

# VI

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## BAVLI BABA BATRA CHAPTER SIX

### FOLIOS 92A-102B

6:1

- A. [92A] He who sells produce [consisting of grain] to his fellow [not specifying whether it is for food or for seed],
- B. and they did not sprout,
- C. and even if it was flax seed,
- D. he is not liable to make it up.
- E. Rabban Simeon b. Gamaliel says, “[If he sold] garden seed which is not suitable for eating, he is liable to make it up.”

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

- B. He who sells an ox to his fellow and it turned out to be a habitual gorer —
- C. Rab said, “Lo, this is a sale made in error [and null, the seller returning the purchase money].”
- D. And Samuel said, “The seller can say to him, ‘I sold it to you for slaughter.’” [There has been no misrepresentation of the merchandise; the sale is valid.]
- E. *But examine the case: If it is someone who ordinarily buys a beast for slaughtering, then his presumed intent was to buy this beast for slaughtering, and if it was someone who would ordinarily have bought the beast for use in ploughing, then it was for the purpose of ploughing! [So what’s the point of the dispute?]*
- F. *What we are dealing with here is someone who purchases for both purposes.*

- G. *Well, why not examine how much money was paid [which will also indicate the purchaser's intent]?*
- H. *The dispute concerns a case in which the price of a beast sold for meat went up and stands at the same level as the price for an animal for ploughing.*
- I. *Yeah, then what difference does it make anyhow?*
- J. *What difference in makes is in regard to the trouble [of butchering the beast].*
- K. *So what sort of case [would be involved in making the seller give the money back] anyhow? [92B] If there is no money for paying the buyer back, let the ox be retained for the money, as people say, "From someone who owes you money, accept as payment even bran [so take what you can and run with it]."*
- L. *The dispute concerns itself with a case in which there really is money to pay the buyer back. In that case, Rab said, "Lo, this is a sale made in error [and null, the seller returning the purchase money]," the operative criterion being majority practice, and the majority buys oxen for ploughing.*
- M. *And Samuel said, "The seller can say to him, 'I sold it to you for slaughter,'" the operative criterion being majority practice, only in matters of religious prohibitions, but not in matters involving money.*

**I.2 A.** [To the proposition that we follow majority practice, only in matters of religious prohibitions, but not in matters involving money,] *an objection was raised as follows: The woman who was widowed or divorced — she says, "You married me as a virgin" — and he says, "Not so, but I married you as a widow" — if there are witnesses that [when she got married], she went forth to music, with her hair flowing loose, her marriage contract is two hundred [M. Ket. 2:1A-D]. The operative consideration, then, is that there are witnesses. Lo, if there were no witnesses, then the claim could not be established. Now why should that be the case? Let us rather invoke the principle that the operative criterion is the condition of the majority of women, and the majority of women are virgins when they get married!*

- B. *Said Rabina, "It is because one may well say that, while the majority of women are virgins when they are married and a minority are widows, still, on the other hand, when a woman is married as a virgin, that fact is publicity, and since in this case the fact is not confirmed, the principle of following the status, so far as she is confirmed, is damaged.*
- C. *So what in the world do we need witnesses for? Since the fact that she was married as a virgin is not established, they are false witnesses!*

- D. *Rather, the majority of those who marry as virgins are known to have been in that condition when they were married, but since the condition of this one is not known, the majority principle in her case is damaged.*
- E. *Come and take note: If someone sold to someone else a slave who turned out to have been a thief or gambler, the sale is valid. If it turned out he was a thug or outlaw, the buyer may say to him, "This is yours, take him back." Now in the opening clause, [93A] what is the operative consideration? Is it not that most slaves are like that? Doesn't this prove that, even in financial matters, we are guided by the rule characteristic of the majority?*
- F. *No, not all of them are like that.*
- G. *Come and take note: An ox [deemed harmless] which gored a cow [which died] and her newly born calf was found [dead] beside her — and it is not known whether, before it gored her, she gave birth, or after it gored her, she gave birth — [the owner of the ox] pays half-damages for the cow, and quarter-damages for the offspring [M. B.Q. 5:1]. Now why should this be the case? Why not say, follow the status of the majority of most cows, and most cows that are pregnant give birth [so this one has, too]? Therefore in this case the miscarriage assuredly was caused by the goring.*
- H. *There the reason that the majority rule does not apply is that we are not certain whether the ox approached from the front, in which case the miscarriage came about because of shock, or whether it came from behind, and the miscarriage was due to goring; the indemnity falls into the category of money, the ownership of which is subject to doubt, and where we deal with a case of money the ownership of which is subject to doubt, it must be divided among the claimants.*
- I.3 A.** *May we say that [Rab's and Samuel's dispute concerning the principle of following the majority in settling a given, particular case] follows the lines of the conflict among the following Tannaite authorities:*
- B. **An ox which was grazing, and a dead ox was found beside it, it must not be said, even though the one is gored and the other is known to gore, the one bitten and the other is known to bite, "Obviously one gored or bit the other."**

- C. **R. Aha says, “A camel that was covering females among the camels, and one of the camels was found dead — it is obvious that the one killed the other” [T. B.Q. 3:6L-R].**
- D. *Taking as our premise that the principles of following the majority and confirming the legal status are pretty much the same thing [most animals don’t gore, so every animal is assumed not to gore until proved to the contrary, and the ox that is known to gore is confirmed as a goring ox (Slotki)], may we say that Rab concurs with R. Aha and Samuel with the initial Tannaite authority?*
- E. *Rab will say to you, “Well, as a matter of fact, I take the position that I do even within the premises of the position of the initial Tannaite authority. For the initial Tannaite authority takes the position that he does only because we are not going to be guided by the confirmed legal status, but we are guided by the condition of the majority.” [Slotki: And thus in this case it is to be assumed that the other oxen, who form the majority, have done the killing.]*
- F. *And Samuel can say to you, “Well, as a matter of fact, my position accords even with R. Aha’s. For R. Aha takes the position that he does there only because we are guided by the principle of confirming the legal status of a given beast, and since it is confirmed in that status, we are guided by it; but one is not guided by the principle of the condition of the majority.”*
- G. **Come and take note: He who sells produce [consisting of grain] to his fellow [not specifying whether it is for food or for seed], and they did not sprout, and even if it was flax seed, he is not liable to make it up. What is the meaning of and even if it was flax seed? Is it not, even as to flax seed, most of which is purchased for sowing, even here we are not governed by the principle that we follow what the majority do in a given case?**
- H. *It is a matter subject to conflict among Tannaite statements, for it has been taught on Tannaite authority: He who sells produce to his fellow and the latter sowed it but the seeds did not sprout, if it was garden seeds, which are not eaten, the seller is responsible to make it up. If it was flax seed, he is not liable to make it up. R. Yosé says, [93B] “He has to pay back the value of the seed.”*

**They said to him, “Well, plenty of people buy it for other purposes” [T. B.B. 6:1].** *Now who are the Tannaite authorities [who dispute the issue of whether we are governed by the rule that covers the majority]? Shall we say they are only R. Yosé and “they said to him”? But both of them are governed by the consideration of the rule that describes the majority, the one, the majority of purchasers, the other, the majority of seed [most people buy flax seed for purposes other than sowing; most flax seed is sold for sowing, though to a minority of buyers (Slotki)]. [Slotki: So neither of these concurs with Samuel.]*

*I. The dispute is either between the initial Tannaite authority and R. Yosé or between the initial Tannaite authority and “they said to him.”*

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

- B. How much does [one who sold garden seeds] refund [to the one who bought them and sowed them without getting a crop out of them]?
- C. The price of the seed but not the expenses [of planting them].
- D. And there are those who say, “Also the cost of planting them.”

**I.5 A.** *Who are “those who say”?*

B. Said R. Hisda, “It is Rabban Simeon b. Gamaliel.”

C. *Which of the teachings of Rabban Simeon b. Gamaliel are meant? If under discussion is the teaching of Rabban Simeon b. Gamaliel in our Mishnah paragraph, where we have learned, **He who sells produce [consisting of grain] to his fellow [not specifying whether it is for food or for seed], and they did not sprout, and even if it was flax seed, he is not liable to make it up,** then note the conclusion: Rabban Simeon b. Gamaliel says, “[If he sold] garden seed which is not suitable for eating, he is liable to make it up.” Now does not the initial Tannaite say the same thing, for he said, “if it was flax seed,” yielding, [If he sold] garden seed which is not suitable for eating, he is liable to make it up! So what must be at issue between them can only be the matter of expenses. One party [the initial Tannaite authority] then takes the view that the seller has to be only the cost of the*

*seeds, and the other [Simeon] wants him to refund also the expenses of planting the seeds.*

- D. *Why must this follow? Perhaps matters are just the opposite [Slotki: the first Tannaite authority holding the seller responsible for the expenses, while Simeon does not; those others will not therefore be Simeon but the initial Tannaite authority of our Mishnah]?*
- E. *That is not a serious challenge. Wherever a Tannaite authority presents his position at the end of a dispute, he does so to add some restriction. [Slotki: In this case Simeon comes last and therefore must be the one who adds the expenses to the seller's responsibility.]*
- F. *Well, maybe the entire passage represents the position of Rabban Simeon b. Gamaliel, with a lacuna, so that the matter has to be read in the following manner: **He who sells produce [consisting of grain] to his fellow [not specifying whether it is for food or for seed], and they did not sprout, and even if it was flax seed, he is not liable to make it up,**" the words of Rabban Simeon b. Gamaliel. For Rabban Simeon b. Gamaliel says, "[If he sold] garden seed which is not suitable for eating, he is liable to make it up"?*
- G. *Rather, this is the teaching of Rabban Simeon b. Gamaliel that can serve, as has been taught on Tannaite authority: **He who brings wheat to be ground, and the miller did not moisten it but made it into coarse bran or second-rate flour, or flour to a baker and he made it into crumbly bread, or meat to a butcher, and he made it unfit, he is liable to pay damages, because he is in the status of a paid bailee. Rabban Simeon b. Gamaliel says, "He also pays compensation for his embarrassment and the embarrassment of his guests"** [T. B.Q. 10:9]. And so did Rabban Simeon b. Gamaliel used to say, "There was an impressive custom in Jerusalem. He who handed over the preparations of a banquet to someone else, who spoiled it — the latter has to compensate him also for his embarrassment and the embarrassment of his guests. At the beginning of the meal a cloth was spread over the door. So long as it was there, guests came; when it was taken away, guests stopped coming.*

I.1 deals with a counterpart case involving the possibility of a purchase made in error. The entire discussion concerns the counterpart case; we do not revert to the clarification of the case of the Mishnah, though the implicit explanation of that case cannot be missed. A massive thematic composite, No. 2 then supplements a detail of No. 1. No. 3 continues the examination of the same matter. Only at No. 4 do we deal with Mishnah exegesis pure and simple. No. 5 forms a talmud to No. 4.

## 6:2

- A. **He who sells produce to his fellow —**
  - B. **lo, [the buyer] must agree to receive a quarter-qab of spoiled produce per seah.**
  - C. **(1) [If he bought] figs, he must agree to accept ten maggoty ones per hundred.**
  - D. **(2) [If he bought] a cellar of wine, he must agree to accept ten sour jars per hundred.**
  - E. **(3) [If he bought] jars in Sharon, he must agree to accept ten faulty ones per hundred.**
- I.1** A. *R. Qattina repeated as a Tannaite formulation, “A quarter-qab of pulse per seah.”*
- B. *But doesn't the purchaser not have to accept sandy matter, too? Did not Rabbah bar Hiyya of Ctesiphon say in the name of Rabbah, “If someone picks a pebble out of the threshing floor of his neighbor, [94A] he has to pay him the price of wheat [Slotki: because the seller is entitled to include a pebble in the weight of his wheat and to receive for it the price of the wheat; but he is not permitted to put a pebble in the mass].*
  - C. *“In the case of pulse, he has to accept a quarter-qab, of sandy matter, less than a quarter.”*
  - D. *But doesn't he have to accept a full quarter of a qab of sandy matter? Has it not been taught on Tannaite authority: He who sells produce to his fellow — in the case of wheat, the buyer must accept a quarter-qab of pulse for each seah; in the case of barley, he has to accept a quarter-qab of chaff per seah; in the case of lentils, he must accept a quarter-qab of sandy matter per seah? Now will not the same rule apply to wheat and barley? [Slotki: It is assumed that sandy matter was mentioned in the case of lentils because it is usual to find it there just as pulse was mentioned with meat, with which it is usually mixed up; but in reality the buyer must accept a quarter of a qab of sandy matter or any refuse in whatever kind of produce it is found.]*
  - E. *Not at all, lentils are exceptional, because they are usually plucked [and therefore sandy matter is to be expected].*

- F. *So if the governing consideration that lentils are permitted a full quarter-qab of sandy matter is that they are usually plucked, and wheat and barley aren't, then does it follow that, in the case of wheat and barley, the buyer does not have to accept a full quarter-qab of sandy matter [sustaining the position of Qattina]?*
- G. *No, the buyer has to accept a full quarter-qab of sandy matter in the case of wheat and barley; but it was necessary to make that point in the case of lentils in particular, since one might have supposed that since these are plucked, they will be accompanied by even more than a quarter-qab of sandy matter, which the purchaser has to accept. So we are informed that that is not the case.*
- I.2 A.** Said R. Huna, “If the buyer proposes to sift the grain [Slotki: suspecting that the refuse amounts to more than a quarter of a qab for each seah, and the sample that he takes turns out to contain more than what is permitted,] he has the right to sift it all, [and the seller must pay for the refuse, even for the permitted quantities].”
- B. *There are those who say that this would represent a payment as a matter of law, and there are those who say that it would represent an extra-judicial fine.*
- C. *There are those who say that this would represent a payment as a matter of law: someone who pays money for produce means to buy fruit of good quality, but someone will not go to the trouble of sifting, if the refuse is only a quarter of a qab per seah; if it is more than that, he does go to the trouble, and since he has done so, he takes a bit more trouble with the whole of it. [Slotki: Once the sifting commences, it is not much more trouble to complete the whole; so the buyer exercises his right and demands compensation for all the refuse.]*
- D. *And there are those who say that it would represent an extra-judicial fine. A quarter-qab of refuse is commonplace, more than that is not, so the seller himself must have mixed it in, and since he put in some of it, the rabbis have imposed on him the extrajudicial fine of paying for all of it.*
- E. *An objection was raised: [Concerning] every seah [of one kind of seeds] which contains a quarter [-qab] of another kind — he shall lessen [the quantity of seeds of the other kind, so that those seeds form less than a quarter-qab] [R. Yosé says, “He shall sift [out the other kind completely]”] [M. Kil. 2:1]. In the assumption that the quarter-qab in the case of mixed seeds is in the same category as the quantity of more than a quarter-qab here, we note that it has been taught only, **he shall lessen [the quantity of seeds of the other kind, while the rest may be sown.** [Slotki: The entire seah is not disqualified by reason of the excess, and as soon as the excess is reduced from a quarter to less, the grain may*



be sown.] *So why, in the case of the purchase, such as is before us, must one pay compensation for the whole of the refuse?!*

- F. *No, the point is that the quarter in the case of mixed seeds is in the same category as a quarter here.* [Slotki: In both cases such a small quantity as a quarter of a qab of a seah is disregarded; but if this quantity is exceeded, it might indeed have to be removed in its entirety even in the case of mixed seeds.]
- G. *If so, why does it have to be lessened?*
- H. *It is because of the more strict enforcement of the rule against mixed seeds.*
- I. *If so, [94B] what are we to make of the position presented at the end of the cited passage: R. Yosé says, “He shall sift [out the other kind completely]”? Now if you maintain that the quarter-qab in the case of mixed seeds is like a quantity of more than a quarter-qab of refuse, there is no problem. For then the dispute [between Yosé and the anonymous ruling] would concern these principles: The initial Tannaite authority would maintain that a penalty is not imposed on what is permitted because of what is prohibited, and R. Yosé would hold that a penalty is imposed on what is permitted because of what is forbidden. But if you maintain that a quarter-qab of mixed seeds is merely like a quarter-qab of refuse, why should he sift it out?*
- J. *This is the operative consideration behind the position of R. Yosé: it would otherwise appear as though he were retaining mixed seeds.* [Slotki: Since he began to remove some, he has to remove it all, otherwise the remainder would be regarded as intentionally left there.]
- K. *Come and take note: Two who deposited something with one person, this one leaving a maneh [= one hundred zuz], and that one leaving two hundred [zuz] — this one says, “Mine is the deposit of two hundred [zuz],” and that one says, “Mine is the deposit of two hundred [zuz]” — he pays off a maneh to this one, and a maneh to that one, and the rest is left until Elijah comes. [Said R. Yosé, “If so, what has the deceiver actually lost? But leave the whole sum until Elijah comes and no one will be paid off”] [M. B.M. 3:7A-G].* [Slotki: Why then do rabbis impose the penalty of paying for it all?]
- L. *What sort of a comparison are you making here?! In that case one maneh certainly belongs to this party, and one maneh to that party. But in this case, who will tell us that the whole of the sand was not put in by the seller?* [Slotki: Since the refuse is in a bigger proportion than the usual quantity, the seller may be suspected of having put in at least some, and one suspected of some may be suspected of all.]

- M. *Come and take note [of a confirmation that a penalty may be imposed on the whole for the sake of the part]: Said R. Yosé, “If so, what has the deceiver actually lost? But leave the whole sum until Elijah comes and no one will be paid off.”* [Slotki: So here as a penalty for mixing compensation must be paid for all the refuse.]
- N. *What makes you think the cases are comparable anyhow? In that case, there certainly is one deceiver at hand. But in this case, who can say that the seller actually put in any sand at all*
- O. *Come and take note: “A bond in which is inscribed provision of interest — they penalize the holder, who may collect on the strength of that bond neither principal nor interest,” the words of R. Meir. [And sages say, “He may collect the principal but he may not collect the interest]” [cf. T. B.M. 5:22D-E].* [Slotki: Does this not prove that a penalty may be imposed on the whole for the sake of the part?]
- P. *What makes you think the cases are comparable anyhow? In that case, the lender had committed the sin from the very moment of the writing of the document, but in this case, who can say that the seller put in sand at all?*
- Q. *Come and take note: And sages say, “He may collect the principal but he may not collect the interest].”* [Slotki: Does this not prove that a penalty may not be imposed on the whole for the sake of the part?]
- R. *What makes you think the cases are comparable anyhow? In that case, the principal of the debt is permitted; but here, who can say that the seller did not put in all of the sand?*
- S. *Come and take note of what Rabin bar R. Nahman taught as a Tannaite statement:* [Slotki: In the case of the sale of a piece of ground, under certain conditions, though it was found to be bigger than arranged, by an area equal to that of a quarter of a qab per seah, the sale is valid; if the difference is greater, then] not only must the excess land be returned, but all the quarter-qabs per seah, which if not exceeded were not to be returned] have also to be returned. *This proves then that whenever part has to be returned, all must be returned!*
- T. *What makes you think the cases are comparable anyhow? [95A] In that case, the seller had said to him, “I sell you an area of a kor more or less,” in which case a quarter of a qab is unimportant, but more than that is, because, since in the area of a kor, the quantity may be combined into nine qab, they form an important free-standing field, which must be returned. [But in the case of the refuse of*

produce, even if there were more than a quarter of a qab per seah, only the surplus might have to be returned but not the valid quarters (Slotki)].

- U. *Come and take note: [It has been taught on Tannaite authority:]* “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”]. *Now why should this be the case? Let the excess be returned only so that the overcharge is less than a sixth of the true value? Does the fact that that is not the law confirm that wherever a part is to be returned, the whole is to be returned [confirming Huna’s position]?*
- V. *What makes you think the cases are comparable anyhow? In that case, to begin with one spoke to the other of equal values* [the price was equal to the true value of the produce, so the buyer had a right to claim the return of an overcharge, even if it were less than a sixth (Slotki)], *but since a sixth is not going to be noticed, someone will not mind giving up that much; a variation from true value by a sixth will be noticed, and someone is not going to forego it; if it is more than a sixth, then it is a purchase made in error and null.*
- W. *Come and take note:* He who contracts to plant another person’s field — the latter must accept responsibility of ten failures per hundred trees; if the failures are more than that, all of the unproductive trees have to be replanted. [Doesn’t this confirm Huna’s position?]
- X. *Said R. Huna b. R. Joshua, “Wherever there are more than this number of trees, it is as though one began to plant a new field.”* [Slotki: Wherever more than ten unproductive trees per hundred trees are planted, the area occupied by a number of trees bigger than ten, say eleven, is considered to form a smaller self-contained field; this smaller field is thus treated as a new field, in which the workman undertakes to plant eleven trees, where evidently he could not claim to have discharged his task by planting only one productive and ten unproductive trees; he must therefore replace them all; in the case of refuse, however, this argument cannot be applied, and the owner may be assumed to accept the loss of a quarter of a qab per seah, if the surplus is refunded to him.]

**II.1 A. [If he bought] a cellar of wine, he must agree to accept ten sour jars per hundred:**

- B. *To what sort of a situation [does this rule pertain]? If the seller said to the buyer, “I am selling you a cellar of wine,” without further specification of what he was selling, there is a problem [since the buyer is supposed to accept ten casks of bad wine per hundred, while, as we shall see in a moment, another opinion is that all the wine has to be good], and if the seller said to the buyer, “This cellar of wine I am selling to you,” there is a problem [since the buyer is supposed to accept the whole cellar, as we shall see in a moment, in accord with another opinion].*
- C. *If the seller said to the buyer, “This cellar of wine I am selling to you” there is a problem, for it has been taught on Tannaite authority: “A cellar of wine I am selling to you” — he has to hand over wine that is entirely good. “This cellar of wine I am selling to you” — he has to hand over to him wine such as is sold in a shop. “This cellar I am selling to you” — even if the whole of it is vinegar, the other party has to take it as his purchase.*
- D. *In point of fact, we deal in our Mishnah with a case in which he said to him, “I am selling you a cellar of wine,” without further specification. And as to the first clause of the cited Tannaite statement, read it in this way: ...He has to hand over wine that is entirely good, but the buyer must agree to accept ten sour jars per hundred.*
- E. *But where there is no further clarification, must the buyer really accept ten sour jars per hundred? And lo, it has been taught by R. Hiyya as a Tannaite statement: “A jug of wine I sell to you” — he must give him good wine [T. B.B. 6:7A].*
- F. *The case of a jug is exceptional, for the whole of it is made up of a single variety of wine.*
- G. *Yeah, well R. Zebid repeated as a Tannaite teaching in behalf of the household of R. Oshaia, “‘I am selling you a cellar of wine’ — he has to hand over wine that is entirely good. ‘This cellar of wine I am selling to you’ — he has to hand over to him wine that is entirely good. The buyer must agree to accept ten sour jars per hundred. [95B] And this is the case of the cellar concerning which sages spoke in our Mishnah paragraph.”*
- H. *So our Mishnah paragraph also speaks of a case in which he said to him, “...this....”*
- I. *Then there is a contradiction between the case in which the seller may hand over a cellar that is wholly vinegar when he said “this,” and the case in which the wine has*

to be entirely good except for ten per hundred, when he said “this,” [in Zebid’s formulation]!

- J. *Not really. There is no contradiction between the case in which the seller may hand over a cellar that is wholly vinegar when he said “this,” and the case in which the wine has to be entirely good except for ten per hundred, when he said “this.” The one rule, that of R. Zebid, speaks of a case in which he told him that the wine was needed for cooking a dish [in which case good wine is needed, because it is used only a little at a time, and here “wine” means “good wine, which will keep a long time,” and “this” entitles the seller to include ten casks of lousy wine, and the other case deals with a situation in which the buyer did not specify that it is for a dish. So, it follows, if the seller spoke of “a cellar of wine” the the buyer spoke of “a dish,” the former has to give wine which is entirely good. If the seller said, “this cellar of wine,” and the buyer said, “for a dish,” he has to give him wine that is entirely good, and the buyer has to accept ten out of a hundred of lousy wine. If the seller said, “this cellar of wine” and the buyer did not say, “for a dish,” then he has to give him wine such as is sold in a shop.*

- II.2 A.** *The question was raised: If the seller said, “A cellar of wine” [not using the language, “this,”] and the buyer did not say, “for a dish,” [so neither party to the transaction used language to his own advantage] — what is the rule?*
- B. *There was a dispute on this matter involving R. Aha and Rabina —*
- C. *One said, “The buyer has to accept ten casks of sour wine per hundred.”*
- D. *The other said, “The buyer does not have to accept ten casks of sour wine per hundred.”*
- E. *The one who has said that the buyer has to accept ten casks of sour wine per hundred derives the law from the formulation of R. Zebid, who stated as the Tannaite rule: “‘I am selling you a cellar of wine’ — he has to hand over wine that is entirely good.” And we have already settled the interpretation of the matter, specifically, it refers to a case in which the buyer had said to him, “for a dish.” Then the operative consideration is that he specified that it was for a dish. If he had not said so, he would have had to accept it. And the one who says that the buyer does not have to accept the bad wine derives the rule from the formulation that states: “A cellar of wine I am selling to you” — he has to hand over wine that is entirely good. Now we have already settled the interpretation of the matter, specifically, it refers to a case in which the buyer did not specify to him, “for a dish.”*

- F. *Well, then, will not the person who derives the law from the formulation of R. Zebid not have to deal with a contradiction from the other formulation?*
- G. *Not at all, since there is a lacuna, and this is how the matter of the other formulation is to be read: "A cellar of wine I am selling to you" — he has to hand over wine that is entirely good. Under what circumstances? When he said to him, "For a dish." But if he did not say to him, "for a dish," then he has to take it all. And if he said to him, "This cellar of mine" but did not say, "for a dish," he may give him wine that is sold in the shop.*
- H. *Well, then, will not the person who derives the law from the formulation of the other version not have to deal with a contradiction based on the statement the version of R. Zebid contains, which is explained to speak of a case in which the buyer specified, "for a dish," so it would follow that if he did not say, "for a dish," he has to accept it?*
- I. *Not at all., The same rule, that he does not have to accept the sour wine, speaks even to a case in which he did not say to him, "for a dish," and the reason that it had to be explained to speak of a case in which he said to him, "for a dish," is because of the contradiction between the two "this"-phrases [as we said above: Then there is a contradiction between the case in which the seller may hand over a cellar that is wholly vinegar when he said "this," and the case in which the wine has to be entirely good except for ten per hundred, when he said "this," in Zebid's formulation] [Slotki: but in the case of the first clauses, where the seller says, "I sell you a cellar of wine," there is no such contradiction, and both may refer to either case, whether the buyer said or did not say, "for a dish"].*

**II.3 A.** Said R. Judah, "Over wine that is sold in the shop, they say the blessing: '...who creates the fruit of the vine.'"

- B. *But R. Hisda said, "As to wine that is turning sour, what need to I have of it [and why should one say the blessing that applies to good wine? Rather say the blessing that applies to anything at all that one can eat]!"*
- C. *An objection was raised [to Judah's proposition]: Before eating bread that has rotted, wine covered by a film, or cooked food that has spoiled, one says, "By whose word."*
- D. *Said R. Zebid, "R. Judah concedes in the case of wine made of kernels, sold on street corners, [that that is not the blessing to be said]."*

**II.4 A.** Said Abbayye to R. Joseph, "Here you have the opinion of R. Judah, there you have the opinion of R. Hisda, so which one do you adopt?"

- B. *He said to him, "I know a pertinent Tannaite formulation, for it has been taught on Tannaite authority: [96A] If one was checking a keg of wine from time to time in order to use it as heave-offering for other wine which came into his possession, and it was found to be vinegar, as to wine for which this keg was to serve as heave-offering that had been designated as such for the preceding three days it is certain that it had already become vinegar; from this time and retroactively, there is a doubt as to whether or not the wine had already become vinegar [T. Ter. 4:8H-J]."*
- C. *What is the meaning of the foregoing?*
- D. *Said R. Yohanan, "This is what it means: For the entirety of the first three days, it is certainly good wine. From that point forward, its status is subject to doubt. How come? Wine deteriorates from the top [spreading downward], and this man has tasted the wine and made sure it had not gone sour. If you should propose to argue that after the man tasted it, it went sour, then it would have had the smell of vinegar and the taste of wine, and in any case in which you have the scent of vinegar and the taste of wine, you classify the contents as wine."*
- E. *And R. Joshua b. Levi said, "For the final three days prior to the discovery that the wine had turned, it is certainly vinegar. As to the days prior to that span of time, the matter is subject to doubt. How come? Wine turns from the bottom, so I say that it had turned but the owner did not know it. And if you say that the wine turns from the top, since the owner tasted it and made sure it had not then deteriorated, one might argue that it turned right after he tasted it, therefore giving out the smell of vinegar and the taste of wine, and wherever you have the smell of vinegar and the taste of wine, it is vinegar."*
- F. *The authorities of the South [in the Land of Israel] repeated in the name of R. Joshua b. Levi, "During the first three days it is certainly wine; during the last three days, it is certainly vinegar. The status of the wine during the intervening days is subject to doubt."*
- G. *There is a problem in the body of the above formulation. You have said, During the first three days it is certainly wine, and therefore where the scent is vinegar and the taste wine, we classify it as wine. Then you have said, during the last three days, it is certainly vinegar, and therefore when the scent is vinegar and the taste wine, we classify it as vinegar.*



H. *The second clause addresses a case in which the wine is a strong vinegar, so it could not have lost its taste during the three prior days, for if it had, it would not be such a strong vinegar. [Slotki: The deterioration must consequently have commenced six days previously; in the first three of these six days it was still regarded as wine, for his opinion, like Yohanan's, is that the odor alone does not deprive the wine of its classification; during the last three of these six days, both scent and taste were vinegar, hence his decision is that in such a case, during the last three days, it is regarded as certainly vinegar.]*

- I. *In accord with which of the two authorities did R. Joseph answer [Abbayye]?*  
J. *There was a dispute in this connection between R. Mari and R. Zebid. One said, "In accord with R. Yohanan," and the other said, "In accord with R. Joshua b. Levi."*

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

- B. He who sells wine to his fellow and it turned sour —  
C. Said Rab, "During the first three days after the sale, it is regarded as still in the domain of the seller, after that, it is regarded as in the domain of the purchaser [who now has no claim of compensation]."  
D. **[96B]** And Samuel said, "'Wine jumps over the shoulder of the owner' [who has no claim on the seller]."  
E. *R. Joseph made a concrete decision involving a case of beer in accord with the position of Rab and another involving a case of wine in accord with the position of Samuel.*  
F. *And the decided law accords with the position of Samuel.*

**Defining Wine**

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

- B. All the same are beer made of dates, beer made of barley, and beer made of lees of wine, the proper benediction is, "...by whose word all things come into being."  
C. Others say, "As to beer made from the lees that have the flavor of wine, the correct benediction is, '...who has created the fruit of the vine.'"  
D. *Both Rabbah and R. Joseph say, "The law does not accord with the position of 'others say.'"*  
E. *Said Raba, "Everyone concurs that if three jugs of water were poured into the lees and four came out, the liquid is classified as wine."*



- F. *Raba is consistent with his principle, for said Raba, “In any case in which wine cannot stand a mixture of three parts of water to one part of wine, that is not wine.”*
- G. *If three parts of water were put into lees and three came out, all concur that that is not wine. Where there is a dispute, it is in a case in which one put in three parts of water and three and a half came out. Rabbis there maintain that since three went in and three came out with only half left over, and one half out of six halves of water is nothing, that is nothing. The others maintain that for the three put in, only two and a half came out, so a complete jug is left over, and a jug of wine in two and a half of water is acceptable wine.*
- H. *But is there a dispute in the case in which more than the quantity put in has come out? Have we not learned in the Mishnah: [97A] He who was making wine-vinegar [steeping stalks and skins of pressed grapes in water or pouring water into lees] and put in water by measure and got the same quantity of liquid back is exempt from having to separate tithes. And R. Judah declares him liable [M. Ma. 5:6]? So it follows that there is a dispute only in a case in which what is put in is taken out, but not where more than what is put in is taken out?*
- I. *No, the same disagreement pertains even where more than what is put in is taken out, but the reason that they dispute the case in which only what is put in is taken out is to show how far R. Judah is willing to go [Slotki: in holding that even when only the quantity put in has been extracted, it is nevertheless subject to tithe].*

**II.7 A.** *R. Nahman bar Isaac raised this question to R. Hiyya bar Abin, “Lees that have the taste of wine — what is the law?”*

B. He said to him, “Do you think this might ever be wine? It is a mere [Slotki:] acidiferous liquor.”

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

B. Lees of wine in the status of heave-offering [that have been mixed with water] — [the mixture resulting from] the first and the second infusions of water is forbidden to ordinary folk, but the third is permitted.

C. R. Meir says, “Even the status of the result of the third infusion is determined by whether or not the lees impart the flavor of wine to the whole of the mixture.”

- D. And lees of wine in the status of first tithe — the result of the first infusion of water is forbidden, the result of the second is permitted.
- E. R. Meir says, “Even the status of the result of the second infusion is determined by whether or not the lees impart the flavor of wine to the whole of the mixture.”
- F. And as to the mixture of the lees of Holy Things — the result of the third infusion of water is forbidden, and the fourth is permitted.
- G. R. Meir says, “Even the status of the result of the fourth infusion is determined by whether or not the lees impart the flavor of wine to the whole of the mixture.”
- H. *An objection was raised:* The result of what is mixed with Holy Things is forbidden under all circumstances, and the result of what is mixed with tithe is permitted. *So there is a contradiction between the two rules that cover infusions with Holy Things, and there also is a contradiction between the two rules that cover infusions with tithe.*
- I. *There is no contradiction between the two rules that cover infusions with Holy Things, the latter speaks of what is sanctified in itself, the former of what is sanctified as to its value. And there also is no contradiction between the two rules that cover infusions with tithe, the former rule speaks of produce that is beyond doubt in the status of tithe, and the latter addresses produce the status of which in respect to tithe is subject to doubt.*

**II.9 A.** Said R. Yohanan in the name of R. Simeon b. Yehosedeq, “Just as they have stated the rule with regard to the prohibitions affecting such mixtures, so they have stated the rule with respect to their imparting fitness [or: being made fit] to receive uncleanness.”

- B. *In what regard is there an issue of their being made fit to receive uncleanness? If the infusion is classed as water, then of course they impart fitness to receive uncleanness [being liquid capable of doing just that in line with Lev. 11:34, 37], and if the infusion is classed as wine, it also imparts fitness to receive uncleanness [being liquid capable of doing just that in line with Lev. 11:34, 37].*
- C. *Well, as a matter of fact, the rule is required to deal with the case of wine vinegar [stalks and skins of pressed grapes steeped in water] made out of rain water [which does not impart susceptibility to uncleanness if it is not wanted, but which does if it is].*
- D. *Since the man has taken the water and poured it into the utensil containing the lees, he certainly gave thought to use of the rain water, so there will be*

*no difference between wine and water. [So what need is there for this statement?]*

- E. *The statement is required to address the case of that which formed wine vinegar on its own.*
- F. *Well, since the man draws out the infusions in sequence, does he not thereby give thought to making use of them in sequence?*
- G. Said R. Pappa, “We deal with a case in which a cow drank the infusions one by one, [so we don’t know what the owner would have thought].” [Slotki: In such a case there is a difference whether the infusion is regarded as wine effecting fitness for uncleanness or as water, not doing so; if the cow drank only the first infusion, the law applies to the second; if it drank the second, the law is regard for the third.]

**II.10 A.** Said R. Zutra bar Tobiah said Rab, “They recite the Sanctification of the Sabbath Day or Festival Day only over wine that is suitable for being used as a libation on the altar.”

- B. *So what does this exclude? Should we say that it is to exclude wine that comes from the vat [which is too fresh], has not R. Hiyya taught as a Tannaite statement: Wine from the vat one should not bring to the altar, but if he has brought it as a libation offering, it is valid. And since if one has presented it, it is valid, we, too, even to begin with may use it for our purposes. [97B] For said Raba, “A man may press out a grape cluster and recite over the juice the Sanctification of the Day.”*
- C. *And if it is to exclude wine at the mouth of the jug or at the bottom [which would be mouldy or which would be mixed with the lees], did not R. Hiyya teach as a Tannaite statement: Wine from the mouth or the bottom one should not bring to the altar, but if he has brought it as a libation offering, it is valid.*
- D. *And if it is to exclude black or white or sweet or cellar or raisin wine, has it not been taught on Tannaite authority: These are not to be presented for libation wine, but if presented, they are valid?*
- E. *And if it is to exclude wine that is pungent, mixed, left exposed, made of lees, or that stinks, has it not been taught on Tannaite authority: These are not to be presented for libation wine, but if presented, they are not valid?*
- F. *Then which of those listed does the present statement exclude? If pungent, this is subject to dispute between R. Yohanan and R. Joshua b. Levi; if mixed, then if it is mixed with water, it is improved, for said R. Yosé b. R. Hanina, “Sages concur with R. Eleazar that as to the cup of grace after meals, they do not say a blessing over it until water has been poured into it.”*

- G. *If it is to exclude wine that has been left exposed, anyhow this is dangerous. If it is to exclude wine made of less, then how is this to be understood? If three parts were poured in and four came out, it is good wine; if three were poured in and three and a half came out, it is subject to the dispute between rabbis and “others say.”*
- H. *Well, as a matter of fact, this is what the statement excludes: it is wine that stinks.*
- I. *And if you prefer, I shall say that in point of fact it is to exclude wine that has been left exposed, and even though it has been strained in line with what R. Nehemiah said [which is that straining the wine will remove the impurities, e.g., snake venom, that may have gotten into the exposed wine], still, it may not be used for this purpose: “Present it now to your governor, will he be pleased with you? or will he accept your person” (Mal. 1: 8).*

**II.11 A.** *R. Kahana, father in law of R. Mesharshayya, asked Raba, “What about white wine?”*

- B. He said to him, ““Do not look at wine when it is red (Pro. 23:31) [only red wine is really wine].”

**III.1 A.** **[If he bought] jars in Sharon, he must agree to accept ten faulty ones per hundred:**

- B. *It has been taught as a Tannaite statement:*
- C. The bad ones are thin and lined with pitch [following Slotki].

I.1 complements the Mishnah’s rule with a Tannaite entry. No. 2 refines the way in which the law is enforced. This leads to a clear exposition of the underlying principles of the law before us. II.1 clarifies the case to which the Mishnah’s rule pertains. No. 2 then raises a secondary question, following upon the result of No. 1. The entire, coherent set, Nos. 3+4-5, 6-11 is tacked on because of the prior reference to wine that is sold in a shop. III.1 tacks on a minor gloss.

### 6:3

- A. **He who sells wine to his fellow that went sour, is not liable to make it up.**
- B. **But if it was known that his wine would turn sour, lo, this is deemed a purchase made in error [and null].**
- C. **And if he had said to him, [98A] “I’m selling you spiced wine,”**
- D. **he is liable to guarantee it [and make it up if it goes sour] up to Pentecost.**
- E. **[If he said it is] old [wine, it must be] last year’s.**
- F. **[If he said it is] vintage old [it must be] from the year before last.**

**I.1 A.** [He who sells wine to his fellow, and it went sour, is not liable to make it up.

**But if it was known that his wine would turn sour, lo, this is deemed a purchase made in error and null:]** said R. Yosé bar Hanina, “The law applies only where the wine is in the jugs of the buyer, but if it is in the jugs of the seller, he can say to you, ‘Take your wine and take your jugs.’” [The buyer has no responsibility for what has happened.]

- B. *But even if the jugs belong to the seller, what difference does that make anyhow? The seller can still say to the buyer, “You shouldn’t have kept it for such a long time.”*
- C. *The clarification is required to deal with a case in which he said to him, “I’m buying it to prepare food with it [so I need wine that will last long in the bottle].”*
- D. *Then what requires R. Yosé bar Hanina to interpret the Mishnah paragraph to deal with a case in which the jugs belong to the purchaser, who has informed the seller that he needs the wine for preparing food? Let him interpret the Mishnah to speak of a case in which the jugs belong to the seller, and in which instance he did not say that he needed the wine for preparing food!*
- E. *Said Raba, “Our Mishnah paragraph contained this difficulty for him: **But if it was known that his wine would turn sour, lo, this is deemed a purchase made in error and null.** Now why should that be so? Let him say to him anyhow, ‘You should not have kept it so long!’ So does it not follow that the rule deals with a case in which he said to him, ‘I am buying it for preparing food’?”*
- F. *It most certainly does follow.*
- G. [Slotki: That our Mishnah speaks of wine in the buyer’s jugs and that, if it had remained in the seller’s jugs, the latter would have been responsible] *differs from the view of R. Hiyya bar Joseph, for said R. Hiyya bar Joseph, “What happens to wine depends solely on the luck of the owner. For it is said, ‘Yes, moreover, wine is treacherous, if the man is haughty’ (Hab. 2: 5).”*

**I.2 A.** Said R. Mari, “Someone who is arrogant is not acceptable even in his own household: ‘A haughty man abides not’ (Hab. 2: 5) — A haughty man abides not — even in his own household.”

**I.3 A.** What is the meaning of “And he abides not”?

- B. Said R. Judah said Rab, “Whoever takes pride in wearing the cloak of a disciple of the sages but is not really a disciple of the sages — they will not bring him in to the circle of the Holy One blessed be He. Here it is written, ‘and abides not’ (Hab. 2: 5), and there, ‘to your holy abode’ (Exo. 15:13).”

- I.4 A.** *Said Raba, “Someone who sold a jug of wine to a shopkeeper to retail it, and while there was a half or a third of the jug, the wine turned sour — the law is that he has to take it back from him.*
- B. *“And we have made that statement only in a case in which the shop keeper has not changed the bung hole, but if he has changed the bung hole, then that rule does not apply.*
- C. *“And we have made that statement only when the market day has not come, but if the market case has already come, that is not the rule.”*
- I.5 A.** *And said Raba, “Some who accepted wine with the intent of taking it to the market of Belshafat, but by the time he got there, the price went down, the law is that the owner must accept it [Slotki: bearing the loss in value as compared with the price prevailing at the time that the wine was accepted, since all the time the wine remained in his ownership].”*
- B. *The question was raised: If the wine turned into vinegar [before getting to market], what is the law?*
- C. *Said R. Hillel to R. Ashi, “When we were in the household of R. Kahana, he said to us, ‘If it turned into vinegar, the owner does not bear the whole of the loss, for the law does not accord with the ruling of R. Yosé bar Hanina. Others say, ‘Even if it turned into vinegar, the seller bears the whole of the loss, in accord with the opinion of R. Yosé bar Hanina.’”*

**II.1 A.** [If he said it is] old [wine, it must be] last year’s.

- B. **[98B]** *A Tannaite statement: Wine sold as “vintage” must last to Tabernacles [three complete years (Slotki)].*

I.1 begins with a clarification of how the law of the Mishnah paragraph applies. The little composite that follows, Nos. 2-3, is tacked on for obvious reasons. Nos. 4, 5 supplement the law of our Mishnah paragraph. II.1 is a light gloss, but making an important statement.

**6:4**

- A. **“He who sells a piece of property to his fellow for building a house,**
- B. **“and so, he who contracts with his fellow to build a nuptial house for his son or a widow’s manse for his daughter —**
- C. **“[The contractor] builds it four cubits by six,” the words of R. Aqiba.**
- D. **R. Ishmael says, “That would be little more than a cattle shed!”**
- E. **(1) He who wants to build a cattle shed builds it four cubits by six.**

- F. (2) [If he wants to build] a small house, it is six by eight.
- G. (3) [If he wants to build] a large house, it is eight by ten.
- H. (4) [If he wants to build] a hall, it is ten by ten.
- I. The height is [the sum of] half its length and half its breadth.
- J. Proof of the matter is the sanctuary [1Ki. 6:17: 40 x 20 x 30].
- K. Rabban Simeon b. Gamaliel says, "Is everything [supposed to be] in accord with the way in which the sanctuary is built?"

**I.1 A.** [And so, he who contracts with his fellow to build a nuptial house for his son or a widow's manse for his daughter:] *what need do I have for the formulation, and so, he who contracts with his fellow to build a nuptial house for his son or a widow's manse for his daughter and not 'a nuptial house for his son or daughter or a manse for his son or daughter'?*

B. *The formulation of the Mishnah paragraph in this manner serves to teach, tangentially, that it is not appropriate for a son-in-law to live at the household of his father-in-law, as is written in the book of Ben Sira [11:8]: "I have weighed everything in the balance and found nothing lighter than bran; but lighter than bran is the son-in-law who lives in the household of his father-in-law; lighter even than a son-in-law who does that is a guest who brings in another guest; and lighter than a guest who brings a guest along is one who answers before he hears the question: 'He that gives an another before he hears is a fool and full of confusion' (Pro. 18:13)."*

**II.1 A.** R. Ishmael says, "That would be little more than a cattle shed." He who wants to build a cattle shed builds it four cubits by six:

B. *What authority stands behind the statement, He who wants to build a cattle shed builds it four cubits by six?*

C. *There are those who say that it is R. Ishmael, and there are those who say that it is R. Aqiba.*

D. *There are those who say that it is R. Aqiba, and this is the sense of his statement: "Even though the size is like that of an ox stall, sometimes someone will make his dwelling like an ox stall."*

E. *There are those who say that it is R. Ishmael, and this is the sense of his statement: "Someone who wants to make an ox stall makes it four by six."*

**III.1 A.** [If he wants to build] a hall, it is ten by ten:

B. *What is the definition of a hall?*



- C. It is [Slotki:] *an arched hall adorned with roses.*
- D. *A Tannaite statement: A centenar is twelve cubits by twelve [T. B.B. 6:24A].*
- E. *What in the world is a centenar?*
- F. *It is the fore-court of a mansion.*

**IV.1 A.** **Proof of the matter is the sanctuary [1Ki. 6:17: 40 x 20 x 30].** Rabban Simeon b. Gamaliel says, “Is everything [supposed to be] in accord with the way in which the sanctuary is built”:

- B. *As to, proof of the matter is the sanctuary [1Ki. 6:17: 40 x 20 x 30], which authority stands behind that statement?*
- C. *Some say, “Rabban Simeon b. Gamaliel stands behind that statement, and this is the sense of the matter: What is the proof of the matter is the sanctuary [1Ki. 6:17: 40 x 20 x 30]. Rabban Simeon b. Gamaliel says, ‘Everything is [supposed to be] in accord with the way in which the sanctuary is built.’”*
- D. *Others say, “It was the initial Tannaite authority who made that statement, and Rabban Simeon b. Gamaliel found it surprising and so he said to him, ‘What sort of proof is there for that statement? Is everything is [supposed to be] in accord with the way in which the sanctuary is built?’”*

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

- B. *Others say, “The height must be the same as the length of the beams [Slotki: laid across the width of the house].”*
- C. *Why not just say, the height must be the same as the width?*
- D. *If you wish, I shall say, a house is wider at the top; and if you wish, I shall say, because there are the holes in the wall [for the beams].*

### **The Dimensions of the House of the Sanctuary**

- IV.3 A.** *R. Hanina went out to the villages, where the following contradiction between Scripture verses was addressed to him: “It is written, ‘And the house that King Solomon built for the Lord, the length thereof was threescore cubits and the breadth twenty cubits and the height thirty cubits’ (1Ki. 6: 2), and also, ‘And before the sanctuary which was twenty cubits in length and twenty cubits in breadth and twenty cubits in the height thereof’ (1Ki. 6:20). [So it was twenty, not thirty cubits high.]”*
- B. *He said to them, “The latter verse takes the measure from the edge of the cherubim [ten cubits in height] upwards.”*
  - C. *“And what does this teach us?”*



- D. [99A] *“Lo, this teaches us that the space below was like the space above. Just as the space above served no purpose, so the space below served no purpose.”*

**IV.4 A.** *That supports the view of R. Levi, for said R. Levi, and some say, R. Yohanan, “This teaching we have in hand as a tradition from our fathers: The place of the ark and Cherubim is not reckoned in the measured space.”*

B. *So, too, it has been taught on Tannaite authority:*

C. *The ark that Moses made had a free space of ten cubits on all sides.*

**IV.5 A.** *Said Rabbanai said Samuel, “The Cherubim that Solomon made stood by a miracle: ‘And five cubits was the one wing of the cherub and five the other, from the uttermost part of the one wing to the uttermost part of the other were ten cubits’ (1Ki. 6:24) — so where were the bodies standing? So it must follow that the Cherubim that Solomon made stood by a miracle.”*

B. *To this proposition objected Abbaye, “But maybe they stood with the bodies protruding like hens [Slotki: with the wings touching on the backs, the entire bodies being covered by the wings]?”*

C. *To this proposition objected Raba, “But maybe they stood not opposite one another [Slotki: their wings overlapping sideways]?”*

D. *To this proposition objected R. Aha bar Jacob, “But maybe they stood diagonally.”*

E. *To this proposition objected R. Huna b. R. Joshua, “The house might have been wider on top.”*

F. *To this proposition objected R. Pappa, “The wings might have been bent.”*

G. *To this proposition objected R. Ashi, “The wings might have overlapped.”*

**IV.6 A.** *How did the cherubim in the Holy of Holies stand?*

B. *R. Yohanan and R. Eleazar —*

C. *One said, “Each faced the other.”*

D. *And the other said, “Their faces were inward.”*

E. *But from the perspective of the one who said, “Each faced the other,” lo, it is written, “And their faces were inward” (2Ch. 3:13)?*

F. *That poses no problem. They faced each other when the Israelites did the will of the Omnipresent, and they faced outward when the Israelites did not do the will of the Omnipresent.*

G. *But from the perspective of the one who said, “Their faces were inward,” lo, it is written, “With their faces one to another” (Exo. 25:20).*

- H. *That means they were turned slightly to the side [partly facing one another, partly turning inward], as it has been taught on Tannaite authority: Onqelos the convert said, “The cherubim were ‘image work’ (2Ch. 3:10), and their faces were slightly turned sideways, as a student who takes his leave of his master.”*

I.1 conducts an important exercise in criticism of the Mishnah’s formulation. II.1 shows the links between two sentences of the Mishnah. III.1 explains the meaning of a word in the Mishnah. IV.1 goes through the exercise of identifying the authority behind a statement of the Mishnah. No. 2 provides a Tannaite gloss to the foregoing. No. 3, carrying Nos. 4-6 in its wake, forms a supplement to a theme of the Mishnah.

### 6:5

- A. **He who has a cistern behind his fellow’s house goes in when people usually go in and goes out when people usually go out.**
- B. **And he may not bring his cattle in and water them from his cistern.**
- C. **But he draws water and waters them outside.**
- D. **This party makes himself a lock, and that party makes himself a lock.**

**I.1 A. [This party makes himself a lock:]** *as to the lock, where is it placed?*

- B. Said R. Yohanan, “Both of them are attached to the cistern.” [Slotki: The lock of the owner of the cistern and the lock of the owner of the house.]
- C. *Well, that is no problem with respect to the owner of the cistern, because he has to guard the water of his cistern. But why does the householder have to have a lock too?*
- D. Said R. Eleazar, **[99B]** “This protects his wife from suspicion” [should the other use the cistern in his absence; he then has no right to enter his house while his wife is alone (Slotki)].

I.1 glosses the Mishnah’s rule.

### 6:6

- A. **He who has a vegetable patch behind the vegetable patch of his fellow goes in when people usually go in and goes out when people usually go out.**
- B. **And he does not bring in merchants.**
- C. **And he may not go in to it through another field.**
- D. **And [the owner of] the outer [patch] sows seeds on the pathway.**
- E. **[If others] have given him a path on the side with the knowledge and consent of both parties,**

- F. he goes in whenever he wants and goes out whenever he wants and brings merchants in with him.**
- G. But he may not go in through another field.**
- H. And neither one of them has the right to sow seed [on the path].**

**I.1 A.** Said R. Judah said Samuel, “‘Land the width of a cubit for an irrigation canal I am selling to you’ — he has to assign to him in addition to the cubit for the canal two cubits of land in the field itself, one on either side of the canal, for the banks. ‘Ground the width of one cubit I am selling to you for a pond’ — he must assign to him one cubit of ground in the courtyard itself, half on either side of the bond, for the banks.”

B. Who sows the banks?

C. [Said] R. Judah said Samuel, “The owner of the field sows the banks.”

D. Said R. Nahman said Samuel, “The owner of the field plants them.”

E. *The one who said “sows them” all the more so concurs that he may plant them, but the one who said, “plant them,” maintains the opinion that he may now sow them, since the roots will penetrate into the canal.*

- F. And said R. Judah said Samuel, “A water canal [belonging to one party, while the field belongs to another (Slotki)] the banks of which have been worn away — one repairs it from the dirt of that field through which it runs, since it is an established fact that the banks have been washed away only into that same field.”
- G. *Objected R. Pappa, “Why can’t the owner of the field say, ‘Your water lowered your ground’?”*
- H. Rather, said R. Pappa, “The operative consideration is that the owner of the field accepted that stipulation to begin with.”

I.1 provides a supplementary case for the Mishnah’s rule.

## 6:7

- A. He who had a public way passing through his field,**
- B. and who took it away and gave [the public another path] along the side,**
- C. what he has given he has given.**
- D. But what is his does not pass to him.**
- E. (1) A private way is four cubits wide.**
- F. (2) A public way is sixteen cubits wide.**

- G. (3) An imperial road is without limit.
- H. (4) A path to the grave is without limit.
- I. (5) A place for halting [and mourning] —
- J. The judges of Sepphoris said, “It should be four qabs of space.”

- I.1 A. [He who had a public way passing through his field, and who took it away and gave the public another path along the side, what he has given he has given. But] what is his does not pass to him — *why not? Let him just go and take a whip and sit down [and guard the path! That then yields the inference that someone has not got the right to take the law into his own hands — even where he will suffer a loss. [But we know as fact that one may do so.]*”
- B. Said R. Zebid in the name of Raba, “In this case it is a precautionary decree [not permitting him to substitute another path for one already grabbed by the public], lest he hand over a crooked [and inconvenient] one.”
- C. R. Mesharshayya said in the name of Raba, “We deal with a case in which he assigned them a crooked path. [Slotki: But if he gave the public a straight path, he may take possession of the old one and use force against any trespassers.]”
- D. [100A] R. Ashi said, “[We do not deal with a case in which he assigned them a crooked path, since] any path that runs at the side of a field is classified as crooked, being near one side and far from the other.”

- II.1 A. [What he has given he has given. But what is his does not pass to him:] but why can’t he say to them, “Take what’s yours and give me back what’s mine?”
- B. *Lo, who is the authority behind this rule? It is R. Eliezer. For it has been taught on Tannaite authority:* R. Judah says in the name of R. Eliezer, “If the public selected a path for themselves, what they have chosen is theirs.”
- C. *Yeah, well then in R. Eliezer’s opinion can the public just rob somebody like that?*
- D. Said R. Giddal said Rab, “We deal with a case in which, for instance, a path belonging to the public had been lost in that field.”
- E. *If so, then why did Rabbah bar R. Huna say Rab said,* “The law is not in accord with the position of R. Eliezer”?
- F. *The authority who repeated the former Tannaite statement is not the one who repeated the other [Giddal and Rabbah do not concur on Eliezer’s position].*
- G. *And what is the operative consideration behind the rule of our Mishnah paragraph?*

H. *It is on account of what R. Judah said, for said R. Judah, "A path that the public has taken over is not to be disrupted."*

**II.2 A.** *And from the perspective of R. Eliezer, precisely how has the public effected title to the land?*

B. *It is through walking on it. For it has been taught on Tannaite authority: "If one walked on the property through its length and breadth, he has acquired title to the area on which he walked," the words of R. Eliezer.*

C. *And sages say, "The mere act of walking does not produce any effect, unless one will take proper possession of the land through an act of usucaption."*

D. *Said R. Eleazar, "What is the scriptural basis of the position of R. Eliezer? As is written, 'Arise, walk through the land in the length of it and in the breadth of it, for I will give it to you' (Gen. 13:17)."*

E. *And sages?*

F. *That statement was made to him only because of his affection for Abraham, so that, later on, his children might more easily conquer the land.*

**II.3 A.** *Said R. Yosé bar Hanina, "Sages concur with R. Eliezer in the case of a path that runs through vineyards, since it was made only for walking, an appropriate act of usucaption is walking."*

**II.4 A.** *When a case came before R. Isaac bar Ammi, he said to them, "Give him a path wide enough so he may carry a load of twigs and be able to turn around.*

B. *"But we have made that statement only in a case in which walls mark out the path. But when walls do not mark out the path, then the width of it may be merely sufficient to permit him to lift up one foot and put down the other."*

**III.1 A.** **A private way is four cubits wide:**

B. *It was taught on Tannaite authority:*

C. *Others say, "Enough so that an ass with its load may pass."*

D. *Said R. Huna, "The decided law accords with 'others.'"*

E. *The judges of the exile say, "Two and a half cubits."*

F. *And said R. Huna, "The decided law is in accord with the judges of the exile."*

G. *But did not R. Huna say, "The decided law accords with 'others'?"*

H. *This party and that party in point of fact speak of precisely the same measure.*

**IV.1 A.** **A public way is sixteen cubits wide:**

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

- C. A private path is four cubits wide. A path from town to town is eight cubits. **[100B]** A public path is sixteen. The path to the cities of refuge, thirty-two.
- D. *Said R. Huna, "What verse of Scripture proves it? 'You shall prepare the way for yourself' (Deu. 19: 3) — not 'a way' but 'the way.'"*

**V.1 A. An imperial road is without limit:**

- B. For the king may cut through a road and no one can stop him.

**VI.1 A. A path to the grave is without limit:**

- B. *This is on account of the honor owing to the dead.*

**VII.1 A. A place for halting [and mourning] — the judges of Sepphoris said, "It should be four qabs of space":**

- B. *Our rabbis have taught on Tannaite authority:*
- C. He who sells his grave plot and the road to his grave or the halting place [where people stop for consolation on returning from a burial] and the place in which the lamentation is to be said — the members of his family come and bury them by force, so as not to reflect badly on the family.

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

- B. They arrange no fewer than seven stoppings and sittings for a funeral cortege, corresponding to "Vanity of vanities, says Qohelet, vanity of vanities, all is vanity" (Qoh. 1: 2).
- C. *Said R. Aha b. Raba to R. Ashi, "So what do people do?"*
- D. *He said to him, "It is in line with that which has been taught on Tannaite authority: Said R. Judah, 'In Judea, at first they would arrange no fewer than seven standings and sittings for the funeral cortege: 'Stand, dear ones, stand up,' 'sit down, dear ones, sit down.' They said to him, 'Well, if that's all right, then that procedure should be permitted also on the Sabbath.'"*

**VII.3 A.** *The sister of Rammi bar Pappa was married to R. Avya. She died. He arranged for her a cortege involving standings and sittings. Said R. Joseph, "He erred in two aspects. He erred, for they arrange such a thing only for one's near relations, and he held it for a distant one; and he erred in that these were instituted only for the first day of the burial, and he arranged them for the second."*

- B. *Said Abbaye, "He erred in a further aspect, specifically, these are done only in the graveyard, but he did them in town."*

- C. *Raba said, "He erred in a further aspect, specifically, these are done only in a locale in which they are customary, but that was not a place where this was customary."*
- D. *An objection was raised to the foregoing: They said to him, "Well, if that's all right, then that procedure should be permitted also on the Sabbath." Now if the rite is permitted only in the graveyard and only on the first day, then what in the world is the necessity of referring to the Sabbath with reference to a graveyard [when there is no burial on the Sabbath anyhow]?*
- E. *Reference is made here to a town near the graveyard, and the dead was brought out at twilight.*

I.1 explains the consideration operative in the Mishnah's rule. II.1 explains the logic of the Mishnah's rule. Nos. 2, 3, 4 gloss the foregoing. III.1-VII.1 provide Tannaite or other complements to the Mishnah. No. 2 adds another Tannaite complement. No. 3 proceeds to a case pertinent to the foregoing.

## 6:8

- A. **He who sells a piece of property to his fellow for making a [family] grave —**
- B. **And so, he who receives [a piece of property] from his fellow for making a [family] grave —**
- C. **[The contractor] makes the central space of the vault four cubits by six,**
- D. **and he opens in it eight niches,**
- E. **three on one side, three on the other side, and two at the end.**
- F. **And the niches are to be four cubits long, seven cubits high, [101A] and six cubits broad.**
- G. **R. Simeon says, "[The contractor] makes the inside of the vault six cubits by eight,**
- H. **"and he opens in it thirteen niches:**
- I. **"four on one side, four on the other side, three at the end, and one at [facing] the right of the door, and one at [facing] the left of the door.**
- J. **"And [the contractor] makes a courtyard at the mouth of the vault, six by six —**
- K. **"Space for the bier and those who bear it."**
- L. **And he opens in [the courtyard] two other vaults, one on one side, and one on the other.**

M. R. Simeon says, “Four, in all four directions.”

N. Rabban Simeon b. Gamaliel says, “All depends on the nature of the rock.”

**I.1 A.** [And one at [facing] the right of the door, and one at [facing] the left of the door:] *as to these two niches, where are they to project? If outwards [Slotki: under the floor of the court], then people will walk on them, and furthermore, lo, we have learned in the Mishnah: The fore-court of the tomb vault — he who stands in its midst is clean, [so long as there will be in it: “four cubits,” in accord with the words of the House of Shammai. The House of Hillel say, “Four handbreadths”] [M. Oh. 15:8A-D].* [Slotki: But if the graves were projecting into the court, he would become unclean on account of walking on these graves.]

B. *Said R. Yosé b. R. Hanina, “They are made like a door bolt.”* [Slotki: The chambers are dug vertically and the bodies are put in upright.]

C. But lo, said R. Yohanan, **[101B]** “That’s how they bury asses.”

D. *In the view of R. Yohanan, they are made in the corners* [Slotki: formed by the wall facing the entrance and the respective two walls adjacent to it].

E. *But lo, the chambers are going to touch each other!*

F. *Said R. Ashi, “One deepens them. [Slotki: The deeper one digs into the corner in a slanting direction, the further the distance between the corner chambers and those adjacent to them.] For if you don’t say this, then how, according to R. Simeon, are four grottos to be constructed? Surely some of the chambers would be touching each other. But that is avoided by digging deeper some chambers than others, and here, too, some of the chambers are dug deeper than the adjacent ones.”*

G. *R. Huna b. R. Joshua said, “From R. Simeon’s perspective, the chambers in the four grottos will be in the shape of palm twigs”* [Slotki: fan shaped, and this would avoid overlapping or coalescing and the necessity for deeper digging].

H. *But this statement of R. Huna b. R. Joshua is fabricated, for [Slotki:] every cubit square has a diagonal of a cubit and two-fifths. The diagonal of the square formed by the adjacent walls of any two grottos measures eleven cubits and a fifth. Is not the number of the chambers eight? How then is it possible to make eight chambers in a width of eleven cubits and a fifth. So that statement of R. Huna b. R. Joshua is fabricated.*



- I. *If you like, I shall say, “It is in accord to the case of R. Shisha b. R. Idi with regard to miscarriages, and here, too, the chambers are for the burial of miscarriages [and so not much space is needed].*

**II.1 A. [R. SIMEON SAYS, “AND THE CONTRACTOR MAKES A COURTYARD AT THE MOUTH OF THE VAULT, SIX BY SIX — SPACE FOR THE BIER AND THOSE WHO BEAR IT:”]** *There we have learned in the Mishnah: A man who finds a corpse, lying in usual fashion, in the first instance — removes it and the soil around it. [If] one found two, he removes them and their soil. [102A] [If] one found three, if there are four cubits between this and that one, and up to eight, about enough space for the bier and its bearers — lo, this is a graveyard. One examines [the ground] from it and onward for twenty cubits. [If] one found one at the end of twenty cubits, he examines [the ground] from it and onward [another] twenty cubits, for there is a basis for the matter, although if one had found it in the first place, he removes it and its soil [M. Oh. 16:3].*

- B. A master said, **“If there are four cubits between this and that one, and up to eight, about enough space for the bier and its bearers — lo, this is a graveyard”:** *lo, who is the authority behind this statement? It can hardly be rabbis, for lo, they have said, “The area of the grotto is four by six,” and it can hardly be R. Simeon, who has said, “The area is six by eight.”*

- C. *Well, as a matter of fact, it is R. Simeon, and it is in accord with the following Tannaite account of R. Simeon’s position, as has been taught on Tannaite authority: If one found them close together, without a space of from four to eight cubits between them, while the earth surrounding the bodies is assigned to them, still, they do not together constitute a graveyard. R. Simeon b. Judah says in the name of R. Simeon, “We regard the bodies in the middle as they they were not present, and the rest combines [to form a graveyard], if the distance then is four to eight cubits.”*

- D. *How have we then explained the cited passage of the Mishnah? In accord with R. Simeon? Then let us examine what follows: [If] one found one at the end of twenty cubits, he examines [the ground] from it and onward [another] twenty cubits, for there is a basis for the matter, although if one had found it in the first place, he removes it and its soil. Who can this be? Surely not R. Simeon, for then the distance should be twenty-two [Slotki: the length of the court is six cubits, and the length of each of the two grottos is eight]; and if it were the rabbis, it should be eighteen [Slotki: the length of each grotto is six and of the court six].*

- E. *In point of fact, it is in accord with rabbis, but it would be a case in which he examined the ground on a diagonal path.* [Slotki: Though the length of the grotto is only six cubits, the diagonal of the area of the graves would be longer; the diagonal of four by six is more than seven cubits in length, roughly eight cubits; add the length of the court, six cubits, and the length of the corresponding grotto, six, and the total obtained is roughly twenty.]
- F. *Well, if one grotto is searched diagonally, the other also is searched diagonally, so the distance should be twenty-two* [Slotki: eight for the diagonal of each grotto, six for the court].
- G. *One diagonal search we may concede, but two we do not concede.*
- H. **[102B]** *R. Shisha b. R. Idi said, “In point of fact, it represents the view of R. Simeon* [Slotki: who requires the area of a grotto for adults to be six by eight] *[but here we deal with a burial place for miscarriages”* [where the grotto is six cubits, so it would be six for miscarriages and eight for adults on one side, plus six on the other, a total of twenty (Slotki)].
- I. *Well, if one is for miscarriages, so should the other, yielding eighteen cubits?*
- J. *One grotto for miscarriages we may concede, but two we do not concede.*
- I.3 A.** *Now we may note a contradiction between two statements assigned to rabbis, and we may note a contradiction between two statements assigned to R. Simeon. For we have learned in the Mishnah: A vineyard which is planted by [intervals of] less than four cubits — R. Simeon says, “[It] is not [considered] a vineyard.” And sages say, “[It is considered] a vineyard.” And they [sages] regard the middle [rows] as if they are not [there] [M. Kil. 5:2]. Does not what rabbis say there [disregarding the intervening vines] conflict with what they say here, and does not R. Simeon’s statement there [counting all the vines] contradict what he says here [where he ignores the intervening corpses]?*
- B. *The two statements of R. Simeon do not contradict one another, for there, people do not plant vines planning to pull them up, but a burial may sometimes take place at twilight, and the corpse is put down only for the time being. There also is no contradiction between the two statements of rabbis. Since the body is treated improperly, the spot is not regarded as a grave, but there, the owner planing the vine will be thinking that whichever planting is sound will remain and whichever fails will be pulled up for firewood [and thus some of the vines are there only temporarily (Slotki)].*

I.1 provides an explanation for a rule of the Mishnah. No. 2 introduces a comparable Mishnah passage for comparison with the one at hand. No. 3 carries forward the foregoing.