

4

BAVLI BABA BATRA CHAPTER FOUR FOLIOS 61A-73A

4:1

- A. He who sells a house has not sold (1) the extension,
- B. even though [the extension] opens into [the house],
- C. (2) the room behind [the house],
- D. or (3) the roof, if it has a parapet ten handbreadths high.
- E. R. Judah says, "If it has the shape of a door, even though it is not ten handbreadths high, it is not [deemed to have been] sold."

I.1 A. *What is the definition of "the extension"?*

B. *Here it is rendered, "a veranda."*

C. *R. Joseph said, "A veranda partly open [latticed in]. One who maintains that a closed in verandah is not sold with the room will not doubt that an open one is not sold, but one who maintains that the verandah excluded is the open one would still include the closed in one with the sale."*

I.2 A. *R. Joseph repeated as a Tannaite formulation: "The extension has three names in Scripture, extension, side chamber, and lodge. Extension: 'the nethermost extension was five cubits broad' (1Ki. 6: 6); side chamber: 'the side chambers were in three stories, one over another, and thirty in order' (Eze. 41: 6); lodge, 'And every lodge was one reed long and one reed broad, and the space between the lodges was five cubits' (Eze. 40: 7).*

B. *“If you prefer, I can show that the verandah also is called lodge on the basis of the following: **The wall of the sanctuary was six cubits and the lodge was six and the wall of the lodge was five [Mid. 4:7].**”*

I.3 A. *Said Mar Zutra, “The rule [He who sells a house has not sold the extension] applies only if the veranda is four cubits square [in which case it is deemed a distinct structure].”*

B. *Said Rabina to Mar Zutra, “From your perspective, that it must be four cubits square, what about the following rule with reference to the cistern, concerning which we have learned in the Mishnah: **Nor [has he sold] (4) the cistern, or (5) the cellar, even though he wrote him [in the deed], ‘The depth and height.’** In this case, too, are we going to say that that is the case only if they are four cubits square but not otherwise?”*

C. *“What makes you think these are comparable!? The cistern and the cellar serve for a purpose different from the house, but the verandah and the house serve the same purpose. Accordingly: The rule [He who sells a house has not sold the extension] applies only if the veranda is four cubits square, but otherwise the rule does not apply.”*

II.1 A. *...the room behind [the house]:*

B. *Well, if he has not sold the extension [along with the living room], is there any case about the room behind the house?*

C. **[61B]** *In point of fact it was necessary to make this point, to show that, even if the seller drew the boundaries outside of the inner room, [the room is still is not sold].*

D. *That is in in line with what R. Nahman said, for said R. Nahman said Rabbah bar Abbuha, “He who sells a house to someone in a big tenement house, even if he draws the boundaries outside the whole house, we say he only drew the boundaries wide [even while selling only the apartment that he was offering on the market].”*

E. *Now how shall we imagine this matter? Should we say that the apartment is called an apartment and a tenement a tenement, it is obvious that this is the case. If the tenement is called an apartment, then he really is selling him the whole building!*

F. *In point of fact, it was necessary to make this point to cover a case in which while most people call an apartment an apartment and a tenement a tenement, some call a tenement an apartment. So I might have supposed that, in this case, if he exaggerates the boundaries, he means to sell him the whole thing. Therefore we are told that, since he might have put into the deed, “And I have not reserved for*

myself anything from this transfer,” and he did not put in that language, we assume he did reserve something” [which is the rest of the tenement (Simon)].

The Meaning of Language Used in Describing Real Estate for the Purpose of a Sale

The matching statement — concerning the same problem and expressing the same principle, now in a different case — presented in the names of the authorities just now cited is now introduced and explored in its own terms. The principle of the Mishnah’s statement remains the same, but the range of problems is entirely different from those treated by the Mishnah-paragraph.

- II.2** A. And said R. Nahman said Rabbah bar Abbuha, “He who sells a field to his fellow in a stretch of fields, even though he draws the outer boundaries around the whole, only sells the field, because we say that he is exaggerating the boundaries.”
- B. *Now how shall we imagine this matter? Should we say that a field is called a field, and a stretch of fields a stretch of fields? Then the rule is obvious. He sold him a field, not a stretch of fields. And if we deal with a case in which a stretch of fields is called a field? Then he sold him the whole thing!*
- C. *In point of fact it was necessary to make this statement to cover a case in which, while most people call a field a field and a stretch of fields a stretch of fields, some call a field a field and a stretch of fields a stretch of fields, while others may refer to a stretch of fields as a field. You might have supposed that in this case, he sells him the whole area. Therefore we are told that, since he might have included in the deed the language, “I have not reserved for myself anything from this transfer” but did not do so, we can assume he did reserve something. And that is not so.*
- II.3** A. *And it was necessary to make this point on both matters. For had we been told the rule concerning the apartment and the house, I might have supposed that, the reason that the tenement is not sold with the apartment is that each is used for its own purpose [Simon: the word for tenement applied to the large hall in it into which separate apartments opened and which was used for sitting and walking about in and not for residence], while in the case of the stretch of fields, all the fields are used for the same purpose, so I might have thought that that is not the case.*
- B. *And if we were given only the rule covering the stretch of fields, I might have supposed that the reason the whole lot is not sold is that it is hard to mark off one field in the middle, but in the case of an apartment, where it is easy enough to*

identify the one apartment, since one did not do so, I might have thought he sold the whole. So both cases are necessary.

II.4 A. *In accord with which authority is that which R. Mari son of the daughter of Samuel bar Shilat said in the name of Abbaye, "One who sells something to his fellow has to incise in the deed, 'I have left for myself nothing at all in this transfer of property'?"*

B. *This obviously accords with the thinking of what R. Nahman said Rabbah bar Abbuha said.*

II.5 A. *Somebody said to someone else, "I'm selling you land of Hiyya's household." Now there were two pieces of land called "Hiyya's household." Ruled R. Ashi, "One he mentioned, not two.*

B. *"If someone said to another, 'I'm selling you some lands,' without further specification, then the minimum of the plural of lands is two. And if he said to him, 'All the lands' this would encompass all of his real estate except for gardens and orchards. If he says 'fields,' that would include also gardens and orchards, but not houses and slaves. [62A] If he said, 'My property,' then the sale would encompass houses and slaves too."*

II.6 A. *If the seller drew one of the boundaries short and one of them long,*

B. *[assuming we have a parallelogram (Simon)], said Rab, "The buyer has acquired only the width of the shorter line."*

C. *Said R. Kahana and R. Assi to Rab, "Why not let him acquire title to the space that is marked out by the oblique line?"*

D. *Rab shut up.*

E. *But Rab concedes in a case in which a field is bounded by fields of Reuben and Simeon on one side and Levi and Judah on the other, that, since if he wanted to sell only half the field, he should have written in the deed either, "the boundaries are the field of Reuben and Levi" or "Simeon and Judah," since he did not do so, his intent was to transfer everything within the oblique line from the end of Simeon's field to the end of Levi's" [following Simon's translation].*

II.7 A. *If the boundary of the field is marked by fields belong to Reuben on the east and west and Simeon to the north and south, he has to write in the deed, "The field is bounded by the fields of Reuben on two sides and Simeon on two sides."*

II.8 A. *The question was raised: If he merely marked the corners of the field, what is the law?*

- B. *If he then draws the boundaries like a Greek gamma, how do we decide things?*
- C. **[62B]** *If he mentions one and omits the other, how do we decide things?*
- D. *These questions stand.*

- II.9** A. If the seller marked out the first, second, and third boundary lines, but the fourth boundary line he did not mark out —
- B. Said Rab, “The buyer has acquired title to the whole, except the fourth boundary [one furrow alongside that boundary].”
 - C. And Samuel said, “Even the fourth boundary.”
 - D. [In a case in which he defines all boundaries but one,] R. Assi said, “He has acquired only a single furrow around the entire field.”
 - E. *He concurs with Rab, who maintains that the seller reserved something; but he also concurs that, since he reserved the boundary, his intent is to reserve the whole of the field.*
 - F. Said Raba, “The decided law is that the buyer has acquired title to the whole, except the fourth boundary [one furrow alongside that boundary].”
 - G. *“And that is the case only if the fourth boundary does not lie within the adjoining two [following Simon], but if it lies within the adjoining two, the purchaser acquires it.*
 - H. *“And even if the fourth boundary does not lie within the adjoining two, he does not acquire that area only if a clump of date trees is on it, or it is an area of nine qabs, [thus being a free-standing area], but if it has no clump of date trees on it or does not contain nine qabs, he does acquire it.”*
 - I. *It follows that if it lies between the adjoining boundaries, then even if there is a clump of date trees on the land and it covers nine qabs, the purchaser acquires it.*
 - J. *There are those who state matters as follows:*
 - K. Said Raba, “The decided law is that the buyer has acquired title to the whole, including the fourth boundary [one furrow alongside that boundary].”
 - L. *“And that is the case only if the fourth boundary lie within the adjoining two, but if it does not lie within the adjoining two, the purchaser does not acquire it.*
 - M. *“And even if the fourth boundary does lie within the adjoining two, he acquires that area only if a clump of date trees is not on it, or it is not an area of nine qabs, [thus being a free-standing area], but if it has a clump of date trees on it or does contain nine qabs, he does not acquire it.”*

- N. *It follows that if it does not lie between the adjoining boundaries, then if there is no clump of date trees on the land and it does not cover nine qabs, the purchaser does not acquire it.*
- O. *We may infer from either of the two versions of Raba's statement that the seller does not propose to reserve any part of the field [when he defines all boundaries but one].*
- P. *We may further infer that where the fourth boundary lies between the two adjoining ones and there is no clump of date trees or it is not an area of nine qabs, the purchaser acquires title to it, and if it is not so situated but there is a clump of date trees or it is the size of nine qabs, or if it does not so lie and there is no clump of date trees or it is not nine qabs in area, according to one version the rule goes one way, accord to the other, the other way, and we then leave it up to the judges to use their own discretion.*

II.10 A. *Said Rabbah, "[If someone said,] 'The half of the field that I own in this land I am selling to you' — he has sold him half the whole of the property. 'Half of the land that I have' — he is selling a quarter of the whole."*

- B. *Said to him Abbayye, "So what difference does it really make whether he uses one formulation or the other?"*
- C. *He shut up.*
- D. *Said Abbayye, "I imagined that, since he shut up, he had accepted what I said. But that is not the case at all. I have seen documents issued from the court of the master, in which it is written, 'the half that I have in the land' — so the sale is of half; 'the half of the land that I have' — the sale is of a quarter of the property."*

II.11 A. *And said Rabbah, "'The boundary of the land is the land from which half has been cut off' — he sells half. If the deed is written, 'The boundary of the land is that from which a piece is cut off,' he sells only nine qabs."*

- B. *Said to him Abbayye, "So what difference does it really make whether he uses one formulation or the other?"*
- C. *He shut up.*
- D. *He drew the conclusion that in either case the rule was that he had sold him half. [63A] But that is not the case. For said R. Yemar b. Shelemayyah, "Abbayye personally explained the matter to me that, whether he writes, 'The boundary of the field is the field from which half has been cut off,' or, 'The boundary of the field is the field from which a piece has been cut off,' then if he adds the*

language, 'these are its boundaries,' he sells half, and if he does not add the language, 'these are the boundaries,' he is selling him nine qabs."

- II.12** A. *It is obvious that if someone said, "Let So-and-so take a share in my property," the other is to receive a half. [If he said,] "Give a share to So-and-so in my property" — what is the law?*
- B. *Rabina bar Qisi said, "Come and take note of what has been taught on Tannaite authority: He who says, 'Give a share to Mr. So-and-so of the cistern' — Sumekhosh says, 'He is to get no less than a quarter.' [Simon: The share may mean either a half or a mere fraction, and in doubt we strike the balance.] If reference was made to a share in the cistern for his pail, he is to get no less than an eighth. If he said, '...for his pot,' he is to receive no less than a twelfth. If he says, 'Give him a share for his drinking cup,' he is to get no less than a sixteenth."*

II.13 A. *Our rabbis have taught on Tannaite authority:*

- B. A Levite who sold a field to an Israelite and said to him, "I am selling you this field on the stipulation that the first tithe produced by this field is to go to me," the first tithe does belong to him.
- C. And if he said to him, "For me and my children," should the Levite then die, the purchaser has to give the first tithe to his sons.
- D. And if he said to him, "So long as this field is in your possession," and then the purchaser sold it to someone else but went and bought it back, the Levite has no further claim on the man.
- E. But how come! After all, someone cannot transfer to a third party possession of something that has not yet come into existence. [Simon: How could the man who bought the field from the Levite make him the possessor of the tithe before even the seed was sown?]
- F. *Since the Levite had stipulated that the first tithe was to belong to him, it is as though he had kept back a portion of the field corresponding to the place in which the first tithe would be growing.*
- G. Said R. Simeon b. Laqish, "That is to say, he who sells a room to someone else and said to him, 'It is with the stipulation that the top layer [the low ceilinged upper story (Simon)] belongs to me,' then the upper story continues to belong to him."
- H. **[63B]** *For what purpose is this law stated [since it tells us the obvious]? [The Mishnah is explicit: **He who sells a house has not sold the extension!**]*

- I. R. Zebid said, "It is to indicate that if the seller wanted to make protrusions from the roof, he has the right to do so."
- J. R. Pappa said, "It is to indicate that if he wanted to build an upper room over the apartment, he has the right to do so."
- K. *Now from the perspective of R. Zebid, that explains why the language is used, "That is to say." [Simon: Because the act of the vender here in reserving to himself, in virtue of his stipulation, a part of the space over the courtyard is analogous to the act of the Levite in reserving to himself a part of the field.] But from the perspective of R. Pappa, why should the language be used, "That is to say"? [Simon: Because there is no particular analogy between reserving part of the field that has been sold and reserving the right to rebuild the roof, which has not been included in the sale, and if Simeon b. Laqish had meant the latter, he should have stated it independently and not derived it from the former.]*
- L. *That's a problem.*

II.14 A. *Said R. Dimi of Nehardea, "If someone sold a room to someone else, even though he wrote in the deed, 'I sell you the depth and the height,' he still has to add the language, 'Acquire for yourself title from the depth of the earth to the height of heaven.' How come? It is because, otherwise, the space below and above is not transferred on its own. So the use of the language, 'depth and height' serve to transfer the space below and above, and the language, 'from the depth of the earth to the height of heaven' serve to transfer a well, cistern, and cavities in the ground."*

- B. *May we say that the following supports the view of R. Dimi: **Nor [has he sold] (4) the cistern, or (5) the cellar even though he wrote him [in the deed], "The depth and height" [M. B.B. 4:2A-C]**? Now if it should enter your mind that the space below and above goes automatically to the buyer, then adding the language **the depth and height** should serve to transfer the well, cistern, and cavities!*
- C. *The Mishnah speaks of a case in which the cited language is not inserted into the deed.*
- D. *Yeah! Well, what it says explicitly is, **even though he wrote him [in the deed], "The depth and height"!***

- E. *This is the sense of the Mishnah's language:* Even though these words were not written into the deed, it is as though they were written into the deed *for the purpose of transferring ownership to the space below and above; but in regard to the well and cistern, if the words "depth and height" are inserted, then they are transferred, but if not, they are not.* [Simon: We do not require the words, "from the depth of the earth to the height of heaven."]
- F. [In further support of Dimi's proposal:] *come and take note: Or (3) the roof, if it has a parapet ten handbreadths high. [64A] Now if it should enter your mind that even without specification, the space below and above is transferred automatically, then what difference does it make to me if the parapet is ten handbreadths high?*
- G. *If the parapet is ten handbreadths high, then it marks off the roof as a distinct structure [which is not sold willy-nilly with the house.]*
- H. [Against the view of Dimi,] *Said Rabina to R. Ashi, "Come and take note of what R. Simeon b. Laqish said, 'That is to say, he who sells a room to someone else and said to him, "It is with the stipulation that the top layer [the low ceilinged upper story (Simon)] belongs to me," then the upper story continues to belong to him.' And in that connection we said, 'For what purpose is this law stated [since it tells us the obvious]? [The Mishnah is explicit: He who sells a house has not sold the extension!]' R. Zebid said, "It is to indicate that if the seller wanted to make protrusions from the roof, he has the right to do so." R. Pappa said, "It is to indicate that if he wanted to build an upper room over the apartment, he has the right to do so." Now if you take the view that without further specification the upper story is not transferred automatically, then what does anybody gain by such a stipulation [Simon: since even without this the vendor would still retain possession of the roof]?"*
- I. *It is that if it falls down, he has the right to rebuild it.* [Simon: This right is not conveyed by the bare transfer, which relates to "this layer only." Hence if he wants to transfer the roof completely, he has to insert the words, "depth and height."]

I.1-2 provide definitions of the Mishnah's word choice. No. 3 qualifies the rule of the Mishnah. II.1 then explains why it is necessary to make the point that the Mishnah adds here, even though it might have appeared to be obvious. The rest works out its own problem, as shown in the outline in Chapter Eleven. But the reason for inserting this excellent composite here is perfectly clear; our Mishnah-

paragraph contributes facts that help solve the problem, and for that reason alone the compilers of the Bavli very commonly will insert along with a Mishnah-commentary such large-scale, free-standing, problem-focused composites.

4:2

- A. Nor [has he sold] (4) the cistern,
- B. or (5) the cellar,
- C. even though he wrote him [in the deed], “The depth and height.”
- D. “But [the seller] has to purchase [from the buyer] a right-of-way [to the cistern or the cellar,” the words of R. Aqiba.
- E. And sages say, “He does not have to purchase a right-of-way.”
- F. and R. Aqiba concedes that when [the seller] said, “Except for these,” he does not have to purchase a right-of-way for himself.
- G. [If the seller] sold [the cistern or cellar] to someone else,
- H. R. Aqiba says, “[The new purchaser] does not have to buy a right-of-way for himself.”
- I. And sages say, “He has to buy a right-of-way for himself.”

I.1 A. *In session Rabina raised this question: “Is not a well the same thing as a cistern?”*

B. *Said Raba Tosefaah to Rabina, “Come and take note of that which has been taught on Tannaite authority: All the same are a well and a cistern, both being holes in the ground, but a well is merely dug out, and a cistern is faced with stone.”*

I.2 A. *In session R. Ashi raised this question: “Is not a well the same thing as a cistern?”*

B. *Said Mar Qashisha b. R. Hisda to R. Ashi, “Come and take note of that which has been taught on Tannaite authority: All the same are a well and a cistern, both being holes in the ground, but a well is merely dug out, and a cistern is faced with stone.”*

II.1 A. **“But [the seller] has to purchase [from the buyer] a right-of-way [to the cistern or the cellar,” the words of R. Aqiba. And sages say, “He does not have to purchase a right-of-way”:**

B. *Is this not what is at issue between them: [64B] R. Aqiba takes the view that the seller sells in a liberal spirit, and rabbis take the view that the seller sells in a*

niggardly spirit [Simon: and he therefore reserves to himself the right-of-way]? *And further, when, in general it is stated, R. Aqiba is consistent with his prevailing principles, for he has said, "The seller sells in a liberal spirit," isn't it the fact that reference is made to this passage as the locus classicus for his view?*

- C. *But why does that necessary follow? For maybe R. Aqiba takes the view that someone does not want other people to trample over ground for which he has given good money, and rabbis maintain that someone does not want to take money on condition that he has to fly through the air [to get to his property].*
- D. *Well, what about what follows: **[If the seller] sold [the cistern or cellar] to someone else, R. Aqiba says, "[The new purchaser] does not have to buy a right-of-way for himself."** And sages say, "He has to buy a right-of-way for himself"? [The stated considerations are not in play here.]*
- E. *Maybe this is what is at issue here, in R. Aqiba's view, we are guided by the intentionality of the purchaser, and in rabbis' view, we are guided by the intentionality of the seller.*
- F. *Well, what about the following: **A cistern, winepress, or dovecote, whether they are lying waste or in use. "And [the seller] needs to purchase [from the buyer] a right-of-way,"** the words of R. Aqiba. And sages say, "He does not have to." Now why in the world do I need a further statement of the matter [which is already explained above]? But is it not with the intention of letting us know that R. Aqiba takes the view that the seller sells in a liberal spirit, and rabbis take the view that the seller sells in a niggardly spirit?*
- G. *No, maybe the intent is to tell us that the dispute on the principle at issue between R. Aqiba and sages pertains to both the house and the field, and it is necessary to state the same dispute in both regards. For had we been given the rule governing the house, I might have thought that there the reason R. Aqiba maintains the seller has to buy a right-of-way is that the purchaser wants his privacy, but in the case of a field, where this consideration does not pertain, I might have supposed that he does not have to do so. And if the dispute had concerned only the field, I might have thought that it is there that R. Aqiba says the seller has to buy a right-of-way, because the purchaser won't want his land to be trampled, but in the case of the house, that consideration is not in lay, so I might have supposed that he does not have to do so.*
- H. *What about what follows: **[If] he sold them to someone else, R. Aqiba says, "[The new purchaser] does not have to buy a right-of-way for himself."** And*

sages say, “He has to buy a right-of-way for himself”? *Why repeat the difference? It’s the same as before!*

- I. *Lo, in this way we are informed that R. Aqiba takes the view that the seller sells in a liberal spirit, and rabbis take the view that the seller sells in a niggardly spirit.*
- J. *That is decisive.*

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

- B. R. Huna said Rab [said], **[65A]** “The decided law is in accord with the opinion of sages.”
- C. And R. Jeremiah bar Abba said Samuel [said], “The decided law is in accord with the opinion of R. Aqiba.”
 - D. *Said R. Jeremiah bar Abba to R. Huna, “Lo, how many times did I say before Rab, ‘The decided law accords with R. Aqiba,’ and he did not say a word to me!”*
 - E. *He said to him, “So how did you report the ruling to him?”*
 - F. *He said to him, “I reversed the names.”*
 - G. *“So now you know why he said nothing to you!”*

II.3 A. *Said Rabina to R. Ashi, “May we say that Rab and Samuel are consistent with opinions expressed by them in the following: For said R. Nahman said Samuel, ‘Brothers who divided an estate — they do not have a claim of a right-of-way against one another, nor the right to set up ladders, nor the right to open windows, nor the right to control watercourses,’ and ‘Take note of these rulings for this are absolutely fixed rulings.’ And Rab said, ‘They have those rights’?” [At issue is whether or not the division is interpreted strictly or liberally.]*

- B. *“It was necessary to state the dispute in both connections. For if we had had the dispute in connection with the brothers, the reason Rab assigns the right-of-way is that one brother can say to the other, ‘I want to live on this land the way my father did,’ as Scripture shows this is a valid plea in the mouth of an heir: ‘In the place of your fathers shall be your sons’ (Psa. 45:17). In the other case, involving a sale of land, I might suppose Rab concurs with Samuel. And if I had only the case of the sale, I might have supposed that it is only in such a case that Samuel says the seller interprets the terms of the sale in a liberal spirit, but here he would concur with Rab. So both statements are required.”*

II.4 A. *Said R. Nahman to R. Huna, “Is the decided law in accord with our position or is it in accord with yours?”*

- B. *He said to him, “The decided law is in accord with your position, since you are closely associated with the tribunal of the exilarch, where there are many judges judging cases [so you can enforce your view of the law].”*

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

- B. Two rooms, one inside the other, both of them transferred by sale or gift to third parties — neither has a right-of-way against the other [being on an equal footing].
- C. All the more so if the outer room is given away and the inner one is sold [is this the case, since the gift is in a liberal spirit, the sale not].
- D. *If the outer room is sold and the inner room is given away, it appeared to stand to reason that there is no right-of-way from the one to the other [the transfer is not more favorable to the one than the other], but that is not the case. For have we not learned in the Mishnah: **Under what circumstances? In the case of one who sells [the aforelisted properties]. But in the case of one who gives a gift, he [willingly] hands over all of them.** Therefore one who gives a gift does so in a liberal spirit. And here, too, one who gives a gift does so in a liberal spirit.*

I.1, 2 deal with a problem of Mishnah language criticism. II.1+2-4, 5 engages in a different form of Mishnah criticism, namely, identifying the underlying principle. This is a well-articulated and quite successful composite of compositions.

4:3

- A. **He who sells a house has sold the door but not the key.**
- B. **He has sold a permanent mortar but not a movable one.**
- C. **He has sold the convex millstone but not the concave millstone,**
- D. **nor the oven or the double stove.**
- E. **When he said to him [in the deed], “It and everything which is in it” –**
- F. **[65B] Lo, all of them are sold.**

- I.1** A. *May we say that the Mishnah’s rule does not accord with the position with R. Meir, for if it did accord with R. Meir, has he not said, “He who sells a vineyard has also sold the implements that go along with the vineyard”? [Simon: Hence we should expect that Meir would include with the house the movable mortar and the key.]*
- B. *You may even take the view that R. Meir stands behind the Mishnah paragraph before us. In that other situation, he deals with things that are permanent fixtures*

of the vineyard [though movable, never being removed therefrom], while here we speak of things that are not necessarily permanent fixtures of the house.

- C. *Well, what about the key, spoken of side by side with a door: just as a door is a fixture of the house, so a key is a fixture of the house [but is not sold with the house]! So it makes more sense to conclude that the Mishnah's rule does not accord with the position with R. Meir.*

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

- B. **He who sells a house has sold the door, the cross bar, and the lock, but not the key; the mortar that has been hollowed out of stone but not one that is fixed; the casing of the handmill but not the sieve; not the oven, the stove, or the handmill.**

- C. **R. Eliezer says, "Whatever is attached to the ground [a fixed mortar in this context] is classified as the ground."**

- D. **If the seller says, "The house and all the contents," everything is sold with it.**

- E. **But one way or the other, he has not sold the well, the cistern, or the verandah [T. B.B. 3:1].**

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

- G. **A pipe that one has hollowed out and then fixed — water from it invalidates an immersion pool. [Fixing the pipe to the soil does not make it part of the soil; it remains a utensil unto itself; but if it were hollowed out after being fixed to the ground, it is part of the ground, and hence water flowing through it remains in its natural, undrawn state, in the latter, but not in the former case.]**

- H. *In accord with which authority [at No. 2] is the foregoing statement? It can accord, after all, with neither R. Eliezer nor rabbis.*

- I. *Well, which statement of R. Eliezer are you thinking of? Shall I say that it is the opinion of R. Eliezer about the house [Whatever is attached to the ground [a fixed mortar in this context] is classified as the ground]? Then there the operative consideration for ruling that fixtures are in the same category as the ground is that the vendor interprets the terms of sale in a liberal spirit, and rabbis hold they interpret them in a niggardly manner? And would it be, perchance, the opinion of R. Eliezer about the beehive, as we have learned in the Mishnah: A beehive — R. Eliezer says, "Lo, it is (1) like the ground; and they write a prosbol depending on it; [66A] and it does not receive uncleanness [when standing] in its place; and he who scrapes honey from it on the Sabbath is liable for a sin-offering." And sages say, "It is (1) not like the ground; and they do not write a prosbol depending on it; and it does receive uncleanness*

[when standing] in its place; and he who scrapes honey from it on the Sabbath is free of having to present a sin-offering” [M. Uqs. 3:10]? *In that case, the reason for the position of R. Eleazar accords with what R. Eleazar said, “It is written, ‘And he dipped it in the honeycomb’ (1Sa. 14:27), just as one who plucks something from a wood on the Sabbath is liable to a sin-offering, so one who takes honey from a comb on the Sabbath is liable to a sin-offering” [Simon: even though the comb is not fixed in the soil; so we cannot say that this statement of Eliezer is incompatible with the one on the pipe].*

J. *Rather, it is the statement of R. Eliezer concerning the baker’s shelf, as we have learned in the Mishnah: **The baking boards of bakers are unclean, and of householders are clean. [If] one colored them red or colored them saffron, they are unclean. The board of the bakers which one affixed onto the wall — R. Eliezer declares clean. And sages declare unclean [M. Kel. 15:2A-D].** Now in accord with which authority before us is that earlier statement? If it were R. Eliezer, then even if one had first hollowed the pipe and then affixed it, the water from it should not impart unfitness to the ritual pool [since it becomes part and parcel with the ground, like the baking boards of the bakers], and if it were in accord with sages before us, then even if the piece was first fixed to the ground and then hollowed, it should still invalidate water flowing through it into the immersion pool!*

K. *In point of fact, the rule accords with the position of R. Eliezer. And flat wooden utensils are exceptional, since the uncleanness assigned to them derives merely from the authority of rabbis. [Simon: It is deemed a utensil for purposes of uncleanness only by rabbis; hence when the board is affixed to the wall it loses the character of a free-standing utensils, but not so the pipe, which is a real utensil, retaining the character of a utensil even after being attached to the ground.]*

L. *Shall we draw the inference that the rule against use of drawn water in an immersion pool derives from the authority of the Torah [and not merely that of rabbis]? [66B] And lo, we have it as a fixed principle that it was decreed by rabbis. Further more, did not R. Yosé b. R. Hanina state that the cited dispute between R. Eliezer and rabbis concerned a board of not wood but metal? [And the uncleanness that pertains to metal articles is based on the authority of the Torah anyhow.] So, as a matter of fact, the cited passage derives from the position of rabbis, and they treat drawn water as exceptional, since the unfitness for use in an immersion*

pool that has been assigned to it derives only from the authority of rabbis.

- M. *Well, if that's the case, then even if someone first hollowed it out and then fixed it, the water should not spoil the immersion pool!*
- N. *Where it was hollowed out and then fixed to the ground, the case is different, because it is in the category of a utensil even when it is not yet fixed to the ground.*

I.3 A. R. Joseph raised the question: “As to rain water that fell on the casing of his handmill, to which one accorded the intentionality of willfully using such water to rinse off his handmill — what is the law as to regarding such rain water as in the category of liquid with the power of imparting susceptibility to uncleanness to seeds on which it falls [in line with Lev. 11:34, 37]?”

B. “With regard to the position of R. Eliezer, who has said, ‘Whatever is attached to the ground is classified as ground itself,’ there is no consideration of such a question. Where it is a question, it is within the framework of the position of rabbis, who have said, ‘It is not deemed equivalent to the ground.’ What then is the answer?”

C. *The question stands.*

I.4 A. R. Nehemiah b. R. Joseph sent word to Rabbah b. R. Huna Zuti in Nehardea: “When this woman becomes before you, [67A] collect for her a tenth of her father’s estate, even from the casing of a handmill.”

B. Said R. Ashi, “When we considered this matter at the household of R. Kahana, we would collect even from the rent of houses also” [classifying the rent as the house itself, which also is immovable (Simon)].

I.1 identifies the authority behind the rule, hence the operative principle. Nos. 2, 3 complement the Mishnah with a further Tannaite rule. No. 2, glossed by Nos. 3 and 4, draws us into the issue of what is deemed classified with the earth and what not.

4:4

- A. **He who sells a courtyard has sold the houses, cisterns, trenches, and caves,**
- B. **but not the movables.**
- C. **If he said to him, “It and everything which is in it,”**
- D. **lo, all of them are sold.**

- E. **One way or the other, he has not sold him the bathhouse or the olive press which are in it.**
- F. **R. Eliezer says, “He who sells the courtyard has sold only the open space of the courtyard.”**

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

- B. **He who sells the courtyard has sold the houses on the inside and the houses on the outside and the sand field in it. As to the shops those that open on to it are sold with it, and those what do not open on to it are not sold with it. Those that open on to both sides are sold with it.**
- C. **R. Eliezer says, “If he sold a courtyard, he sells only the air of the courtyard” [T. B.B. 3:1M, R-T].**

I.2 A. **The master has said: Those that open on to both sides are sold with it.**

- B. *But lo, R. Hiyya has repeated as a Tannaite formulation: They are not sold with it!*
- C. *There is no contradiction, the one speaks of shops that have as their main entrance the courtyard itself, the other of shops that have their main entrance in the street outside.*

II.1 A. **R. Eliezer says, “He who sells the courtyard has sold only the open space of the courtyard”:**

- B. *Said Raba, “If the seller says, ‘I sell you a residence,’ no one argues that he means the apartments. Where there is a dispute, it concerns a case in which he says, ‘the courtyard,’ for R. Eliezer says that in that case he means the open space only, and rabbis hold he means the apartments as well.”*
- C. *Another version: Said Raba, “If he said ‘courtyard,’ all parties concur he meant the apartments as well. Where they differ is a case in which he used the Hebrew word for courtyard and not the Aramaic cited above, in which one party says he has sold only the space of the courtyard, the other, it is analogous to the courtyard of the tabernacle [in which the tent of assembly was reckoned along with the courtyard, so Exo. 27:18].”*

II.2 A. **And said Raba said R. Nahman, “If someone sold the other party the sand along the shore of the river and its bed, if the buyer took possession of the bed, he has not acquired title to the shore. If he took possession of the shore, he has not acquired title to the bed.”**

- B. *Is that so?* And lo, said Samuel, “If one has sold ten fields in ten different provinces, once the purchaser has acquired possession of one of them, he has acquired possession of all of them.”
- C. *The reason is that there, all of the ground in the world forms a single block of land, and all the properties serve the same purpose, while here, one thing serves one purpose, the other a different purpose.*
- D. *Another version:* [67B] said Raba said R. Nahman, “If he took possession of the shore, he has acquired title to the bed.”
- E. *That’s obvious!* For lo, said Samuel, “If one has sold ten fields in ten different provinces, once the purchaser has acquired possession of one of them, he has acquired possession of all of them.”
- F. *Well, you might have argued that the reason is that there, all of the ground in the world forms a single block of land, and all the properties serve the same purpose, while here, one thing serves one purpose, the other a different purpose. So we are informed that that is not the case.*

I.1 gives us a Tannaite complement to the Mishnah. No. 2 provides a talmud to the foregoing. II.1 explains what is at issue in the language of the Mishnah’s dispute. No. 2 is a supplement tacked on because the issue is congruent.

4:5

- A. **He who sells an olive press has sold the vat, grindstone, and posts.**
- B. **But he has not sold the pressing boards, wheel, or beam.**
- C. **If he said, “It and everything which is in it,”**
- D. **all of them are sold.**
- E. **R. Eliezer says, “He who sells an olive press has sold the beam.”**

- I.1** A. [The vat, grindstone, and posts:] “The vat” is called in Aramaic “the lentil.”
- B. Said R. Abba bar Mamel, “‘The grindstone’ is called in Aramaic ‘the crusher.’”
- C. **And posts:** said R. Yohanan, “These are cedar posts that support the beam.”
- D. **The pressing boards:** these are the planks.
- E. **Wheel: this is a winch.**
- F. **Or beam:** this means what it says.

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

- B. **He who sells an olive press has sold the moulds, tanks, press-beams, and lower millstones.**

- C. **But he has not sold the upper millstones.**
 - D. **But if he said to him, “It and everything that is in it I sell to you,” lo, all of them are sold [T. B.B. 3:2A-C].**
 - E. One way or the other, he does not sell the stirrers, sacks, or leather bags.
 - F. R. Eliezer says, “If he sold an olive press, he thereby includes the beam, since that is what gives the olive press its name.”
- I.1 defines word choices of the Mishnah paragraph. No. 2 provides a Tannaite complement.

4:6

- A. **He who sells a bathhouse has not sold the boards, benches, or hangings.**
 - B. **If he said, “It and everything which is in it,”**
 - C. **lo, all of them are sold.**
 - D. **One way or the other, he has not sold the water jugs or woodsheds.**
- I.1** A. *Our rabbis have taught on Tannaite authority:*
- B. **He who sells a bathhouse has sold the inner rooms, outer rooms, kettle room, towel room, and dressing room.**
 - C. **But he has not sold the kettles, towels, or cupboards that are in it.**
 - D. **But if he said to him, “It and everything that is in it I sell to you,” lo, all of them are sold.**
 - E. **One way or the other, he has not sold to him the water channels from which the bathhouse derives water [68A] in the dry season or the rainy season, and also not the wood shed.**
 - F. **But if he had said to him, “The bathhouse and everything that is needed for using it do I sell to you,” all of them are sold [T. B.B. 3:3A-H, in T.’s version].**
- I.2** A. *There was someone who said to his fellow, “The bathhouse and everything that is needed for using it do I sell to you.”*
- B. *There were some shops that abutted onto it, on the roofs of which they would spread sesame seeds for drying. The case came before R. Joseph, He said to him, “It is taught as a Tannaite statement: But if he had said to him, ‘The bathhouse and everything that is needed for using it do I sell to you,’ all of them are sold.’”*

- C. *Said to him Abbayye, “And lo, R. Hiyya taught as his Tannaite version, ‘All of them are not sold’!”*
 - D. *Rather, said R. Ashi, “We examine the case. If the seller said, ‘An olive press and all the things that are used it, and these are its boundaries,’ the purchaser acquires title to them [including the shops], but if not, he does not.”*
- I.1 commences with a Tannaite complement. No. 2 provides an important clarification of No. 1.

4:7

- A. **He who sells a town has sold the houses, cisterns, ditches, caves, bathhouses, dovecotes, olive presses, and irrigated fields**
- B. **but not the movables**
- C. **If he said to him, “It and everything which is in it,”**
- D. **even though there are cattle and slaves in it,**
- E. **lo, all of them are sold.**
- F. **Rabban Simeon b. Gamaliel says, “He who sells a town has sold the town guard.”**

I.1 A. **[Even though there are cattle and slaves in it:]** *said R. Aha b. R. Hiyya to R. Ashi, “The passage implies that a slave is classified as movables, for if he were classified as real estate, he should be deemed to have been sold along with the place itself. So what must follow? It is that a slave is classified as movables. [And] why does the passage read, **even though**? It is so as to indicate, what can you say? That there is a difference between movable and immovable movables? The upshot is that, even if you hold that the slave is classified as real estate, there still is a difference between movable and immovable real estate.”*

- II.1** A. **Rabban Simeon b. Gamaliel says, “He who sells a town has sold the town guard”:**
- B. *What is the meaning of **guard**?*
 - C. *Here [in Babylonia] it is rendered [Simon:] one who shows [that is, a recorder, indicating the boundaries of fields].*
 - D. *Simeon b. Abtolomos says, “It means, ‘tilling fields.’” [Simon: A stretch of fields adjoining the town.]*
 - E. *One who says that it means one who shows [that is, a recorder, indicating the boundaries of fields] — all the more so will he maintain the secondary meaning of tilling fields. But he who says that it means “tilling fields” will not encompass*

within the word the meaning of “one who shows...,” so that if one has sold the town, the recorder is not sold therewith [Simon: being animate].

II.2 A. We have learned in the Mishnah: Olive presses, and irrigated fields [but not the movables].

- B. *It was reasoned, “What is the meaning of irrigated fields? Tilled fields, as it is written, ‘And God sends waters upon the fields’ (Job. 5:10).”*
- C. *Now one who takes the position that “guard” means one who shows [that is, a recorder, indicating the boundaries of fields] will maintain that the initial authority holds that tilled fields are sold, while the recorder is not sold, and then Rabban Simeon b. Gamaliel comes along to say that even the recorder also is sold. But the one who says that the word means “tilled fields,” then has not the initial Tannaite statement also encompassed this item?*
- D. *Do you really maintain that what irrigated fields are are tilled fields? Not at all. What are irrigated fields? They are orchards, as in this usage: “Your shoots are an orchard of pomegranates” (Song 4:13). So the initial Tannaite authority tells us that these are sold, but not the tilling fields, and Rabban Simeon b. Gamaliel comes to tell us that the tilling fields also are sold.*
- E. *There are those who say:*
- F. *They supposed that what irrigated fields means is orchards. And then that would pose no problem to him who maintains that the word translated guard means tilled fields. So the initial Tannaite authority takes the view that the orchards are sold, but the tilled fields are not sold, and then Rabban Simeon b. Gamaliel comes along to say that even the tilled fields are sold. [68B] But from the perspective of him who says that the word means the recorder, then the initial Tannaite authority maintains that the man who sells the town sells the orchards as well, so is Rabban Simeon b. Gamaliel going to go back over the same ground and say that he also sells the recorder?*
- G. *Do you really maintain that what irrigated fields are is orchards? Not at all. What are irrigated fields? They are tilled fields, as in this usage: “and sends waters upon the fields.” So the initial Tannaite authority tells us that these are sold, but not the recorder,*

and Rabban Simeon b. Gamaliel comes to tell us that the recorder also is sold.

II.3 A. *Come and hear:*

- B. **He who sells a town — R. Judah says, “The town guard is not sold along with it, the town clerk is sold along with it” [T. B.B. 3:5B-D].** [Our version of the Tosefta has the verse, corrected to conform to the Bavli’s version for reasons that will appear presently.]
- C. *Now since the town clerk is a human being, surely the town guard is also a human being [hence the definition, “he who shows” is the right one].*
- D. *What makes you find such a conclusion compelling? The one falls into its classification, the other into its classification.*
- E. *Well, can you really say so? Note what follows: And even though he said to him, “It and everything that is in it I sell to you,” he has not sold him the outlying parts or suburbs, or the thickets that are set apart by themselves, or the vivarium for wild beasts, fowl, and fish [T. B.B. 3:5G-J]. And in this connection we have said, What is the meaning of, “its outlying parts”? The strips at the end of the fields. And what are these? They are bits of ground at the far end of fields separated from the rest by rocky ground [Simon]. This shows that, in his view, only such strips are not sold with the town, but the fields themselves are.*
- F. *Reverse matters: R. Judah says, “The town guard is sold, but the town clerk is not sold.”*
- G. *But can you really say that R. Judah concurs with R. Simeon b. Gamaliel, when in the later clause R. Judah’s reasoning is in accord with that of rabbis, as the concluding clause has stated: He has not sold him the outlying parts or suburbs, or the thickets that are set apart by themselves, or the vivarium for wild beasts, fowl, and fish, while, as a matter of fact, has not Rabban Simeon b. Gamaliel said that if one has sold a town, he does sell the adjoining village, as has been taught on Tannaite authority: He who sells a town has not sold its suburbs. Rabban Simeon b. Gamaliel says, “He who sells a town has sold its suburbs.”*
- H. *R. Judah concurs with him in one matter and differs from him in another.*

II.4 A. **Or the vivarium for wild beasts, fowl, and fish:**

- B. *An objection was raised on the basis of the following: If the town had suburbs, they are not sold with it. If it had a part on an island*

and a part on the mainland, or if it had a vivarium for wild beasts, fowl, and fish, lo, these are sold with it.

- C. *There really is no contradiction. The one speaks of a case in which they open towards the town, the other, they open away from the town.*
- D. *But lo, it has been taught as a Tannaite rule: The woods adjoining it are not sold with it?*
- E. *Read: The woods that are separated from it.*

We begin with a theoretical question to which the Mishnah paragraph, I.1, is deemed critical. II.1, 2-3+4 then work on the meaning of a word in the Mishnah.

4:8

- A. **He who sells a field has sold (1) the stones which are needed for it [Simon: which are used in it], (2) the canes in the vineyard which are needed for it, and (3) the crop which is yet unplucked up from the ground;**
- B. **[He also has sold:] (4) a partition of reeds which covers less than a quarter-qab of space of ground, (5) the watchman's house which is not fastened down with mortar, (6) the carob which was not grafted, and (7) the young sycamores.**

4:9A-D

- A. **But he has not sold (1) the stones which are not needed for it, (2) the canes in the vineyard which are not needed for it, (3) the crop which has already been plucked up from the ground.**
- B. **If he had said to him, "It and everything which is in it,"**
- C. **lo, all of them are sold.**
- D. **One way or the other, he has not sold to him (4) a partition of reeds which covers a quarter-qab of space of ground, (5) a watchman's house which is fastened down with mortar, (6) a carob which was grafted, and (7) cropped sycamores.**

I.1 A. [69A] *What is the meaning of the stones which are needed for it?*

- B. *Here [in Babylonia] it is translated as "stones used to weigh things down" [Simon: stones placed on sheaves to keep them from being blown about by the wind].*
- C. Ulla said, "They are stones that are laid out to make a fence."

- D. *But lo, did not R. Hiyya formulate as the Tannaite statement: "They are stones that are piled up to make a fence"?*
- E. *Read it as "laid in order."*

I.2 A. *Here [in Babylonia] it is translated as "stones used to weigh things down":*

- B. *Now according to R. Meir, it means, "They are ready for use, even though they are not actually used," and from rabbis' perspective, it means, "They are actually used."*
- C. *Now to Ulla, who holds they are stones laid in order for making a fence, then from R. Meir's perspective, that suffices, even though they are not laid out in order; from rabbis' perspective, they also must have been laid in order.*

II.1 A. **The canes in the vineyard which are needed for it:**

- B. *What do they do with these canes?*
- C. *Said the household of R. Yannai, "They are canes that are placed under the vines to hold them up."*
- D. *Now according to R. Meir, it means, "They are [sold with the field] if they are peeled, even though not fixed in place," and according to rabbis, "They are sold only if they have been fixed in place."*

III.1 A. **The crop which is yet unplucked up from the ground:**

- B. *Even though it is ripe to be cut down.*

IV.1 A. **A partition of reeds which covers less than a quarter-qab of space of ground:**

- B. *Even though they are thick.*

V.1 A. **The watchman's house which is not fastened down with mortar:**

- B. *Even though it is not fixed to the ground.*

VI.1 A. **The carob which was not grafted, and the young sycamores:**

- B. *Even though they are quite sizable.*

VII.1 A. **But he has not sold the stones which are not needed for it:**

- B. *Now according to R. Meir, it means, "They are not ready for use," and according to rabbis, "They have actually not been used."*
- C. *Now to Ulla, who holds they are stones laid in order for making a fence, then from R. Meir's perspective, they are not regarded as having been sold only if they are not yet ready for use; and from rabbis' perspective, it is even if they simply have not yet been laid in order.*

VIII.1 A. The canes in the vineyard which are not needed for it:

- B. *From the perspective of R. Meir, this is the rule if they have not been peeled, and from the perspective of rabbis, it means that that is the case even if they simply have not yet been fixed.*

IX.1 A. The crop which has already been plucked up from the ground:

- B. *Even though it still needs to be left in the ground [to ripen further].*

X.1 A. A partition of reeds which covers a quarter-qab of space of ground:

- B. *Even though they are tiny.*
C. *Said R. Hiyya bar Abba said R. Yohanan, "This is so not only of a clump of reeds, but even a small bed of perfume plants, even if it bears a name of its own, is not included in the sale of the field."*
D. *Said R. Pappa, "That would be a case in which it is called 'So-and-so's rose bushes.'"*

XI.1 A. A watchman's house which is fastened down with mortar:

- B. *Even though it is fixed to the ground.*

XI.2 A. R. Eleazar raised this question: "As to the frames of doors, what is the rule? *Where they are fixed to the wall with mortar, there of course is no question that they are sold with the house, since they are firmly attached. The question comes up where the doors are only connected with hooks.*"

- B. *The question stands.*

XI.3 A. R. Zira raised this question: "As to window frames, what is the law? *Do we say that they are put on merely for decoration, or perhaps, since they are attached, they really do form attachments to the house?*"

- B. *The question stands.*

XI.4 A. R. Jeremiah raised this question: "What is the law concerning the castors on the legs of beds? *The question does not arise if they are moved along with the bed, since, because they go with it, they belong to it. The question is raised in a case in which they are not moved with it.*"

- B. *The question stands.*

XII.1 A. A carob which was grafted, and (7) cropped sycamores:

- B. **[69B]** *What is the source of this rule [that these trees are not reckoned with the field]?*

- C. Said R. Judah said Rab, “Said Scripture, ‘So the field of Efron which was in Machpelah...and all the trees that were in the field that were in the border thereof’ (Gen. 23:17) — [Abraham acquired all the trees] that required a boundary round about [small trees, which are included within the bounds], but therefore excluding to those that did not require a boundary round about [big trees], these were not acquired.”
- D. Said R. Mesharshayya, “On this basis we know that it is the law of the Torah that requires inclusion of the border[-trees in the sale of a field].”

- XII.2** A. *Said R. Judah, “Someone who sells a field ought to write in the deed, ‘Acquire hereby the date trees, other big trees, small trees, and small date trees.’ And even though it is the fact that even if he did not write that language in the deed, the buyer has acquired the specified items, nonetheless a well-drawn deed is more effective if such language is used.*
- B. *“If he said to him, ‘I sell you the land and date trees,’ [thus two transfers, one the land, one the trees (Simon)], we have to examine the case: if he has any date trees, so he owes him two; and if he does not have any, he has to buy two for him. If his date trees were mortgaged, he has to redeem two of them for him.*
 - C. *“If he said to him, ‘I am selling you the land with the date trees,’ we have to examine the case: if there are date trees in the land, he of course has to give them to him; if there is none, it is a sale made in error [and is null].*
 - D. *“If he said, ‘I am selling you a date tree field,’ the purchaser cannot claim that he has bought any date trees, since the meaning of the seller is merely, ‘a field in which date trees will be grown.’*
 - E. *“If he said, ‘I am selling you the field except for a named date tree,’ we have to examine the case: if it is a first class date tree, we have to assume that the man meant to reserve that one for himself; if it is one of poor quality, then all the more so he meant to reserve those better than that one.*
 - F. *“If he said, ‘I am selling you the field without the trees, then if there are trees in the field, the purchaser acquires title to everything except the trees. If there are date trees in the field and no others, the purchaser acquires the whole without date trees. if there are vines, he acquires the whole of the field without the vines; if there are trees and date trees, he acquires the whole except the trees; if trees and vines, he acquires the whole except the trees; if there are date trees and vines, he acquires the whole except the vines.” [Simon: As between date trees and vines, the name “trees” would be more readily applied to the latter.]*

- XII.3** A. Said Rab, “If the seller said, ‘...everything except those that have to be climbed by a rope ladder [to pick the fruit],’ this represents a reservation of all the trees that have to be climbed by a rope ladder to pick the fruit, but those that do not have to be climbed by a rope ladder to be harvested are not so reserved to the seller.”
- B. **[70A]** But the judges of the exile say, “All those trees that are bent back by the yoke [Simon: when the ground under the tree is ploughed by oxen and the yoke knocks against it] are not reserved, but all those that are not bent back by the yoke are reserved.”
- C. *In any event there is no difference of opinion, the former refers in particular to date trees, the latter to all other kinds of trees.*
- XII.4** A. R. Aha bar Huna asked R. Sheshet, “[If the seller used the language,] ‘...except for such-and-such a carob tree,’ ‘...except for such-and-such a sycamore,’ what is the law? *That particular carob is the one that he has not acquired, but lo, the rest of the carobs he has acquired? Or perhaps all the other carob trees too he has not acquired?*”
- B. *He said to him, “He has not acquired them.”*
- C. *He raised this objection: “[If the seller used the language,] ‘...except for such-and-such a carob tree,’ ‘...except for such-and-such a sycamore,’ he has not acquired title — does this not mean, ‘he has not acquired title to that particular carob tree,’ but he has acquired title to the other carob trees?’”*
- D. *He said to him, “No, it means, even to the rest of the carob trees he has not acquired title. You may know that that is so, for if he had said to him, ‘My fields are sold to you except for such-and-such a field,’ that field alone is the one that the buyer has not acquired, but to title to the others he has made acquisition. Here, too, he has not acquired title.”*
- E. *There are those who state the matter in this language:*
- F. R. Aha bar Huna asked R. Sheshet, “[If the seller used the language,] ‘...except for half of such-and-such a carob tree,’ ‘...except for half of such-and-such a sycamore,’ what is the law? *Title to half of the carobs he has certainly has not acquired, but lo, has he acquired title to the half left over in the specific carob tree, or has he not acquired even that?*”
- G. He said to him, “He has not acquired it.”
- H. *He raised this objection: “[If the seller used the language,] ‘...except for half of such-and-such a carob tree,’ ‘...except for half of such-and-such a sycamore,’ he*

has not acquired title' — does this not mean, 'he has not acquired title to the rest of the carob trees,' but he has acquired title to what he left to himself in that carob tree'?"

- I. *He said to him, "No, it means, even to what he left for himself in the specific carob trees he has not acquired title. You may know that that is so, for if he had said to him, 'My fields are sold to you except for half of such-and-such a field,' would that field alone be the one that the buyer has not acquired, and would he acquire the other half? Rather, he would not acquire it, and here, too, he does not acquire title."*

XII.5 A. R. Amram raised this question to R. Hisda: "He who leaves a bailment with his fellow and gets a written receipt for it, and then the other claims, 'I returned the things to you,' what is the law? Do we say that, since if he wanted, he could have claimed, 'they were lost on account of events beyond my control,' he would have been believed, now, too, he is believed? Or perhaps, since if the other says, 'How come you have your receipt in my possession,' [so if you returned the object, how come I still have your receipt?] we accept his claim, [we reject the argument beginning 'since']?"

- B. *He said to him, "The defendant is believed."*
- C. *"But the other can say to him, 'What in the world is your receipt doing in my possession'?"*
- D. *He said to him, "Well, according to your reasoning, even if the defendant said, 'I lost it through events that I could not prevent,' could the plaintiff claim, 'How come your receipt is in my hand'?"*
- E. *He said to him, [70B] "Well, in the end, even if he pleads that it was seized from him by events over which he could not gain control, doesn't he have to take an oath? Here, too, when I say that he is believed, I mean, we accept his statement only if he takes an oath."*
- F. *May we say that what is at issue here is the same dispute between the following Tannaite teachings, for it has been taught on Tannaite authority:*
- G. *In the case of a bond given by a borrower for capital on the condition that the profit is shared equally between borrower and lender, which is produced in support of a claim against an estate —*
- H. *The judges of the exile say, "The plaintiff takes an oath and collects the whole of his claim."*
- I. *The judges of the land of Israel say, "He takes an oath and collects half of his claim."*

- J. *All parties here concur in the view of the Nehardeans that this transaction is classified as half-loan, half-bailment. So is this not what is at issue here, namely, one authority [the judges of the exile] maintains that the plaintiff may validly plead, "What is your bond doing in my possession" [and the estate cannot claim that the money was paid back, since if the father were alive, he could not have issued such a claim], and the other party holds that he may not validly make such a plea?*
- K. *Not at all, all parties concur with the position of R. Hisda that he may not validly enter such a claim. But here what is at issue? The one party [the judges of the exile] take the view that if the borrower had paid the debt before his death, he would have informed his children [so we cannot enter the plea on their behalf that the money had been returned, since the father, if alive, could not have made such a plea], and the other party maintains that we may assume that death is what stopped him from so informing them."*

XII.6 A. R. Huna bar Abin sent word: "He who leaves a bailment with his fellow and gets a written receipt for it, and the other party then claimed, 'I returned the things to you,' the other party is believed [in line with what R. Hisda has said]. In the case of a claim against an estate on the strength of a bond given by a borrower for capital on the condition that the profit is shared equally between borrower and lender, which is produced in support of a claim against an estate, the plaintiff takes an oath and collects the whole of what he claims."

- B. *Two [positions, mutually incoherent]!?!'*
- C. *The second case is exceptional, for if the deceased had paid, he would have told his children.*

XII.7 A. Raba said, "The decided law is: He takes an oath and collects half of his claim."

- B. *Said Mar Zutra, "The decided law accords with the position of the judges of the exile."*
- C. *Said Rabina to Mar Zutra, "Lo, said Raba, 'he takes an oath and collects half of his claim.'"*
- D. *He said to him, "So far as our version is concerned, to the judges of the exile [71A] is attributed the opposite opinion."*

I.1-2 defines a term used in the Mishnah; the work of Mishnah exegesis occupies II.1-XI.1 impose a simple exegetical program for the interpretation of the Mishnah's rule in a somewhat broader framework. XI.2, 3, 4 raise subsidiary questions. XII.1 then provides the scriptural source of the Mishnah's rule. Nos. 2,

3, 4 give us further pertinent rules, a thematic supplement of a sort we have seen before. Nos. 5-7 are tacked on because it gives us another ruling of the authority of No. 4, judges of the exile.

4:9E-V

- E. (8) A cistern, (9) winepress, or (10) dovecote,
 - F. whether they are lying waste or in use.
 - G. “And [the seller] needs to purchase [from the buyer] a right-of-way,” the words of R. Aqiba.
 - H. And sages say, “He does not have to.”
 - I. And R. Aqiba concedes that, when [the seller] said to him, “Except for these,” he does not have to buy himself a right-of-way.
 - J. [If] he sold them to someone else,
 - K. R. Aqiba says, “[The new purchaser] does not have to buy a right-of-way for himself.”
 - L. And sages say, “He has to buy a right-of-way for himself.”
 - M. Under what circumstances?
 - N. In the case of one who sells [the aforelisted properties].
 - O. But in the case of one who gives these things as a gift,
 - P. he [willingly] hands over all of them [in a liberal spirit].
 - Q. Brothers who divided [an estate] —
 - R. Once they have acquired possession of a field, they have acquired possession of all of them [and no longer may retract] —
 - S. He who lays hold [through usucaption, seeking title] of the property of a deceased proselyte [lacking Israelite heirs],
 - T. once he has acquired possession of a field, has acquired possession of all of them.
 - U. He who declares a field sanctified has declared all of them sanctified.
 - V. R. Simeon says, “He who declares a field sanctified has declared sanctified only the carob which is grafted, and cropped sycamores.”
- I.1** A. [...In the case of one who sells [the aforelisted properties]. But in the case of one who gives these things as a gift, he willingly hands over all of them in a liberal spirit.] *So what's the difference between a sale and a gift?*
- B. Explained Judah b. Naqosa before Rabbi, “The seller makes the matter articulate, and the donor does not make the matter articulate.”

- C. *Do you really means to say, “The seller makes the matter articulate, and the donor does not make the matter articulate”? Rather, it should be, just as the one does not make the matter articulate, so the other does not make the matter articulate!* [Simon: If the donor wished to reserve something to himself, he should specify them, because he is assumed to give in a liberal spirit.]
- D. Rather, the explanation should be: the latter ought to have articulated any conditions attached to the gift, while the former has no need to articulate such conditions.
- I.2** A. *Somebody said to others, “Give Mr. So-and-so a room that holds a hundred barrels.” It turned out that the room could hold a hundred twenty barrels.*
- B. *Said Mar Zutra, “Well, the man said to him, ‘a hundred,’ but ‘a hundred and twenty’ is not what he said.”*
- C. *R. Ashi said, “Have we not learned in the Mishnah: **In the case of one who sells [the aforelisted properties]. But in the case of one who gives these things as a gift, he [willingly] hands over all of them in a liberal spirit?** Therefore one who makes a gift does so in a liberal spirit. Here, too, one who makes a gift does so in a liberal spirit.”*

II.1 A. He who declares a field sanctified has declared all of them sanctified:

- B. *Said R. Huna, “Even though our rabbis have said, **He who buys two trees in his fellow’s field, lo, this party has not bought the ground [on which they are growing] [M. 5:4A-B],** if he sold land and left two trees in the field for himself, he does possess some soil with him. And that would accord even with the position of R. Aqiba, who has said, ‘He who sells sells in a liberal spirit,’ that position pertains in particular to the cases of a well or a cistern, which do not exhaust the soil, but as to trees, which do exhaust the soil, **[71B]** if the seller did not reserve some dirt for himself, the buyer could say to him, ‘Pull up your tree and get out of here.’”*
- C. *We have learned in the Mishnah: **R. Simeon says, “He who declares a field sanctified has declared sanctified only the carob which is grafted, and cropped sycamores.”** And in that connection it has been set forth as a Tannaite statement: Said R. Simeon, “How come? Since they draw nourishment from a field that has been sanctified.” Now if you take the position that the one who sanctifies the field tacitly keeps back something for himself, then, when the trees draw nourishment, it is from his own property that they do so. Will it not follow that R. Simeon makes his ruling in accord with the position of R. Aqiba, and R. Huna accords with rabbis? [Aqiba holds the seller sells in a liberal spirit, and*

when the man sanctifies the field, he reserves nothing to himself; Huna then would not accord with Aqiba.]

- D. *Well, if all you have to say is that R. Huna accords with rabbis, that is obvious!*
- E. *Well, there is the practical consequence that, if the trees fall down, he can plant them again.*
- F. **[72A]** *But can you interpret the position of R. Simeon to accord with the principle of R. Aqiba? And lo, it has been taught on Tannaite authority: “[If] one has consecrated three trees in a field in which ten [in all] were planted in a plot sufficient for sowing a seah of seed, lo, this one has consecrated [not only the trees themselves] but also the land and the [other] trees among them. When [therefore] he redeems [the lot, paying the value to the sanctuary,] he redeems at the rate of fifty sheqels of silver for every part of the field that suffices for the sowing of a homer of barley.*
- G. *“If there were fewer or more [than specified], or if the man consecrated the trees in sequence one after the other, lo, this one has sanctified neither the land nor the other trees [among the trees he actually has consecrated seriatim]. Therefore, when he redeems the lot, he redeems the trees according to their actual value.*
- H. *“And furthermore, even if he sanctified the trees and afterward he sanctified the ground, when he redeems the lot, he redeems the trees in accord with their actual worth and then he goes and redeems the land at the rate of fifty sheqels of silver for every part of the field that suffices for the sowing of a homer of barley.”*
- I. *Now who stands behind this rule? It can hardly be R. Aqiba, for lo, he has said, “A seller sells in a liberal spirit” — all the more so someone who sanctifies his property to Heaven! It cannot be rabbis, for lo, they have said, “One who sells is the one who does it in a niggardly spirit, but one who sanctifies his property will do so in a liberal spirit”! So it is obvious that before us is the opinion of R. Simeon. Now vis à vis whose position does R. Simeon make his ruling? Obviously, it cannot be in accord with R. Aqiba, for lo, he has said, “A seller sells in a liberal spirit,” and all the more so one who sanctifies the property, so, obviously, it must be within the framework of the position of rabbis. And yet, R. Simeon takes the position that, just as one sells his property in a niggardly spirit, so he sanctifies it also in a niggardly spirit! In that case, he leaves some land to himself. **[72B]** Then there is a contradiction with what he has said above: **[R. Simeon says, “He who declares a field sanctified has declared sanctified only the carob which is grafted, and cropped sycamores.”** ...How come?] Since they draw nourishment from a field that has been sanctified!*

- J. *[It's easy enough to deal with this problem,] R. Simeon responded to rabbis within their own premises, saying to them, "In my view, just as one sells in a niggardly spirit, so he sanctifies also in a niggardly spirit, therefore leaving some land over for his own use. But from your perspective, you should in any event concede to me: **He who declares a field sanctified has declared sanctified only the carob which is grafted, and cropped sycamores!** And to that rabbis responded, "There is no such distinction to be made."*

II.2 A. *In accord them with whom have you interpreted this clause in the cited passage? To R. Simeon? Then look at what follows: "And furthermore, even if he sanctified the trees and afterward he sanctified the ground, when he redeems the lot, he redeems the trees in accord with their actual worth and then he goes and redeems the land at the rate of fifty sheqels of silver for every part of the field that suffices for the sowing of a homer of barley"! Now if this really did accord with R. Simeon, then the valuation should be determined at the time of redemption [Simon: according to the character of the article to be redeemed at the time of redemption, not at the time of sanctification], and it would follow that the trees should be redeemed along with, and as part of, the field [Simon: and not separately, at their own value, as they would be, if we went by the value at the time of sanctification]. For lo, we have learned that R. Simeon is guided by the value at the time of redemption, for it has been taught on Tannaite authority:*

- B. "How do we know that [if a man] purchases a field from his father and then consecrates the field, and then the father died, that [since now the field is received by the purchaser no longer as an acquisition attained through purchase, but through inheritance] the field falls into the category of a field of possession [and is redeemed in accord with the rules governing redemption of a field of possession that has been consecrated]?"
- C. "Scripture states, 'And if he should consecrate to the Lord a field which he has bought, which is not a field of possession [that is, not a field he has inherited]' (Lev. 27:22) — thus [making reference] to a field which is not ever going to be suitable to fall into the category of a field of possession.
- D. "That statement then excludes the case at hand, since the land is suitable [at a later point] to fall into the category of a field of possession," the words of R. Judah and R. Simeon.

- E. R. Meir says, “How do we know that, if one purchases a field from his father and then his father died, and afterward the man consecrated the field, the field falls into the category of a field of possession?”
- F. “Scripture states, ‘And if he should consecrate to the Lord a field which he has bought, which is not a field of possession’ (Lev. 27:22) — thus [making reference to] a field which does not fall into the category of a field of possession.
- G. “That statement then excludes the case at hand, which already has fallen into the category of a field of possession.”
- H. *But in the view of R. Judah and R. Simeon, even if the land was consecrated and subsequently the father died, the land falls into the category of land of possession.*
- I. *And what is the reason for their position? If it is on the basis of the cited verse of Scripture, the verse of Scripture accords with the view of R. Meir [anyhow].*
- J. *Rather, is it not because, in the case of redeeming a consecrated field, we follow the status that prevails at the moment of consecration [just as proposed above]?!*
- K. *[Rejecting the view that there is no scriptural basis for Judah’s and Simeon’s view and that the cited verse of Scripture accords with Meir alone,] said R. Nahman bar Isaac, “R. Judah and R. Simeon found a pertinent verse of Scripture and interpreted it as they found suitable: ‘If [matters were as Meir says], Scripture should have been formulated as follows: “...If he should sanctify a field which he has bought, which is not a field of possession [at all].” When Scripture states, “...a field...” what is the meaning? It is a field that is not suitable ever to fall into the category of a field of possession, therefore excluding from the rule a field that is capable of becoming a field of possession.”’*

II.3 A. Said R. Huna, “A full-grown carob and a cropped sycamore fall under the law governing a tree and also under the law governing land.

- B. “They fall under the law governing trees in that, if someone sanctified or bought two trees and one of these, the soil in between is classified as going along with the trees [these then are deemed trees, and we invoke the rule that three trees carry with them the ground between them].

C. “*They fall under the law governing land, in that they are not included in the transfer of land that is sold* [as are other trees, if the seller inserts the language, ‘it and all its contents’ (Simon)].”

II.4 A. And said R. Huna, “A sheaf of two sheaves is partly subject to the law governing a sheaf and is partly subject to the law governing a shock.

B. “It is partly subject to the law governing a sheaf, in that while two sheaves are classified as forgotten, two along with this one are not regarded as forgotten. [Simon: It is treated as a sheaf on a par with the other two sheaves, the three together forming one shock.]

C. “And it is partly subject to the law governing a shock, *in line with what we have learned in the Mishnah: A sheaf which contains two sheaves, and [the worker] forgot it, is not [subject to the restrictions of the] forgotten sheaf, [for the householder will not forget such a sheaf, since it contains a large amount of produce] [M. Pe. 6:6A-B].*”

II.5 A. Said Rabbah bar bar Hannah said R. Simeon b. Laqish, “As to a full-grown carob and a cropped sycamore, we come to the dispute between R. Menahem b. R. Yose and rabbis” [Simon: the former holding that they are not sanctified along with a field, the latter that they are].

B. **[73A]** *And why not say, “Between R. Simeon and rabbis”?*

C. *In stating matters in this way he informs us that R. Menahem b. R. Yose accords with the position of R. Simeon.*

I.1 asks the obvious question. No. 2 supplies an illustrative case. II.1, continued at No. 2, cites the pertinent statement of the Mishnah in pursuing the issue at hand, which is one that has played a role elsewhere in our chapter. No. 3, with No. 4 tacked on, and No. 5 supplement the rule concerning the classes of trees under discussion.