courtyard —
- N. he pays fourfold or fivefold restitution.
- O. **R. Simeon declares him exempt in these last two matters.**

- I.1** A. [...or on the basis of the testimony of two other witnesses:] *May we say that our passage of the Mishnah does not conform to the view of R. Aqiba. For R. Aqiba has said, “‘a matter’ [(Deu. 19:15) ‘a matter shall be established by two witnesses’] and not half a matter.” For it has been taught on Tannaite authority: Said R. Yosé, “When my father, Halafta, went to R. Yohanan b. Nuri to study the Torah — and some say, when R. Yohanan b. Nuri came to study Torah with my father, [70B] Halafta — he said to him, ‘Lo, if someone had the usufruct of a piece of ground for one year in the presence of two witnesses, for a second year in the presence of two others, and for a third year in the presence of two others, what is the law?’ He said to him, ‘Lo, they have supplied evidence sufficient to accord to the squatter ownership through usucaption.’ He said to him, ‘So that’s what I say too, but R. Aqiba differs in this matter. For R. Aqiba would say,*

“A matter shall be established by two witnesses’ (Deu. 19:15) — and not half of a matter” [T. B.B. 2:10A-C].

- B. *Said Abbaye, “You may even say that the passage before us represents the position of R. Aqiba. Would not R. Aqiba concede in a case in which two witnesses say that someone has betrothed a woman, and two other witnesses testify that someone else later on had intercourse with her, that, even though the witnesses to the sexual relations, for their testimony to prove effective, require as premise the testimony of the witnesses to the betrothal [for otherwise, no wrong has been done], since the witnesses to the betrothal, for their testimony to prove effective, certainly do not require as premise the testimony of the witnesses to the sexual relations, we should classify this as a case in which a matter, complete in itself, has been established. Here, too, even though the witnesses to the act of slaughtering the beast, for their testimony to prove effective, require as premise the testimony of the witnesses to the theft, since, as a matter of fact, the witnesses to the theft do not require as their premise the witnesses to the slaughter of the beast, we should classify this as a case in which a matter, complete in itself, has been established.”*

C. *And as to rabbis [who accept independent testimony by three sets of witnesses in the case covered by the cited passage], for what purpose do they require this exegesis, “a matter,” not half a matter?*

D. *It is to exclude a case in which one witness [to whether or not a girl had reached puberty] testified that there was one hair on her back, another there was one in front.*

E. *But this is not “half a matter,” it is “half a testimony” [which is null]!*

F. *Rather, it excludes a case in which two witnesses testify that there was one hair on the back, two on the front. Here we have testimony by one set that she is a minor, and testimony by the other set that she is a minor [Kirzner: but where different witnesses testify to different years, each year is considered “a whole matter”].*

- II.1 A. [If] he stole or sold [an ox or a sheep] on the Sabbath, stole and sold [an ox or a sheep] for idolatrous purposes, stole and slaughtered [an ox or a sheep] on the Day of Atonement, stole [an ox or a sheep] belonging to his father and slaughtered or sold it, and afterward his father died, stole and slaughtered, and afterward consecrated [an ox or a sheep], he pays fourfold or fivefold restitution:**

- B. *But has it not been taught on Tannaite authority: He is exempt from having to make such a payment?*
- C. *Said Rammi bar Hama, "When that Tannaite formulation set forth the ruling that one would be exempt, it was in a case in which the purchaser [on the Sabbath] said to him [the thief who sold the animal], 'Pick a fig from off my fig tree, in consideration of which transfer to me ownership of what you have stolen.'" [Kirzner: Thus it follows that at the very moment when the sale was completed, the thief was desecrating the Sabbath by an act that renders him liable to a capital charge in which all possible civil liabilities to take effect at that time have to emerge.]*
- D. *Say: But if the purchaser claimed from him, before us in court, [some consideration for the figs], we could not instruct him to go, pay, since he is on trial for his life, why not declare the sale itself to be no sale? [Kirzner: Since the thief would have by law to pay nothing for the consideration given him on the part of the purchaser, there should be no consideration at all of rendering the purchase null and void.]*
- E. Rather, said R. Pappi, "[A case in which there would be an exemption would involve] the purchaser's saying to him, 'Throw your stolen objects from the public domain into my private courtyard, and in that manner transfer to me ownership of the objects you have stolen.'"
 - F. *In accord with whom is this scenario?*
 - G. *It is in accord with the position of R. Aqiba, who said, "An object caught in the air is equivalent [in respect to the Sabbath] to one that has come to rest." [Kirzner: The capital offense was committed at the very moment the transaction of sale became complete by the animal's entering the air of the purchaser's courtyard.] But were the position of rabbis to prevail, while the title to the stolen objects would be transferred when they entered the air space of the courtyard of the purchaser's household, so far as violation of the Sabbath would be concerned, liability to the death penalty would be incurred only when the objects had actually touched down.*
- H. But what about the case in which the purchaser said to him, "Your stolen objects' title shall pass to me only when they have actually touched the actual ground"?
- I. Raba said, "In point of fact, the case accords with the position of Rammi bar Hama [that the purchaser said, take figs off my tree, and that is despite the objection as to the lack of consideration]. The hire of a harlot has been

prohibited by the Torah [for use in the temple] even if it was paid by a son for having sexual relations with his mother, *and that is without regard to the fact that, if she had claimed it from him before us in court, we should not have been in a position to instruct him to go and pay it to her for her fee as a prostitute. Even though she claimed it from him by law, we should not have been able to tell him to go and pay her* [Kirzner: as the very act that would cause pecuniary liability is a capital offense in which all possible civil liabilities have to merge]. *Here, too, with respect to paying for the figs the thief picked on the Sabbath, if the purchaser had claimed it by law in our presence as judges, we should not have been able to tell him, 'Go, pay.'* [71A] *Nonetheless, since the thief was prepared to transfer title to the stolen objects to the other, by that very procedure it is considered a valid sale."*

III.1 A. ...stole and slaughtered [an ox or a sheep] on the Day of Atonement:

- B. *Say: Why should that be the rule? Even though there is no consideration of the death penalty, there still is the consideration of a flogging, and we have it as an established law that someone is not penalized both by a flogging and a monetary sentence as well?*
- C. *Say: Lo, who is the authority behind this passage? It is R. Meir, who has taken the position that one is penalized both by a flogging and a monetary sentence as well.*
- D. *Well, if that's the case, then would not R. Meir maintain that even if he had slaughtered the animal on the Sabbath, there should be a penalty? And if you say that, while R. Meir maintains that one may be both flogged and also required to pay a monetary fine, he would not take the view that one may be both put to death and also required to pay a monetary fine, has it not been taught as follows on Tannaite authority: "If one stole and slaughtered on the Sabbath, stole and slaughtered for the sake of an idol, stole an ox that was to be stoned and slaughtered it, he pays the fourfold or fivefold indemnity," the words of R. Meir, while sages declare him exempt from that indemnity [being liable to the death penalty]?*
- E. *Say: That is the rule except for this case, for in this regard it has been stated: Said R. Jacob said R. Yohanan, and some say, said R. Jeremiah said R. Simeon b. Laqish, R. Abin, R. Ilai, and all of the group, in the name of R. Yohanan, "Say: In that case, the act of slaughter was carried out by a third party [in behalf of the thief]. The third party is liable to the death penalty, the thief to the indemnity.]"*

- F. *Well, now, are we going to say that this party sins and that party has to pay?*
- G. *Said Raba, "This case is exceptional, for Scripture has said, 'And slaughter it or sell it' (Exo. 21:37) — just as the act of sale may be carried out by a third party serving as agency, so the act of slaughter may be carried out by a third party acting as agent."*
- H. *[Answering the same question differently,] the household of R. Ishmael's Tannaite authority [stated], "'...or...' serves to encompass the agent."*
- I. *[Answering the same question differently,] the household of Hezekiah's Tannaite authority [stated], "'...instead...' serves to encompass the agent."*
- J. *Objecting to this solution, [said] Mar Zutra, "Well, is there really a case in which if one party had done a deed, he would not have been liable to a penalty, but if his agent did the deed, he is liable to a penalty?"*
- K. *Said to him R. Ashi, "In the case at hand [involving capital punishment for Sabbath violation of idolatry], the operative consideration is not that he is liable, but that we impose upon the man the more severe of the two penalties that apply [to a single action, in this case, then, capital punishment]."*
- L. *Then, if he had the act of slaughter done by a third party, how come rabbis declare him exempt?*
- M. *Say: Who is the authority for whom "rabbis" stand? It is R. Simeon, who has said, "An act of slaughter that is inappropriate [Kirzner: through which the animal would not become fit for food] is not classified as an act of slaughter."*
- N. *Say: Well, certainly in the cases of slaughtering the beast for idolatry or slaughtering an ox that was to be stoned, we really do have an act of slaughter that is inappropriate [Kirzner: through which the animal would not become fit for food], but as to doing so on the Sabbath, this is, after all, an act of slaughter that is appropriate! For we have learned in the Mishnah: **He who slaughters on the Sabbath or on the Day of Atonement, even though he [thereby] becomes liable for his life — his act of slaughter is valid [M. Hul. 1:1J].***
- O. *Say: He accords with the view of R. Yohanan the sandal maker, for we have learned in the Mishnah: **One who tithes [his produce], or who cooks on the Sabbath — [if he does so] unintentionally, he may eat [the food he has prepared]; [but if he does so] intentionally, he may not eat [the food] [M. Ter. 2:3D-F],** the words of R. Meir. R. Judah says, "If he did so inadvertently, he may eat the food at the end of the Sabbath, if it was done deliberately, he may never eat it." R. Yohanan the sandal maker says, "If he*

did so inadvertently, at the end of the Sabbath he may give to others to eat, but not to himself; if he did so deliberately, it may never be eaten either by him or by others.”

P. *What is the scriptural basis for the position of R. Yohanan the sandal maker?*

Q. *It is in line with what R. Hiyya expounded at the gate of the patriarch's household: “‘You shall keep the Sabbath therefore, for it is holy to you’ (Exo. 31:14) — just as what is holy is forbidden for ordinary people’s everyday consumption, so what is made on the Sabbath is forbidden for consumption. And if one were to propose, ‘just as what is holy is forbidden for any benefit whatsoever, so what is made on the Sabbath is forbidden for any benefit whatsoever,’ Scripture says, ‘for you,’ meaning, it is yours. Might one suppose that the stated prohibition extends even to what is done inadvertently? Scripture says, ‘Those who profane it shall surely be put to death’ (Exo. 31:14), ‘it is when they have done so deliberately that I have so instructed you, and not when they have done so inadvertently.’”*

III.2 A. R. Aha and Rabina —

- B. *One said, “The prohibition of what is made on the Sabbath derives from the authority of the Torah.”*
- C. *The other said, “The prohibition of what is made on the Sabbath derives from the authority of the rabbis.”*
- D. *The one who said, “The prohibition of what is made on the Sabbath derives from the authority of the Torah,” explains matters as we have just set forth.*
- E. *As to the other, who said, “The prohibition of what is made on the Sabbath derives from the authority of the rabbis,” [points out], “Scripture has said, ‘It is holy,’ meaning, it itself is what is holy, but what is prepared on it is not holy.”*

F. *Now, from the perspective of him who said, “The prohibition of what is made on the Sabbath derives from the authority of the Torah,” that is [71B] why rabbis have declared one exempt [Kirzner: as the slaughter of the animal on the Sabbath would on scriptural authority render the animal unfit for food and could according to Simeon not be slaughtered at all]. But from the view of rabbis, why should there be any such exemption?*

G. *The exemption pertains to serving idols and the ox that was to be stoned [but not to this case].*

- III.3** A. *But why should R. Meir impose liability to the fourfold or fivefold indemnity [stole and sold [an ox or a sheep] for idolatrous purposes] if someone slaughtered such a beast to an idol? As soon as one merely started the act of slaughter, he made the animal forbidden, in which case, when he continued the act of slaughter, he was slaughtering an animal that already was forbidden for any purpose, and he was therefore slaughtering something that no longer belonged to the owner!*
- B. *Said Raba, “With what sort of a case do we deal? We deal with a case in which the man said, ‘It is with the completion of the act of slaughter that the idol will be served by this beast.’”*
- C. *And, again, since an ox that is condemned to be stoned is forbidden for any benefit at all, so he was therefore slaughtering something that no longer belonged to the owner!*
- D. *Said Raba, “With what sort of a case do we deal? We deal with a case in which he had handed the beast over to a bailee, and the animal did damage to others while he was in the household of the bailee, and the admonition that the beast was an attested danger was given while the beast was in the household of the bailee, and the court process was completed while the beast was in the household of the bailee. Now R. Meir concurs in one aspect with R. Jacob and he concurs in another aspect with R. Simeon. Now R. Meir concurs in one aspect with R. Jacob, who has said, ‘Even after the court process has been completed, if the bailee returned the beast to the owner, it is properly handed back.’ And he concurs in another aspect with R. Simeon, who has said, ‘Something the absence of which causes a loss of money is regarded as itself possessed of monetary value,’ [Kirzner: so that since if the ox would not have been slaughtered, the bailee would have been able to restore it intact without paying anything for its value, whereas now that the ox was stolen and slaughtered, he would have to pay for the full value of the ox, the ox is considered of an intrinsic value, though it was condemned to be stoned, and the thief has to pay the fine accordingly], for so we have learned in the Mishnah: R. Simeon says, “**For Holy Things [for which compensation of fourfold or fivefold indemnity is not exacted] for the replacement, if lost, of which he bears responsibility does he pay fourfold or fivefold restitution. [And for those for the replacement, if lost, of which he bears***

no responsibility, he is exempt]" [M. B.Q. 7:4I]. *This proves that in his view something the absence of which causes a loss of money is regarded as itself possessed of monetary value.*"

E. *Said R. Kahana, "I reported this discussion before R. Zebid of Nehardea, asking, 'Can you really explain our Mishnah paragraph in accord with R. Meir but not in accord with R. Simeon? Lo, the concluding paragraph states, [If he stole and slaughtered [an ox or a sheep] for use in healing or for food for dogs, he who [steals and] slaughters [an ox or a sheep] which turns out to be terefah, he who slaughters unconsecrated beasts in the Temple courtyard — he pays fourfold or fivefold restitution.] R. Simeon declares him exempt in these last two matters, which yields the inference that he concurs with the rest of the Mishnah's statements. He said to me, 'Not at all! What it implies is that he concurs in the case of slaughtering or selling the meat for use for healing or for feeding dogs [If he stole and slaughtered [an ox or a sheep] for use in healing or for food for dogs].'"*

- IV.1 A. ...stole [an ox or a sheep] belonging to his father and slaughtered or sold it, and afterward his father died:**
- B. *Raba addressed this question to R. Nahman: "If one stole an ox that belonging to two partners and slaughtered it and then confessed to one of the two that he had done so, what is the law? [He does not have to pay the fine to the partner to whom he confessed, since confessing the matter freed him from the indemnity; but when witnesses come and tell the other partner what has happened, what is the rule?] Scripture has said, 'Five oxen,' but not five halves of oxen, or does 'five oxen' that Scripture stated encompass five halves of oxen?"*
- C. *He said to him, "Scripture has said, 'Five oxen,' but not five halves of oxen."*
- D. *An objection was raised: ...stole [an ox or a sheep] belonging to his father and slaughtered or sold it, and afterward his father died...he pays fourfold or fivefold restitution. Now here, when the father died [and the thief becomes a partner in the estate with the other male heirs], it is as though he had gone ahead and made a confession to one of the other partners, and yet it is stated, he pays fourfold or fivefold restitution!*
- E. *He said to him, "Here with what situation do we deal? It is one in which the father had already gone to court, but if he had not gone to court, what would*

have been the rule? He does not have to pay the fourfold or fivefold indemnity.”

- F. *Well, if that is the situation, then instead of formulating the concluding clause in this language, ...stole from his father's [herd of oxen or sheep] and then his father died and afterward he slaughtered or sold [the beast],...he pays twofold restitution and does not pay fourfold or fivefold restitution [M. B.Q. 7:4], the framer of the Mishnah could have broken up the passage and made the distinction in context in this language: Under what circumstances [is one liable]? When he had already gone to court. But if the father had not gone to court, the thief would not have had to make the fourfold or fivefold indemnity payment!*
- G. *He said to him, “True enough. But since the initial clause reads, ...stole [an ox or a sheep] belonging to his father and slaughtered or sold it, and afterward his father died, the latter clause was worded in a parallel way: ...stole from his father's [herd of oxen or sheep] and then his father died and afterward he slaughtered or sold [the beast].”*
- H. *In the morning, however, he said to him, “When the All-Merciful said, ‘five oxen,’ it covered even ‘five halves of oxen,’ and the reason that I didn’t say that to you last night is [72A] that I hadn’t then eaten roast beef. [So I was weak-minded.]*
- I. *And then, what is the difference between the earlier clause [where the indemnity is charged] and the later one [where the indemnity is not charged] [Kirzner: for five oxen can imply “five halves of oxen,” so why should he not pay part that is due to the other heirs of the estate]?*
- J. *He said to him, “In the earlier clause [where one is liable to the indemnity] we invoke upon the offense the language, ‘and he slaughters it,’ since the whole act is unlawful [Kirzner: since at that time the father was alive], but in the latter instance, we cannot apply to the offense the language ‘and he slaughters it’ in the sense that the whole act is unlawful [for then the thief also was a joint owner of the animal (Kirzner)].”*

- V.1** A. **He who [steals and] slaughters [an ox or a sheep] which turns out to be terefah, he who slaughters unconsecrated beasts in the Temple courtyard — he pays fourfold or fivefold restitution:**
- B. *Said R. Habibi of Hozana to R. Ashi, “That yields the inference that pertinent to the act of slaughter is only the outcome, for if pertinent to the act of slaughter also is all that takes place from start to finish, then once the man had*

slaughtered even the smallest part of the beast, the rest of the beast would have been forbidden as well, with the result that what he slaughtered no longer belonged to its owner anyhow."

- C. *Said to him R. Huna b. Raba, "When liability is incurred, it is on account of that very slight starting point."*
- D. *Said to him R. Ashi, "Don't dismiss the question so lightly! What we require is 'he slaughtered it,' meaning, the whole of it, and we have not met that condition here, so it is a legitimate problem."*
- E. *He said to him, "This is what R. Gameda said in the name of Raba: Here is a case in which he cut part of the vital organs outside of the Temple courtyard and then cut the rest of the vital organs inside."*

F. There are those who cite the foregoing colloquy in the context of the following argument:

G. Said R. Simeon in the name of R. Levi the Elder, "Pertinent to the act of slaughter is only the outcome."

H. And R. Yohanan said, "Pertinent to the act of slaughter is all that takes place, beginning to end."

I. Said R. Habibi of Hozana to R. Ashi, "That yields the inference that in the opinion of R. Yohanan, if unconsecrated animals were slaughtered in the Temple courtyard, that would not be a prohibition of a rule set forth by Scripture. [72B] For if you assume that the prohibition rests on the authority of Scripture, then once the man had slaughtered even the smallest part of the beast, the rest of the beast would have been forbidden as well, with the result that what he slaughtered no longer belonged to its owner anyhow."

J. Said to him R. Huna b. Raba, "When liability is incurred, it is on account of that very slight starting point."

K. Said to him R. Ashi, "Don't dismiss the question so lightly! What we require is 'he slaughtered it,' meaning, the whole of it, and we have not met that condition here, so it is a legitimate problem."

L. He said to him, "This is what R. Gameda said in the name of Raba: Here is a case in which he cut part of the vital organs outside of the Temple courtyard and then cut the rest of the vital organs inside."

I.1 addresses the issue of the authority behind our Mishnah paragraph. **II.1** harmonizes Tannaite treatments of the same problem, which seem to conflict. **III.1**, complemented by Nos. 2, 3, raises a fundamental question of Mishnah explanation. **IV.1**

provides a secondary question not required for Mishnah exegesis but situated here because our clause of the Mishnah is cited. But, as we see, this discussion does clarify what is at issue in the two passages of the Mishnah that are introduced as evidence. V.1 goes over now familiar territory.

7:3

- A. [If] one stole [an ox or a sheep] on the evidence of two witnesses,
- B. and [was convicted of having] slaughtered or sold [it] on the basis of their testimony,
- C. and they turned out to be false witnesses,
- D. they pay full restitution.
- E. [If] he stole on the evidence of two witnesses,
- F. and [was convicted of having] slaughtered or sold it on the basis of the testimony of two other witnesses,
- G. [and] these and those turn out to be false witnesses,
- H. the first pair of witnesses pays twofold restitution, and the second pair of witnesses pays threefold restitution.
- I. [If] the latter pair of witnesses turn out to be false witnesses, he pays twofold restitution, and they pay threefold restitution.
- J. [If] one of the latter pair of witnesses turns out to be false, the evidence of the second one is null.
- K. [If] one of the first pair of witnesses turns out to be false, the entire testimony is null.
- L. For if there is no culpable act of stealing, there is no culpable act of slaughtering or selling.

I.1

- A. *It has been stated:*
- B. As to a witness who is proved to have conspired to commit perjury —
- C. Abbaye said, “[When between the time he gave his testimony and the time he was proved a perjurer, some days have elapsed], his status as a witness is treated as invalid retrospectively [Shachter, *Sanhedrin*, p. 158, n. 6: from the time he began to give his evidence in court, and all the evidence he has given in the intervening period becomes invalidated].”
- D. And Raba said, “It is only from that point onward that he becomes an invalid witness.”

E. Abbaye said, “Retrospectively he is treated as an invalid witness, *for from the moment at which he gave his [perjured] testimony, he entered the status of the wicked, and the Torah has said, ‘Do not put your hand with the wicked’ (Exo. 23: 1), meaning, ‘Do not make a wicked man a witness.’*”

F. Raba said, “It is only from that point onward that he becomes an invalid witness, *for the law governing the demonstration of conspiratorial perjury [involving two false witnesses who have agreed to testify against a man] constitutes an anomaly [Shachter, Sanhedrin:]. [How so?] Why do you rely upon these two witnesses [who testify against the original witnesses and claim they are perjurers]? Rely on the others [the original pair]!*

G. “Accordingly, you have against [this witness] only a [claim that applies] from the time of the application to him of the anomalous [law] and onward.”

H. *There are those who say that Raba concurs in Abbaye’s reasoning. But on what grounds has he ruled that the disqualification [is not retroactive] but only from that point onward?*

I. **[73A]** *It is on account of causing loss to the purchasers. [Shachter, p. 158, n. 9: If purchasers have transacted business through documents signed by the perjured witnesses, having been unaware of their disqualification, they would become involved in considerable loss, should their evidence be declared invalid.]*

J. *What would be at issue [between the two theories of Raba’s position]?*

K. *A case in which two witnesses gave evidence against one witness [as a perjurer, but not against the other witness in the case].*

L. *Or there would also be the case in which the grounds for disqualifying the witness was that he was a robber. [Shachter, p. 159, n. 2: Here again the argument that it is an anomalous procedure no longer holds good.] According to the version that Raba appeals to the anomalous character of the rule, he*

would not apply it here; according to the version that Raba appeals to the consideration of the effect on purchasers, it would hold good even here.

- M. *And R. Jeremiah of Difti said, "R. Pappa made a concrete decision in a case in accord with the position of Raba."*
- N. *Mar, son of R. Ashi said, "The decided law accords with the view of Abbayye."*
- O. *And the decided law accords with the view of Abbayye in six matters.*

I.2

- A. *We have learned in the Mishnah: [If] one stole [an ox or a sheep] on the evidence of two witnesses, and [was convicted of having] slaughtered or sold [it] on the basis of their testimony, and they turned out to be false witnesses, they pay full restitution. Does this not mean that the witnesses gave their testimony concerning the theft and then they went and gave their testimony on the slaughter of the beast, and then they were proved to be a conspiracy of false witnesses in respect to the testimony concerning the theft, and then they again were convicted of forming a conspiracy of false witnesses as to the slaughter of the beast? Now, if it should enter your mind that [as Abbayye has said, as to a witness who is proved to have conspired to commit perjury], [when between the time he gave his testimony and the time he was proved a perjurer, some days have elapsed], his status as a witness is treated as invalid retrospectively, then these witnesses, once they were shown to have been a conspiracy of false witnesses in respect to the theft, have been shown retrospectively to be what they are, so that when they gave testimony as to the slaughter of the beast, they were already unfit to give testimony, so why in the world do they have to pay compensation for the testimony concerning the slaughter of the beast?*
- B. *Say: Here, with what sort of a situation do we deal? It is one in which they first of all were declared to be a conspiracy as to the act of slaughter.*
- C. *Say: Still in all, when they then were shown also to have been a conspiracy of perjury as to the theft, it was already clear that, when they gave their evidence as to the slaughter of the stolen beast, they already were invalid for giving testimony, so why in the world do they have to pay damages for that other testimony?*
- D. *The law before us pertains to a case in which they gave testimony concerning both matters at once and then were shown to have been a conspiracy of perjurers in both regards simultaneously.*

I.3 A. *May we say that the difference of opinion between Abbayye and Raba is what is at stake between the following Tannaite authorities: If two people gave testimony against him that he had stolen, and two gave testimony against him that he had slaughtered the animal, and the ones that testified as to the theft were found perjurers, then testimony part of which has been nullified is wholly nullified. If they were shown to be a conspiracy of false witnesses as to the slaughter, then the person who is accused still has to pay the double indemnity for the beast, but the perjurers then pay a threefold indemnity. Said R. Yosé, “Under what circumstances? When these were two distinct acts of testimony. But if it was a single act of testimony, then testimony part of which has been nullified is wholly nullified. [T. B.Q. 7:23]. Now what can be the meaning of two distinct acts of testimony or of a single act of testimony? If we say that by two distinct acts of testimony is meant actually, literally, two distinct acts of testimony, as in a case of two distinct sets of witnesses, and if we say that by a single act of testimony is meant one pair of witnesses giving two acts of testimony in sequence, then R. Yosé would take the view that, if there were a single act of testimony by a single set of witnesses in sequence, when they gave evidence in respect to the theft and then again went and gave evidence as to the slaughter, then, when they were shown to be a conspiracy with regard to the act of slaughter, we have a case in which testimony part of which has been nullified is wholly nullified. So these same witnesses are now regarded as a conspiracy also in respect to the theft. But on what basis would he take such a position anyhow? So then is not the meaning of two testimonies one piece of evidence that is like two testimonies, meaning, one set of witnesses gives two testimonies one after the other, but not where there is one testimony in which all the statements are made at the same time? And in the assumption that all parties concur that statements in sequence within a brief interval are equivalent to a single undivided statement, what is at issue between the authorities before us is this: Rabbis maintain the view that [as to a witness who is proved to have conspired to commit perjury, when between the time he gave his testimony and the time he was proved a perjurer, some days have elapsed], rabbis maintain that it is only from that point onward that he becomes an invalid witness.*

And since, from that time the testimony was shown to be a conspiracy as to the matter of the slaughter of the beast, with respect to the theft they have not been declared a conspiracy, so the effect of the declaration as to the other aspect of the testimony does not apply. R. Yosé for his part maintains that [as to a witness who is proved to have conspired to commit perjury, when between the time he gave his testimony and the time he was proved a perjurer, some days have elapsed], his status as a witness is treated as invalid retrospectively. Now, since when they testified to begin with, they were invalidated, when they were shown to have been a conspiracy as to the slaughter of the beast, they also were shown to have been a conspiracy as to the theft. For lo, it is established that a statement made in close sequence in the same interval as another is deemed part of that one and unified statement and not to be subdivided into its components.

*B. Say: Not at all! If it were the fact that statements in sequence within a brief interval are equivalent to a single undivided statement, then the Tannaite authorities before us would concur that the pair that were shown to have been a conspiracy were disqualified retrospectively. But what is in point of fact at stake here is the very question of whether or not all parties concur that statements in sequence within a brief interval are equivalent to a single undivided statement. Rabbis maintain that all parties concur that statements in sequence within a brief interval are **[73B]** not equivalent to a single undivided statement, and R. Yosé holds that all parties concur that statements in sequence within a brief interval are equivalent to a single undivided statement.*

C. But does R. Yosé really take the view that statements in sequence within a brief interval are equivalent to a single undivided statement? And have we not learned in the Mishnah: “[He who with peace-offerings and burnt-offerings before him says], ‘Lo, this [unconsecrated beast] is the substitute of a burnt-offering and the substitute of peace-offerings,’ lo, this is the substitute of a burnt-offering,” the words of R. Meir. Said R. Yosé, “If to begin with he intended thus, since it is not possible to designate [them] by two names at once, his words are confirmed. But if after he said, ‘It is the substitute of a burnt-offering,’ he changed his mind and said, ‘It is the substitute of peace-offerings,’ lo, this is the substitute of a

burnt-offering” [M. Tem. 5:4A-C]? Now, when we examine this matter, we note: If he changed his mind, is the rule not obvious? So R. Pappa said, “The matter concerns a situation in which he changed his mind within a brief interval.” [Kirzner: For otherwise why should the first utterance be more decisive than the second?]

D. Say: There are two distinct definitions of such a brief interval, one which marks time sufficient for a disciple to greet a master, the other, sufficient for a master to greet a disciple. When, as in the case of Temurah, R. Yosé does not hold that two statements are one where the interval is sufficient for greeting a disciple to a master, for example, “Peace to you, Master and Teacher,” it is because this is too long an interval; but where it is sufficient, it involves the greeting of the master to the disciple, for example, “Peace be upon you,” in which case he holds that the two statements serve for a single expression.

- I.4** A. Said Raba, “Witnesses that are contradicted [by other witnesses in making a capital charge] and then are proven to be a conspiracy of perjurers are put to death, since the contradictory evidence is the beginning of the process of proving that they are perjurers, but that process is not brought to a conclusion by the contradictory testimony.”
- B. Said Raba, “How do I know it? Because it has been taught on Tannaite authority: **The witnesses who testified, “We give evidence that Mr. So-and-so has blinded the eye of his slave and afterward he knocked out his tooth” — and so the master says — and who turned out to be perjurers pay compensation to the slave for the eye [T. Mak. 1:4A-D]** [Note the continuation: **The witnesses who testified, “We give evidence that Mr. So-and-so has blinded the eye of his slave and afterward he knocked out his tooth” — and so the slave says — and who turned out to be perjurers pay compensation to master (T. Mak. 1:4E-H).** Now how are we to understand this case? If we assume that the passage has been formulated in the premise that there is no other set of witnesses, why are they going to pay the value of the eye to the slave? After they have got him freed, are they also going to have to pay for the value of his eye? And furthermore, they ought to have to pay the value of the entire slave to the master! And, furthermore, **and so the master says!** How could the master have accepted such a statement? So does this not refer to a case in which two witnesses came and said, “We give evidence that Mr. So-and-so has knocked out his tooth and then blinded the eye of his slave,” in which case the master has to pay him the value of his eye;

*then a further set of witnesses came along and said, “We give evidence that Mr. So-and-so has blinded the eye of his slave and then knocked out his tooth,” in which case he has to pay him only for the value of his tooth, so that the first set of witnesses have contradicted the middle one, and that is the sense of the phrase, **and so the master says**. For the master is perfectly satisfied to go along with this middle statement. And then the passage goes on: **and who turned out to be perjurers**. Now the middle set is proved to be a conspiracy of perjurers. And they are the ones who **pay compensation to the slave for the eye**. So does this not demonstrate that the contradictory evidence is the beginning of the process of proving that they are perjurers?”*

- C. *Said Abbayye, “Not at all. We may assume that the statement of those witnesses is reversed by a set of witnesses who themselves are proven to be a conspiracy of perjurers. [Kirzner: There were only two sets of witnesses, the former set testifying that the injury was done to the eye first and then to the tooth, the second set giving evidence to the contrary and at the same time proving the first set to be a conspiracy of perjurers, in which case the first would have to pay the slave the value of his eye.] How do we know this? [74A] It is because, since the latter clause addresses a case of witnesses the allegations of whom were contradicted by the same set of witnesses who later on proved they were a conspiracy of false witnesses, so the former clause likewise must deal with a case in which the allegations of the witnesses were reversed by the same latter set of witnesses who had proved their alibi. For since it says later on, **The witnesses who testified, “We give evidence that Mr. So-and-so has blinded the eye of his slave and afterward he knocked out his tooth” — and so the slave says — and who turned out to be perjurers pay compensation to master [T. Mak. 1:4E-H]**. Now how are we to understand this case? If we assume that the second set of witnesses did not concur with the first set on any injury at all, why would the first set of witnesses not have to pay the master the entire value of the slave [whom they would have freed]? So it must mean that the witnesses in all did concur that there had been an injury, but the second set gave the order in reverse from that of the first set, and also proved the first set to be a conspiracy of perjurers. And still, under what circumstances would this have taken place? If the witnesses who made up the second set had given a later date for the injury, why should the witnesses of the first set still not have to pay the entire value of the slave to the master, having falsely claimed that he was liable when he was not subject to any liability? So we must say that the witnesses of*

the second set had given an earlier date to the injury. But if at the time that the witnesses of the first set gave evidence the master had not yet come to court at all, why should they still not have to pay him the whole value of the slave as at the time that he was subject to no liability? So we must deal with a case in which the master had already appeared in court” [Kirzner: and he was ordered to let the slave go free on the strength of testimony by earlier witnesses, without any direction as to any payment to be made to the slave, who now seeks to recover from the master compensation for the eye or tooth].

D. Said R. Aha b. R. Iqa to R. Ashi, “How could Raba have found evidence to prove this point [Kirzner: even according to his interpretation that three sets of witnesses took part in the controversy]? It cannot be from the initial clause, for were the witnesses of the middle group [first the eye, then the tooth] not contradicted? If they were not proven a conspiracy, their testimony would have stood as the decisive evidence and the case would have been settled in accord with what they alleged, in the principle that “in the total of two hundred at issue, when both sides concur in a hundred, a hundred is included. So it must follow that the first set of witnesses were the ones who were contradicted, and the middle set were not contradicted at all” [Kirzner: and this cannot afford proof to Raba’s position.]

E. He said to him, “Raba thought that since the earlier clause dealt with three sets of witnesses that gave testimony, the latter one did as well, and he tried to prove his point from the latter clause. It would then have addressed a case in which two witnesses appeared and claimed that the master first knocked out the slave’s tooth, then put out the eye, and after the verdict was given in accord with what they had said, another set of witnesses came along and said that the first put out his slave’s eye and then his tooth, contradicting the witnesses of the first set, and, since these were proved a conspiracy of perjurers, they would have to pay the value of the slave’s eye to the master. And if you assume that a refutation of the substance of the testimony is not regarded as the first step in proving that the witnesses were a conspiracy, why should they have to pay anything at all after they were confuted? So doesn’t this prove that a contrary proof of what has been alleged is indeed the first step in proving that the witnesses were a conspiracy of perjurers?”

F. And Abbayye?

G. *He will say to you, “Well, as to the opening clause, it can only be explained within the assumption that there were three sets, in line with the language, **so, too, the master says** [that is, corroborating the witnesses’ allegation that he put out the slave’s eye and knocked out his tooth; for if these witnesses were the first to give evidence on the matter, it would not be in the interest of the master to corroborate them (Kirzner)]. But as to the latter clause, why do I need three sets? The statement, **so, too, the slave says**, is quite in order, since the slave would say anything, since he wants to go free!”*

H. *[To the premise that the master would have to both let the slave go free for having knocked out his tooth, and also pay compensation for the eye,] objected R. Zira, “Might I not say that if he knocked out his eye, [74B] he goes free on account of his eye; when he knocks out the tooth, the slave goes free on account of the tooth, and when he both puts out his eye and knocks out his tooth, the slave goes free on account of both [with no further compensation]?”*

I. Said to him Abbaye, “In regard to this position of yours, Scripture says, ‘for the sake of his eye,’ not for the sake of both eye and tooth; ‘for the sake of his tooth’ (Exo. 21:26, 27), not for the sake of his tooth and his eye.”

J. Said R. Idi bar Abin, “So, too, we have learned as a Tannaite rule: **[If] one stole [an ox or a sheep] on the evidence of two witnesses, and [was convicted of having] slaughtered or sold [it] on the basis of their testimony, and they turned out to be false witnesses, they pay full restitution.** Does this not mean that they gave witnesses against him in regard to the theft and then they gave witnesses against him in regard to the slaughter of the beast, and they then were found to be a conspiracy of perjurers in regard to the theft and then they were found to be a conspiracy against him with regard to the slaughter of the beast? So lo, once they were found to be a conspiracy of perjurers with regard to the theft, that itself constitutes a refutation of their evidence in respect to his having slaughtered the beast [for if he didn’t steal the beast, what difference does it make whether or not he slaughtered it], and yet the passage says, **they pay full**

restitution! *On the other hand, if you take the position that a contradiction of that evidence does not constitute the first step in the demonstration that they are in fact a conspiracy of perjurers, why should they pay the indemnity for the slaughter? So does this not prove that the contradiction of what they have alleged constitutes the first step in a pattern which will lead them to be shown to be a conspiracy of perjurers?"*

K. *Say: Here with what case do we deal? It is one in which they were first shown to be a conspiracy of perjurers as to the slaughter of the beast.*

L. *As to the dispute concerning a case in which witnesses were first contradicted and only then shown to be a conspiracy of perjurers, there is the dispute of R. Yohanan and R. Eleazar [involving a case in which the penalty would have been death]:*

M. *[In a case in which the witnesses were first contradicted by a second set of witnesses, and then proved a conspiracy of perjurers by yet a third set of witnesses], one said, "They are put to death."*

N. *And the other said, "They are not put to death."*

O. *You may draw the conclusion that R. Eleazar is the one who said, "They are not to be put to death," for said R. Eleazar, "Witnesses who were contradicted in a murder case are flogged." Now if you should imagine that it is R. Eleazar who has said that they are put to death, then why in the world should they be flogged? You are dealing with a violation of a negative commandment that has been dealt with through an admonition in respect to a death penalty executed by the court, and in any case in which there is a prohibition that is subject to an admonition of the death penalty inflicted by the court, there will not be a flogging at all. So does it not follow that it is R. Eleazar who has held that they are not to be put to death?"*

P. *It follows indeed.*

I.5 A. *[If the witnesses were contradicted but not proven a conspiracy of perjurers in a capital case,] they are flogged. But what you have here is a case in which two witnesses contradict two other witnesses. So how come you rely on these? Rely rather on those?*

B. Said Abbaye, “We deal with a case in which the man who had allegedly been murdered walks into court on his own two feet.”

I.1 on its own addresses in general terms the issue of an interval between one piece of testimony and another, and for that reason alone appears to have been appended to our Mishnah paragraph, which is not illuminated by it. But No. 2, carried forward at No. 3 and continuing the issue of the foregoing in response to the present passage, then carries us to our Mishnah paragraph. No. 4, footnoted by No. 5, continues the rather theoretical inquiry at hand, amplifying the theme, but not the particular problem, of our Mishnah’s rule; but as before our Mishnah paragraph contributes in so many words to the composition as a whole.

7:4

- A. [If] one [was convicted of a charge that he] stole [an ox or a sheep] on the evidence of two witnesses and of having slaughtered or sold [the ox or sheep] on the basis of only one,
- B. or on the basis of the evidence of his own [confession],
- C. he pays twofold restitution and does not pay fourfold or fivefold restitution.
- D. (1) [If] he stole and slaughtered on the Sabbath,
- E. (2) stole and slaughtered for idolatrous purposes,
- F. (3) stole from his father’s [herd of oxen or sheep] and then his father died and afterward he slaughtered or sold [the beast],
- G. (4) stole and then consecrated [the animal] and afterward slaughtered or sold it,
- H. he pays twofold restitution and does not pay fourfold or fivefold restitution.
- I. R. Simeon says, “For Holy Things for the replacement, if lost, of which he bears responsibility does he pay fourfold or fivefold restitution.

J. “And for those for the replacement, if lost, of which he bears no responsibility, he is exempt.”

I.1 A. On the basis of only one:

B. *So what else is new?*

C. *Say: Lo, we are informed that testimony on the basis of the evidence of his own [confession] is equivalent to testimony on the basis of only one witness. Just as in the case of testimony by a single witness, if another witness should come along, he is joined together with the first to impose liability, so too, in the case of his own confession, if another witness should come along and corroborate his, he would be liable.*

D. *That then excludes from consideration the position that R. Huna said Rab said, for said R. Huna said Rab, “If someone confessed to a crime punishable by an extrajudicial sanction, and then witnesses came along to the same effect, he would still be exempt from having to pay the sanction.”*

I.2 A. *Reverting to the body of the prior statement: Said R. Huna said Rab, “If someone confessed to a crime punishable by an extrajudicial sanction, and then witnesses came along to the same effect, he would still be exempt from having to pay the sanction.”*

B. *An objection was raised by R. Hisda to the statement of R. Huna: “There was the case concerning Rabban Gamaliel, who blinded the eye of his slave, Tabi, and he was very happy about it. R. Joshua came upon him, and he said to him, ‘Don’t you know that my slave, Tabi, has gone free?’ He said to him, ‘How come?’ He said to him, ‘Because I blinded his eye.’ He said to him, ‘You talk nonsense! For there are no witnesses to that effect.’ The implication then is that, if there were witnesses to that effect, he would still have had to set him free, and does this not prove that, if someone confessed to a crime punishable by an extrajudicial sanction, and then witnesses came along to the same effect, he would still have to pay the sanction?”*

C. *He said to him, “The case involving Rabban Gamaliel is exceptional, because he did not confess before a court.”*

D. *“Yeah, well, as a matter of fact, R. Joshua was the head of the court!”*

E. **[75A]** *“Well, at that moment he still was not in session in court.”*

F. *“But has it not been stated as part of the Tannaite formulation: ‘You talk nonsense! For you yourself have already confessed to the matter [and hence there is no extrajudicial sanction here]’?”*

G. *“So aren’t we dealing with a conflict among Tannaite versions here? The Tannaite version that states, ‘you have no witnesses,’ takes the view that, if someone concedes to an offense punishable by an extrajudicial sanction and afterward witnesses came along, he is liable; and the other Tannaite master, who formulates matters as, ‘you have already confessed the matter on your own,’ takes the view that if someone confesses to an offense for which there is an extrajudicial sanction and then witnesses came along, he is exempt.”*

H. *“Not at all. All parties concur that if someone concedes that he has committed an offense for which there is an extrajudicial penalty and then witnesses came along to the same effect, he remains exempt from having to pay. But here this is what is at issue: The Tannaite version that states, ‘you have no witnesses,’ takes the view that the confession happened outside the law court, and the other Tannaite master, who formulates matters as, ‘you have already confessed the matter on your own,’ takes the view that the confession had been made in court.”*

I.3

A. *It has been stated:*

B. If someone concedes that he has committed an offense for which there is an extrajudicial penalty and then witnesses came along to the same effect —

C. Rab said, “He is exempt.”

D. And Samuel said, “He is liable.”

E. *Said Raba bar Ahilai, “What is the scriptural basis for the position of Rab? ‘If to be found it be found,’ meaning, if to begin with, witnesses are found, then it will ‘be considered found’ in the view of the judges, except in a case in which the defendant incriminated himself.”*

F. *Well, what need do I have for this approach, since the same ruling can emerge from the language, “whom the judges shall condemn” (Exo. 22: 8) — not him who condemns himself? It is to make the point that if someone concedes that he has committed an offense for which there is an extrajudicial penalty and then witnesses came along to the same effect, he is exempt.*

G. *And Samuel will say to you, "That is required to make the thief himself subject to the double payment, in line with the Tannaite formulation of the household of Hezekiah."*

H. *Rab objected to the position of Samuel, " [He said to someone in the market, "Where is my ox which you stole?" and he says, "I never stole it," but witnesses testify against him that he had stolen it — he pays twofold restitution. If he had slaughtered and sold it, he pays fourfold or fivefold restitution.] If he saw witnesses [to what he had done] coming along and said, "I stole it, but I never slaughtered or sold it," he pays only the principal [M. Shebu. 8:4]. [He confessed liability, so he does not have to pay the fine.]"*

I. *He said to him, "What sort of a situation do we deal with here? It is one in which, for instance, the witnesses turned back."*

J. *Well, since the same item states at the end, R. Eleazar b. R. Simeon says, "Let the witnesses come forward and testify," we must maintain that the initial authority took the contrary view [Kirzner: that the evidence of the witnesses would be of no avail].*

K. *Said to him Samuel, "Well, anyhow, there is at least R. Eleazar b. R. Simeon, who takes the view that I do! So I am in accord with the position of R. Eleazar b. R. Simeon."*

L. *Well, then, from Samuel's perspective, it is most certainly a dispute among Tannaite authorities, but from Rab's viewpoint is this a conflict among Tannaite authorities?*

M. *Rab will say to you, "I take the position that I do even within the framework of the view of R. Eleazar b. R. Simeon. For R. Eleazar b. R. Simeon takes the position that he does in that case only because the thief has made his confession out of fear of what the witnesses would say, but here, where he confessed willingly, even R. Eleazar b. R. Simeon might maintain that the confession would eliminate any further liability for indemnities of the extrajudicial character under discussion."*

I.4 A. *Said R. Hamnuna, "It stands to reason that the ruling of Rab pertains to a situation in which the thief says, 'I have stolen,' and witnesses came to the effect that he had stolen. He is exempt, for lo, he has imposed upon himself liability to the principal.' But if he had said,*

‘I did not steal,’ and witnesses came along to the effect that he had stolen, and then he reverted and said, ‘I slaughtered and I sold the beast,’ and witnesses came along to the effect that he had slaughtered the beast and sold the meat, he still would be liable to the indemnities, for lo, he has originally proposed to exempt himself from all sort of penalties in his testimony.”

B. *Said Raba, “Well, I beat out the elders of the household of Rab, for lo, Rabban Gamaliel in the case of putting out his slave’s eye was only exempting himself from any liability, and yet, when R. Hisda invoked the case in his argument against R. Huna, that is not the answer that he got.”*

C. *So, too, it has been stated:*

D. Said R. Hiyya bar Abba said R. Yohanan, “If the thief says, ‘I have stolen,’ and witnesses came to the effect that he had stolen. He is exempt, for lo, he has imposed upon himself liability to the principal.’ But if he had said, ‘I did not steal,’ and witnesses came along to the effect that he had stolen, and then he reverted and said, ‘I slaughtered and I sold the beast,’ and witnesses came along to the effect that he had slaughtered the beast and sold the meat, he still would be liable to the indemnities, for lo, he has originally proposed to exempt himself from all sort of penalties in his testimony.”

E. *Said R. Ashi, “From our Mishnah paragraph and the cited Tannaite passage we find the same distinction emerging. From our Mishnah, it is in line with what we have learned: **[If] one [was convicted of a charge that he] stole [an ox or a sheep] on the evidence of two witnesses and of having slaughtered or sold [the ox or sheep] on the basis of only one, or on the basis of the evidence of his own [confession], he pays twofold restitution and does not pay fourfold or fivefold restitution.** Now what need do I have for the language, **[If] one [was convicted of a charge that he] stole [an ox or a sheep] on the evidence of two witnesses?** It could as well frame matters as, [If] one [was convicted of a charge that he] stole [an ox or a sheep] and of having slaughtered or sold [the ox or sheep] on the basis of only one, or on the basis of the evidence of his own [confession], he pays twofold restitution*

and does not pay fourfold or fivefold restitution. **[75B]** *So is it not the purpose to tell us that if one [was convicted of a charge that he] stole [an ox or a sheep] on the evidence of two witnesses and of having slaughtered or sold [the ox or sheep] on the basis of only one, or on the basis of the evidence of his own [confession], that is the situation in which it was not the confession that made him liable for the principal, and hence we argue that confession by the thief on his own part is comparable to testimony given by a single witness. Just as, in the case of testimony given by a single witness, if another witness comes along and joins him, he is liable, so in the case of a confession by the thief himself, if witnesses come along and testify to what he had already confessed to, he would likewise become liable. But if the testimony to the theft and slaughter and sale were testified by one witness or by the thief himself, so that his confession has made him liable to pay the principal, we would not maintain that the thief's own confession is comparable to the testimony given by a single witness. And the proof from the Tannaite formulation of the matter is as follows: If he saw witnesses [to what he had done] coming along and said, "I stole it, but I never slaughtered or sold it," he pays only the principal [M. Shebu. 8:4]. Now what need do I have for the language, and said, "I stole it, but I never slaughtered or sold it"? Why not just use the language, I stole an ox, or I slaughtered it or I sold it? But in this formulation we are informed that it is only when the thief confessed, 'I have committed the theft of the ox,' in which instance by his confession he has made himself liable for the principal, that he would exempt himself from the fine; but if he had stated, 'I have not committed any theft at all,' and when witnesses came along and testified that he did steal, then he turned around and said, 'Yeah, and I slaughtered it or sold it,' and witnesses came along and said he had slaughtered it or sold it, he is not the one who made himself liable for the principal, and he would be liable for the fine; so the confession merely in regard to the act of slaughter is not regarded as a confession for the purpose of suspending liability to the fine."*

F. *Say: Not at all. The cited words themselves inform us that, since the man has said, "I have stolen an ox or a sheep," even though he said, "I did not slaughter it or sell it," and then witnesses came along and testified that he slaughtered it or sold it, he would still be exempt from a fine, since the All-Merciful has said, "Fivefold or fourfold payment" (Exo. 21:37) but not "fourfold or threefold payment," as the case may be. [Kirzner: Since he confessed regarding the theft, in which case he will only have to pay the principal, since the doubling of it is a fine, he will not be subject to the fine of slaughter or sale even when denied by him and testified to by two witnesses, on account of the fact that the payment in this case would have to be not fivefold but fourfold for an ox, and not fourfold but threefold for a sheep.]*

G. *May we then say that the same matter is at issue in the following Tannaite tradition: If two witnesses gave testimony that he had stolen, and there were two others who gave testimony that he had slaughtered and sold the meat, if the witnesses as to the theft were proven to be a conspiracy of perjurers, then testimony part of which has been nullified is wholly null. If the witnesses to the slaughter were proven to be a conspiracy of perjurers, then he has to pay the double indemnity, and they have to pay the indemnity of three times the value of the beast. In the name of Sumekhosh they have said, "They have to pay the double indemnity, and he has to pay the threefold indemnity that remains for an ox, and the twofold indemnity that remains for the lamb." Now to what did Sumekhosh make reference here? It could not be the opening clause [if the witnesses as to the theft were proven to be a conspiracy of perjurers], since would not Sumekhosh concede that testimony part of which has been nullified is wholly null? But then could it refer to the concluding case [If the witnesses to the slaughter were proven to be a conspiracy of perjurers]? But didn't rabbis make an entirely valid statement when they said, he has to pay the double indemnity, and*

they have to pay the indemnity of three times the value of the beast? *So there must be some other point at issue between them. It would be, for example, a case in which a set of two witnesses came along and said to him, "You have stolen," and he replied, "Well, o.k., I stole an ox, and I slaughtered it or sold it, but it was not in your presence that I stole the ox," and, moreover, he produced witnesses to prove that they were a conspiracy of perjurers showing that whatever he did, it was not in their presence that he committed the theft; and then the plaintiff brought more witnesses, who testified against the thief that he had stolen the ox and slaughtered it or sold it. Now what is at issue here? It has to do with the effect of confessing that one has slaughtered the beast. Rabbis maintain that, even though the confession as to the theft was because of the witnesses coming along, the confession as to the slaughter should be regarded as entirely valid, so he is then exempt from having to pay the indemnities. Sumekhosh maintains, by contrast, that since the confession as to the theft was on account of the witnesses who were coming along, the confession as to the theft is not really a confession, and the first witnesses, the ones who were found a conspiracy of perjurers, would have to pay the thief double the value of the animal they said he stole, and he would have to pay threefold for an ox and twofold for a ram.*

[Kirzner: This proves that the rabbis maintained that a confession that does not involve the liability of the principal should still have the effect of a confession, in contradiction to Hamnuna; and Sumekhosh would maintain that it should be devoid of the absolute exempting effect of a confession to liability for a fine.]

H. Said R. Aha b. R. Iqa, "No, all parties concur that the confession with respect to the slaughter is not deemed an effective confession for any purpose, but at issue here is the effect of testimony that you cannot

subject to the test of whether or not it comes from a conspiracy of perjurers. *Such a case, for instance, would involve the advent of witnesses who came and said to him, 'You have stolen,' and he said to them, 'I stole, I slaughtered, and I sold the meat, but it was not in your presence that I did the stealing but in the presence of Mr. So-and-so and Mr. Such-and-such,' and, moreover, he brought witnesses that the original pair were a conspiracy of perjurers, so that it was not in their presence that he had committed the theft at all. Then those whom the thief had named came along and they testified against him that he had indeed stolen the ox and slaughtered it or sold it. Now what is at stake in the dispute? Rabbis maintain that what you have here in the final evidence given by witnesses is testimony that you cannot subject to the test of whether or not it comes from a conspiracy of perjurers [since the accused is the one who named them as witnesses to begin with], and testimony that you cannot subject to the test of whether or not it comes from a conspiracy of perjurers is null. But Sumekhos takes the position that testimony that you cannot subject to the test of whether or not it comes from a conspiracy of perjurers nonetheless is deemed valid testimony.*" [Kirzner: Hence the thief would have to pay the exclusive fine for the slaughter or sale.]

I. *But don't we have it as an established fact that testimony that you cannot subject to the test of whether or not it comes from a conspiracy of perjurers is null?*

J. *That is the case when the witnesses cannot tell you the exact day or hour of the event that they claim has happened, so then there is no evidence here at all; but in the present case the reason that the testimony is not subject to the usual test is that the thief himself has in all aspects corroborated what they said to begin with!*

I.5 A. The master has said: "They have to pay the double indemnity":

B. Now, since the thief has admitted that he committed the theft, so he has to pay the principal, why should the witnesses have to pay the double indemnity?

C. Said R. Eleazar in the name of Rab, "Repeat the Tannaite formulation: **[76A]** the payment of doubling" [Kirzner: a single payment].

- II.1** A. ...stole and then consecrated [the animal] and afterward slaughtered or sold it, he pays twofold restitution and does not pay fourfold or fivefold restitution:
- B. Say: Now there is no problem understanding why he is not liable in respect to slaughtering the beast, since, at the moment he slaughtered it, it was a sanctified beast, and he did not slaughter a beast belonging to a particular master. But as to the act of sanctifying the beast, he should be held liable. For what difference does it make to me whether he sold it to a common person or whether he sold it to Heaven?
- C. Well, then, who is the authority behind this passage? It is R. Simeon, who takes the view that Holy Things which one is responsible to replace in the event of loss remain classified as belonging to the domain of the owner [who has consecrated them].
- D. But since the concluding clause is explicitly assigned to R. Simeon, it would seem to follow that the opening clause should not be assigned to him as well! Rather, here, with what sort of a situation do we deal? It is one involving Lesser Holy Things, and the authority behind the rule is R. Yosé the Galilean, who has said that Lesser Holy Things are regarded as the property of the owner and they remain in his domain.
- E. But as to Most Holy Things, what is the rule then? Does the thief have to pay in such cases the fourfold or fivefold indemnity? Then, instead of framing matters in the opening clause [with implicit reference to Most Holy Things], ...stole and then consecrated [the animal] and afterward slaughtered or sold it, he pays twofold restitution and does not pay fourfold or fivefold restitution, why should the Tannaite framer of the passage not have divided up matters in such a way as to make a single, continuous and clear statement, namely: [...stole and then consecrated [the animal] and afterward slaughtered or sold it, he pays twofold restitution and does not pay

fourfold or fivefold restitution] — under what circumstances? In the case of Lesser Holy Things. But as to Most Holy Things, **he does pay fourfold or fivefold restitution?** *Rather, in point of fact, there really is no distinction to be drawn between Most Holy Things and Lesser Holy Things. And as to the question that you have raised, For what difference does it make to me whether he sold it to a common person or whether he sold it to Heaven? [in the case of a sale to Heaven, by contrast to one to a private party,] to begin with the ox belonged to Reuben and now it belongs to Simeon. Even though he sold it to Heaven, to begin with the ox belonged to Reuben and now it is still the ox of Reuben.*

- III.1 A. R. Simeon says, “For Holy Things for the replacement, if lost, of which he bears responsibility does he pay fourfold or fivefold restitution. And for those for the replacement, if lost, of which he bears no responsibility, he is exempt”:**
- B. *Say: Granted that R. Simeon takes the view, “What difference does it make to me whether he sold it to a common person or whether he sold it to Heaven?” Then matters should be reversed in this way: As to Holy Things for which the thief bears responsibility for replacement should the animal be lost or stolen, he is exempt [from having to pay the specified indemnities], since they still have not left his domain. But as to Holy Things for which the thief bears no responsibility for replacement should the animal be lost or stolen, he is liable, since they still have left his domain.*
- C. *Say: R. Simeon addresses a different matter altogether, and this is the sense of his Tannaite formulation: One who steals from a thief does not have to pay fourfold or fivefold indemnities, and so too, he who steals an animal that has been consecrated out of the house of the owner is exempt. How come? “...and it be stolen out of the man’s house” (Exo. 22: 6) — and not out of the house of the sanctuary. R. Simeon says, “As to Holy Things for which the thief bears responsibility for replacement should the animal be lost or stolen, he is liable.” How come? To such I apply the phrase, ‘...and it be stolen out of the man’s house’ (Exo. 22: 6). And as to Holy Things for which the thief bears no responsibility for replacement should the animal be lost or stolen, he is exempt. For to them I do not apply the phrase, ‘...and it be stolen out of the man’s house’(Exo. 22: 6).”*
- D. *Well, now, we have indeed heard that R. Simeon rules, “An act of slaughter that is inappropriate [Kirzner: through which the animal*

would not become fit for food] is not classified as an act of slaughter.”
Is the slaughter of Holy Things outside of the sanctuary not in the class of an act of slaughter that is inappropriate [so why should the thief be liable to the indemnities here]?

E. *When R. Dimi came, he said R. Yohanan [said]*, “[The thief would be liable] if he slaughtered unblemished [consecrated] beasts within the Temple court for the sake of the owner.”

F. But lo, the principal is thus restored to the owner [since, after all, the blood rite has been properly carried out, so atoning for the sin for which the beast was set aside]!

G. Said R. Isaac bar Abin, “We deal with a case in which the blood was poured out [not properly sprinkled on the altar, so the blood rite was not carried out, and the owner has not gained the benefit for which he designated the beast].”

H. *When R. Dimi came, he said R. Yohanan [said]*, “[The thief would be liable] if he slaughtered unblemished [consecrated] beasts within the Temple court not for the sake of Heaven.”

I. **[76B]** And R. Simeon b. Laqish said, “Liability would be incurred by the thief if he outside of the Temple courtyard slaughtered animals designated as Holy Things that were blemished” [Kirzner: as these may be slaughtered outside of the Temple even without being first redeemed].

J. *R. Eleazar was taken by surprise by the statement of R. Yohanan*: “Is it the act of slaughter that renders the animal that has been sacrificed permissible for eating [when an unblemished animal designated as a Holy Thing was sacrificed in the Temple]? Is it not the sprinkling of the blood that permits eating the remainder of the meat?”

K. *R. Eleazar was taken by surprise by the statement of R. Simeon b. Laqish*: “Is it the act of slaughter that renders the animal [in the situation to which Simeon b. Laqish made reference] permissible for eating? Is it not the act of redemption of the beast that permits the eating of the meat?”

L. *But in expressing his amazement, it turns out that he had overlooked the statement of R. Simeon*: “Whatever is ready to be sprinkled is tantamount to having been sprinkled, and whatever is ready to be redeemed is tantamount to having been redeemed.”

M. Whatever is ready to be sprinkled is tantamount to having been sprinkled, *as has been taught on Tannaite authority*: **R. Simeon** says, “There is that which is left over of the sacrifice that receives uncleanness as food, and there is that which is left over of the sacrifice that does not receive uncleanness as food. How so? If the meat of the offering was left overnight before sprinkling the blood, that which is left over that does not receive uncleanness as food. If the meat of the offering was left overnight after sprinkling the blood, that is left over that does receive uncleanness as food. [As to flesh of the sacrifice that has been rendered refuse because the officiating priest has formed the improper intention of eating his share at an improper time, in the case of Most Holy Things or Lesser Holy Things, it does not receive uncleanness as food. The afternoon-offering that has been made refuse nonetheless does receive uncleanness as food]” [T. Uqs. 3:12E-H]. *And we have established as fact in connection with this statement: What is the meaning of before sprinkling the blood?* This is prior to the blood’s having become fit to be sprinkled, *and what is the meaning of after sprinkling the blood?* This is after the blood’s having become fit to be sprinkled. *Now what would be a situation in which it was prior to the blood’s having become fit to be sprinkled?* It is a situation in which there was no time during the day to toss the blood, the beast having been slaughtered near sunset. *The meat under these conditions would not become subject to the rules concerning the uncleanness of food. And what would be a situation in which it was after the blood’s having become fit to be sprinkled?* That is an animal that was kept overnight even though there was time during the prior day for the sprinkling of the blood, and in that case, the meat would be subject to the rules of uncleanness governing food. It therefore follows that whatever is ready to be sprinkled is tantamount to having been sprinkled.

N. ...and whatever is ready to be redeemed is tantamount to having been redeemed, *as has been taught on Tannaite authority*: **R. Simeon** says, [77A] “A red cow imparts

uncleanness as food because at some one moment at the very least it was fit for food [before it was designated for its present purpose]" [T. Par. 7:9A]. And in this connection stated [77B] R. Simeon b. Laqish, "R. Simeon would say that a red cow may be redeemed even though it has already been put on the wood pile where it is to be burned!" *It therefore follows that* whatever is ready to be redeemed is tantamount to having been redeemed.

O. Now, it is clear, R. Yohanan did not rule as did R. Simeon b. Laqish, because he wanted to explain the Mishnah paragraph in such a way that the law could apply even to unblemished animals. But how come R. Simeon b. Laqish did not rule in accord with the view of R. Yohanan?

P. R. Simeon b. Laqish will say to you, "'And he slaughtered it or sold it' (Exo. 21:37) — *an animal that is subject to the law when it is sold is also subject to this law when it is slaughtered, while an animal that is not subject to this law when it is sold cannot be subject to this law if it is slaughtered. In the case of unblemished sacrifices, if the thief had sold the animals designated as a sacrifice, the sale would have been null, these animals also are not subject to the law if they were slaughtered either.*"

Q. *Each of these authorities is consistent with rulings made in other contexts, for it has been stated: He who sells a [stolen] beast that was unfit for Israelite consumption — in the report of R. Simeon on the matter — R. Yohanan said, "He is liable," and R. Simeon b. Laqish said, "He is exempt."*

R. R. Yohanan said, "He is liable:" *Even though the beast is not subject to indemnities by reason of its having been slaughtered, it is, nonetheless, subject to the appropriate indemnities by reason of its having been sold.*

S. And R. Simeon b. Laqish said, "He is exempt:" *An animal that is not subject to this law when it is sold cannot be subject to this law if it is slaughtered.*

T. R. Yohanan objected to the view of R. Simeon b. Laqish on the strength of the following rule: **He who stole a hybrid**

animal and slaughtered it, a terefah animal and sold it, has to pay the fourfold or fivefold indemnity [cf. T. B.Q. 7:16B]. *Now would this rule not be formulated within the framework of the position of R. Simeon [Kirzner: for if otherwise, why not state the matter of slaughter in the case of the terefah animal?] and, it must follow, an animal that is not subject to this law when it is slaughtered most certainly can be subject to this law if it is sold?"*

U. *He said to him, "No, it represents the view of rabbis [Kirzner: according to whom even for slaughter in the case of a terefah beast there is liability for the indemnity]."*

V. *He said to him, "Well, if this is the position of rabbis, how come the terefah beast is subject to the indemnity involving sale but not to the indemnity that is the sanction for slaughtering the beast?"*

W. *So what is to be said? That is is the view of R. Simeon [who exempts one from the cited sanctions in the case of a terefah beast]? Then why should the thief who steals and slaughters or sells a hybrid beast be subject to the indemnities for slaughtering it and not to the indemnities for having sold it? So we must say that while only the matter of slaughter is mentioned, the same rule pertains also to selling it; and so too, with respect to rabbis, while in context reference is made only to sale, still, the same rule applies to slaughter as well.*

X. *And R. Yohanan will say to you, "Now what's this? True enough, there is no problem with respect to the claim that the passage accords with R. Simeon. Since the framer of the passage had to make reference to liability in respect to a terefah beast only in one case [namely, that of selling it], only a single reference to liability in respect to the hybrid animal is stated only in one instance in the matter of slaughter. But if you say that the ruling accords with rabbis, then why not rephrase matters as a single rule, in the following language, which covers all cases: If one stole a hybrid beast or a terefah beast, slaughtered or sold it, he pays the fourfold or fivefold indemnity."*

Y. *So that's a legitimate question.*

III.2 A. [Now why is there liability to the fourfold or fivefold indemnity in the case of stealing and slaughtering or selling a hybrid, since] Scripture says, “Sheep,” and said Raba, “This is the generative case governing every passage in which reference is made to ‘sheep,’ in which case the intent is only to exclude from the rule the case of a hybrid animal [which is not regarded as a sheep alone]”?

B. *The present case is exceptional, since Scripture used the word “or,” (Exo. 21:37), which serves to extend the law even to the hybrid.*

C. But then does every usage of the word “or” serve to extend the law under discussion? *And has it not been taught on Tannaite authority: “When a bullock of a sheep” (Lev. 22:27) — excluding a hybrid; “or a goat” (Lev. 22:27) — excluding a beast that even looks like a hybrid?*

D. *Said Raba, “Well, in the one case the use of the word ‘or’ is explained in the context of the verse in which it occurs, and in the other case, the use of the word ‘or’ is explained in the context of the verse in which it occurs. In the present case, with reference to theft, in which case it is written, ‘ox or sheep,’ since there is no possibility of producing a hybrid from an ox and a sheep, ‘or’ serves to include a hybrid of a different species; in the context of sacrifices, where at issue is ‘a sheep or a goat,’ where there can be a hybrid from the union, the ‘or’ serves as exclusionary.”*

E. **[78A]** *Well, with respect to Holy Things, we also find a reference to “bullock or sheep,” and here, there is no possibility of producing a hybrid from an ox and a sheep, so why not utilize the “or” to include a hybrid of a different kind?*

F. *Well, since the use of the word “or” in the latter phrase [sheep, goat] serves as exclusionary, the use of*

the term “or” in the prior one [bullock, sheep] likewise should be exclusionary.

G. Well, now, why not go the other route: Well, since the use of the word “or” in the former phrase [sheep, goat] serves as inclusionary, the use of the term “or” in the latter one [bullock, sheep] likewise should be inclusionary.

H. How so? I see no problem if you maintain that the word serves as exclusionary, in which case it is necessary to make use of two exclusionary constructions, for even though it is necessary explicitly to exclude the hybrid, it also is necessary explicitly to exclude a beast that appears to look like a hybrid. But if the word serves as inclusionary, why in the world would I need explicit inclusionary constructions [when one is enough]? If, after all, Scripture explicitly means to include a hybrid beast, what need do I have to be told that a beast that looks like a hybrid also is included under the law?

I. Well, then, for what concrete legal purpose do we require the statement made by Raba, “This is the generative case governing every passage in which reference is made to ‘sheep,’ in which case the intent is only to exclude from the rule the case of a hybrid animal [which is not regarded as a sheep alone]”? If it has to do with Holy Things, this is explicitly stated in the following: “A bullock or a sheep” excludes a hybrid! And if it has to do with tithe, the rule governing that case is derived by the verbal analogy between tithe and Holy Things established by the common presence of the word “instead.” And if it has to do with the firstling, then the rule common to both the firstling and tithe is established by the presence of the word “passing” used in both connections. And if you should propose that it is to deal with the beast

that appears to be a hybrid, which you may claim is not subject to the law of the firstling, since it is written, “but the firstling of an ox” (Num. 18:17), meaning, the law applies only if it is of the species of the ox and the firstling is of the species of the ox — so, in all, what issue can be raised concerning the hybrid itself [to which Raba can have made reference]?

*J. So, when the statement of Raba was made, it addressed the matter of the firstling of an ass, as we have learned in the Mishnah: **They do not redeem [a firstling of an ass] with (1) a calf, or (2) with a wild beast, or (3) with an animal which has been properly slaughtered, or (4) with an animal which is terefah, or (5) with a hybrid [of a he-goat and a ewe], or (6) with a koy [the offspring of a he-goat and a hind] [M. Bekh. 1:5A].***

*K. And from the viewpoint of R. Eleazar, who permits in the case of a hybrid, as we learn in the same Mishnah paragraph, **R. Eliezer permits in the case of a hybrid, because it is deemed a lamb**, for what legal purpose was Raba’s statement made?*

L. R. Eleazar may say to you, “When the statement of Raba was made, it was to indicate that an unclean animal born from a clean animal that became pregnant by an unclean animal is forbidden as food [for example, a cow that became pregnant from a horse and gave birth to a foal or a sheep that became pregnant from a swine and gave birth to a swine].”

M. And that is not in accord with R. Joshua, for R. Joshua derived the rule

from the language, “A sheep born from a pair of lambs, a goat born from a pair of goats” (Deu. 14: 4) — the father must be a sheep and the mother a sheep [for the offspring to be available for food].

N. So does a clean animal become pregnant by an unclean animal?

O. Yup. We have it as an established fact that [78B] it could become pregnant from an animal with uncloven hooves [born from parents belonging to a species of an ox, considered unclean] in the opinion of R. Simeon, [R. Simeon says, “The word camel occurs twice [at Lev. 11:4 and at Deu. 14:7], once referring to a camel born from a camel, which is forbidden, the other, to a camel born of a cow” (T. Bekh. 1:9A-C)].

III.3 *A. Raba raised this question: “If someone said, ‘Lo, incumbent upon me is a burnt-offering,’ and he then designated for that purpose an ox, and someone else came and stole the ox — from the perspective of rabbis, can the thief exempt himself [from any further claim on the part of an owner] by supplying him with funds for a sheep [for the burnt-offering that is owed], and from the perspective of R. Eleazar b. Azariah, by supplying him with funds for a bird? That would be in line with what we have learned in the Mishnah: [He who says], “Lo, I pledge myself [to bring] a burnt-offering” brings a lamb [the smallest acceptable burnt-offering]. R. Eleazar b. Azariah says, “Or a turtledove, or a pigeon [a fowl also is acceptable as a burnt-offering]” [M. Men. 13:6A-B]. Now what would the law be in this case? Do we say the householder has taken upon himself the obligation to bring an animal that falls into the category of a burnt-*

offering, so the thief restores whatever may serve for that purpose, or may the householder say to the thief, 'I want to carry out my obligation in the most generous possible manner'?"

B. After he had raised the question, Raba resolved the question in this way: "From the perspective of rabbis, the thief may exempt himself [from any further claim on the part of an owner] by supplying him with funds for a sheep [for the burnt-offering that is owed], and from the perspective of R. Eleazar b. Azariah, by supplying him with funds for a bird."

C. R. Aha b. R. Iqa repeated this solution along with the question: "Said Raba, 'If someone said, "Lo, incumbent upon me is a burnt-offering," and he then designated for that purpose an ox, and someone else came and stole the ox, from the perspective of rabbis, the thief exempt himself [from any further claim on the part of an owner] by supplying him with funds for a sheep [for the burnt-offering that is owed], and from the perspective of R. Eleazar b. Azariah, by supplying him with funds for a bird.'"

I.1 shows that the statement of the Mishnah is required, even though it appears self-evident. No. 2 then glosses the foregoing, and Nos. 3-4+5 continue the same inquiry. **II.1** asks an exegetical question and works out the answer by finding the authority behind the Mishnah. **III.1**, complemented by No. 2, carries forward the prior discussion, now with reference to the next clause of the Mishnah. No. 3 completes the discussion with a secondary point of refinement.

7:5A-F

- A. (1) [If] one sold [all] but one hundredth part of [a stolen ox or sheep],
- B. (2) or if [the thief already] owned a share of it,
- C. (3) he who slaughters [an ox or a sheep] and it turns out to be made into carrion by his own hand,
- D. (4) he who pierces [the windpipe],
- E. (5) and he who tears out [its gullet]
- F. pays twofold restitution and does not pay fourfold or fivefold restitution.

- I.1** A. *What is the meaning of the language, but one hundredth part of [a stolen ox or sheep]?*
- B. Said Rab, "Except for any part of the beast that would be rendered available as food, along with the bulk of the beast, in the proper process of slaughter." [Kirzner: Excepted then is wool or horn, so that the law would not extend to a case in which the wool or horns were excluded from the sale.]
- C. And Levi said, "Except for the wool."
- D. *And so, too, it has been taught in a Tannaite formulation:* Except for the wool.
- E. *An objection was raised:* **If the thief sold the animal, except for its foreleg, except for its hind leg, except for its horn, or except for its fleece, he does not have to pay fourfold or fivefold restitution.**
- F. Rabbi [T.: Meir] says, "If he sold an ox or a sheep except for some part of the beast the absence of which would prevent the animal from being properly slaughtered [T.: on which life depends], he pays twofold restitution. If he sold it except for some part of the beast on which life does not depend, he pays fourfold or fivefold restitution."
- G. [T.'s version:] R. Simeon b. Eleazar says, "If he sold it except for its foreleg or except for its hind leg, he pays twofold restitution. If he sold it except for its horn or its fleece, he pays twofold restitution as well as fourfold or fivefold restitution" [T. **B.Q 7:18H-L**].
- H. *Now, there is no problem here for Levi, since he has made his statement within the framework of the opinion of the initial authority, but in accord with whom is Rab's view set forth* [since he cannot concur with Rabbi, who would regard the exclusion of the fore-paw as null, and this is rendered permissible through the process of slaughter (Kirzner)]?
- I. *He made his statement in accord with the version of the following Tannaite authority, for it has been taught on Tannaite authority:* R. Simeon b. Eleazar says, "If he sold it except for its foreleg or except for its hind leg, he does not have to pay the fourfold or fivefold indemnity; if he sold it except for its horn, except for its wool, he does have to pay the fourfold or fivefold indemnity."

- I.2** A. *What is at issue among these authorities?*
- B. *The initial Tannaite authority reads "and he slaughter it" (Exo. 21:37) to mean, we require that he slaughter the whole of it [for liability to the fourfold or fivefold indemnity to be incurred], "and he*

sell it,” we require that he sell the whole of it [for liability to the fourfold or fivefold indemnity to be incurred]. Rabbi takes the view that the language, “and he slaughter it” (Exo. 21:37) refers to those parts the absence of which would make the slaughter null, excluding therefore anything that has no relationship to the matter of slaughter at all, “and he sell it,” is understood by analogy to the language referring to slaughter. R. Simeon b. Eleazar, for his part, takes the view that the horn, which is not a part that is ordinarily cut off, would be regarded as a consequential exception, so that the thief who sold the animal except for the horn would not have to make a fourfold or fivefold indemnity payment, but the wool of the animal, which is usually shorn, would not be regarded as a consequential exception, and in that case, he still would have to make the fourfold or fivefold indemnity payment. And the other Tannaite authority of the household of R. Simeon b. Eleazar [who assigns to the master a different view] takes the position that the foreleg or hind leg, which are rendered permissible only if the beast is properly slaughtered, would constitute a significant exception, in which case the thief who sold the beast having made such an exception would not have to pay a fourfold or fivefold indemnity, but as to the horns or wool, which can be used even if the animal is not properly slaughtered, would not form a consequential reservation.

C. Yeah, well, anyhow, doesn't R. Simeon b. Eleazar contradict himself?

D. No, but what we have are two Tannaite formulations of his position.

- I.3**
- A. Our rabbis have taught on Tannaite authority:
 - B. **He who steals an ox or a sheep that was mutilated, lame or blind, he who steals a beast belonging to partners, is liable to pay the fourfold or fivefold indemnity. But if partners stole an ox or a sheep, while they pay a twofold indemnity, they are exempt from having to pay in addition fourfold or fivefold indemnities [T. B.Q. 7:16A-D].**
 - C. But do we not have a Tannaite formulation: If partners stole, they are liable?
 - D. Said R. Nahman, “There is no conflict between these two formulations. The one speaks of a partner who steals a beast that belongs to himself and another

partner, and the other speaks of a case in which the partnership stole from third parties [so the partnership is liable].”

- E. *Objected Raba*, “‘‘Might one suppose that a partner who steals a beast belonging to himself and his fellow partner, or if a partnership commits a theft, they are liable? Scripture states, ‘‘and slaughter it’’ (Exo. 21:37) — *we require for the law to apply that the slaughter affect the whole of it, and that is not in hand here.*’’” [Kirzner: Does this not prove that partners stealing from outsiders also are exempt?]
- F. *Rather, said R. Nahman*, “‘‘There is no conflict between these two formulations. The one passage [in which liability is incurred] speaks of a case in which one partner slaughtered the beast with the full knowledge and consent of his fellow, the other who slaughtered a beast not with the full knowledge and consent of his fellow.’’”

- I.4 A. *R. Jeremiah raised this question*: “‘‘If the thief sold the beast, excepting ownership during the initial thirty days [which the thief would retain for himself], or excepting the work that it may perform, or excepting ownership of its embryo, what is the law? *Now that last item would not be a question from the viewpoint of him who maintains that the embryo is no more than a limb of the mother, since that would constitute an effective exclusion. Where the problem would arise, it would be within the premise of him who maintains that the embryo is a distinct being from the limb of the mother. Now what is the law? Shall we say that, since the embryo is joined to the mother, it is validly excepted, or since it is going to be separated from the mother, it is not validly excepted?*’’”
- B. *Some frame the question in this way*: “‘‘Since it is not equivalent to the limb of the mother, it is not a valid exception, or perhaps, since at that time it has to be united with the mother so that only through a process of slaughter of the mother does it become permissible for food, it is a valid exception made in the actual corpus of the mother?’’”
- C. *The question stands.*

- I.5 A. *R. Papa raised this question*: “‘‘If the thief stole the beast and cut off a piece of it and then sold it, what is the law? *Do we say, what he stole he did not sell, he is exempt? Or since he has excepted nothing for himself in what he sold, he is liable?*’’”
- B. *The question stands.*

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

- B. If one stole and gave the ox and sheep to someone else, who slaughtered it,
- C. or stole and gave it to someone else, who sold it,
- D. [79A] or stole and traded an ox,
- E. or stole and consecrated the ox or sheep,
- F. or stole and gave the ox or sheep to someone else as a gift,
- G. or stole and gave the ox or sheep to someone as a loan,
- H. or stole and paid with the ox or sheep a debt that he owed,
- I. or stole and sent the ox or sheep to his father-in-law's house as a gift,
- J. he must pay the fourfold or fivefold indemnity [T. B.Q. 7:14A-I].

- I.7** A. *So what does this formulation tell us that we did not already know?*
- B. *What this formulation tell us that we did not already know is in the opening clause, namely: **If one stole and gave the ox and sheep to someone else, who slaughtered it***
- C. *What we learn thereby is that in the present context, there can be an agent who incurs for the person who appoints the agent liability for performing a transgression, for, while, in the entirety of the Torah, there cannot be an agent to perform a transgression, in the present context, there can be an agent who incurs for the person who appoints the agent liability for performing a transgression. How come? Scripture says, "and slaughtered it and sold it," with the meaning, just as in the case of selling the animal, which cannot be accomplished without the involvement of a third party [the one who buys the beast!], so in the case of slaughtering the animal, this can be accomplished through the involvement of a third party.*
- D. *Not only so, but what this formulation tell us that we did not already know is in the concluding clause, namely: **or stole and consecrated the ox or sheep**, meaning that it makes no difference to me whether he sold it to a private person or to Heaven.*

I.1, with its talmud at No. 2, commences with an explanation of language used in the Mishnah. No. 3, enriched by secondary refinements that form its talmud at Nos. 4, 5, complements our Mishnah passage with a Tannaite entry. No. 6, with its talmud at No. 7, follows suit.

7:5G-K

- G. [If] (1) he stole it in the owner's domain but slaughtered or sold it outside of his domain,
- H. or (2) [if] he stole it outside of his domain and slaughtered or sold it in his domain,
- I. or (3) if he stole and slaughtered or sold it outside of his domain,
- J. he pays fourfold or fivefold restitution.
- K. But if he stole and slaughtered or sold it [wholly] in his domain, he is exempt.

7:6

- A. [If the thief] was dragging [a sheep or ox] out [of the owner's domain], but it died in the domain of the owner,
- B. he is exempt.
- C. [If] he lifted it up or removed it from the domain of the owner and then it died, he is liable.
- D. [If] he handed it over for (1) the firstborn-offering at the birth of his son,
- E. or (2) to a creditor,
- F. to (3) an unpaid bailee,
- G. or (4) to a borrower,
- H. or (5) to a paid bailee,
- I. or (6) to a renter,
- J. and [one of these] was dragging it away, and it died in the domain of the owner,
- K. he is exempt.
- L. [If] he raised it up or removed it from the domain of the owner and then it died, he is liable.

- I.1** A. *Amemar raised this question:* "In the case of bailees, has the rite of transfer through drawing the beast been decreed [as it is in the case of those who purchase the beast], or is that not the case?"
- B. *Said R. Yemar, "Come and take note:* **[If] he handed it over for (1) the firstborn-offering at the birth of his son, or (2) to a creditor, to (3) an unpaid bailee, or (4) to a borrower, or (5) to a paid bailee, or (6) to a renter, and [one of these] was dragging it away, and it died in the domain of the owner, he is exempt.** *Now does this not refer to a bailee, with the*

result that it is indeed the fact that in the case of bailees, the rite of transfer through drawing the beast has been decreed [as it is in the case of those who purchase the beast]?”

- C. *He said to him, “No, it refers to the case of a thief.”*
- D. *But has this not been encompassed in the prior Tannaite statement: **[If] he stole it in the owner’s domain** [which indicates that the theft is complete only if the thief has dragged the beast and so acquired title to it]?*
- E. *In that case, the reference is to a thief that steals from the household of the owner of the beast, and here the rule addresses the case of the thief’s stealing the beast from the household of a bailee.*
- F. *Said to him R. Ashi, “Don’t try to put people off in such a way. What difference is there between stealing from the household of the bailee or stealing from the household of the owner? But does this not mean that indeed, in the case of bailees, the rite of transfer through drawing the beast has been decreed [as it is in the case of those who purchase the beast]?”*
- G. *Quite so, that is the clear implication of the passage before us.*

I.2

- A. *It has been stated:*
- B. *Said R. Eleazar, “Just as sages instituted the requirement of effecting possession through an act of drawing on the part of purchasers, so sages instituted the requirement of effecting possession through an act of drawing on the part of bailees.”*
 - C. *So, too, it has been taught on Tannaite authority: Just as sages instituted the requirement of effecting possession through an act of drawing on the part of purchasers, so sages instituted the requirement of effecting possession through an act of drawing on the part of bailees. And just as real estate is acquired through the exchange of money, a deed, and a formal act of taking physical possession [for example, digging], so hiring is effected through the exchange of money, a deed, and a formal act of taking physical possession.*

I.3

- A. *Now [assuming that we speak of movables, and money does not effect the transfer of title of movables], what is “hiring” doing on this list? If we say **[79B]** that it is “hiring” of movables, are movables transferred by a deed anyhow?*
- B. *Said R. Hisda, “The rule pertains to renting real estate.”*

- I.4** A. Said R. Eleazar, "If people saw a thief concealed in woods [where flocks are located] and there slaughtering or selling sheep or oxen, he has to pay the fourfold or fivefold indemnity."
- B. *But why should this be the case? Lo, he has not also acquired the beast through drawing it?*
- C. Said R. Hisda, "He hit it with a stake."
- D. *Say: Yes, but since he was seen publicly doing this, is he not in the classification of a robber [and so be exempt from having to pay the indemnities]?*
- E. *Well, at the same time he was concealing himself from view, so he is classified as a thief [liable to pay indemnities].*

The Thief and the Robber: The Difference

The reference in the foregoing to the distinction between a thief and a robber explains the introduction of the following composite on that subject.

- I.5** A. *So what is the definition of a robber?*
- B. Said R. Abbahu, "It would be someone like Benaiah, son of Jehoiadah: 'And he plucked the spear out of the Egyptian's hand and slew him with his own spear' (2Sa. 23:21)."
- C. R. Yohanan said, "It would be someone like the men of Shechem: 'And the men of Shechem set people to lie in wait for him on the tops of the mountains, and they robbed everyone that came along that way by them, and it was told to Abimelech' (Jud. 9:25)."
- D. *How come R. Abbahu did not present his evidence from this passage?*
- E. *He would say, "Since they were concealing themselves, they do not fall into the category of robbers."*
- F. And R. Yohanan?
- G. *He would say to you, "The reason they were concealing themselves was so that people would not realize they were there and run away from them."*

- I.6** A. **The disciples asked Rabban Yohanan ben Zakkai, "On what account does the Torah impose a more strict rule on the thief [who pays not only the double indemnity but also the fourfold and fivefold indemnities if he slaughtered or sold the sheep or ox] than upon the robber [who pays only the value of the thing he has stolen, in line with Lev. 5:23]?"**

- B. He said to them, “This one has treated in the same way the honoring owing to the slave and the honor owing to the master, but this one has not treated in the same way the honor owing to the slave and the honor owing to the master. It is as though he has treated the eye that is below as though it does not see, and the ear that is below as though it does not hear, in line with this verse: ‘Woe to those who seek to hide their counsel deep, away from the Lord, and their works are done in the dark, and who say, who sees us, and who knows us’ (Isa. 29:15); ‘and they say, the Lord will not see neither will the god of Jacob hear’ (Psa. 94: 7); ‘for they say, the Lord has forsaken the earth and the Lord sees not’ (Eze. 9: 9)” [T. **B.Q. 7:2A-K**].

I.7 A. Said R. Meir, “They have presented the following parable in the name of Rabban Gamaliel: To what are the thief and the robber comparable? To two people who lived in the same town and made parties. One invited the townsfolk but not the royal family, the other, neither the townsfolk nor the royal family. Who is subject to the more severe reprisal? It is the one who invited the townsfolk but not the royal family” [T. **B.Q. 7:2G-L**].

I.8 A. Said R. Meir, “Come and reflect on how beloved is hard work before him who merely by speaking brought the world into being: for an ox, because the thief has kept it away from its work for the farmer, the thief pays fivefold compensation. For a sheep, which does no labor for the owner, the thief pays fourfold compensation.’

- B. Said Rabban Yohanan b. Zakkai, “Come and reflect on how the Omnipresent takes pity for the honor owing to humanity. For an ox, because it goes along on its own feet, the thief has to pay fivefold compensation. For a sheep, which the thief has to carry upon his shoulder, the thief pays only fourfold compensation” [T. **B.Q. 7:10**].

I.1, carrying a footnote and appendix at Nos. 2-3, 4+5, with a tacked on item at Nos. 6-8, utilizes our Mishnah paragraph for the solution of a free-standing theoretical question.

7:7

- A. They do not rear small cattle in the Land of Israel,
B. but they do rear them in Syria and in the wastelands which are in the Land of Israel.
C. They do not rear chickens in Jerusalem, on account of the Holy Things,

- D. **nor do priests [rear chickens] anywhere in the Land of Israel, because of the [necessity to preserve] the cleanness [of heave-offering and certain other foods that are handed over to the priests].**
- E. **They do not rear pigs anywhere.**
- F. **A person should not rear a dog, unless it is kept tied up by a chain.**
- G. **They do not set traps for pigeons, unless they are thirty ris from a settlement.**

I.1

- A. *Our rabbis have taught on Tannaite authority:*
- B. They do not rear small cattle in the Land of Israel, but they do rear them in woodlands in the Land of Israel, and in Syria, even in inhabited areas, and one need not say outside of the Land of Israel altogether.
- C. *It has further been taught on Tannaite authority:*
- D. They do not rear small cattle in the Land of Israel, but they do rear them in the wilderness of Judah and in the wilderness at the border of Akko.
- E. And even though sages have said, “They do not raise small cattle,” they may in any event raise large cattle, for a decree may not be issued for the community that the majority of the community can carry it out. **In the case of small cattle, it is possible to import them from abroad; in the case of large cattle, it is not possible to import them from abroad [cf. T. B.Q. 8:11B].**
- F. And even though sages have said, “They do not raise small cattle,” one may nonetheless hold on to them for thirty days prior to a festival, or for thirty days prior to the celebration of a wedding of one of his sons. But he may not hold on to an animal bought for thirty days, if the thirty days expire after the festival. *So if the festival was already passed, even though from the time that he bought the animal until the time that thirty days have gone by is not yet over, we do not say that for a period of thirty days it is permitted to keep the animal. As soon as the festival has passed, he should not hold on to it any longer.*
- G. **[80A]** But a butcher may purchase and slaughter, purchase and hold a beast, so long as he does not hold on for more than thirty days to an animal that he has bought.

I.2

- A. The disciples asked Rabban Gamaliel, “What is the rule about breeding small cattle?”
- B. He said to them, “It is permitted.”

- C. *But have we not learned in the Mishnah: They do not rear small cattle in the Land of Israel?*
- D. *This is what they asked him:* “What is the rule as to holding onto them?”
- E. He said to them, “It is permitted, on condition that the beast not go out to pasture with the herd, but is fastened to the leg of the bed.”

I.3

- A. *Our rabbis have taught on Tannaite authority:*
- B. There is the case of a certain pious man, who groaned because of heartburn, and they asked the physicians, who said, “There is no remedy unless he drink hot milk from a goat morning by morning.” So they brought a goat and tied it to the foot of his bed, and he would suck hot milk from it morning by morning.
- C. Some time later his friends came to visit him. When they saw the goat [a small beast, which it is forbidden to keep in the Land of Israel], they said, “An armed robber is in his house, and are we going to visit him?”
- D. [When he died,] they went into session and they examined his case and found that that sin involving the goat was the only sin that pertained to him. He too, when he was dying, said, “I know in my own regard that that sin involving the goat was the only sin that pertained to me, for in that case I violated the teachings of my colleagues. [For sages have taught, ‘People are not to raise small cattle in the Land of Israel.’]”

I.4

- A. **Said R. Ishmael, “My father was one of the householders of Upper Galilee, and how come his properties were wiped out? Because they would pasture their flocks in forests, try civil cases with a single judge, [T.: and raised small cattle.] The forests were nearly contiguous with their lands, but there was a little field nearby that belonged to someone else, and the cattle was led in and out by way of this” [T. B.Q. 8:14A-E].**

I.5

- A. *Our rabbis have taught on Tannaite authority:*
- B. **A shepherd of small cattle in the Land of Israel who wanted to repent — they do not obligate him to sell all of them simultaneously, but he proceeds to sell them one by one. If someone received as an inheritance pigs or dogs, they do not require him to sell them all simultaneously, but he proceeds to sell them little by little [T. B.Q. 8:15].**
- C. **So too, if someone took a vow to purchase a house or marry a woman in the Land of Israel, they do not require him to do so right away, but he may wait until an appropriate one for him becomes available.**

D. Now there was the case of a woman's son who was causing her trouble about remarrying. she said, "Qonam! Whomever he will send to me — I won't turn him down!" Now there were two unsuitable men who heard about it, and they went and laid a claim on her to marry one of them. The case came before sages, who ruled, "This woman intended to marry the first person who comes along, only if she will find one who is appropriate for her to marry" [T. B.Q. 8:16].

I.6 A. Just as they do not raise small domesticated cattle, so they do not raise small wild beasts.
B. R. Ishmael [T.: Simeon b. Eleazar] says, "They raise dogs, porcupines, cats, and apes — that is, things that peck about the house" [T. B.Q. 8:17A-D].

I.7 A. *What is the definition of things that peck about the house?*
B. Said R. Judah, "It is a creeping thing of the *harsa* species."
C. *Some say, "It is a harza thing that has thin legs, which pastures among the rose bushes, and it is called 'creeping' because it has legs that are short and underneath it."*

I.8 A. Said R. Judah said Rab, "In Babylonia we have treated ourselves as equivalent to the Land of Israel when it comes to the rule governing small cattle."

I.9 A. *Said R. Adda bar Ahbah to R. Huna, "So what about yours?"*
B. *He said to him, "As to ours, they are taken care of by [my wife,] Hoba."*
C. *"So is Hoba ready to bury her son?"*
D. *Throughout the entire lifetime of R. Adda bar Ahbah, no child of Hoba with R. Huna lived.*
E. *There are those who say:* Said R. Huna said Rab, "In Babylonia we have treated ourselves as equivalent to the Land of Israel when it comes to the rule governing small cattle," *that is, from the time that Rab came to Babylonia.*

I.10 A. *Rab, Samuel, and R. Assi came to the celebration of the "week of the son" [the occasion of the circumcision], and some say, the redemption of the firstborn. Rab did not go on before Samuel, [80B] and Samuel would not go in before R. Assi, and R. Assi would not go in before Rab. They said, "Who will go in last," and concluded that Samuel should go in last, and Rab and R. Assi together.*

- B. *But why should not Rab or R. Assi have gone in last?*
- C. *Rab meant to pay a rather routine courtesy to Samuel, on account of the occasion when a curse against Samuel had escaped Rab's lips, so Rab gave Samuel precedence.*
- D. *While all this was going on, a cat came by and bit off the hand of a child. Rab went out and expounded: "As to a cat, it is permitted to kill it and forbidden to keep it, and there is no consideration in its regard as to robbery, nor does one have to return it to its owner."*
- I.11** A. *So, since you said it is permitted to kill it, what need is there to add, and forbidden to keep it?*
- B. *What might you otherwise have supposed, that, while it is permitted to kill it, still, it is not forbidden to keep it? We are thereby told that that is not the case.*
- C. *Say: And since you have said, there is no consideration in its regard as to robbery, why bother to add, nor does one have to return it to its owner?*
- D. *Said Rabina, "This refers to the hide of a dead cat."*
- E. *It was objected: R. Ishmael [T.: Simeon b. Eleazar] says, "They raise dogs, porcupines, cats, and apes — that is, things that peck about the house" [T. B.Q. 8:17A-D]. [So why is it not permitted to keep cats?]*
- F. *There is no contradiction, the latter speaks of black cats, the former, white ones.*
- G. *Yeah, well, wasn't the assault in the case Rab knew about done by a black cat?*
- H. *Well, as a matter of fact, that was a black cat that was born of a white one.*
- I. *And didn't Rabina raise his question about this very case? For asked Rabina, "What is the law regarding a black cat the offspring of a white cat?"*
- J. *When Rabina raised that question, it concerned a black cat the offspring of a white cat that was the offspring of a black cat, while Tab's cat was a black cat that was the offspring of a white cat that was the offspring of a white cat.*

Other Rules on Correct Management of the Land of Israel

What follows is an enormous composite on the general theme of rules that govern the implicit rights of Israelites in the Land of Israel. Received Tannaite formulations are systematically supplied with talmuds, following a single pattern.

- I.12** A. Said R. Aha bar Pappa in the name of R. Abba bar Pappa in the name of R. Adda bar Pappa, and some say, said R. Abba bar Pappa in the name of R. Hiyya bar Pappa in the name of R. Aha bar Pappa, and some say, said R. Abba bar Pappa in the name of R. Aha bar Pappa in the name of R. Hanina bar Pappa, “They sound the shofar as an alarm even on the Sabbath day on account of an epidemic of itching.
- B. “A door that is closed is not going to be quickly reopened [for example, the door of prosperity once shut is not rapidly reopened].
- C. “He who buys a house in the Land of Israel — even on the Sabbath day they write out the deed.”
- D. *An objection was raised:* On account of all other misfortunes that may come upon the community, for example, itching, locusts, flies, hornets, mosquitoes, a plague of serpents or scorpions, they would not sound the shofar alarm, but they would cry out [which proves that they do not sound the alarm on the Sabbath as just now alleged].
- E. *No problem, in the one case we speak of when the plague marks are wet, in the other dry [and they sound the alarm when the itch is dry and more dangerous].*
- F. For said R. Joshua b. Levi, “The boil that the Holy One, blessed be He, brought on the Egyptians was dry inside and moist outside: ‘and it became a boil breaking forth with blains upon man and beast’ (Exo. 9:10).”

- I.13** A. *What is the meaning of the statement, A door that is closed is not going to be quickly reopened [for example, the door of prosperity once shut is not rapidly reopened]?*
- B. Mar Zutra said, “This speaks of ordination.”
- C. R. Ashi said, “Anyone who suffers ill fortune will not quickly gain good fortune.”
- D. R. Aha of Difti said, “He will never gain good fortune.”
- E. *That really is not true, R. Aha of Difti spoke about his own experience.*

I.14 A. “He who buys a house in the Land of Israel — even on the Sabbath day they write out the deed”:

B. *Do you really think that it may be written on the Sabbath?*

C. *Rather, it is in line with what Raba said there: “One may speak to a gentile and have him do it.” Here, too, one may speak to a gentile and have him do it. And even though in general, asking a gentile to work for an Israelite on the Sabbath violates the principle of Sabbath rest, rabbis did not hold to that prohibition when it comes to maintaining the settlement of Israelites in the Land of Israel.*

I.15 A. Said R. Samuel bar Nahmani said R. Jonathan, “He who buys a village in the Land of Israel — they require him to buy for it access roads in all four directions, on account of maintaining the Israelite settlement in the Land of Israel.”

I.16 A. *Our rabbis have taught on Tannaite authority:*

B. There were ten stipulations that Joshua made when the Israelites entered the Land: **[81A]** [1] that cattle may be allowed to pasture in forests; [2] that wood may be gathered freely in private fields; [3] that grass may be gathered freely in private property, except for a field where fenugrec is growing; [4] that shoots may be cut off freely in any place, except for stumps of olive trees; [5] that a spring emerging even to begin with may be used by townsfolk; [6] that it is permitted to fish at an angle in the Sea of Tiberias, so long as no sail is spread out, since this would detain the boats; [7] that it is permitted to take a crap at the back of any fence, even in a field full of saffron; [8] that it is permitted to use paths in private fields until the time that the second rains are anticipated; [9] that it is permitted to turn aside to private paths to avoid road pegs; [10] that someone who is lost in vineyards is permitted to cut through going up or cut through going down; [11] that a dead body that someone finds neglected and subject to immediate burial acquires the spot on which it is found.

I.17 A. That cattle may be allowed to pasture in forests:

B. *Said R. Pappa, “This rule has been stated only with respect to small cattle pasturing in a large forest, but in the case of small cattle pasturing in a small forest or big ones in a big forest, it is not permitted, all the more so, big cattle pasturing in small forests.”*

I.18 A. That wood may be gathered freely in private fields:

B. This rule has been stated only with regard to [Kirzner:] prickly shrubs such as spina regia and hollow. But in the case of other kinds of wood, that is not the rule.

C. And even with regard to prickly shrubs such as spina regia and hollow, that rule applies only if they were attached to the ground, but if they were already cut up, that is not the case.

D. And even if they were attached to the ground, the rule applies only to those that are moist; but to those that are dried up, that does not applied.

E. And in any case it is permitted on condition that one not uproot the plant entirely.

I.19 A. That grass may be gathered freely in private property, except for a field where fenugrec is growing:

B. *Is that to imply that fenugrec gets some benefit from grass [and that is why the grass has to be left to grow there? Then what about the following: ...and so fenugreek which brought up [different] kinds of plants — they do not require him to weed or cut down [some of them], they say to him, “Uproot everything, except for one kind” [M. Kil. 2:5E]? Does this not show that grass is bad for fenugrec?*

C. *Said R. Jeremiah, “There is no contradiction, the one speaks of seeds, the other, pods [used as food]. The seeds are badly affected by the grass, since they make them scrawny, but to the pods, grasses are an advantage, for when the pods are among grasses, they get soft. Or, if you prefer, I may say, one statement refers to cultivated fenugrec, the other, fenugrec sown for animals, and since it was sown for animals, grasses will be needed for it.”*

D. *So how do we know the difference?*

E. *Said R. Pappa, “If it is made in beds, it is sown for man, if not in beds, for animals.”*

I.20 A. That shoots may be cut off freely in any place, except for stumps of olive trees:

B. R. Tanhum and R. Baryas explained in the name of a certain elder, “In the case of an olive tree the size of the length of an egg, it has to be left over at the bottom; in the case of reeds and vines, from the knot upwards [it is permitted to cut shoots]; in the case of all other trees,

one may cut shoots from the thick parts but not from the central part of the tree, and then, only from a new bough, which has not given fruit, but not from a fruit yielding, old bough; and only from spots not exposed to the sun, **[81B]** but not from spots that are exposed to the sun: ‘And for precious things of the fruits of the sun’ (Deu. 33:14).”

- I.21** A. That a spring emerging even to begin with may be used by townsfolk:
B. Said Rabbah b. R. Huna, “The owner has every right to be paid for the water.”
C. *But the law does not accord with his opinion.*

- I.22** A. That it is permitted to fish at an angle in the Sea of Tiberias, so long as no sail is spread out, since this would detain the boats:
B. But one may fish with nets and traps.

- I.23** A. *Our rabbis have taught on Tannaite authority:*
B. **The tribes made the collective stipulation to begin with that no one may spread a sail and detain boats, but one may fish with nets and traps [T. B.Q. 8:17N-O].**

- I.24** A. *Our rabbis have taught on Tannaite authority:*
B. **The Sea of Tiberias was included in the portion of Naphtali, and in addition, Naphtali got a rope’s length of dry land on the southern side to keep nets on: “Possess the sea and the south” (Deu. 33:23) [T. B.Q. 8:18C-D].**

- I.25** A. *It has been taught on Tannaite authority:*
B. **R. Simeon b. Eleazar says, “Things that are harvested that are found in the wilderness — lo, they belong to all of the tribes; and those that are still attached to the ground, lo, they belong to the tribe in whose property they are located” [T. B.Q. 8:18G-H].**
C. **You do not have a single tribe that did not take a portion in the mountains and the plains, in the valleys and in the fields, in the wilderness and in the south country: “Turn you and take your journey and go to the hill country of the Amorites and into all the places near there, in the plain, in the hills, and in the vale, and in the south, and by the seaside” (Deu. 1: 7), and so you can find the same in regard to the Canaanites, Perizites, and Ammonites, who were before them: “and unto**

all night thereto,” proving that the same rule applied to those who were nearby [T. B.Q. 8:19A-B].

- I.26** A. That it is permitted to take a crap at the back of any fence, even in a field full of saffron:
B. Said R. Aha bar Jacob, “This ruling was required only so that one may take a pebble from the fence [for wiping oneself].”
C. Said R. Hisda, “And even on the Sabbath.”
D. *Mar Zutra the pious took a pebble and put it back there, and would tell his servant to go and make it good.*”
- I.27** A. That it is permitted to use paths in private fields until the time that the second rains are anticipated:
B. *Said R. Pappa, “And as to our country, even after the fall of dew, this would be destructive [and is not done].”*
- I.28** A. That it is permitted to turn aside to private paths to avoid road pegs:
B. *Samuel and R. Judah were once walking on the way, and Samuel turned aside to the private sidewalk. Said to him R. Judah, “So do the stipulations that were set forth by Joshua apply even in Babylonia?”*
C. He said to him, “Well, I maintain that they apply even outside of the Land.”
D. *Rabbi and R. Hiyya were walking along the way, and they turned aside into a private sidewalk, while R. Judah b. Qenosa strode along right down the public way before them. Said Rabbi to R. Hiyya, “So who’s this big shot who is showing off in front of us?”*
E. Said to him R. Hiyya, “Well, as a matter of fact, it might be R. Judah b. Qenosa, my disciple, and everything he does is for the sake of Heaven.”
F. *When they got near him, he saw him and said to him, “Were you not Judah b. Qenosa, I would have [Kirzner:] sawed your joints with an iron saw.”*
- I.29** A. That someone who is lost in vineyards is permitted to cut through going up or cut through going down:
B. *Our rabbis have taught on Tannaite authority:*

C. He who sees his fellow lost among the vineyards — he takes him by his hand and leads him through fields and vineyards until he reaches the town he wants or the way he is seeking. And just as it is a religious duty to do so for one's fellow, so it is a religious duty to do so for oneself. For if one has lost the way, one crosses fields and vineyards until he gets to the town he wants on the way he is seeking. For it was on that stipulation, that people might pass across vineyards and fields if they were lost, that Joshua allowed the Israelites to inherit the Land [T. B.M. 2:28I-M].

D. *What is the meaning of making such an obvious statement as, And just as it is a religious duty to do so for one's fellow, so it is a religious duty to do so for oneself?*

E. *Well, what might you otherwise have imagined? It is in the case of his fellow that he should cut his way through, since he knows as the guide just where he is going, but if he himself is the one who does not know where he is going, he should not be permitted to cut through but should walk around the boundaries. So we are informed that that is not the case.*

I.30 A. *Well, in any event, is this stipulation not based on the law of the Torah? For it has been taught on Tannaite authority: How on the basis of Scripture do we know that one is obliged to restore one's fellow's body [as much as his goods]? Scripture states, "And you shall restore it to him" (Deu. 22: 2), meaning, himself. So why did Joshua have to make such a stipulation?*

B. *From the perspective of the Torah's rules, the one who got lost would have to stand between the boundaries; Joshua had to come along and make the rule that he can cut his way going up and down.*

I.31 A. That a dead body that someone finds neglected and subject to immediate burial acquires the spot on which it is found:

B. *A contrary rule is to be noted: He who finds a corpse laying in the road removes it to the right or the left side of the road. If on the one side of the road is a field that is not cultivated and on the other a field that is fallow, he removes him to the uncultivated field; if on one side is a fallow field and on the other a seeded field, he removes him to the fallow field. If both are uncultivated or both fallow or both sown, he may take the corpse anywhere he wants. [So how can we maintain that*

a dead body that someone finds neglected and subject to immediate burial acquires the spot on which it is found?]

C. Said R. Bibi, “We deal with a corpse that was lying crossways across the boundary, so it was necessary to give permission to remove him from there [he is, after all, a source of uncleanness], in which case, he may be taken anywhere the burial crew wants.”

I.32 A. *But are they only ten? I count eleven!*

B. *That it is permitted to use paths in private fields until the time that the second rains are anticipated was stipulated in something Solomon said, as it has been taught on Tannaite authority:*

C. Lo, if someone’s produce was already quite removed from the field but he still doesn’t let people go into the field, what would people say of him, if not “So what benefit does he get from his field? For in that way would people do him any damage? In such a regard it is said, “While you can do good, don’t treat yourself as wicked.’

D. *So is there such a verse in Scripture as, “While you can do good, don’t treat yourself as wicked”?*

E. Try this: “Do not hold back good from him to whom it is due, when it is in your power to do it” (Pro. 3:27).

I.33 A. *Are there no more stipulations? Is there not the one that was mentioned by R. Judah? For it has been taught on Tannaite authority:*

B. **R. Judah says, “At the time of fertilizing the fields, a man may take out his manure and pile it up at the door of his house in the public way so that it will be pulverized by the feet of man and beast, for a period of thirty days. For it was on that very stipulation that Joshua caused the Israelites to inherit the Land” [T. B.M. 11:8E-H].**

C. *Are there no more stipulations? Is there not the one that was mentioned by R. Ishmael b. R. Yohanan b. Beroqa? For it has been taught on Tannaite authority:*

D. R. Ishmael b. R. Yohanan b. Beroqa says, “It is a stipulation established by the court that a person may go down into a

fellow's field and cut the bough of a tree on which his bees have settled so as to rescue the swarm of his bees, paying the value of the bough; it is likewise a stipulation of the court that the owner of wine may pour out his wine from the flask so as to save the honey of his fellow and get back the value of his wine out of the honey he has said; it is a stipulation of the court that the owner of a bundle of wood may remove the wood from his ass and load on the ass his fellow's flax, and get back the value of the wood out of the flax of his fellow, for it was on that very stipulation that Joshua caused the Israelites to inherit the Land."

E. *We were not speaking of stipulations stated in the names of individuals [but only those that form part of the consensus of the community of sages].*

F. **[82A]** *But lo, when Rabin came, he said R. Yohanan [said], "All the same are a tree that is located close to the boundary of the neighbor's field and one that overhangs another's field — the owner presents first fruits and makes the declaration, since it was with the stipulation that people should deal with one another in a liberal spirit that Joshua gave Israel ownership of the Land individually."*

G. *So who is the Tannaite authority who listed ten stipulations that Joshua made? It must be R. Joshua b. Levi.*

H. *R. Gebihah of Be Gebil said so in so many words: "R. Tanhum and R. Baryas explained in the name of a certain elder — and who is it? It is R. Joshua b. Levi, 'There were ten stipulations that Joshua made when the Israelites entered the Land.'"*

- I.34** A. Ten stipulations did Ezra make: That the Torah should be read aloud at the afternoon service on the Sabbath; that the Torah should be read on Monday and on Thursday; that courts should go into session on Monday and on Thursday; that laundry is to be done on Monday and on Thursday; that garlic be eaten Fridays; that a woman must rise early to bake bread; that a woman must wear a sinnar-garment; that a woman must comb her hair before immersing; that pedlars must be allowed to travel around in the towns. He also decreed that one who had emitted semen must immerse in a cultic bath.

I.35 A. That the Torah should be read aloud at the afternoon service on the Sabbath:

B. This is on account of stall keepers [too busy during the week to hear the Torah read (Kirzner)].

I.36 A. That the Torah should be read on Monday and on Thursday:

B. *Did Ezra make this ordinance? Lo, to begin with this was the practice, for it has been taught on Tannaite authority: “And they went three days in the wilderness and found no water” (Exo. 15:22) — those who expound Scripture as metaphors said, ““Water” refers only to Torah: ‘Hey, everybody who’s thirsty — come for water’ (Isa. 55: 1). When they had gone for three days without Torah, they got tired. Prophets among them arose and ordained for them that they should read the Torah on the Sabbath, skip the first day of the week, read on the second, skip the third and fourth, read on the fifth, skip the eve of the Sabbath, so that, in all, three days should not go by without Torah.*

C. Well, to begin with they ordained that a single individual should be called to the Torah, responsible for three verses; or three persons for three verses, corresponding to the priests, Levites, and Israelites. Then he came along and ordained that it should be three persons and ten verses of Scripture, corresponding to the ten persons left free [of all responsibility other than study and prayer].

I.37 A. That courts should go into session on Monday and on Thursday:

B. *That’s when people are available, coming as they do to read in the Torah scroll.*

I.38 A. That laundry is to be done on Monday and on Thursday:

B. On account of the honor owing to the Sabbath.

I.39 A. That garlic be eaten Fridays:

B. That is on account of the requirement that sexual relations take place on Friday night, as it is written, “That brings forth its fruit in its season” (Psa. 1: 3), and said R. Judah, and some say, R. Nahman, and some say, R. Kahana, and some say, R. Yohanan, “This refers to one who has sexual relations on Fridays.”

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

D. Five statements have been made in regard to garlic: it satisfies, it warms, it brightens the face, it increases virility, it kills parasites in the intestines.

E. Some say, "It brings in love and takes away jealousy."

- I.40** A. That a woman must rise early to bake bread:
B. This is so that there will be plenty of bread for the poor.

- I.41** A. That a woman must wear a sinner-garment:
B. This is on account of chastity [modesty].

- I.42** A. That a woman must comb her hair before immersing:
B. *This is a rule that derives from the Torah, for it has been taught on Tannaite authority: "And he shall bathe + accusative article + his flesh in water" (Lev. 14: 9) — indicating that nothing should interpose between his flesh and the water. The use of the accusative particles expands the coverage of that rule to include whatever is secondary to the flesh, and what might that be? That is the hair.*
C. *Say: The rule that the Torah lays down is that one has to examine the hair to see that it is not knotted and that there is nothing dirty that might interpose. [82B]*

- I.43** A. That pedlars must be allowed to travel around in the towns:
B. This is so that pedlars will go through the villages so as to provide women's ornaments so that the women will not be ugly in their husband's eyes.

- I.44** A. He also decreed that one who had emitted semen must immerse in a cultic bath:
B. *This is a rule that derives from the Torah, for it has been written, "And if the flow of seed go out from him, then he shall bathe all his flesh in water" (Lev. 15:16)!*
C. *On the authority of the Torah, that immersion must be done prior to eating food in the status of heave-offering or Holy Things, but he came along and decreed that it is necessary also for the purpose of studying the Torah.*

- I.45** A. **Ten statements were made with reference to Jerusalem: a house that is sold there is never permanently transferred; Jerusalem does not have to present a heifer the neck of which was to be broken in the case of a**

neglected corpse; it cannot be declared an apostate city no matter what happens there; it cannot be made unclean by plague marks; beams or balconies are not allowed to project there; they do not make dung heaps there; they do not make kilns there; they do not cultivate gardens or orchards there, except for a rose garden, which was there from the time of the former prophets; they do not raise chickens there; they do not keep a corpse there overnight [T. [Neg. 6:2](#)].

I.46 A. A house that is sold there is never permanently transferred:

B. “Then the house that is in the walled city shall be made sure in perpetuity to him that bought it throughout his generations” (Lev. 25:29-30) — and Jerusalem is not divided among the tribes [but held in trust for all Israel and could not be subject to absolute private ownership (Kirzner)].

I.47 A. Jerusalem does not have to present a heifer the neck of which was to be broken in the case of a neglected corpse:

B. “If one be found slain in the land that the Lord your God gives you to possess it” (Deu. 21: 1) — and Jerusalem is not divided among the tribes.

I.48 A. It cannot be declared an apostate city no matter what happens there:

B. “Out of your cities” (Deu. 13:13) — and Jerusalem is not divided among the tribes.

I.49 A. It cannot be made unclean by plague marks:

B. “And I put the plague of leprosy in the house of the land of your possession” (Lev. 14:34) — and Jerusalem is not divided among the tribes.

I.50 A. Beams or balconies are not allowed to project there:

B. So as not to create a tent to spread corpse uncleanness and so as not to injure pilgrims on the festivals.

I.51 A. They do not make dung heaps there:

B. Because of snakes.

I.52 A. They do not make kilns there:

B. Because of smoke.

I.53 A. **They do not cultivate gardens or orchards there, except for a rose garden, which was there from the time of the former prophets:**

B. Because of the smell.

I.54 A. **They do not raise chickens there:**

B. Because of the consecrated animal-offerings.

I.55 A. **They do not keep a corpse there overnight:**

B. This is a tradition.

II.1 A. **They do not rear pigs anywhere:**

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

C. When the kings of the Hasmonean house fought one another, Hyrcanus was outside and Aristobulus was inside [Jerusalem]. Every day [the people inside] would lower a basket of denars, and those outside would raise up animals for the daily whole-offering. There was there [among the besieging forces] an elder, who was familiar with Greek learning. He spoke with them concerning Greek learning, saying to them, “So long as they carry out the Temple service, they will not be given over into your hands.”

D. The next day when the insiders lowered a basket of denars, the outsiders sent up a pig.

E. When the pig got halfway up the wall, it dug its hoof into the wall. The Land of Israel quaked and moved four hundred square parasangs.

F. At that time they ruled, “It is cursed for someone to raise pigs, and it is cursed for anyone to teach Greek learning to his son.”

G. Concerning that year, we have learned: **It was brought from Gaggot Serifin [“roofs of cone-shaped huts”], and [the grain for] the two loaves (Lev. 23:17) from the valley of En Sokher [“Eye Socket”].**

H. *Is it so [that one may not teach his children Greek]? And has it not been taught on Tannaite authority:*

I. Said Rabbi, “In the Land of Israel **[83A]** why use Syriac? Let it be either the Holy Language or the Greek language.”

J. And R. Joseph said, “In Babylonia why use Aramaic? Either use the Holy Language or use the Persian language [Pahlavi].”

K. *[But we have to make a distinction, teaching] the Greek language as one thing, and Greek learning as something else.*

L. *But is Greek learning, for its part, forbidden at all?*

M. And did not R. Judah say Samuel said in the name of R. Rabban Simeon b. Gamaliel, “What is the meaning of the following verse of Scripture: ‘My eye affects my soul, because of all the daughters of my city’ (Lam. 3:51)?

N. “There were a thousand children in my father’s house, five hundred of them studied Torah, and five hundred studied Greek learning.

O. “And I am the only one of them who has survived here, and my father’s brother’s son [survived] in Asia.”

P. *Say*: The household of Rabban Gamaliel is in a separate category [and may study Greek], for they had a relationship with the government.

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

R. To cut the hair in front — lo, this is one of the “ways of the Amorites” [which is forbidden].

S. Abtilus b. Reuben was permitted to cut his hair in front, because he had a relationship to the government.

T. The household of Rabban Gamaliel did they permit to study Greek learning, because they had a relationship to the government.

III.1 A. **A person should not rear a dog, unless it is kept tied up by a chain. They do not set traps for pigeons, unless they are thirty ris from a settlement:**

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

C. A person should not keep a dog unless it is tied up on a chain, but he may do so in a town near the frontier, and he then ties it up by day and lets it loose by night.

III.2 A. *It has been taught on Tannaite authority*:

B. R. Eliezer the Great says, “He who raises dogs is as though he raised pigs.”

C. *What’s the upshot of that statement? To invoke a curse on such a person.*

D. *Said R. Joseph bar Minyumi said R. Nahman, “Babylonia is classified as a town near the frontier.”*

E. *This was explained to mean Nehardea in particular.*

III.3 A. R. Dosetai of Bira expounded, “‘And when it rested, he said, Return O Lord to the tens of thousands and thousands of Israel’ (Num. 10:36) — this teaches you that the Presence of God comes to rest on Israel only if there are two thousand and two tens of thousands. If they lacked one, but a pregnant woman was among them, able then to make up the number, but a dog barked at her and caused a miscarriage, the dog would then have caused God’s presence to depart from Israel.”

III.4 A. *A woman went in to bake bread in her neighbor’s house, and the dog barked at her. The owner of the house said to her, “Don’t be afraid of that dog, it has no teeth.” She said to him, “Take your kindness and shove it, the embryo has already shifted.”*

- IV.1** A. **They do not set traps for pigeons, unless they are thirty ris from a settlement:**
- B. *Do they go such a distance as that? Have we not learned in the Mishnah: A dovecote must be kept fifty cubits from a town [M. B.B. 2:5]?*
 - C. *Said Abbayye, “While pigeons may well spread over a broader area, they fill their stomachs within fifty cubits of their starting point.”*
 - D. *But do they fly thirty ris and no further? And has it not been taught on Tannaite authority: And in regard to a settled area, even within a hundred mils, they should not spread out nets?*
 - E. R. Joseph said, “By ‘a settled area’ is meant a succession of vineyards.”
 - F. Raba said, “‘By a settled area is meant an area where there is a succession of pigeon cotes.’”
 - G. *But then the operative consideration should be the cotes themselves!*
 - H. *If you wish, I shall say that the intermediate ones belong to the one who sets out the traps, and if you like, I shall say they belong to gentiles, and if you like, I shall say that they are ownerless property, and if you like, I can say that they are his own.*

I.1 complements the Mishnah’s rule with further Tannaite formulations. Nos. 2-6+7, 8-10+11, 12+13-14, itself glossed by No. 15, 16, which bears its talmud at Nos. 17-32, and a further expansion of No. 33 at Nos. 34-42, and the same pattern at No. 43, expanded at Nos. 44-54 add other pertinent materials, all of them of mere thematic, not analytical, interest. Some of these entries look suspiciously like caricatures of weighty talmud passages. **II.1**, **III.1**, **IV.1** complement the Mishnah with more Tannaite materials.