

IV.

BAVLI BABA MESIA CHAPTER FOUR

FOLIOS 44A-60B

4:1-2

4:1

- A. (1) Gold acquires silver, but silver does not acquire gold.
- B. (2) Copper acquires silver, but silver does not acquire copper.
- C. (3) Bad coins acquire good coins, but good coins do not acquire bad coins.
- D. (4) A coin lacking a mint mark acquires a minted coin, but a minted coin does not acquire a coin lacking a mint mark.
- E. (5) Movable goods acquire coins, but coins do not acquire movable goods.
- F. This is the governing principle: All sorts of movable objects effect acquisition of one another.

4:2

- A. How so?
- B. [If the buyer] had drawn produce into his possession but not yet paid over the coins,
- C. he [nonetheless] cannot retract.
- D. [If] he had paid over the coins but had not yet drawn the produce into his possession, he has the power to retract.
- E. Truly have they said:
- F. He who exacted punishment from the men of the Generation of the Flood and the Generation of the Dispersion is destined to exact punishment from him who does not keep his word.
- G. R. Simeon says, “Whoever has the money in his hand — his hand is on top.”
- I.1 A. Rabbi [Judah the Patriarch] repeated the Tannaite teaching to his son, R. Simeon, as “**Gold acquires silver, but silver does not acquire gold.**”
- B. He said to him, “My lord, in your youth you taught it to us in the language, ‘silver acquires gold, but gold does not acquire silver.’ Now you go and teach it to us in your old age, ‘**Gold acquires silver, but silver does not acquire gold.**’”

- C. *When he was young, what was his theory of matters, and when he was old, what was his theory of matters?*
- D. *When he was young, his theory was that gold, which is the more precious commodity, is deemed money, and silver, which is the less valued commodity, is in the status of produce; so the delivery of the produce is what effects the transfer of title to the money.*
- E. *But in his old age, he reasoned that silver, [44B] which is current, is equivalent to money, while gold, which does not circulate, is deemed produce, and the produce is what effects the transfer of title to the money.*

I.2. A. Said R. Ashi, “It stands to reason that the opinion he held in his youth is the correct one, for the Mishnah is explicit in stating, **Copper acquires silver, but silver does not acquire copper.** Now if you hold that silver vis à vis gold is in the status of produce, then that is in line with the Mishnah’s teaching, **Copper acquires silver, but silver does not acquire copper.** For even though, in relationship to gold, it is in the status of produce, in relationship to copper, it is in the status of coins. But if you maintain that silver in relationship to gold is deemed money, then if in relationship to gold, which is more valuable, it is classified as money, is it necessary to make that same point it is in the same status in relationship to copper, since it is both more valuable and also current [and copper is not]? [So why should it have been necessary to give the rule concerning copper, were it not that, as Rabbi held in his youth, silver acquires gold.]”

B. *It was necessary [to state matters as we have them, with reference to copper as much as to silver]. For it might have entered your mind to think that copper coins, where they are plentiful, circulate more than does silver, so we are taught that, since there is a place in which copper coins may not be in circulation at all, they rank as produce.*

I.3. A. *So too, R. Hiyya takes the position that gold is in the classification of money [and not produce, contrary to our Mishnah’s judgment].*

B. *For Rab borrowed gold denarii from the daughter of R. Hiyya. Later on the value of denarii appreciated. He came before R. Hiyya [since he could not pay interest on the loan, and if he returned the same face value of denarii, it would have been more gold than he had borrowed earlier], who ruled, “Go and repay her in current and full-weight coin.”*

C. *Now if you take the view that gold is in the classification of coinage, then there is no difficulty with that ruling [since what he returned is of the same nominal value as what he borrowed], but if you hold that gold is in the classification of produce, then he is in the position of returning a seah of grain for the loan of a seah of grain, and that is forbidden [since what we then have is trading in futures, for the grain may appreciate in value]!*

D. *[When Rab incurred the debt], Rab had gold denarii in hand, and, since that was the case, it was as if he had said to her, “Lend me until my son comes,” or, “until I find the key” [and that is not a relationship in which usury takes place].*

I.4. A. Said Raba, “This Tannaite authority takes the position that gold is in the classification of coinage, for it has been taught on Tannaite authority: **The**

perutah of which they have spoken is the eighth part of an Italian issar [M. Ed. 4:7C]. *What difference does it make? In respect to the money given in betrothal of a woman [which must not be less than a perutah or its equivalent]. The issar is a twenty-fourth of a silver denar. What difference does it make? In respect to buying and selling. A silver denar is a twenty-fifth of a gold denar. What difference does it make? In respect to the money given in redemption of the first born.*

- B. *“Now if you take the view that gold is in the classification of coinage, then there is no difficulty with that ruling, for the Tannaite authority assesses the coins in relationship to something of fixed value. [Freedman: The gold denar is always theoretically reckoned at 25 silver ones, and the redemption is assessed accordingly, So even if the gold denar was actually worth 20 denarii, we do not regard the gold as having depreciated; but the silver has appreciated.] But if you say that it is in the classification of produce, can the Tannaite authority provide an assessment on the basis of something that rises and falls in value? In that case [in the instance of the redemption of the first born], sometimes the priest may have to give the father change, while at other times the father will have to give extra money to the priest.”*
- C. *That proves, does it not, that in the opinion of the Tannaite authority at hand, gold is in the classification of money.*
- D. *It does indeed.*

I.5. A. *There we have learned:*

- B. **The House of Shammai say, “One should not convert his silver selas consecrated as second tithe into gold denars.”**
- C. **And the House of Hillel permits converting silver coins for gold coins.[M. M.S. 2:5].** *[Produce in the status of second tithe is to be eaten in Jerusalem; it can be converted into cash, and the cash may then be brought to Jerusalem and spent there for food, so Deu. 14:22-26. If the produce has been exchanged for silver coins, the House of Shammai say that the silver coins may not then be exchanged for gold ones; the House of Hillel permit the reexchange.]*
- D. R. Yohanan and R. Simeon b. Laqish:
- E. *One said that the dispute concerns the exchange of selas for denarii, with the House of Shammai holding that the silver coins are classified as money, and gold classified as produce, and money may not be redeemed by produce [given in exchange for the money; the process must be only money for produce, not produce for money already in the status of second tithe]. In the view of the House of Hillel, silver coin is in the classification of produce, gold in the classification of money, and produce may be redeemed for gold denarii. But all concur that actual produce may be redeemed by gold denarii. How come? Because, by analogy with silver coin on the view of the House of Hillel. Hence silver, in the opinion of the House of Hillel, though classified as produce in relationship to gold, is deemed as money in relationship to produce. So is gold according to the House of Shammai; though it is regarded as produce in relationship to silver, it is classed as money in relationship to produce.*

- F. *The other holds that the dispute concerns exchanging real produce for gold denarii as much as for silver coins. [Freedman: The House of Shammai regard gold as produce in absolute terms, even without reference to any other commodity,k and therefore one may not redeem other produce with it.]*
- G. *Now in the view of the one who maintains that the dispute concerns exchanging real produce for gold denarii, then instead of stating the dispute in regard to the exchange of sela for denarii, they could as well have said it with reference to actual produce for denarii.*
- H. *But if matters were expressed in such a way, I might have reached the false conclusion that at issue is only the exchange of produce for denarii, but as for trading silver coins for denarii, the House of Hillel would concede the position of the House of Shammai that gold in relationship to silver is classified as produce, and so silver may therefore not be redeemed by gold. Thus by framing matters as we have them, we are told that that is not the case.*

1.6. A. *We may draw the conclusion, moreover, that it is R. Yohanan who takes the view that they do not redeem it in this way [in the view of the House of Hillel even real produce may not be redeemed by gold denarii]. For R. Yohanan said, [45A] “It is forbidden to lend a denar for the return of a denar [since the denar may appreciate in the interval, and that would then lead to usury].”*

B. *Now what sort of denar can be at stake here? If we say that it is a silver denar that must not be lent for the return of a silver denar, is there any authority who maintains that, in relationship to itself, a silver denar is not mere currency? Rather, at issue, it is obvious, is the exchange of a golden denar for a golden denar.*

C. *Now in accord with whom [does this ruling concur]? If you maintain that it is in accord with the view of the House of Hillel, lo, they have maintained that a golden denar is in the status of coinage.*

D. *Hence it must accord with the position of the House of Shammai. In that case, it is R. Yohanan who took the view that they do not redeem it in this way.*

E. *No, in point of fact, I shall tell you that it is R. Yohanan who said that redemption may be made in this way, but the case of a loan is to be distinguished from the case of redeeming produce for coins. For, in regard to the matter of buying and selling, rabbis have treated gold as produce, since we say that gold appreciates or depreciates [Freedman:] it ranks as produce in relationship to loans.*

F. *That view is moreover quite reasonable, for when Rabin came, [he said that R. Yohanan had said, “Even though they have said, ‘It is forbidden to lend a denar for the return of a denar [since the denar may appreciate in the interval, and that would then lead to usury],’ nonetheless they do redeem produce in the status of second coin through [gold denars].”*

G. *That proves it.*

H. *Come and hear:*

I. **One who exchanges for a silver sela coins sanctified as second tithe —**

J. **the House of Shammai say, “The whole sela’s worth of coins to be given in exchange must consist of copper coins.”** [Freedman: The whole of the exchange must be done at once.]

- K. **And the House of Hillel say, “The sela’s worth of coins to be given in exchange may consist of one shekel [half a sela] of silver coins and one shekel of copper coins.” [R. Meir says, “They do not deconsecrated silver and produce with silver.” But the sages permit the deconsecration of silver and produce with silver] [M. M.S. 2:8].**
- L. *Now if in the view of the House of Shammai, if one may exchange the produce for copper coins, can there be any doubt that the produce may be redeemed with gold coins [and it will follow that gold is in the status of produce]?*
- M. *Copper coins are differentiated, for, when they do circulate, they have greater currency. [So if produce may be redeemed for copper, it does not necessarily follow that it may be redeemed with gold.]*
- N. *Another version of the matter:*
- O. *R. Yohanan and R. Simeon b. Laqish:*
- P. *One said that the dispute concerns the exchange of selas for denarii, with the House of Shammai holding that “the money” refers to the first money, not the second. [Cf. Deu. 14:25: “You shall turn it into money and bind up the money in your hand and shall go to the place that the Lord your God shall choose.” This reference to “the money” in the view of the House of Shammai speaks of the first money, that which was given in exchange for the second tithe. That must be carried to Jerusalem. But the redemption money itself may not be exchanged for other coins.] And the House of Hillel hold that the linguistic formation, “money...” “the money” serves to encompass even a second redemption of the money. But all parties concur that actual produce may be redeemed by gold denarii, since gold remains in the status of the first money.*
- Q. *The other party, by contrast, holds that the dispute pertains also to the exchange of real produce for gold denarii.*
- R. *Now with regard to the position of him who says that the dispute pertains also to the case of the exchange of silver selas for gold denarii, instead of stating the dispute in regard to selas for denarii, let it be stated in reference to the exchange of selas for selas [since this is a second act of redemption of money, and the House of Shammai forbid such a transaction — if that is what is at issue!]*
- S. *Had the dispute been expressed in terms of the redemption of silver coins for other silver coins, I might have falsely come to the conclusion that the dispute is particular to the exchange of silver coins for silver coins, but as to the exchange of silver coins for golden denarii, the House of Hillel will concede the position of the House of Shammai, for gold in relationship to silver is deemed a commodity, and in that case in particular, there can be no exchange. In framing matters in this way, the authority indicates that that is not the case.*
- T. *Come and hear:*
- U. **One who exchanges a silver sela coin sanctified as second tithe for other coins in Jerusalem —**

- V. **the House of Shammai say, “The whole sela he receives must consist of copper coins.”**
- W. **And the House of Hillel say, “The sela he receives may consist of one shekel of silver coins and one shekel of copper coins.” [The disputants before the sages say, “The silver may consist of three silver denars and one denar of copper coins.” R. Aqiba says, “The sela may consist of three silver denars and a quarter of the fourth denar must consist of copper coins.” R. Tarfon says, “The fourth denar may consist of four aspers of silver, equal to four fifths of the denar’s value, and the remaining asper must be of copper.” Shammai says, “Let him deposit it in a shop and consume its value in produce].**[M. M. S. 2:9].
- X. *Now at stake is whether silver may be redeemed with copper coins, but we do not say, “It may be exchanged into money once but not twice. It goes without saying that that is the rule in respect to gold, which is more valuable.” [Freedman: and consequently, it has a greater claim to be regarded as produce.]*
- Y. *Said Raba, “Do you raise an objection from the case involving Jerusalem? Jerusalem is in a class by itself, since, concerning that place, it is written, ‘And you shall spend the money in Jerusalem for whatever you want’ (Deu. 15:26) [and every form of exchange is permitted there, even into coins of smaller denominations; the issue of ‘first money’ and ‘money received in exchange, second money’ is not relevant.]”*
- Z. *Come and hear:*
- AA. **One who exchanges for a silver sela coins sanctified as second tithe —**
- BB. **the House of Shammai say, “The whole sela’s worth of coins to be given in exchange must consist of copper coins.”**
- CC. **And the House of Hillel say, “The sela’s worth of coins to be given in exchange may consist of one shekel [half a sela] of silver coins and one shekel of copper coins.”**
- DD. *Thus all parties must concur that the linguistic formation, “money...” “the money” serves to encompass even a second redemption of the money.*
- EE. *But if a dispute was stated between R. Yohanan and R. Simeon b. Laqish, this is how it was set forth:*
- FF. *One party says that the dispute concerns cashing silver selas into gold denarii, for the House of Shammai maintain that we make a decree [45B] lest one postpone his pilgrimage to Jerusalem, not having the full number of silver coins that he needs to buy a gold coin to make the trip, so he will not take the money up there, and the House of Hillel take the view that we do not make such a decree out of concern that he may postpone the pilgrimage, for even if he has not got enough silver for a gold denar, he will still take up the silver money and make the pilgrimage. But all concur*

that the produce may be redeemed with gold denarii, since it rots, if he waited, he will certainly not keep it back.

GG. *The other party holds that the dispute refers even to the exchange of produce for gold denarii.*

HH. *In the view that by the authority of rabbis, the exchange is permitted, but rabbis forbade it, there are not problems, and that accords with the Tannaite formulation, “he may turn...he may not....” But in line with the version of the dispute that the difference concerns scriptural law itself, he should have stated, “One can redeem...one cannot redeem....”*

II. *The question stands.*

I.7 A. *It has been stated:*

B. Rab and Levi:

C. One says, “Coins can effect a barter.”

D. The other says, “Coins cannot effect a barter.” [Freedman: “Barter is a technical term, connoting delivering of a small object representing a larger one that is being bartered. Upon this delivery, the recipient becomes liable for the object he is to give in exchange, though he has not yet received the real object of barter, the transaction having been consummated by this delivery. Now, as was stated in the Mishnah, in a purchase the delivery of the money does not effect the transaction. That, however, may be only if it is delivered in payment. But what if the transaction is made as barter instead of purchase, e.g., money is bartered for goods: can a coin received by one party in exchange for goods, or as a mere token of delivery, consummating the transaction?”]

E. *Said R. Pappa, “What is the reasoning of the one who takes the position that coins cannot effect a barter? It is because the recipient’s attention is set on the mint-mark of the coin [the figure that gives the coin its value].* [Freedman: When an ordinary object is used as a medium for a barter, the recipient accepts its own intrinsic value as symbolical of the whole. But when a man receives a coin, he does not think of the intrinsic value of the metal, but merely of its worth on account of the legend it bears.] *But the mint mark is subject to cancellation [by the state, so nothing of value will have been given, since the value of the metal is disregarded. Symbolical delivery can be effected only by an article that has some intrinsic value (Freedman).]”*

I.8 A. *We have learned in the Mishnah: **Gold acquires silver.***

B. *Is that not in a transaction of barter, proving that coins can effect a barter?*

C. *No, it is only as cash [when handed over in payment for silver coins, but not as a mere symbolic delivery of barter].*

D. *If that were the case, then instead of saying **gold acquires silver**, what the Mishnah should have said is this: gold imposes liability for silver.* [Freedman: Gold acquires silver implies that immediately upon delivery of the gold coin, the recipient’s silver coin vests in the other party, wherever it be; and that indeed is the effect of a transaction consummated as barter. If gold coin is legally regarded as payment for the article, its effect is merely to create an obligation upon the

recipient of an agreed amount of silver, which then ranks as an ordinary debt. In that case, the Mishnah should have stated, Gold sets up a liability for silver.]

- E. *Then repeat the passage in that language: Gold sets up a liability for silver.*
- F. *That indeed is reasonable, since the second clause further says, **but silver does not acquire gold.***
- G. *Now if you agree that the sense is, “as cash” [when handed over for silver coins, but not as a mere symbolic delivery of barter], there is no problem, for we maintain that gold is classified as produce, silver as coin, and coin does not effect acquisition of produce. But if you maintain that the sense involves a barter-transaction, then both of them should serve equally well to effect acquisition of one another.*
- H. *And, in addition, it has been taught on Tannaite authority: ...**but silver does not acquire gold. How so? [If one has handed over a golden denar for twenty-five pieces of silver, lo, this one has made acquisition of the silver no matter where it is.] But if he handed over twenty-five pieces of silver for a single golden denar, lo, this one has made acquisition only at the moment at which he actually draws into his own possession the pieces of silver that he is buying [T. B.M. 3:13A-D].***
- I. *Now if you agree that the sense is, “as cash” [when handed over for silver coins, but not as a mere symbolic delivery of barter], there is no problem, for it is on that account that one has not made acquisition [in the second case]. But if you maintain that the sense involves a barter-transaction, then let him make acquisition.*
- J. *But how? As payment? Then consider the opening clause of the same passage: **Gold acquires silver. How so? If one has handed over a golden denar for twenty-five pieces of silver, lo, this one has made acquisition of the silver no matter where it is.***
- K. *Now if you agree that the sense is, as barter, then there is no problem, and that explains why the passage states, **lo, this one has made acquisition of the silver no matter where it is.** But if you say that it is a transaction of payment, instead of saying, **lo, this one has made acquisition of the silver no matter where it is,** the passage should say, the man has become obligated to make a payment of silver.*
- L. *Said R. Ashi, “Indeed, the sense of the passage is, as a transaction of payment! And what is the meaning of the phrase, **no matter where it is?** It is, ‘just as it is,’ that is, we include the following stipulation: if he had said, ‘I will give you coins out of a new purse,’ he cannot give him coins out of an old purse, even if they are of better quality. Why? Because the other can say, ‘I need them for storage’ [and so I need new coins, since the old ones may be mouldy, so the cited passage does refer to the recipient’s liability (Freedman)].”*

I.9 A. Said R. Pappa, “Even in the view of him who has said, ‘Coins cannot effect a barter,’ while coins cannot effect a barter, they can still be acquired through barter. [Freedman: Once the owner of the coin takes possession of an object either delivered to him symbolically or in exchange

against it, the ownership of the money vests in the other party.] *For it may be classified as produce, in accord with the opinion of R. Nahman.*

- B. *“So even though in R. Nahman’s view, produce cannot effect a barter, it can be acquired through barter, and the same rule pertains to coinage.”*
- C. *An objection was raised: **If one was standing at the threshing floor and had no coins with him, he says to his fellow, “Lo, this produce is given to you as a gift,” and [46A] then immediately says, “Lo, it is deconsecrated with coins that are at home” [M. M.S. 4:5].*** [The man wants to turn the produce into money to be taken to Jerusalem. When he does so with his own produce, however, he has to add a fifth to the value. If he does so with produce in the status of second tithe that belongs to another party, he does not add a fifth to the value. This then presents a legal fiction; he gives the produce to another, trades it in for money, then receives it back. This is an acceptable procedure.]
- D. *The reason, then, is that **he had no coins with him.** Lo, if he did have money with him, he should give possession of the money to his friend through an act of drawing, and the other can then redeem the produce in the status of tithe with that money, and this is a preferable way to do it, since then the other would be an actual stranger.* [Freedman: If he gave the money to his neighbor, while retaining the produce himself, the friend would actually be redeeming a tithe that is not his own. That is not such a glaring evasion as when a person gives the produce to the neighbor and then redeems it himself.]
- E. *Now if you take the view that coins effect a barter, let the farmer who owns the tithe give possession of the money he has at home to his friend by means of a scarf [in a symbolic transaction on the spot, in which the scarf stands for the object that is being acquired], and then let the latter redeem the produce.* [Freedman: Instead of his gifting the produce to him, let the friend give him a scarf as barter for the money and then redeem the tithe with this money. It follows that money cannot be acquired through barter, since the Tannaite authority does not provide for such a procedure.]
- F. *The case is one in which he has no scarf at hand.*
- G. *Then let him transfer ownership of the coins by means of the soil [through a transfer of real estate].*
- H. *The case is one in which he has no real estate.*
- I. *But lo the passage explicitly states, **If one was standing at the threshing floor!***
- J. *He is standing at a threshing floor that does not belong to him.*
- K. *And does the Tannaite authority take the trouble to tell us a rule concerning a man who is utterly naked, who has no property at all?!*
- L. *Rather, does not the passage yield the principle, “Coins cannot effect a barter”?*
- M. *It does indeed yield that principle.*
- N. *And so even R. Pappa retracted his view. For lo, R. Pappa had thirteen thousand denarii in Khuzistan, which he transferred to R.*

Samuel b. Aha along with the threshold of his house. When he came, he went forth to meet him up to Tauak.

- I.10** A. And so said Ulla, "Coins cannot effect a barter."
- B. And so said R. Assi, "Coins cannot effect a barter."
- C. And so said Rabbah bar bar Hanah said R. Yohanan, "Coins cannot effect a barter."
- D. *R. Abba objected to Ulla, "Lo, if someone in the marketplace had ass-drivers and workers laying claim on him for their wages, and he said to a money-changer, 'Give me coins for a denar, so I can pay them, and I shall pay you back coinage worth a denar and a tressis out of money that I have at home,' if he has the money at home, it is a permitted transaction [since as soon as the employer takes possession of the coins in the market place, the money-changer takes possession of the ownership of the money at home in a process of barter; this is not usury, since the banker does not have to wait for his money and is not collecting interest], but if not, it is a forbidden one [since this is merely a loan and the usury is forbidden, the tressis being interest on the loan]. Now if you take the view that coins cannot effect a barter, this would in fact constitute a loan and therefore the transaction would be forbidden [by reason of usury]."*
- E. *He was struck dumb.*
- F. *He said to him, "Perhaps both this and that [that is, the money delivered in the marketplace, the money at home] are uncoined metal, lacking a mint mark, so they are classified as produce and therefore may be acquired by barter?"*
- G. *He said to him, "That is quite so, since the authority says, coinage worth a denar and a tressis, but not a current denar and a tressis."*
- H. *That proves the point.*
- I. *R. Ashi said, "No, the return of the coins may take on the character of a repayment, even though at issue is unminted metal, since he has them at home, it is as though he had said, 'Lend me until my son comes,' or, 'until I find the key.'"*
[Freedman: Since it is uncoined metal, the transaction may be viewed as a loan, the return being actually in the nature of repayment, but it is permitted for the stated reason.]
- J. *Come and take note: Whatever serves as payment for some other object, once one party has taken possession of that object, the other becomes liable for what is given in exchange.*
- K. *Now to what can reference be made in the sentence, Whatever serves as payment for some other object? It must be coins, and that statement proves that coins can effect a barter*
- L. *Said R. Judah, "This is the sense of the passage: [46B] Whatever may be assessed as the value of another object,[excluding money, which, by definition, requires no assessment, since its value is explicit], once one party has taken possession of that object, the other becomes liable for what is given in exchange. And that reading is reasonable, for lo, the passage proceeds as follows: How so? If one has exchanged an ox for a cow or an ass for an ox [once one party has taken possession of that object, the other becomes liable for what is given in exchange]."*
- M. *That proves the point.*

- N. *But on the initial theory that what is at stake here is a coin, what is the sense of “how so”?*
- O. *This is the sense of the passage: and produce also serves to effect a barter. How so? If one has exchanged an ox for a cow or an ass for an ox [once one party has taken possession of that object, the other becomes liable for what is given in exchange].*
- P. *That poses no problem to the position of R. Sheshet, who has taken the position that produce can be employed for purposes of barter.*
- Q. *But on the view of R. Nahman, who takes the view that produce cannot serve in a transaction of barter, but only a utensil can, what is the meaning of this “how so”?*
- R. *This is the sense of the statement: There is money that may serve as an object of barter. How so? If one has exchanged the money’s worth of an ox for the money’s worth of a cow or the money’s worth of an ass for the money’s worth of an ox [once one party has taken possession of that object, the other becomes liable for what is given in exchange].*
- S. *What is the reasoning of R. Nahman?*
- T. *He accords with the view of R. Yohanan, who has said, “Upon the law of the Torah, the transfer of money does effect the transfer of title from one man to the other, and why has it been said that only an act of drawing effects the transfer of ownership? It is a precautionary measure, lest one say to the other, ‘It is your wheat that was burned in the loft.’”*
- U. *But [explaining Nahman’s position,] rabbis make such precautionary decrees to deal with practical problems, and not to deal with unusual ones. [Hence the biblical rule applies, and delivery of money effects a title, from which neither can now withdraw.]*
- V. *And on the view of R. Simeon b. Laqish, who has said, “The rule of acquisition through an act of drawing is explicitly required on the authority of the Torah,” there is no problem if someone accords with R. Sheshet’s position. But if someone accords with R. Nahman’s, who maintains that produce cannot effect a barter while money does not effect a title at all, how is the matter to be explained [since at issue in the transaction is either produce effecting a barter or money effecting a title]?*
- W. *One must of necessity explain matters in accord with the position only of R. Sheshet.*

I.11 A. *We have learned in the Mishnah: All sorts of movable objects effect acquisition of one another.*

- B. *And in this connection said R. Simeon b. Laqish, “Even a purse full of coins when exchanged for a purse full of coins [— so money can effect a barter].”*
- C. *R. Aha interpreted the statement to refer to Bithynian and Ancyrean denarii [deemed mere commodities, for] one was cancelled by the imperial administration, the other by the local government.*
- D. *And both conditions had to be made explicit, for had we been told the case of the imperial administration’s cancelling the coinage, it would have been the case that such coins were mere commodities because they cannot circulate anywhere, that*

is, in any other province, while if the local administration had nullified the coinage, since those coins could circulate in another province, I might have deemed them not commodities but still money, in consequence of which we should conclude that coinage cannot effect a barter.

E. *And if I had in hand only the case of local nullification of the coinage, these coins would have been deemed a mere commodity because they circulate neither openly nor secretly in that province, but, in the case of coins cancelled by the state, which circulate clandestinely, I might still deem them to be money [and not a commodity], in consequence of which we should conclude that coinage cannot effect a barter.*

F. *That is why both cases required specification.*

I.12 A. Said Rabbah said R. Huna, “[If someone said to another party,] ‘Sell it to me for these [coins], the other has effected acquisition of the item. [47A] But the seller still has a claim of fraud against the buyer [if the money is less than the true value of the object by a sixth. Should that be the case, the seller can claim to cancel the transaction. Not having known how much coinage was in hand, A told B to sell the article for those coins, and B has agreed. The exchange is a valid one. Normally delivering the money does not effect the transfer of title, but here it does.]”

B. *“the other has effected acquisition of the item.” even though the purchaser has not drawn the item to him, because, since the other party was not meticulous about the exact value of the coinage, the buyer acquires the object, since this is a mere barter of commodity for commodity.*

C. *“But the seller still has a claim of fraud against the buyer :” it is because he said to him, “Sell it to me for these coins.”*

D. R. Abba said R. Huna said, “[If someone said to another party,] ‘Sell it to me for these [coins], the other has effected acquisition of the item. And the seller has no claim of fraud against the buyer.”

E. *Now it is self-evident that in the case of cash, concerning the value of which the buyer is not meticulous, as we have said, the buyer has effected acquisition of the object, because it is in the manner of a barter.*

F. *But if it is a case of a barter [that is, the object, not money, is handed over] in which the seller is meticulous about the value of the coins, what is the law?*

G. *Said R. Ada bar Ahbah, “Come and take note of the following case: Lo, if someone was standing with his cow in the market, and his fellow came and asked him, ‘How come you brought your cow?’ and he replied, ‘I need an ass,’ and the other said, ‘I have an ass that I can give you for your cow, what is the value of your cow?’ ‘Thus and so? And what is the value of your ass?’ Thus and so’ — if then the ass-owner drew the cow into his possession, but before the cow-owner had time to draw the ass into his possession, the ass died, the ass-owner has not acquired title to the cow.*

H. *“That proves that, in a case in which there is an act of barter, but the seller is meticulous about that which is given in barter, there is no transfer of title [until both parties take possession].”*

I. *Said Raba, "Now does the law of barter pertain only to idiots who are not meticulous about the exchange of actual value? Not at all — in every case of barter, we must assume that both parties are meticulous about the value of what is exchanged. Still, the transfer of title takes place [even when only one party has taken possession. In the present case, the fact is, the one said, 'I will give you my ass in exchange for not only the cow but also a lamb,.' He drew the cow into his possession, but not the lamb. So the act of drawing what has been exchanged is not yet complete [which is why the exchange is invalid]."*

I.13 A. The master said, "[If someone said to another party,] 'Sell it to me for these [coins], the other has effected acquisition of the item. But the seller still has a claim of fraud against the buyer [if the money is less than the true value of the object by a sixth.]"

B. *Then R. Huna [as portrayed by Rabbah] maintains that coin effects a barter.*

C. *No, R. Huna accords with the view of R. Yohanan, who has said, "Upon the law of the Torah, the transfer of money does effect the transfer of title from one man to the other, and why has it been said that only an act of drawing effects the transfer of ownership? It is a precautionary measure, lest one say to the other, 'It is your wheat that was burned in the loft.'" Now as to a routine event, rabbis made their decree, but they made no such decree governing an uncommon happening [such as the one treated here. Hence no such conclusion may be drawn.]*

D. *Said Mar Huna, son of R. Nahman, to R. Ashi, "This is the version as you repeat it. But when we repeat the matter, it is as follows: And so R. Huna said, 'Coins do not effect a barter.'"*

I.14 A. [Freedman: When A wishes to gain possession of an article belonging to B by means of a symbolical delivery of an object,] with what is the transfer of title to the purchaser effected? [Freedman: Does A have to provide the article for effecting the title, the article he delivers being a symbolical exchange for that which he is to acquire, or B, the object he delivers being symbolical of that which he really intends giving?]

B. Rab said, "It is done with utensils belonging to the purchaser." *For it pleases the purchaser to have the seller take possession [of what he is giving in barter], so that he may complete the transaction and gain title of ownership.*

C. And Levi said, "It is done with utensils belonging to the seller," *as we shall explain in due course.*

D. *Said R. Huna of Disqarta to Raba, "And as to Levi, who has said, 'It is done with utensils belonging to the purchaser,' one will be in a position of effecting title to land because of the transfer of a garment, and that is equivalent to having secured property acquired along with unsecured property. But we have learned in the opposite rule: Property for which there is no security is acquired along with property for which there is security [but not vice versa]."*

E. *He said to him, "If Levi were here, he would have flogged you with a lash of fire. Do you think that it is the garment that confers title? Obviously not, but because of the pleasure that the one who bestows title receives when the one who receives title accepts it from him, the former gladly transfers the garment to the recipient, [so it is regarded as though the bestower too is actually receiving something]."*

I.15 A. *It accords with the following dispute between Tannaite authorities:*

- B. “Now this was the custom in former times in Israel concerning redeeming and exchanging: to confirm a transaction, the one drew off his sandal and gave it to the other, and this was the manner of attesting all things in Israel” (Rut. 4: 7):
- C. “redeeming” — this refers to selling: “It shall not be redeemed” (Lev. 27:33).
- D. “exchanging” — this refers to barter: “He shall not alter it nor change it” (Lev. 27:10).

I.16 A. “to confirm a transaction, the one drew off his sandal and gave it to the other.”

- B. Who gave to whom?
- C. Boaz gave the sandal to the redeemer.
- D. R. Judah says, “The redeemer gave the sandal to Boaz.”

I.17 A. *It was taught on Tannaite authority:*

- B. Transfer of title may take place with a utensil even though the utensil is not worth a perutah.
- C. Said R. Nahman, “That teaching pertains only to a utensil, but not to produce [which, if used for this purpose, must be worth at least a perutah].”
- D. R. Sheshet said, “That teaching pertains even to produce.”
- E. *What is the scriptural basis for the position of R. Nahman?*
- F. Scripture says, “his sandal” (Rut. 4: 7), *thus the rule pertains to a sandal [and things in its classification] but not to anything else.*
- G. *What is the scriptural basis for the position of R. Sheshet?*
- H. Scripture says, “and this was the manner of attesting all things” (Rut. 4: 7).
- I. *Now, so far as R. Nahman is concerned, surely Scripture says, “and this was the manner of attesting all things”!*
- J. That refers to attesting all things title to which is properly transferred through a sandal.
- K. Now, so far as R. Sheshet is concerned, Scripture says, “his sandal”!
- L. R. Sheshet may reply to you, “Just as ‘his sandal’ refers to a clearly defined object, so anything that is used in the same regard must be a clearly defined object, *thus excluding, for example, half of a pomegranate or half of a nut; these may not be used [having no clearly defined traits].*”

I.18 A. *Said R. Sheshet son of R. Idi, “In accord with what authority these days do we write, ‘with a utensil with which it is fit to transfer title’ therewith?”*

- B. “‘with a utensil’ — serves to exclude the position of R. Sheshet, who has said, ‘Transfer of title may be effected with produce.’”
- C. “‘with which it is fit’ — that serves to exclude the position of Samuel, who has said, ‘Transfer of title [47B] takes place through a utensil made of baked shit.
- D. “‘to transfer title’ — that serves to exclude the position of Levi, who takes the view that utensils that belong to the one who transfers the title [not the one who receives it], and so it stresses, ‘to obtain possession but not to confer possession.’”

- E. *“therewith” —*
- F. *R. Pappa said, “This serves to exclude the use of coins.”*
- G. *And R. Zebid — others say, R. Ashi — said, “It serves to exclude objects from which one is forbidden to derive benefit.”*
- H. *Others say, “‘therewith’ serves to exclude coins.*
- I. *“‘with which it is fit’ — R. Zebid — others say, R. Ashi — said, ‘It serves to exclude objects from which one is forbidden to derive benefit.’ But as to a utensil made of baked shit, it is not necessary to make explicit that one cannot use such a negligible object.”*

II.1 A. A coin lacking a mint mark acquires a minted coin, but a minted coin does not acquire a coin lacking a mint mark.

- B. *What is the meaning of “a coin lacking a mint mark”?*
- C. *Said Rab, “Coins given as tokens at the bath house.”*
- D. *An objection was raised as follows: **Produce in the status of second tithe may not be rendered unconsecrated by an exchange with an unminted coin nor by coins that are given as tokens at the bath house [M. M.S. 1:2].** Now that formulation implies that the unminted coin is not the same thing as a coin that is given as a token at the bath house.*
- E. *And should you maintain that the intent of the passage is to explain the meaning of “an unminted coin,” that is, “a coin given as a token at the bath house,” has it not been taught on Tannaite authority:*
- F. **“Produce in the status of second tithe may be rendered unconsecrated by an exchange with an unminted coin,” the words of R. Dosa.**
- G. **But sages say, “Unminted coins may be used to render such produce unconsecrated.”**
- H. **And both sides concur that produce in the status of second tithe may not be rendered unconsecrated by an exchange with by coins that are given as tokens at the bath house [M. Ed. 3:2].** [So the two cannot be one and the same thing.]
- I. *So, said R. Yohanan, “What is the meaning of ‘a coin lacking a mint mark’? It is a disk [a circular plate or ring used as a weight and as uncoined money (Freedman)].”*
- J. *R. Yohanan is consistent with views expressed elsewhere, for R. Yohanan said, “R. Dosa and R. Ishmael said the same thing.”*
- K. *As to R. Dosa, it is the item just now stated.*
- L. *And what is the matter of R. Ishmael?*
- M. *It is that which has been taught on Tannaite authority:*
- N. *“And you shall bind up the money in your hand” (Deu. 14:25) —*
- O. *“This serves to encompass anything that can be bound up,” the words of R. Ishmael.*
- P. *And R. Aqiba says, “It includes anything that bears a mint mark.”*

III.1. A. [If the buyer] had drawn produce into his possession but not yet paid over the coins, he [nonetheless] cannot retract. [If he had paid over the coins but

had not yet drawn the produce into his possession, he has the power to retract.]

- B. Said R. Yohanan, “By the law of the Torah, the transfer of money does effect the transfer of title from one man to the other, and why has it been said that only an act of drawing effects the transfer of ownership? It is a precautionary measure, lest one say to the other, ‘It is your wheat that was burned in the loft.’”
- C. *[What difference does the fire make?] After all, whoever caused the fire has to pay compensation [and so there can be no practical difference in the consideration just now introduced]!*
- D. Rather, it is a decree lest a fire catch by accident.
- E. *If you assign ownership to the vendor, he will risk his life to make the effort to save the grain, but if not, he will not do so. [Therefore we wish to leave the grain within the domain of the seller as long as possible.]*
- F. R. Simeon b. Laqish said, “The act of drawing [as the sole medium for the transfer of title] is explicitly set forth by the law of the Torah [and it is not merely in the status of a precautionary measure; transfer of money does not serve].”
- G. *What is the scriptural basis for the position of R. Simeon b. Laqish?*
- H. Scripture has said, “If you sell anything to your neighbor or acquire anything from your neighbor’s hand” (Lev. 25:14) — it is a transaction that takes place through a transfer from hand to hand.
- I. And R. Yohanan?
- J. “from your neighbor’s hand” *serves to exclude from the law of a claim of fraud [by variation from true value] real estate [for which any sum of money, large or small, constitutes true value, since real estate itself defines the measure of true value].*
- K. And R. Simeon b. Laqish?
- L. *If that were the case, Scripture should have written [only], “And if you sell anything into your neighbor’s hand, you shall not commit fraud.” Why does Scripture say, “or acquire anything from your neighbor’s hand”? This proves that the purpose of the statement is to indicate that for the transfer of title, an act of drawing the acquired object is required.*
- M. *And how does R. Yohanan interpret the phrase, “or acquire anything from your neighbor’s hand”?*
- N. *He requires it in connection with the following teaching on Tannaite authority:*
- O. “And if you sell anything, you shall not defraud” (Lev. 25:14) —
- P. I know only that that law applies when the purchaser is defrauded. What about the case of fraud committed against the seller?
- Q. Scripture says, “or acquire anything...you shall not defraud.”
- R. And R. Simeon b. Laqish?
- S. *He derives both rules from the same clause.*

III.2. A. *We have learned in the Mishnah:*

- B. **R. Simeon says, “Whoever has the money in his hand — his hand is on top.”**

- C. *This means that it is the seller who can retract, but the purchaser cannot retract [since the purchaser had paid the money and the seller holds it, so he can retract]. Now if, to be sure, you take the view that it is the coins that effect the transfer of title, then it is on that account that the seller can retract, but the buyer cannot retract. But if you maintain that the transfer of coins does not effect the passage of title, then the purchaser also should be able to retract.*
- D. *R. Simeon b. Laqish will respond to you, "When I framed my view, it was not vis à vis R. Simeon. When I made my statement, it was vis à vis rabbis.*
- E. *Now as to the position of R. Simeon b\ Laqish, that is precisely what is at issue between R. Simeon and rabbis, but as to the view of R. Yohanan, what can possibly be at issue between R. Simeon and rabbis?*
- F. *At issue between them is that which R. Hisda said, for R. Hisda said, "Just as the law of transfer of property through drawing the object pertains to the vendor in accord with the ordinance of rabbis, so that same law pertains to the purchaser." R. Simeon does not accord with the position of R. Hisda, and rabbis do accord with R. Hisda's view.*

III.3. A. *We have learned in the Mishnah:*

- B. **Truly have they said: He who exacted punishment from the men of the Generation of the Flood and the Generation of the Dispersion is destined to exact punishment from him who does not keep his word.**
- C. *Now if, to be sure, you take the view that it is the coins that effect the transfer of title, then that is the point of the statement, Truly have they said...*
- D. *But if you maintain that the transfer of coins does not effect the passage of title, then what is the point of the statement, Truly have they said...? [Freedman: How is this action in retracting in any way reprehensible, seeing that the sale is not complete at all?]*
- E. *It is on account of withdrawing from what he has said [and that is reprehensible, even if the agreement had no legal standing].*
- F. *And in mere words, is there the consideration of Truly have they said...?*
- G. *And have we not learned on Tannaite authority:*
- H. **[48A] R. Simeon says, "Even though they have said, 'a cloak effects acquisition of a golden denar, but a gold denar does not effect acquisition of a cloak, while that is, indeed the law, nonetheless, Truly have they said: He who exacted punishment from the men of the Generation of the Flood and the Generation of the Dispersion and from the Men of Sodom and Gomorrah and from Egypt at the Sea is destined to exact punishment from him who does not keep his word. But he who has given and taken in words — the other party has not effected acquisition of the object. And he who retracts loses the good will of sages [but the other has no claim of fraud against him if he**

does not keep his word] [T. B.M. 3:14A-F].” And Raba noted, “There is no other sanction but that he loses the good will of sages.” [The cited passage does not mean that one is subject to the curse, but only that one who retracts is told he has lost the good will of the rabbis; no curse is pronounced on account of mere words.]

- I. *That pertains, in particular, when there are words joined with transfer of money, at which point one is subject to the curse, Truly have they said... But if it is a matter of words with no transfer of money, one is not subject to the curse, Truly have they said.*

III.4. A. *Said Raba, “Scripture and Tannaite teaching both support the position of R. Simeon b. Laqish [that the act of drawing as the sole medium for the transfer of title is explicitly set forth by the law of the Torah].*

- B. *“Scripture: ‘If any one sins and commits a breach of faith against the Lord by deceiving his neighbor in a matter of deposit or security or through robbery, or if he has oppressed his neighbor or has found what was lost and lied about it, swearing falsely, in any of all the things that men do and sin therein, when one has sinned and become guilty, he shall restore what he took by robbery...’ (Lev. 5:21-2 [6:2-3]).”*

- C. *“or security:” — said R. Hisda, “For instance, if the debtor had assigned a utensil to him for the payment of his debt.” [If a debtor swears falsely in denying his debt, he is not liable to a sacrifice. But the passage at hand says that he is. Hisda explains that this refers to a false denial of a debt for the payment of which a utensil has been assigned by the debtor, for then the loan is equivalent to a bailment (Freedman)].*

- D. *“or if he has oppressed his neighbor” — said R. Hisda, “For example, if he assigned a utensil in payment of that in which he has oppressed him.” [At issue here are holding back wages. Here too a sacrifice for false denial of liability is incurred only if the employer had assigned an article for payment (Freedman)].*

- E. *[Raba now continues:] “Now when Scripture went and repeated the law, it is written, ‘when one has sinned and become guilty, he shall restore what he took by robbery, or what he got by oppression, or the deposit which was committed to him, or the lost thing which he found, or anything about which he has sworn falsely’ (Lev. 6: 4-5).*

- F. *“But we note that there is no reference whatsoever to “security.” Now what is the reason for the omission? Is it not because no act of drawing has taken place? [When the man repents, he is not bound to restore the particular utensil assigned by him for the repayment of the loan. The reason is that, since there was no act of drawing, the object never really belonged to the creditor, and this proves that, by biblical law, an act of drawing is required to effect transfer of ownership (Freedman)].”*

- G. *Said R. Pappa to Raba, “But perhaps the matter is to be derived from the rule pertaining to ‘oppression,’ which, in point of fact, Scripture has repeated?”*

- H. *In this case, with what situation do we deal? It is one in which the employee took the utensil from the employer and gave it back to him for safe-keeping [so there was a valid act of drawing when the employee originally acquired the object].*
- I. *But that is merely another case of bailment!*
- J. *There are two distinct types of bailment [one in which the bailment belonged wholly to the bailor, the other where it originally belonged to the bailee, as in this case].*
- K. *If so, then in the matter of security also, the matter should be repeated, and it too could be applied to the case in which the creditor had taken the utensil assigned for repayment from the debtor and then entrusted it to him as a bailment!*
- L. *If Scripture had repeated this matter too, it would neither have refuted nor supported [the position of R. Simeon b. Laqish], but since Scripture did not repeat it, it supports his position [Freedman: for the only reason that can be given for the repetition of ‘oppression’ and not ‘security’ is that in the former it provides only for the case in which an act of drawing had been performed, while in the latter it is a case where there was no act of drawing, as indicated by the omission of the latter].*
- M. *Now had Scripture not repeated the matter of security? But it has been taught on Tannaite authority:*
- N. Said R. Simeon, “How do we know on the basis of Scripture that what is stated above pertains also to what is stated below?”
- O. “Because it is said, ‘or anything about which he has sworn falsely.’”
- P. And said R. Nahman said Rabbah bar Abbuha said Rab, “This serves to encompass cases of violation of security, *subjecting such a case to the law of restoration.*”
- Q. *Still, Scripture has not in fact gone back over the matter. [Freedman: The inference holds good, while the extension of the law will apply to a loan that is exactly similar to ‘oppression,’ where an act of drawing was performed.]*

III.5. A. Now [reverting to Raba’s claim that Scripture and Tannaite teaching both support the position of R. Simeon b. Laqish that the act of drawing as the sole medium for the transfer of title is explicitly set forth by the law of the Torah], *what about the teaching on Tannaite authority?*

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

C. **[If one took a perutah of consecrated money, lo, this one has not committed an act of sacrilege. If he gave it to his fellow, he has committed an act of sacrilege, but his fellow has not committed an act of sacrilege.] If he gave it to a bath keeper, even though he did not take a bath, he has committed an act of sacrilege, [for the bath keeper says to him, “Lo, the bath is open to you. Go and take a bath”] [M. Me. 5:4F-J].**

- D. *And said Raba, "That rule applies specifically to the case of the bath keeper, since an act of drawing is not lacking here [for the bath keeper says to him, "Lo, the bath is open to you. Go and take a bath"], but if he handed it over for anything else in which an act of drawing is going to be required, there is no act of sacrilege until the other party has effected an act of drawing."*
- E. *But lo, it has been taught on Tannaite authority: if he gave it to a barber, he is committed an act of sacrilege, and lo, a barber has to draw the sheers into his possession. [Freedman: When one paid a hairdresser in advance, he signified his liability to trim the customer's hair by handing him the shears. The man incurs a liability here as soon as he gives the money, which shows that the act of drawing is only a rabbinical requirement].*
- F. *With what sort of situation do we deal here? It is the case of a gentile barber, who is not subject to the transfer of property through an act of drawing anyhow.*
- G. *So too it has been taught on Tannaite authority: If one handed the perutah that has been sanctified over to a barber, a ship's captain, or any artisan, he will have committed sacrilege only after the other takes possession. Now these teachings [on the barber] are mutually contradictory. Is it not therefore to be inferred that in the one case we deal with a gentile barber, in the other, with an Israelite one?*
- H. *That is indeed the correct inference.*

III.6. A. And so said R. Nahman, "'By the law of the Torah, the transfer of money does effect the transfer of title from one man to the other.'"

- B. *Now Levi taught in his [collection of teachings] on Tannaite authority and found the following:*
- C. *If [as a deposit for an order of provisions] one gave [a consecrated coin] to a wholesale merchant, [the other has acquired ownership of the coin, with the result that the one who handed it over] has committed an act of sacrilege. [That means the title to the coin has been transferred merely when the coin has been handed over, so the transfer of money here does effect the transfer of title.]*
- D. **[48B]** *Now does this not present a problem to the position of R. Simeon b. Laqish?*
- E. *Not at all, for R. Simeon b. Laqish may reply to you that that position accords only with the opinion of R. Simeon. [a minority view].*

IV.1 A. **Truly have they said: He who exacted punishment from the men of the Generation of the Flood and the Generation of the Dispersion is destined to exact punishment from him who does not keep his word.**

- B. *It has been stated:*
- C. *Abbaye said, "He is informed of that fact [being warned that God punishes those who renege]."*
- D. *Raba said, "He is cursed formally."*

- E. *Abbaye said, "He is informed of that fact [being warned that God punishes those who renege], since it is written, 'And you shall not curse the ruler of the people' (Exo. 22:27)."*
- F. *Raba said, "He is cursed formally, because it is written, 'of your people,' meaning, when he acts as is appropriate for your people [but not if he breaks his word; then he should be cursed]."*
- G. *Said Raba, "How do I know it? There is the case of R. Hiyya b. Joseph, to whom money was given for salt [as an advance payment]. [When the salt was to be delivered], the salt had risen in price. He came before R. Yohanan, who said to him, 'Go, give it to them, and if not, then submit to the curse, **He who exacted punishment.** Now if you take the position that this was merely to inform him of the fact that God punishes those who renege, was R. Hiyya bar Joseph the sort of person who had to be informed?" [Obviously not, since he was an educated sage.]*
- H. *Then what happened? Was he actually cursed? Did R. Hiyya b. Joseph come to accept a curse from the rabbis [knowing, as a matter of fact, that he could not retract? That too is hardly very likely!]*
- I. *Rather, R. Hiyya bar Joseph had received a deposit. He thought that the purchaser was entitled only to the value of what had been deposited, but R. Yohanan said he was entitled to the entirety of the purchase [for which the deposit had been left as surety].*

IV.2. *A. [With respect to the matter of a deposit in the present context,] it has been stated:*

- B. *As to a deposit —*
- C. *Rab says, "One effects title only to the value of the deposit."*
- D. *R. Yohanan says, "One effects title to the whole purchase [represented by the deposit]."*
- E. *An objection was raised:*
- F. *"He who hands over a pledge [equivalent to a deposit] to his neighbor and says to him, 'If I retract, the object I have left as a pledge is forfeited to you,' and the other said, 'If I retract, I shall double for you the value of your pledge,' the stipulations are binding," the words of R. Yosé.*
- G. *R. Yosé is consistent with his general position, for he has said, "An assurance that one will forfeit something in case of non-fulfillment of a condition that one is sure he will be able to carry out has the power to effect the transfer of title."*
- H. *R. Judah says, "It suffices that it has the power to effect the transfer of title only to that which is equivalent to the value [of the pledge that has been put up for forfeit]."*
- I. *Said R. Simeon b. Gamaliel, "Under what circumstances? When the depositor had said to him, 'Let my pledge effect the purchase.' But if one sold a house or field for a thousand zuz, and the buyer*

paid out five hundred, he has acquired title to the whole and must repay the balance, even after many years.”

J. *Now is this not the rule, also, for movables, so that if one has given a pledge it effects the transfer of title to the whole?*

K. *No, the rule governing movables is that a deposit that is unspecified does not effect the transfer of title to the whole. And what is the difference [between real estate and movables]? Real estate, title to which is transferred through the payment of money, is wholly acquired [through the transfer of a pledge or deposit or security], while movables, subject only to the curse, **He who exacted punishment**, are acquired not wholly [but only up to the value of what is left as a pledge].*

IV.3. A. *May we then say that at issue is the same principle as is disputed in the following Tannaite statement:*

B. “He who makes a loan to his fellow on the security of a pledge, and the year of release arrived — even if the pledge is worth only half the value of the loan, the year of release does not remit the loan,” the words of Rabban Simeon b. Gamaliel.

C. R. Judah the Patriarch says, “If the value of the pledge was the same as the value of the loan, then the loan is not remitted by the year of release, but if not, it is remitted.”

D. *What is the meaning of Rabban Simeon b. Gamaliel’s statement, “The loan is not remitted”? If we say that he means, only up to the value of the pledge, then, in the view of R. Judah the Patriarch, the half of the loan that is covered by the pledge also is remitted by the advent of the Sabbatical year [and that is contrary to the law]! [49A] Then what is the purpose of holding on to the pledge at all? But does the dispute not lead to the inference that the sense of, “The loan is not remitted” in Rabban Simeon b. Gamaliel’s view is, the whole of the loan is not remitted? And what is the sense of, “it is remitted” in the opinion of R. Judah the Patriarch? It is to the half of the loan against which the lender holds no pledge. And what is at stake in the dispute is this: Rabban Simeon b. Gamaliel takes the view that the pledge effects the transfer of title to the whole of the matter, and R. Judah the Patriarch maintains that the pledge effects the transfer of title only to what is covered by its own value.*

E. *Not at all. What is the meaning of Rabban Simeon b. Gamaliel’s statement, “The loan is not remitted”? He refers to the half of the loan that is covered by the pledge.*

- F. *It follows that, in the view of R. Judah the patriarch, the half of the loan that is covered by the pledge also is remitted — and if that is the law, then why get the pledge at all!*
- G. *It is only as a general reminder [that the loan is outstanding].*

IV.4. A. *R. Kahana was given money [as an advance payment] for flax, which later on appreciated in value.*

- B. *He came before Rab, who instructed him, “For the value of the money you received, hand over the flax, and as to the rest, it is a mere verbal transaction, which would not involve a breach of faith.”*

IV.5. A. *For it has been stated:*

- B. *As to a verbal transaction,*
- C. *Rab said, “A verbal transaction does not involve a breach of faith.”*
- D. *And R. Yohanan said, “A verbal transaction does involve a breach of faith.”*
- E. *An objection was raised [to the position of Yohanan]:*
- F. *R. Yosé b. R. Judah says, “What is the meaning of the statement of Scripture, ‘A just hin you shall have’ (Lev. 19:36)? It is surely covered by the reference to the ephah measure in the same verse! But it is to tell you that your ‘yes’ should be just a yes, and your ‘no’ should be just a no.” [But Yohanan’s position is excluded; this is simply moral advice, not legal.]*
- G. *Said Abbayye, “The purpose of the statement is that one should not speak one way but really think another way.”*
- H. *An objection was raised [to the position of Yohanan]:*
- I. **R. Simeon says, “Even though they have said, ‘a cloak effects acquisition of a golden denar, but a gold denar does not effect acquisition of a cloak, while that is, indeed the law, nonetheless, Truly have they said: He who exacted punishment from the men of the Generation of the Flood and the Generation of the Dispersion and from the Men of Sodom and Gomorrah and from Egypt at the Sea is destined to exact punishment from him**

who does not keep his word. But he who has given and taken in words — the other party has not effected acquisition of the object. And he who retracts loses the good will of sages [but the other has no claim of fraud against him if he does not keep his word] [T. **B.M. 3:14A-F**].”

- J. *What is at stake is, in fact, debated also by Tannaite authorities. For we have learned in the Mishnah:*
- K. **M'SH B: R. Yohanan b. Matya said to his son, “Go, hire workers for us.” He went and made an agreement with them for food [without further specification]. Now when he came to his father, [the father] said to him, “My son, even if you should make for them a meal like one of Solomon in his day, you will not have carried out your obligation to them. For they are children of Abraham, Isaac, and Jacob. But before they begin work, go and tell them, ‘[Work for us] on condition that you have a claim on me [as to food] only for a piece of bread and pulse alone.’”** [Rabban Simeon b. Gamaliel says, “He had no need to specify that in so many words. Everything in any case accords with the practice of the province”] [M. **B.M. 7:1H-N**]. *Now if you maintain that a statement made only verbally may involve a breach of faith, how could he say to him, “Go, withdraw [and revise the terms of the agreement]?”*
- L. *That case is different, for the workers on their own did not rely upon the son’s statement. Why not? They knew full well that the son himself was his father’s dependent [so no verbal agreement could have been valid anyhow].*
- M. *If that were the case, then what about the detail, **But before they begin work, go and tell them?** Even if they had not begun work, the same condition should have pertained.*
- N. *Once they had begun work, they assuredly meant to rely upon the verbal statement conveyed from the father, for they would*

reason, “He must have told this to his father, who concurred.”

- IV.6.** A. *Now has R. Yohanan really said [violating a verbal transaction does involve a breach of faith]? But has not Rabbah b. b. Hana said R. Yohanan said, “He who says to his fellow, ‘I am giving you a present’ can retract.”*
- B. *But that is self-evident!*
- C. Rather, the sense is, “It is permitted to him to retract.”
- D. *Said R. Pappa, “But R. Yohanan concedes that in the case of a small gift [that violating a verbal transaction does involve a breach of faith] because the recipient has relied on that statement [Freedman: that he will certainly fulfil his promise; hence he cannot retract without a breach of faith. But if one promises a large gift, the beneficiary himself does not have full confidence in the promise, and therefore withdrawal is permitted. In the case of a business transaction, each party naturally looks to the other to fulfil his undertaking, and therefore a breach of faith is involved].”*
- E. *And that is assuredly a reasonable conclusion, for R. Abbahu said R. Yohanan said, “A person of Israelite caste who said to a person of Levite caste, ‘A kor of wheat in the status of tithe [which is owing to any Levite] is in your possession in my domain] — the Levite is permitted to declare that produce to serve as heave-offering of tithe for produce that is located elsewhere.”*
- F. *Now if, as a matter of fact, you take the view that the donor cannot retract, it is on that account that the Levite has the right to make such a statement [knowing that the produce belongs to him, or will shortly]. But*

if you say that the donor does have the right to retract, why has the Levite got the right to make such a statement? It may turn out that he will consume totally untithed produce!

G. *In this case what are the circumstances? For example, if the Levite actually received the grain from him and then went and left it with him as a bailment.*

H. *If so, then what about the conclusion of the same statement: If the donor then gave the produce to some other member of the Levite caste, the first Levite has against the donor no more than mere resentment. Now if you take the position that we deal with a case, for example, in which the Levite actually received the grain from him and then went and left it with him as a bailment, how can it be that the first Levite has against the donor no more than mere resentment? Since he has drawn the produce, he has property in deposit with the other. Thus it must prove that he did not first take the grain from him.*

I. *That proves it. [In the case of a small gift, there can be no retraction.]*

IV.7. *A. Somebody made a deposit of money against later delivery of sesame seed. Later on the sesame seed appreciated in value, and the seller retracted the sale, saying, "We have no sesame seed, take your money back." He would not take his money back. The money was stolen. The case came before Raba, who ruled, "Since he said to you, 'Take your money,' and you did not take it, it is not necessary to say that he was*

not in the status of a paid bailee, but even an unpaid bailee is not his status in relationship to your money.’”

- B. *Said rabbis to Raba, “But lo, the other has to accept upon himself the curse, **He who exacted punishment from the men of the Generation of the Flood and the Generation of the Dispersion is destined to exact punishment from him who does not keep his word.**”*
- C. *Said R. Pappi, “Said Rabina to me, ‘One of the rabbis, named R. Tabut — others say, R. Samuel b. Zutra — who, if people gave him all of the hidden treasure in the world, would not break his word, told me of this case: ‘That incident happened with me. That day was a Friday, and I was in session, and somebody came and stood at the door and asked me, “Do you have sesame seed for sale?” [49B] I said to him, “No.” He said to me, “Then let me leave this money with you, since it’s getting dark.” I replied, “The house is open to you.” He left the money in the house, and it was stolen.” I came to Raba, who ruled, “In any case in which there is a claim, ‘The house is open to you,’ the defendant is not only not in the status of a paid bailee, but even an unpaid bailee is not his status in relationship to your money.’” I [Rabina] said to him, “But rabbis protested to Raba, ‘Then he would have*

to accept upon himself the curse, He who exacted punishment from the men of the Generation of the Flood and the Generation of the Dispersion is destined to exact punishment from him who does not keep his word.' But he answered, "That is pure fiction."'''

V.1 A. R. Simeon says, "Whoever has the money in his hand — his hand is on top."

- B. *It has been taught on Tannaite authority:*
- C. Said R. Simeon, "When is that the case? When both the money and the produce are in the possession of the seller. But if the money is in the possession of the seller, but the produce is in the possession of the purchaser, he cannot retract, because the money is in his hand."
- D. "In his hand" — but it is in the hand of the seller!
- E. Say, "It is because the money's worth is in his hand [and he has already received the goods]."
- F. *So what else is new!*
- G. *Said Raba, "With what sort of case do we deal here? It is one in which the attic where the transaction took place belongs to the purchaser but rented to the seller. Then why did the rabbis ordain that the transaction involved an act of drawing? It is out of concern that the seller may say to the buyer, 'Your wheat was burned up in the attic.' Since in this case it is already in the ownership of the buyer, should fire break out by accident, the buyer is going to go to the trouble of saving the produce."*

V.2. A. Somebody handed over money in advance payment for wine. Then he learned that one of the officers of General Rufulus was planning to seize the wine. He said to him, "Give me back my money, I don't want the wine."

- B. *He went before R. Hisda, who ruled, "Just as the requirement of an act of drawing for transfer of title was ordained in the favor of the seller, so it was ordained in the favor of the buyer as well [so can withdraw from the contract before the act of drawing is carried out]."*

The exposition is not evenly distributed among the components of the Mishnah-paragraphs. Some matters are treated in great detail, others bypassed rather haphazardly. The opening exposition, I.1f., seems to wish to discuss the triviality of the right reading, but, in fact, by dealing with that problem, the framer exposes the premise of the entire matter, which is that money is deemed null, except as a commodity. Then the only issue — the one of detail — is what is a commodity in relationships among precious metals. This becomes explicit at I.3-9. Not only so, but the quite distinct rules governing the exchange of produce in the status of second tithe into coin are invoked, with important consequences; the upshot is that, as usual, the compositor of the whole has surveyed all materials that can be drawn together for the issue at hand. His interest is not so much harmonization of

one thing with something else; it is rather to explore the issue at hand through the far reaches of the law. The second unit, I.10ff., moves from the detail of whether silver or gold is deemed a commodity vis à vis the other to the much more fundamental issue of the status of coinage in a barter-arrangement. We have first to establish that, on their own, the transfer of mere money does not effect the transfer of title, and only then do we proceed to the rather subtle question at hand. Since coins are a mere commodity, are they of the same classification, in the work of barter, as any other commodity? A legal fiction is possible; we may say that, when coins are given for an object, it is simply a barter arrangement, and that would yield the possibility of allowing ordinary trade, using cash as the medium of exchange, to go forward. But the issue is worked out in its own terms, not as a matter of social policy but of legal theory: can coins effect a barter in the way in which produce does, or the drawing of a handkerchief by the purchaser does in effecting, in symbolic form, the transfer of title? The discussion proceeds to the symbolic transfer that is effect through the purchaser's drawing to himself an item, e.g., a piece of clothing. This stands for the article that is transferred. We start with the simple question of who provides the object, the purchaser or the seller. The issue seems to me tangential to the exposition of the theoretical concerns of our Mishnah-paragraph, even as these are articulated. But it comes at the end of the exposition and leaves us at a secondary point, the primary theoretical issue having been worked out in terms of the role of coins in barter. And that strikes me as the critical issue precipitated by the opening lines of our Mishnah-paragraph. We then are drawn toward the difference between a minted coin and coinage as a commodity, now with reference to what constitutes a coin for use in the deconsecration of produce that has been declared second tithe through exchange for a minted coin. The issue is not vital to the exposition of the Mishnah's principle, but it does pertain. The discussion proceeds to the next consideration of the Mishnah-paragraph, which is the question of retraction: at what point is an exchange deemed complete? Here we revert to that profound consideration of matters of theory, which we have come to expect from our Talmud's reading of the Mishnah. The issue now is whether the transfer of money effects the transfer of title, and, if it does, is this by the authority of the Torah or by the authority of rabbis? Simeon b. Laqish's view, that the act of drawing as the sole medium for the transfer of title is explicitly set forth by the law of the Torah, then competes with the contrary conception, Yohanan's, that this is only a provision for the good order of commercial transactions.

4:3

- A. **Fraud [overreaching] is an overcharge of four pieces of silver out of twenty-four pieces of silver to the sela —**
- B. **one-sixth of the purchase price.**
- C. **For how long is it permitted to retract [in the case of fraud]?**
- D. **So long as it takes to show [the article] to a merchant or a relative.**
- E. **R. Tarfon gave instructions in Lud:**
- F. **“Fraud is an overcharge of eight pieces of silver to a sela —**
- G. **“one-third of the purchase price.”**

- H. **So the merchants of Lud rejoiced.**
- I. **He said to them, “All day long it is permitted to retract.”**
- J. **They said to him, “Let R. Tarfon leave us where we were.”**
- K. **And they reverted to conduct themselves in accord with the ruling of sages.**

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

- B. Rab said, “What we have learned to repeat in the Mishnah is, ‘a sixth of the purchase price [reckoned at true value]’ **[one-sixth of the purchase price]**.”
- C. And Samuel said, “A sixth of the money paid also was taught.”
- D. *Obviously if something worth six was sold for five or seven, all parties concur that we follow the purchase price and if there was overreaching by one-sixth, the law of fraud is invoked] Then what is at issue? It would be a case in which something worth five or seven was sold for six.*
- E. *As to Samuel, who has said that we follow the money paid as well, in both instances there is a valid claim of fraud.*
- F. *But in the view of Rab, who has said that we follow only the purchase price, then if something worth five went for six, the sale is invalid, but if something worth seven is sold for six, [so it is only a seventh of the true value of the purchase price], then the seller is deemed to have renounced part of what is really coming to him.*
- G. *And Samuel said, “When we maintain that there is renunciation by the seller or invalidation of the sale? Only if there is not a sixth variation from true value on either side whether we regard the true purchase price or the money paid (Freedman)], but if there is a sixth of variation on one side, then it is a case of fraud.”*

I.2. A. *We have learned in the Mishnah:*

- B. **Fraud [overreaching] is an overcharge of four pieces of silver out of twenty-four pieces of silver to the sela — one-sixth of the purchase price.**
- C. *Does this not mean that one has sold something for twenty for twenty four, so a sixth of the money paid also is covered by the Mishnah’s teaching?*
- D. *No, what it means is that twenty-four coins worth was sold for twenty, and who was subjected to fraud? It was the seller!.*
- E. *Then what about the concluding part of the rule? **For how long is it permitted to retract [in the case of fraud]? So long as it takes to show [the article] to a merchant or a relative.***
- F. And R. Nahman said, “This refers only to the purchaser, but as to the seller, at any time he may retract.”
- G. *The meaning is that he sold something worth twenty-four for twenty eight.*

I.3. A. *We have learned in the Mishnah:*

- B. **R. Tarfon gave instructions in Lud: “Fraud is an overcharge of eight pieces of silver to a sela — one — third of the purchase price.”**
- C. *Does this not mean that one sold something worth sixteen for twenty-four, so a third of the money that was paid is covered [and the rule then refutes Rab’s reading of the Mishnah]?*

- D. *No, the meaning is that what was worth twenty-four was sold for sixteen, and who was subjected to to fraud? It was the seller!.*
- E. *Then what about the concluding part of the rule? He said to them, “All day long it is permitted to retract.”*
- F. *And R. Nahman said, “This refers only to the purchaser, but as to the seller, at any time he may retract.”*
- G. *The meaning is that he sold something worth twenty-four for thirty-two [a sixth of the purchase-price].*

I.4. A. *It has been taught on Tannaite authority in accord with the position of Samuel:*

- B. **He who has been subjected to fraud — his hand is on top [M. B.M. 4:4D]. How so? If one sold to him a shirt forth five for six, who was defrauded? It is the purchaser, and therefore he has the upper hand. If he wants, he can say to him, “Give me my money back,” or, “give me my shirt.”**
- C. **But if he sold him something [50A] worth six for five, who is subjected to fraud. It is the seller. The seller therefore has the upper hand. He can say either, “Return the purchase to me,” or “give me the money that should have been paid.” [T. B.M. 3:16A-I].**

I.5 A. *The question was raised:*

- B. *In the opinion of rabbis, does an overcharge of less than a sixth immediately represent an act of renunciation by the seller, or is that the case only when he has had time to show the purchase to a merchant or a relative? [Freedman: If eleven were paid for an article worth ten, is the buyer regarded as having renounced the eleventh and so, even if he immediately demands its return, he has no redress, or perhaps renunciation is only if sufficient time has elapsed to show it to a merchant but before that he can claim a refund?]*
- C. *Now if you take the position that that the case only when he has had time to show the purchase to a merchant or a relative, then what difference is there between an overcharge of a sixth and less than a sixth, there is indeed a difference. In the case of a sixth, he has the upper hand, and has the choice of annulling the purchase or retaining ownership and having the overcharge returned. If it is less than a sixth, he has to retain ownership and simply get the overcharge refunded. So what is the ruling?*
- D. **Come and take note: And they reverted to conduct themselves in accord with the ruling of sages. Now, assuming that one-third of the purchase price in R. Tarfon's view is equivalent to sages' one-sixth of the purchase price, then if you take for granted that the sages' less than one-sixth of the purchase price involves the right to retract [in the case of fraud] so long as it takes to show [the article] to a merchant or a relative, and, in R. Tarfon's view, all day long it is permitted to retract, on this account they retracted the ruling. But if you maintain that sages' one-sixth of the purchase price involves the right to retract only forthwith represents an act of renunciation, [50B], and to R. Tarfon, also, less than a third overcharge immediately constitutes renunciation, then why in the world did they retract? For R. Tarfon's ruling was to the merchants' advantage. The reason is that what rabbis declared overreaching was deemed by R. Tarfon to be an act of renunciation of the overcharge.**

E. *But do you imagine that less than a third overcharge in R. Tarfon's view is the same as less than a sixth overcharge in the opinion of rabbis? Not at all, not at all: from a sixth to a third overcharge in R. Tarfon's view is equivalent to a sixth overcharge on the view of rabbis. [Freedman: and in both cases the overcharge is returnable. But while the rabbis maintain that an overcharge of more than a sixth entirely annuls the sale, Tarfon held that up to a third the defrauded party has the upper hand, and the sale may stand.]*

F. *Then why to begin with were the merchants so pleased with R. Tarfon's ruling? Then you may deduce the point that, in rabbis' view, if the sale is annulled, one can always withdraw; so they were happy when R. Tarfon instructed them that an overcharge up to a third constitutes overreaching [while rabbis held that if it was more than a sixth, the transaction was cancelled, but they reverted to rabbis' ruling when Tarfon told them that the time for withdrawing is all day long. For if you maintain that, in rabbis' view, the annulment of the sale can take place only within the time in which the purchaser can show it to a merchant or to a relative, why did they rejoice at all?*

G. *It was only on account of the narrow measure of the sixth itself [Freedman: For when we say that according to R. Tarfon from a sixth up to a third constitutes overreaching, a sixth itself is excluded and not recoverable. Hence they might well rejoice, without respect to the time within which the sale is revocable in rabbis' opinion.]*

I.6 A. *The question was raised: if a purchase is annulled, in the view of rabbis, may one retract without time-limit, or perhaps one may retract only within the time it would take **to show [the article] to a merchant or a relative.***

B. *And if you take the view that it is only within the time it would take **to show [the article] to a merchant or a relative,** then what is the difference between an overcharge of a sixth and more than a sixth?*

C. *The difference is that, in the case of an overcharge of a sixth, only the defrauded party can retract, but if it is more than that proportion of true value, both parties may retract. What is the ruling?*

D. *Come and take note: **And they reverted to conduct themselves in accord with the ruling of sages.** Now if you say that, in the view of rabbis, the sale may be annulled only within the span of time needed **to show [the article] to a merchant or a relative,** while in R. Tarfon's view, it may take place all day long, there is no problem; that is why they preferred to revert.*

E. *But if you say that, in the view of rabbis, when a sale is annulled, one can always retract, then why did they revert? Surely R. Tarfon's position was more to their advantage, since he limited the claim of returning an item on account of overreaching to the whole day but no more than that span of time.*

F. *Annulment of a sale is unusual.*

I.7 A. *Said Raba, "The decided law is this: if the fraud is less than a sixth of variation from true value, the transaction is irrevocable. If it is more than a sixth, the transaction is null. If it is precisely a sixth, the transaction is valid, but the overcharge has to be returned. And in both cases, the complaint must be made*

within the span of time that is required to show the object to a merchant or a relative.”

B. *It has been taught on Tannaite authority in line with the view of Rabbah:*

C. “If the fraud is less than a sixth of variation from true value, the transaction is irrevocable. If it is more than a sixth, the transaction is null. If it is precisely a sixth, the transaction is valid, but the overcharge has to be returned. And in both cases, the complaint must be made within the span of time that is required to show the object to a merchant or a relative,” the words of R. Nathan.

D. R. Judah the Patriarch says, “Under all circumstances the hand of the seller is on top. If he wants, he may say to him, ‘Give me back the purchase,’ or, ‘Pay me the sum by which you have defrauded me.’ And in both cases, the complaint must be made within the span of time that is required to show the object to a merchant or a relative.”

II.1 A. For how long is it permitted to retract [in the case of fraud]? So long as it takes to show [the article] to a merchant or a relative.

B. Said R. Nahman, “This was taught only in connection with the purchaser. But as to the seller, he always has a right to retract.”

C. *May I say that the following supports his view: And they reverted to conduct themselves in accord with the ruling of sages.*

D. *Now if you say, as a matter of fact, that the seller always has a right to retract, [51A] that explains why they reverted. But if you say that the seller is in the same status as the buyer, then what difference would [Tarfon’s longer span of time available for registering a complaint] make to them? Just as rabbis improved the position of the buyer, so they likewise improved that of the seller!*

E. *The merchants of Lud did not make many mistakes [so the longer period in which they might recover the fraud made no difference to them, but the longer period given to the buyer was to their disadvantage (Freedman)].*

II.2. A. The innkeeper of R. Ammi bar Hama sold some wine but made a mistake. [R. Ammi] came across him and found him depressed, so he asked him, “How come you’re depressed?”

B. *He said to him, “I bought wine but made a mistake.”*

C. *He said to him, “Go, retract the sale.”*

D. *He said to him, “Lo, I have procrastinated for a greater length of time than it takes to show it to a merchant or a relative.”*

E. *He sent him to appear before R. Nahman, who said to him, “That rule pertains only to the buyer, but as to the seller, he always has the right to retract. What is the reason? The purchaser has the purchase in hand, and wherever he goes, he can show it to people and they can tell him whether or not he has made a mistake. But the seller, who does not hold the purchase in hand any more, has to wait until he can find an article like the*

one he sold, and only then will he know whether or not he has made a mistake.”

- II.3.** A. *Somebody had silk skeins for sale. He asked for six, while the silk was worth five, and if someone had given him five and a half, he would have taken the money. Somebody came and said to himself, “If I pay five and a half, it is immediate renunciation, so I’ll pay six and then go to court to get the money back.”*
- B. *When the case came before Raba, he ruled, “That is the rule only in the case of one who purchases from a merchant. But in the case of purchasing from a house holder, one may never make a claim of overcharge at all.”*
- II.4.** A. *Somebody had jewelry for sale. He asked sixty, while the jewelry was worth five, and if he had been offered fifty-five, he would have accepted the offer. Somebody came and thought to himself, “If I pay him fifty-five, it will add up to an immediate renunciation of a claim of fraud. So I’ll pay him sixty and then go to court.”*
- B. *When the case came before R. Hisda, he ruled, “That is the rule only in the case of one who purchases from a merchant. But in the case of purchasing from a house holder, one may never make a claim of overcharge at all.”*
- C. *Said to him R. Dimi, “Quite right.”*
- D. *And so said R. Eleazar, “Quite right.”*
- E. *But lo, we have learned: **Just as fraud applies to an ordinary person, so it applies to a merchant [M. B.M. 4:4B].** What is meant by an ordinary person? Surely it is a householder!*
- F. *Said R. Hisda, “That pertains to [Freedman:] rough cloth garments, but as to garments for personal use, which he values, he will sell only at an increased price.”*

I.1 proceeds to clarify the sense of the Mishnah, making a distinction that produces a more subtle law than we have in hand. This yields at Nos. 2ff. a sustained inquiry into the same matter by appeal to pertinent rules. The following unit raises a question that our Mishnah-paragraph has not precipitated, II.1.B. This is investigated in light of the opinions of both Tarfon and sages in our Mishnah. The same procedure is covered at II.2. Then II.3 settles the matter with a clear statement of the law, and what follows III.1ff., are cases in which the law is applied.

4:4

- A. **All the same are the buyer and the seller: both are subject to the law of fraud.**
- B. **Just as fraud applies to an ordinary person, so it applies to a merchant.**
- C. **R. Judah says, “Fraud does not apply to a merchant [who cannot lay claim to having been defrauded].”**
- D. **He who has been subjected [to fraud] — his hand is on top.**
- E. **[If] he wanted, he says to him, “Return my money.”**
- F. **[Or, if he wanted, he says to him,] “Give me back the amount of the fraud.”**

I.1 A. *What is the scriptural source of this rule?*

- B. *It is in accord with that which our rabbis have taught on Tannaite authority:*
- C. *“And when you sell anything to your neighbor [or acquire], you shall not deceive” (Lev. 25:14) —*
- D. *I know only that that applies if the buyer is defrauded. How do I know that the same rule pertains to the seller?*
- E. *Scripture says, “...or acquire....”*
- F. *And it was necessary for Scripture to make reference to both the buyer and also the seller.*
- G. *For had the All-Merciful written only the rule concerning the seller, I should have assumed that the rule against defrauding him is because he knows what he is selling [so if he overcharges, he does so intentionally], but the purchaser, who does not know what he is buying [so if he underpays, he does not do so intentionally], would not be subject to the rule against fraud in the All-Merciful’s admonition, “you shall not deceive.”*
- H. *And had the All-Merciful written the rule concerning the purchaser, it is because he makes acquisition, and people say, “whenever you buy, you benefit,” but the seller, who loses out, as people say, “whenever you sell, you lose out,” would not be subject to the rule against fraud in the All-Merciful’s admonition, “you shall not deceive.”*
- I. *Accordingly, it was necessary for Scripture to make explicit reference to both parties.*

II.1 A. R. Judah says, “Fraud does not apply to a merchant.”

- B. *Is it merely because he is a merchant that he cannot claim he has been defrauded?*
- C. *Said R. Nahman said Rab, “The teaching pertains to a [Freedman:] middle-man. What is the reason? He most certainly knows the value of his merchandise, how much it is worth, and [if he sells it at less than true value, the reason is that] he has renounced [part of the value of his merchandise in the buyer’s favor. So he cannot afterward allege fraud by reason of variation from true value.] The reason that he has sold cheap is that he has come upon some other opportunity, and now, nonetheless, he wants to retract. [He is not permitted to do so.]”*
- D. *R. Ashi said, “What is the meaning of **Fraud does not apply to a merchant?** It means, he is not subject to the law of overreaching, so that even if the sale involves a variation from true value of less than the standard of overreaching, he has the right to retract.”*
- E. *We have on Tannaite authority a statement confirming the position of R. Nahman: **R. Judah says, “Fraud does not apply to a merchant,** because he is an expert [in trade and is assumed to know the value of his merchandise].”*

III.1 A. He who has been subjected [to fraud] — his hand is on top. [If] he wanted, he says to him, “Return my money.” [Or, if he wanted, he says to him,] “Give me back the amount of the fraud.”

- B. *In accord with which authority is our Mishnah-teaching? It accords with neither R. Nathan nor with R. Judah the Patriarch. [Reference is made to the following, at 50B above: “If the fraud is less than a sixth of variation from true value, the transaction is irrevocable. If it is more than a sixth, the transaction is null. If it is precisely a sixth, the transaction is valid, but the overcharge has to be returned.*

And in both cases, the complaint must be made within the span of time that is required to show the object to a merchant or a relative,” the words of R. Nathan. R. Judah the Patriarch says, “Under all circumstances the hand of the seller is on top. If he wants, he may say to him, ‘Give me back the purchase,’ or, ‘Pay me the sum by which you have defrauded me.’ And in both cases, the complaint must be made within the span of time that is required to show the object to a merchant or a relative.”]

- C. *It cannot be R. Nathan, for our Mishnah-paragraph formulates matters in terms of **if he wanted**, while R. Nathan’s Tannaite formulation does not make reference to **if he wanted**.*
- D. *But it also cannot be R. Judah the Patriarch, for our Mishnah-passages refers to the buyer, while R. Judah’s Tannaite formulation refers to the seller!*
- E. *Said R. Eleazar, “As to this law concerning variation from true value, I have not got the slightest idea who has repeated it in this formulation.”*
- F. *Rabbah said, “In point of fact it represents the view of R. Nathan, but include in the formulation of the Tannaite formulation, **if he wanted**.”*
- G. *Raba said, “In point of fact it represents the view of R. Judah the Patriarch, and what has been omitted from the statement made in the Mishnah-passages has been made explicit in the Tannaite formulation that complements the Mishnah-passages.”*
- H. *Said R. Ashi, “A close reading of the Mishnah also [produces the same conclusion, namely:] **All the same are the buyer and the seller: both are subject to the law of fraud.** But the rule is spelled out in terms of the buyer. That proves that the matter of the seller has merely been left out.”*
- I. *That indeed is proven.*

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

- B. He who says to his fellow, “[I make this sale to you] on the stipulation that you may not lay claim of fraud [by reason of variation from true value] against me” —
- C. Rab said, “He nonetheless may lay claim of fraud [by reason of variation from true value] against him.”
- D. Samuel said, “He may not lay claim of fraud [by reason of variation from true value] against him.”
- E. *May we then say Rab accords with the principle of R. Meir and Samuel, of R. Judah, as it has been taught in the following Tannaite teaching:*
- F. “He who says to a woman, ‘Lo, you are betrothed to me on the stipulation that you have no claim upon me for provision of food, clothing, and sex’ — lo, she is betrothed, and his stipulation is null,” the words of R. Meir.
- G. And R. Judah says, “With respect to property matters [food, clothing], his stipulation is valid.”
- H. *[No, Rab would not concur with Meir,] for Rab would say to you, “My position is valid even within the framework of the opinion of R. Judah. For R. Judah took the position he did there only because the woman knew her rights and renounced them, [51B] but here, did the man know the facts of the matter at all, that he should have renounced what is coming to him?”*

- I. *And Samuel may say, "My position is valid even within the framework of the opinion of R. Meir. Only in such a case does R. Meir take that position, since the man's stipulation has certainly rejected a biblical law, but here can we say that he has in fact disregarded any law [we do not after all know for sure that he will defraud the other by charging more than true value by the specified proportion]."*
- J. *Said R. Anan, "The matter has been explained to me by Mar Samuel, 'He who says to his fellow, "[I make this sale to you] on the stipulation that you may not lay claim of fraud [by reason of variation from true value] against me" — he has no claim of fraud against him. [If he said,] "...on the stipulation that in the transaction itself, there is no aspect of fraud," lo, he has a claim of fraud against him.'"*
- K. *An objection was raised to this matter [at E-H:]*
- L. **He who does business on trust [Rashi: A gives goods to B to sell at whatever price he can, to render him the money at a fixed date, while he pays him for his labor, appointing him as a salaried agent; Tosafot: the buyer, B, trusts the seller, A, as to the price he paid for the goods, and is willing to allow him a certain percentage for profit (Freedman)] —**
- M. **or if he says to his fellow, "[I make this sale to you] on the stipulation that you may not lay claim of fraud [by reason of variation from true value] against me" —**
- N. **he may not lay claim of fraud [by reason of variation from true value] against him [T. B.M. 3:22A-C].**
- O. *Now in the view of Rab, who held, "'My position is valid even within the framework of the opinion of R. Judah," who is the authority for this rule?*
- P. *Said Abbaye, "Obviously Rab's position does accord with that of R. Meir, and Samuel's, R. Judah's."*
- Q. *Raba said, "No, there is no difficulty reading matters as is. The one refers to an unspecified case, the other to one in which a stipulation as been made."*
- R. *So too it has been taught on Tannaite authority:*
- S. *So what case does this rule apply [that whatever prior stipulation has been made, a claim of overcharge can be entered anyhow]? When matters have been left unarticulated. But if one party makes it explicit that he is charging more than true value by greater than the permitted variation, for example, if the seller said to the buyer, "I know that this article, which I am selling to you for two hundred zuz, is worth a hundred, but I am selling it to you on the stipulation that you may not lay claim of overcharge against me," then there is no possibility of entering a claim for overreaching. So too, if the purchaser said to the seller, "I know that this article, which I am buying from you for a hundred zuz, is really worth two hundred, and I am buying it on condition that you have no later claim of overcharge against me, then the defrauded party has no claim of overcharge against the other."*

III.3. A. Our rabbis have taught on Tannaite authority:

- B. **He who does business on trust [the buyer, B, trusts the seller, A, as to the price he paid for the goods, and is willing to allow him a certain percentage for profit (Freedman)] — lo, this one should not calculate inferior goods on trust and superior ones at par, but either wholly on trust or wholly at par.**
- C. **He must pay the cost of portorage, transportation, and storage, but he does not get paid for his own trouble, since he already has been paid in full [T. **B.M. 3:23**].**
- D. How has his fee already been paid in full?
- E. *Said R. Pappa, “This refers to textile manufacturers, who give a discount of four per cent.”* [Freedman: The cost price is subject to a further manufacturer’s discount, but the seller, in estimating his profits, bases it on the cost price before the discount; that discount is regarded as full payment for his personal trouble.]

The treatment of the opening clause, at I.1, asks the common question of the source, in Scripture, for the rule of the Mishnah, in the supposition of course that the Mishnah’s laws are not free-standing but wholly dependent upon Scripture. II.1 then clarifies the language of the Mishnah, and III.1f. brings out Mishnah-passages into relationship with another rule that rests upon the same principle. III.3 is attached because it develops a detail introduced in connection with the immediately-prior exercise.

4:5

- A. **How much may a sela be defective and [still] not fall under the rule of fraud?**
- B. **R. Meir says, “Four issars, at an issar to a denar”**
- C. **R. Judah says, “Four pondions, at a pondion to a denar “**
- D. **R. Simeon says, [52A] “Eight pondions, at two pondions to a denar.”**

4:6

- A. **How long is it permitted to return [a defective sela]?**
- B. **In large towns, for the length of time it takes to show to a money changer.**
- C. **And in villages, up to the eve of the Sabbath.**
- D. **If [the one who gave it] recognizes it, even after twelve months he is to accept it from him.**
- E. **But [if the one who gave the coin refuses to take it back], he has no valid claim against the other except resentment.**
- F. **He may give it for produce in the status of second tithe, [for easy transportation to Jerusalem],**
- G. **and need not scruple,**
- H. **for it is only churlishness [to refuse a slightly depreciated coin].**
- I.1** A. *An objection was raised: How much may a sela be defective so that it falls under the rule of fraud?*
- B. *Said R. Pappa, “There is no contradiction. Our Tannaite authority reckons from below to above, and the other Tannaite authority reckons from above to below.”* [Freedman: The Mishnah explains how far can the sela go on increasing in

deficiency without involving overreaching. The *baraita* asks, how far can the deficiency of a sela go on decreasing and still involve overreaching. The Mishnah's "until" is exclusive, the *baraita*'s "until" is inclusive.]

- I.2.** A. *What is the difference between a sela, in which there is broad disagreement on the per centage of variation from true value that involves fraud, and a garment, in which [excluding Tarfon] there is no disagreement on the per centage of variation from true value that involves fraud [all parties concurring that it is one-sixth of true value]?*
- B. *Said Raba, "Who is the authority in the case of the garment? It is R. Simeon [who takes the same position here, that is, **Eight pondions, at two pondions to a denar**, which is a one-sixth variation from true value]."*
- C. *Abbayye said, "In the case of a garment, if the variation is merely one sixth from true value, people are willing to renounce their claim, for people say, 'Overpay for your back [clothing], but give only exact value for your stomach [food].' But as for a sela, since it is not going to circulate at less than true value, one is not likely to renounce such a deficiency."*

I.3. A. *Reverting to the text given above:*

- B. How much may a sela be defective so that it falls under the rule of fraud?
- C. R. Meir says, "Four issars, at an issar to a denar"
- D. R. Judah says, "Four pondions, at a pondion to a denar"
- E. R. Simeon says, "Eight pondions, at two pondions to a denar."
- F. If the variation is greater than that specified, the coin is to be sold for its true value.
- G. How long may a coin depreciate while it is still permitted to hold on to it?
- H. **In the case of a sela, as far as a shekel; in the case of a denar, down to a quarter. If it is an issar less, it is forbidden to circulate it [T. B.M. 3:18A-C].**
- I. **One may not sell it to a merchant, a highwayman, or a thug, for they deceive others thereby. But one may pierce and suspend it around the neck of his son or daughter [T. B.M. 3:19A-D].**

I.4. A. A master has said, **In the case of a sela, as far as a shekel; in the case of a denar, down to a quarter. If it is an issar less, it is forbidden to circulate it [T. B.M. 3:18A-C].**

- B. *What is the difference that, in the case of a sela, it may depreciate down to a shekel, while in the case of a denar, it may deteriorate down to a quarter [twice the former proportion]?*
- C. *Said Abbayye, "What is the 'quarter' to which reference is made? It is indeed a shekel."*
- D. *Said Raba, "A close reading of the passage will show the same thing, for lo, it is taught, 'a quarter' but not 'a fourth.'"*
- E. *That proves it.*
- F. *Then why correlate the denar with the shekel?*
- G. *The Tannaite authority wishes to make a point en passant, which is that there is a kind of denar that comes from a shekel.*

- H. *This supports the view of R. Ammi, for R. Ammi said, “A denar that derives from a shekel may be kept, one that derives from a sela may not be kept.”*

I.5. A. If it is an issar less, it is forbidden to circulate it

- B. *What is the sense of this statement?*
- C. *Said Abbaye, “This is the sense of this statement: If a sela depreciated by an issar more than the measure of variation such as to constitute overreaching, it may not be circulated.”*
- D. *Said Raba to him, “If that were the case, then even any depreciation at all [and not so much as is specified, an issar] should also produce the same result.”*
- E. *Rather, said Raba, “[The sense is this:] If a sela depreciated at the rate of an issar to a denar, it is forbidden to circulate it as a sela, an unattributed saying that accords with the position of R. Meir [R. Meir says, “Four issars, at an issar to a denar”].”*

I.6. A. We have learned in the Mishnah in another passage:

- B. **A sela that became defective and that one fashioned for use as a measure is susceptible to becoming unclean. How defective may it become and yet remain fit for use as a coin? Up to two denars. If it is less than this, let it be cut up [M. Kel. 12:7B-C].**
- C. *What is the rule if it is worth more than the stated amount?*
- D. *Said R. Huna, “If it is less than this, let it be cut up. If it is more than this, let it be cut up.”*
- E. *R. Ammi said, “If it is less than this, let it be cut up. If it is more than this, let it be kept as is.”*
- F. *An objection was raised: [52B] If the variation is greater than that specified, the coin is to be sold for its true value.*
- G. *Does this not mean, if it depreciated by more than the limit for overreaching [and that proves it may be kept]?*
- H. *No, “above” means, if it is worth more, since it has not so depreciated as to involve overreaching; it may then be sold for its true value.*
- I. *An objection was raised: **How defective may it become and yet remain fit for use as a coin? In the case of a sela, as far as a shekel; [in the case of a denar, down to a quarter. If it is an issar less, it is forbidden to circulate it] [T. B.M. 3:18A-C].***
- J. *Does this not mean, if it depreciated little by little?*
- K. *No, what it means is that it fell into a fire and lost its value all at once.*

I.7. A. The master has said: But one may pierce and suspend it around the neck of his son or daughter [T. B.M. 3:19A-D].

- B. *An objection was raised: One should not keep it as a weight among his weights, nor toss it into his scrap-metal, nor pierce it and suspend it around the neck of his son or daughter, but he must either pound it to dust, melt it down, mutilate it, or throw it into the Dead Sea.*

- C. *Said R. Eleazar, and some say, R. Huna in the name of R. Eleazar, "There is no contradiction. The former statement refers to the middle of the coin, the latter to the edge."* [Freedman: When the coin is pierced in the middle, it cannot circulate, so it is permitted to make it into a piece of jewelry. But if it is pierced at the edge, one may file it around until the hole is gone and use it as a coin, and that is where keeping the coin at all is forbidden.]

II.1 A. How long is it permitted to return [a defective sela]? In large towns, for the length of time it takes to show to a money changer. And in villages, up to the eve of the Sabbath.

- B. *What is the difference in the case of a sela that we distinguish between town and village, while in the case of a garment we make no such distinction?*
- C. *Said Abbaye, "When we learned the Mishnah-passage with respect to the garment, the rule concerning towns."*
- D. *Raba said, "In the case of a garment, everybody knows about such matters, while in respect to a coin, since not everybody can value it, having to depend on a money-changer who is an expert, it must follow that, in towns, where one can find a money-changer, one can retract only for the space of time in which it takes to show the coin to a money-changer. In villages, on the other hand, where there is no money-changer, the period of retraction is until the eve of the Sabbath, when [on a Friday] villages will go to market [in town, and get the coin to a money-changer]."*

III.1 A. If [the one who gave it] recognizes it, even after twelve months he is to accept it from him.

- B. *To what circumstance does this rule apply, to towns? But you have said, In large towns, for the length of time it takes to show to a money changer.*
- C. *Then is it in villages? But you have said, And in villages, up to the eve of the Sabbath.*
- D. *Said R. Hisda, "What is taught in this clause is the requirement of true piety."*
- E. *But then consider the continuation of the statement: But [if the one who gave the coin refuses to take it back], he has no valid claim against the other except resentment.*
- F. *Against whom may one feel resentment, against a pious man? But if it is a reference to the pious man, let him neither accept the coin nor feel resentment against him! And if it is a reference to the one from whom he accepted the coin, then after having accepted the coin from him, should he bear resentment?*
- G. *This is the meaning of the passage: But as for another person [who insists upon his legal right not to take the coin back], even if he does not re-accept the coin from him, he to whom it was given as full coin has no valid claim against the other except resentment.*

IV.1 A. He may give it for produce in the status of second tithe, [for easy transportation to Jerusalem], and need not scruple, for it is only churlishness [to refuse a slightly depreciated coin].

- B. *Said R. Pappa, "This implies that one who is too meticulous about the coins that are given to him is called churlish, but that is the case only if the coins are sufficient [in volume of precious metal] to circulate."*

IV.2. A. *The statement of the Mishnah [He may give it for produce in the status of second tithe] supports the position of Hezekiah, for Hezekiah has said, "When one comes to exchange [the coin in Jerusalem for produce], he does so at its intrinsic value. When he comes to redeem [produce in the status of second tithe, for transfer of their value to Jerusalem in convenient form] with a coin, he does so with its worth."* [Freedman: e exchanges a worn sela for perutahs, he must estimate it at its metallic, intrinsic value. If he redeems second tithe produce with such coins, he gives the coins their nominal value, as though unworn.]

- B. *What is the sense of this statement? It is this:* Even though, when one comes to exchange the coin, he does so for its actual worth [even though it has depreciated somewhat, so long as it remains within the limits of not overreaching], when he redeems produce with it, he does so at its mint value. [Freedman: Thus Hezekiah informs us that when the Mishnah states that the second tithe may be redeemed therewith, it means that the coin is reckoned at its full nominal value, because to be exacting in regard to coins that are slightly worn is a mark of churlishness.]

- C. *Is that then to imply Hezekiah takes the view that produce in the status of second tithe may be treated lightly?* [For he estimates the deficient coin at full, mint value]. But has not Hezekiah himself stated, "In the case of produce in the status of second tithe that, in the aggregate, is not worth so much as a perutah, one may make the declaration, 'It, together with its fifth, is redeemed with the first money that has already been used in connection with the redemption [of produce in the status of second tithe, that is, money already used in redeeming other produce in the status of the second tithe],' for it is not possible for someone to be too exact about his coins." [Freedman: When one redeems the second tithe, he does not calculate its exact value, lest he underestimate it, and so redeems it at slightly more than its true worth. This slight excess may now be regarded as the redemption money of second tithe produce worth less than a perutah, the smallest possible coin. This proves that in the first place it is liberally calculated, which contradicts his former statement that even deficient coins may be reckoned at their true value for this purpose.]

- D. *What is the sense of his saying, "at its true value"?* Under the rule governing the proper value of the coin, *because produce in the status of second tithe may not be treated lightly in two distinct respects.* [Freedman: The defective coin is computed only at the proper value it possesses now, now only is full allowance made for its deficiency, but its valuation is slightly lowered even beyond that, so as to make certain that it does possess the value attributed to it. Hezekiah asserts that we are stricter in respect to the redemption of the second tithe than in ordinary secular transactions. And the reason is because it may not be lightly treated in two respects, for the mere fact that it may be redeemed with a defective coin, which some might refuse as a coin at all, is considered a light treatment of the second tithe; we may certainly not subject it to the further indignity of computing the value of this coin in a liberal spirit. The statement in the Mishnah that the second tithe

may be redeemed with it means, accordingly, “at its present intrinsic value,” for to refuse to accept it thus is a mark of churlishness.]

IV.3. A. *Returning to the body of the preceding:*

- B. Said Hezekiah, ““In the case of produce in the status of second tithe that, in the aggregate, is not worth so much as a perutah, one may make the declaration, ‘It, together with its fifth, is redeemed with the first money that has already been used in connection with the redemption [of produce in the status of second tithe, that is, money already used in redeeming other produce in the status of the second tithe],’ for it is not possible for someone to be too exact about his coins.”
- C. *An objection was raised on the basis of the following: As regards food in the status of heave-offerings and first fruits, non-priests who eat them are liable to death if they eat the offering intentionally, or to pay the offering’s value and an added fifth if they eat the offering unintentionally. [53A] They are forbidden for use by non-priests, since they are priestly property. They are neutralized, losing their consecrated status, in a mixture with at least one hundred and one parts of unconsecrated food. They require washing of the hands on the part of any priest before he may handle them, and, after ritual immersion, an unclean priest must await sunset before he may handle them. Lo, these rules pertain to food in the status of priestly rations [“heave offering”] and first fruits, but not to tithe. [And they may not be separated from a clean batch or dough or produce on behalf of an unclean batch of dough or produce] [M. Hal. 1:9A-F; cf. also M. Bik. 2:1].*
- D. *What is the sense of, “ but not to tithe? Is it not that tithe mixed with other produce may be deemed nullified by a greater volume of secular produce? [Freedman: If a quantity of the second tithe fell into a greater quantity of unconsecrated food, it is neutralized and the whole is deemed unconsecrated, the required volume of secular produce being not one hundred times the volume of the consecrated produce, but a mere majority.] But if the position if Hezekiah were sound, then tithe should be deemed in the classification of something that under the proper conditions may be treated as permitted, and whatever falls into that classification mixed with even a thousand times its own volume is not neutralized. [Normally, a certain proportion of unconsecrated produce may neutralize a much smaller volume of consecrated produce with which it is mixed. But that principle does not pertain if what is consecrated may be released from its status of consecration in some way other than through neutralization. In the case of second tithe, since it can be annulled by a lesser quantity than is necessary for food in the status of heave offering, or indeed since it can be annulled at all, there is a remedy other than nullification. It can be taken to Jerusalem and eaten there. Now if Hezekiah’s ruling that second tithe worth less than a perutah can be redeemed by retrospectively including it in other redeemed produce is correct, the law of neutralization should not operate here at all.]*

- E. *And how do you know that the statement, **but not to tithe**, bears the sense that it may be nullified by a greater volume of secular produce? Perhaps the sense is that it may not be nullified at all [and so there is no contradiction between Hezekiah and the cited passage].*
- F. *You really cannot take that position, for in respect to food in the status of priestly rations, it is the strict rules that pertain to food in that status that are set forth, while the lenient rulings that apply to food in the status of priestly rations are not set forth at all.*
- G. *But the passage states explicitly, **they are priestly property** [and that is a lenient ruling vis a vis food in the status of second tithe].*
- H. *You may not even imagine [that food in the status of second tithe cannot be neutralized at all, should it be mixed with secular food], for it has been taught on Tannaite authority in that very same context that food in the status of second tithe is neutralized if it is mixed with a larger volume of unconsecrated food. And concerning what food in the status of second tithe have they spoken? It concerns tithe that was not worth even a perutah that was brought into Jerusalem and taken out again. Now if Hezekiah's ruling were sound, then let the remedy for this situation be the same as that of Hezekiah, which is to say, let the produce be deemed as rendered secular in exchange for the coins that were paid out in connection with produce that had earlier been redeemed.*
- I. *We deal with a case in which he had not redeemed any produce prior to this case.*
- J. *Then let him bring other produce in the status of tithe that he may have and make a combination of that produce with this produce of a paltry volume that has passed into and then out of Jerusalem [and redeem the whole]?*
- K. *That which is in the status of tithe by the authority of the Torah and that which is in the status of second tithe only by rabbinic ordinance are not to be deemed combined [for the present purpose]. [Freedman: By biblical law the tithe is certainly neutralized by a greater quantity than itself. Consequently, when it is thus intermixed, it is tithe only by rabbinic law, whereas what is brought now is tithe according to biblical law, and the two cannot be combined for the purpose of joint redemption, with the result that the tithe which he brings will remain unredeemed. But the retrospective combination permitted by Hezekiah is with produce that is already redeemed; hence it does not matter that the first was tithe by biblical law and the second, the mixed produce, only by rabbinic law.]*
- L. *Then let him bring doubtfully tithed produce [which yields tithe only by rabbinic law, and could be combined with the mixed produce].*
- M. *The reason not to permit such a procedure is that the farmer may turn out to mix what is certainly in the status of second tithe [thinking that utilizing the remedy of doubtfully tithed produce is permitted even in the case of produce that is certainly in the status of tithe].*
- N. *Then let him bring two perutot and redeem the produce in the status of tithe that he brings with a perutah and a half, and this mixture with the*

rest of the money. [Freedman: If the produce in the status of tithe is worth a perutah and a half, can it then consecrated two whole perutahs? Surely not!] One perutah's worth consecrates the one perutah, while the half-perutah's worth of produce in the status does not consecrate any coin, so what we have once more is tithe on the authority of the Torah and tithed on the authority of rabbis, and these cannot be combined!

- O. *Then bring an issar [and tithe produce to a lesser value will be redeemed with that small coin, the excess then being used for the redemption of mixed tithe; for though one and a half perutahs worth cannot consecrate two perutahs, since they are two distinct coins, one being consecrated, the other not, if a single larger coin is used, the whole becomes consecrated, and the excess can retrospectively redeem the mixed tithe (Freedman)].*
- P. *No, he might bring perutahs for that purpose.*

IV.4. A. [And concerning what food in the status of second tithe have they spoken? It concerns tithe that was not worth even a perutah] that was brought into Jerusalem and taken out again:

- B. *But what's the problem [and why may the mixed tithed be neutralized? Just let it be taken back into Jerusalem again [and eaten there]!*
- C. *We deal with produce that has been made unclean [and cannot be treated in that way].*
- D. *Then let it be redeemed?* For said R. Eleazar, "How on the basis of Scripture do we know that produce in the status of second tithe that has become cultically unclean may be redeemed **[53B]** even in Jerusalem itself? As it is said, 'When you are not able to bear it [then you shall turn it into money]' (Deu. 14:24-25). And 'bear' means only 'eating,' as it is said, 'And he took and sent burdens to them before him' (Gen. 43:34) [making Deu. 14:24 mean, 'if you cannot eat it, then you shall turn it into money]."
- E. *But this speaks [not of our case, but rather] of produce that has been purchased with money that has been exchanged for produce in the status of second tithe. [The original produce was exchanged for money, the money brought to Jerusalem and spent on produce, and that produce has become unclean. It is now assumed that only the original produce designated as tithe if made unclean can be redeemed, but not that purchased with redemption money.]*
- F. *But let what is purchased with money that has been exchanged for produce in the status of second tithe also be redeemed, for we have learned in the Mishnah: **Produce purchased with coins in the status of second tithe which becomes unclean and therefore may not be eaten as second tithe — let it be redeemed. R. Judah says, "Let it be buried"** [M. **M.S. 3:10A-C**].*
- G. *The formulation before us concurs with the position of R. Judah, who maintains, "Let it be buried."*

- H. *If the passage conforms with the view of R. Judah, then why is this the rule in particular once the produce has been carried out of Jerusalem? The same rule should pertain even if it has not gone forth!*
- I. *In point of fact the rule pertains to produce in the status of second tithe that has not become cultically unclean, and what is the meaning of "has gone forth"? It is that the walls of Jerusalem have fallen down [after the second tithe was taken into Jerusalem. It cannot be eaten other than within the walls, but it also has been brought inside of the city while the walls were still standing, so it cannot be redeemed.]*
- J. *But has not Raba said, "The law of the walls of Jerusalem that requires the produce in the second tithe to be eaten within them is on the authority of the Torah, but the law that they have such power that, even when fallen, they demarcate the area in which the produce is to be eaten is merely on the authority of rabbis." When would rabbis have made such a rule? Only when the walls were standing, but not when they no longer were standing. [Freedman: the barriers having fallen, let the tithe be redeemed.]*
- K. *Rabbis made no such distinction between the case in which the walls were standing and the one in which they were not standing.*

IV.5. *A. R. Huna b. Judah in the name of R. Sheshet said, "Thus it has been taught, [And concerning what food in the status of second tithe have they spoken? It concerns tithe that was not worth even a perutah] that was brought into Jerusalem and taken out again. Why not just bring the produce back and eat it there?"*

- B. *Because the walls had fallen.*
- C. *But then let it be redeemed, for has not Raba said, "The law of the walls of Jerusalem that requires the produce in the second tithe to be eaten within them is on the authority of the Torah, but the law that they have such power that, even when fallen, they demarcate the area in which the produce is to be eaten is merely on the authority of rabbis." When would rabbis have made such a rule? Only when the walls were standing, but not when they no longer were standing. [Freedman: the barriers having fallen, let the tithe be redeemed.]*
- D. *Rabbis made no such distinction between the case in which the walls were standing and the one in which they were not standing.*
- E. *If that were the case, then why impose the detail that the produce was not worth even a perutah? Even if it were worth that much, the same rule should apply!*
- F. *The sense of the statement is this: it is not necessary in the case of produce worth a perutah to state that the passage through the walls has the affect of retaining the food therein, but even in a case in which the produce is not worth even a perutah, in which*

instance I might have thought that the walls had no such power, the law is the same. So we are informed to the contrary.

IV.6. A. Our rabbis have taught on Tannaite authority:

- B. “If a man wishes to redeem any of his tithe, he shall add a fifth to it” (Lev. 27:31):
- C. “any of his tithe” — but not all of the produce he has designated as tithe, excluding then the case of produce in the status of second tithe that is not worth even a perutah [and this cannot be redeemed through an exchange of produce and money].
- D. *It has been stated:*
- E. R. Ammi said, “[The tithe] itself is not [worth a perutah].”
- F. R. Assi said, “[The added fifth is less than the specified perutah. [Freedman: Even if the produce is worth more than a perutah, no redemption is possible if the fifth to be added is less than a perutah.]]”
- G. R. Yohanan said, “[The tithe] itself is not [worth a perutah].”
- H. R. Simeon b. Laqish said, “[The added fifth is less than the specified perutah.”
- I. *An objection was raised on the basis of the following statement: “‘In the case of produce in the status of second tithe that, in the aggregate, is not worth so much as a perutah, it is sufficient for one to make the declaration, ‘It, together with its fifth, is redeemed with the first money that has already been used in connection with the redemption [of produce in the status of second tithe, that is, money already used in redeeming other produce in the status of the second tithe]...’ Now from the viewpoint of the one who says that it does not require redemption should its added fifth be worth less than a perutah, there is no problem, and that is why the authority says, ‘It is sufficient,’ meaning, even though the thing itself does contain what is worth a perutah, yet since the fifth does not, it suffices. But from the perspective of the one who says that the tithe itself may be worth less than a perutah, what is the sense of ‘it is sufficient’? [Freedman: I would not think redemption is necessary in such a case, but ‘it is sufficient’ implies that a concession is made while the law might have been stricter.]*
- J. *That is a problem.*

Composite on the Added Fifth

- IV.7. A.** *The question was raised: as to the added fifth, is it calculated on the principal or on the principal plus the addition [Freedman: if the principal is worth 20 zuz, must one add four zuz, a fifth of the principal, or five, that is, a fifth of the principal plus the added fifth]?*
- B. *Said Rabina, “Come and take note of the following: [If the owner who has sanctified his field and wishes to redeem it says, ‘Twenty,’ and any other*

person says, 'Twenty,' the owner takes precedence, for in any event he adds a fifth. If one said, 'Lo, it is mine for twenty-one,' [54A] the owner pays twenty-six. 'Twenty-two' — the owner pays twenty-seven. 'Twenty-three' — the owner pays twenty-eight. 'Twenty-four' — the owner pays twenty-nine. 'Twenty-five' — the owner pays thirty. For they do not add the fifth to what the other bids more than the owner's bid. If one said, 'Lo, it is mine for twenty-six' — if the owner wants to pay thirty-one and a denar, the owner takes precedence, and if not, they say, 'It's yours!' [M. Bekh. 8:2H-I, 8:3A-I]. *Now this proves that the fifth is calculated on the principal plus the addition.*"

C. *That is decisive.*

IV.8. A. *The same issue is debated by Tannaite authorities:*

B. "Then he shall add a fifth part of it thereto" (Lev. 27:27) —

C. "The meaning is that it and its added fifth should be five," the words of R. Josiah.

D. R. Jonathan says, "...its fifth' means a fifth of the principal."

IV.9. A. *The question was raised: is the payment of the added fifth an essential part of the transaction or is it not an essential part of the transaction? [Freedman: If one redeems the second tithe without adding a fifth, does this omission restrain him from eating that produce outside of Jerusalem since it has not been wholly redeemed?] Do four zuz redeem four zuz's worth of produce in the status of second tithe, with the fifth added on its own, so that the fifth is not essential to the transaction? Or is it the case that four zuz's worth of produce is redeemed by five zuz, the fifth zuz being essential to the transaction?*

B. *Said Rabina, "Come and take note: Produce in the status of second tithe which is demai [doubtfully tithed produce] has no added fifth and is not subject to the law of removal [M. Dem. 1:2A-B]. Lo, it is subject to the consideration of the principal [and that has to be attended to]. What is the operative consideration? As to the payment of principal, which is essentially on the authority of the law of the Torah, pertains to a matter that to begin with rests upon the authority of rabbis; as to the payment of the added fifth, which does not form an intrinsic part of the transaction so far as the law of the Torah is concerned, also does not pertain at all in a matter that to begin with is ordained only on the authority of rabbis anyhow.*

IV.10. A. *May I say that the same issue is debated by Tannaite authorities:*

B. If one has handed over the principal [in redeeming the second tithe produce] but not the added fifth,

C. R. Eliezer says, "The produce that has been redeemed may be eaten [outside of Jerusalem, having been fully redeemed; the added fifth is not essential to the transaction, though it is, of course, to be paid]."

D. R. Joshua says, "It is not to be eaten."

E. Said Rabbi [Judah the Patriarch], "The opinion of R. Eliezer seems to me preferable for the Sabbath [when there is no remedy], but that of R. Joshua for ordinary days."

- F. *Now, since he has said, "The opinion of R. Eliezer seems to me preferable for the Sabbath," it stands to reason that the dispute applies even to week-days, and since he has said, "but that of R. Joshua for ordinary days," it stands to reason that the dispute applies also to the Sabbath. And is it not in reference to the following matter of reasoning that the dispute applies: R. Eliezer takes the view that the payment of the added fifth is not essential to the transaction, while R. Joshua holds that the payment of the added fifth is essential to the transaction?*
- G. *Said R. Pappa, "No, that is not the case, for all parties concur that the payment of the added fifth is not principal to the transaction. Here at stake is whether or not we take account of the possibility of culpable omission, and one master holds that we do take account of that possibility [that someone may intentionally omit paying the added fifth] and the other holds that we do not take account of that possibility."*

- IV.11.** A. Said R. Yohanan, "All concur in the case of that which has been consecrated and then redeemed [in which case, the added fifth must be paid], that even without the payment of the added fifth, it is held to be redeemed, since the Temple treasurers will claim the added fifth in the market place."
- B. *But in the case of that which has been consecrated, is there not such a dispute [on the possibility of culpable omission]? And lo, has it not been taught on Tannaite authority:*
 - C. If one has paid the principal [value of what has been sanctified and is now to be redeemed] but not paid the added fifth,
 - D. R. Eliezer says, "He has deconsecrated the formerly consecrated object."
 - E. And sages say, "He has not done so."
 - F. Said Rabbi [Judah the Patriarch], "The opinion of R. Eliezer seems to me preferable for that which has been consecrated [when there is no worry about culpable omission], but that of sages for food in the status of second tithe."
 - G. *Now since he has said, "The opinion of R. Eliezer seems to me preferable for that which has been consecrated," it follows that he would differ even as to the treatment of produce in the status of tithe, and since he has said, "but that of sages for food in the status of second tithe," it follows that they would differ even in the case of what has been consecrated to the Temple!*
 - H. *Rather, if the statement attributed to R. Yohanan was made, this is how it was made:*
 - I. Said R. Yohanan, "All concur in the case of the Sabbath with respect to that which has been consecrated to the Temple, that one has indeed deconsecrated it [merely by the payment of the principal], first of all, since it is written, 'And you shall call the Sabbath a delight' (Isa. 58:13), and second, because the Temple treasurers will claim the added fifth in the market place."

IV.12. A. Said R. Ammi bar Hama, “Lo, they have said, ‘That which has been consecrated to the Temple cannot be secularized through an exchange of land of equivalent value,*for the All-Merciful has said*, “Then he shall give the money and it shall be assured to him” (Lev. 27:19) [meaning, money but not land].’

B. “But as to the required added fifth, what is the law as to rendering the originally consecrated thing secular through an exchange of land?

C. “And as to food that has been designated as priestly rations [“heave offering”], it may be repaid only by entirely unconsecrated produce [should a non-priest eat heave-offering unintentionally and restores what he has eaten to the priest, what he pays back must be in unconsecrated funds or produce], *for the All-Merciful has said*, ‘he shall give to the priest the holy thing’ (Lev. 22:14), meaning, something that can be consecrated [and is now secular[, but what is the law as to paying the added fifth by money or produce that is not unconsecrated?

D. “And as to produce in the status of second tithe, we know that it cannot be rendered secular through exchange with an unminted coin, *for the All-Merciful has said*, ‘You shall bind up the money in your hand’ (Deu. 14:25), encompassing anything that has a mint-mark on it, but what is the law as to paying off the added fifth with an unminted piece of metal?”

E. *The matter circulated until it reached Raba, who said to them*, “Scripture has said, ‘[then he shall add the fifth part of the money or your estimation[to it’ (Lev. 27:19), encompassing also the added fifth, which must be of the same status [as what is paid for the principal, in all cases].”

F. *Said Rabina*, “*We too have learned the matter along these lines: One who steals heave offering but does not eat it pays as restitution twice the monetary equivalent of the heave offering. If he unintentionally ate it, he pays twice the principal and an added fifth of one of the principals: one principal and the added fifth he pays out of unconsecrated produce, and the other principal he pays in the monetary equivalent of the heave offering. [If he stole heave offering which was dedicated to the Temple and unintentionally ate it, he pays two added fifths and the principal, for the requirement of the payment of twofold restitution is not applicable in the case of items dedicated to the Temple] [M. Ter. 6:4A-G]. What follows from this statement is [54B] that the fifth is treated as is the principal.*”

IV.13. A. Said Raba, “*With regard to robbery it is written*, ‘He shall even restore it in the principal, and he shall add the fifth part more thereto’ (Lev. 5:24), *and in this regard we have learned*: If he restored the principal and took a false oath concerning the added fifth [claiming he had already paid it when he had not], he must add a fifth to that fifth, and so on, until the principal is less than a perutah in worth.

B. “*With regard to food in the status of priestly rations, it is written*, “And if a man eat of the holy thing unwittingly, then he shall add the fifth part thereof to it’ (Lev. 22:14), *and in this regard we have learned in the Mishnah: If one eats priestly rations unwittingly, he must pay back the principal and an added fifth, and that is whether he has eaten, drunk, or anointed with it; whether*

or not it was clean or unclean priestly rations, he must pay a fifth and a fifth of the fifth [M. Ter. 6:1].

- C. *“With respect to food that has been designated second tithe, we have neither a verse of Scripture nor a teaching of sages, nor has it come up for us as a problem.*
- D. *“With respect to that which has been consecrated to the Temple, it is written, ‘And if he who sanctified it will redeem his house, then he shall add the fifth part of the money or your estimation to it’ (Lev. 27:15). And we have learned in the Mishnah, ‘He who redeems that which he has consecrated adds a fifth to its value’ [M. B.M. 4:8].*
- E. *“Now in this case, a fifth alone has been taught, but not a fifth of the fifth, so what is the law?*
- F. *“In regard to priestly rations it is written, ‘and he shall add,’ and in respect to that which has been consecrated it is also written, ‘and he shall add.’ [Following Freedman verbatim:] or perhaps with respect to food in the status of priestly rations, it is written, ‘he shall add,’ and if you remove the waw from that word and added it to ‘the fifth party thereof,’ it becomes ‘the fifth parts thereof;’ while in respect to that which has been consecrated, it is written, ‘and he shall add the fifth part,’ and even if you remove the waw from that word and add it to the fifth part, after all, it only becomes the singular, thus giving no hint that a second fifth part may be required.”*
- G. [Following Freedman:] *But cannot this fact be deducted from the fact that the fifth is a second matter of consecration to the Temple, and R. Joshua b. Levi said, “A fifth is added to what is originally consecrated when it is redeemed, but not to what is subsequently consecrated [so no added fifth to the added fifth is required]?*
- H. *Said R. Pappa to Rabina, “Thus is what Raba said,: ‘The fifth is treated as tantamount to what is originally consecrated.’”*
- I. *What is the upshot of the matter?*
- J. *R. Tabyomi in the name of Abbaye said, “Scripture says, ‘Then he shall add the fifth part of the money of your estimation to it,’ thus the fifth is encompassed within its assessed value, so just as a fifth is added to the assessed value, so a fifth is added to a fifth of its value.”*

IV.14. A. *Reverting to the prior text:*

- B. R. Joshua b. Levi said, “A fifth is added to what is originally consecrated when it is redeemed, but not to what is subsequently consecrated [so no added fifth to the added fifth is required].”
- C. *Said Raba, “What is the scriptural foundation for the position of R. Joshua b. Levi? ‘And if he who sanctified it will redeem his house, then he shall add the fifth part’ (Lev. 27:14) — only he who sanctified it, but not the one who then transferred its sanctity [to some other object].”*

IV.15. A. *A Tannaite authority repeated before R. Eleazar, “‘And if it be of the unclean beast, [if an unclean animal was consecrated] then he shall redeem it according to your estimation and shall add a fifth part thereto’ (Lev. 27:27). Just as the unclean beast is singular in that it was originally consecrated and the whole of it belongs to*

Heaven and the laws of sacrilege apply to it, so anything that was originally consecrated, wholly belonging to heaven, is subject to the laws of sacrilege.”

- B. *Said to him R. Eleazar, “Now the phrase, ‘the whole of it belongs to Heaven’ serves to exclude from the rule Lesser Holy Things, since some part of them belongs to the owner, on which account the laws of sacrilege do not apply. But what is excluded by the phrase, ‘originally consecrated’? Could it be that only what is originally consecrated is subject to the laws of sacrilege, but not what is ultimately consecrated [within a process of exchange and secularization]? [That is obviously ridiculous; there is no reason to exclude from the laws of sacrilege what is ultimately consecrated!] Rather, you said what you said with regard to the added fifth, in concurrence with the position of R. Joshua b. Levi.”*

- C. *He said to him, “That is precisely what I meant.”*

IV.16. A. *Said R. Ashi to Rabina, “As to an unclean beast, while it is subject to an initial act of consecration, [55A] can it be subject to an intermediate act of consecration as well? [Freedman: Three categories are distinguished: the original act of consecrated, that is, that which is itself consecrated in the first place, though it cannot be employed in the Temple; an intermediary act of consecrated, that which is consecrated in place of something else, which is now redeemed, and a final act of consecration, that which is itself finally used for the Temple, e.g., a clean beast, which may be sacrificed, or a wooden beam, which may be built into the Temple. Now an unclean animal is capable of intermediary or transferred sanctity, if it is substituted for another beast. But it cannot be used as a consecrated beast, e.g., for the altar, nor of course can it be built into the Temple.]”*

- B. *He said to him, “[No,] because it is not subject to ending up as what is consecrated [for actual use in the cult or incorporation in the Temple].”*
- C. *Said R. Aha of Difti to Rabina, “But it certainly is subject to an intermediary condition of consecration, and one should also add a fifth to its value when it is secularized.”*
- D. *He said to him, “Lo, it is equivalent to that which stands at the end of the process of consecration, and just as what stands at the end of the process of consecration is not subject to the addition of a fifth of its value, so what is within an intermediary sequence of acts of consecration likewise should not be subject to the addition of the added fifth.””*
- E. *Said Rab Zutra son of R. Mari to Rabina, “How come you classify it as standing at the end of a process of consecration. Rather classify it as standing at the outset of a process of classification?”*
- F. *He said to him, “It stands to reason that it should be classified as equivalent to the end of a process of consecration, for it falls into the class of that which has been subjected to a transferred sanctity [in that it has been exchanged for what was holy and is now secularized].”*
- G. *To the contrary! It should be classified in the category of what stands at the head of a process of consecration, for what stands at the head of a process of consecration is succeeded in the process by something else that is sanctified, and it*

is to that classification that what stands intermediate in a process of consecration is to be compared.

- H. *That is in line with what Raba said, “And the fire upon the altar shall be burning in it; it shall not be put out; and the priest shall burn wood on it every morning, and lay the burnt offering in order upon it, and he shall burn thereon the fat of the peace offering’ (Lev. 6: 5) — implying ‘the first burnt offering,’ and here too, ‘and if it be of the unclean beast’ bears the sense of ‘the first uncleanness to which the beast may be subject.’”*

IV.17. A. *It has been taught on Tannaite authority in accord with the position of R. Joshua b. Levi [who said, “A fifth is added to what is originally consecrated when it is redeemed, but not to what is subsequently consecrated [so no added fifth to the added fifth is required].”*

- B. He who says, “This cow will be in place of a cow that has been consecrated,” “this cloak in place of that cloak that has been consecrated,” what he has consecrated by that statement has to be redeemed, and the full value of that which has been consecrated must be paid.
- C. If he says, “This cow. which is worth five selas. will be substituted for that cow that has been consecrated,” or “This cloak. which is worth five selas. will be substituted for that cloak that has been consecrated,” the consecrated object is to be redeemed.
- D. For the initially-consecrated object he must add the added fifth, but for the object that he then consecrated [and later must redeem] he need not pay the added fifth.

The reference to the use of a marginally-valid coin in exchange for produce in the status of second tithe accounts for the inclusion of a sizable and sustained discussion of materials that our Mishnah-paragraph hardly requires; and the discussion is of not only details, but also principles. We begin, I.1, with a clarification of the language and cases of the Mishnah, a routine way of composing a Talmud. The close reading of the paragraph at hand gives way to a systematic comparison and contrast of thematically-aligned materials, again a mark of an interest mainly in Mishnah-exposition. Units II.1, III.1, and IV.1 revert to our Mishnah-paragraph and proceed to repeat the procedures that produced Unit I. It is at IV.2 that we are drawn into the subject of second tithe, and the movement is not at all jarring. But most of the remainder of our Talmud is composed as a sustained essay on problems of transferring the sanctity inherent in produce designated as second tithe to coins for easy transportation to Jerusalem. From IV.3 through IV.17 I can point to scarcely a line that is required by our Mishnah-paragraph. Not only so, but the order of the units is logical and sequential, and we can readily explain why a given subject or problem must come before some other. So the program that covers this vast discussion is a well-crafted one, and it allows us to see how a Talmud will be composed in entire independence of the Mishnah.

- A. Defrauding [through overreaching] involves [an overcharge of] four pieces of silver [for what one has bought for a sela] [=one sixth over true value].
- B. And a claim [involving a court-imposed oath] must be [for a claim of at least] two silver [maahs].
- C. An admission must be for at least what is worth a perutah.
- D. There are five [kinds of rules involving] that which is worth a perutah:
- E. (1) An admission must be for at least what is worth a perutah.
- F. (2) A woman is betrothed for that which is worth a perutah.
- G. (3) He who derives use to the value of a perutah from that which belongs to the sanctuary has committed sacrilege.
- H. (4) He who finds that which is worth a perutah is liable to make proclamation.
- I. (5) He who steals from his fellow something to the value of a perutah and takes [a false] oath to the contrary [and then confesses his crime] must bring it after him, even to Media.

I.1 A. *We have already learned [at M. 4:3] the rule [given at M. 4:7A, so why repeat:]* **Fraud [overreaching] is an overcharge of four pieces of silver out of twenty-four pieces of silver to the sela — one-sixth of the purchase price?**

- B. *The authority before us wants to make the other points:* **And a claim [involving a court-imposed oath] must be [for a claim of at least] two silver [maahs]. An admission must be for at least what is worth a perutah.**
- C. *This too we have already learned elsewhere:* An occasion for imposing the oath required by the court must involve a claim of two silver coins, and an admission, at least a perutah.
- D. *It was the concluding materials that were necessary [and occasioned the repetition of these other matters]:* **There are five [kinds of rules involving] that which is worth a perutah.**

II.1 A. **There are five [kinds of rules involving] that which is worth a perutah:**

- B. *Why not include also,* “The minimum case involving overreaching must be at least of the value of a perutah”?
- C. Said R. Kahana, “That is to say the consideration of overcharge does not apply to perutah-transactions [but only to those involving a minimum value covered by an issar, a silver coin].”
- D. Levi said, “The consideration of overcharge does apply to perutah-transactions.”
- E. *And so did Levi repeat matters in his version of the Mishnah:* **“There are five cases involving the minimum value of a perutah: the minimum claim for overreaching must involve a perutah; an admission must be for at least what is worth a perutah; A woman is betrothed for that which is worth a perutah...; the court may be called into session on account of a minimum claim of a perutah.”**

- F. *Why does the Tannaite authority of our version of the Mishnah not encompass that **the court may be called into session on account of a minimum claim of a perutah**?*
- G. *He encompasses it under the consideration of theft [a claim is actionable only if it covers something of the value of a perutah, and then a court may be called into session].*
- H. *Yet does he not make reference to both robbery and loss [when he says, **he who finds that which is worth a perutah is liable to make proclamation**]?*
- I. *It is necessary to make reference to both items explicitly, the inclusion of robbery to teach the following: **he who steals from his fellow something to the value of a perutah and takes [a false] oath to the contrary [and then confesses his crime] must bring it after him, even to Media.***
- J. *And as to the matter of loss: **he who finds that which is worth a perutah is liable to make proclamation** — and that is the case, even though it should depreciate to less than that volume.*
- K. *And as to Levi, how come he does not include in his repetition of the Mishnah a reference to the matter of the lost object that, to be subject to announcement, must be worth a perutah?*
- L. *He encompasses it within the matter of theft.*
- M. *But is it not the fact that he makes explicit both the matter of theft and the matter of calling the court into session only on account of a minimum claim of a perutah? [But both of these involve precisely the same principle.]*
- N. *He finds it necessary to make reference to the latter so as to exclude the position of R. Qatina.*
- O. *For R. Qatina said, “A court is required to go into session to deal with a claim even for less than the value of a perutah.”*
- P. *[Reverting to the comparison of Levi’s and the Mishnah’s versions of the same matter,] what is the reason that Levi has not included reference to what has been sanctified [**He who derives use to the value of a perutah from that which belongs to the sanctuary has committed sacrilege**]?*
- Q. *He deals with unconsecrated things, but he does not deal with Holy Things. But since the Tannaite authority whose version of the Mishnah is before us does deal with Holy Things, let him also make reference to second tithe, e.g., “The minimum volume of produce that has been designated as second tithe that can be exchanged for coinage is a perutah.”*
- R. *He concurs with the position of him who has said, “If the added fifth is going to yield less than a perutah, then that volume of produce cannot be redeemed.”*
- S. *Then let him formulate matters in this way: “The minimum value of the added fifth of the value of produce in the status of second tithe must be a perutah.”*
- T. *He deals with the principal, not the added fifth.*

II.2. A. Reverting to the above-cited text:

- B. Said R. Qatina, “A court is required to go into session to deal with a claim even for less than the value of a perutah.”
- C. Raba raised an objection: “““And he shall make amends for the harm that he has done to the holy thing” (Lev. 5:16) **[55B]** — with the ‘and’ serving to encompass what is worth even less than a perutah.’ Now that proof pertains to Holy Things, but not to unconsecrated property.”
- D. *Rather, if anything at all was said, this is the version that must have been said:*
- E. Said R. Qatina, “If a court is called into session on account of a claim involving a perutah of value, they complete the consideration of the case even though less than a perutah’s value is involved in some extended claim.”
- F. *Thus to commence the hearing of the claim, we require that the matter involve a perutah of value, but to complete the hearing of a case, we do not require that the matter involve a perutah of value.*

Here is a fine example of how the Talmud would have appeared had it been a Mishnah-commentary. The stages of analysis are in a predictable and simple order: first the language, then the principles of law, introduced through analysis of competing versions of the Mishnah’s treatment of the same matter as is represented in the received Talmud. I.1 compares our Mishnah-passages with others, asking why it goes over familiar ground. II.1 then imposes a close reading on our version so as to consider other possible treatments of the same issue. This involves a careful reading of the language before us as well as research into other conceptions of the pertinent rule. Then II.2 analyzes a saying introduced en passant in II.1. All of this is quite in accord with patterns that yield rules for the organization of the Talmud.

4:8

- A. **There are five instances in which an added fifth applies:**
- B. **(1) He who eats (1) heave offering, (2) heave offering of tithe, (3) heave offering of tithe taken from doubtfully tithed produce, (4) dough offering, and (5) first fruits,**
- C. **[when he makes restitution] adds a fifth [to the value of the principal].**
- D. **(2) He who redeems [pays coins to bring to Jerusalem in place of] produce deriving from a fourth-year planting or from his second tithe adds a fifth.**
- E. **(3) He who redeems that which he has consecrated adds a fifth.**
- F. **(4) He who derives benefit to the extent of a perutah from that which has been consecrated [when he makes restitution] adds a fifth.**
- G. **(5) He who steals from his fellow that which is worth a perutah and takes a [false] oath to him [when he wishes to confess and effect restitution] adds a fifth.**

I.1 A. Said Raba, “*The inclusion of the detail of heave offering of tithe taken from doubtfully tithed produce represented a problem to R. Eleazar*, specifically, did sages set up protective measures [such as the sanction involving the added fifth in making restitution] for not only requirements of the Torah [such as are represented by the provision of **heave offering, heave offering of tithe, dough offering, and first fruits**] but also requirements that they made on their own account [such as

the provision of **heave offering of tithe taken from doubtfully tithed produce**]?”

- B. *Said R. Nahman said Samuel, “Lo, what authority stands behind this formulation? It is R. Meir, who has said, ‘Sages indeed did set up protective measures for requirements that they made on their own account as much as for requirements set forth by the Torah.’”*
- C. *For it has been taught on Tannaite authority:*
- D. “He who delivers a writ of divorce from overseas — if he handed it over to the wife but did not say to her, ‘In my presence it was written, and in my presence it was signed’ — the second husband [who married the woman on the strength of this impaired writ] must divorce her, and any offspring of the second union is in the status of a mamzer [child of a couple that had no right to wed],” the words of R. Meir. [But the provision of the stated declaration is only on rabbinical authority.]
- E. And sages say, “The offspring of the second union is not a mamzer. What is to be done? One should retrieve the writ from the woman and then go and handed it back to her and state to her, ‘In my presence it was written, and in my presence it was signed.’”
- F. Now in the view of R. Meir, merely because the agent has not said to her, “Before me it was written and before me it was signed,” must the second husband divorce her, and is the offspring of the second union a mamzer?
- G. *Indeed so! For R. Meir is consistent with his views stated in other connections.*
- H. *For R. Hamnuna said in the name of Ulla, “R. Meir would maintain, ‘Anyone who in the procedure of a divorce [Freedman:] departs from the fixed procedure ordained by sages,— the second husband must divorce her, and the offspring of the second union is a mamzer.’”*
- I. *To that proposition R. Sheshet objected, “**Produce designated as second tithe deriving from doubtfully-tithed produce is exchanged for redemption money, silver for silver, copper for copper, silver for copper, and copper for produce, provided that he again redeems the produce for money,**’ the words of R. Meir. And sages say, ‘**They must bring up the produce and it must be eaten in Jerusalem**’ [M. **Dem. 1:2G-J**]. [Freedman: Meir permits the produce to be redeemed, though that itself was formerly employed for redeeming the money, while sages maintain that in these circumstances the produce itself must be taken to Jerusalem. So Meir is more lenient here in respect to doubtfully-tithed produce than are sages, and that contradicts Samuel’s claim that Meir is more stringent than rabbis in such matters as are ordained by rabbis, not by the Torah, as the consideration of doubtfully-tithed produce.]”*
- J. *And is it routinely permitted to render silver secular through an exchange with copper? And lo, we have learned in the Mishnah: **A sela which is second tithe and an unconsecrated sela that were confused so that the consecrated coin cannot be identified — one brings a sela’s worth of copper coins and says, “The sela which is second tithe, wherever it may be, is deconsecrated with the two selas,” and deconsecrates the copper coins with it. [56A] For they ruled, “They deconsecrate silver with copper only out of necessity. But if they do deconsecrate silver with copper, it may not remain so, but they must***

immediately deconsecrate the copper coins with silver coins” [M. M.S. 2:6A-F]. *Thus, in any event, it is taught, They deconsecrate silver with copper only out of necessity — necessity, yes but routinely, no!* [Freedman: But in the case of doubtfully-tithed produce Meir holds that even silver may be freely employed in redeeming silver and copper may redeem silver even not out of necessity, so doubtfully-tithed produce is treated more leniently than what is assuredly tithe. This contradicts his position here and raises the question of whether the assertion at I is correct.]

- K. Said R. Joseph, “While R. Meir, to be sure, imposes a lenient rule in redeeming the tithe, he imposes a more strict rule in regard to eating it. *For it has been taught on Tannaite authority: ‘Sages have permitted only the wholesaler to sell doubtfully tithed produce, while a householder, one way or the other, must always tithe,’* the words of R. Meir. And sages say, ‘All the same are the wholesaler and the householder: one may sell doubtfully tithed produce, send it off to one’s fellow, or hand it over as a gift, and need not scruple in the matter.’ [It is assumed that whatever is transferred in volume has not been tithed, so we assume the recipient will tithe it. Freedman: this dispute shows that in respect to the actual tithing, e.g., the eating of doubtfully tithed produce, Meir is still more stringent than rabbis.]”
- L. *Rabina objected, “He who purchases bread from a baker separates tithes from the freshly baked bread for the stale bread and from the stale for the fresh, even from many diverse molds,’* the words of R. Meir. [R. Judah forbids, for I say, ‘Yesterday’s wheat derives from one man, and today’s wheat was from another, so yesterday’s gain may have been tithed, while today’s not, or vice versa.’ R. Simeon forbids with regard to heave offering of the tithe but permits with regard to dough offering] [M. Dem. 5:3A-G]. *Now there is no difficulty concerning the ruling about from the stale for the fresh, for this would accord with the position of R. Ilai, for said R. Ilai, ‘How do we know on the basis of Scripture that one who designates heave-offering from inferior for superior produce has validly done so? As it is said, ‘And you shall bear no sin by reason of it, when you have raised up from it the best of it’ (Num. 18:32). Now, were it not sanctified, why should one bear sin. So it follows that if one designates heave-offering from inferior for superior produce, he has validly done so. But why should it be the case that the same is so even from many diverse molds? Should one not scruple that one may end up designating heave offering from what is liable for the separation of heave-offering in behalf of what is exempt, and from what is exempt for what is liable?’* [Freedman: Since one does not scruple, it follows that even Meir did not hold that the law of demai was treated with the same stringency as biblical rules.]
- M. *Said Abbaye [reverting to A], “R. Eleazar raised a very good question indeed, but Samuel did not resolve the problem properly. For R. Eleazar raised a problem in a matter in which the sanction is death at the hand of heaven, while Samuel supposed that he could resolve the problem on the basis of a matter the sanction pertaining to which is death at the hand of an earthly court! Now perhaps a matter in which the sanction involves death at the hands of an earthly court is to be differentiated, for that is a more severe matter altogether.*

- N. *“And R. Sheshet also did not raise a valid objection, for Samuel referred to a law, the sanction of which is the death penalty, but R. Sheshet raised an objection from one in which that is not the case. For it is written, ‘You may not eat within your gates the tithe of your grain’ (Deu. 12:17).*
- O. *“[Not only so, but] the objection raised by R. Sheshet was validly resolved by R. Joseph.*
- P. *“Now as for Rabina, instead of raising the objection from the case of a baker, let him derive support for the position of the other from the case of the wholesale bread dealer. For we have learned in the Mishnah: ‘He who purchases from a bread merchant separates tithes from each mold individually,’ the words of R. Meir. [R. Judah says, ‘He separates tithes from one mold for all.’ R. Judah concedes in the case of one who purchases from a monopolist that he separates tithes from each mold individually’] [M. Dem. 5:4]. Now what can you say [in reply to the question of why Meir distinguishes a baker from a bread-seller]? For a bread-seller buys from two or three. Then in the case of a baker too, he buys from one man only.”*
- Q. *Raba said, “Samuel resolved the problem quite well, since the sanction of the death penalty does apply.”*

The issue that is explored here is hardly required for the clarification of our Mishnah-paragraph, since it concerns the principle of whether or not extraordinary sanctions are invoked in protection of rules that derive from not the Torah but only the rabbis or scribes. That is a position attributed to Meir, and the entire protracted discussion concerns Meir’s view, whether it is as claimed, whether it is consistently held, and the like. We are then drawn into a sustained inquiry into the rules of doubtfully-tithed produce (dema), since that classification is an invention of sages, who concerned themselves for such interstitial matters, and took a keen interest in how we are to sort out what is confused or mixed. As we see from the beginning and end, the whole derives from Raba’s and Abbaye’s circles, and everything else is inserted to complete the matter of Raba’s exposition. I do not claim to have done full justice to this matter, which seems to me to wander far from the requirements of a Talmud for our Mishnah; the purpose, rather, is to explore the issue at hand, using as a hook the theory of Meir on the question before us. The whole is therefore idiomatic and stylized in form, but in conception, entirely philosophical and well-composed.

4:9

- A. **These are matters which are not subject to a claim of fraud [on account of overcharge]:**
- B. **(1) slaves, (2) bills of indebtedness [which are discounted and sold], (3) real estate, and (4) that which has been consecrated.**
- C. **They are not subject to twofold restitution,**
- D. **nor [in the case of a consecrated ox or sheep] to fourfold or fivefold restitution.**

- E. An unpaid bailee is not required to take an oath [on their account, that he has not inflicted damage].
- F. And a paid bailee does not have to pay compensation [on their account, if they are stolen or lost].
- G. R. Simeon says, [56B] “Holy Things for which one is liable for replacement [should they be lost] are subject to a claim of fraud on account of overcharge.
- H. “Holy Things for which one is not liable for replacement [should they be lost] are not subject to a claim of fraud on account of overcharge”
- I. R. Judah says, “Also: He who sells a scroll of the Torah, a beast, or a pearl —
- J. “they are not subject to a claim of fraud by reason of overcharge.”
- K. They said to him, “They have specified only these [of B].”

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

- B. *It accords with that which our rabbis have repeated on Tannaite authority:*
- C. “And if you sell to your neighbor or buy from your neighbor, you shall not wrong one another” (Lev. 25:14) —
- D. this refers then to that which is “bought” [acquired] from hand to hand, excluding real estate, which is not movable; slaves, which are tied to land; deeds, for it is written, “and if you sell...,” meaning, that which in its intrinsic value is sold or bought, excluding bills, which are not in their intrinsic value sold or bought but which only stand for the transfer of value.

I.2. A. In this connection it has been said:

- B. He who sells his deeds to a perfume dealer — they are subject to the consideration of overreaching.
- C. *That is self-evident.*
- D. *The statement serves to exclude the position of R. Kahana, who has said, “Considerations of overreaching do not pertain to a purchase involving only perutahs [e.g., the value of the paper on which the deeds are written]; so we are told that those considerations do apply.”*
- E. *So we are informed that that is not the case, but that considerations of overreaching do pertain to a purchase involving only perutahs.*

II.1 A. ...**that which has been consecrated:**

- B. Scripture has said, “[And if you sell to your neighbor or buy from your neighbor, you shall not wrong] one another” (Lev. 25:14) — “one’s brother” but not that which has been consecrated.
- C. *To this proposition Rabbah b. Mammel objected, “Is it then the case that wherever Scripture writes, ‘his hand,’ that means literally, ‘his hand’? [Surely that is not the case, and likewise here, so literal a reading of the verse is not compelling.] If so, when Scripture says, ‘and he took all his land out of his hand’ (Num. 21:26), does the passage mean that he held all of his land in his hand? What it must mean is, ‘out of his possession,’ and here too, the sense must be, ‘out of his possession.’”*
- D. *Then is it the case that wherever Scripture writes, “his hand,” that does not mean literally, “his hand”?*

- E. *Has it not been taught on Tannaite authority: "If the theft be certainly found in his hand [...he shall restore double]" (Exo. 22: 3) — I know only that that is the case if the object is found in his hand. If it is found on his roof, in his courtyard, or in his enclosure, how do I know that the same rule applies? Scripture says, "If certainly it is found...", meaning, in all circumstances.*
- F. *The reason, then, is that the All-Merciful has written, "If certainly it is found...", which means that had Scripture not phrased matters in that way, I should have drawn the conclusion that in any passage in which "his hand" occurs, the meaning is quite literal.*
- G. *And furthermore, it has been taught on Tannaite authority, "Then let him write her a writ of divorce and put it into her hand" (Deu. 24: 1). I know only that the writ if properly divorced if it is put into her hand. How do I know that that is equally the case if it is put in her roof, courtyard, or enclosure? Scripture says, "and put it," meaning, in all circumstances.*
- H. *The reason, then, is that the All-Merciful has written, "and put it," which means that had Scripture not phrased matters in that way, I should have drawn the conclusion that in any passage in which "his hand" occurs, the meaning is quite literal. So "his hand" is always meant literally, but that case is to be distinguished, because in that instance it cannot be rendered in a literal way but must mean, "his possession."*

Other Matters to which the Law of Overreaching Does Not Apply

- II.2.** A. *R. Zira raised the question, "Does the law of overreaching pertain to hiring a worker or not? Scripture has said, 'And if you sell to your neighbor' (Lev. 25:14) — thus excluding a case of employment.*
 - B. *"Or perhaps there is no distinction to be made."*
 - C. *Said Abbaye to him, "But has Scripture referred to a sale for all time [which would exclude a situation of employment]? What is written is simply a reference to 'sale', and this case too involves a sale for the day on which the transaction is carried out."*
- II.3.** A. *Raba raised the question, "As to wheat that is sown in the soil [a man was engaged to sow a field with wheat, and the wheat belongs to the worker (Freedman)], what is the law? Does overreaching pertain to that transaction or not?*
 - B. *"Is it to be compared to the case of putting the grain into a pitcher, so subject to the law of overreaching, or perhaps it is as though he had put it into the soil [to which the law of overreaching does not apply]?"*
 - C. *What is operative condition here? Shall we say that the man had said, "I can cast six measures therein," and witnesses came and testified that he had sowed only five? But has not Raba said, "In the case of any sort of fraud as to measure, weight, or number, even if less than the defined standard of overreaching, one can retract [an agreement]." [So what is the issue here anyhow?] [Freedman: If the goods are not as specified, being short in measure, weight, or number, one can withdraw. It is unnecessary that the fraud be a sixth, for a sixth is required only when the goods are as specified. Otherwise it is altogether an erroneous bargain and revocable. That principle applies to real estate too, so that even if the wheat is*

accounted part of the soil, the purchaser can insist upon compensation or revoke the agreement.]

- D. *Rather, the question arises where the man said, "I cast as much seed into it as was necessary," and it turned out that he had not sown in the plot as much as was required. In such a case, is the transaction subject to the law of overreaching or not? Is it to be compared to the case of putting the grain into a pitcher, so subject to the law of overreaching, or perhaps it is as though he had put it into the soil [to which the law of overreaching does not apply]? Is an oath taken in connection with the matter or not? [Freedman: e.g., if A maintain that B had undertaken to sow his soil with six measures of grain, with which he had supplied him, but used only five, while B pleaded he had used five and a half.] Is it to be compared to the case of putting the grain into a pitcher, so subject to the taking of an oath, or perhaps it is as though he had put it into the soil [to which the oath does not apply]?]*
- E. Further, does the offering of the sheaf of first grain [after Passover] render the new grain of this field permitted or not? *What is the condition to which this question applies? If the crop had taken root, then we have learned a pertinent rule, and if not, we also have a pertinent rule: **If the crop had taken root before the offering of the sheaf of first barley-grain, the offering of the sheaf of first barley-grain renders them permitted for reaping, and if not, the crop is prohibited until the coming sheaf will have been brought** [M. Men. 10:7D-E].*
- F. *No, the question indeed needs to be raised to address a case in which he reaped and resowed the field before the offering of the sheaf of first barley-grain, then the sheaf of first barley grain was offered and the time of the offering passed, while the seed did not take root before the offering of the sheaf of first barley grain. [57A] What is the law as to removing and eating the grain? Is it to be compared to the case of putting the grain into a pitcher, so the offering of the first sheaf of barley serves to render the new grain permitted, or perhaps it is as though he had put it into the soil [[and therefore the grain is forbidden until the next offering of the first sheaf of barley grain, at the next Nisan]]?*
- G. *The question stands.*

II.4. A. *Said Raba said R. Hasa, "R. Ammi raised the question: if these listed items **slaves, bills of indebtedness which are discounted and sold, real estate, and that which has been consecrated** are not subject to the rule of overreaching, are the subject to the rules governing the nullification of a sale or not? [The law permits a complete cancellation for a variation from true value of more than a sixth.]"*

B. *Said R. Nahman, "R. Hasa then said that R. Ammi worked the matter out in this way: while they are not subject to the rule of overreaching, they are the subject to the rules governing the nullification of a sale."*

II.5. A. *R. Jonah made the following statement with reference to that which has been consecrated to the Temple, while R. Jeremiah made the same statement with reference to real estate, and both made the statement in the name of R. Yohanan, saying, "While they are not subject to the rule of overreaching, they are the subject to the rules governing the nullification of a sale."*

- B. *He who made that statement with respect to that which has been consecrated all the more so will apply it to real estate.*
- C. *He who made that statement with respect to real estate, however, would not regard it as valid for that which has been consecrated,*
- D. *in line with the thinking of Samuel, for Samuel said, "If that which has been consecrated worth a maneh was redeemed with funds equivalent to only a perutah, it is nonetheless redeemed [even with such a vast variation from true value]."*

II.6. A. *There we have learned in the Mishnah: [He who says, "Lo, this is instead of that," "...the substitute of that," "...the exchange of that," — lo, this is a substitute. He who says, "Lo, this is unconsecrated through that," — it is not a substitute.] And if it was a blemished consecrated animal, it goes forth for unconsecrated purposes, but one must make good its full value [M. Tem. 5:5A-D].*

- B. Said R. Yohanan, **"It goes forth for unconsecrated purposes** by the law of the Torah, **but one must make good its full value** by the decree of rabbis."
- C. And R. Simeon b. Laqish said, **"Also one must make good its full value** by the law of the Torah."
- D. *What can be at issue between the two? If we say that it is within the limit of overreaching [in that the substitute is worth less than the original only by an amount that constitutes overreaching, not cancellation of the transaction (Freedman)], then in such a case would R. Simeon b. Laqish say **one must make good its full value** by the law of the Torah? And have we not learned in the Mishnah: **These are matters which are not subject to a claim of fraud [on account of overcharge]: (1) slaves, (2) bills of indebtedness [which are discounted and sold], (3) real estate, and (4) that which has been consecrated.***
- E. *But if it speaks of the cancellation of the sale, could R. Yohanan in such a case take the view that making up the value is only by the authority of rabbis alone? And is it not so that R. Jonah made the following statement with reference to that which has been consecrated to the Temple, while R. Jeremiah made the same statement with reference to real estate, and both made the statement in the name of R. Yohanan, saying, "While they are not subject to the rule of overreaching, they are the subject to the rules governing the nullification of a sale"?*
- F. *In point of fact, at issue is the cancellation of the sale, but reverse the attributions, so that the view of R. Yohanan is assigned to R. Simeon b. Laqish, and the view of R. Simeon b. Laqish to R. Yohanan.*
- G. *And what is the principle at issue?*
- H. *It concerns the statement of Samuel, for Samuel said, "If that which has been consecrated worth a maneh was redeemed with funds equivalent to only a perutah, it is nonetheless redeemed [even with such a vast variation from true value]."*
- I. *One authority takes the position of Samuel, and the other rejects the position of Samuel.*
- J. *If you prefer, however, I shall say that all parties concur in the position of Samuel, but here, at issue is the following: one authority takes the view that if one has actually effected the deconsecration of the object in such wise, it is a*

valid action, even though to begin with, that procedure is not to be done, while the other party holds that even to begin with, such a procedure is valid.

- K. *But if you prefer, I shall say that in point of fact at issue is the limit of overreaching, and you must not reverse the attributions, for they differ on the statement of R. Hisda, who has said, “What is the meaning not the clause, **which are not subject to a claim of fraud [on account of overcharge]**? They do not fall within the provisions of the law of overreaching at all. [57B] For even if the variation from true value is less than the standard of overreaching, the transaction may be nullified. [Freedman: R. Yohanan disagrees with this and maintains it must be made good only by rabbinical law, and R. Simeon b. Laqish accepts this view.]*
- L. *An objection was raised: the prohibitions of interest and overreaching apply to an ordinary person but not to that which has been consecrated. Now is that teaching of greater authority than the Mishnah-passage at hand, which we have interpreted to speak of the law governing overreaching! Here too, the prohibitions of usury and overreaching apply to a layman but not to that which has been consecrated.*
- M. *But then what about the concluding clause: In this respect the case of the ordinary person is subject to a more stringent rule than applies to that which has been consecrated? [Freedman: On the contrary, the rule affecting that which has been consecrated is the more stringent, since even less than a sixth constitutes overreaching.]*
- N. *That refers to usury.*
- O. *Then the passage should be formulated as follows: this rule is more stringent with respect to that which has been consecrated than that which pertains to an ordinary person, with special regard to overreaching.*
- P. *But the comparison is inapt, for, as for saying, “In this respect the case of the ordinary person is subject to a more stringent rule than applies to that which has been consecrated,” bears the sense, “but there are no other respects in which that is the case”! But as to that which has been consecrated, is this the only stringency, and are there no others? [Surely there are others, and the proposed formulation is unacceptable].*

II.7. A. *Well, how is usury involving that which has been consecrated even possible?*

- B. *Shall we say that the treasurer of the Temple lent one hundred zuz for a repayment of one hundred twenty? Then, by giving money that has been consecrated and getting nothing back, he has committed an act of sacrilege, and the money is now deconsecrated and the action is that of a layman!*
- C. *Said R. Hoshia, “With what sort of case then do we deal? It is one in which a commoner undertook to supply flour at four seahs per sela, while it went to three seahs per sela, as we have learned: **Whoever undertakes to provide flour at four seahs a sela, if the price stood at a deflated price of three selas for a seah, he must still provide it at four. If he undertook to provide it at three to a seah and the price inflated to four, let him provide it at four, for the claim of the sanctuary is always paramount [M. Sheq. 4:9A-F].**”*

- D. *Said R. Pappa, “This speaks of bricks for building that have been entrusted to the Temple treasurer, following the statement of Samuel, for Samuel said, ‘We build the Temple with material that is not consecrated, but then consecrate it. [The buildings are purchased with unconsecrated funds, so the workers can work with the materials without committing acts of sacrilege. The materials were bought on credit and paid for out of Temple funds only when used, at which point they became sanctified. The treasurer lent some of the unconsecrated materials for a higher return. There is no sacrilege, since the materials were unconsecrated; but they were lent on behalf of the Temple, and the prohibition of usury will not apply to them (Freedman).]’”*

III.1 A. They are not subject to twofold restitution:

- B. *What is the source in Scripture for this rule?*
C. *It accords with that which our rabbis have taught on Tannaite authority:*
D. “For all manner of trespass, for ox, for ass, for sheep, for garment, for every manner of lost thing which another challenges to be his, the cause of both parties shall come before the judges, and the one whom the judges shall condemn shall pay double to his neighbor” (Exo. 22:88)”
E. “For all manner of trespass:” — here we have a generalization.
F. “for ox, for ass, for sheep, for garment:” — here we have the particularization.
G. “for every manner of lost thing which another challenges to be his:” — here we find Scripture reverting and offering a generalization.
H. In the case of a generalization, a particularization, and another generalization, you draw an analogy only within the limits defined by the particularization.
I. In this case, just as in the particular cases, we deal with something that is movable and that contains intrinsic value, so whatever is movable and contains intrinsic value is covered,
J. excluding then real estate, which is not movable; slaves, which are comparable to real estate [Lev. 25:46 treating slaves and real estate as forming a single category within the rules of inheritance]; deeds, which, while movable, bear no intrinsic value.
K. As to consecrated things, Scripture says, “He shall pay double to his neighbor” (Exo. 22:88) — to his neighbor, but not to the sanctuary.

IV.1 A. ...nor [in the case of a consecrated ox or sheep] to fourfold or fivefold restitution.

- B. *How come?*
C. *Scripture has required fourfold and fivefold repayment, not threefold or fourfold [there being no double payment here, we are left with only the three- or fourfold repayment, and Scripture knows no such arrangement].*

V.1 A. An unpaid bailee is not required to take an oath [on their account, that he has not inflicted damage].

- B. *What is the source in Scripture for this rule?*
C. *It accords with that which our rabbis have taught on Tannaite authority:*

- D. “If a man shall deliver to his neighbor money or goods and it be stolen out of the man’s house” (Exo. 22: 6):
- E. “If a man shall deliver to his neighbor:” — here we have a generalization.
- F. “money or goods:” — here we have a particularization.
- G. “and it be stolen out of the man’s house:” — here we have a generalization.
- H. In the case of a generalization, a particularization, and another generalization, you draw an analogy only within the limits defined by the particularization.
- I. In this case, just as in the particular cases, we deal with something that is movable and that contains intrinsic value, so whatever is movable and contains intrinsic value is covered,
- J. excluding then real estate, which is not movable; slaves, which are comparable to real estate [Lev. 25:46 treating slaves and real estate as forming a single category within the rules of inheritance]; deeds, which, while movable, bear no intrinsic value.
- K. As to consecrated things, Scripture says, “He shall pay double to his neighbor” (Exo. 22:88) — to his neighbor, but not to the sanctuary.

VI.1 A. And a paid bailee does not have to pay compensation [on their account, if they are stolen or lost].

- B. *What is the source in Scripture for this rule?*
- C. *It accords with that which our rabbis have taught on Tannaite authority:*
- D. “If a man deliver to his neighbor an ass or an ox or a sheep or any beast to keep” (Exo. 22: 6):
- E. “If a man deliver to his neighbor:” — here we have a generalization.
- F. “an ass or an ox or a sheep: “ — here we have a particularization.
- G. “or any beast to keep:” — here we have a generalization.
- H. In the case of a generalization, a particularization, and another generalization, you draw an analogy only within the limits defined by the particularization.
- I. In this case, just as in the particular cases, we deal with something that is movable and that contains intrinsic value, so whatever is movable and contains intrinsic value is covered,
- J. excluding then real estate, which is not movable; slaves, which are comparable to real estate [Lev. 25:46 treating slaves and real estate as forming a single category within the rules of inheritance]; deeds, which, while movable, bear no intrinsic value.
- K. As to consecrated things, Scripture says, “He shall pay double to his neighbor” (Exo. 22:88) — to his neighbor, but not to the sanctuary.

VII.1 A. An unpaid bailee is not required to take an oath on their account, that he has not inflicted damage:

- B. *An objection was raised on the basis of the following:*
- C. If townsfolk sent their sheqel-tax payment [to the temple in Jerusalem to pay for the public sacrifices], and the money was stolen or lost, if this took place after the heave-offering of the coins had been taken up [58A], the messengers take an oath to the Temple treasurers [that they were not at fault]. But if not, the messengers take an oath to the townsfolk, and the townsfolk present other sheqel-offerings in

their place. If the sheqels that had been lost were later on found or returned by the thieves, both the money given in replacement and the original money are classified as holy sheqel-offerings, but the funds are not credited to the people for the year to come. [Thus, though the money was consecrated, the messengers — assumed to be unpaid bailees — have to take an oath, in contradiction of the rule of the Mishnah.]

- D. *Said Samuel, "Here [in the rule on the transmittal of the sheqel-offering] we deal with paid bailees, who take an oath so as to receive their fee."*
- E. *If that were the case, then, instead of the language, "they take an oath to the Temple treasurers," what the rule should say is, "they take an oath to the townsfolk"!*
- F. *Said Rabbah, "They take an oath to the townsfolk in the presence of the Temple treasurers, so that they should not be suspect or held to be culpable of negligence."*
- G. *But lo, the language is, the money was stolen or lost, and a paid bailee is responsible for loss or theft. Furthermore, even if they do not have to pay restitution, still, they should lose their fee!*
- H. *Said Rabbah, "The sense is, 'the money was stolen by armed thugs,' or 'lost, in that the ship sank in the sea' [which are unpreventable accidents, and the bailees can get their wages]."*
- I. *R. Yohanan said, "Who is the authority behind the statement before us? It is R. Simeon, who has said, 'Holy Things for which one is liable for replacement [should they be lost] are subject to a claim of fraud on account of overcharge.'"*
- J. *That poses no problem for the case in which the loss took place prior to the taking up of the heave-offering of the sheqels.*
- K. *But once the heave offering of the sheqels has been taken up, there is no liability on the part of the original donors to replace the funds should they be lost, for it has been taught on Tannaite authority, "The taking up of the heave offering is made in respect to what is lost, collected, and yet to be collected [so from that point, the owner bears no further obligation to make restitution. Why then should there be an oath at all?]*
- L. *Rather, said R. Eleazar, "This oath is a mere provision enacted by sages, so that people will not treat consecrated things in a contemptuous manner."*

VIII.1 A. And a paid bailee does not have to pay compensation on their account, if they are stolen or lost:

- B. *R. Joseph bar Hama objected to Rabbah, "On the one side we have learned: **And a paid bailee does not have to pay compensation on their account, if they are stolen or lost.** But there is the following contradiction: He [a Temple treasurer] who hires a worker to watch his cow or to watch his child or to guard his crop should not give him his wage for the Sabbath labor at all. Therefore the guard is not responsible to him to make restitution for whatever may take place on the Sabbath, should harm befall that day. If he was hired by the week, by the month, or by the year, or by the septennate, he pays him his salary for the Sabbath as well. Therefore the guard is*

responsible to him to make restitution for whatever may take place on the Sabbath. He should not say to him, 'Pay me my salary for the Sabbath,' but he says to him, 'Pay me for ten days' [T. **Shabbat 17:26-28**]. *Is not the meaning of the phrase Therefore the guard is responsible to him to make restitution to pay for the loss?* [And the upshot is that a paid bailee does have to pay compensation on their account, if they are stolen or lost]?"

- C. "No, it is to lose his fee."
- D. *"If that were the case, then take note of the first part of the same rule: Therefore the guard is not responsible to him to make restitution for whatever may take place on the Sabbath, should harm befall that day. Is the sense here too that he is to lose his fee? But does he receive a fee for his work on the Sabbath at all? Lo, has it not been taught, should not give him his wage for the Sabbath labor at all!"*
- E. *He fell silent. He then said to him, "Have you heard anything about this matter?"*
- F. *He said to him, "This is what R. Sheshet said: "The rule applies where the worker made acquisition of the object from his domain [that is, the worker accepted responsibility, so that by biblical law he is exempt, he made himself liable and performed one of the acts whereby possession is effected (Freedman)]."*
- G. And so said R. Yohanan, "The rule applies where the worker made acquisition of the object from his domain."

IX.1. A. R. Simeon says, "Holy Things for which one is liable for replacement [should they be lost] are subject to a claim of fraud on account of overcharge."

- B. *A Tannaite expert repeated before R. Isaac bar Abba, "Holy Things for which one is liable for replacement [should they be lost] [if someone received a consecrated animal and then denied having received it but then repented and confessed, he is liable to bring a guilt offering, Lev. 5:21-25], because for I invoke in their regard the verse, 'If a soul sin and commit a trespass against the Lord and lie' (Lev. 5:21). But for those consecrated beasts for which one is not liable to pay restitution should they be lost, a bailee is not liable, because I invoke in this regard the verse, 'If a soul sin against his neighbor and lie.'"*
- C. *He said to him, "Reverse the matter! [58B] It is more reasonable to see things in exactly the opposite way."*
- D. *He said to him, "Should I erase it?"*
- E. *He said to him, "No, this is the sense of the matter: For Holy Things for which one is liable to make restitution, the bailee is liable, for these are covered by the verse, 'If a man sin against the Lord and lie...', but for Holy Things for which the owner bears no responsibility for restitution, the bailee is not liable, because they are excluded by the language, 'against his neighbor and lie.'"*

X.1 A. R. Judah says, "Also: He who sells a scroll of the Torah, a beast, or a pearl — they are not subject to a claim of fraud by reason of overcharge." [They said to him, "They have specified only these of B]:"

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

- C. **R. Judah says, “The sale of a scroll of the Torah is not subject to the law of overreaching, because it is beyond price, a beast or a pearl, because a person wants to buy them for a match with their counterpart and therefore there is no limit to what he is going to be willing to pay.”**
- D. **They said to him, “But is it not so that every sort of object a man may want to match up with its pair?” [T. **B.M. 3:24A-D**].**
- E. And R. Judah?
- F. *These matters are particularly important, while the others are not particularly valued.*
- G. *To what extent [can there be an overcharge without a claim of overreaching being instituted, so far as Judah is concerned]?*
- H. Said Amemar, “Up to their true value.”

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

- B. **R. Judah b. Petera says, “A horse, battle-ax, and good sword in time of war are not subject to a claim of fraud by reason of overcharge” [T. **B.M. 3:24E**].**
The principal point of interest throughout is the scriptural basis for the rules of the Mishnah, because, as is clear, it is possible to identify in Scripture a foundation for what the Mishnah has presented. Other speculative analyses do not stray far from the Mishnah’s main interests.

4:10

- A. **Just as a claim of fraud applies to buying and selling**
- B. **so a claim of fraud applies to spoken words.**
- C. **One may not say to [a storekeeper], “How much is this object?” knowing that he does not want to buy it.**
- D. **If there was a penitent, one may not say to him, “Remember what you used to do!”**
- E. **If he was a child of proselytes, one may not say to him, “Remember what your folks used to do!”**
- F. **For it is said, And a proselyte you shall not wrong nor oppress (Exo. 22:20).**

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

- B. “You will not wrong one another” (Lev. 25:17).
- C. Scripture speaks of wrongs committed by acts of speech.
- D. You maintain that Scripture speaks of wrongs committed by acts of speech. But perhaps Scripture speaks only of wrongs committed against property.
- E. When Scripture says, “And if you sell anything to your neighbor or acquire anything from your neighbor, you shall not wrong one another” (Lev. 25:14), lo, it has covered wrongs committed against property. Then to what may I refer the verse, “You will not wrong one another” (Lev. 25:17)? It can refer only to wrongs committed by acts of speech.
- F. How so? **If one was a penitent, one may not say to him, “Remember your earlier deeds!”**
- G. **If one was a child of proselytes, one may not say to him, “Remember what your ancestors used to do.”**

- H. If he was a proselyte who has come to study the Torah, one may not say to him, “Look who’s coming to study Torah which was given by the mouth of the Almighty! This one, who ate carrion and teref-meat, abominations, and creeping things!” [T. **B.M. 3:25H**].
- I. If ailments affected someone, or afflictions came upon him and he buried his child, one should not speak to him in the manner in which Job’s friends spoke to him: “Is not your fear of God your confidence, and the integrity of your ways your hope? Think now who that was innocent ever perished? or where were the upright cut off?” (Job. 4:6-7)” [T. **B.M. 3:25G**].
- J. If there were ass-drivers seeking wine and oil, one should not say to them, “Go to s-and-so,” who has never sold wine or oil [T. **3:25F**].
- K. R. Judah says, “One should also not examine a piece of goods knowing he has no money, for lo, this is a matter known only to the heart, and of whatever is known only to the heart, it is written, ‘and you will fear your God.’ (Lev. 25:17).”
- I.2.** A. Said R. Yohanan in the name of R. Simeon b. Yohai, “Far more common is fraud in spoken words than fraud in matters of property. For of the former it is written, ‘and you shall fear your God,’ but that is not said of the latter.”
- B. And R. Eleazar says, “This is done to the person, the other only to the property.”
- C. R. Samuel bar Nahmani said, “This can be made up, but that cannot be made up.”
- I.3.** A. *A Tannaite authority recited before R. Nahman bar Isaac*, “Whoever embarrasses his fellow in public is as though he shed blood.”
- B. *He said to him, “Well said! For I have seen it, with the person’s color fading and paleness taking over.”*
- I.4.** A. *Said Abbaye to R. Dimi, “In the West, about what are people most meticulous?”*
- B. *He said to him, “Not embarrassing somebody.”*
- C. For said R. Hanina, All go down into Gehenna except for three...”
- D. *...everybody! Is that what you think? Rather, “All who go down into Gehenna return except for three, who go down but do not come back up, and these are they: he who has sexual relations with a married woman, a person who embarrasses his fellow in public, and he who assigns a mean nick-name to his fellow.”*
- E. But assigning a mean nickname is the same as embarrassing him!
- F. *It means, even though the man is accustomed to the mean name.*
- I.5.** A. Said Rabbah bar bar Hana said R. Yohanan, [**59A**] “It would be better for someone to have sexual relations with a woman who may or may not be married but not embarrass his fellow in public.”
- B. *What is the source of this view?*
- C. *It is in line with the interpretation of Raba, for Raba interpreted, “What is meant by the verse, “What is the meaning of the following verse: ‘But in my adversity they rejoiced and gathered themselves together, yes, the objects gathered themselves together against me and I did not know it, they tore me and did not cease’ (Psa. 35:15)?*

- D. “Said David before the Holy One, blessed be he, ‘Lord of the world, it is perfectly clear to you that if they had torn my flesh, my blood would not have flowed [because I was so embarrassed.]
- E. “‘Not only so, but when they take up [B.M.: the tractates of Negaim and Ohalot; Sanhedrin:] the four modes of execution inflicted by a court, they interrupt their Mishnah-study and say to me, ‘David, he who has sexual relations with a married woman — how is he put to death?’”
- F. “‘I say to them, ‘He who has sexual relations with a married woman is put to death through strangulation, but he has a share in the world to come,’ while he who humiliates his fellow in public has no share in the world to come.’””

I.6. A. *Mar Zutra bar Tubiah said Rab said, and some say, said R. Hana bar Bizna said R. Simeon Hasida, and some say, said R. Yohanan in the name of R. Simeon b. Yohai, “It would be better for someone to through himself into a fiery furnace than to embarrass his fellow in public.*

- B. *“What is the Scriptural basis for that view? The case of Tamar.*
- C. “For it is written, ‘when she was brought forth, she sent to her father-in-law’ (Gen. 38:25).” [She chose death rather than confessing and so embarrassing him.]

I.7. A. *Said R. Hinena son of R. Idi, “What is the meaning of the verse of Scripture, ‘You shall not wrong one another’ (Lev. 25:14)?*

- B. “If someone has borne with you in Torah and in religious duties, do not wrong him.”

I.8. A. Said Rab, “One should always be careful about not wronging his wife [in words], since she cries easily, she is readily wronged.”

I.9. A. R. Eleazar said, “From the day on which the house of the sanctuary was destroyed, the gates of prayer have been locked.

- B. “For it is said, ‘Yes, when I cry and call for help, he shuts out my prayer’ (Lam. 3: 8).
- C. “But even though the gates of prayer are locked, the gates of tears are not locked.
- D. “For it is said, ‘Hear my prayer, Lord, and give ear to my cry, keep not silence at my tears’ (Psa. 39:13).”

I.10. A. And Rab said, “Whoever follows his wife’s advice falls into Gehenna: ‘But there was not like Ahab, who sold himself to work wickedness in the sight of the Lord, whom Jezebel, his wife, stirred up’ (1Ki. 21:25).”

- B. *Said R. Pappa to Abbaye, “But lo, people say, ‘If your wife is short, bend down and listen to her whisper!’”*
- C. *There is no contradiction. One refers to matters in general, the other, to matters concerning the household.*
- D. *Another version:*
- E. *One refers to matters pertaining to Heaven, the other, to matters of a practical order.*

I.11. A. Said R. Hisda, “All gates are locked, except for the gates that receive complaints against overreaching, as it is said, ‘Behold, the Lord stood by a wall of wrongs, and in his hand were the wrongs’ (Amo. 7: 7).”

B. Said R. Eleazar, "Penalty for all matters is exacted through an agent [angel], except for the penalty for overreaching, as it is said, 'And in his hand were the wrongs' (Amo. 7: 7)."

I.12. A. Said R. Abbahu, "There are three sins before which the curtain is not locked: overreaching, robbery and idolatry.

B. "Overreaching: 'hand was the overreaching.'

C. "robbery: 'Robbery and spoil are heard in her; they are before me continually' (Jer. 6: 7).

D. "idolatry: 'A people that provokes me to anger continually before my face, that sacrifices in gardens and burn incense upon altars of brick' (Isa. 65: 3)."

I.13. A. Said R. Judah, "One should always make certain that there is ample grain in his household, for strife is commonplace only in the household of a man on account of matters concerning grain: 'He makes peace in your borders, he fills you with the best wheat' (Psa. 147:14)."

B. *Said R. Pappa, "That is in line with what people say, '[Freedman:] when the barley is entirely gone from the pitcher, strife comes knocking at the door.'"*

C. And said R. Hinena bar Pappa, "One should always make certain that there is ample grain in his household, for Israel is called poor only because of dearth of grain: 'And so it was when Israel had sown...and the Midianites and Amalekites encamped against them and destroyed the increase of the earth...and Israel was greatly impoverished because of the Midianites' (Jud. 6:3, 4, 6)."

I.14. A. Said R. Helbo, "A man should always be meticulous about the honor owing to his wife, for a blessing is abundant in a man's household only on account of his wife: 'And he treated Abraham well for her sake' (Gen. 12:16)."

B. This is in line with what Raba told the people of Mehoza, "Value your wives, so that you may be rich."

The Wife's Prayer: All gates are locked, except for the gates that receive complaints against overreaching

The complex concerning Eliezer, Nos. 15-16, is inserted whole, because of the concluding item, which joins the two themes of the foregoing, the power of a wife's prayer, the complaint against overreaching: All gates are locked, except for the gates that receive complaints against overreaching. Because of that climactic and concluding statement, the compiler has given us the entire composite.

I.15 A. *There we have learned: If one cut [a clay oven] into parts and put sand between the parts,*

B. **R. Eliezer declares the oven broken-down and therefore insusceptible to uncleanness.**

C. **And sages declare it susceptible.**

D. **[59B] And this is what is meant by the oven of Akhnai [M. Kel. 5:10].**

E. *Why the oven of Akhnai?*

F. Said R. Judah said Samuel, "It is because they surrounded it with argument as with a snake and proved it was insusceptible to uncleanness."

G. *A Tannaite statement:*

- H. On that day R. Eliezer produced all of the arguments in the world, but they did not accept them from him. So he said to them, "If the law accords with my position, this carob tree will prove it."
- I. The carob was uprooted from its place by a hundred cubits — and some say, four hundred cubits.
- J. They said to him, "There is no proof from a carob tree."
- K. So he went and said to them, "If the law accords with my position, let the stream of water prove it."
- L. The stream of water reversed flow.
- M. They said to him, "There is no proof from a stream of water."
- N. So he went and said to them, "If the law accords with my position, let the walls of the school house prove it."
- O. The walls of the school house tilted toward falling.
- P. R. Joshua rebuked them, saying to them, "If disciples of sages are contending with one another in matters of law, what business do you have?"
- Q. They did not fall on account of the honor owing to R. Joshua, but they also did not straighten up on account of the honor owing to R. Eliezer, and to this day they are still tilted.
- R. So he went and said to them, "If the law accords with my position, let the Heaven prove it!"
- S. An echo came forth, saying, "What business have you with R. Eliezer, for the law accords with his position under all circumstances!"
- T. R. Joshua stood up on his feet and said, "'It is not in heaven' (Deu. 30:12)."
- U. *What is the sense of, "'It is not in heaven' (Deu. 30:12)"?*
- V. Said R. Jeremiah, "[The sense of Joshua's statement is this:] For the Torah has already been given from Mount Sinai, so we do not pay attention to echoes, since you have already written in the Torah at Mount Sinai, 'After the majority you are to incline' (Exo. 23: 2)."
- W. *R. Nathan came upon Elijah and said to him, "What did the Holy One, blessed be he, do at that moment?"*
- X. *He said to him, "He laughed and said, 'My children have overcome me, my children have overcome me!'"*
- Y. They said:
- Z. On that day they brought all of the objects that R. Eliezer had declared insusceptible to uncleanness and burned them in fire [as though they were unclean beyond all purification].
- AA. They furthermore took a vote against him and cursed him.
- BB. They said, "Who will go and inform him?"
- CC. Said to them R. Aqiba, "I shall go and tell him, lest someone unworthy go and tell him, and he turn out to destroy the entire world [with his curse]."
- DD. What did R. Aqiba do? He put on black garments and cloaked himself in a black cloak and took his seat before him at a distance of four cubits.
- EE. Said to him R. Eliezer, "Aqiba, why is today different from all other days?"

- FF. He said to him, "My lord, it appears to me that your colleagues are keeping distance from you."
- GG. Then he too tore his garments and removed his shoes, moved his stool and sat down on the ground, with tears streaming from his eyes.
- HH. The world was blighted: a third olives, a third wheat, a third barley.
- II. And some say, also the dough in women's hands swelled up.
- JJ. *A Tannaite authority taught:*
- KK. There was a great disaster that day, for every place upon which R. Eliezer set his eyes was burned up.
- LL. And also Rabban Gamaliel was coming by ship. A big wave arose to drown him.
- MM. He said, "It appears to me that this is on account only of R. Eliezer b. Hyrcanus."
- NN. He stood upon his feet and said, "Lord of the world, it is perfectly obvious to you that it was not for my own honor that I have acted, nor for the honor of the house of my father have I acted, but it was for the honor owing to you, specifically, so that dissension should not become rife in Israel."
- OO. The sea subsided.
- PP. *Imma Shalom, the wife of R. Eliezer, was the sister of Rabban Gamaliel. From that time onward she never left R. Eliezer to fall on his face [in prayer]. [So great was the power of his prayer that if he were to recite certain prayers because of the injury done him, God would listen and destroy her brother.]*
- QQ. *One day, which was the day of the New Moon, she mistook, assuming that the month was a defective one; and others say, she was distracted by a poor man who came and stood at her door, and to whom she took out a piece of bread.*
- RR. *She found that her husband had fallen on his face, and she said to him, 'Get up, for you have killed my brother.'*
- SS. *Meanwhile the word came from the house of Rabban Gamaliel that he had died.*
- TT. *He said to her, "Then how did you know?"*
- UU. *She said to him, "So do I have as a tradition from the household of the father of my father: 'All gates are locked, except for the gates that receive complaints against overreaching.'"*

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

- B. He who abuses the proselyte violates three negative commandments, and one who oppresses him violates two.
- C. *What distinguishes abuse?*
- D. *Three negative commandments are specified in that regard, specifically: "You shall not wrong a stranger" (Exo. 22:20); "And if a stranger sojourn with you in your land, you shall not wrong him" (Lev. 19:33); "and you shall not therefore wrong each his fellow" (Lev. 25:17).*
- E. *As to oppression, there are three as well: "and you shall not oppress him" (Exo. 22:20); "also you shall not oppress a stranger" (Exo. 23: 9); "if you lend money to any of my people that is poor by you, you shall not be to him as a usurer" (Exo. 22:24), and this encompasses a proselyte!*
- F. Then say, all the same are the one and the other: both of them are forbidden by three commandments.

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

- B. R. Eliezer the Elder says, “On what account has the Torah admonished against wronging the proselyte in thirty-six passages, and others say, in forty six? It is because he has a very strong impulse to do evil.”

I.18 A. *What is the meaning of the verse of Scripture, “You shall not wrong a stranger nor oppress him, for you were strangers in the land of Egypt” (Exo. 22:20)?*

- B. R. Nathan says, “If you have a fault, do not impute it to your fellow.”
C. *So people say, “If someone in a family has been hung, don’t say to a member of that family, ‘Hang this fish up for me.’”*

The treatment of our Mishnah-passages is diffuse and unfocused. The inclusion of the vast construction on Eliezer is only because of the intersection of the very concluding component with prior statements on wrongs committed by words. Analyzed as is done here, the composite shows strongly-etched lines of structure and order.

4:11

- A. **They do not commingle one sort of produce with another sort of produce,**
B. **even new and new [produce, plucked in the same growing season],**
C. **[60A] and it goes without saying, new with old.**
D. **To be sure, in the case of wine they have permitted commingling strong with weak,**
E. **because it improves it.**
F. **They do not commingle the lees of wine with wine.**
G. **But one may hand over [to a purchaser] the lees [of the wine he is buying].**
H. **He whose wine got mixed with water may not sell it in a store,**
I. **unless he informs [the purchaser],**
J. **nor to a merchant,**
K. **even though he informs him.**
L. **For [the latter buys it] only to deceive others thereby.**
M. **In a place in which it is the custom to put water in wine,**
N. **one may dilute it.**

4:12A-C

- A. **A merchant purchases grain from five threshing floors and puts it [all] into one storage-bin,**
B. **[wine] from five wine-presses and puts it into a single storage-jar –**
C. **on condition that he not intend to commingle [wine of diverse quality for the purpose of fraud].**

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

- B. [With reference to the statement, **They do not commingle one sort of produce with another sort of produce, even new and new produce, plucked in the same growing season, and it goes without saying, new with old**], it is not necessary to say that when the new produce is at four seahs per sela while the old is priced at three, they may not be commingled.

- C. But even if the new is at three and the old is at four, they may not be commingled, because [the higher price of the new grain is that] one wishes to age them. [Freedman: The higher price of the new grain is not due to its superiority but to the fact that there is no market that year and merchants are buying ahead for the following, while if they store last year's grain, it may be too old when they need it. Hence when one stipulates that he wants old grain, it is evidence that he needs it for immediate use, and it may not be mixed with new, though this is more expensive.]

II.1 A. To be sure, in the case of wine they have permitted commingling strong with weak, because it improves it:

- B. Said R. Eleazar, "That is to say, every passage in which the language, 'to be sure' [or: 'in truth'] is stated, that constitutes the decided law."

II.2. A. Said R. Nahman, "The rule applies when the wine is in the press. But nowadays wines are mixed even after they have left the press."

- B. Said R. Pappa, "It is because people know and accept the practice."
C. R. Aha son of R. Iqa said, "Lo, whose view is represented here? It is that of R. Aha.
D. "For it has been taught on Tannaite authority:
C. "R. Aha permits doing so in the case of a commodity that is first tasted."

III.1 A. They do not commingle the lees of wine with wine. But one may hand over to a purchaser the lees of the wine he is buying:

- B. Now in the opening clause you have said **they may not be commingled** at all. And should you reply that what is the intention of the language, **But one may hand over to a purchaser the lees of the wine he is buying**, is that he must simply inform him of what is being handed over, since you have stated in the concluding clause, **He whose wine got mixed with water may not sell it in a store, unless he informs [the purchaser], nor to a merchant, even though he informs him**, it stands to reason that the opening clause is framed for a situation in which the seller has not informed the buyer at all!
C. Said R. Judah, "This is the sense of the statement: 'One must not mix the lees of yesterday's wine with that of today's, nor the lees of today's wine with yesterday's, **But one may hand over to a purchaser the lees of the wine he is buying.**'"
D. So too it has been taught on Tannaite authority:
E. R. Judah says, "One who pours out wine for his fellow, lo, this one should not mix yesterday's with today's, or today's with yesterday's, but he may mix yesterday's with yesterday's or today's with today's."

IV.1 A. He whose wine got mixed with water may not sell it in a store, unless he informs [the purchaser], nor to a merchant, even though he informs him:

- B. Raba brought wine from a shop. He mixed it and tasted it, but it was not good tasting, so he returned it to the shop.
C. Said to him Abbaye, "But lo, we have learned in the Mishnah: **nor to a merchant, even though he informs him.**"

- B. *He said to him, "My mixing is pretty common knowledge. And if you should claim that he may add wine to it and strengthen it and sell it as pure wine, then there is no end to the matter."*

V.1. A. In a place in which it is the custom to put water in wine, one may dilute it:

- B. *It has been taught:*
- C. **In a place in which it is customary to put water into wine for a half, a third, or a quarter of the volume of the whole, they put it in, and people must not vary from the established custom of the locale [T. B.M. 3:27J-L].**
- D. Said Rab, "The passage speaks of the time of the pressing of the grapes."
- I see nothing more here than a systematic glossing of the Mishnah, line by line; the amplifications are not sustained. Here is another example of what the Talmud would have given us, had it been a commentary to the Mishnah and nothing more.

4:12D-L

- D. **R. Judah says, "A storekeeper should not hand out parched corn and nuts to little children, because in that way he makes it their habit [to buy from] him."**
- E. **But sages permit.**
- F. **And he should not cut the prevailing price.**
- G. **But sages say, "[If he does so], his memory will be blessed."**
- H. **"He should not sift crushed beans," the words of Abba Saul.**
- I. **And sages permit.**
- J. **But they concede that he should not sift them [solely] at the entry of the storage bin,**
- K. **for he would do so only to create a false picture [of the quality of what is in the bin].**
- L. **They do not beautify [what they sell] — either man, beast, or utensils.**

I.1 A. What is the reasoning behind the position of rabbis [permitting handing out come-ons]?

- B. *He may say to him, "I give out nuts, you can give out plums."*

II.1. A. And he should not cut the prevailing price. But sages say, "[If he does so], his memory will be blessed."

- B. *What is the reasoning behind the position of rabbis [permitting price-competition]?*
- C. **[60B]** It is because he gives the market breathing space.

III.1 A. "He should not sift crushed beans," the words of Abba Saul. And sages permit.

- B. *Which sages are represented here?*
- C. *It is R. Aha.*
- D. *For it has been taught on Tannaite authority:*
- E. R. Aha permits in respect to something that is visible.

IV.1 A. They do not beautify [what they sell] — either man, beast, or utensils.

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

- C. **They do not curry a beast or blow up the intestines for sale, and they do not put meat in water to increase its weight [T. B.M. 3:29A-B].**
- D. *What is the meaning of the phrase, 'They do not curry a beast'?*
- E. *Here it is explained [Freedman] as referring to bran broth.*
- F. *Zeiri said R. Kahana said, "It means, brushing up the hair."*
- G. *Samuel permitted putting fringes on a cloak.*
- H. *R. Judah permitted putting a gloss on fine cloth.*
- I. *Rabbah permitted beating hemp-cloths.*
- J. *Raba permitted painting arrows.*
- K. *R. Pappa b. Samuel permitted painting baskets.*
- L. *But have we not learned, **They do not beautify [what they sell] — either man, beast, or utensils?***
- M. *There is no contradiction, the one refers to what is new, the other to what is old [which may not be beautified to look newer than it is].*

IV.2. A. Why paint human beings?

- B. *It is illustrated by the case of a superannuated slave who went and had his head and beard dyed and came to Raba, saying to him, "Buy me."*
- C. *He said to him, "Let the poor be the children of your household."*
- D. *He came to R. Pappa bar Samuel, who bought him. One day he said to him, "Bring me some water." He went and washed his head and beard and said to him, "See, I am older than your father [so get your own water]."*
- E. *He recited in his own regard, "The righteous is delivered out of trouble and another comes in his place" (Pro. 11: 8).*

The concluding passage is exegetical and episodic, presenting no surprises. I see no sustained and unifying inquiry, transforming data of law and cases into the materials of jurisprudence and social philosophy.