

# Bavli Baba Qamma

## Chapter Ten

### Folios 111B-119B

#### 10:1A-C

- A. He who steals [food] and feeds [what he stole] to his children, or left it to them —
- B. they are exempt from making restitution.
- C. But if it remained something which could serve as security [for example, subject to a mortgage, that is, real estate], they are liable to make restitution.

- I.1**
- A. Said R. Hisda, “If one stole something [such as an animal], and, before the owner had despaired of getting it back [at which point the thief acquires title to the object], someone else came along and ate up what he stole, the owner has the choice of collecting the payment from the one or the other. *How come? The reason is that, for so long as the owner did not despair of getting the thing back, the stolen object is still in the title of the original owner.*”
  - B. *But have we not learned in the Mishnah: He who steals [food] and feeds [what he stole] to his children, or left it to them — they are exempt from making restitution. But if it was something which is subject to a mortgage, [that is, real estate], they are liable to make restitution? Does this not contradict the position of R. Hisda?*
  - C. *R. Hisda will say to you, “When that is set forth as a Tannaite rule, it pertains to the situation that prevails after the original owner has despaired of getting the thing back [and so title has passed to the thief].”*

## II.1 A. Or left it to them — they are exempt from making restitution:

- B. Said R. Ammi bar Hama, “That is to say, the domain of the heir is equivalent to the domain of the purchaser [and if after despairing of getting the object back, at which point the object was subject to the robber’s title, the robber died, the article would remain with the heirs, just as would an article that was purchased].”
- C. And Raba said, “The domain of the heir is not equivalent to the domain of the purchaser, *for with what sort of a case do we deal? It is one in which the food was eaten after the father died.*”
- D. *But since it is said, **But if it remained something which could serve as security [for example, subject to a mortgage, that is, real estate], they are liable to make restitution, it should follow that, in the opening clause, we deal with a case in which the stolen object is still available [and has not yet been consumed].***
- E. *Raba may say to you, “This is the sense of the statement: If their father had left them **something which could serve as security [for example, subject to a mortgage, that is, real estate], they are liable to make restitution.**”*
- F. *But lo, Rabbi repeated as the Tannaite formulation to R. Simeon, his son, “The meaning is not literally, **something which could serve as security [for example, subject to a mortgage, that is, real estate],** but rather, even a cow that could be used for ploughing, or an ass that could be used for driving, they are liable to make restitution, on account of the honor that is owing to their father.”*
- G. *Rather, said Raba, “When I die, R. Oshaia will come out to meet me, for I interpret the Mishnah in accord with his view. For it has been taught on Tannaite authority by R. Oshaia: He who steals [food] and feeds [what he stole] to his children, or left it to them — they are exempt from making restitution. If he left it to them as an inheritance, then if the stolen object is available, they are liable to restore it, but if not, they are exempt. But if it remained something which could serve as security [for example, subject to a mortgage, that is, real estate], they are liable to make restitution.”*

## II.2 A. The master has stated, “But if not, they are exempt”:

- B. *Does this not refute the view of R. Hisda [who holds that they are equivalent to purchasers]?*
- C. *R. Hisda will say to you, “When that is set forth as a Tannaite rule, it pertains to the situation that prevails after the original owner*

*has despaired of getting the thing back [and so title has passed to the thief].”*

**II.3** A. The master has stated, “Then if the stolen object is available, they are liable to restore it”:

B. *Does this not refute the view of R. Ammi bar Hamma?*

C. *R. Ammi bar Hamma will say to you, “When that rule was set forth as a Tannaite formulation, it pertains to the period [112A] prior to the owner’s despairing of getting the object back.”*

**II.4** A. *R. Adda bar Ahba repeated the statement of R. Ammi bar Hamma in connection with the following: “If the father died and left money gained on interest to his children, even if the heirs know that it was money paid as interest, the children do not have to return the money collected as interest. [But if the father had left them a cow, field, cloak, or any sort of object for which he bore responsibility for replacement, should the object be lost, they are liable to return such an object for the honor of their father] [T. B.M. 5:25-6].”*

B. Said R. Ammi bar Hama, ‘That is to say, the domain of the heir is equivalent to the domain of the purchaser [and if after despairing of getting the object back, at which point the object was subject to the robber’s title, the robber died, the article would remain with the heirs, just as would an article that was purchased].”’

C. *Raba said, ‘I shall say to you, the domain of the heir is not equivalent to the domain of the purchaser. But this case is exceptional, for Scripture has said, “Do not take usury of him or increase but fear your God that your brother may live with you” (Lev. 25:36), meaning, return the money to him so that he may live with you. The man himself is the one whom the All-Merciful has placed under admonition, his children are not so admonished.”’*

D. *One who repeats the dispute in connection with the cited Tannaite formulation external to the Mishnah all the more so would maintain that it pertains to the Mishnah passage itself. But one who repeats it in connection with the Mishnah passage would maintain*

*that in regard to the cited Tannaite formulation external to the Mishnah, R. Ammi bar Hamma would repeat the passage along the same lines as did Raba.*

- II.5** A. *Our rabbis have taught on Tannaite authority:*  
B. **He who steals something and feeds it to his children — they are exempt from having to pay restitution. If he left it before them [as an inheritance], the adult heirs are obligated to pay restitution. The minors are exempt from having to pay restitution. If the adults say, “We are not familiar with the dealings of our father with you,” they would also be exempt from having to pay restitution [T. B.Q. 10:21D-E].**

- II.6** A. *Well, then, merely because they say, “We are not familiar with the dealings of our father with you,” are they going to be exempt from having to pay restitution? [That’s ridiculous.]*  
B. *Said Raba, “This is the sense of the passage: If the adults say, ‘We know full well the dealings that our father had with you, and we therefore know for sure that there was no balance in your favor,’ they are exempt from having to pay restitution.”*

- II.7** A. *Our rabbis have further taught on Tannaite authority:*  
B. He who steals something and feeds it to his children — the latter are exempt from having to pay restitution. If he left it before them as an inheritance and they consumed it, whether adult or minor, they are liable.

- II.8** A. *How come the minors are liable? They are in no worse a situation than if they had deliberately done damage [and they would not then have had to pay restitution]!*  
B. *Said R. Pappa, “This is the sense of the passage: If he left it before them as an inheritance and it has not yet been consumed, then whether adult or minor, they have to pay restitution.”*

- II.9** A. Said Raba, “If he left before them a borrowed cow, they may make use of it through the entire term for which it has been borrowed. If it died, they are not liable on account of any accidents that happen to it. If they supposed that it was the property of their father and they slaughtered or sold it, they have to pay for the value of the meat at the lowest possible price. If their father left them property that would serve as security [for example, real estate], they are liable to pay restitution for it.”

B. *There are those who repeat this statement of his with reference to the former of the two statements [If it died, they are not liable on account of any accidents that happen to it], and there are those who repeat it in connection with the latter [If they supposed that it was the property of their father and they slaughtered or sold it, they have to pay for the value of the meat at the lowest possible price]. He who takes the view that the statement pertains to the former of the two statements all the more so will apply it to the latter, but would then differ from the view of R. Pappa. One who repeats this statement as to the latter of the statements but not to the former would concur with R. Pappa. For said R. Pappa, "If someone had a cow that he had stolen and he slaughtered it on the Sabbath [and is liable to the death penalty], he still is liable [to pay for the cow], for he had already incurred liability for the theft before incurring liability for having violated the Sabbath. But if he had a cow that was borrowed and he slaughtered it on the Sabbath, he would be exempt, for he violated the Sabbath and also committed theft at one and the same moment [and is liable only to the more severe of the two charges]."*

**II.10** A. *Our rabbis have taught on Tannaite authority:*

- B. "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.] In this connection sages have said: "He who steals something and feeds it to his children — the latter are exempt from having to pay restitution. If he left it before them as an inheritance and they consumed it, whether adult or minor, they are liable."
- C. In the name of Sumekhoh they have said, "The adults are liable, the minors, exempt."

**II.11** A. *The son of R. Jeremiah's father-in-law bolted the door before R. Jeremiah [who wanted to take over the household of his father-in-law]. The case came before R. Abin. He said, "What he [the son of the father-in-law] is claiming is what belongs to him [cf. Num. 27:8 (Kirzner)]."*

B. *He said to him, "I shall produce witnesses that I established ownership through usucaption during the lifetime of the father."*

C. He said to him, “But do they accept testimony [112B] when the other party [the minor, deemed absent in any event] is not at hand?”

D. “But don’t they? *And has it not been set down as a Tannaite rule: If he left it before them as an inheritance and they consumed it, whether adult or minor, they are liable?*”

E. He said to him, “Lo, there is the contrary view of Sumekhosh alongside!”

F. *He said to him, “So has everybody in the world decided to take its stand with Sumekhosh just in order to deprive me of my property?”*

G. *In the interim the matter rolled along until it reached R. Abbahu, who said to them, “Have you not heard what R. Joseph bar Hama said R. Oshaia said, for said R. Joseph bar Hama said R. Oshaia, ‘A minor who instructed his slaves and grabbed someone else’s field and claimed, “It’s mine” — they do not say, “Let us wait until he grows up,” but they extract it from his possession, and, when he grows up, he can always bring witnesses and we can consider the matter.’”*

H. *Are the cases really all that comparable? In the case of the youngster and his slaves we have every right to take the field away from him, since he had no presumptive right of ownership from his father, but here, where the brother-in-law certainly does have a presumptive right of ownership from the father, we would certainly not do so.*

### **Composite on Accepting Testimony accept testimony even though the other party is not present.**

The issue raised at II.11C is now treated in its own terms, a sizable composite being parachuted down that addresses that principle.

**II.12** A. Said R. Ashi said R. Shabbetai, “They accept testimony even though the other party is not present.”

B. *R. Yohanan expressed surprise at this statement: “But do they really accept testimony even though the other party is not present? R. Yosé bar Hanina accepted that rule from him to deal with a situation in which [the plaintiff] was very sick or his witnesses were sick, or his witnesses wanted to go overseas, and they sent for the other party but he did not appear.”*

**II.13** A. Said R. Judah said Samuel, “They accept testimony even though the other party is not present.”

B. *Said Mar Uqba, “In so many words did Samuel explain to me, ‘That would be in a case, for instance, only where the court had opened the trial, and the party was summoned but did not appear. But if the case had not yet been opened, he could plead, “I am going to a higher court.”’”*

C. *Well, if that is the operative consideration, then even if the court trial had not yet begun, he still can plead, “I am going to a higher court”!*

D. *Said Rabina, “For example, it would be a case in which the lower court was holding a writ issued by the higher court.”*

**II.14** A. Said Rab, “They validate a writ not in the presence of the other party.”

B. And R. Yohanan said, “They do not validate a writ not in the presence of the other party.”

C. *Said R. Sheshet to R. Yosé bar Abbahu, “I will explain to you the scriptural foundations of the position of R. Yohanan, namely, Scripture says, ‘And it has been testified to its owner and he has not kept him in’ (Exo. 21:29) — the Torah has said, ‘Let the owner of the ox come and stand by his ox [and be instructed as to his responsibilities].’”*

D. Said Raba, “The decided law is that they validate a writ not in the presence of the other party, and that is the case even if he stands and squawks.”

**II.15** A. *But if he said, “Give me time to bring witnesses and I will invalidate the document,” we do give him the time he needs. If he then comes along, he comes along and well and good. If not, we wait on him for a Monday and Thursday and a Monday. If he does not appear, we*

*write out a warrant against him to take effect in ninety days. For the first thirty days, we do not place a lien on his property, in the theory that he is busy trying to borrow money. In the next thirty we do not do so, in the theory that he cannot raise the loan so is selling the property. In the final thirty we do not take possession of the property, in the theory that the purchaser [who might have bought the property] is trying to raise the money to pay him off. If after all this, he does not appear, then we write an order to trace the property and an authorization to seize it. All of this happens only if he pleads, "I will come and contest the case." But if he said, "I will not appear at all," then right off the bat we write an order to trace the property and an authorization to seize it.*

*B. We write out an order to trace the property and an authorization to seize it only with reference to real property but not movables, lest a creditor in the interim carry off the movables and consume them, so that the debtor would come along and give evidence that invalidates the document, there would be nothing from which to recover payment. But if the creditor has real property, we do write an order to trace the property and an authorization to seize it even on movables.*

*C. But that is not so. If the creditor has real property, we do not write an order to trace the property and an authorization to seize it even on*



*movables, since it is possible that in the interim the property may have depreciated [and would not meet the requirement of the repayment].*

*D. When we do write an order to trace the property and an authorization to seize it, we notify the debtor, so long as he is living nearby, but if he is living at a distance, that is not done. And even if he lives far away, if he has relatives nearby or if caravans take that route, we wait another twelve months until the caravan can go there and come back.*

*E. For instance, Rabina held up the case of Mar Aha for twelve months, until a caravan could go to Khuzistan and come back.*

*F. Well, that is not really proof, since the creditor in that case was violent, and if he had in hand an order to trace the property and an authorization to seize it, it would never have been possible to get anything back from him. In commonplace cases, however, we wait only for the sheriff of the court to go on a Tuesday and come back on a Wednesday, so that on the Thursday of the same week, the man himself could come to court.*

*G. Said Rabina, "The agent of the rabbis is as credible [if he comes back and says the other party refuses to appear] as would be two witnesses. That is the case so far as imposing an oral ban is concerned, but in the case of commencing court proceedings, since the litigant will have to pay for the*

*scribe to lift the ban, that would not be so [and there would have to be corroborating evidence along with the word of the agent of the court].”*

*H. Said Rabina, “We send out a summons of a fixed day for trial through a woman or through a neighbor. That would be the rule, however, only when the man was not in town. [113A] But if the man was in town, we do not do so, for we say, ‘Maybe they might not bring the summons to him, supposing that the agent of the court will go and tell him. And that rule, further, applies only when the other party would not have to go by the door of the court, but if he would ordinarily have to go by the door of the court, that would not be the rule, for people might say that at the court they will find him first and tell him about the summons. And, further, that is the rule only when the party was to come home on the same day, but if he was not coming home on the same day, that would not be the rule, since we would say that such messengers might forget the matter anyhow.’”*

*I. Said Raba, “Where a summons was written on a defaulter for not having come to court, it will not be destroyed so long as he does not come to court; if it was for his not having obeyed the decree, it will be preserved only when he has obeyed the decree.”*

*J. But that is not the rule. In fact, as soon as he says he will obey, we destroy the summons.*

K. Said R. Hisda, *"We cite the man to appear on a Monday, a Thursday, and the next Monday; we fix one date and then another and then another, and after that, we write the summons."*

L. R. Ashi happened by R. Kahana's and noticed that on the previous evening a certain woman had been summoned to appear before the court. [She didn't come, so] a summons was already written against her the next day. He said to R. Kahana, *"Does the master not accept what R. Hisda said, namely, 'We cite the man to appear on a Monday, a Thursday, and the next Monday; we fix one date and then another and then another, and after that, we write the summons'?"*

M. He said to him, *"That is the case when the man is unavoidably prevented from responding, being out of town, but a woman is always in town, and since she has not come, it is an act of rebellion on her part."*

N. Said R. Judah, *"We do not summon a defendant to appear in court during Nisan or Tishri, on the eve of a holy day or on the eve of the Sabbath. During Nisan we may cite him to appear after Nisan, during Tishri for after Tishri. But on the eve of the Sabbath, we do not cite him to appear after the Sabbath, since he might be busy with the Sabbath"*

*preparation [and fail to note the summons].”*

*O. Said R. Nahman, “We do not summon participants in the annual study sessions to court during the period of the session, or participants in the sessions preparatory to the Festival during that season.”*

*P. When plaintiffs wanted R. Nahman to issue such summons, he would say to them, “Have I called them for your sake?”*

*Q. But nowadays that there are plenty of imposters, we do take account of the possibility that people come to the sessions to escape summonses.*

**III.1 A. But if it remained something which could serve as security [for example, subject to a mortgage, that is, real estate], they are liable to make restitution:**

*B. Rabbi repeated the rule to R. Simeon, his son, in the following terms: “The meaning is not literally, something which could serve as security [for example, subject to a mortgage, that is, real estate], but rather, even a cow that could be used for ploughing, or an ass that could be used for driving, they are liable to make restitution, on account of the honor that is owing to their father.”*

*C. R. Kahana asked Rab, “What about the bed on which they sit or the table at which they eat?”*

*D. He said to him, “‘Give instructions to a wise man and he will be wiser’ (Pro. 9: 9).”*

**I.1** clarifies the rule of the Mishnah, and **II.1** then draws out the implications of our Mishnah’s rule for a distinct theoretical problem. Nos. 2-3+4 proceed to revert to the issue of **I.1**. No. 5 then proceeds to a Tannaite complement to our Mishnah paragraph, which carries its own talmud at No. 6. No. 7 proceeds with its Tannaite complement, with its talmud at No. 8, and an extension at No. 9. No. 10, with a talmud at No. 11, gives another Tannaite complement, going over familiar ground in a fresh way. Nos. 12, 13 pick up a detail of No. 11, not critical to the problems here, and develops that issue in its

own terms, that is, an appendix, which runs on through Nos. 14-15, a thematic composite. III.1 works on the wording of the Mishnah.

### 1:1D-F

- D. They do not change money from the chest of the excise collectors or from the fund of the tax farmers.
- E. And they do not take from them contributions to charity.
- F. But one may take [from them contributions for charity] when the funds are] from [the collector's] own home or from the marketplace.

I.1 A. *It is taught as a Tannaite statement:*

- B. But when he gives him [a tax collector] a denar, he may return change to him.

II.1 A. **Excise collectors:**

- B. *But did not Samuel say, "The law of the state is valid law"?*
- C. Said R. Hanina bar Kahana said Samuel, "This rule speaks of a tax collector who is subject to no limits [but grabs everything he can get]."
- D. *The household of R. Yannai say, "This rule speaks of a tax collector who is self-appointed."*

E. *There are those who repeat these statements with reference to the following rule of the Mishnah: And one shall not wear [a garment of] diverse kinds even on top of ten [garments], even to avoid [paying] customs duty [M. Kil. 9:2F]. Does this rule not conflict with the statement of R. Aqiba, which has been taught on Tannaite authority: It is forbidden to cheat the customs agent? R. Simeon said in the name of R. Aqiba, "It is permitted to cheat the customs agent." Now with respect to the matter of diverse kinds [here: fabrics, linen, and wool], this is what is at issue: One party maintains that an act that is not done intentionally is permitted, and the other authority takes the view that an act that is not done intentionally is nonetheless forbidden. But as to eluding the customs agent, is this permitted?*

F. *But did not Samuel say, "The law of the state is valid law"?*

G. Said R. Hanina bar Kahana said Samuel, "This rule speaks of a tax collector who is subject to no limits [but grabs everything he can get]."

H. *The household of R. Yannai say, "This rule speaks of a tax collector who is self-appointed."*

I. *There are those who repeat these statements with reference to the following rule of the Mishnah: They take a vow to murderers, robbers, or tax collectors that [produce] is heave-offering, even though it is not heave-offering; that [property] belongs to the state, even though it does not belong to the state [M. Ned. 3:4A-C].*

J. *But did not Samuel say, “The law of the state is valid law”?*

K. Said R. Hanina bar Kahana said Samuel, “This rule speaks of a tax collector who is subject to no limits [but grabs everything he can get].”

L. *The household of R. Yannai say, “This rule speaks of a tax collector who is self-appointed.”*

- II.2** A. *R. Ashi said, “It refers to a Canaanite tax collector, for it has been taught on Tannaite authority: “An Israelite and a Canaanite tax collector who come to court — if you can find in favor of the Israelite according to the laws of Israel, find in his favor, and say to the other, ‘That is our law.’ If you can find in favor of the Israelite through the laws of the Canaanites, find in his favor, and say to him, ‘That is in accord with your law.’ But if not, then do whatever you can anyhow,” the words of R. Ishmael. R. Aqiba says, “Do not use any subterfuge whatever, on account of the sanctification of the Name of Heaven.”*
- B. *Now R. Aqiba invokes as the principal consideration the matter of the sanctification of the name of Heaven. Lo, if it were not for that consideration, we could indeed deceive him.*

### **The Legal Status of Canaanites and their Property**

- C. *But is robbing a gentile permitted? Has it not been taught on Tannaite authority: Said R. Simeon, “This is a matter that R. Aqiba expounded when he came from Zifirin: ‘How on the basis of Scripture do we know that it is forbidden to rob from a gentile? As it is written, “After he is sold [an Israelite to a gentile], he may not be redeemed again” (Lev. 25:48), meaning, he cannot [113B] just take his leave without paying redemption money. Might one then say that the gentile may demand an exorbitant sum? Scripture says, “And he shall reckon with him who bought him” (Lev. 25:50), meaning, one has to be very precise in making the valuation with him who had bought him” [which proves that robbery is invariably forbidden]?*
- D. *Said R. Joseph, “There is no contradiction between these formulations. The one speaks of a gentile, the other is a resident alien [who observes the Noahide commandments (Kirzner)].”*

- E. *Said to him Abbaye, "But lo, all of them are treated in the same verse: 'Your brother...sell himself' (Lev. 25:47), not to you but to a stranger, 'unto the stranger'; and not to a sincere convert to Judaism but to a mere resident alien, 'unto a resident alien'; 'the family of a stranger' then refers to one who worships idols; and 'or to one of the stock of...' means one who has sold himself into idolatry." [Does this not prove that no one, of any classification, is left unprotected by the law against robbery? (Kirzner)].*
- F. *Rather, said Raba, "There is no contradiction between these formulations. The one speaks of robbing from him [which is invariably forbidden]; the other speaks of cancelling debts."*
- G. *Said to him Abbaye, "But the purchase of a Hebrew slave is so as to cancel a debt [and there is no distinction as to the person of the master (Kirzner)]!"*
- H. *Raba is consistent with a few stated elsewhere, for said Raba, "A Hebrew slave is owned by his master as to his very body."*

### **The Legal Status of Canaanites and their Property**

- II.3** A. *Said R. Bibi bar Giddal said R. Simeon the Pious, "It is forbidden to steal from a Canaanite; it is permitted to keep a lost object that belongs to him."*
- B. *It is forbidden to steal from a Canaanite: For said R. Huna, "How on the basis of Scripture do we know that it is forbidden to rob from a heaven? It is said, 'And you shall consume all the peoples that the Lord your god shall deliver to you' (Deu. 7:16) — only when [in wartime] they are handed over to you as enemies is this permitted, but in time [of peace (Kirzner)] when they are not handed over to you, that is not allowed."*
- C. *It is permitted to keep a lost object that belongs to him: For said R. Hama bar Guria said Rab, "How on the basis of Scripture do we know that it is permitted to hold on to a lost object belonging to a Canaanite? As it is said, 'And with all lost things of your brother' (Deu. 22: 1ff.) — to your brother you return a lost thing, but you do not return a lost thing to a Canaanite."*
- D. *But why not say that that rule applies to a case in which the lost object has not yet come into the possession of the finder, in which case he is not obligated to go looking for it; but if it has already come into his hand, perhaps he really should return it?*
- E. *Said Rabina, "...and you have found it' (Deu. 22: 3) — meaning that it has already come to hand."*

**II.4** A. *It has been taught on Tannaite authority:*

B. R. Phineas b. Yair says, "In a situation in which there is the possibility of a profanation of the Name of Heaven, then even as to a lost object belonging to a gentile, it is forbidden [to keep the object, but it must be returned]."

**II.5** A. Said Samuel, "But as to a mistake that he may have made, it is permitted to benefit from that."

B. *There was the case when Samuel bought from a gentile a golden bowl, thinking it was copper, for four zuz, and also left him a zuz down.*

C. *R. Kahana bought a hundred twenty barrels assuming they were a hundred and left him one zuz, and said to him, "See, I am depending on you [to count the barrels]."*

D. *Rabina and a gentile bought a palm tree to chop it up and divided the lumber. He said to his servant, "Run and grab the parts near the roots, since the gentile only cares about the number."*

E. *R. Ashi was going down the road and noticed branches of vines outside a vineyard, on which ripe clusters of grapes were suspended. He said to his servant, "Go, see, if they belong to a gentile, bring them to me, but if to an Israelite, don't." The gentile happened to be sitting right there and overheard the conversation, so he said to him, "If they belong to a gentile are they permitted?" He said to him, "Well, a gentile is ready to sell the grapes for money, but an Israelite isn't."*

**II.6** A. *Reverting to the body of the foregoing: But did not Samuel say, "The law of the state is valid law"?*

B. *Said Raba, "You may know that that is the fact, because the authorities can cut down palm trees without consent and build bridges with them, and [not regarding the wood as stolen property] we for our part use those bridges and cross them."*

C. *Said to him Abbaye, "But maybe that is because the owners of the lumber despair of getting it back [and so relinquish ownership, so it is no longer stolen property]?"*



D. He said to him, “If it were not for the fact that the law of the state is valid law, how would the owners ever give up hope of getting them back anyhow?”

E. Still, since the officers of state do not really carry out the instructions of the government, since the government tells them to go and cut trees from each area in proportion, but they come and chop them all down in one area, [how come we use the bridges, which are made of stolen lumber]?

F. The agent of the government is tantamount to the government itself, and is not going to be bothered about the rule of cutting all the trees down in equal proportion, area by area, and the owners are the ones who cause the loss to themselves, since they ought to have made sure to get lumber from tree owners in all the different regions and then hand over the money to pay the costs of the public construction job.

**II.7** A. Said Raba, “He who gets caught at the barn has to pay the government’s share of the grain in the field. [Kirzner: He can then force the owners of the other grain to share proportionately in the payment he had to make for all of them.]”

B. And that rule pertains in particular to a partner, but as to a sharecropper, he pays no more than the portion for his share.

**II.8** A. And said Raba, “One townsman may be pledged for another townsman, so long as what is at issue are arrears for the land tax or the head tax of the current year, but not if they are in arrears for the year that has passed, for, since for the prior year the government has accepted the take of that town, the matter will be allowed to pass.”

**II.9** A. And said Raba, “As to those who manure fields for pay and live inside the Sabbath limits, it is forbidden to buy any animal from them. How come? An animal from the town might have been confused with their animals [and it may be stolen property]. But if they live outside of the Sabbath limits, it is permitted to buy animals from them.”

B. Said Rabina, “If the owners were running after them, then even if they were outside of the Sabbath limits, it is forbidden to buy animals from them.”

**II.10** A. Raba proclaimed — others say, R. Huna — “Those who go up to the Land of Israel, those who come down from Babylonia, know that if an Israelite knows

evidence for the benefit of a gentile, and if without being subpoenaed, goes into a gentile court and testifies against another Israelite in such a case, we shall excommunicate him. How come? Because they collect money even [114A] on the evidence of a single witness.

- B. *“And we have made that statement only if it involved one witness, not two. And, further, we have made that ruling only in the case of a trial before untrained magistrates, but if it was before a well-qualified Iranian court, where the judges impose an oath on the evidence of a single witness.”*

**II.11** A. Said R. Ashi, *“When we were at the household of R. Kahana, we raised this question: What about an eminent authority, who would be trusted by them as though he were two witnesses? Money would be adjudicated on his sole evidence, so he should not give testimony in their courts. Or perhaps, since he is an eminent authority, he not going to be able to get away from them, and therefore he should give evidence. And this question was left moot.”*

**II.12** A. Said R. Ashi, *“An Israelite who sells land to a gentile which borders on land of another Israelite shall we excommunicate.”*

- B. *How come? If we say because of the law of the nearest neighbor [who has the right to buy the boundary land, did the master not say, “In buying from a gentile or selling to a gentile, the right of preemption enjoyed by the nearest neighbor does not apply”?*
- C. *Rather, the reason is that the neighbor may say to the seller, “You put a lion at my door.”*
- D. *So we excommunicate him until he accepts responsibility for all mishaps that may take place because of the sale.*

**I.1** clarifies the application of the Mishnah’s rule. **II.1** then asks a fundamental question in clarification of that same rule, going over the same question in several contexts. No. 2, with an appendix at Nos. 3, 4, 5, solves the problem in its own way and yields its own secondary expansion. No. 6, complemented at Nos. 7-12, then reverts to an item in the foregoing exposition of the Mishnah passage.

## 10:2

- A. [If] excise collectors took one’s ass and gave him another ass,  
B. [if] thugs took his garment and gave him another garment,  
C. lo, these are his,  
D. because the original owners have given up hope of getting them back.

- E. He who saves something from a river, from a raid, or from thugs,
- F. if the owner has given up hope of getting them back, lo, these belong to him.
- G. And so a swarm of bees:
- H. If the owner had given up hope of getting it back, lo, this belongs to him.
- I. Said R. Yohanan b. Beroqah, “A woman or minor is believed to testify, ‘From this place did this swarm go forth.’”
- J. And one may walk through the field of his fellow to get back his swarm of bees.
- K. But if he did damage, he pays compensation for the damage which he did.
- L. But he may not cut off a branch of his tree [to retrieve the swarm, even] on condition that he pay damages for it.
- M. R. Ishmael, son of R. Yohanan b. Beroqah, says, “Also, he cuts down the branch and pays damages for it.”

- I.1**
- A. *A Tannaite statement:* If he took something from the customs collectors, he has to give it back to the original owner.
  - B. *The framer of that passage takes the view that the despair of the owner by itself does not transfer title, so to begin with the article has come into his possession unlawfully.*
  - C. *There are those who say:* If he wants to give up the article, he should give it back to the original owner.
  - D. *The framer of that passage takes the view that the despair of the owner by itself does transfer title, [so to begin with the article has come into his possession lawfully,] so if he said, “I don’t want money that isn’t mine,” he returns it to the original owner.*

- II.1**
- A. **Lo, these are his, because the original owners have given up hope of getting them back:**
  - B. *Said R. Assi, “This rule pertains only to a case in which the robber was a gentile, but if he was an Israelite, that is not the case. The owner will imagine, “Tomorrow I’ll take him to court” [and hence he does not despair of getting the things back].*
  - C. *Objected R. Joseph, “To the contrary! The opposite view is the more reasonable. In the case of a gentile, where the courts are very strict, the owner may not give up hope, but in the case of the Israelite courts, where the judges just issue an order to return the object [but don’t torture the*

*recalcitrant party], the Israelite will despair of getting the object back. Therefore, if any statement was made, it can deal only with the concluding clause: **He who saves something from a gentiles [sic] [M.: river], from a raid, or from thugs, if the owner has given up hope of getting them back, lo, these belong to him.** In general, then, that is not so, but only in the specified cases. This rule, then, has been taught only in connection with gentile courts, which are very strict, but in the case of the Israelite courts, where the judges just issue an order to return the object [but don't torture the recalcitrant party], the Israelite will despair of getting the object back."*

- II.2** A. *We have learned in the Mishnah: The hides of the householders — intention makes them susceptible to uncleanness. And of the tanner — intention does not make them susceptible to uncleanness. Of the one stolen by a thief — intention makes them susceptible to uncleanness. And of the [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](#)]*
- B. Said Ulla, "The dispute concerns a situation in which there is no evidence one way or the other, but if it is known that the owner has despaired of regaining the object, that effects a transfer of title."
- C. Rabbah said, "The dispute also concerns a situation in which it is known that the owner has despaired of regaining the object."
- D. *Said Abbayye to Rabbah, "Do not disagree with Ulla, for our Mishnah paragraph accords with his view: [If excise collectors took one's ass and gave him another ass, [if] thugs took his garment and gave him another garment, lo, these are his,] because the original owners have given up hope of getting them back. So the operative consideration is that the original owners have given up hope of getting them back. But if the owners had given up hope, lo, these belong to the other."*
- E. *He said to him, "We read the statement to mean, 'for there is no renunciation on the part of the owners.' [Kirkner: Since the skins were taken away stealthily, the owner will never give up hope of tracing the thief and recovering them, even though he may express his despair of their return.]"*

**II.3** A. *We have learned in the Mishnah: If excise collectors took one's ass and gave him another ass, if thugs took his garment and gave him another garment, lo, these are his, because the original owners*

**have given up hope of getting them back.** *Now whose view is represented here? It cannot be rabbis, since the ruling on the robber [Kirzner: the customs collector who acts openly] is a problem for them [Kirzner: for in their view there is no renunciation in the case of a robber], and it cannot be R. Simeon, since, from his view, the thief would represent a problem. [Kirzner: The brigand is a problem, for according to Simeon there is no renunciation in the case of a thief.] But from the perspective of Ulla, who has said that all parties concur that if it is known that the owned has despaired of regaining the object, that effects a transfer of title, here, too, we deal with a case in which it is known that the owned has despaired of regaining the object, and all parties concur on this point. But from Rabbah's view, which maintains that the dispute also concerns a situation in which it is known that the owner has despaired of regaining the object, who can be represented in this rule? It is not rabbis nor R. Simeon!*

B. *The case before us involves an armed bandit, and the ruling accords with R. Simeon.*

C. *If so, then that is no different from the robber [customs officer acting openly like a robber (Kirzner)], so why say the same thing twice?*

D. *There are two distinct types of robber [customs officer, armed bandit].*

**II.4** A. *Come and take note: 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?] Now whose view is represented here? It cannot be rabbis, since the ruling on the robber [Kirzner: the customs collector who acts openly] is a problem for them [Kirzner: for in their view there is no renunciation in the case of a robber], and it cannot be R. Simeon, since, from his view, the thief would represent a problem. [Kirzner: The brigand is a problem, for according to Simeon there is no renunciation in the case of a thief.] But from*

*the perspective of Ulla, who has said that all parties concur that if it is known that the owner has despaired of regaining the object, that effects a transfer of title, here, too, we deal with a case in which it is known that the owner has despaired of regaining the object, and all parties concur on this point. But from Rabbah's view, which maintains that the dispute also concerns a situation in which it is known that the owner has despaired of regaining the object, who can be represented in this rule? It is not rabbis nor R. Simeon!*

*B. The case before us once more involves an armed bandit, and the ruling accords with R. Simeon.*

*C. If so, then that is no different from the robber [customs officer acting openly like a robber (Kirzner)], so why say the same thing twice?*

*D. There are two distinct types of robber [customs officer, armed bandit].*

*E. But if you prefer, I shall say: The Tannaite formulation before us represents the position of Rabbi, for it has been taught on Tannaite authority: Rabbi said, "A thief is in the classification of a robber." [114B] And we have it as an established fact that so far as Rabbi's statement was concerned, it pertained to the law that, in the position of R. Simeon, applied to a robber. [Simeon holds that there is renunciation in the case of a robber; Rabbi then says there is renunciation in the case of both robbery and theft (Kirzner).]*

**II.5** *A. Reverting to the body of the prior discussion: Rabbi said, "A thief is in the classification of a robber."*

*B. The question was raised: "Did he mean in the category of a robber as defined by rabbis, so title is not transferred, or did he mean to subject him to the law that applies to a robber as R. Simeon states, in which case title is transferred?"*

*C. Come and take note: If excise collectors took one's ass and gave him another ass, if thugs took his garment and gave him another garment, lo, these are his, because the original owners have given up*

**hope of getting them back.** *Now whose view is represented here? It cannot be rabbis, since the ruling on the robber [Kirzner: the customs collector who acts openly] is a problem for them [Kirzner: for in their view there is no renunciation in the case of a robber], and it cannot be R. Simeon, since, from his view, the thief would represent a problem. [Kirzner: The brigand is a problem, for according to Simeon there is no renunciation in the case of a thief.] But if you say that when Rabbi made his statement, "A thief is in the classification of a robber," it was in the setting of the robber as defined by R. Simeon, so ownership is transferred, then the ruling of the Mishnah would accord with Rabbi, and that explains why title is transferred. But if you say that when Rabbi made his statement, "A thief is in the classification of a robber," it was in the setting of the robber as defined by rabbis, so that title is not transferred, then in accord with whom will this Mishnah ruling follow? It can be neither Rabbi nor R. Simeon nor rabbis!*

D. *The case before us once more involves an armed bandit, and the ruling accords with R. Simeon.*

E. *If so, then that is no different from the robber [customs officer acting openly like a robber (Kirzner)], so why say the same thing twice?*

F. *There are two distinct types of robber [customs officer, armed bandit].*

G. *Come and take note: 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?]*

H. *Now whose view is represented here? It cannot be rabbis, since the ruling on the robber [Kirzner: the*

customs collector who acts openly] *is a problem for them* [Kirzner: for in their view there is no renunciation in the case of a robber], *and it cannot be R. Simeon, since, from his view, the thief would represent a problem.* [Kirzner: The brigand is a problem, for according to Simeon there is no renunciation in the case of a thief.] *But from the perspective of Rabbi, who held that the thief and the robber are subject to the same rule, if he addressed the position of R. Simeon, then title is transferred, and the ruling accords with Rabbi, since that explains why title is transferred. But if you take the position that when Rabbi treated the thief and robber as subject to the same rule, it is within the setting of rabbis' position, then from their perspective, title is not transferred, so in accord with whom is this ruling [in which there is renunciation both in the case of robbery and theft]?*

I. *The case before us once more involves an armed bandit, and the ruling accords with R. Simeon.*

J. *If so, then that is no different from the robber [customs officer acting openly like a robber (Kirzner)], so why say the same thing twice?*

K. *There are two distinct types of robber [customs officer, armed bandit].*

L. *Said R. Ashi to Rabbah, "Come and take note: But lo, Rabbi repeated as the Tannaite formulation to R. Simeon, his son, 'The meaning is not literally, something which could serve as security [for example, subject to a mortgage, that is, real estate], but rather, even a cow that could be used for ploughing, or an ass that could be used for driving, they are liable to make restitution, on account of the honor that is owing to their father.' Now the operative consideration, therefore, is the honor owing to their father; if it were not for that consideration, it would not be so.* [Kirzner: They would be entitled to retain the object on account of renunciation on the part of the



owner.] *This proves that when Rabbi made his statement, it was to the law of the robber within the context of the law of the robber as defined by R. Simeon [maintaining that there is renunciation both in the case of robbery and in the case of theft].*”

M. *That is decisive proof.*

**III.1 A.** **And so a swarm of bees: If the owner had given up hope of getting it back, lo, this belongs to him:**

- B. *What is the meaning of the language, And so a swarm of bees?*
- C. *This is the sense of the statement: Even in the case of a swarm of bees, where the right to title is merely an enactment of rabbis, in which case you might have thought that since the title is merely on the authority of the rabbis, we might have supposed that the owner despaired of getting the bees back, we are told that it is only where the owner has articulated his renunciation is that the rule, but otherwise not.*

**IV.1 A.** **Said R. Yohanan b. Beroqah, “A woman or minor is believed to testify, ‘From this place did this swarm go forth’”:**

- B. So can a woman or a minor give evidence?
- C. *Said R. Judah said Samuel, “With what sort of a case do we deal here? It is one in which the owner was chasing the bees, and, speaking without guile, a woman or minor said, ‘This swarm started from here.’”*

**IV.2 A.** *Said R. Ashi, “Speaking without guile validates only a woman’s evidence alone that a man has died, so that the widow is free to remarry.”*

B. *Said Rabina to R. Ashi, “And is that so? And lo, the case of a swarm of bees involves speaking without guile.”*

C. *“The case of the swarm of bees is exceptional, for the title to the swarm is merely by reason of rabbis’ ruling.”*

D. *But is it not on the authority of the Torah? And did not R. Judah say Samuel said, “There was a case in which a man, speaking without guile, said, ‘I remember that, when I was a child and riding on my father’s shoulder, they took me out of school and took off my garment and immersed me, so that I could eat food in the status of heave-offering that night,’” and R. Hanina completed the story: “And my playmates shunned me and called me, ‘Yohanan the dough-offering*

eater,’ and on the strength of that testimony, Rabbi raised the man to the priesthood on the basis of what he himself had said”?

E. *That refers to eating heave-offering [after the destruction of the Temple], which is merely by rabbinical authority.*

F. *And would the credibility of testimony given without guile pertain then to rulings based on the authority of the Torah? And lo, when R. Dimi came, he said, “R. Hana Qaratigena — and some say R. Aha Qaratigena — reported: ‘There was a case that came before R. Joshua b. Levi — some say, a case came before Rabbi — of a certain child, who, speaking without guile, said, “My mother and I were taken captive by gentiles. I went out to get water, thinking about her; to gather wood, thinking about her.” And Rabbi allowed the woman to marry a priest on the strength of the testimony of the child.’”*

G. In the case of a woman taken captive, rabbis have enforced the law in a lenient manner.

**V.1 A. But he may not cut off a branch of his tree [to retrieve the swarm, even] on condition that he pay damages for it. R. Ishmael, son of R. Yohanan b. Beroqah, says, “Also, he cuts down the branch and pays damages for it”:**

B. *It has been taught on Tannaite authority:*

C. 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 saved; 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.”

**I.1** investigates the premise of the Mishnah’s rule, harmonizing two contradictory laws on the strength of that inquiry. **II.1** explains the circumstances to which the Mishnah’s rule pertains. Nos. 2, 3, 4, with a sizable rerun at Nos. 5, 6, pursue the general problem introduced in the Mishnah and undertakes a comparative and broad-ranging investigation of it. **III.1** provides an important clarification of the intent of the phrasing of the Mishnah.

IV.1 answers an obvious question, and No. 2 amplifies the principle invoked in No. 1. V.1 goes over familiar ground, explaining why the Mishnah's rule pertains.

### 10:3

- A. He who recognizes his utensils or his books in someone else's possession,
- B. and a report of theft had gone forth in the town —
- C. the purchaser takes an oath to him specifying how much he had paid and takes [the price in compensation from the original owner, and gives back the property].
- D. And if not, [the original owner] has not got the power [to get his property back].
- E. For I say, "[The original owner] sold them to someone else, and this one [lawfully] bought them from that other person."

- I.1
- A. *But even if a report of theft had gone forth in the town, so what? Why not take account of the possibility that the plaintiff himself is the one who sold the goods and that he was the one who circulated the rumor!*
  - B. Said R. Judah said Rab, "We deal with a case in which thieves had actually gotten into the man's house and he had gotten up and called for help, since he was being robbed and then reported that his goods had been stolen."
  - C. All the more reason to suppose he was looking for a pretext!
  - D. *R. Kahana completes the statement in Rab's name in the following language: "It would be a case, for instance, in which a hole was made in his house, and people who were staying in his household were going out with bundles of articles on their shoulders, so everybody was saying that So-and-so had been robbed."*
  - E. *So maybe there were utensils, but what about the books?*
  - F. *Said R. Hiyya bar Abba said R. Yohanan, "For instance, people were saying that books, too, were stolen."*
  - G. *So why not take account of the possibility that they were small books and he claimed compensation for big ones?*
  - H. *Said R. Yosé bar Hanina, "They were saying, 'That particular book.'"*
  - I. *So why not take account of the possibility that they were old books and he claimed new books?*
  - J. Said R. Abbahu, "For instance, people were saying, "These were the utensils of So-and-so, and these were the books of So-and-so."

- K. But did Rab make such a statement? And did not Rab say, "He who breaks into a house and took utensils and got away is exempt [from having to pay for them]. *What is the reason?* He has acquired ownership of them by the risk of his life."
- L. *That is the rule, involving transfer of title, where the thief broke in, in which case to begin with he risked his life. But if people living in the house did it, they did not risk their lives, so this ruling cannot apply.*

**I.2** A. Said Raba, "The rule applies only in a case in which the householder was one who would ordinarily sell his possessions, but if it was a householder who did not ordinarily sell his possessions, **[115A]** *it is not necessary to follow up on the matter.*"

B. *But maybe the man needed the money and so really did sell what he had and later claimed it was stolen?*

C. Said R. Ashi, "Lo, the fact is that **a report of theft had gone forth in the town.**"

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

B. If the thief stole and then sold the goods, and then the thief was caught —

C. Rab in the name of R. Hiyya said, "The original owner would have to sue the first party [the thief]."

D. R. Yohanan in the name of R. Yannai said, "The case should be brought against the second party [who had purchased the stolen goods]."

E. *Said R. Joseph, "These two opinions really are not in conflict. The one refers to the period prior to the owner's despairing of recovering the object and so renouncing title, in which case the case should be brought against the second party [who had purchased the stolen goods], and the other refers to the period after the owner's despairing of recovering the object and so renouncing title, in which case the case should be brought against the first party [the thief]."*

F. *And both of them concur in the position of R. Hisda [If one stole something and, before the owner had despaired of getting it back, at which point the thief acquires title to the object, someone else came along and ate up what he stole, the owner has the choice of collecting the payment from the one or the other. How come? The reason is that, for so long as the owner did not despair of getting the thing back, the stolen object is still in the title of the original owner].*

- G. *Said to him Abbayye, “But do they not differ? Lo, there is the case of the gifts to the priests [at Deu. 18: 3], which are equivalent to the situation prevailing in the case of a purchase that took place before the owner had renounced ownership [priests never abandoning what is coming to them, after all], and yet there is a difference of opinion on that matter, for we have learned in the Mishnah: [If] he said, ‘Sell me the intestines of the cow [= the maw],’ and the priests’ dues were in them, he gives them to the priest and does not deduct their value from [what he pays] him. [If] he purchased it from him by weight, he gives them to the priest, and he does deduct their value [from what he pays] him [M. Hul. 10:3H-K]. And said Rab, ‘The latter ruling pertains to a case in which the purchaser weighed it for himself, but if the butcher weighed it for him, then the priest would sue the butcher’ [and here there was no renunciation of title, so why does Rab say the priest sues the butcher and not the purchaser (Kirzner)].”*
- H. *Read it in this wording: The priest may also sue the butcher. For what might you otherwise have supposed? The priestly parts are not subject to the law of robbery. So we are informed that they are.*
- I. *Now from Abbayye’s perspective, which maintains that they do differ, what is the point of difference between them?*
- J. *They differ on the statement made by R. Hisda [If one stole something and, before the owner had despaired of getting it back, at which point the thief acquires title to the object, someone else came along and ate up what he stole, the owner has the choice of collecting the payment from the one or the other. How come? The reason is that, for so long as the owner did not despair of getting the thing back, the stolen object is still in the title of the original owner].*
- K. *R. Zebid said, “They differ on a case in which the owner despaired of getting back the lost goods when they were in the hands of the purchaser, but did not despair when they were in the hands of the thief. And this is what is at issue: One master [Yohanan] takes the view that if there is an attitude of renunciation of ownership and then afterward there was a change in the domain of the object, it effects a transfer of title, but if there is a change in the domain in which the object is located and only afterward the owner’s despair, the title is not transferred. And the other master [Rab] maintains that that distinction is null.”*

- L. *R. Pappa said, "As to the cloak itself, all parties concur that it is returned to the owner [Kirzner: as the purchaser acquired no title to it if he bought it before renunciation]. Here at issue is whether the ordinance governing the market is assigned to him. [Kirzner: That ordinance provides, in the case of sales made bona fide in the open market, for the return of the purchased article to the owner, who would have to pay the purchaser the price he paid. Otherwise people would be afraid to buy goods for fear lest they are stolen.]*
  - M. *"Rab in the name of R. Hiyya said, 'The original owner would have to sue the first party [the thief]': The suit of the purchaser to get his money back is against the thief, so the benefit of the ordinance of the market does not pertain here [where we know who the thief is]."*
  - N. *"R. Yohanan in the name of R. Yannai said, 'The case should be brought against the second party [who had purchased the stolen goods]': The purchaser's claim for repayment goes against the owner, so the benefit of the ordinance of the market does pertain here."*
  - O. *But does Rab really take the view that the benefit of the ordinance of the market does not apply here [where we know that a theft has taken place]? Now lo, R. Huna was Rab's disciple, and when Hanan the bully stole and sold someone's cloak and the case came before R. Huna, he said to the plaintiff, "Go and redeem your pledge in the domain of the purchaser" [Kirzner: proving that the plaintiff would have to pay the purchase money even where the theft was definitely established].*
  - P. *The case of Hanan the bully is exceptional, for, since it was not possible to get any money out of him, it is as though the thief was not actually identified at all.*
  - Q. *Said Raba, "If it is a notorious thief, then the ordinance of the market does not apply" [Kirzner: since the purchaser should not buy anything from such a person].*
  - R. *Well, Hanan the bully was a notorious thief, and yet the ordinance of the market applied!*
  - S. *Well, while he was notorious as a skunk, he wasn't notorious as a thief.*
- I.4**
- A. *It has been stated:*
  - B. *If someone stole and paid off a debt with the stolen goods, or if he stole and paid with the stolen goods for goods he had received on credit, the ordinance of the market does not apply, for we say [to the purchaser], "Whatever credit you gave him was not with repayment in stolen goods in mind."*

- C. If he gave them in pledge for a loan of a hundred, and they were worth two hundred, then the ordinance of the market would apply. But if they were worth precisely what was lent on them as a pledge –
- D. Amemar said, “The ordinance of the market would not apply.”
- E. Mar Zutra said, “The ordinance of the market would apply.”
- F. If he sold the goods, if the money paid was the same as the value of the goods, then the ordinance of the market would apply. But if the goods worth a hundred were bought for two hundred —
- G. R. Sheshet said, “The ordinance of the market would not apply.”
- H. Raba said, “The ordinance of the market would apply.”
- I. *And the decided law in all instances is:* The ordinance of the market would apply, except for the cases in which one stole goods and paid a debt with them or stole goods and paid for goods received on credit.

**I.5** A. *Abimi bar Naazi, father-in-law of Rabina, was owed a debt of four zuz by someone. The debtor stole a garment and brought it to him as a pledge, then he borrowed on it four more zuz. In the end the thief was caught. The case came before Rabina, who said, “As to the first four zuz, we have a case in which one stole goods and paid a debt with them, so the plaintiff does not have to give him anything at all. In the case of the second four zuz, you can get your money and then you return the garment.”*

B. *Objected R. Kohen, “But perhaps the cloak was given in consideration of only the first four zuz, in which case the appropriate rule would be the one for cases in which one stole goods and paid a debt with them or stole goods and paid for goods received on credit. And as to the other four zuz, this was just a matter of trust, just as he trusted him to begin with” [Kirzner: and so the plaintiff should be entitled to recover the garment without any payment whatsoever].*

C. *The matter rolled along from court to court, until it came before R. Abbahu, who ruled, “The decided law accords with R. Kohen.”*

**I.6** A. *A man from Nersh stole a book and sold it to a man from Papunia for eighty zuz. The man from Papunia went and sold it to a man from Mahoza for a hundred and twenty zuz. In the end the thief was caught. Ruled Abbaye, “Let the owner of the book go and give the man from*

*Mahoza eighty zuz and take his book back, then let the man from Mahoza go and collect forty zuz from the man from Papunia.”*

*B. Objected Raba, “Now if in the case in which someone bought something from the thief, the ordinance of the market applies, in the case in which one has bought something from a buyer of the object, all the more so should the benefit of the market apply!”*

*C. Rather, said Raba, “Let the owner of the book go and pay the man from Mahoza a hundred and twenty zuz and get his book back, and then the owner of the book can go and get forty zuz from the man from Papunia and eight from the man from Nersh.”*

**I.1** explains the logic behind the Mishnah’s ruling. No. 2 continues the exposition of the same matter. No. 3 refines the foregoing rule. Nos. 4+5-6 is an appendix to a detail of the foregoing, but the relevance to the problem of our Mishnah paragraph becomes clear in the closing cases.

#### 10:4

- A. This one is coming along with his jar of wine,
- B. and that one is coming along with his jug of honey —
- C. the jug of honey cracked —
- D. and this one poured out his wine and saved the honey in his jar —
- E. [115B] he has a claim only for his wages.
- F. And if he said, “I’ll save yours if you pay me back for mine,”
- G. [the owner of the honey] is liable to pay him back.
- H. [If] the river swept away his ass and the ass of his fellow,
- I. his being worth a maneh and his fellow’s worth two hundred [zuz] [twice as much],
- J. [if] he then left his own and saved that of his fellow,
- K. he has a claim only for his wages.
- L. But if he said, “I’ll save yours, if you pay me back for mine,”
- M. [the owner of the better ass] is liable to pay him back.

**I.1** A. [This one is coming along with his jar of wine, and that one is coming along with his jug of honey — the jug of honey cracked — and this one poured out his wine and saved the honey in his jar — he has a claim only for his wages:] *Why should this be the rule? [Since the owner of the honey must have despaired in the interim of saving his honey,] why cannot the one*



who saved the honey say, “I acquired title to the honey, since it became ownerless [by reason of your despair]”? Has it not been taught on Tannaite authority: **If someone was coming along carrying jugs of wine or oil and saw that they were going to be broken, he may not say, “Lo, this will serve as heave-offering or tithe in behalf of produce that I have at home,” and if he made such a statement, it is null [T. M.S. 1:6]** [which shows that at that moment he has renounced ownership prior to the breakage, and here, too]?

- B. *The answer is in accord with what R. Jeremiah said, “Where the [Kirzner:] bale of the press house was twined around it [it would not become ownerless] [since there would be no instant loss],” and here, too, we assume that there was a bale twined around the honey [and it would not then be rapidly lost, so there is no immediate renunciation and loss of title].*
- C. [But the cited passage refers to a case in which the bale of the press house was not twined around it, and it says,] **And if he made such a statement, it is null.** *Now has it not been taught on Tannaite authority: If someone was walking down the road and saw a robber in front of him, he may not say, “The produce I have at home will be redeemed [from the status of second tithe] in exchange for this money,” but if he makes such a statement, it is entirely valid?*
- D. *Here with what situation do we deal? It is one in which he could still do something to keep his money.*
- E. *Well, if it is one in which he could still do something to keep his money, then why to begin with may he not make such a statement [but only after the fact is it accepted]?*
- F. *It is a situation in which he can do something to keep his money only with very considerable effort.*
- G. *Still, even if there was likely to be a loss but he can rescue the property with some effort, why can't he make the specified statement to begin with? Has it not been taught on Tannaite authority: Lo, if someone had ten jugs of produce that was not yet tithed but was liable to tithing, which was in the status of uncleanness, and he realizes that some of them are on the verge of breaking or becoming uncovered [and so forbidden for use], he may say, “Let this serve as the heave-offering of the tithe in behalf of nine other barrels,” though in the case of oil, he should not do so, since he would cause considerable loss to the priest [who could not make use of wine but could make use of oil, for example, for light or heat]?*

H. Said R. Jeremiah, “This is a case in which the bale of the press house was still wrapped around the barrel [so the loss is not great].”

**I.2** A. *Now with regard to a case in which the barrel broke, the wine that is left is still suitable for use, but where the barrel became uncovered, what good is it anyhow? And should you say, it is still fit for sprinkling, has it not been taught on Tannaite authority: **Water that has been left uncovered — one may not spill it out in the public way, mix plaster with it, give it to a gentile, or give it to cattle owned by others to drink. But he may water his own cattle with it. He may not wash with it his own face, hands, or feet. Others say, “They said that only if there is a cut, but if there is no cut, it is permitted” [T. Terumot 7:14A-D]?***

B. *It is usable if one strained it, in line with the opinion of R. Nehemiah, for it has been taught on Tannaite authority: Liquid poured through a strainer is still forbidden if it has been left uncovered. Said R. Nehemiah, “Under what conditions? When the receptacle underneath was left uncovered. But if the receptacle underneath was covered, though the strainer on top was uncovered, the strained liquid would not be subject to the law of uncovering, because the venom of a serpent is like a fungus and will float in its previous position.”*

C. *Has it not been stated in that regard: Said R. Simon said R. Joshua b. Levi, “That ruling has been stated only if it has not been stirred, but if it has been stirred, it is forbidden”?* [Kirzner: Here likewise, since he cannot avoid stirring the wine while pouring it from the barrel into the strainer, the venom will pass into the receptacle.]

D. *But there still, it is possible to clear up the situation by putting cloth on the mouth of the barrel and gently straining the liquid through it.*

E. *Still, from R. Nehemiah’s viewpoint, may we declare produce that is unclean to be in the status of heave-offering, even in behalf of other produce that is unclean? And has it not been taught on Tannaite authority: They may separate heave-offering from produce that is unclean in behalf of produce that is unclean, from produce that is clean in behalf of produce that is clean, and from produce that is clean in behalf of produce that is unclean, but not from produce that is unclean in behalf of produce that is clean. R. Nehemiah says, “Also from*

produce that is unclean for produce that is unclean they have not permitted the designation of heave-offering, except in the case of doubtfully tithed produce.”

F. *This too is a case of doubtfully tithed produce.*

- I.3** A. The master has said: “...though in the case of oil, he should not do so, since he would cause considerable loss to the priest”:
- B. *Why is oil exceptional? It is because it can be used for kindling. But wine can also be used for sprinkling. And should you maintain that sprinkling is not anything to be taken into account, did not Samuel say in the name of R. Hiyya, “To drink it, you pay a sela for a log of wine, but to sprinkle it, you pay two selas for a log of wine”?*
- C. *Here with what sort of a case do we deal? It is one in which the wine is new [and not usable for sprinkling].*
- D. *So it could be kept and allowed to age?*
- E. *He may use it for the wrong purpose.*
- F. *So why not take account of the possibility in the case of [unclean] oil that he may use it for the wrong purpose?*
- G. *He would keep the oil in a filthy jug.*
- H. *So he can keep the wine in a filthy jug.*
- I. *Since the wine is needed for sprinkling, how can it be held in a filthy jug?*

- I.4** A. *The concern about some sort of improper use of the substance is subject to dispute between Tannaite authorities, as has been taught on Tannaite authority:*
- B. A jug of wine in the status of heave-offering that was made unclean –
- C. the House of Shammai say, **[116A]** “It is to be poured out.”
- D. And the House of Hillel say, “It is to be used for sprinkling.”
- E. Said R. Ishmael b. R. Yosé, “I shall mediate. [If it became unclean] in the house, it should be used for sprinkling; in the field, it is to be entirely pilled out.”

F. There are some who say, “If it is old, it may be used for sprinkling, but if it was new, it is to be entirely spilled out.”

G. They said to him, “A compromise based on a third approach to the problem is not taken into account.”

**II.1 A. And if he said, “I’ll save yours if you pay me back for mine,” [the owner of the honey] is liable to pay him back:**

B. *Why should this be the case? Why cannot the other say to him later on, “That was just a come-on [I was only joking with you to get you to help]”? Has it not been taught on Tannaite authority: Lo, if someone was escaping from prison and there was a ford before him, and he said to the boatman, “Take this denar as your fee and carry me across” — the boatman may claim only his usual fee [and not so huge a payment as was offered]? Therefore he could later on claim, “That was just a come-on [I was only joking with you to get you to help].” Here, too, let him just say, “That was just a come-on”!*

C. *The cases are not really parallel, since the apt comparison is the one with the concluding clause of the same cited Tannaite passage, namely: But if he said to him, “Take this denar as your fee and carry me across the river,” he would have to pay in full the stated sum.*

D. *What is the difference between the first and second cases?*

E. Said R. Ammi bar Hama, “[In the second, the boatman] was like a fisherman who catches fishes from the sea, so he can say to him, ‘[By ferrying you] you made me lose fish amounting to the value of a zuz.’”

**III.1 A. [If] the river swept away his ass and the ass of his fellow, his being worth a maneh and his fellow’s worth two hundred [zuz] [twice as much], [if] he then left his own and saved that of his fellow, he has a claim only for his wages. But if he said, “I’ll save yours, if you pay me back for mine,” [the owner of the better ass] is liable to pay him back:**

B. *It was necessary to make explicit both examples. For had we been given only the former [wine, honey], we might have supposed that it was only in that case, where an articulated stipulation was made, that payment would cover the whole value of the wine, because it was by a deliberate action on his own part that the owner sustained the loss [spilling the wine]. But here, where the loss comes about on its own, one might have thought that, under all circumstances, the helper would have as a claim no more than the value of his services. And had we been given only the second of the two clauses, we might*

*have supposed that here in particular where no stipulation was articulated that he would get no more than the value of his service, since the loss came about on its own, but in the other case, where the loss came about through his own actions, I might have thought that, even absent a stipulation, payment would have to cover the whole value of the honey. Therefore both cases were required.*

- III.2** A. *R. Kahana raised this question of Rab: “If the owner of the miserable ass got down to save the other’s ass [with the condition of being paid for his own], and it turned out that his ass took care of itself and got out, what is the law?”*
- B. *He said to him, “It was his good luck [‘from Heaven they showed him mercy’] [and the initial stipulation remains valid and must be carried out].”*

**III.3** A. *That is like what happened to R. Safra. He was going along in a caravan, and a lion was stalking them, so every evening they had to leave it an ass, one by one, which it ate up. When it was the turn of R. Safra to give it the ass, he did it, but the lion didn’t eat it. R. Safra forthwith took possession of his ass again.*

**III.4** A. *Said R. Aha of Difti to Rabina, “So why did he have to retake possession of his ass? Granting that he had abandoned the beast, it was with the lion in mind that he abandoned the beast [assigning ownership to the lion], but he did not abandon the beast with the intention that anybody else could take title to it except for the lion!”*

B. *He said to him, “R. Safra did it just to cover all possibilities.”*

- III.5** A. *Rab raised this question of Rabbi: “If the owner of the miserable ass got down to save the other’s ass [with the condition of being paid for his own], and it turned out that he did not succeed in saving the other’s ass, what is the law?”*
- B. *He said to him, “Is this a question? He has a claim for no more than the value of his services.”*
- C. *An objection was raised: He who hired a worker [116B] to bring grapes, apples, and plums to a sick person, and he went along but found the sick person dead or found that he had gotten well pays him his full salary [T. B.M. 7:4D-H].*

- D. *He said to him, “Are the cases really parallel? In that case, the employee has carried out his assignment to the full, but here he did not carry out his assignment.”*

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

- B. **A caravan that was passing through the wilderness, and a band of thugs fell on it and seized it for ransom — they make a reckoning in accord with the property loss and not in accord with the number of people. But if they sent out a pathfinder before them, they also make a reckoning of the number of people. But in any event they do not vary from the accepted practice governing those who travel in caravans [T. B.M. 7:13].**
- C. **The ass drivers have the right to declare, “Whoever loses an ass will be given another ass.” But if the loss is caused by negligence, they would not have to meet that stipulation, and if it was not on account of negligence, he is given another ass. And if he said, “Give me the money and I’ll watch out for it as a paid bailee,” they do not listen to him [T. B.M. 11:25B-G].**

D. *That’s obvious.*

E. *Not at all, it was necessary to specify the rule to cover the case in which he has another ass. What might you have thought? He has to take care of it anyhow. So we are informed that the requirements for taking care of one ass are not the same as the requirements for taking care of two.*

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

- B. **A boat that was coming along in the sea and got hit by a storm, so they had to toss some cargo overboard — they make a reckoning in accord with the property loss and not in accord with the number of people. But in any event they do not vary from the accepted practice of sailors [T. B.M. 7:14A-C].**
- C. **And the sailors have the right to declare, “Whoever loses a ship — we’ll provide him with another ship.” If it was lost through flagrant neglect, they do not have to provide him with another ship. If it was lost not through flagrant neglect, they do have to provide him with another ship. But if he set sail for a place to which people do not prudently set sail, they do not have to provide him with another ship if he loses his on the perilous voyage [T. B.M. 11:26A-R].**

D. *That’s obvious.*

E. *Not at all, it was necessary to specify the rule to cover the case in which in Nisan [spring] they will sail one rope's length out from shore, in Tishri [fall], two. And in this case, during Nisan he sailed in the place in which it is suitable for sailing during Tishri. In that case he might argue that since he took his usual course in sailing, he still should have another boat; so we are informed that that is not the rule.*

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

B. **A caravan that was traveling along in the wilderness, and a troop of thugs attacked it, and one of them went and saved the common property with his own — what he has saved he has saved for the common benefit of all participants. But if he had made a stipulation with them in a court, then what he has saved he has saved to his own account [T. B.M. 8:25A-E].**

C. *How are we to imagine such a case? If it is a case in which the others were able to take care of themselves, then why in the second case should the rescued property not go to the owners? And if no other owner could take care of a thing, then why in the first case should everything not go to the rescuer himself [in the theory that the property was then ownerless]?*

D. *Said R. Ammi bar Hama, "Here we are dealing with a partnership, and in a situation of this kind [where property loss is imminent (Kirzner)], a partner has the right to dissolve the partnership without the knowledge and consent of the other. If he made such a stipulation [as in the concluding clause (Kirzner)], the partnership is null; if he made no such stipulation [as in the first clause (Kirzner)], the partnership is still in force."*

E. *Raba said, "Here we are dealing with workers, and the ruling is in accord with Rab, for said Rab, 'A worker has a right to withdraw from a stipulated task even in the middle of the work day.' So long as he did not withdraw, what he rescues is assigned to the employer; if he withdrew, it is otherwise, in line with: 'For to me the children of Israel are slaves, they are my slaves' (Lev. 25:55) — not slaves to slaves."*

F. *R. Ashi said, "It is a case in which he can save the situation with unusual effort, so that, where the one who did the rescuing declared his intention, what is rescued is assigned to him, but if not, then it goes back to the individual owners [there having been no implied renunciation on their part (Kirzner)]."*

**I.1** explains the logic behind the Mishnah's rule. No. 2, with its own appendix at Nos. 3-4, forms a talmud to an item secondary to the exposition of No. 1. **II.1** clarifies the logic of the question. **III.1** explains the formulation of the Mishnah. No. 2 then proceeds to a secondary case, refining the Mishnah's rule. Nos. 3, 5 provide secondary and illustrative cases to No. 2, and No. 4 a talmud to No. 3. The citation of a Tosefta passage at No. 3 accounts for the continuation of interest in the Tosefta's materials at Nos. 6, 7, 8.

### 10:5A-F

- A. He who stole a field from his fellow,**
- B. and bandits seized it from him —**
- C. if it is a blow [from which the whole] district [suffered],**
- D. he may say to him, "Lo, there is yours before you."**
- E. But if it is because [of the deeds] of the thief [in particular],**
- F. he is liable to replace it for him with another field.**

- I.1** A. *Said R. Nahman bar Isaac, "If someone repeats as the Tannaite formulation, 'bandits,' he does not err, and if someone repeats, 'thieves,' he does not err.*  
       B. *"If someone repeats as the Tannaite formulation, 'bandits,' he does not err: 'In the siege and straitness [using the former spelling]' (Deu. 28:57).*  
       C. *"And if someone repeats 'thieves,' he does not err: 'The locust shall consume' (Deu. 28:42), translated into Aramaic as 'the sack carrier shall inherit it.'"*

- II.1** A. **But if it is because [of the deeds] of the thief [in particular], he is liable to replace it for him with another field:**  
       B. *How shall we understand this case? If only this field was grabbed and none of the others, would this rule not follow from the opening clause, If it is a blow [from which the whole] district [suffered], he may say to him, "Lo, there is yours before you," which implies that if that is not the case, the ruling would be the opposite? But if that were not the case, then the ruling would not be the opposite!*  
       C. *No, the rule is necessary to cover a case in which the thief did not actually grab the field but rather pointed it out to those that did.*  
       D. *Another version:*



E. *Here with what sort of a case do we deal? It is one in which gentiles harassed him to show them his fields, so he showed them this field among his own.*

**II.2** A. *Somebody showed robbers a heap of wheat that belonged to the household of the exilarch. He was summoned before R. Nahman who ordered him to pay compensation. R. Joseph happened to be sitting behind R. Huna bar Hiyya, who was in session before R. Nahman. Said R. Huna bar Hiyya to R. Nahman, "Is this a normal routine legal judgment or an extrajudicial fine?"*

B. *He said to him, "It is an explicit ruling of our Mishnah, in line with that which what we have learned in the Mishnah: **But if it is because [of the deeds] of the thief [in particular], he is liable to replace it for him with another field.** This we assign to a situation in which he showed the field to the thugs."*

C. *After he adjourned, said R. Joseph to R. Huna bar Hiyya, "What difference does it make to you [117A] whether it is a normal routine legal judgment or an extrajudicial fine?"*

D. *He said to him, "If it is a normal routine legal judgment, then we shall derive the law for other cases from this ruling, but if it is an extrajudicial fine, then we shall not derive the law for other cases from it."*

E. *As it has been taught on Tannaite authority: In the beginning they maintained, He who imparts uncleanness to someone's food in the status of heave-offering or who imparts to the wine of someone else the status of libation wine [prohibiting its use]; then they ruled, Also, he who imparts the status of doubtfully tithed grain to someone else's grain. That is the case, therefore, only because they went and later on made that rule, but if they had not made that rule, it would have not been the case. So the operative consideration is not that there is a liability in fact, but rather, the liability is a matter of an extrajudicial sanction, and that proves that by analogy we do not derive a rule from an extrajudicial fine.*

F. *No, not at all. To begin with they took the view that we take account of a very substantial loss but we do not take into*

*account a negligible loss; but in the end they reached the conclusion that even for a negligible loss they do take account.*

*G. Is that so? But lo, the father of R. Abin repeated the Tannaite formulation as follows: In the beginning they maintained, He who imparts uncleanness to someone's food in the status of heave-offering or who imparts to the wine of someone else the status of libation wine [prohibiting its use, is liable to make it up]. Then they ruled, Also, he who imparts the status of doubtfully tithed grain to someone else's grain. So since they then made that ruling, that is the case, but if they had not made that ruling, that would not have been the case. Is not the reason that we do not derive a ruling from an extrajudicial punishment for other such analogical cases?*

*H. No, to begin with people followed the position of R. Abin, but later on, that of R. Jeremiah.*

*I. ...No, to begin with people followed the position of R. Abin: For said R. Abin, "If someone shot an arrow [on the Sabbath in a public domain] from the beginning to the end of a space of four cubits and it cut through silk en route, he would be exempt [from having to pay for the silk, since he was going to be liable for capital punishment for violating the Sabbath]. For lo, the beginning of the motion of the arrow was required for the completion of the end of the motion, and at the end he was liable for capital punishment."*

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

**II.3** A. *R. Huna bar Judah came to Be Ebioni. He came before Raba. He said to him, "Has any [interesting] case come before you?"*

B. He said to him, "The case of an Israelite whom gentiles forced to reveal the cash of his fellow came to my court, and I required him to pay compensation."

C. *He said to him, "Reverse the decision in favor of the defendant, for it has been taught on Tannaite authority: An Israelite whom gentiles forced to reveal the cash of his fellow is exempt from having to pay compensation. But if, of course, he had himself handed it over, he is liable."*

D. Said Rabbah, "If he showed it on his own volition, it is as though he personally took the money and handed it over to the robber."

## II.4

A. *Somebody was forced by gentiles to show the wine that belonged to Mari b. R. Phineas b. R. Hisda. They said to him, "Now pick it up and carry it along with us," so he carried it and brought it with them. The case came before R. Ashi. He declared him exempt from having to pay compensation.*

B. *Said rabbis to R. Ashi, "But has it not been taught on Tannaite authority, But if, of course, he had himself handed it over, he is liable?"*

C. *He said to them, "That rule pertains only when the gentiles were not supervising the process to begin with, but in a case in which they were supervising the process, it is as though [the produce, in that case] had already been burned up."*

D. *An objection was raised by R. Abba to R. Ashi, "If the bully had said to him, 'Hand me a bunch of sheaves or a cluster of grapes,' and he did so, would he not be liable? [And yet, here is a case in which the process was subject to the supervision of the source of the force majeure!]"*

E. *Here with what situation do we deal? It is one in which the two were standing on opposite sides of a river [so the bully could not get at the objects without the other's collaboration]. And that interpretation follows from the use of the language, Hand me a bunch, rather than the language of giving.*

F. *That is decisive proof.*

## II.5

A. *There was a certain net, over which two people were fighting. One said, "It's mine," and the other said, "It's mine." One of them took it*

*and handed it over to a royal Iranian authority [parahanga de malka=farahang].*

*B. Said Abbayye, "He may then legitimately plead, 'I handed over what was my property.'"*

*C. Said to him Raba, "Does he have the power to do that?"*

*D. Rather, said Raba, "We place him in excommunication, until he produces the net in court."*

## **II.6**

*A. Somebody who wanted to reveal someone else's straw was brought to Rab's court. He said to him, "Don't show it, don't show it."*

*B. The other replied, "I will show it, I will show it."*

*C. R. Kahana, in session before Rab, ripped out the man's windpipe. Rab recited in his regard the verse, "'Your sons have fainted, they lie at the heads of all the streets as a wild bull in a net' (Isa. 51:20): Just as a wild bull falls into a net, no one has mercy upon him, so, when it comes to an Israelite's property, as soon as it falls into the hands of gentiles, there is no mercy on it."*

*D. Said Rab to him, "Kahana, up to now the Greeks [Parthians], who did not care much about bloodshed, were here, but now the Persians [Sasanians], who do pay close attention to bloodshed, are here, and they will cry out, 'Rebellion, rebellion!' So get up and go up to the Land of Israel, but agree as a stipulation that you will not ask hard questions to R. Yohanan for the next seven years."*

*E. He went and found R. Simeon b. Laqish in session and reviewing the session of the day for the rabbis. He said to them, "Where is R. Simeon b. Laqish?"*

*F. They said to him, "Why?"*

*G. He said to them, "Well, here's a problem and there's a problem, but here's the solution and there's the solution."*

*H. They told R. Simeon b. Laqish. R. Simeon b. Laqish went and said to R. Yohanan, "A lion has come up from Babylonia. Let the master examine tomorrow's lecture with real care."*

*I. The next day R. Kahana was seated in the first row of disciples before R. Yohanan. He said his thing and the other raised no question, said something else and the other raised no*

question. So they put him back seven rows, so he was seated at the very last row. Said R. Yohanan to R. Simeon b. Laqish, "The lion of whom you have spoken has turned into a fox."

J. He said to him, "May it be God's will that these seven rows take the place of the seven years of which Rab spoke."

K. He stood up and said to him, "Will the master now review from the beginning [what he has said]?"

L. He made his statement and the other raised his questions. So they seated him in the first row. He made another statement and the other raised another question.

M. R. Yohanan was seated on seven pillows. Whenever he made a statement and the other presented a problem, they pulled out a pillow from under him, until all the pillows had been pulled away and he was sitting on the ground.

N. Now R. Yohanan was a very old man, and he had bushy eyelashes, so he said to those standing nearby, "Raise my eyes for me, I want to see him." They lifted up his eyelids with silver pincers. He saw that R. Kahana had a harelip and thought he was laughing at him. He was upset, and, consequently, R. Kahana died.

O. The next day, said R. Yohanan to the rabbis, "Did you see how that Babylonian was acting toward me?"

P. They said to him, "That was just his normal appearance."

Q. He went to the burial cave [of R. Kahana]. He saw that there was **[117B]** a snake wrapped around it. He said, "Snake, snake, open your mouth and let the master go into the disciple." But the snake would not open its mouth.

R. "Let the colleague go into the colleague." But the snake would not open its mouth.

S. "Let the disciple go into the master." Then the snake opened its mouth.

T. He prayed for mercy and raised him from the dead. He said to him, "If I had known that that is the master's normal appearance, I would not have been upset. Now, therefore, let the master go with us."

U. *He said to him, "Well, if you could pray for me never to die again [if I annoy you], I will go with you, but if not, I'm not going with you, since you might change your mind."*

V. *He raised him up and restored him and would ask him about matters of doubt, and R. Kahana worked out the problems for him. That is in line with what R. Yohanan said, "What I thought belonged to you in fact belonged to them [the Babylonians]."*

**II.7** A. *There was a case in which someone showed silk belonging to R. Abba [to thugs]. R. Abbahu and R. Hanina bar Pappi and R. Isaac Nappaha were in session, with R. Ilai with them. They considered imposing upon that man liability to make it up, in line with what we have learned in the Mishnah: **If one judged a case, declaring a liable person to be free of liability, declaring the person free of liability to be liable, declaring what is clean to be unclean, declaring what is unclean to be clean, what he has done is done. But he pays compensation from his own funds [M. Bekh. 4:4D-F].*** [Kirzner: This proves that for a mere statement that has caused a monetary loss, one is liable to pay].

B. *Said to them R. Elai, "This is what Rab said, 'That is the case if the defendant actually took action on his own.'"*

C. *They said to the plaintiff, "Go to R. Simeon b. Eliaqim and R. Eleazar b. Pedat, who assign liability for damage when it is done by a direct cause."*

D. *He went to them, and they declared the defendant liable in light of our Mishnah paragraph: **But if it is because [of the deeds] of the thief [in particular], he is liable to replace it for him with another field.** This we assign to a situation in which he showed the field to the thugs.*

**II.8** A. *There was a case in which someone left as a bailment a silver cup with someone else, and the man was attacked by muggers and took it and handed it over to them. The case came before Rabbah, who declared him free of having to pay compensation.*

B. *Said to him Abbaye, "Was he not rescuing himself through someone else's property?"*

C. Rather, said R. Ashi, "We examine the case. If he was a rich man, the thieves came to him to steal his own possessions, and if not, they came for the silver cup."

- II.9** A. There was a case in which a purse of money collected to redeem captives was left as a bailment with someone. The man was attacked by muggers and took it and handed it over to them. The case came before Rabbah, who declared him free of having to pay compensation.
- B. Said to him Abbaye, "Was he not rescuing himself through someone else's property?"
- C. He said to him, "Is there a case of redeeming a captive more urgent than this one?"

- II.10** A. There was a case in which someone went ahead and boarded his ass on a ferry boat before the people in the boat had got out onto land. The boat was about to sink, so someone came along and pushed the ass into the river, where it drowned.
- B. The case came before Rabbah, who declared him free of having to pay compensation.
- C. Said to him Abbaye, "Was he not rescuing himself through someone else's property?"
- D. He said to him, "The owner of the ass to begin with was in the status of a pursuer."

E. Rabbah is consistent with rulings expressed elsewhere, for said Rabbah, "If one was pursuing his fellow and broke utensils, whether they belong to the one who is being pursued or to any other man, [the pursuer] is exempt from having to pay compensation. What is the reason? The pursuer is at risk of being put to death. But if the one who was being pursued broke utensils, if they belong to the pursuer, he is exempt from having to pay compensation. If they belong to anybody else, he is liable. If they belong to the pursuer, he is exempt, so that the victim's property is not treated as more valuable to him than his person [since if the victim were able to kill the pursuer, he would not be liable to the death penalty]. If they belonged to anyone else, he is liable, because he is in the situation of saving his life at the cost of someone else's property. And as to one who was pursuing so as to save the life of his victim and broke

utensils, whether they belonged to the pursuer, the pursued, or anyone else, he is exempt from having to make compensation. That in point of fact is not logical. But if you maintain the contrary position, it will turn out that no one will ever try to save his fellow from a pursuer [since he will undertake risks he cannot afford].”

**I.1** works on the correct reading of the Mishnah paragraph. My translation is copied from Kirzner nearly verbatim. **II.1** explains the concrete situation to which the Mishnah’s rule refers. No. 2 illustrates the explanation with a case. This composition trails off in a direction not suggested by the initial statement of its issue and proposition. Cases at Nos. 3-10 further illustrate the problem and rule of the Mishnah.

### 10:5G

**G. [If] a river swept it away, he may say to him, “Lo, there is yours before you.”**

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

B. “He who steals a field from his fellow and the river swept it away is liable to provide him with a field,” the words of R. Eliezer.

C. And sages say, “He may say to him, “Lo, there is yours before you.”” [Cf. **M. B.Q. 10:5A, G: He who stole a field from his fellow, and a river swept it away, may say to him, “Lo, there is yours before you”].**

D. *What is at issue between the two opinions? R. Eliezer interprets scriptural evidences of inclusionary and exclusionary usages, and sages expound the law in accord with the principle of an encompassing principle and its associated particularization [in which case the encompassing principle is limited by what is covered by the particularization thereof.]*

E. *“R. Eliezer interprets scriptural evidences of inclusionary and exclusionary usages, as follows: ‘And lie to his neighbor’ (Lev. 5:21) — this forms an inclusionary clause. ‘In a bailment of a loan’ — this forms an exclusionary clause. ‘...or any thing about which he has sworn’ — this forms another inclusionary clause. Thus we have an inclusionary, exclusionary, and inclusionary clause, in which case the final clause encompasses everything. What then does it encompass? Everything. So what is excluded? Only bonds.*



F. *“Sages expound the law in accord with the principle of an encompassing principle and its associated particularization [in which case the encompassing principle is limited by what is covered by the particularization thereof]: ‘And lie to his neighbor’ (Lev. 5:21) — this forms an encompassing principle. ‘In a bailment of a loan’ — this forms a limiting particularization. ‘...or any thing about which he has sworn’ — this forms another encompassing principle. Thus we have an encompassing principle, limiting particularization, and an encompassing principle. You may encompass under the rule only what conforms to the traits of the limiting particularization. Just as what is covered by the particularization is certainly movable and intrinsically monetary, so whatever is movable and intrinsically monetary is included, excluding lands, which are immovable, and excluding slaves, which are treated by the law as comparable to real estate, and excluding bonds, which, though movable, are not in themselves monetary.*

G. *But has it not been taught on Tannaite authority: He who steals a cow and it was swept away by the river has to present him with another cow,” the words of R. Eleazar. And sages say, “He may say to him, “Here is yours before you”? What is at issue in that case?*

H. *Said R. Pappa, “With what sort of a case do we deal here? It is one in which he stole a field from his fellow, [118A] and there was a cow that was lying there, and a river flooded the field. R. Eleazar is consistent with his view [Kirzner: that the field entered the domain of the robber like anything else, so since he owned the field, the cow also was his], and the rabbis were consistent with their view [that land is not subject to the law of robbery and did not enter the possession of the robber, so he was not responsible for anything that happened to the cow either (Kirzner)].”*

The Mishnah paragraph is clarified at I.1 by a complement deriving from an intersecting rule and the discussion thereof.

## 10:6

- A. He who (1) stole something from his fellow, or (2) borrowed something from him, or (3) with whom the latter deposited something,
- B. in a settled area —

- C. may not return it to him in the wilderness.
- D. [If it was] on the stipulation that he was going to go forth to the wilderness,
- E. he may return it to him in the wilderness.

- I.1** A. [He who (1) stole something from his fellow, or (2) borrowed something from him, or (3) with whom the latter deposited something, in a settled area — may not return it to him in the wilderness:] *A contradictory rule is as follows: A loan may be repaid in any location, a lost article or a bailment may be restored only in a suitable place.*
- B. *Said Abbaye, "This is the sense of the statement: A loan is available for a demand for repayment in any location, but it is permitted to demand the return of a lost object or a bailment only in an appropriate place."*

- II.1** A. [If it was] on the stipulation that he was going to go forth to the wilderness, he may return it to him in the wilderness:
- B. *So what else is new?*
- C. *It is necessary to state the rule explicitly to take account of a case in which he said to him, "Take this article as a bailment with you, since I'm going off to the wilderness," and the other said, "Well, I'm going off to the wilderness, too, so if you want me to return it to you there, I'll be able to."*

**I.1** contrasts and harmonizes two set rules. **II.1** answers the obvious question.

### 10:7

- A. He who says to his fellow, "I have stolen from you....,"
- B. "You have lent something to me....,"
- C. "You have deposited something with me....,"
- D. "and I don't know whether or not I returned [the object] to you"
- E. is liable to pay him restitution.
- F. But if he said to him, "I don't know whether I stole something from you,"
- G. "...whether you lent me something,"
- H. "...whether you deposited something with me,"
- I. he is exempt from paying restitution.

- I.1** A. *It has been stated:*
- B. If someone says to another, "You have a maneh of mine in your possession," and the other says, "I don't know" —

- C. R. Huna and R. Judah say, “He is liable.”
  - D. R. Nahman and R. Yohanan say, “He is exempt from liability.”
    - E. R. Huna and R. Judah say, “He is liable”: *Where we have one claim based on certainty, the other on doubt, the claim based on certainty wins out.*
    - F. R. Nahman and R. Yohanan say, “He is exempt from liability”: *We leave money where it is [absent compelling proof to the contrary].*
  - G. *We have learned in the Mishnah: But if he said to him, “I don’t know whether I stole something from you,” “...whether you lent me something,” “...whether you deposited something with me,” he is exempt from paying restitution. Now how can we imagine such a case? If we say that the plaintiff made no such demand, then the first case also must speak of a case in which he made no such demand, so why is there liability at all? It must then involve a case where the plaintiff did make such a demand, and yet it is taught, he is exempt from paying restitution!*
  - H. *Not at all. In point of fact while the second clause refers to a case in which the plaintiff made no such demand, the first speaks of a circumstance in which the defendant wishes to carry out his obligations to Heaven [that is, moral duty]. [Kirzner: Since he is certain about the initial liability and only in doubt as to whether it was cancelled by payment, he is liable to make restoration for Heaven’s sake, even though there was no demand on the part of the plaintiff, while in the second clause, where the doubt was regarding the initial liability, it would not be so.]*
    - I. *So, too, it has been stated:*
    - J. Said R. Hiyya bar Abba said R. Yohanan, “If someone says to another, ‘You have a maneh of mine in your possession,’ and the other says, ‘I don’t know’ — he is liable, in a case in which his intent is to carry out his duty to Heaven.”
- I.1 reviews the principles pertinent to the Mishnah.

### 10:8

- A. He who steals a lamb from a flock and [unbeknownst to the owner] returned it,
- B. and it died or was stolen again,
- C. is liable to make it up.

- D. [If] the owner did not know either that it had been stolen or that it had been returned,
- E. and he counted up the flock and it was complete,
- F. then [the thief] is exempt.

- I.1** A. Said Rab, “[If the householder] knew [that the beast had been stolen,] then [for the thief to be no longer liable] he must also know about the restoration; if he did not know about the theft, then the act of counting the herd [and finding it complete] exempts the thief [from further obligation to restore the stolen animal]. *The language, And he counted up the flock and it was complete, then [the thief] is exempt, refers only to the concluding clause.*”
- B. And Samuel said, “Whether or not the householder knew of the theft, the counting of the herd would exempt the thief, and the language, **And he counted up the flock and it was complete, then [the thief] is exempt**, *refers to the entire set of cases.*”
- C. And R. Yohanan said, “If the householder knew about the theft, his act of counting the herd exempts the thief, *but if he had no knowledge of the theft, even counting is not required, and the language, And he counted up the flock and it was complete, then [the thief] is exempt, refers only to the first clause.*” [Kirzner: The first clause deals with a case in which the householder probably knew of the theft.]
- D. R. Hisda said, “If the householder knew about the theft, counting exempts the thief, if not, he would have to be informed that the beast was brought back [before the thief would be no longer liable for the fate of the beast], and the language, **And he counted up the flock and it was complete, then [the thief] is exempt**, refers only to the first clause.” [Kirzner: The first clause deals with a case in which the householder probably knew of the theft.]

**I.2** A. Said Raba, **[118B]** “*What is the operative consideration behind the position of R. Hisda? It is because animals run out into the fields.*” [Kirzner: So where the householder did not know of the theft, he should be notified about the restoration, so as to take better care of his sheep.]

B. *But did Raba make such a statement? Did Raba not say, “Someone who saw another picking up a lamb in his herd and who picked up a clod to throw at him and did not see whether he put the lamb back or not, and the lamb died or was stolen by someone else — the thief nonetheless is responsible”? Does this not pertain also to a*

*case in which the herd later on was counted* [Kirzner: thus proving that counting is not sufficient to exempt the thief where the owner knew about the theft]?

C. *Not at all. It refers to a case where the householder had not yet counted the flock.*

### I.3

A. *And did Rab really make such a statement* [that where the householder knew of the theft, he also has to know of the restoration, and where he did not, then at least counting would be required to exempt the thief from further liability (Kirzner)]? And did not Rab say, “If the thief returned the stolen sheep to a herd out in the wilderness, he thereby has carried out his duty to bring the lamb back”?

B. *Said R. Hanan bar Abba, “Rab concedes in a case in which the lamb was readily recognized”* [Kirzner: that the shepherd looking after the flock in the wilderness would notice its restoration].

### I.4

A. *May we say that Rab and Samuel differ along the lines of the following Tannaite statement:*

B. “He who steals a lamb from the fold or a *sela* from a purse must return what he has stolen to the place from which he stole it [and then is no longer responsible for what happens to the lamb or the coin],” the words of R. Ishmael?

C. R. Aqiba says, “The knowledge of the owner is required [for the transaction to be complete].”

D. *In the assumption that all parties concur in the position of R. Isaac, who has said, “People keep fingering their change” [so they always know whether or not something is missed], would the issue not be a case in which the householder knows about the loss of the coin, so both authorities differ as do Rab and Samuel [the householder then knows the coin is missing, the householder knows the lamb is missing; Rab stands with Aqiba, Samuel with Ishmael]?*

E. *No, they refer to a case in which a lamb has been stolen and the owner does not know about it, and [Ishmael and Aqiba] differ along the lines of R. Hisda and R. Yohanan.*

### I.5

A. *Said R. Zebid said Raba, “In a case in which a bailee has stolen a beast from the domain of the owner, all parties concur in the position of R. Hisda*

[Kirzner: that he must invariably notify the householder, since animals wander]. Here [Ishmael and Aqiba] differ on a case in which a bailee has stolen a bailment in his own domain and then put it back there. R. Aqiba holds that, at the moment he stole the bailment, his agency as bailee has come to an end [and the bailment must be given back to the owner], and R. Ishmael maintains that the bailment did not come to an end [and the unannounced restoration is valid (Kirzner)].”

- I.6** A. May we say that at issue between the following Tannaite authorities is whether or not the householder's act of counting the herd exempts the thief from further liability? For it has been taught on Tannaite authority:
- B. He who steals from his fellow and thereafter conceals the stolen money within the sum of money he pays over to him —
- C. One Tannaite formulation states, “He has carried out his obligation to return the funds.”
- D. And another Tannaite formulation states, “He has not carried out his obligation to return the funds.”
- E. In the assumption that all parties concur in the position of R. Isaac, who has said, “People keep fingering their change” [so they always know whether or not something is missed], would the issue not be that the one who maintains he has carried out his obligation holds that the act of counting exempts the thief from further responsibility, once the owner knows there is nothing missing, and the other party takes the view that he has not carried out his obligation because the act of counting does not exempt the thief from further obligation?
- F. Say: If both versions rest on the position of R. Isaac, then there would be no doubt at all that the act of counting exempts the thief from further responsibility. But what is at issue is the position of R. Isaac itself. One party takes the view of R. Isaac and the other party does not take the view of R. Isaac.
- G. And if you prefer, I shall say, All parties concur in the position of R. Isaac, and still there is no inexplicable contradiction here, for one party, who holds the return is valid, assumes the thief has counted the money and tossed it back into the purse of the victim [who then will count it soon enough], and the other party holds that he tossed it into

*the hand [not the purse] of the other party [and there may not have been an act of counting (Kirzner)].*

*H. And if you wish, I shall say that in both cases the robber counted the money and tossed it into the purse of the other, but in the latter case, we suppose some money was in the purse, in the former, we imagine there was no other money in the purse.*

I.1 explains the reasoning behind the Mishnah's rule, bearing its own talmud at Nos. 2-6.

### 10:9

- A. They do not purchase from herdsmen wool, milk, or kids,
- B. or from watchmen of an orchard wood or fruit.
- C. But they purchase clothing of wool from women in Judah,
- D. flax clothing in Galilee,
- E. and calves in Sharon.
- F. And in all cases in which [the sellers] say to hide them away,
- G. it is prohibited [to make such a purchase].
- H. They purchase eggs and chickens in every locale.

- I.1
- A. *Our rabbis have taught on Tannaite authority:*
  - B. They do not purchase from shepherds either goats or shearings or bits of wool. But they purchase from them garments that have been sewn, for ones that have been sewn belong to them.
  - C. And they purchase from them milk and cheese in the wilderness, but not in settled country.
  - D. They may buy from them four or five sheep, four or five bundles of fleece, but not two sheep or two bundles of fleece.
  - E. R. Judah says, "They purchase from them domesticated ones but not those that are wild."
  - F. The summary principle of the matter is this: Anything that a shepherd may steal without the householder's knowing about it one may not purchase from a shepherd,
  - G. and anything which it is impossible to steal without the householder's knowing about it may be purchased from him [T. B.Q. 11:9A-K].

- I.2** A. The master has said, “**They may buy from them four or five sheep, four or five bundles of fleece, but not two sheep or two bundles of fleece**”:
- B. *If it is permitted to buy four, why specify the number five as well?*
- C. Said R. Hisda, “One may be four out of a herd of five.”
- D. *Some say, “Four may be bought out of a small herd, five out of a big one.”*
- I.3** A. *There is a contradiction in the body of the formulation:*
- B. *One the one side, you say, **Four or five sheep**, therefore: but not three; and then you say, **But not two sheep**, but therefore three may be bought!*
- C. *No problem, the former talks about fat animals, the latter, thin ones.*
- I.4** A. **R. Judah says, “They purchase from them domesticated ones but not those that are wild:”**
- B. *The question was raised: Did R. Judah make reference to the opening clause [**four or five sheep**], so that he meant to impose a more strict ruling, or to the closing clause [**but not two sheep**] so that he meant to impose a more lenient ruling?*
- C. *Did R. Judah make reference to the opening clause [**four or five sheep**], so that he meant to impose a more strict ruling: **They may buy from them four or five sheep**, that is to say, **domesticated ones but not those that are wild**, so that, as to the latter, even four or five are not to be purchased.*
- D. *Or to the closing clause [**but not two sheep**], so that he meant to impose a more lenient ruling: **But not two sheep**, that is to say, **domesticated ones but not those that are wild**, so that, as to the former, even two may be bought.*
- E. *Come and take note: R. Judah says, “They may buy from them domesticated animals but not those that are wild in the pasture, but, under all circumstances, they may buy from them four or five sheep.”* **[119A]** *Since he has said, “Under all circumstances,” it follows that he refers to the concluding clause and takes the more lenient view.*
- F. *It certainly follows.*



- II.1** A. **Or from watchmen of an orchard wood or fruit. But they purchase clothing of wool from women in Judah, flax clothing in Galilee, and calves in Sharon. And in all cases in which [the sellers] say to hide them away, it is prohibited [to make such a purchase]:**
- B. *Raba bought bundles of wood from a sharecropper. Said to him Abbaye, “But have we not learned in the Mishnah: Or from watchmen of an orchard wood or fruit?”*
- C. *He said to him, “That rule pertains to a guardian who has no share at all in the land. But in the case of a sharecropper, who does have a share in the land, I might maintain that what he is selling is his own property.”*
- II.2** A. *Our rabbis have taught on Tannaite authority:*
- B. **If a watchman over produce sits and sells produce with his basket before him, if he sits and weighs it out with his balance before him, it is permitted to purchase from them. But in any case in which they said to hide away what has been purchased, one may not make such a purchase [T. 11:8A-D].**
- C. One may purchase from them at the gate of the vegetable patch, but not at the back wall.
- II.3** A. *It has been stated:*
- B. As to a robber, at what point is it permitted to purchase something from him?
- C. Rab said, “When the greater part of what he has belongs to himself.”
- D. And Samuel said, “Even when the smaller part of what he has belongs to himself.”
- E. *R. Judah instructed Adda the servant to carry out a concrete deed in accord with the position of him who said, “Even when the smaller part of what he has belongs to himself.”*
- II.4** A. As to a quisling —
- B. R. Huna and R. Judah —
- C. One said, “It is permitted to destroy his property through a deliberate action.”
- D. The other said, “It is forbidden to destroy his property through a deliberate action.”
- E. *From the perspective of him who said, “It is permitted to destroy his property through a deliberate action,” his property should not be*

held in greater esteem than his body [and one may deliberately maim him for the sake of the common good].

F. *From the perspective of him who said, “It is forbidden to destroy his property through a deliberate action,” he may have worthy descendants, and the Torah has said, “He, the wicked, may prepare it but the just shall wear it” (Job. 27:17).*

### **Composite on Dealing with Thieves and Robbers**

**II.5** A. R. Hisda had a sharecropper who weighed and gave, weighed and took. He fired him and in his own regard cited the verse, “The wealth of the sinner is laid up for the just” (Pro. 13:22).

**II.6** A. “For what is the hope of the hypocrite though he has gained when God takes away his soul” (Job. 27: 8):

B. R. Huna and R. Hisda —

C. One said, “The life of the robber.”

D. The other said, “The life of the victim.”

E. *He who says that it is the life of the robber refers to the verse, “Do not rob the poor because he is poor nor oppress the afflicted in the gate” (Pro. 22:22), followed by, “For the Lord will plead their cause and spoil the soul of those who spoiled them” (Pro. 22:23).*

F. *He who says that it is the life of the victim refers to the verse, “So are the ways of everyone who is greedy of gain; he takes away the life of its rightful owner” (Pro. 1:19).*

G. *And as to the other party, too, is it not written, “He takes away the life of its rightful owner” (Pro. 1:19)?*

H. That is, of its present owner.

I. *And as to the other party, too, is it not written, “And spoil the soul of those who spoiled them” (Pro. 22:23)?*

J. *That gives the reason for the rule: Why will he spoil the soul of those who spoiled them? Because they took their lives [“He takes away the life of its rightful owner” (Pro. 1:19)].*

**II.7** A. Said R. Yohanan, “Anyone who steals so much as a penny from someone else is as though he takes away his life, as it is said, ‘So are the ways of everyone that is greedy of gain, that takes away the life of the owners thereof’ (Pro. 1:19), and also, ‘And he shall eat up your harvest and your bread, that your sons and daughters should eat’ (Jer. 5:17), and further, ‘For the violence

against the children of Judah because they have shed innocent blood in their land' (Joe. 4:19), and 'It is for Saul and for his bloody house because he slew the Gibeonites' (2Sa. 21: 1)."

B. *Why the sequence of verses [when one would do]?*

C. *Should you say he takes away his soul but not that of his sons and daughters, come and take note: "And he shall eat up your harvest and your bread, that your sons and daughters should eat." And should you say, that is the case in which there was no transfer of money [the robber stole without paying], but if there was money paid, that is not the case, come and take note: "For the violence against the children of Judah because they have shed innocent blood in their land" (Joe. 4:19). And should you say, that is the case where the person has done it directly, but in a case in which he merely caused the offense, that would not be so: "It is for Saul and for his bloody house because he slew the Gibeonites" (2Sa. 21: 1).*

**II.8** A. So where do we find that Saul killed the Gibeonites?

B. Since he killed Nob, the city of the priests, that would provide them with water and food, Scripture regards him as though he had personally killed them.

**III.1** A. **But they purchase clothing of wool from women in Judah:**

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

C. **They purchase from housewives clothing of wool in Judea and of flax in Galilee, but not wine nor oil nor flour; nor do they make purchases from slaves or children.**

D. **Abba Saul says, "A woman may sell things worth four or five denarii to make a hat for her head.**

E. **But in all cases in which they said to hide the goods away, it is forbidden to do so.**

F. **Charity collectors accept from them some small thing for the philanthropic fund, but not a large expensive gift.**

G. **They do not purchase from workers at the olive press a small amount of oil or a small quantity of olives, but they purchase from them oil by measure and olives by measure.**

- H. **Rabban Simeon b. Gamaliel** says, “They purchase olives from women, for sometimes a man is ashamed to be seen selling things at the door of his store, so he gives them to his wife and she sells them.”

**III.2** A. *Rabina came to Mahoza. Women of the households of Mahoza came and [for charitable purposes] threw before him chains and bracelets. He accepted them from them.*

B. *Said to Rabbah Tosepaah to Rabina, “But has it not been taught on Tannaite authority: Charity collectors accept from them some small thing for the philanthropic fund, but not a large expensive gift?”*

C. *He said to him, “In the households of Mahoza these are chicken feed.”*

**I.1** begins with a Tannaite amplification on the theme of the rule of the Mishnah, and Nos. 2-4 provide its talmud. **II.1** provides an important refinement to the law of the Mishnah, and No. 2 complements the Mishnah with a Tannaite entry. Nos. 3-4 move along the same path of refining the given law. Then we have an anthology of thematically pertinent entries, joined in obvious ways, Nos. 5-7+8. **III.1+2** complement the Mishnah’s rule with a Tannaite item.

### 10:10

- A. Shreds of wool which the laundryman pulls out — lo, these belong to him.
- B. And those which the wool comber pulls out — lo, they belong to the householder.
- C. The laundryman pulls out three threads, and they are his.
- D. But more than this — lo, they belong to the householder.
- E. If they were black [threads] on a white [surface], he takes all, and they are his.
- F. A tailor who left over a thread sufficient for sewing,
- G. or a piece of cloth three by three fingerbreadths —
- H. lo, these belong to the householder.
- I. What the carpenter takes off the plane — lo, these are his.
- J. But [what he takes off] with a hatchet belongs to the householder.
- K. And if he was working in the household of the householder, even the sawdust belongs to the householder.

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

- B. [Following Tosefta's wording:] **They purchase flockings from laundrymen, because these belong to him. And he should not comb the garment along its warp but along its woof. He should not use the cloth for stretching and hackling more than three widths of a seam. And he should not place in the garment more than three fuller's hooks for stretching the garment, and the two upper threads — lo, these are his. [119B] He may straighten it out lengthwise but not breadth-wise. If he wants to straighten it out up to a handbreadth, he may do so [T. B.Q. 11:13A-E].**

**I.2** A. The master has said: “**And the two upper threads — lo, these are his**”:

B. *But have we not learned in the Mishnah: The laundryman pulls out three threads, and they are his?*

C. *No problem, the former speaks of thick, the latter, thin threads.*

**I.3** A. **And he should not comb the garment along its warp but along its woof:**

B. *But has not the contrary been set forth as a Tannaite statement?*

C. *No problem, the one speaks of a cloak used every day, the other for dress.*

**I.4** A. **He should not use the cloth for stretching and hackling more than three widths of a seam:**

B. *R. Jeremiah raised this question: “Does the needle’s being drawn to and fro count as one stitch or two?”*

C. *That question stands.*

**I.5** A. **He may straighten it out lengthwise but not breadth-wise:**

B. *But has not the contrary been set forth as a Tannaite statement?*

C. *No problem, the one speaks of a garment, the latter of an undergarment.*

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

B. **They do not buy flockings from the fuller, because these do not belong to him.**

C. **But in a place in which they are usually his, lo, these are assumed to be his and may be purchased from him [T. B.Q. 11:C-E].**

- D. Everywhere, however, one may buy from them a mattress full of stuffing or a stuffed cushion, since these were transferred to them through the change [effected upon the stuffing itself].

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

B. **They do not purchase from a weaver either thorns, remnants of wool, threads of the bobbin, or remnants of the coil.**

C. **But they purchase from them a checkered web, spun wool, warp, or woof [T. B.Q. 11:11A-B].**

D. *Say: If the spun kind may be taken from them, why is it necessary to specify the same of the woven?*

E. *What is the meaning of “woven”? Merely twisted [not spun].*

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

B. **They do not purchase from a dyer either test pieces, samples, or wool that has been pulled out, but they purchase from him dyed wool, spun wool, warp, or woof [T. B.Q. 11:12A-B].**

C. *Well, if yarn may be accepted from him, what question is there about ready-made garments?*

D. *The meaning of “ready-made garments” is felt spreadings [a separate item].*

**I.9** A. *Our rabbis have taught on Tannaite authority:*

B. **He who gives skins to the tanner — the trimmings and hair torn off belongs to the householder, and what comes up by rinsing in water belongs to the tanner [T. B.Q. 11:16A-C].**

**II.1** A. **If they were black [threads] on a white [surface], he takes all, and they are his:**

B. Said R. Judah, “A washer is called a shrinker and he takes the shrinkage.”

C. And said R. Judah, “All three threads can be included for the purpose of the making of the show fringes, *though my son, Isaac, is meticulous in that regard.*”

**III.1** A. **A tailor who left over a thread sufficient for sewing, or a piece of cloth three by three fingerbreadths — lo, these belong to the householder.**

B. *How much is sufficient for sewing?*

C. Said R. Assi, “The length of a needle and a bit beyond.”

- III.2** A. *The question was raised: “Is the meaning of ‘the length of a needle and a bit beyond’ ‘as much again as the length of the needle,’ or is it merely ‘the length of the needle and a little more than that’?”*
- B. *Come and take note of what has been taught on Tannaite authority:*
- C. **If a tailor left a thread of less length than can be sewn with, or a patch less than three by three fingerbreadths, if the householder cares for them, they belong to him, but if not, they belong to the tailor [T. B.Q. 11:17].**
- D. *Now if you take the view that the meaning of ‘the length of a needle and a bit beyond’ is ‘as much again as the length of the needle,’ then there is no problem; but if you hold that it is ‘the length of the needle and a little more than that,’ what in the world could one do with less than that? So it must be that the meaning of ‘the length of a needle and a bit beyond’ is ‘as much again as the length of the needle.’*
- E. *True.*
- IV.1** A. **What the carpenter takes off the plane — lo, these are his. But [what he takes off] with a hatchet belongs to the householder:**
- B. *A contrary formulation of the rule is as follows:*
- C. **Whatever a carpenter removes with the adze or cuts with the saw belongs to the householder, and only what comes out from under the borer or the chisel or is sawed with the saw belongs to the carpenter himself [T. B.Q. 11:15].**
- D. *Said Raba, “In the locale in which the Tannaite frame of the Mishnah rule was situated, two kinds of tools were used, a big one called an ax, a small one called an adze, and in the place in which the Tannaite of the cited Tannaite rule was located, only one was used, but [though big] it was called an adze.”*
- V.1** A. **And if he was working in the household of the householder, even the sawdust belongs to the householder:**
- B. *Our rabbis have taught on Tannaite authority:*
- C. **Stone cutters are not subject to the law of robbery [if they keep the chips]. Workers who trim shrubs or cut vines or weed plants or thin vegetables, if the householder cares about the waste, are subject to the law of robbery, but if not, then what they cut belongs to them [cf. T. B.Q. 11:18A-J].**
- D. *Said R. Judah, “Cuscuta and lichen are not subject to the law of robbery; in places where householders care about them, they are.”*

E. *Said Rabina, “And Mata Mehassayya is a place in which householders care about them.”*

**I.1** complements the Mishnah’s rule with Tosefta’s entry, with an appended talmud at Nos. 2-5. Nos. 6-9 proceed with other Tannaite complements. **II.1** explains the Mishnah’s rule. **III.1, IV.1, V.1** all gloss the Mishnah. **III.1** bears amplification at No. 2.