
Bavli Baba Qamma

Chapter Nine

Folios 93B-111A

9:1

- A. [93B] He who steals wood and made it into utensils,
- B. wool and made it into clothing,
- C. pays [compensation in accord with the value of the wood or wool] at the time of the theft.
- D. [If] he stole a pregnant cow and it gave birth,
- E. a ewe heavy with wool [needing shearing], and he sheared it —
- F. he pays the value of a cow which is about to give birth, or of a ewe which is about to be sheared.
- G. [If] he stole a cow, and it got pregnant while with him and gave birth,
- H. a ewe, and it became heavy [with wool] while with him, and he sheared,
- I. he pays [compensation in accord with the value of the cow or ewe] at the time of the theft.
- J. This is the governing principle:
- K. All robbers pay compensation [in accord with the value of the stolen object] at the time of the theft.

- I.1** A. [He who steals wood and made it into utensils:] *Say*: it is in particular **he who steals wood and made it into utensils**, who has to pay as specified, but if he merely planed the wood, that would not be the case? It is in particular **he who steals wool and made it into clothing** who has to pay as specified, but if

he merely bleached the wool, that would not be the case? *Then in contradiction we may cite the following: He who stole wood and planed it, wool and bleached it, thread and bleached it, flax and washed it, stones and smoothed them down, he pays compensation in accord with their value at the time of the theft [T. B.Q. 10:2A-B]!*

- B. *Said Abbayye, "The Tannaite of our Mishnah paragraph refers to a case in which the change in the character of the stolen goods is merely recognized by the authority of rabbis, that is to say, where the stolen goods can still revert to their former condition; and all the more so, where change is such as is recognized by the Torah [where the stolen goods can no longer revert to the former state]. That is shown by the formulation of the Mishnah itself: He who steals wood and made it into utensils, refers to wood that was already planed, for example, ready-made boards; here it is possible to revert to the prior condition, for if one wants to, he can pull the boards out and leave them as they were. So, too, he who steals wool and made it into clothing refers to wool that was already spun, for here, too, the wool can be restored to its original condition, since if one wants, he can pull out the thread and restore them to their prior condition. And all the more so, where change is such as is recognized by the Torah [where the stolen goods can no longer revert to the former state]. The Tannaite authority behind the contrary formulation addresses the case of a change that is such that the stolen goods can no longer revert to their prior condition, which then would be recognized by the Torah; but he does not deal with a change in the condition of the stolen article that would be recognized only by rabbis."*
- C. *R. Ashi said, "The Tannaite framer of our Mishnah paragraph likewise addresses the case of changes in the condition of the stolen object that are recognized by the Torah, for he has formulated matters as, wood and made it into utensils. By that he means clubs, which were changed by being planed. So, too: wool and made it into clothing, which refers to felt cloth, that is, a change that cannot be undone."*

- I.2** A. *[With reference to the language, wool and bleached it,] is bleaching regarded as a change [such that the stolen goods have been irretrievably transformed]? And an objection may be raised on the basis of the following: [If] he did not give to the priest the first of the fleece before he dyed it, he is free [of the obligation to give it]. [If] he bleached it but did not dye it, he is liable [M. Hul. 11:2K-L].*

- B. *Said Abbayye, "There is no contradiction. The former statement accords with R. Simeon, the latter with rabbis, as has been taught on Tannaite authority: If the owner sheared the sheep, spun the wool and wove it, in respect to the minimum amount of fleece that is liable to the first fleece-offering, this portion is not reckoned with the other wool, still in the raw state, but if he only purified it — R. Simeon says, 'It is still not reckoned'; sages say, 'it is reckoned.'"*
- C. *Raba said, "Both this and that statement represent the position of R. Simeon. But there still is no contradiction. The one speaks of a case in which the bleaching was done by beating the wool [which did not change the character of the wool] and the other case [where the process is considered a substantive change] refers to a case in which the bleaching was done by cording the wool with a comb."*
- D. *R. Hiyya bar Abin said, "The one speaks of a case in which the wool was merely washed, the other, in which it was whitened with sulphur."*

I.3 A. Now, since, from R. Simeon's perspective, even dyeing is not considered a change, how can bleaching ever be considered a change, for has it not been taught on Tannaite authority: If the owner sheared the sheep one after another, dyeing the fleece in the interval, or sheared the sheep one after another and in the interval spun the wool, or sheared the sheep one after the other and in the interval wove the wool, that portion would not be reckoned to form the requisite minimal. R. Simeon b. Judah said in the name of R. Simeon, "If he only dyed the wool, it would be reckoned to make up the minimum volume" [so Simeon does not consider dyeing a change, all the less so, bleaching]?

B. *Said Abbayye, "There is no contradiction. The one formulation represents rabbis' version of R. Simeon's position, the other, R. Simeon b. Judah's version of Simeon's position."*

C. *Raba said, "Not at all. Rabbis did not differ from R. Simeon b. Judah. But the case of dyeing wool is exceptional, since the color could be removed by soap, it is not considered a change; and as to the statement, [If] he did not give to the priest the first of the fleece before he dyed it, he is free [of the obligation to give it], which we have maintained represents the unanimous opinion of all parties, that addresses a case in which the wool was dyed with indigo [and is therefore permanent and not to be removed with soap]."*

- I.4** A. Said Abbaye, “R. Simeon b. Judah, the House of Shammai, R. Eliezer b. Jacob, R. Simeon b. Eleazar, and R. Ishmael all maintain the view that a change in the character of an object leaves the object in its established status [or classification]..
- B. “R. Simeon b. Judah: as in the text we have just now cited.
- C. “The House of Shammai: As has been taught on Tannaite authority: **If one gave her wheat for making into flour, grapes for making wine, olives for making oil, a cow that became pregnant while in her domain and gave birth [T. Tem. 4:7A]** — one Tannaite version states, ‘They are forbidden.’ And another Tannaite version states, ‘They are permitted.’ Said R. Joseph, ‘Gurion of Aspora [94A] recited on Tannaite authority: The House of Shammai prohibit [use of these things on the altar] and the House of Hillel permit.’ The House of Hillel permit, *for the House of Hillel reason, Scripture says, ‘them,’ meaning, ‘them but not their offspring’; ‘them,’ but not the things made from them.* The House of Shammai prohibit [use of these things on the altar], *for the House of Shammai maintain that Scripture says, ‘them,’ but not their offspring; but the word ‘even’ means to encompass what is made of them.* And the House of Hillel? *They derive two rules from that: ‘them’ and not things that they turn into, ‘them’ and not their offspring. But the House of Hillel surely must deal with this same ‘even’! The use of the word ‘even’ does present a problem to the House of Hillel.*
- D. “What is the evidence concerning R. Eliezer b. Jacob? *It is as has been taught on Tannaite authority: R. Eliezer [T.: b. Jacob] says, ‘[B.’s version: Lo, if one has stolen a seah of wheat and ground it and kneaded it and baked it and separated from it dough-offering — how does he say a blessing?] Why does Scripture say, “He who blesses a robber blasphemes the Lord” (Psa. 10: 3)? They made an analogy. To what is the matter to be compared? To] someone who stole a seah of wheat, ground it into wheat, baked it into bread, and separated dough-offering from the bread [for the priest], [T.: and then fed the bread to his children.] How is such a person to say a blessing? It is no blessing but a curse. Concerning such a person it is said, “When the robber blesses, he blasphemes the Lord”’ [T. San. 1:2].*
- E. ““What is the evidence concerning R. Simeon b. Eleazar? *It is as has been taught on Tannaite authority: This governing principle did R. Simeon b. Eleazar state, ‘In the case of any object the value of which the thief has*

increased, his hand is on top. If he wants, he pays compensation in accord with the value at the time of the theft; if he wants, he says to him, 'Lo, there is your property before you and take it as is' [T. B.Q. 10:2C-E]."

F. *What is the sense of this statement?*

G. Said R. Sheshet, "This is the sense of the statement: If the article has been improved, the robber may take the increased value, but if it has deteriorated, he may say to him, 'Here, take your own,' *since the change in the article leaves it as it was before.*"

H. *If so, then even if it increased in value, the rule should be the same.*

I. We make provision for the penitence of those who wish to repent.

- J. [Reverting to E:] *"What is the evidence concerning R. Ishmael? As has been taught on Tannaite authority: The religious duty of carrying out the obligation of designating peah is to do so from standing grain. If one did not designate it from standing grain, he designates it from the sheaves. If he did not designate it from the sheaves, he designates it from the pile of grain before he smooths it down. If he had smoothed it, he tithes it and then gives peah to the poor man. In the name of R. Ishmael they said, 'He even may separate it from the dough [despite all the changes that have been made in the grain].'"*
- K. *Said R. Pappa to Abbaye, "Now have we gone over all of these Tannaite formulations so as to inform ourselves that the decided law accords with the House of Shammai!?"*
- L. *He said to him, "This is the intent of the statement: The House of Shammai and the House of Hillel did not differ in this matter."*
- M. *Said Raba, "Now why draw the conclusion that you have? Perhaps [in each case the ruling is ad hoc, and not in response to the alleged principle affirmed throughout, namely:] R. Simeon b. Judah made the ruling that he did with respect to dyeing because the color could be removed by soap; the House of Shammai took the view that they did with respect to the religious duty because, in that context, it would look disgusting; R. Eliezer b. Jacob made the statement that he did respecting the blessing because it was in context a religious duty that was carried out through a transgression; R. Simeon b. Eleazar took the view that he did only in a case in which there was deterioration that could be made up; R. Ishmael took the view that he did only*

in the context of the law of the corner of the field, where the language, ‘you shall leave’ (Lev. 19:10, 23:22) recurs [meaning, under all circumstances].

- N. *“And if you should say that from the case of the corner of the field we should derive the law in general that change does not transfer ownership, in fact, the case of gifts to the poor is exceptional, in line with the question of R. Jonathan. For R. Jonathan raised the question: ‘What is the operative consideration in the mind of R. Ishmael in that context? Is it because he held that change does not transfer ownership, or does he hold that, while change does transfer ownership, here the rule is different because only in the context of the law of the corner of the field, where the language, “you shall leave” (Lev. 19:10, 23:22) recurs [meaning, under all circumstances].’*
- O. *“And, further, if you assume that the operative consideration in the mind of R. Ishmael was that change does not transfer title to the object, then why, in the context of the law of the corner of the field, does the language, ‘you shall leave’ (Lev. 19:10, 23:22) recur? And furthermore, from the perspective of rabbis, too, why, in the context of the law of the corner of the field, does the language, ‘you shall leave’ (Lev. 19:10, 23:22) recur?”*
- P. *[From their perspective] it is required in line with that which has been taught on Tannaite authority: He who declares his vineyard to be ownerless and then gets up early in the morning and harvests the grapes is liable to leave for the poor the grapes the fall to the ground, the puny bunches, the forgotten ones, and the corner of the field, but is exempt from having to designate tithes.*

I.5 A. Said R. Judah said Samuel, “The decided law is in accord with R. Simeon b. Eleazar [This governing principle did R. Simeon b. Eleazar state, ‘In the case of any object the value of which the thief has increased, his hand is on top. If he wants, he pays compensation in accord with the value at the time of the theft, if he wants, he says to him, ‘Lo, there is your property before you and take it as is’].”

B. *But did Samuel make such a statement at all? But did not Samuel say, “They do not make an estimate in the case of a thief or a robber [the guilty party having to pay in full for the original value of the damaged article (Kirzner)] but they do so for compensation for damages [the carcass going back to the injured party]”? Now, from the perspective of Raba, who has said that when R. Simeon b. Eleazar made his statement there, it was in a case in which there was*

deterioration, but it would be possible for the stolen object to regain its original character, there would be no problem here; Samuel in saying that the decided law follows R. Simeon b. Eleazar, who says that a change leaves the article in the status quo, speaks of a case of deterioration where the recovery would still be possible, and the statement made by Samuel, that the assessment of the carcass is not made in the case of theft or of robbery but only of damage, would refer then to a case in which no recovery is possible. But from the viewpoint of Abbaye, who said that the statement made by R. Simeon b. Eleazar pertains also to a case in which recovery is not possible any more, surely there is a contradiction!

C. This is how Abbaye formulated the Tannaite statement: “Said R. Judah said Samuel, [94B] ‘They said that the law follows the position of R. Simeon b. Eleazar,’ but Samuel himself did not concur in that statement.”

- I.6** A. Said R. Hiyya bar Abba said R. Yohanan, “As a matter of the law of the Torah, a stolen object that has been changed should still go back to the original owner as is: ‘He shall restore that which he took by robbery’ (Lev. 5:23) — under all circumstances. And if you should cite our Mishnah paragraph [**pays compensation in accord with the value of the wood or wool at the time of the theft**], that is a rule that is made to facilitate the penitence of those who would repent.”
- B. *But did R. Yohanan make such a statement? And did not R. Yohanan say, “The decided law accords with the unattributed statement of the Mishnah?” And we have learned in the Mishnah: **If] he did not give to the priest the first of the fleece before he dyed it, he is free [of the obligation to give it]. [If] he bleached it but did not dye it, he is liable [M. Hul. 11:2K-L].***
- C. *Said to them one of the rabbis, and R. Jacob was his name, “To me personally did R. Yohanan explain that his statement spoke of a case in which the thief had stolen planed pieces of wood and made utensils out of them, since, in such a case, the materials could revert to their prior condition.”*

- I.7** A. *Our rabbis have taught on Tannaite authority:*
- B. Robbers or usurers who repent and wish to restore what they have stolen — they do not take back from them what they offer by way of restitution, and one who does accept back from them what they have stolen — the spirit of sages derives no pleasure from him.

C. Said R. Yohanan, “In the days of Rabbi was this Mishnah teaching set forth. *For it has been taught on Tannaite authority:* there was the case in which someone wanted to repent. Said to him his wife, ‘Empty head! If you repent, then even your girdle is not going to be yours.’ So he refrained from repenting. At that time they said: ‘Robbers or usurers who repent and wish to restore what they have stolen — they do not take back from them what they offer by way of restitution, and one who does accept back from them what they have stolen — the spirit of sages derives no pleasure from him.’”

D. *An objection was raised: If the father died and left money gained on interest to his children, even if the heirs know that it was money paid as interest, the children do not have to return the money collected as interest. [But if the father had left them a cow, field, cloak, or any sort of object for which he bore responsibility for replacement, should the object be lost, they are liable to return such an object for the honor of their father] [T. B.M. 5:25-6]. Does this not imply that it is the children who do not have to pay the money back, but the father would have to do so?*

E. *As a matter of law, the father also should not have to pay the money back, but the passage is stated with regard to the children because of what was going to follow, namely: But if the father had left them a cow, field, cloak, or any sort of object for which he bore responsibility for replacement, should the object be lost, they are liable to return such an object for the honor of their father. On that account, the earlier clause likewise was formulated in terms of the children.*

F. *But why should they not return such an object for the honor of their father? Would not there apply to this case the verse, “nor curse the ruler of your people” (Exo. 22:27), meaning, so long as he is acting in accord with the customs of your people?*

G. *It is in line with what R. Phineas stated, “It is a case in which he would have repented.” Here, too, the father repented.*

H. *Well, if the father repented, what is the object doing with the father? Would he not have given it back?*

I. *He wanted to return it, but he did not have time to return it before he died.*

J. *Come and take note:* Robbers and those who lend money on interest, even though they have collected the money, must make restitution.

K. *Now as to robbers, what relevance can there be to the clause, “even though they have collected the money”?* [That can only pertain to the usurer.] [And that proves that the court will permit recovery of funds paid out in interest.] *If the money is stolen, it is stolen, and if not, how can you call them robbers anyhow?*

L. *Frame matters in this way:* Robbers — *and who are they?* they are those who lend money on interest — even though they have collected the money, must make restitution.

M. *Say:* They have to give it back, even though it would not be accepted from them.

N. So if it would not be accepted, why do they have to give it back?

O. It is to carry out their obligations to Heaven.

P. *Come and hear:* **As to tax farmers and tax collectors, doing penitence is difficult. They return what they can to those whom they recognize, and of the rest of the taxes that they propose to hand back, they make use for the public good [T. B.M. 8:26A-C].** [Does this not prove that if they give the money back, it is accepted?]

Q. *Say:* They have to give it back, even though it would not be accepted from them.

R. So if it would not be accepted, why do they have to give it back?

S. It is to carry out their obligations to Heaven.

T. *So why is it hard for them to repent? And furthermore, why is it said, **Of the rest of the taxes that they propose to hand back, they make use for the public good,*** and said R. Hisda, “This involves paying for digging wells, ditches, and caves”?

U. *There is no problem, the one teaching [where we assume that the thief may actually make restitution] was stated prior to the specified ordinance, the others, afterward. And now that R. Nahman has said, “It is when the stolen object is no longer intact,” you may even say that both statements refer to the period after the ordinance was made, and there still is now problem, [95A] since the one speaks of a case in which the stolen object is still intact and the other to a case in which the stolen object is not intact.*

V. *Well, what about the girdle that the man was wearing, which, after all, by definition was still intact?*

W. *What is the meaning in context of “girdle”? It meant, “the money paid for the girdle.”*

X. *And is it the fact that, so long as the stolen object is intact, our rabbis did not make this enactment [so that the article itself would have to be given back]? But is it not the fact that the beam was still intact, concerning which we have learned in the Mishnah: **Testified R. Yohanan b. Gudegedah concerning...a stolen beam which one built into his house, that the original owner collects its value for the good order of those who repent [M. Ed. 7:9D]**?*

Y. *That case is exceptional, because, since the house would be damaged, the rabbis treated the beam as though it were no longer intact.*

- II.1** A. **[If] he stole a pregnant cow and it gave birth, a ewe heavy with wool [needing shearing], and he sheared it — he pays the value of a cow which is about to give birth, or of a ewe which is about to be sheared:**
- B. *Our rabbis have taught on Tannaite authority:*
- C. *“He who steals a ewe and sheared it, a cow and it bears offspring must pay for the ewe, the shearings, and the offspring,” the words of R. Meir.*
- D. *R. Judah says, “The object that is stolen returns as is.”*
- E. *R. Simeon says, “They regard the animal as though it had been assessed with the robber for money at the time of the robbery.”*

II.2 A. *The question was raised: What is the operative consideration behind the ruling of R. Meir? Is it because he takes the view that a change leaves the article as it is? Or did he maintain that, while in general changing the object effects a transfer of title to it, here he imposes a fine on the robber. What is the practical difference? If the animal got thin. [The robber would not have to pay, but just gives the animal back; or he would have to pay the difference.]*

B. *Come and take note: [If] he stole a beast and it got old, slaves and they got old, he pays [compensation for them in accord with their value] at the time of the theft. R. Meir says, “In the case of slaves, he may say to him, ‘Here is what is yours before you!’” [M. B.Q. 9:2A-D]. So the same would go for the ox, that is, payment*

would have to be in accord with the value at the time of the robbery [since when the animal changed, title transferred to the robber]. Now, if you should suppose that in R. Meir's opinion, a change in the character of the stolen object leaves the object as is, then even a beast should be covered by the same rule. So does that not prove that R. Meir takes the view that a change in the character does effect transfer of title, and here, he takes the position that he does because it is a special sanction that has been imposed in this case?

C. Say: R. Meir made his statement within the framework of the opinion of rabbis, that is, "From my perspective, a change in the character of the stolen object does not effect the transfer of title, so that even a beast would be covered by the rule, but from your perspective, in that you say, a change in the character of the object does effect transfer of title, you should concede to me nonetheless in the cases of slaves, who are comparable to real estate, and we know that real estate is not subject to the law of robbery." But sages replied, "No, in this matter slaves are equivalent to movables."

D. Come and take note: **[If he gave wool to a dyer] to dye it red, and he dyed it black, [or] to dye it black, and he dyed it red — R. Meir says, "[The dyer] pays him back the value of his wool" [M. B.Q. 9:4G-L].** So what he pays him back is the value of the wool, but not the value of the wool plus the value of the improvement of the wool. Now if you take the view that R. Meir takes the view that a change in the character of the stolen goods does not effect transfer of title, he should have to pay him back not only the value of the wool but also the value of the improvement made to the wool! So does that not prove that R. Meir takes the view that a change in the character of the stolen object does transfer title to the thief, but here, it is a special sanction that rabbis have imposed?

E. That proves the case.

F. There are those who say that that question in point of fact was never raised, since Rab transposed the names of the passage and repeated it in this language: **"If he stole a beast and it got old, slaves and they got old, he pays [compensation for them in accord with their value] at the time of the theft,"** the words of R. Meir. And sages say, **"In the case of slaves, he may say to him, 'Here is what is yours**

before you!” [M. B.Q. 9:2A-D], so R. Meir certainly takes the position that a change in the character of the object transfers title, and here, we deal with a special sanction that has been imposed by rabbis. But if any such question was raised, this is the language in which it was raised: When they imposed that extrajudicial sanction, was it only when the theft was deliberate, but if the theft was inadvertent, no such fine was imposed? Or perhaps the fine was imposed even if the theft was inadvertent?

G. Come and take note: Five classes of creditors may collect only from the unencumbered assets of the debtor, and these are they: creditors for produce [Kirzner: A field full of produce in the hands of a purchaser was taken away through the fault of the vendor; the amount due to the purchaser for his loss of the actual field could be recovered even from property already in the hands of subsequent purchasers, while the amount due to him for the value of the produce he lost could be recovered only from property still in the hands of the vendor], for amelioration showing profits [Kirzner: such as where the purchaser spent money on improving the ground which was taken away from him through the fault of the vendor], for an undertaking to maintain the wife's son or the wife's daughter; for a bond of liability without a warranty of indemnity; and for the marriage contract of a wife where no property is made a security. Now what authority have you heard who takes the view that omission of a warranty of indemnity is not merely an error made by the scribe and null? It is R. Meir, and the passage refers explicitly to creditors for produce and for amelioration showing profits. Now as to the former, what sort of a case is before us? It would be one, for instance, in which the seller stole the field from a third party and sold it to someone else, who improved it, and from whose domain the field was taken away. The law is that when the purchaser then comes to distrain, [95B] he distrains for the principal on real property that has been sold, but for amelioration, only on assets that are available for that purpose [and not in the hands of the seller]. For the owner of the field may come along and take away the

field together with the increment. Now do we not deal with a purchaser who did not know the law and therefore did not know whether real estate is or is not subject to the law of robbery? And even in such a case, the owner of the field came come along and take away the land along with the value of the improvement? So does this not prove that even in a case of inadvertent theft [as has happened with the purchaser] R. Meir would take the view that a fine is imposed?

H. Say: Not at all! Here we have a purchaser who is a disciple of a sage, and he knows the law [that real estate is not subject to the law of robbery, so the misappropriation is deliberate].

I. Come and take note: [If he gave wool to a dyer] to dye it red, and he dyed it black, [or] to dye it black, and he dyed it red — R. Meir says, “[The dyer] pays him back the value of his wool” [M. B.Q. 9:4G-L]. So what he pays him back is the value of the wool, but not the value of the wool plus the value of the improvement of the wool. Now if you should maintain that R. Meir would impose a fine even in the case of inadvertent thievery, why should he not have to pay for the combined value of the wool and the increase in its value? Does this not prove that only in the case of a deliberate misappropriation that a fine is imposed, but if the thievery is inadvertent, there is no fine?

J. Yes.

II.3

A. [“He who steals a ewe and sheared it, a cow and it bears offspring must pay for the ewe, the shearings, and the offspring,” the words of R. Meir.] R. Judah says, “The object that is stolen returns as is.”

B. R. Simeon says, “They regard the animal as though it had been assessed with the robber for money at the time of the robbery.”

C. What’s at stake?

D. Said R. Zebid, “At issue between them is the increased value that still is attached to the stolen article. R. Judah takes the view that this is assigned to the plaintiff [the article being restored in tact], and R. Simeon maintains that that belongs to the robber [since the restitution is assessed as the value at the time of the robbery].”

E. *R. Pappa said, "All parties concur that the increased value attaching to the misappropriated article belongs to the robber [that is to say, not solely to the original owner], but they differ on whether the robber gets a half, a third, or a fourth [of that increased value [in payment for his good care of the stolen article]. R. Judah takes the view that the increased value still attached to the stolen article belongs solely to the robber. R. Simeon holds that the robber would get a half, third, or a fourth thereof."*

F. *We have learned in the Mishnah: [If] he stole a cow, and it got pregnant while with him and gave birth, a ewe, and it became heavy [with wool] while with him, and he sheared, he pays [compensation in accord with the value of the cow or ewe] at the time of the theft. That is so if the animal gave birth, but if the cow had not given birth, it would go back as is. Now that inference poses no problem to R. Zebid's view, who maintains that R. Judah takes the view that this is assigned to the plaintiff [the article being restored in tact], so our Mishnah paragraph's rule accords with the position of R. Judah. But from the perspective of R. Pappa, who maintains that the increased value attaching to the misappropriated article belongs wholly neither to the robber nor to the original owner, the cited rule accords with neither R. Judah nor R. Simeon!*

G. *R. Pappa may say to you, "That same rule would apply even if the cow had not yet given birth. It is still in accord with the value at the time of the robbery. And the reason that the passage makes mention of 'giving birth' is that, since the earlier clause has spoken of 'giving birth,' the latter clause uses the same language."*

H. *There is a Tannaite formulation in accord with the view of R. Pappa: R. Simeon says, "They regard the object as though its pecuniary value had been assessed with the robber, who gets a half, third, or fourth of the increase of value."*

II.4 A. *Said R. Ashi, "When we were at the household of R. Kahana, the question came up for us: From the perspective of R. Simeon, who has said, '...the robber gets a half, third, or fourth of the increase of value,' when we pay off the thief as he gives up the object, is he paid in coin or does he get his share out of the corpus of the stolen animal? And we found the*

*solution to this question in what R. Nahman said Samuel said, namely, 'In three instances an assessment of the value of improvements is made and compensation is paid in cash, and these are they: the debt paid by the first born to another son of the same father; the debt of the creditor of the widow who has collected her marriage settlement, when she pays to the estate; and the debt of creditors to those who have bought a property [then seized from them in collection of the original seller's debt].'" [In these three instances, if the land has been improved by the firstborn, the widow, or the purchaser of a property that has been seized, the compensation is in cash. The case of the firstborn, who gets a double portion of the estate, is this: the division of the estate was not made immediately but some time after the death of the father. Both the firstborn and the other son effected improvements on the whole estate. When the firstborn takes his double share, he has to pay for the part of the joint improvements to which he is not entitled. An assessment is made, and he pays the ordinary sum for it, not in additional ground but in cash. When the widow seized the estate to satisfy her marriage settlement or the creditor his claim, and the heirs after the deceased's death had improved the land or the purchaser had improved the land, those who get the land must pay compensation for improvements, and this is in cash, not real estate (Freedman, *Baba Mesia*).]*

B. Said Rabina to R. Ashi, "*Does this then imply that, in Samuel's opinion, the creditor who seizes land has to return the value of the improvement to those who bought the land [from the debtor, and have now lost it to the debtor's creditor]? But does the purchaser of that land have any claim on the value of the improvements he has made? And has not Samuel said, 'The creditor [of the original owner, the debtor, who has sold the land] collects the value of the improvements [and the purchaser from the debtor has no claim on his work]?' And if you should say, 'There is no problem, for the one ruling refers to improvement affecting what is carried [the produce], the other to one that does not affect what is carried [the produce], [that is, an increase in the value of the crop, as*

against an increase in the value of the land, which reverts to the creditor when he seizes the land],’ is it not the fact that in cases that came up from day to day, Samuel collected even from the increase in value that affected what is carried [the produce]?!”

C. [He said to him,] “There is no difficulty, [96A] for in the one case the value of the land encompassing its improvement is claimed, and the other involves no claim for the value of the land and its improvement [the initial debt not reaching that larger figure].

D. He said to him, “[But if the claim does not encompass the value of the land and its improvement, you maintain that the creditor must pay the purchaser for his improvements and may then evict him. And] that position is fully in accord with the view of one who maintains that even if the purchaser has the money, he cannot pay off the original seller’s creditor [but must surrender the land]. On the other hand, on the view of the one who maintains that if the purchaser has the funds, he can pay off the creditor with the funds and keep the land, why can he not claim, “If I had had the money, I would have paid you off from the whole estate. Since I have no money, give me a griva of land in any field that is worth at least the value of the improvements that I have made to the land.” [Why should he lose everything?]

E. Here we deal with a case in which the original debtor had treated this field as a specific form of repayment of the debt, saying, “Payment of what is owing to you shall come only out of this field.” [Everyone then concurs that the purchaser cannot retain a piece of the land as repayment for his improvements.]

II.5 A. Said Raba, “If the robber stole and improved the stolen article and sold it, or if he stole and improved the value and left it to the heirs, then the value of the improvement he has validly sold, or the value of the improvement he has validly bequeathed.”

B. *Raba raised this question:* “If the purchaser had improved the value of an object that was stolen, what is the law?”

C. *After he had raised this question, he reverted and answered it: "What the first party sold to the second is every right that would accrue to him [thus whatever share in the improvements the thief would get to retain]."*

- II.6** A. *Raba raised this question: "If a gentile had improved the value of an object that was stolen, what is the law?"*
- B. *Said R. Aha of Difti to Rabina, "So are we going to get up and provide a remedy for the situation of a gentile [who wishes to repent]?! [Let him return the improvements and get nothing.]"*
- C. *He said to him, "Not at all, it is a necessary question. For example, if he sold the stolen object, which he had improved, to an Israelite, [what do we do]?"*
- D. *"Well, in the end, whatever comes about by reason of the action of a gentile, lo, it is in the status of the gentile."*
- E. *"Not at all, it is a necessary question. For example, if an Israelite did the stealing, and sold the object to him, and the gentile improved it, and then the gentile went and sold the object to another Israelite — what is the law? Do we say, since to begin with an Israelite was involved, and in the end an Israelite was involved, rabbis therefore provided a remedy for the penitent? Or perhaps, since a gentile is in the middle of the transaction, rabbis made no such remedy available?"*
- F. *The question stands.*

- II.7** A. *Said R. Pappa, "Someone who stole a palm tree from another party and cut it down, even though he threw it from the other person's field into his own field, he would not acquire title. What is the operative consideration? To begin with it was called a palm tree and now it is called a palm tree. [Kirzner: The change involved does not confer ownership enabling him to make restitution by payment in money.] If out of the palm tree he made logs, he does not acquire title to them, since even now all they are called is logs of a palm tree. If he made beams out of the logs, then he would acquire title. But if out of big beams he made little beams, he would not acquire title, even though, if he had made them into boards, he would have acquired title to them."*

- II.8** A. *Said Raba, "Someone who stole a lulab and turned it into leaves would acquire title to them. To begin with the object was called a lulab, but now it is called leaves. If out of the leaves he made a broom, he would acquire title, since to begin with they were leaves and now they are a broom. But if he*

made a rope out of the broom, he would not acquire title, since if he were to take it apart again, it would become a broom once more."

- II.9** A. *R. Pappa raised this question: "If the central leaf of a lulab split, what is the law?"*
- B. *Come and take note: For said R. Maton said R. Joshua b. Levi, "If the central leaf was removed, the palm branch is invalid."*
- C. **[96B]** *Now would not the same rule apply if the central leaf was split?*
- D. *No, the case of removing it differs, because the leaf then is completely lacking.*
- E. *There are those who said the same matter in the following version:*
- F. *Said R. Maton said R. Joshua b. Levi, "If the central leaf was split, it is treated as if the central leaf was removed, and it is invalid."*
- G. *That settles the question.*

- II.10** A. *Said R. Pappa, "Someone who stole sand from another party and made a brick out of it would not acquire title. How come? Because it could be turned back into sand. But if he turned a brick into sand, he would acquire title to it. If you should claim, well, perhaps he could turn the sand back into a brick, that brick would still not be the original one, but would be just another one, and, as a new entity that would be produced [it would be compensated in cash, not in kind]."*

- II.11** A. *Said R. Pappa, "Someone who stole silver bullion from someone else and turned it into coins would not acquire title to the coins, since he could turn them back into bullion. But if out of coins he made bullion, he would acquire title. And if you say that he can turn it back into coins, in fact the coins would be a new entity that would be produced. If he took black coins and polished them up like new, he would not acquire title to them, but if they were new and he blackened them, he would acquire title to them, and if you say that he can make them new again, in fact the blackness will always mark them."*

- III.1** A. **This is the governing principle: All robbers pay compensation [in accord with the value of the stolen object] at the time of the theft:**
- B. *What further information does the language, **This is the governing principle, encompass?***
- C. *It is meant to encompass the point that R. Ilai made, namely, "If one stole a lamb and it grew up into a ram, or a calf and it grow up into an ox, since the article has undergone a change while in his domain, he would acquire title to it.*

If then he slaughters or sells it, he is slaughtering or selling his own property [and does not any longer have to pay the indemnity that has been specified, four or five times the value].”

III.2 A. *Somebody stole a yoke of oxen from another party and ploughed with them and sowed some seeds with them and then returned the yoke of oxen to the owner. The case came before R. Nahman. He said to them, “Go, and make an estimate of the value of the increment to the field.”*

B. *Said to him Raba, “Did the oxen improve the land, but did the land add nothing to the increment?”*

C. *He said to him, “Did I say assess the entire increment and pay it over? What I had in mind was half.”*

D. *He said to him, “So in the end, it is a matter of a theft, and what he has to do is return what he stole, for we have learned in the Mishnah: **All robbers pay compensation [in accord with the value of the stolen object] at the time of the theft**”*

E. *[The reason that there has to be compensation for work done with the oxen then has to be specified.] He said to him, “Look, fella, didn’t I tell you that when I am in session in court, don’t open up your mouth?! For said our colleague Huna concerning me, ‘I and King Shapur [Samuel] are brothers when it comes to civil law!’ The guy who stole the oxen is a notorious recidivist, and I wanted to impose on him a severe penalty.”*

I.1 clarifies an ambiguity in the formulation of the Mishnah’s rule. No. 2 then supplies a talmud to the cited passage of No. 1. No. 3 is built on No. 2. No. 4, continued at No. 5, then generalizes and introduces the abstract issue that clarifies not only the secondary materials in hand but the principle behind the law of our Mishnah paragraph as well. No. 6 further clarifies the law of the Mishnah, now in a different way, namely, formulating an abstract principle that intersects with a statement in the Mishnah paragraph. No. 7 then proceeds to complement our Mishnah paragraph with a further Tannaite rule. A talmud for this composition is presented at No. 8. **II.1** complements the Mishnah’s rule with a Tannaite addition, with its talmud at Nos. 2, 3+4. The basic theme of the Mishnah as read in the foregoing, the share of the thief in improvements in the stolen articles that he has brought about, accounts for the inclusion of the appendix, Nos. 5-6, 7-11. **III.1** clarifies the word choices of the Mishnah in identifying their implications. No. 2 provides the expected case at the end.

9:2

- A. [If] he stole a beast and it got old,
- B. slaves and they got old,
- C. he pays [compensation for them in accord with their value] at the time of the theft.
- D. R. Meir says, “In the case of slaves, he may say to him, ‘Here is what is yours before you!’”
- E. [If] he stole (1) a coin and it got cracked,
- F. (2) pieces of fruit and they turned rotten,
- G. (3) wine and it turned into vinegar,
- H. he pays [compensation for them in accord with their value] at the time of the theft.
- I. [If he stole] (1) a coin, and it was declared invalid, (2) heave-offering, and it became unclean, (3) leaven, and the festival of Passover passed [making it no longer available for Israelite use], (4) a beast, and a transgression was committed upon it, or (5) [a beast] which was invalidated for use on the altar, or (6) which was going forth to be stoned,
- J. [the robber] says to him, “Here is what is yours right in front of you!”

- I.1** A. Said R. Pappa, “The meaning of **and they got old** is not literal. Rather, even if they got weak, the same law applies.”
- B. *But lo, in the Mishnah we learn, [If] he stole a beast and it got old!*
- C. *It means, it would be the equivalent of getting old, for instance, it will not ever become healthy again.*
- D. *Said Mar the Elder, son of R. Hisda to R. Ashi, “This is what has been said in the name of R. Yohanan: ‘If one stole a lamb and it grew up into a ram, or a calf and it grow up into an ox, since the article has undergone a change while in his domain, he would acquire title to it. If then he slaughters or sells it, he is slaughtering or selling his own property [and does not any longer have to pay the indemnity that has been specified, four or five times the value].’”*
- E. *He said to him, “Didn’t I tell you not to go on confusing the names of authorities? That has been stated in the name of R. Ilai!”*
- II.1** A. **R. Meir says, “In the case of slaves, he may say to him, ‘Here is what is yours before you’”:**
- B. Said R. Hanina bar Abdimi said Rab, “The decided law accords with R. Meir.”

C. *So would Rab abandon the position of the consensus of rabbis and adopt that of the individual authority, in this case R. Meir?!*

D. *Say: The reason is that, in the pertinent external Tannaite formulation, the opinions assigned to the several parties were reversed.*

E. *So would Rab abandon the position of the Mishnah and adopt that of the pertinent external Tannaite formulation?*

F. *Even in our version of the Mishnah, the reason is that in Rab's version, the opinions assigned to the several parties were reversed.*

G. *Still, how come Rab would transpose the names in the text of the Mishnah on account of that of the external Tannaite formulation?*

H. *To the contrary, why transpose the names in the text of the external Tannaite formulation on account of what we have in our Mishnah paragraph?*

I. *Say: In the version of our Mishnah paragraph Rab had been given the Tannaite version with the names transposed.*

J. *But if you prefer, I may say that the version of the Mishnah is not changed to be harmonized with an external version of the same only where there is a contradiction between two equivalent versions of the same matter, but where you have a contradiction of one against two [that is, two external traditions as against the text of a single Mishnah paragraph], then it would be changed.*

K. *For example, as has been taught on Tannaite authority: "He who exchanges a cow for an ass, and [the cow] produced offspring, and so, too: he who sells his girl slave and she gave birth — this one says, 'It was before I made the sale,' and the other one remains silent — the former acquires title. If this one says, 'I don't know,' and that one says, 'I don't know' — let them divide up [the difference] [cf. M. **B.M. 8:4**]. If this one said the birth took place when he was owner, and the other makes the same claim, the seller would swear that the birth took place when he was the owner [and would keep the baby], for all those who on the law of the Torah have to take an oath take the oath and then are relieved of the obligation to make a payment," the words of R. Meir. And sages say, "An oath is not imposed either in the case of slaves or in the case of real estate." [Kirzner: It is thus evidence that it was the majority of the rabbis, not Meir, who*

considered slaves to be subject to the law of real property.] *Now since the text in our Mishnah paragraph is supposed to have been reversed [Kirzner: in which case it was rabbis who maintained that slaves are subject to the law of real estate], why did Rab say that the law accords with R. Meir? Should he not have said that the law accords with rabbis [so that slaves are in the classification of real estate]?*

L. *This is the sense of his statement: "According to the version that you have repeated, with the names confused, the law is in accordance with R. Meir."*

II.2 A. **[97A]** *And did Rab actually say that slaves are in the same classification as real estate? And did not R. Daniel b. R. Qattina say that Rab said, "He who seizes the slave of his fellow and puts him to work is exempt [of blame for charging interest on the loan]"? Now if you take the view that the slave is classified as real estate, then why is he exempt? Would the slave not be regarded as remaining in the domain of the owner?*

B. *Here with what sort of a case do we deal? It is one in which he grabbed the slave not at a work time. That would be in line with what R. Abba said when he sent word to Mari bar Mar, "Ask R. Huna: 'He who lives in someone else's house without the owner's knowledge and consent — does he have to pay rent for having done so once he is discovered, or does he not have to pay rent?' And he sent word, 'He does not have to pay rent.'" [This case is similar to one in which the owner requires no work from the slave, and here the other party pays for the apartment, so he would have to pay for the work owing from the slave.]*

C. *But are these cases really parallel? Whether we take the view that the house is better off when it is occupied [so the owner wants it that way] or if we follow the view that "the gate is smitten into ruin" (Isa. 24:22), the owner has benefited by the occupancy. But in the case at hand, how can we maintain that the owner would be pleased to have his slave overworked?*

D. *Say: Here, too, the owner is pleased, since he does not want his slave to get lazy.*

- II.3** A. *Members of the household of R. Joseph bar Hama seized the slaves of those who owed him money and made them work for him. Said to him Raba his son, "What is the reason that the master acts in such a way?"*
- B. *He said to him, "I share the view of R. Nahman, for R. Nahman has said, 'A slave is not worth the bread in his belly' [Freedman, Baba Mesia: Having to provide them with food, I gain nothing by their labor and receive no interest]."*
- C. *He said to him, "But perhaps R. Nahman spoke only of such a slave as Daru, his slave, who goes around dancing in taverns. But did he mean all slaves?"*
- D. *He said to him, "I share the view of R. Daniel b. R. Qattina in the name of Rab, 'He who seizes the slave of his fellow and puts him to work is exempt [of blame for charging interest on the loan].' The reason is that the [owner of the slave, who owes the money] is just as happy that his slave does not become used to sloth."*
- E. *He said to him, "But that view pertains to a case in which the other does not owe him any money, while the master, since the other owes you money, appears to be collecting interest. For, after all, said R. Joseph bar Minyomi said R. Nahman, 'Even though they have said, "He who lives in his fellow's courtyard without his knowledge does not have to pay him rent," still, if he claims, "he lent me money and lived in his courtyard," then he has to pay him rent.'"*
- F. *He said to him, "I retract."*

- II.4** A. *It has been stated:*
- B. He who seizes someone else's boat and does some work with it —
- C. Rab said, "If the owner wants, he may collect a fee for the use of the boat, but if he wants, he may collect a fee for the deterioration of the boat."
- D. And Samuel said, "He may collect only a fee for the deterioration of the boat."

- E. *Said R. Pappa, "There is no dispute here. Rab spoke of a case in which the ship was up for rent anyhow, and Samuel spoke of a case in which the ship was not up for rent. Or if you like, I may say that both of them deal with a case in which the ship was up for rent. Rab deals with a case in which the one who took possession intended to pay a fee for rental, and Samuel refers to a case in which the one who grabbed the boat intended to steal it."*

III.1 A. If he stole a coin and it got cracked, pieces of fruit and they turned rotten, wine and it turned into vinegar, he pays [compensation for them in accord with their value] at the time of the theft:

- B. *Said R. Huna, "When the Mishnah rule refers to the coin's getting **cracked**, that is literal; when it speaks of its being **declared invalid**, that means that the government officially declared it invalid."*
- C. *And R. Judah said, "If the government declared the coin invalid, *that is equivalent to the coin's being cracked*. But what is the sense of its being **declared invalid**? That means that while one province declared it invalid, the coin still circulates in some other province."*
- D. *Said R. Hisda to R. Huna, "In line with what you said, namely, when it speaks of its being **declared invalid**, that means that the government officially declared it invalid, why, when our Mishnah speaks of cases of **pieces of fruit and they turned rotten, wine and it turned into vinegar**, which are set up as parallel to a case in which the kingdom declared the coin invalid, and yet it is taught, **he pays [compensation for them in accord with their value] at the time of the theft** [Kirzner: as the change transferred the ownership]!"*
- E. *He said to him, "In the case of produce and wine, the taste and smell change, but in the case of coin, there is no change in the character of the object [only in its function]."*
- F. *Said Rabbah to R. Judah, "In line with what you said, namely, 'If the government declared the coin invalid, that is equivalent to the coin's being cracked. But what is the sense of its being **declared invalid**? That means that while one province declared it invalid, the coin still circulates in some other province,' lo, there is the case of **heave-offering, and it became unclean**, which is parallel to the case in which the government declared the coin invalid, and yet it is taught, [the robber] says to him, 'Here is what is yours right in front of you'!"*

- G. *He said to him, "In that case [the heave-offering] the invalidity is not discerned in the physical character of the produce, but here, the invalidity is discernible [as circulating coins look different from non-circulating ones]."*

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

- B. He who lends to his fellow on the stipulation that the loan should be repaid in a designated type of coinage, and that coinage became invalidated —
- C. Rab said, [97B] "He repays him in coinage that circulates at that time."
- D. Samuel said, "He may say to him, 'Go, spend it [the designated type of coinage, which has been invalidated] in Meshan [Mesene, where it is now circulating].'"

E. *Said R. Nahman, "The statement of Samuel stands to reason if the creditor had occasion to go to Meshan, but if he didn't, then that would not be the case."*

F. *Objected Raba to R. Nahman: "They do not redeem second tithe with coinage that is not circulating, for example, if one had coins issued by Ben Koziba in Jerusalem or of earlier kings, one could not redeem produce in the status of second tithe with such money [T. M.S. 1:6]. Lo, it must follow, then, if they were coinage of later kings, even though analogous to coinage of earlier kings [for example, having been invalidated in one place but not another], one could redeem the produce with them!"*

G. *He said to him, "Here with what sort of a case do we deal? It is one in which the governments of the various provinces were not hostile to one another."*

H. *Then is the statement of Samuel to be applied to a case in which the governments of the several provinces were hostile to one another? Then how could one bring coins to the province where they were still circulating even though one had occasion to go there?*

I. *Well, they could be brought there, even if it were something of a problem, if there were no thorough search at the frontier; but if the coins were discovered there, it would be a real problem.*

J. *Come and take note: Redemption of produce in the status of second tithe cannot be carried out by means of coinage that circulates here but are with the owner in Babylonia; so, too, if they circulate in Babylonia but are kept here. Where the coins circulate in Babylonia and are in Babylonia, one may make redemption with them. So, in any*

event, it is clear that redemption of produce in the status of second tithe cannot be carried out by means of coinage that circulates here but are with the owner in Babylonia, and that is without regard to the fact that the owner has to go up here from there!

K. Here with what situation do we deal? It is a case in which the governments are hostile to one another [and are making searches at the border].

L. If so, then if the coins circulate in Babylonia and are presently located there, what are they good for [and how can they be used as redemption money]?

M. They can serve for the purchase of an animal in Babylonia, which can be brought up to Jerusalem.

N. But has it not been taught on Tannaite authority: They ordained that all kinds of coinage may circulate in Jerusalem? [Why should Babylonian coins not circulate in Jerusalem anyhow?]

O. Said R. Zira, "That is not a problem. The latter statement pertains to times when the Israelites governed the nations of the world, the former statement refers to the time in which the nations of the world govern themselves."

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

B. What is the signifier of the coinage of Jerusalem?

C. Figures of David and Solomon on one side, Jerusalem on the other.

D. What is the mint-mark of the coinage of Abraham our father?

E. Figures of an old man and an old woman on one side, a young man and a young woman on the other.

III.4 *A. [Within the premise of Rab's ruling,] Raba raised this question of R. Hisda, "He who lent money to his fellow on condition of being repaid with a designated coin, and, in the interval, the coin was made heavier [and more costly] — what is the law?"*

B. He said to him, "He pays him off in coins that circulate at that time."

C. He said to him, "And even if the new coins are the size of a sieve?"

- D. *He said to him, "Even if they are the size of a tirtia."*
- E. *He said to him, "Yes."*
- F. *He said to him, "But then will the produce not have gone down in price?"* [Kirzner: A larger supply being obtained by the heavier coin, so the increase would appear to be usury.]
- G. *Said R. Ashi, "We examine the case. If through the increased weight of the coin prices of produce dropped, we make a deduction on that account of what he has to pay; [98A] but if it was because of an increase in the supply to the market that prices went down, we do not deduct anything."*
- H. *"But still, the creditor would be receiving more metal!"*
- I. *We rather accord with R. Pappa and R. Huna b. R. Joshua, who in a concrete case made a judgment on coins in accord with the information supplied by a Tai-Arab market supervisor that the debtor should pay only eight new coins for ten old coins.*

Composite of Rulings by Rabbah on Exemptions for Destroying Other Peoples' Property

- III.5 A.** Said Rabbah, "He who tosses someone else's coin into the Great Sea is exempt from having to pay reparations. *How come? He can say to him, 'There it is, lying before you; if you want it, go get it.'* But that ruling pertains to a case in which the water was clear, so he can see it. But if the water was murky, so he can't see it, that is not the case. And this rule further applies to a case in which the act of throwing was only indirectly caused by him, but if he himself took the coin and threw it, then this is a case of robbery, and he would have to make restitution of the money."
- B. *Raba objected: "They do not deconsecrate [produce in the status of] second tithe with (1) a poorly minted coin nor with (2) coin that is not [currently] circulating, nor with (3) money that is not in one's possession [M. M.S. 1:2G].* How so? If someone had money in Castra or in the Royal Mountain, or if his purse fell into the ocean, that money may not be used for the purpose of redeeming produce in the status of second tithe." [Kirzner: If the coins thrown into the ocean are not considered as lost to the owner, why can they not be used for redeeming this produce?]
- C. *Said Rabbah, "The rule is exceptional when it comes to redeeming produce in the status of second tithe, because in that matter, we require that the money be*

actually in hand, for the All-Merciful has said, 'And bind up the money in your hand' (Deu. 14:25), and that condition has not been met here."

III.6 A. And said Rabbah, "One who disfigures a coin belonging to someone else is exempt from having to make restitution. *How come? He didn't do anything* [Kirzner: to reduce the substance of the coin]. *That ruling applies in a case in which he knocked on it with a hammer and flattened it. But if with a file he rubbed the mint mark off the coin, he has actually diminished its substance and is liable."*

B. *Raba objected:* "If the master hit the slave on his eye and blinded him, on his ear and deafened him, the slave goes forth by that reason to freedom. If he hit an object that was opposite the slave's eye, and the slave cannot see, or opposite his ear, so that he cannot hear, the slave does not go forth on that account to freedom." [Kirzner: Does this not prove that even where the substance was not reduced, such as in the case of deafening, so long as the damage was done, there is liability?]

C. *Rabbah is consistent with a position announced elsewhere, for said Rabbah,* "He who deafens his father is put to death, since it is not possible to cause deafness without making a wound through which a drop of blood falls into the ear."

III.7 A. And said Rabbah, "He who splits the ear of someone else's cow [and so renders it unfit for use on the altar of the Temple] is exempt from having to pay compensation. *How come? The cow is as it was, since he did nothing to reduce its value, since not every ox is going to be sacrificed on the altar."*

B. *Raba objected:* "He who performs an act of labor with water set aside for the preparation of purification water or with a red cow that has been designated for the purification-offering is exempt under the laws of humanity but liable under the laws of heaven. *That is so when work was done with it, because the injury is not palpable, but tearing the ear, which is palpable, would constitute damage such that one would be liable also under the laws of humanity."*

C. *Say: No, the same rule applies even if he tore the ear; here, too, he is exempt. And in stating the rule, he so informs us that even in the case of an act in which the damage is not palpable, one is liable also under the laws of heaven.*

III.8 A. And said Rabbah, "He who destroys by fire the bond of a creditor, he would not have to pay compensation. *How come? The one who burned the bond may say to him, 'All I burned of yours was a piece of paper.'*"

- B. *R. Ammi bar Hama objected: "With what sort of a case do we deal? [98B] If it is one in which there are witnesses who know what was in the bond, then why not just write up another bond, which would be entirely valid? But if there are no witnesses to the contents of the bond, then how in the world can we know what was in it [to assess liability anyhow]?"*
- C. *Said Raba, "It would be a situation in which the defendant would take the word of the other on the contents of the bond."*

D. Said R. Dimi bar Hanina, "This statement of Rabbah involves a dispute between R. Simeon and rabbis. In the opinion of R. Simeon, who held something that can cause a monetary liability is classified as money, there would be liability; in the opinion of rabbis, who maintained that something the absence of which would cause a monetary liability is not counted as money, there would be no liability."

E. Objected R. Huna b. R. Joshua, "I can concede that you have heard assigned to R. Simeon the view that something that can cause a monetary liability is classified as money in a case in which we deal with something that is of intrinsic value. That would be in accord with the view of Rabbah. For said Rabbah, 'If someone stole leaven prior to Passover, and someone else came along and burned it, if this took place on the festival, he would be exempt from having to pay compensation, since, at that time, everyone is commended to burn it.' But if this took place after Passover, there is the dispute of R. Simeon and rabbis. R. Simeon takes the position that, since something that can cause a monetary liability is classified as money, there would be liability; in the opinion of rabbis, who maintained that something the absence of which would cause a monetary liability is not counted as money, there would be no liability. But what about a case in which the object is not one the substance of which bears intrinsic value? Would he take the same view?"

F. Said Amemar, "A judge who would adjudicate liability in which the damage was done only through an indirect action would likewise sentence damages to the amount that could be recovered on a valid deed; one who does not assign liability for damage which is done indirectly would allow here damages only for the paper that was burned."

G. *There was a case of this sort and Rafram [who destroyed a bond of a creditor] required R. Ashi to pay, and damages were collected like a beam used for decorative mouldings [Kirzner: straight, exact, out of the best of the estate].*

- IV.1 A.** [If he stole] (1) a coin, and it was declared invalid, (2) heave-offering, and it became unclean, (3) leaven, and the festival of Passover passed [making it no longer available for Israelite use], (4) a beast, and a transgression was committed upon it, or (5) [a beast] which was invalidated for use on the altar, or (6) which was going forth to be stoned, [the robber] says to him, “Here is what is yours right in front of you”:
- B. *What Tannaite authority takes the view that with reference to something from which one cannot derive any benefit whatsoever, one may still say to the plaintiff, “There is yours before you”?*
- C. *Said R. Hisda, “It is R. Jacob. For it has been taught on Tannaite authority:*
- D. *“An ox that killed someone — if the owner sold it before the court decree was issued, it is deemed to have been validly sold. If the owner sanctified it to the Temple, it is validly sanctified. If he slaughtered it, its meat is permitted. If the bailee returned it to the household of the owner, it is validly returned [and the bailee has no further obligation].*
- E. *“If after the court decree was issued, the owner sold it, it is deemed not to have been validly sold. If the owner sanctified it to the Temple, it is not validly sanctified. If he slaughtered it, its meat is not permitted. If the bailee returned it to the household of the owner, it is not validly returned.*
- F. *“R. Jacob says, ‘Even after the court decree has been issued, if the bailee returned it to the household of the owner, it is validly returned.’”*
- G. *May we say that this is what is subject to dispute here: Rabbis take the view that, in matters that have become prohibited for any use or benefit, it is not permitted to say, “Here is yours before you.” And R. Jacob maintains that, in matters that have become prohibited for any use or benefit, it is permitted to say, “Here is yours before you.”*
- H. *Said Rabbah, “Not at all! All parties concur that in matters that have become prohibited for any use or benefit, it is permitted to say, ‘Here is yours before you.’ For if it is so that they differ, then they should also differ on the matter of leaven [stolen before Passover] on Passover. [May it be returned by the thief when, at Passover, it may not be used in any way?].”*

- I. *Rather, said Rabbah, “What is at issue here is a different matter, namely, whether or not the sentence over an ox may be pronounced if it is not present. Rabbis maintain that the sentence over an ox may not be pronounced if it is not present, for the owner may say to the bailee, ‘If you had returned it to me before sentence was passed, I would have sent it off to the refuge of the marshes, while you have allowed my ox to fall under the control of the court, against which I cannot bring any action.’ R. Jacob takes the view that the sentence over an ox may be pronounced if it is not present. For the bailee may reply to the owner, ‘In the end the sentence would certainly have been passed against the ox.’”*

IV.2 A. *R. Hisda came across Rabbah bar Samuel, saying to him, “Have you learned as a Tannaite statement anything concerning things that are forbidden for any use [with special reference to whether or not we accept the plea, ‘Here is yours before you’]?”*

- B. *He said to him, “Well, yes: ‘He shall restore the misappropriated object which he violently took away’ (Lev. 5:23) — What is the sense of ‘which he violently took away’? If it is like what he violently took away, he shall restore it; if not, then it is the value that he must pay. In this connection sages have said: **[If he stole] a coin, and it was declared invalid, produce and it rotted, wine and it turned into vinegar, heave-offering, and it became unclean, leaven, and the festival of Passover passed [making it no longer available for Israelite use], a beast, and a transgression was committed upon it, or [a beast] which was invalidated for use on the altar, or which was going forth to be stoned before the court decree had been finally issued, [the robber] says to him, ‘Here is what is yours right in front of you.’ And of whom have you heard who applies this ruling only where the court decree had not been issued, but not where it had? It must be rabbis. And yet it is stated here, ‘Leaven, and the festival of Passover passed [making it no longer available for Israelite use], [the robber] says to him, ‘Here is what is yours right in front of you.’”***
- C. *[Hisda] said to him, “If you happen to meet my colleagues, don’t tell them about this.”*

IV.3 A. *Produce and it rotted...[the robber] says to him, “Here is what is yours right in front of you”:*

B. *But have we not learned in the Mishnah: Pieces of fruit and they turned rotten...he pays [compensation for them in accord with their value] at the time of the theft?*

C. Said R. Pappa, “[Where payment must be made] that is a case in which all of the produce rotted; [where not] that is in a case when only parts of them rotted.”

I.1 clarifies the meaning of the language used in the Mishnah paragraph. **II.1**, bearing its own appendix at Nos. 2-3+4, determines the decided law pertinent to the Mishnah paragraph. **III.1** goes over the intent of the words of the Mishnah paragraph. No. 2 is an appendix on a detail of No. 1, and No. 3 to No. 2. No. 4 continues the work on the issue of No. 2. The general theme of coinage now takes over, providing a sizable thematic appendix at Nos. 5-8. **IV.1** finds the authority behind the Mishnah’s rule. No. 2, with a footnote at No. 3, works on the same basic problem, yielding a scriptural proof for the rule of the Mishnah.

9:3

- A. [If one gave [something] to craftsmen to repair, and they spoiled [the object], they are liable to pay compensation.
- B. [If he gave to a joiner a box, chest, or cupboard to repair, and he spoiled it, he is liable to pay compensation.
- C. A builder who took upon himself to destroy a wall, and who smashed the rocks or did damage is liable to pay compensation.
- D. [If he was tearing down the wall on one side, and it fell down on the other side, he is exempt.
- E. But if it is because of the blow [which he gave it], he is liable.

I.1 A. [If one gave something to craftsmen to repair, and they spoiled the object, they are liable to pay compensation:] Said R. Assi, “That rule applies only to a case in which he gave to a joiner a box, chest, or cupboard for the purpose of nailing, and while he was hammering the nail, he broke the box. But if he gave to a joiner wood for the purpose of making a box, chest, or cupboard, and after he made the box, chest, or cupboard, he broke them, he is exempt. *How come?* The craftsman acquires title to the increase in the utensil that he has made.”

- B. *But we have learned in the Mishnah: If he gave to a joiner a box, chest, or cupboard to repair, and he spoiled it, he is liable to pay compensation.*

Now does that not mean, he gave them wood for making the box, chest, or cupboard?

- C. *No, he gave the craftsman the box, chest, or cupboard.*
- D. *Well, since the next clause states, **[If] he gave to a joiner a box, chest, or cupboard to repair, and he spoiled it, he is liable to pay compensation,** does it not stand to reason that the opening clause refers to a case in which he gave them wood?*
- E. *Say: The latter clause spells out the sense of the former clause, as follows: **[If] one gave [something] to craftsmen to repair, and they spoiled [the object], they are liable to pay compensation.** For example, if he gave to a joiner a box, chest, or cupboard to repair, and he spoiled it, he is liable to pay compensation. And it stands to reason that the second clause means to exemplify the first, for if you say that the first clause refers to a case in which he handed over timber, then, once we have been told that even in a case in which the householder handed over timber, the craftsman would be liable to pay, and we do not say that the craftsman acquires title to the increase in the value caused by the making of the timber into an article, why should we then have to be told, further, the rule about the making of a box, chest or cupboard?*
- F. *If that were the principal consideration, then that would not prove your point, for it could have been the intent to provide the second clause to explain the exact sense of the first, so that you should not say in the context of the first clause that he gave him a chest or box or cupboard, but if he gave only timber, the law would not be the way that it is; so the second clause makes reference to the chest, box, or cupboard to show that the opening clause really does refer to timber, and even in that case, the craftsman would have to pay.*

1.2 A. *May we say that [Assi] may find support for his allegation [that the craftsman acquires title to the increase in the utensil that he has made] in the following: **He who hands over wool to a dyer, [99A] and the [dye in the] cauldron burned it, [the dyer] pays the value of the wool.** He pays the value of the wool, but not the value of the wool as well as of the increase in its value [from having been dyed]. Is this not the rule even where the wool was burned after the dye was put in, so that the increase in value has already taken effect, and that would prove that the craftsman acquires title to the increase in the utensil that he has made?*

B. *Said Samuel, “Here with what situation do we deal? It is one in which the wool was burned at the time that the dye was put in, in which case there never was an increase in the value of the wool. But if the dyer had burned the wool after it was put in, what would be the rule? He would indeed have to pay the value of the wool as well as of the increase.”*

C. *So shall we have to conclude that Samuel does not accord with the statement of R. Assi?*

D. *Samuel will say to you, “Here with what situation do we deal? It is one in which the wool and the dye belonged to one and the same householder, so that the dyer was to be paid only for the work of his hands.”* [Kirzner: In this case the craftsman acquires no title to the increase in value, since the dye that imparts the increased value to the wool is not his.]

E. *If so, the language that should be used is, [the dyer] pays the value of the wool and of the dye.*

F. *Rather, Samuel’s intent was to refute the argument that R. Assi made [but did not really reject his proposition].*

G. *Come and take note:* He who gave his cloak to a craftsman, the latter finished it and informed him — [if] even after the passage of ten days [the householder has not picked up the garment and paid for it,] he does not violate the law, “You shall not keep all night.” But if the craftsman delivered the cloak to the householder even in the middle of the day, as soon as the sun has set upon it, the householder is guilty of transgressing the law, “You shall not keep all night.”

H. *Now if you take the position that the craftsman acquires the improvement in the value of the utensil, on which account what is owing to him is in the category of a loan, on what count is he guilty of transgressing the law?*

I. *Said R. Mari b. R. Kahana, “The rule pertains to the task of removing the wooly surface of a thick coat [and that is not considered an improvement at all, so here the craftsman does not acquire possession of the garment].”*

J. *Then why did he give the garment to him? Surely it was to soften it, and that constitutes improving the garment.*

K. *The rule is required to cover the case of his hiring him for stamping [and flattening the cloth], with every act of stamping to be charged at the rate of a maah [so the contract did not cover the whole piece of work, but only the amount of work done, step by step].*

L. *Now within the prior premise, that he was not hired for stamping [Kirzner: but for the completion of a certain undertaking, in which case he would be a contractor and in a sense a vendor, and yet the injunction of not delaying the payment of the fee applies], this would have supported the view of R. Sheshet.*

M. *For when they asked R. Sheshet, “Does or does not the rule, ‘The wages of a hired hand will not remain with you all night’ apply also to a contract? [If the employee was not engaged by the day but contracted to do a piece of work, what is the law?] Does the craftsman acquire possession of the object on which he is working by reason of the improvement in the value of the utensil, on which account what is owing to him is in the category of a loan, or does the craftsman not acquire possession of the object on which he is working by reason of the improvement in the value of the utensil, on which account what is owing to him is in the category of wages?” Said to them R. Sheshet, “He does violate the law.” Now does this not contradict the position of R. Assi?*

N. *Said Samuel bar Aha, “He addressed the case of a messenger sent to deliver a letter” [Kirzner: where there is no tangible accretion to which a title of ownership could be acquired, and to which consequently there applies the injunction].*

I.3 A. *May one say that at issue is what is debated among the following Tannaite authorities:*

B. *“[If a woman said,] ‘Make me bracelets, earrings, and rings, and I will agree to become betrothed to you’ — as soon as he made them, she is betrothed,” the words of R. Meir.*

C. *And sages say, “She is betrothed only after the cash reaches her domain.”*

D. *Now what is meant here by “cash”? If we say that it refers to that particular money, that is, the bracelets, then would it follow that from R. Meir’s viewpoint she did not have actually to come into possession of that value? Then what would be the*

instrument that would effect the betrothal? So what can be the meaning of "cash"? It means, something else of value [not necessarily the bracelets, earrings, and rings]. Now, in the assumption that all authorities concur that the fee that is owing to the work grows continuously from the beginning to the end of the work process, and in the assumption, also, that all parties concur that if someone effects a betrothal with a loan, the woman is not betrothed, do we then not find that at issue here is whether the worker acquires title to the improvement in the value of an object that he has imparted through his work? For in that case, R. Meir takes the view that the worker acquires title to the improvement in the value of an object that he has imparted through his work [Kirzner: so that when he makes her the bracelets and so on out of her material, the improvement becomes his and could therefore constitute a valid consideration], and sages maintain that the worker does not acquire title to the improvement in the value of an object that he has imparted through his work [since the improvement was never his, he only had an outstanding debt for the hire upon the other party, who was in this case his prospective wife, and as the forfeiture of a debt is not sufficient consideration, some actual value must be added to make the consideration value].

E. Not at all. All parties concur that the worker does not acquire title to the improvement in the value of an object that he has imparted through his work, but here, what is at issue is whether or not the fee that is owing to the work grows continuously from the beginning to the end of the work process. R. Meir takes the view that the fee that is owing to the work grows continuously from the beginning to the end of the work process, and rabbis maintain that the fee that is owing to the work does not grow continuously from the beginning to the end of the work process. Or, if you prefer, I shall explain that all parties concur that the fee that is owing to the work grows continuously from the beginning to the end of the work process, and what is at issue here? It is whether or not if someone effects a betrothal with a loan, the woman is betrothed. For R. Meir takes the position that, if someone effects a betrothal with

a loan, the woman is betrothed, *and rabbis hold that* if someone effects a betrothal with a loan, the woman is not betrothed.

F. **[99B]** *Raba said, "All parties concur that* the fee that is owing to the work grows continuously from the beginning to the end of the work process. *And all parties concur that* if someone effects a betrothal with a loan, the woman is not betrothed. *And all parties concur that* the worker does not acquire title to the improvement in the value of an object that he has imparted through his work, *but here, with what case do we deal?* It is one in which the worker added a bit out of his own material to the raw material supplied by the woman for the bracelets. *R. Meir takes the view that, where we have in the instrument of betrothal both the forgiveness of a debt and the giving of a penny, the woman has in mind the penny [so she is betrothed by this valid consideration], and rabbis maintain that, in such a case, the woman has in mind the debt [and that is not a valid instrument of betrothal]."*

G. *That is what is at stake in the following conflict of Tannaite statements, as has been taught on Tannaite authority:*

H. [If a man says to a woman, "Lo, you are betrothed to me] in consideration of the wage for the work that I have done for you [having already returned the object to her, that is, the forgiveness of a debt], she is not betrothed. If he said, "In consideration of the fee for the work that I am going to do for you," she will be betrothed.

I. R. Nathan says, "If he said, 'In consideration of the fee for the work that I am going to do for you,' she will not be betrothed — all the more so if he said, 'Lo, you are betrothed to me] in consideration of the wage for the work that I have done for you' [having already returned the object to her]."

J. R. Judah the Patriarch says, "Rightly did sages rule: 'Whether he said, 'In consideration of the wage for the work I have already done for you' or 'In consideration of the wage for work I will do for you,' she would not

be betrothed. But if the worker added a bit out of his own material to the raw material supplied by the woman for the bracelets, she would be betrothed.”

K. The difference of opinion between the initial Tannaite authority and R. Nathan is whether or not liability for wages is incurred from the very beginning of the work, point by point, and the difference of opinion between R. Nathan and R. Judah is on the question of the attitude of the woman when the betrothal is effected by both the accumulated wage that she owes and also the giving of a penny.

- I.4** A. Said Samuel, “A professional slaughterer who spoiled the task is liable to pay damages. He has done damage and so is deemed negligent. It is treated as though the owner had said to him, ‘Slaughter it for me on this side,’ and he slaughtered it for him on the other side.”
- B. *What is the point of saying, He has done damage and so is deemed negligent?*
- C. *If the formulation had given only “He has done damage,” I might have supposed that that is the rule only if he was working for a fee, but if he was doing it for free, that would not be the case; so we are told that we do not make any such distinction, for he was negligent.*
- D. *R. Hama bar Guria objected to Samuel’s statement on the strength of the following: “He who handed a beast over to a slaughterer, who made it carrion [through some flaw in the act of slaughter] — if he was a professional, he is exempt from having to pay damages, but if it was an unskilled person, he is liable. But if he paid him a fee, then, whether he was a professional or an amateur, he is liable.”*
- E. *He said to him, “Are you befuddled?”*
- F. *Then another one of our rabbis came along and he said to him, “Now you ought to take what I gave your colleague. I was telling you the view of R. Meir, and you answer me with the view of rabbis! Why didn’t you pay attention to me when I carefully framed matters, He has done damage and so is deemed negligent? It is treated as though the owner had said to him, ‘Slaughter it for me on this side,’ and he slaughtered it for him on the other side. Now who in the world reasons in this way, other than R. Meir, who has said, ‘He has to be more careful!’”*

I.5 A. *Which statement of R. Meir can be contemplated here? May we say the following: “[If] the owner tied it up with a halter, or locked it up in a proper way, and it went out and did damage — all the same are an animal deemed harmless and one which is an attested danger — [the owner] is liable,” the words of R. Meir. R. Judah says, “[The owner of an animal deemed] harmless is liable, but one regarded as an attested danger is exempt, since it is said, ‘And it has been testified to its owner, but he did not keep him in’ (Exo. 21:29) — but this one has been kept in” [M. B.Q. 4:9G-N] — for here what is at stake is the interpretation of verses of Scripture [and not a precedent].*

B. *Then what about the following statement of R. Meir: [If he gave wool to a dyer] to dye it red, and he dyed it black, [or] to dye it black, and he dyed it red — R. Meir says, “[The dyer] pays him back the value of his wool.” R. Judah says, “If the increase in value is greater than the outlay for the process of dyeing, [the owner] pays him back the outlay for the process of dyeing. And if the outlay for the process of dyeing is greater than the increase in the value of the wool, [the dyer] pays him only the increase in value of the wool” [M. B.Q. 9:4G-K]?*

C. *There he did not spoil it with his own hands [and it was not a case of negligence].*

D. *Then what about the following statement of R. Meir: If one’s pitcher broke and he did not clean up the mess, or his camel fell down and he did not raise it up, R. Meir declares him liable for any damage that may result, and sages say, “He is exempt from action in earthly courts though liable in heavenly courts”? Now we interpreted the disputed matter in terms of whether or not stumbling is a sign of negligence.*

- I.6** A. Said Rabbah bar bar Hannah said R. Yohanan, “A professional slaughterer who spoiled the task is liable to pay damages. And that is so even if he were as skilled as the professional slaughterers of Sepphoris.”
- B. *But did R. Yohanan say any such thing? And did not Rabbah bar bar Hannah say, “There was a case that came before R. Yohanan in the synagogue of Maron, and he said to the slaughterer, ‘Go and produce evidence that you are skilled in killing chickens, and I will declare you exempt’”?*

- C. *There is really no contradiction between these statements. The latter speaks of a case in which he was working for free, the former, where he was slaughtering for a fee, just as R. Zira said, “He who wants the slaughterer to be liable to him for any damages should first of all pay him his denar fee.”*
- D. *An objection was raised: 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].*
- E. *Say: Because he is paid.*

I.7 A. *A case in which the slaughterer started at the right point but was finished at a higher point came before Rab, who declared the animal unfit for Israelite use but exempted the slaughterer from having to pay compensation. When R. Kahana and R. Assi met the man who owned the animal, they said to him, “Rab did two things with you.”*

B. *What are “two things”? If we say that it was two things to the owner’s disadvantage, first of all, Rab should have declared the animal validly slaughtered, in accord with the opinion of R. Yosé b. R. Judah, but he declared it unfit for Israelite consumption, in accord with rabbis; and second, since he acted in accord with rabbis, then he should have declared the slaughterer liable — so is it permitted to say things like this? Has it not been taught on Tannaite authority: Now how do we know that when one of the judges leave [the court], he may not say, “I think he is innocent, but my colleagues think he is guilty, so what can I do? For my colleagues have the votes!” Concerning such a person, it is said, “You shall not go up and down as a talebearer among your people” (Lev. 19:16). And it is said, “He who goes about as a talebearer and reveals secrets, [but he that is faithful conceals the matter]” (Pro. 11:13) [M. San. 3:7C-E]?*

C. *Rather, these were two things that were to the owner’s advantage: first, he did not let you eat something that may*

have been subject to a prohibition; and second, he kept you from getting payment that might have been thievery.

I.8

- A. *It has been stated:*
- B. He who shows a coin to a money changer [who validated it] and it turns out to be an invalid one —
- C. *One Tannaite formulation:* The expert is exempt, but the amateur is liable.
- D. *And another Tannaite formulation:* Whether expert or amateur, he is liable.
 - E. *Said R. Pappa, “When the Tannaite formulation maintains that the expert is exempt, it would be such as Dankho and Issur, who had no need to study any further, but who could have made a mistake in respect to a new stamp at the time that the coin had just come from the mint.”*

I.9

- A. *A woman once showed a denar to R. Hiyya, who validated it. Afterward she came before him and said to him, “So I showed it around, and they said to me that it’s no good and I couldn’t pass it.”*
- B. *He said to Rab, “Go and change it for a good one and register it on my books that it was a bad trade.”*
- C. *So how was he any different from Dankho and Issur? Was it because they had no need to study any further? R. Hiyya, too, didn’t have to study any longer.*
- D. *Well, R. Hiyya wanted to act beyond the strict requirements of the law, on the principle that was in accord with what was stated as a Tannaite formulation by R. Joseph:*
- E. *“And you shall show them the way in which they must walk, and the work that they shall do (Exo. 18:20) —*
- F. *“and you shall show them’ — this refers [100A] to the house of their life.*
- G. *“The way’ — this refers to acts of compassion.*
- H. *“In which they must walk’ — this refers to visiting the sick.*
- I. *“In which’ — this refers to burying the dead.*

J. “‘And the work’ — this refers to the strict requirements of the law.

K. “‘That they shall do’ — this refers to acts that go beyond the strict requirements of the law.”

I.10 A. *R. Simeon b. Laqish showed a denar coin to R. Eleazar. He validated it.*

B. *He said to him, “See that I’m relying on you.”*

C. *He said to him, “So you’re relying on me? So what! If it turns out to be no good, do you think I’m going to have to trade it in for you? And lo, you are the one who has said, ‘It is R. Meir who takes the position that one considers liability on the basis of damage done indirectly’? And that bears the implication that it is only R. Meir who holds that position, but others don’t concur with him!”*

D. *He said to him, “Come off it! It’s R. Meir’s view, and we agree with him.”*

E. *Which statement of R. Meir is under discussion here? Should we say that this is the opinion of R. Meir to which he made reference: **If one judged a case, declaring a liable person to be free of liability, declaring the person free of liability to be liable, declaring what is clean to be unclean, declaring what is unclean to be clean, what he has done is done. But he pays compensation from his own funds [M. Bekh. 4:4D-F].** But lo, in that connection it has been stated, said R. Ilai said Rab, “But that is the case only when he personally executed the judgment.”*

F. *Rather, do you think that it is the following ruling of R. Meir: **[If he gave wool to a dyer] to dye it red, and he dyed it black, [or] to dye it black, and he dyed it red — R. Meir says, “[The dyer] pays him back the value of his wool”?** But in that case, too, he has actually spoiled it with his own hands.*

G. *Rather, it is the ruling of R. Meir in the following, which we have learned in the Mishnah: **He who trains his vine over the grain of his neighbor, lo, this one***

has sanctified [the grain underneath the vines] and is liable for its replacement [M. Kil. 7:4A]. *But in that case, too, he has actually spoiled it with his own hands.*

H. *Rather, it is the R. Meir of that which we have learned in the following Tannaite formulation:* The partition of a vineyard that was broken — [100B] [the owner of an adjacent property containing grain] may say to the owner of the vineyard, “Build the wall.” If the wall again was broken, he may say to him, “Rebuild the wall.” If the other party despaired and did not rebuild the wall, lo, he has imposed the status of sanctification on the grain of the neighbor [by reason of violating the law against sowing grain in a vineyard (Deu. 22: 9)] and so is liable for the loss.

I.1 clarifies the circumstances under which the law of the Mishnah applies. No. 2 carries forward the proposal of No. 1, and No. 3 pursues the same issue. No. 4 reverts to the problem of the Mishnah, namely, damages done by a craftsman and how liability is incurred. No. 5 footnotes No. 4. No. 6, with an illustrative case at No. 7, continues the theme introduced by No. 4. No. 8, with its illustrative cases at Nos. 9-10, then pursues the same theme but a different type of case.

9:4

- A. He who hands over wool to a dyer, and the [dye in the] cauldron burned it, [the dyer] pays the value of the wool.
- B. [If] he dyed it in a bad color,
- C. if [the wool] increased in value more than the outlay [of the dyer],
- D. [the owner of the wool] pays him the money he has laid out in the process of dyeing.
- E. But if the outlay of the dyer is greater than the increase in value of the wool,
- F. [the owner] pays him back only the value of the improvement.
- G. [If he gave wool to a dyer] to dye it red, and he dyed it black,
- H. [or] to dye it black, and he dyed it red —
- I. R. Meir says, “[The dyer] pays him back the value of his wool.”

- J. R. Judah says, “If the increase in value is greater than the outlay for the process of dyeing, [the owner] pays him back the outlay for the process of dyeing.
- K. “And if the outlay for the process of dyeing is greater than the increase in the value of the wool, [the dyer] pays him only the increase in value of the wool.”

- I.1 A. *What is the meaning of “bad color”?*
- B. Said R. Nahman said Rabbah bar bar Hannah, “The copper did the dyeing.”
 - C. *What is the meaning of “The copper did the dyeing”?*
 - D. Said Rabbah bar Samuel, [101A] “[Kirzner:] He dyed it with the sediments of the kettles.”

- I.2 A. *Our rabbis have taught on Tannaite authority:*
- B. **If one handed wood over to a joiner to make a chair for him and he made a bench, a bench and he made a chair,**
- C. **R. Meir says, “He pays him the cost of his wood.”**
- D. **R. Judah says, “If the increase in value is greater than the outlay, [the owner] pays him back the outlay. And if the outlay is greater than the increase in the value of the wood, [the carpenter] pays him the increase in value of the wood.”**
- E. **And R. Meir concedes that if he gave wood to a carpenter to make him a nice chair and he made him an ugly one, a nice bench and he made him an ugly one, then if the outlay is greater than the increase in the value of the wood, [the carpenter] pays him only the increase in value of the wood, and if the outlay is greater than the increase in the value of the wood, [the carpenter] pays him only the increase in value of the wood” [T.: the hand of the owner is on top] [T. B.Q. 10:8D-I].**

- I.3 A. *The question was raised:* Is the improvement brought about by the colors in the dyeing a distinct item, separate from the wool, or is the improvement brought about by the colors in the dyeing not a distinct item, separate from the wool?
- B. *How could we imagine such a case? If we say that the dyes were stolen and, having crushed and dissolved them, the thief dyed the wool with them, then would he not have acquired title to them through the change that he effected with them? [He dyed it with dyes stolen by the same plaintiff (Kirzner).]*

C. *The question is required for a case in which he stole dyes that were already dissolved and used them for the dyeing. Now, what is the rule? If the improvement effected by the dyes is independent of the wool, the plaintiff might claim, "Give me back the dyes that you took from me" [Kirtzner: and the increase through the process of dyeing is below the price of the dyes, in which case the plaintiff can say he would have sold the dyes before the depreciation]. Or perhaps the improvement effected by the dyes is not independent of the wool, so the defendant may say to him, "You have no claim on me whatsoever."*

D. *Say: But if the improvement effected by the dyes is not independent of the wool, can the defendant say to him, "You have no claim on me whatsoever"? The other may say to him, "Give me back my dyes, the loss of which you have caused to me!"*

E. *So we must go the other route. Shall we then say that the improvement effected by the dyes is not independent of the wool, so the defendant has to pay him? Or perhaps the improvement effected by the dyes is a distinct item from the wool, and the defendant can say to him, "Here are your dyes before you and take them"?*

F. *But how can he take them away? By soap? But soap will take them out, but not restore them to the owner!*

G. *So here we must be dealing with a case in which he stole the dyes and the wool belonging to one and the same person, and he dyed that wool with the dyes and was giving him the wool. Then, if the improvement effected by the colors is a distinct item, independent of the wool, the robber would be returning both the dyes and the wool, but if the improvement is not distinct, it is only the wool he is returning, and the dyes he is not returning [and he would have to pay for them].*

H. *Say: Why wouldn't that be enough to carry out his obligation, since, after all, the wool has increased in value [because of the dyes stolen by the same plaintiff]?*

I. *No, it is still a problem, in a case in which the dyed wool had gone down in price; or if you wish, I may say, the case is one in which he painted them with a basket of willows that he stole from the same plaintiff [so the wool may not have increased in value].*

J. *Rabina said, “Here with what case do we deal? It is one in which the wool belongs to one party, the dyes to another, and an ownerless ape came along and did the dyeing of that wool with that dye. If the improvement effected by the dye is treated as an item separate from the wool, then the owner of the dyes can say to the owner of the wool, ‘Give me my dyes, which you have.’ If the improvement is not distinct, he might answer, ‘I don’t have a thing belonging to you.’”*

K. *Come and take note: A garment which one dyed with [dye made from] rinds of orlah [fruit] is to be burned. [If it was mixed with other [permitted garments] — “All are to be burned,” the words of R. Meir. But sages say, “It is neutralized in a ratio of one forbidden garment to two hundred permitted ones”] [M. [Orl. 3:1](#)]. This proves that the appearance is a distinct item in the evaluation of the garment [indicating whether or not it is prohibited.]*

L. *Said Raba, “This case is exceptional, since the Torah has forbidden any benefit that is visible, as has been taught on Tannaite authority: ‘Uncircumcised: it shall not be eaten of’ (Lev. 19:23) — I know only the prohibition concerning eating it. How do I know that one may derive no benefit from it or use it for dye or light a candle with it? Scripture says, ‘You shall count the fruit thereof as uncircumcised; uncircumcised it shall not be eaten of’ — encompassing all these other usages.” [So this is not decisive.]*

M. *Come and take note: A garment that one dyed with shells of produce grown in the Seventh Year is to be burned.*

N. *The matter of the Seventh Year is exceptional, since it is written, “It shall be” (Lev. 25: 7), meaning, it must be as is.*

O. **[101B]** *Raba contrasted passages: “We have learned in the Mishnah: A garment which one dyed with [dye made from] rinds of orlah [fruit] is to be burned. This proves that the appearance is a distinct item in the evaluation of the garment [indicating whether or not it is prohibited.] And by contrast: A quarter-log of blood which was absorbed in [the ground] of a house — the house is unclean. Others say, ‘The house is clean’ [M. [Oh. 3:2D](#)]. These statements do not conflict. The one refers to utensils that were there to begin with, the other to utensils that were brought there later on. [If] it was absorbed in clothing — if it is washed and a quarter-log of blood*

exudes from it, it is unclean; and if not, it is clean. [For whatever is absorbed which cannot exude is clean] [M. Oh. 3:2E-F].” [The reason is that the blood could no more be considered present in the garment; this proves that mere color is not a distinct item (Kirzner)].

P. Said R. Kahana, “This rule has been repeated in the list of lenient rulings made with regard to quarters of a log of blood that were oozing out while the person was still alive, [which may or may not be unclean, and is regarded as unclean only by reason of rabbis’ enactment, not by the law of the Torah].”

Q. *Raba contrasted passages: “We have learned in the Mishnah: **And what is [considered] a species [of plant used for] dyeing? Aftergrowths of wood and seed of safflower. They are subject to [the laws of] the Sabbatical Year, and the money [received when the produce is sold] is subject to [the laws of] the Sabbatical Year. They are subject to removal and the money [received when the produce is sold] is subject to removal [M. Shebi. 7:1I-L]. Therefore the sanctity of the Sabbatical Year affects wood. By contrast:***

R. “As to leaves of reeds and of vines which one piled up as a cover on a field, if one then gathered them in order to eat them, they are subject to the rules of sanctity affecting produce of the Seventh Year. If he gathered them for use as wood, they are not subject to the rules of sanctity affecting produce of the Seventh Year. [So what is used only as wood is not subject to the taboos of the Seventh Year.]”

S. But he himself taught, “[The case involving use of wood for firewood] is to be distinguished [since Scripture itself has made a distinction in respect to the applicability of the taboos of the Seventh Year], for Scripture has stated, “... for you for food” (Lev. 25: 6).

T. In this way Scripture establishes an analogy between what is “for you” and what is “for food.”

U. The restriction governing the Sabbath Year produce applies to that which both imparts benefit and also is consumed at the same moment, thus eliminating wood, which imparts benefit only after it is consumed [and turned into coals]. [Slotki, p.

178, n. 14: A lulab, however, whose main use is for sweeping a floor, is used up or consumed at the same time that the benefit is derived from it.]

V. But there is the case of pine wood, which imparts benefit at the same moment at which it is consumed [since it is used for torches].

W. Said Raba, [102A] “Wood under ordinary conditions is meant for burning. [We do not take account of exceptional instances. The norm generates the law.]”

X. *Said R. Kahana, “As to the use of wood for heating, there is a dispute among Tannaite authorities. For it has been taught on Tannaite authority: Produce of the Seventh Year may not be used either for steeping or for washing, [since it is meant to be eaten]. R. Yosé says, ‘People may use it for that purpose.’”*

Y. What is the Scriptural basis for the rule of the first of the two Tannaite authorities?

Z. It is that Scripture has said, “... for eating” (Lev. 25: 6) — and not for steeping or washing.

AA. What is the Scriptural basis for the position of R. Yosé?

BB. It is that Scripture has said, “For you,” meaning for all your needs, even steeping and washing.

CC. *And the first of the two Tannaite authorities has also to note that it is written, “For you.”*

DD. That use of the word “for you” is meant to establish the analogy between what is “for you” and what is “for eating,” yielding the principle that that which both imparts its benefit and also is consumed at the same moment [may define a permitted utilization of produce of the Seventh Year], then excluding the labor of steeping and washing, in which case the benefit that the produce imparts comes after the consumption of the produce. [Slotki, *Sukkah*, p. 179, n. 8: If flax, for instance, is steeped in wine of the Sabbatical Year in the

process of its preparation, the wine is already spoiled by the time the flax is ready for us.]

EE. *And as to R. Yosé, is it not written, “For eating”?*

FF. *He requires that reference to yield a different point entirely, namely, “For eating” — and not for an ointment. [One may not use as an ointment produce of the Seventh Year, for example, olive oil.]*

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

HH. “For food” (Lev. 25: 6) — and not for an ointment.

II. You maintain that the sense is, “‘For food’ and not for an anointment.” But perhaps it means only — and not for laundering [clothes].

JJ. When the passage states, “For you,” lo, that encompasses the matter of using produce of the Seventh Year in connection with laundry.

KK. Lo, how, then, shall I interpret the reference, “For food”?

LL. It must mean, “For food” — and not for an ointment.

MM. On what basis, however, do you wish to include [using produce of the Seventh Year] for laundering and to exclude anointing [with that same produce]?

NN. I include laundering, which applies equally to everybody, and I exclude anointing, which does not apply to everybody. [Everybody eats, everybody washes, but not everybody uses ointments.]

OO. *Who stands behind this statement, which our rabbis have taught on Tannaite authority:*

PP. “For food” (Lev. 25: 6) and not for an ointment,

QQ. “For food” and not for perfume,

RR. “For food” and not for an emetic?

SS. *In accord with which Tannaite authority? It accords with the view of R. Yosé.*

TT. *For it cannot be in accord with rabbis, for if it were, there also are the matters of steeping and washing [which they would explicitly exclude].*

- II.1** A. **R. Judah says, “If the increase in value is greater than the outlay for the process of dyeing, [the owner] pays him back the outlay for the process of dyeing. And if the outlay for the process of dyeing is greater than the increase in the value of the wool, [the dyer] pays him only the increase in value of the wool”:**
- B. *R. Joseph was in session behind R. Abba, with R. Abba in session facing R. Huna, who, in session, said, “The law accords with R. Joshua b. Qorhah, and the law accords with R. Judah.”*
- C. *R. Joseph turned his face away [in disgust, stating,] “Now a statement that the law accords with R. Joshua b. Qorhah was entirely in order. For you might have imagined that one might say, where there is an individual opposed to the majority, the law accords with the position of the majority. Here therefore we are informed that the law follows the individual.”*
- D. *And what is the law involving R. Joshua b. Qorha?*
- E. *It is in accord with that which has been set forth on Tannaite authority: **R. Joshua b. Qorha says, “In the case of any loan secured by a bond, one does not accept repayment from [a gentile] [M. 1:1D]. But in the case of any loan which is not secured by a bond, one does accept repayment from [a gentile], because one thereby saves the capital from their power” [T. A.Z. 1:1H-K].***
- F. *[Reverting to Joseph’s statement:] “But why in the world should I have to be told that the decided law accords with the position of R. Judah? That is perfectly obvious. For where you have a dispute and then a statement of the law without attribution to a named authority, the decided law follows the unattributed formulation of the law. Now in point of fact, there is a dispute in Mishnah-tractate Baba Qama: [If he gave wool to a dyer] to dye it red, and he dyed it black, [or] to dye it black, and he dyed it red — R. Meir says, ‘[The dyer] pays him back the value of his wool’ R. Judah says, ‘If the increase in value is greater than the outlay for the process of dyeing, [the owner] pays him back the outlay for the process of dyeing. And if the outlay for the process of dyeing is greater than the increase in the value of the wool, [the dyer] pays him only the increase in value of the wool’” [M.*

B.Q. 9:4G-K]. *And the law is presented without a named authority behind it in tractate Baba Mesia, for we have learned in the Mishnah: **Whoever changes [the original terms of the agreement] — his hand is on the bottom. And whoever retracts — his hand is on the bottom [M. B.M. 6:2E-H].***

- G. And R. Huna?
- H. *“It was necessary to make explicit the matter of the decided law. The operative consideration here is that there is no such fixed order to Mishnah tractates. For one might claim, quite to the contrary, that since there is no assigned order to Mishnah tractates, to begin with the Tannaite framer of the document first of all gave the law without an assigned authority, and then he presented it as subject to dispute.”*
- I. And R. Joseph?
- J. *“If so, in the case of any matter where first of all there is a dispute and afterward an unattributed statement of the law, one might claim just as well, there is no such fixed order to Mishnah tractates.*
- K. And R. Huna?
- L. *When we invoke the principle that there is no fixed order to the Mishnah, that concerns [the contents of] a single tractate, but in respect to two or more tractates, we do not invoke that principle.*
- M. And R. Joseph?
- N. *The whole of the [three principal] tractates of Damages [Baba Qamma, Baba Mesia, and Baba Batra] is classified as a single tractate.*
- O. *But if you prefer, I shall say the reason is that this rule is stated as a final decision, in this language, after all: **Whoever changes [the original terms of the agreement] — his hand is on the bottom. And whoever retracts — his hand is on the bottom [M. B.M. 6:2E-H].***

- II.2**
- A. *Our rabbis have taught on Tannaite authority:*
 - B. He who gives money to an agent **[103A]** to buy wheat and he bought barley, or barley and he brought wheat —
 - C. *It has been taught as one Tannaite statement: “If there was a loss, the loss is assigned to the agent, and if there is a profit, the profit is assigned to the agent.”*

- D. *And it has been taught as another Tannaite statement: "If there was a loss, the loss is assigned to the agent, and if there is a profit, the profit is divided between the agent and the principal."*
- E. *Said R. Yohanan, "There is no contradiction. The former represents the position of R. Meir, the latter, R. Judah. The former represents the position of R. Meir, who [in the case of wool given to a dyer to dye red and he dyed it black, etc.] said that a change in the character of the object transfers title to the object; and the latter, R. Judah, who said that a change in the character of the object does not transfer title to the object."*
- F. *Objected R. Eleazar, "How so? Perhaps R. Meir stated his position only with reference to something that was meant to be used by the owner personally [Kirzner: such as wool for his own garment or a chair for his own use], but as to merchandise for trade, he may not have taken that position at all."*
- G. *Rather, said R. Eleazar, "Both represent the position of R. Meir, and the two statements do not conflict. The one addresses the case of grain bought for food for the household, the other, grain bought for trade."*
- H. *In the West they ridiculed R. Yohanan's statement with respect to R. Judah: "[How can the principal have any share in the ownership of the wheat, that he should share in the profits?]" Who in the world told the seller of the wheat to transfer ownership of the wheat to the one who owned the money?"*
- I. *Objected R. Samuel bar Sistrati, "If so, then even if the principal told him to buy wheat and he bought wheat, the same rule should pertain!"*
- J. *Said R. Abbahu, "A case in which the principal told him to buy wheat and he bought wheat is different from the present one, for the agent carried out the terms of his contract of agency. So it is as if the householder himself had done it [Kirzner: whereas in the case before us, where the agent acted against the instructions, the mandate has been set aside and the purchase could no more be ascribed to the principal]. For we have learned in the Mishnah: **All the same are the one who sanctifies his property and the one who pledges his own Valuation: he has no claim either on his wife's garment, or on his children's garment, or on dyed clothes which he dyed for them, or on new shoes which he bought for them [M. Ar. 6:5A-B].** Now why should that be the rule? Why not say here, too: Who told the dyer that he was*

transferring ownership of the dye to the wife? *So we must respond, Is it not because we say that the husband was acting in behalf of his wife, so it is as if the work was done by the hand of the wife?* [Kirzner: But if the ownership of the dye was transferred to the husband and not to his wife, why then should the Temple treasurer have no claim on it?] *Here, too, the agent is acting out the mandate of the householder and therefore is as the hand of the household himself."*

K. Said R. Abba, "Not at all. The reason is that when someone consecrates his property, he does not have the slightest intention of including the clothing of his wife and children."

L. *Objected R. Zira*, "But is it the fact that a man would even have in mind his prayer boxes containing scriptural passages when he made such a statement? *And yet we have learned in the Mishnah: He who sanctifies his property — they take away his tefillin [M. 6:4C-D]."*

M. *Said to him Abbaye*, "Yes, indeed, a man would even have in mind his prayer boxes containing scriptural passages when he made such a statement of consecration. *He was thinking that he would carry out a great religious duty.* But he was not thinking about the clothing of his wife and children because of the ill-will that he would create."

N. *Objected R. Oshaia*, "But does the passage not pertain to those who are liable to pay off vows of valuation, in regard to which we have learned: **Those who owe Valuations [to the Temple] — they exact pledges from them [M. Ar. 5:6A]**, but can it be said that the man at the time he made the vow of consecration had in mind that he would have to give a pledge?"

O. Rather, said R. Abba, "Whoever consecrates his property is treated as though to begin with he had already transferred title of his wife's and children's clothing to them."

- II.3** A. *Our rabbis have taught on Tannaite authority:*
- B. He who buys a field in the name of his fellow — they do not force the latter to sell it to him. But if he had said to the seller, "It is on the stipulation that they will then force him to sell it [to me," that condition is met].
- C. *What is the sense of this statement?*
- D. *Said R. Sheshet*, "This is the sense of this statement: He who buys a field in the name of the exilarch — they do not force the exilarch to sell it to him. But

if he had said to the seller, ‘It is on the stipulation that they will then force the exilarch to sell it [to me,’ that condition is met].”

II.4 A. The master has said: “He who buys a field in the name of the exilarch — they do not force the exilarch to sell it to him. But if he had said to the seller, ‘It is on the stipulation that they will then force the exilarch to sell it [to me,’ that condition is met].”

B. *That bears the implication that the purchaser would acquire title to the field [even if the deed were drawn up in the name of the exilarch]. But then may we say that this differs from the position of the Westerners, who have said, “Who in the world told the seller of the wheat to transfer ownership of the wheat to the one who owed the money?”?*

C. *If that’s all that bothers you, then there’s no problem, for we would deal with a case in which the purchaser indeed informed the owner of the field and the witnesses to the deed.*

D. *Well, then, what about the concluding clause: But if he had said to the seller, “It is on the stipulation that they will then force the exilarch to sell it [to me,” that condition is met]. Why should this be the rule? Should not the exilarch have the right to say, “I don’t want your compliments and I don’t want your insults”? [You make me look like a land speculator.]*

E. Rather, said Abbaye, *“This is the sense of the statement: He who buys a field in the name of his fellow — [103B] they do not force the seller to sell it to him once more. But if he had said to the seller, ‘It is on the stipulation that they will then force him to sell it to me,’ they do force the seller to sell it to him once more.”*

II.5 A. The master has said: “He who buys a field in the name of his fellow — they do not force the seller to sell it to him *once more*. But if he had said to the seller, ‘It is on the stipulation that they will then force him to sell it to me,’ they do force the seller to sell it to him *once more*”:

B. *So what else is new!*

C. *What might you otherwise have supposed? That he can say to him, “You knew full well that I was buying the field for myself, and in using the name of a third party, I merely want protection, and, since I was not planning to throw away money for nothing, I certainly made the purchase in the assumption that a new deed would be drawn up for me*

by you.” So we are informed that the seller can reply, “It’s up to you to make arrangements with the person whom you named when you bought the field, so he can draw up the new title deed for you.”

II.6 A. “But if he had said to the seller, ‘It is on the stipulation that they will then force him to sell it to me,’ they do force the seller to sell it to him”:

B. *So what else is new!*

C. *What might you otherwise have supposed? That the purchaser said to the witnesses to the deed in the presence of the seller, “See that I want another deed,” and you might suppose that the seller could say to him, “I thought you were speaking of a new deed to be drawn up by the one in the name of whom you bought the field.” The buyer can therefore say to him, “That was precisely why I went to the trouble of telling the witnesses in your very presence, to show that you were the one from whom I wanted the other deed.”*

II.7 A. *R. Kahana handed over money for flax. Flax went up in value. The owners of the flax sold it in his behalf. He came to Rab and said to him, “What should I do? Should I go and accept the purchase money [for this might be usury]?”*

B. *He said to him, “If when they sold the flax, they said, ‘This flax belongs to Kahana,’ go and accept the money, but if not, don’t take it.”*

C. *In accord with whom did he give this ruling? It was in accord with the Westerners, who said, “Who in the world told the seller of the wheat to transfer ownership of the wheat to the one who owned the money?”*

D. *But did R. Kahana give four to get eight? Didn’t flax that actually belonged to him go up in price, which the sellers had then stolen, and in this context we have learned in the Mishnah: **This is the governing principle: All robbers pay compensation [in accord with the value of the stolen object] at the time of the theft M. 9:1.***

E. *Say: In that case, it was a payment in advance [there being no flax in hand when Kahana sent off his money], and R. Kahana had never performed an act of acquisition of the flax to acquire title to it; and Rab was consistent with views*

expressed elsewhere, for said Rab, “Payment in advance at present prices may be made for future delivery of produce, but payment in advance at present prices may not be made if the value of the produce later on will later on be paid in lieu of the produce itself.

I.1 glosses the language of the Mishnah. No. 2 then provides a Tannaite complement to the law of the Mishnah. No. 3 then carries forward the problem of No. 2. **II.1** raises the question of the decided law in the case of the Mishnah’s dispute. Obviously, the composition is worked out in its own terms and not as a comment to our Mishnah paragraph in particular. Reverting to our Mishnah rule, No. 2 broadens the discussion on changing the terms of agency, which our rule exemplifies in detail. No. 3, amplified by No. 4, carries forward the problem of No. 2. Nos. 5, 6+7 then continue the analysis of No. 4.

9:5

- A. He who stole something from his fellow worth only a perutah,
- B. and took an oath to him [that he had stolen nothing, but then wants to make restitution],
- C. must take it to him, even all the way to Media.
- D. He should not give it to his son or his agent, but he may hand it over to an agent appointed by a court.
- E. And if [the victim] died, [the robber] restores [the object] to his estate.

9:6

- A. [If the thief] paid him back the principal but did not pay the Added Fifth,
- B. [if the victim] forgave him the value of the principal but did not forgive him the value of the Added Fifth,
- C. [if] he forgave him for this and for that, except for something less a perutah out of the principal,
- D. he need not take it back to him.
- E. [If] he [the thief] gave him back the Added Fifth and did not hand over the principal,
- F. [if the victim] forgave him the Added Fifth but did not forgive him the principal,
- G. forgave him for this and for that, except for an amount of the principal that added up to a perutah,

H. then he has to go after him [to make restitution, wherever he may be].

9:7A-F

- A. [If] he paid him back the principal but swore [falsely] to him about the Added Fifth [and then confessed],
- B. [103B] lo, this one pays back an Added Fifth for the Added Fifth,
- C. [and so is the rule] until the value of the principal [of the Added Fifth] becomes less than a perutah in value.
- D. And so [is the rule] in the case of a bailment.
- E. For it is written, “In a matter of deposit or of bargain or of robbery, or if he has oppressed his neighbor or has found that which was lost, dealing falsely therein and swearing to a lie” (Lev. 6:2-3) —
- F. lo, this one pays back the principal, an Added Fifth, and a guilt-offering.

- I.1** A. So if he took an oath [falsely], that would be the rule, but if he did not take an oath, then that would not be the rule. *So who is the authority behind the rule before us? It is not R. Tarfon nor R. Aqiba. For we have learned in the Mishnah: [If] one stole from one of five men and does not know from which one of them he stole, [and] each one of them says, “From me did he steal,” “he leaves that which he stole among them and takes his leave,” — the words of R. Tarfon. R. Aqiba says, “This is not the way to remove him from the toils of transgression, unless he pays the value of that which was stolen to each and every one of them” [M. Yeb. 15:7J-M]. Now whose opinion can be before us in the passage at hand? It cannot be R. Tarfon, for has he not said that, even after he took the oath, all he has to do is leave the stolen goods among them and shove off? And if it were in accord with R. Aqiba, would he not hold the opinion that even where there was no oath taken, he still would have to restore the value of the stolen article to each and every one of them!?*
- B. *In point of fact, the Mishnah paragraph before us represents the position of R. Aqiba. And when R. Aqiba made his statement, Unless he pays the value of that which was stolen to each and every one of them, that pertained a case in which an oath was taken. What is the scriptural basis for that position? “And give it to him to whom it belongs in the day of his being guilty” (Lev. 5:24). But R. Tarfon holds that, even though he took an oath, rabbis still made a remedy to make it easy to repent. For it has been taught on Tannaite authority: R. Sadoq says, “A great ordinance did sages ordain:*

Where the expense of making the trip was greater than the principal, lo, this one pays the principal and the Added Fifth in court and brings a guilt-offering for the false oath” [T. B.Q. 10:11I-J].

- C. And R. Aqiba?
- D. *Where rabbis made such an ordinance, it was in a case in which the man knew precisely whom he had robbed, in which case he can return the money to its owner. But if he stole from one of five people and did not know whom he robbed, so that the stolen money cannot be given to the rightful owner, our rabbis provided no such remedy.*
- E. *Objected R. Huna bar Judah, “Said R. Simeon b. Eleazar, ‘R. Tarfon and R. Aqiba did not differ in a case in which one purchased something from one out of five persons without knowing from whom he bought it. Both concur that he puts down the purchase money among them and shoves off. [He committed no crime (Kirzner).] Concerning what case did they differ? It concerned one in which he stole from one of five men and does not know from which one of them he stole. R. Tarfon says, ‘He leaves that which he stole among them and takes his leave.’ And R. Aqiba says, ‘He has no remedy unless he pays for the stolen article to each of them.’ Now, if you assume an oath has been taken here, then what is the difference between buying an object and stealing it [Kirzner: since in both cases the person has committed perjury]?”*
- F. *Furthermore, objected Raba, “There was a case in which a certain pious man bought an article from one of two persons and he did not know from which one he bought it. He came before R. Tarfon. He said to him, ‘Leave the money for your purchase between them and shove off.’ He came before R. Aqiba. He said to him, ‘You have no remedy unless you pay to each one of them.’ Now, if you assume an oath has been taken here, then would a pious man take a false oath? And if you should say that after he took the false oath, then he went and became pious, is it not an established fact that, wherever we find the language, There was a case in which a certain pious man..., reference is made to either R. Judah b. Baba or to R. Judah b. R. Ilai. And, as a matter of established fact, both R. Judah b. Baba and R. Judah b. R. Ilai were pious men from the very outset.”*
- G. *So, in point of fact, the Mishnah paragraph before us accords with the position of R. Tarfon, and R. Tarfon concurs that in a case in which one has taken a false oath, [proper restoration must be made (Kirzner)], in line with the verse of Scripture, “And give it to him to whom it pertains in the day of his*

trespass-offering” (Lev. 5:24), *but R. Aqiba maintained that, even where no oath was taken, the fine is imposed.*

H. *Now as to the view of R. Tarfon, let us consider the matter: If he took an oath, he would certainly not be subject to the law set forth in our Mishnah paragraph unless he confessed his guilt [in line with Num. 5:7]. So why is it then only in the case where he took an oath? Would the same rule not pertain even where he did not take an oath, as has been taught on Tannaite authority: R. Tarfon concurs that [if] one said to two people, “I stole a maneh [a hundred zuz] from one of you and I do not know from which one of you it was,” [he] pays off a maneh to this one and a maneh to that one, [104A] for he has already confessed of his own volition [T. B.M. 14:3].”*

I. *Said Raba, “Our Mishnah’s case is exceptional, for, since the man knows from whom he has stolen, and he has confessed it, it is possible to give the stolen object to the owner, so it is as if the plaintiff had said to him, ‘For the present it can stay in your possession.’ But only in the case where an oath was taken is it as though he had set to him, ‘Let it stay in your possession,’ and yet since the robber still requires atonement, it is not a sufficient solution until the object actually comes into the plaintiff’s domain; but where no oath is taken, the stolen article is considered a deposit with him until the owner comes and takes it” [Kirzner: so our Mishnah paragraph may be in agreement with either Aqiba or Tarfon].*

- II.1** A. **He should not give it to his son or his agent, but he may hand it over to an agent appointed by a court:**
- B. *It has been stated:*
- C. A messenger appointed in the presence of witnesses [to receive a money payment] —
- D. R. Hisda said, “He is a validly appointed agent” [Kirzner: and if some accident should happen with the money while it is in his hands, the one who paid the money would not be responsible to make it up].
- E. Rabbah said, “He is not a validly appointed agent” [Kirzner: and if some accident should happen with the money while it is in his hands, the one who paid the money would be responsible to make it up].

F. R. Hisda said, “He is a validly appointed agent”: *It was for that very purpose that he went to the trouble of appointing witnesses, so that the*

appointed agent should stand in his stead [and bear responsibility for the money].

G. Rabbah said, “He is not a validly appointed agent”: *For this is the intent of the man’s statement before the witnesses to the party sending the money, “This man is credible and if you want to rely on him, you may do so, and if you want to send the money along with him, you may do so.”*

- H. *We have learned in the Mishnah: **He who borrowed a cow, and [the one who lent it out] sent it along with his son, slave, or messenger, or with the son, slave, or messenger of the borrower — and it died — [the borrower] is exempt [M. B.M. 8:3A-E].** Now how are we to imagine the status of this messenger? If he was not appointed in the presence of witnesses, then how could we have known that he was an agent at all? So it must be that he was appointed in the presence of witnesses. And so it is taught that he is exempt, which represents a challenge to the position of R. Hisda.*
- I. *The answer accords with what R. Hisda said, for said R. Hisda, “It is a case in which he was an employee or a guest in his household,” and here, too, he was an employee or a guest in his household.*
- J. *We have learned in the Mishnah: **He should not give it to his son or his agent.** Now how are we to imagine the status of this messenger? If he was not appointed in the presence of witnesses, then how could we have known that he was an agent at all? So it must be that he was appointed in the presence of witnesses.*
- K. *R. Hisda explained it to refer to a case in which he was an employee or a guest in his household.*
- L. *But if it were an agent appointed in the presence of witnesses, what would be the law? Would he be regarded as a properly appointed agent [so that a robber could hand over to him the stolen object]? In that case, why repeat as the Tannaite formulation of the concluding clause, **He should not give it to his son or his agent, but he may hand it over to an agent appointed by a court?** Why not rather present the entire rule by making a distinction in a single case, saying: “This refers to an agent that was not appointed in the presence of witnesses, but if it was an agent appointed in the presence of witnesses, he would be a properly accredited agent.”*
- M. *Say: The framer of the passage could not state such a rule in absolute terms. So far as an agent of the court, there would be no difference of any*

consequence whether it was the victim of the theft who authorized him to serve as agent or whether the robber authorized him to serve as agent; in that case, he could state with certainty that he is a properly accredited agent. But when it came to an agent appointed in the presence of witnesses, if he were appointed by the victim of the theft, he would indeed be considered a properly appointed agent; but if he were appointed by the robber, he would not be a properly appointed agent; hence, he could not state that rule with absolute certainty. For it would be contrary to that which has been taught on Tannaite authority: R. Simeon b. Eleazar says, “In the case of an agent who was appointed by the court, if the victim of the theft appointed him but the robber did not, or the robber appointed him but the other party went and took the object from him, in the case of an accident to the object, the thief would have no liability [T. B.Q. 10:11F-G] [Kirzner: proving that where the robber appointed the agent, so long as the payment did not reach the plaintiff, the robber is not yet released from responsibility, as against the interpretation of the Mishnah releasing the robber in such a case].

- II.2** A. R. Yohanan and R. Eleazar both say, “An agent appointed in the presence of witnesses is a validly appointed agent.”
- B. *And if you maintain that our Mishnah passage holds to the contrary, it may be said that the agent there was not appointed but merely placed at the robber’s disposal, for example, he said to him, “Someone owes me some money, who has not sent it to me. It would be nice for you to be seen by him, since perhaps he has found no one with whom to send the money.” [Kirzner: Such a request is by no means sufficient to make him an agent.] Or it may be as explained by R. Hisda that the agent was an employee of a guest in his household.*
- II.3** A. Said R. Judah said Samuel, **[104B]** “[Except at the sender’s risk (Kirzner)], they do not send trust funds by means of a person whose power of attorney is validated only by a sign, even if witnesses have signed on it to authenticate the authentication.”
- B. And R. Yohanan said, “If witnesses have signed on it to authenticate the authentication, they do send trust funds by means of a person whose power of attorney is validated only by a sign.”
- C. *Say: From Samuel’s perspective, then, what remedy is there [Kirzner: in the case of power of attorney that the payer be released from further responsibility]?*

D. *It is in line with the case of R. Abba, to whom R. Joseph bar Hama owed money. He said to R. Safra, "When you go there, bring it to me." When he got there, Raba his [Joseph's] son said to him, "Did the creditor give you a written statement, that by your accepting the money, he will be regarded as having received it?"*

E. *He said to him, "No."*

F. *He said to him, "Then first of all go back and let him give you a document that will indicate that by accepting the money on your part, he will be regarded as having received the money."*

G. *But in the end he said to him, "So even if he were to give you a document that will indicate that by accepting the money on your part, he will be regarded as having received the money, it wouldn't make any difference, since, before you get back here, R. Abba may have died, and the money will already have been transferred to the estate, in which case the receipt executed by R. Abba will be no help."*

H. *He said to him, "So what's the solution?"*

I. *"Go back and have him transfer ownership to you by means of a piece of land, and when you get back here, you will give us a written receipt that you have received the money."*

J. *That would be like the case of R. Pappa, who had thirteen thousand denarii owing to him by people in Khuzistan, which he transferred to R. Samuel b. Aha along with the threshold of his house. When he came, he went forth to meet him up to Tauak.*

- III.1 A.** **[If the thief] paid him back the principal but did not pay the Added Fifth, [if the victim] forgave him the value of the principal but did not forgive him the value of the Added Fifth, [if] he forgave him for this and for that, except for something less a perutah out of the principal, he need not take it back to him:**
- B. *Therefore the Added Fifth is a civil liability, so that if the thief were to die in the interim, the estate would have to pay it.*
- C. *So, too, we have learned in the Mishnah: [If] he paid him back the principal but swore [falsely] to him about the Added Fifth [and then confessed], lo, this one pays back an Added Fifth for the Added Fifth, [and so is the rule] until the value of the principal [of the Added Fifth] becomes less than a perutah in value [M. 9:7A-C]. Therefore the Added Fifth is a civil*

liability, so that if the thief were to die in the interim, the estate would have to pay it.

- D. *And so, too, it has been taught on Tannaite authority: [He who steals from his fellow and takes a false oath to him, lo, this one pays back the principal and an Added Fifth, and brings a guilt-offering. If the victim of the thievery died, the thief pays to the estate of the victim of thievery the principal and an Added Fifth, and he brings a guilt-offering.] If the thief died, the estate of the thief pays the principal to the victim of the thievery, and also the Added Fifth but is exempt from the requirement of bringing the guilt-offering [T. B.Q. 10:12]. Since the heirs have to pay the Added Fifth that their father would have had to pay, it follows that the Added Fifth is a civil liability.*
- E. *But by contrast:* Still I might say, the case in which an heir does not have to pay the Added Fifth for a robbery that his father has committed is only one in which neither he nor the father took a false oath. How do we know that the same rule applies where he took the oath but his father did not, or his father took the oath but he did not, or even where both he and his father took oaths? “That which he took by robbery or the thing which he has gotten by oppression” (Lev. 5:23) — but in this case, he [the heir] has neither taken something away by violence nor deceived anybody. [This proves that the Fifth is not a civil liability, for the heirs would not have to pay it].
- F. *Said R. Nahman, “There is no contradiction. The one case speaks of an instance in which the father confessed his guilt [so he is already liable to the Added Fifth, and his estate pays it], and the other of a case in which he did not admit it [so the estate does not have to pay the Added Fifth].”*
- G. *Yeah, well, if he admitted nothing, why does the estate even have to pay the principal? And if you maintain that that is the fact, so they don’t have to pay it in the latter case, since the entire discussion before us concerns the Added Fifth, does it not bear the implication that, one way or the other the principal has to be paid? Moreover, it has been stated on Tannaite authority quite explicitly: Still I might say, “When does he have to pay the principal?” It is when the robbery was committed by his father, and both he and his father took oaths. How do I know that the same is the rule if he took an oath but not the father, or the father took an oath but not he, or neither he nor his father took an oath? “The misappropriated article and the deceitfully gotten article, the lost article, and the deposit” (Lev. 5:23). And in this regard there is a talmud. Now when R. Huna was in session and stating this tradition, said to him his*

son Rabbah, "Is the language that has just now been cited, And in this regard there is a talmud? Or did the master say, 'It stands to reason that the heirs would have to pay'?" He said to him, "What I said is, And in this regard there is a talmud. For I take the view that the rule is extended by Scripture." [Kirzner: Extended from the objects of payment enumerated at Lev. 5:23; but if no admission was made, why should principal be paid?]

- H. *Say: What then is the meaning of "he did not confess"? It is, he did not confess but his son did.*
- I. *Then why should the son not have to pay the Added Fifth for his own false oath?*
- J. *Say: It is a case in which the stolen object is no longer available. [If the stolen article were no longer available, the son is not responsible for it, and by committed perjury he became liable to the penalties of taking a false oath but not to the penalty of the Added Fifth (Kirzner)].*
- K. *If the stolen article is no longer available, why should he have to pay even the principal?*
- L. *The rule is required to deal with a case in which there did remain real property [for which the father bore responsibility of making it up if it were to be stolen or lost].*
- M. *But if real property were left, what difference would it make? The liability here is merely an oral one, and a liability that is attested merely by oral testimony cannot be collected from either an estate or those who have purchased the property subsequently.*
- N. *Say: [105A] It is a case in which before the father died he had come to trial, and liability was asserted against him by the court.*
- O. *So if it is a case in which before the father died he had come to trial, and liability was asserted against him by the court, then even the Added Fifth should have to be paid by the heir [for the false oath]!*
- P. *Said R. Huna b. R. Joshua, "The reason is that an Added Fifth is not paid for denial of a liability that is secured by real estate [no oath applying in such a case]."*
- Q. *Raba said, "Here with what sort of a situation do we deal? It is one in which the stolen article was kept in his father's trunk, which was itself deposited with others [so that when the son took the oath that he didn't have the object, it was a true oath and he is not liable for perjury]. Now obviously the principal is to be repaid, since it was found to be available, but the Added Fifth does not*

have to be paid, since when the son took the oath, he meant to take it honestly, but he did not know the facts of the matter.”

- IV.1** A. **[If] he forgave him for this and for that, except for something less a perutah out of the principal, he need not take it back to him:**
- B. Said R. Pappa, “That rule applies only if the stolen object is not available, but if the stolen object is available, he has to go after him. *We take account of the possibility that the stolen article has gone up in value.*”
- C. *There are those who say, said R. Pappa, “There is no difference whether the stolen article is available or not. He does not have to go after him, because we do not take account of the possibility that the article has gone up in value.”*

**Raba’s Refinements of the Theory of Restitution:
Theoretical Problems**

- IV.2** A. Said Raba, “If one stole three bundles of goods worth three pennies, which then fell in price to two, and he stored two bundles, he would still have to make up one more.”
- B. *And there is a Tannaite authority that repeats the same view: ...leaven, and the festival of Passover passed [making it no longer available for Israelite use] — [the robber] says to him, “Here is what is yours right in front of you!” The operative consideration is that the leaven is available; but if it were not intact, even though it at this time is worthless, he still would have to pay, since it originally was worth something. So, too, in the present case. Even though the bundle is now not worth a penny, since originally it was worth a penny, he has to pay it.*
- IV.3** A. *Raba asked this question: “If one stole two bundles of goods worth one penny, and he returned one of them, what is the law? Do we say that now, at any rate, no stolen object is with him to the value of a penny [so he should not have to pay]? Or, perhaps, lo, he has not in any event returned what he stole that he had in hand?”*
- B. *Then he solved the problem: “Before us is no robbery, before us is no act of restoration of what has been stolen [Kirzner: since the whole restoration was of an article worth less than a penny].”*
- C. *But if there is no robbery in hand, is it not because there has been an act of restoration?*

D. *This is the sense of his statement:* Even though no robbery was in hand, the requirement of restoring the object likewise has not been carried out.

IV.4 A. And said Raba, “A Nazirite who performed his act of shaving his head but left two hairs has done nothing at all.”

B. *Asked Raba*, “If he shaved one off, and the other fell off by itself, what is the law?”

C. *Said to R. Aha of Difti to Rabina*, “Does Raba really find a problem with the case of a Nazirite who performed his religious duty by shaving hair after hair in sequence? [That’s how the act is done anyhow!]”

D. *He said to him*, “This is what was troubling him: a case in which one of them fell out and he then shaved the other. Do we say, ‘Here, at any rate, there is no minimum [of unshaved hair, so he has done the duty],’ or do we maintain that he has not actually carried out the religious duty of shaving, since he originally had left two hairs, and when he went to shave them, there were not two hairs there to be shaved?”

E. *Then he solved the problem*: “There is no hair here, but there also is no act of shaving here.”

F. *So if there was no hair there, had the Nazirite not carried out the religious requirement of shaving?*

G. *This is the sense of his statement*: Though there is no hair here, the religious duty of shaving also has not been properly carried out.

IV.5 A. And said Raba, “Lo, they have said: ‘A jug that was perforated and that lees stopped up would afford protection [in the tent of a corpse, so it would be regarded as tightly sealed].’”

B. *Asked Raba*, “If only half of the hole was blocked up, what is the law?”

C. Said R. Yemar to R. Ashi, “Is this not explicitly treated in the following passage of our Mishnah, *which we have learned*: **[In the case of] a jar which was perforated, and which the wine lees have stopped up — they have protected it. [If] one stopped it up with the wine shoot, [it affords protection only] after one will have plastered [it] from the sides [M.**

Kel. 10:6A-D]. *The operative consideration is that one has plastered it. Lo, if he did not plaster it, it does not afford protection. But why should this be the case? Let it be like a case in which the hole was only half blocked up!"*

D. Say: How are the cases parallel? In that case, if one did not plaster it, the stopper would not hold at all, but in this case, half of the hole is blocked with materials that will stand in place.

IV.6 A. And said Raba, "Lo, they have said, **leaven, and the festival of Passover passed [making it no longer available for Israelite use]...[the robber] says to him, 'Here is what is yours right in front of you!'"**

B. *Raba raised this question: [105B] "What if, after Passover, instead of making that plea, the robber took a false oath? Do we say that, if the leaven were stolen from him, he would have to pay for it, so what he has denied in fact is worth money [so he is subject to penalty for the false oath and for the costs of restoration, Lev. 5:21-25], or perhaps, since the leaven was still intact but was null in value, he has not denied anything of any substantial monetary value [and he is subject to Lev. 5:4-10 for the false oath]?"*

C. *Something about which Raba was uncertain struck Rabbah as entirely clear and simple. For said Raba, "'You stole my ox,' and he says, 'I did not steal your ox,' and when the first says, 'So what's my ox doing with you,' he says, 'As a matter of fact, I am in the status of an unpaid bailee in respect to this ox,' and then he defended himself by taking an oath but later admitted his guilt, he is liable [in line with Lev. 5:21-25], for by taking that oath, he released himself from liability if the animal had died by reason of ordinary work done with it. [Kirzner: That is a valid defense in the case of a borrower but not of a thief.] So, also, if the defense had been, 'In regard to this cow, I am in the status of a paid bailee,' he would be liable [in line with Lev. 5:21-5], as he would relieve himself from liability if the animal became maimed or died; if he defended himself by saying, 'In respect to this cow I am a borrower,' he would be liable, for he would have released himself from liability if the*

animal died merely because of ordinary work. *It follows that, even though the ox is now in hand, the statement is tantamount to denial of a money claim, for if the animal had been stolen, he would have saved himself the costs of repaying, so even now it is considered a denial of a monetary obligation. In our case also, though the leaven we have in hand is regarded as mere dirt, since if it were to be stolen the thief still would have to pay him with something of worth, even now there is a denial of a substantive monetary claim.*”

D. *Rabbah was in session and stating this tradition. An objection was raised by R. Amram to Rabbah: “And lies concerning it’ (Lev. 5:22) — that excludes one who admits the substance of the claim. How so? ‘You stole my ox,’ and he says, ‘I did not steal your ox,’ and when the first says, ‘So what’s my ox doing with you?’ he says, ‘As a matter of fact, you sold it to me’; ‘You gave it to me as a gift’; ‘Your father sold it to me’; ‘Your father gave it to me as a gift’; ‘It ran after my cow on its own’; ‘It come to me on its own’; ‘I found it wandering around in the road’; ‘I am an unpaid bailee in regard to it’; ‘I am a paid bailee in regard to it’; ‘I am in the status of a borrower in respect to it’; and then he took an oath to the effect of one of these claims, but later on, he admitted his guilt — might one suppose that he is liable here? Scripture states, ‘And lies concerning it’ (Lev. 5:22) — that excludes one who admits the substance of the claim.” [Kirzner: Why then has Rabbah made a statement to the contrary?]*

E. *[Rabbah] said to [Amram], “This is a confused situation, for when that Tannaite formulation was set forth, it dealt with a case in which the defendant said to him, ‘Here is yours,’ [in which case he has not denied a monetary liability at all]. But in my statement I referred to a case in which the animal was out in the pasture [Kirzner: and there is the potential of a denial of money].”*

F. *But if he said to him, “You sold it to me,” what admission is represented by such a defense?*

G. *It would refer to a case in which he said to him, “I did not pay you the money for the ox, so take your ox back and go.”*

H. *And still, how has he admitted his guilt in making such a statement as “Your father gave it to me as a gift,” or “You gave it to me as a gift”?*

I. *It would be an admission if the defendant said to him, “It was a gift on the stipulation that I should do a favor for you, and since I didn’t do you any favors, you’re entitled to take your ox and go.”*

J. *And still, if his plea was, “I found it wandering around in the road,” why can’t the other say, “Well, you ought to have returned it to me”?*

K. Said the father of Samuel, “He was alleging and then confirming his statement by an oath: ‘I found it as a lost article; I didn’t know it was yours, that I should return it to you.’”

- V.1** A. [Supply: **If he paid him back the principal but swore falsely to him about the Added Fifth and then confessed, lo, this one pays back an Added Fifth for the Added Fifth, and so is the rule until the value of the principal of the Added Fifth becomes less than a perutah in value. And so is the rule in the case of a bailment. For it is written, “In a matter of deposit or of bargain or of robbery, or if he has oppressed his neighbor or has found that which was lost, dealing falsely therein and swearing to a lie” (Lev. 6: 2-3) — lo, this one pays back the principal, an Added Fifth, and a guilt-offering:**]
- B. *It has been taught on Tannaite authority:* Said Ben Azzai, “There are three false oaths, taken by one witness, [that are subject to a single law]: He knew about the lost animal but not the person who found it, the person who found it but not the lost animal, neither the lost animal nor the person who found it.”
- C. *But if he knew neither the lost animal nor the finder, is it not a true oath?*
- D. *Say:* He knew both the lost animal and the finder [but took an oath that he didn’t].
- E. *For what concrete purpose is this law laid down?*
- F. *R. Ammi said R. Hanina [said], “For purposes of exempting the man from the penalties for the false oath.”*
- G. *And Samuel said, “For purposes of imposing liability on the man for having taken a false oath.”*

H. *And they are in disagreement on what is at issue among the following Tannaite authorities, as has been taught on Tannaite authority: "In a case in which an oath was imposed on a single witness [to give testimony to give evidence, and he denied having any], and then he admitted he took a false oath, he is exempt." R. Eleazar b. R. Simeon imposes liability. What is at stake in the dispute? [Eleazar] takes the view that a matter that can merely cause some monetary liability is regarded as one that directly does cause monetary liability, and the initial authority takes the view that a matter that may cause a monetary liability is not regarded as one that actually does cause a monetary liability.*

V.2 A. Said R. Sheshet, "He who denies holding a bailment is regarded as though he had stolen it and therefore will be liable for any accidents that happen to it [as a robber is liable]."

B. *A Tannaite formulation sustains that view:*

C. "...and he lies concerning it" (Lev. 5:22) — thus we derive the penalty [which is restitution]. How on the basis of Scripture do we know that there is an admonition? "Neither shall you deal falsely" (Lev. 19:11).

D. *Does this not refer to the penalty of having denied the money [even before committing perjury, the fine being that he is liable for all accidents]?*

E. *No, it speaks of the penalty for taking the false oath [in line with Lev. 5:21-24].*

F. *But since the Tannaite formulation at the concluding clause speaks of a case where an oath was taken, surely the opening clause speaks of a case in which no oath was taken! For it is stated as the Tannaite formulation with respect to the concluding clause: "And swears falsely" (Lev. 5:22) — thence we derive the penalty, whence the admonition? "Nor lie" (Lev. 19:11).*

G. *Does this not refer to a case in which the oath was taken, so that the initial clause deals with a case in which no oath was taken?*

H. *Say: Both clauses refer to a case in which an oath was taken, the one in which he confessed that the oath was false, the other in which he did not confess but witnesses came along and proved his perfidy.*

I. *In the case in which the witnesses came and proved the perfidy, the defendant would be liable for all accidents [from the moment of having taken the false oath]; where he admitted the perjury, he would be liable for the principal and Added Fifth and trespass-offering.*

J. *Objected R. Ammi bar Hama: “He whose contrary litigant is not trusted [even if he takes] an oath — how so? All the same are an oath regarding testimony, an oath regarding a bailment, and even a rash oath — [if] one of the litigants was a dice player, gave out loans on usury, [was] a pigeon racer, or a dealer in Seventh Year produce (M. San. 3: 3), the other litigant takes an oath and collects his claim.” “If both of them were suspect in the matters just now listed, the oath returns to its normal place and is taken by the one against whom the claim is made,” the words of R. Yosé. R. Meir says, “Let them divide up [the claim at issue]” [M. Shebu. 7:4]. But if there were validity in what you have said [Kirzner: that by mere denial of a deposit the depositor becomes subject to the law of robbery], would that person not be disqualified at the very moment he denied the bailment [even before taking a false oath]?”*

K. *Say: Here with what situation do we deal? It is a case in which the deposited animal was out in a pasture, so the denial was not genuine, since he might have thought, “Well, I’ll get rid of him for now and later on I’ll go and deliver the animal that is left with me.” You may know that that is the case, for said R. Idi bar Abin, “He who falsely denies a loan is still valid to give testimony; [106A] if he falsely denies a bailment, he is invalid to give testimony.”*

L. *But did not Ilfa say, “An oath transfers title to an object” [Kirzner: as a deposit falsely denied by a bailee committing perjury will no less than in the case of conversion no longer remain in the possession of the deposit but is transferred to the responsibility of the bailee who has become subject to the law of robbery]. So what that means is that the oath is what transfers title and responsibility, but mere denial does not! [That would then not render the bailee a robber, as against Sheshet’s view].*

M. *Here, too, we’re dealing with a case in which the bailment was out in the pasture.*

N. *Or if you prefer, I shall say, "What is the meaning of the statement, 'An oath transfers title'?" It is as in the case of R. Huna. For said R. Huna said Rab, "'A maneh of mine is in your possession,' and the other says, 'You have nothing in my possession at all,' and he takes an oath to that effect, and afterward witnesses came along — he is exempt. For it is said, 'And the owner thereof shall accept it and he shall not make restitution' (Exo. 22:10), so if the owner accepted the oath, the defendant no longer has to pay the money."*

V.3 A. *Reverting to the body of the prior discussion:* Said R. Huna said Rab, "'A maneh of mine is in your possession,' and the other says, 'You have nothing in my possession at all,' and he takes an oath to that effect, and afterward witnesses came along — he is exempt. For it is said, 'And the owner thereof shall accept it and he shall not make restitution' (Exo. 22:10), so if the owner accepted the oath, the defendant no longer has to pay the money."

B. *Said Raba, "It might stand to reason that the statement that Rab has made applies to a case of a loan, in which the money was given to be spent [no act of transfer of ownership being required], but not to a deposit, which always remains under the title of its owner [Kirzner: even in the hands of the bailee, in which case an act of conveyance is necessary, which could hardly be done by an oath]. But by God! I affirm that Rab made his statement even with regard to a deposit, since it is in respect to a deposit that the text of the cited proof verse is written."*

C. *Now R. Nahman was in session and repeating this tradition, and R. Aha bar Minyumi pointed out to R. Nahman a contradiction based on the following: [If one said,] "Where is my bailment?" he said to him, "It got lost." "I impose an oath on you!" And he said, "Amen" — then witnesses come along and give testimony against him that he had eaten it up — he pays back the principal. [If] he had confessed on his own, he pays back the principal, the Added Fifth, and a guilt-offering. "Where is my bailment?" He said to him, "It was stolen." "I impose an oath on you!" And he said, "Amen" — then witnesses*

come along and testify against him that he stole it, he pays twofold restitution. [If] he had confessed on his own, he pays the principal, an Added Fifth, and a guilt-offering [M. B.Q. 9:7-8]. [Surely that contradicts Rab's allegation.]

D. *Said to him R. Nahman, "Here with what sort of a case do we deal? It is one in which he took the oath outside of a court."* [Kirzner: This is just a private matter, so it would not bar the judicial reopening of the case, while Rab speaks of a cast in which the oath was taken in a court of law.]

E. *He said to him, "If so, let me point out the concluding part of the same matter: 'Where is my bailment?' He said to him, 'It was stolen.' 'I impose an oath on you!' And he said, 'Amen' — then witnesses come along and testify against him that he stole it, he pays twofold restitution. [If] he had confessed on his own, he pays the principal, an Added Fifth, and a guilt-offering. Now, if you imagine that this has taken place outside of a court of law, outside of a court of law would there be the double indemnity to be paid?!"*

F. *He said to him, "Well, as a matter of fact, if I wanted, I could indeed tell you that the opening clause addresses a case outside of a court of law, and the closing one in a court of law. But that would be a bit forced, so I am not going to try that out on you. Rather, both clauses refer to a case taking place in a court of law. But there is no contradiction. The one speaks of a case in which the claimant jumped ahead of the court and administered the oath on his own [so the oath did not take place in court], the latter, in which he did not do so [so the oath was administered in court, with the different consequences that have been specified]."*

G. *Said R. Ammi bar Hama to R. Nahman, "Since you for your own part really do not concur with the view of Rab, how come you are giving your life in pledge to explain Rab's position?"*

H. *He said to him, "It is to explain the position of Rab, for this is how Rab would have explained the Mishnah paragraph under discussion."*

I. *But lo, Rab has cited a verse of Scripture in behalf of his position (Exo. 22:10) [so how can you differ from him anyhow]!”*

J. Say: “The verse of Scripture serves to show that **All those who are subjected to oaths [that are required] in the Torah take [said] oaths and do not pay [the claim against them] [M. Shebu. 7:1A]**, in line with the verse, ‘And the owner shall accept it and he shall not make restitution’ (Exo. 22:10), meaning, the one who otherwise would have to make it good is the one who has to take an oath.”

K. *Objected R. Hamnuna: “[If] he imposed an oath on him five times, whether this is before a court or not before a court, and the other party denied it, he is liable for each count. And said R. Simeon, ‘What is the reason? Because [on each count] he has the power to retract and to confess [that he does have the bailment and will now return it]’ [M. Shebu. 5:3F-H].* Now here is a case in which the claimant jumped ahead of the court and administered the oath on his own, since it is explicitly stated, **[If] he imposed an oath on him.** And you cannot say that this took place outside of court, since it is equally explicitly stated, **Whether this is before a court or not before a court.”**

L. *He is the one who posed the question, and he is the one who answered it: “The text is to be read [Kirzner:] disjunctively. If the oath was imposed upon him by the court but taken outside of the court, or if it was administered in the presence of the court but in anticipation of its action [Kirzner: it still remains a private matter and the court can reopen the cast].”*

M. *Objected Raba, “A householder who in the case of a bailment lodged with him claimed that it had been stolen [and so is not responsible, being an unpaid bailee], took an oath, and then confessed that he really had the object, and witnesses to the facts came along — if he had confessed before the witnesses came along, he pays the principal, the Added Fifth, and presents a guilt-offering; if this was the case after the witnesses came along that he confessed, he [being classified now as a thief] pays*

double and presents a guilt-offering. *Now here is a case in which you cannot allege that the oath took place outside of the court, and you cannot claim that the householder jumped ahead [before the court took its action], since there is liability to the double indemnity [so how can Rab be right?]*”

N. *Said Raba, “In any case of confession of perjury having to do with a claim for something worth money, whether the defense was loss or theft, Rab did not intend that his statement should apply. For it is definitely stated, ‘Then they shall confess’ (Num. 5: 7), meaning that in all cases the perjurer would have to pay the principal and the Added Fifth; and in a case in which he pleaded theft and witnesses came forward to the contrary, Rab did not intend his statement to pertain. For here the liability for double payment is provided for by Scripture itself. So to what situation does the statement of Rab apply? It is to a case in which he pleaded in defense that he had lost the object, and took an oath, but did not admit his perjury before witnesses appeared and proved he had lied. [Kirzner: It is in such a case that Rab laid down the ruling that once the oath has been administered, the claim cannot be put forward again.]”*

O. *Now R. Gameda went and reported his tradition before R. Ashi. He said to him, “Since R. Hamnuna was a disciple of Rab and knew what Rab meant, namely, that his statement pertains also to a case of confession of perjury — since otherwise he could not have raised an objection from a case of confession — how can you maintain that Rab did not mean that his statement should apply to a case of confession of perjury?”*

P. *Said R. Aha the Elder to R. Ashi, “This is what was troubling R. Hamnuna [and led him to the surmise that he set forth]: **[106B]** If you have said that he took the oath and then the witnesses appeared [and proved that he was a perjurer], then he would have to pay, since it would be on this account that we should require him to present an atonement-offering (Lev. 5:21-26), on*

account of the oath taken at the last, since he could always retract and admit the claim. But if you hold that if he took the oath and afterward witnesses came to court, he would be exempt, then, is it possible that, while if witnesses had come and testified against him then he would have been exempt, we then should go and declare him liable to the sacrifice for an oath merely on the ground that he would have been able to retract and confess? But up to this point he has not confessed.”

Composite of R. Hiyya bar Abba in the Name of R. Yohanan

- V.4** A. Said R. Hiyya bar Abba said, R. Yohanan, “He who falsely claims that a bailment has been stolen on that account pays the double indemnity that a thief pays. If he sold or slaughtered the animal, he has to pay the fourfold or fivefold indemnity. Since a thief pays double indemnity and a bailee who presents the defense of theft has to pay the double indemnity, just as the thief liable to the double indemnity also is liable to pay fourfold or fivefold if he slaughters or sells the beast, so the bailee who defends himself through a plea of theft of the bailment has to be double, he should also have to repay fourfold or fivefold if he turns out to have lost or sold the beast.”
- B. But what characterizes the thief who has to repay double even if he has not perjured himself? Can you say the same of a bailee who defends himself by claiming the bailment has been stolen, who pays double indemnity only if he has taken a false oath?
- C. *Say: It is a verbal analogy supplied by Scripture that the thief and the bailee who claims the bailment has been stolen are analogous, and there is no possibility of refuting an analogy dictated by Scripture.*
- D. *Now that poses no problem to him who maintains that one verse deals with a thief and the other with a bailee who has falsely claimed that the bailment was stolen. But from the position of him who says that both of the verses, “If the thief be found” and “If the thief not be found,” deal with a bailee that has falsely claimed the bailment was stolen, what is to be said?*
- E. *Say: Instead of saying “thief,” Scripture says “the thief.”*
- F. **R. Hiyya bar Abba objected to R. Yohanan: “Where is my ox?” — he said to him, “It was stolen” — “I impose an oath on you” — he said, “Amen” — and witnesses testify against him that he had eaten it — he pays twofold compensation [M. Shebu. 8:4M-R].** *Now here is a case in which he could*

not have eaten any of the meat of the beast, even of the size of an olive, without first slaughtering the beast, and yet it is stated that he pays double, so it is only the double payment but not the fourfold or fivefold payment [and this surely contradicts Yohanan's view that the fourfold or fivefold payment also will be paid]!"

G. *Here with what sort of a case do we deal? It is one in which the beast was eaten though it was merely carrion.*

H. *So why did [Yohanan] not say that the meat was eaten though it was unfit for Israelite consumption?*

I. *He took the view of R. Meir, who has said, "An act of slaughter that is not suitable nonetheless is classified as an act of slaughter."*

J. *So why did [Yohanan] not say that the animal was alive when removed from the womb of the mother, who had been slaughtered [and that may be eaten without any further act of slaughter]?*

K. *Here, too, he concurred with R. Meir, who said, "An animal removed alive from the womb of the mother, who has been properly slaughtered, also requires a proper act of slaughter to be made fit for Israelite consumption."*

L. *Why not reply that the ruling pertained to a case in which the bailee had already appeared in court and had been instructed, "Go, give him [what he claims]," for said Raba, "If after the judges said, 'Go, pay him,' the thief slaughtered or sold the animal, he would be exempt, the operative consideration being that, once the judges gave their final sentence, when he sold or slaughtered the animal, he became a robber, and a robber does not have to pay the fourfold or fivefold indemnity? If they had said to him, 'You are liable to pay him,' and then the thief went and slaughtered or sold the animal, he is liable to pay the fourfold or fivefold indemnity. What is the operative consideration? Since the matter has not yet been wrapped up, he still is classified as a thief [and so subject to liability for those payments]."*

M. *Say: [True enough, there can be a variety of answers to the question. Still,] from your reasoning, why could he not have answered that the bailee was a partner to the theft and slaughtered the ox without the partner's knowing it [in which instance he would not be liable to the fourfold or fivefold payment]? [So there is a variety of possible*

answers,] and this must be one of several possible answers that he set forth.

- V.5** A. Said R. Hiyya bar Abba said R. Yohanan, “He who falsely claims that a bailment has been stolen on that account pays the double indemnity that a thief pays. If he sold or slaughtered the animal, he has to pay the fourfold or fivefold indemnity. What is the pertinent verse of Scripture? ‘For any manner of lost thing of which one says’ (Exo. 22: 8).”
- B. *Objected R. Abba bar Mammel to R. Hiyya bar Abba, “‘...if a man deliver...’ (Exo. 22: 6) — this implies that the act of delivery on the part of a minor is null. I know that that is the case only if the delivery was made when he was a minor and the claim for return of the object was made when he was a minor. If he handed it over when he was a minor but claimed it when he was an adult, how do I know the law? Scripture states, ‘The cause of both parties shall come before the judges’ (Exo. 22: 8) — the law of bailment applies only when the delivery of the object as a bailment and the demand for its return were made under the same circumstances. But if what you say is so [that there is double indemnity in the case of perjury with respect to a lost article], why in the case of the minor do we not treat the object as equivalent to a lost article [Kirzner: where there would be liability in the absence of any depositor at all]?”*
- C. *He said to him, “With what sort of a case do we deal? It is one in which the bailee ate up the deposited [beast] while the depositor was still a minor [Kirzner: in which case the bailee had never had any responsibility to an adult in respect to that deposit].”*
- D. *Then what would be the rule if the bailee ate up the deposited beast after the depositor had come of age? Would he be liable to pay [double indemnity for the perjury]? If that is the case, then why formulate matters as the law of bailment applies only when the delivery of the object as a bailment and the demand for its return were made under the same circumstances, rather than the law of bailment applies only when the consumption of the bailment and the demand for its return were made under the same circumstances?*
- E. *He said to him, “That is precisely how the rule should be read: The law of bailment applies only when the consumption of the bailment and the demand for its return were made under the same circumstances.”*
- F. *R. Ashi said, “The cases of a lost article and a deposit really are not comparable anyhow. The lost article came into the hands of the*

finder out of the domain of a person who was held responsible for his actions, while in the case of the minor, the deposit did not come to the domain of the bailee out of the domain of a responsible party.”

- V.6** A. Said R. Hiyya bar Abba said R. Yohanan, “An unpaid bailee who sets forth a defense that the bailment has been stolen [and is shown a perjurer] is made liable only if he denies a part of the bailment and admits a part. *What is the scriptural basis for that position?* ‘This is it’ (Exo. 22: 8) — this only.”
- B. *This differs from what R. Hiyya bar Joseph said, for said R. Hiyya bar Joseph, [107A] “[At issue here is the interpretation of Exo. 22:9, ‘For every breach of trust...of which one says, “This is it,” the case of both parties shall come before God.] What we have before us is a case in which one passage is interwoven with another. Specifically, when Scripture says, “This is it,” it refers only to loans [Kirzner: confining the imposition of the oath to cases of partial-admission].’ [The rule pertains only to loans and not to bailments, the topic to which the verse makes explicit reference?] [So we have a transposition of verses in such wise that the rules governing the case of a property claim are the same as those governing the case of a loan].”*
- C. *And what differentiates loans?*
- D. *It is in accord with Rabbah, for said Rabbah, “On what account has the Torah imposed the requirement of an oath on one who confesses to only part of a claim against him? It is by reason of the presumption that a person will not insolently [deny the truth about the whole of a loan] in the very presence of the creditor [and so entirely deny the debt. He will admit to part of the debt and deny part of it. Hence we invoke an oath in a case in which one does so, to coax out the truth of the matter.] [Daiches, Baba Mesia: In the case of one who restores a lost article to its owner, he is believed without an oath, even if the owner maintains that only part of the loss has been returned to him by the finder.] But this person wants to repudiate the entire claim, and the reason that he did not do so is that a person will not insolently [deny the truth about the whole of a loan] in the very presence of the creditor [and so entirely deny the debt]. He will admit to part of the debt and deny part of it. In our case likewise, where we limit the oath to partial admission of the claim, he was inclined to admit the whole claim; the reason he denied part of it was that he reasoned as follows: If I admit the whole liability, he will want the whole thing. I’ll admit part of it now to put him off, and when I have the money, I’ll pay him. That is why the All-Merciful imposed the oath on him, so that he has*

to admit the whole of the claim. It is only in the case of a loan that that reasoning applies, but in the case of a deposit, the bailee would be willing to tough it out. [Kirzner: In the case of the bailment, the bailee is the benefactor, and not the depositor, so the argumentation of Rabbah fails, and an oath is to be imposed even where there is a total denial, which is contrary to the view of Hiyya bar Abba in Yohanan's name.]

Theoretical Problems

- V.7** A. *R. Ammi bar Hama repeated as a Tannaite statement: “[If they are to be subjected to an oath,] four sorts of bailees [107B] have to have denied part of the bailment and conceded part of the bailment, namely, the unpaid bailee, the borrower, the paid bailee, and the one who rents.”*

B. *Said Raba, “What is the scriptural basis for the position of R. Ammi bar Hama? In the case of the unpaid bailee it is explicitly stated, ‘This is it’ (Exo. 22: 8) — and the rule pertaining to the paid bailee derives from the case of the unpaid bailee through the presence of the verbal analogy, pertaining to both, established by the word, ‘giving’ (Exo. 22: 6). The law covering the borrower commences with the word, ‘and,’ in the language, ‘and if a man borrow’ (Exo. 22:13), so the ‘and’ joins the matter to the immediately prior subject. The law governing the one who hires is subject to the same condition, for if we maintain that he is the same as a paid bailee, he is classified as a paid bailee; and if he is equivalent to an unpaid bailee, so that is the rule that applies.”*

- V.8** A. And said R. Hiyya bar Joseph, “He who falsely claims in the case of a bailment that the object has been stolen is liable only if he has laid hands on the object [and stolen it for his own use]. *What is the scriptural basis for that position?* ‘The master of the house shall come to the judges to see whether he has not put his hand unto his neighbor’s goods’ (Exo. 22: 7), *meaning, if he actually put his hand to the goods he is liable; and here therefore we must be dealing with a case in which he had already done so.*”
- B. *Said to them R. Hiyya bar Abba, “This is what R. Yohanan said: ‘This ruling applies while the animal was yet standing at its crib [and has not been misappropriated in any way, contrary to the foregoing statement].’”*
- C. *Said R. Zira to R. Hiyya bar Abba, “Is his statement, specifically when it was yet standing at its crib, so that if the bailee had already laid hands on the beast, the bailment would thereby have been transferred to his possession, in which*

case the later oath would have had no weight? Or is it, even when it was still standing at the crib [and the bailee has not yet laid hands on the beast]?”

- D. He said to him, “On that subject I have heard nothing. But something relevant I have heard, for said R. Assi said R. Yohanan, ‘He who in his defense claimed that the beast was lost and took an oath to that effect, though witnesses came along to prove otherwise, is exempt from having to pay the double indemnity.’ *What is the operative consideration here? Is it not that the initial oath has effected the transfer of title to the bailee?*”
- E. [Zira] said to [Hiyya bar Abba], “No, the operative consideration is that he has already carried out his duty to the owner of the beast when he took the initial oath [so that the second oath is not judicial and would not impose double indemnity].”

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

G. Said R. Abin said R. Ilai said R. Yohanan, “He who in his defense claimed that the beast was lost and took an oath to that effect, and then went and claimed that it was stolen and took an oath to that effect, though witnesses came along to prove otherwise, is exempt from having to pay the double indemnity, because through the first oath he had carried out his obligation to the owner.”

- V.9** A. Said R. Sheshet, “An unpaid bailee who presented as his defense in the case of a bailment the plea that the object had been stolen, if he had already laid hands on the object, would be exempt from having to pay double indemnity. *What is the scriptural basis for that position?* ‘The master of the house shall come to the judges to see whether he has not put his hand unto his neighbor’s goods’ (Exo. 22: 7), *meaning, if he actually put his hand to the goods he is exempt.*”
- B. Said to him R. Nahman, “But is it not the case that we impose upon an unpaid bailee [who claims that the animal has been lost] three distinct oaths: first, an oath that I have not deliberately caused the loss, that I did not put a hand on it, and that it is not in my domain at all? *Does this not then mean that an oath that he did ‘not put a hand on it’ would be comparable to an oath ‘that it is not in my domain at all’? So just as it is known that the bailment really was at that time in his domain, so he would be liable for double payment, so if he swore that he did not put his hand on it, when the matter becomes known that he did, he becomes liable to double payment in the case of perjury!*”
- C. He said to him, “Not at all. The oath ‘that I did not put my hand on it’ is comparable to the oath ‘that I did not treat it negligently.’ Just as in a case

in which he took an oath that he did not treat the bailment negligently, even if it was shown that he had been negligent, he would not have to pay the double indemnity [not having stolen the object for his own use], so where he swore that he did not lay his hands on the object, even if it is known that he did do so, he still would be exempt from the double indemnity.”

- V.10** A. R. Ammi bar Hama raised this question: “[Kirzner: Since where there is liability for double payment, there is no liability for the Added Fifth], does money for which one is liable to pay double indemnity exempt one from having to pay the Added Fifth, or perhaps the oath that involves liability to double indemnity is what exempts him from the Added Fifth?”
- B. *Under what circumstances?*
- C. If the bailee defended himself by pleading that the bailment had been stolen, then he took an oath, then he came and made the plea that it was lost, and then he took an oath, **[108A]** and then witnesses came along *to the effect that the original oath was perjury, and the man himself confessed that the second oath was perjury [so he is liable to Lev. 5:21-25’s provisions]. What is the rule? Does money for which he is liable to pay double indemnity exempt one from having to pay the Added Fifth, so that in this case there would be liability to make double payment [Kirzner: for the deposit, there being no Fifth for it], or perhaps the oath that involves liability to double indemnity is what exempts him from the Added Fifth, so the second of the two oaths does not involve liability for double indemnity, in which case he would be liable for the Added Fifth?*
- D. Said Raba, “Come and take note: **He said to someone in the market, ‘Where is my ox which you stole?’ and he says, ‘I never stole it.’** [B. adds:] ‘I impose an oath on you to that effect,’ and the other says, ‘Amen,’ **but witnesses testify against him that he had stolen it — he pays twofold restitution. [If] he had slaughtered and sold it, he pays fourfold or fivefold restitution.** [B.:] If he confessed on its own, he pays the principal, the Added Fifth, and the guilt-offering. **[M. Shebu. 8:4:] [If] he saw witnesses [to what he had done] coming along and said, ‘I stole it, but I never slaughtered or sold it,’ he pays only the principal [M. Shebu. 8:4].** Now here is a case in which there are witnesses, and that is why he is obligated to the double payment, so if he had confessed on his own, then he pays it, but if he confessed after the advent of witnesses, that is not the rule. Now if you take the view that it is the oath that imposes the obligation on him

to pay the double indemnity and also then exempts him from having to pay the Added Fifth, then why is it the case that, if he confessed after the advent of witnesses, he does not have to pay? Since it was not the oath that imposed liability for double payment, why would he not have to pay the Added Fifth? Does this not prove that a pecuniary value for which there is liability to make a double payment exempts him from having to pay the Added Fifth?"

E. Yes.

V.11 A. *Rabina raised this question: "What would be the law as to an Added Fifth and double indemnity that were assigned to two persons, respectively? For instance? For instance, he handed over his ox to two persons and they claimed that it had been stolen. One of them then took an oath and then confessed the oath was false, and the other took an oath, and then witnesses came along. So what is the rule? Do we say that it is only in the case of a single person that the All-Merciful was concerned that he not have to pay both the Added Fifth and double indemnity, so that, where there are two persons, one makes the double payment, the other pays the Added Fifth, or do we say that it was regarding a single pecuniary obligation that the All-Merciful was concerned not to impose both the Added Fifth and double indemnity, in which case this is one and the same monetary obligation?"*

B. *The question stands.*

V.12 A. *R. Pappa raised this question: "How about a situation in which there might be two Added Fifths or two double indemnities assigned to one individual? For instance? For instance, the bailee claimed that the bailment was lost, and he took an oath and then confessed, and then he claimed that the bailment was lost and took another oath and then confessed; or, also, for instance, he claimed that the bailment was stolen and took an oath, and then witnesses came along; and then he claimed that it was stolen, and he took another oath, and witnesses came along, and so on. Now do we say that it was two distinct kinds of liability to a money payment that the All-Merciful did not permit to have paid with respect to a single monetary obligation, but here the liabilities are of a single kind [either two Added Fifths or two double indemnities]? Or perhaps it was two monetary obligations that the All-Merciful did not wish to have paid with respect to the same monetary obligation, and here we have two distinct monetary liabilities?"*

B. *Come and take note: Said Raba, "'And he shall add the fifth' (Lev. 5:24) — the Torah has assigned many Added Fifths to a single principal."*

C. *That is decisive.*

V.13 A. If the owner demanded the return of his bailment from the bailee, who denying the claim on oath, nonetheless paid for it, and then the actual thief was found, to whom does the double payment go?

B. Abbayye said, “To the owner of the bailment.”

C. Raba said, “To the bailee.”

D. Abbayye said, “To the owner of the bailment”: *Since the bailee has been put to the trouble of taking an oath, he would not have transferred the double payment to the bailee.*

E. Raba said, “To the bailee”: *For since he paid him the double payment likewise should be transferred to him.*

F. *What is at issue between them is the interpretation of the following passage of the Mishnah: He who deposits with his fellow a beast or utensils, and they were stolen or lost, [if the bailee] made restitution and was unwilling to take an oath — (for they have said, “An unpaid bailee takes an oath and thereby carries out his obligation [without paying compensation for the loss of the bailment])” — [if then] the thief was found, [the thief] pays twofold restitution. [If] he had slaughtered or sold the beast, he pays fourfold or fivefold restitution. To whom does he pay restitution? To him with whom the bailment was left. [If the bailee] took an oath and did not want to pay compensation, [if] the thief was found, he pays twofold restitution. [If] he slaughtered or sold the beast, he pays fourfold or fivefold restitution. To whom does he pay restitution? To the owner of the bailment [M. B.M. 3:1]. Abbayye then focuses upon the opening clause, and Raba on the closing one. Abbayye focuses upon the opening clause: [if the bailee] made restitution and was unwilling to take an oath. Lo, the operative consideration is that he did not want to take the oath. [108B] So if he had been willing to take the oath, even though he subsequently paid, the thief would have had to pay the owner of the bailment. And Raba on the closing one: took an oath and did not want to pay compensation. The operative consideration then is that he did not want to pay. Lo, if he had paid, even though he had taken the oath, to whom would he have paid? To the person with whom the bailment was left.*

G. *Then for Abbayye the second component of the paragraph is a problem!*

- H. *Abbaye will say to you, "This is the sense of the passage: 'If the bailee took an oath rather than paying before he took the oath, though he did so after he took the oath, then to whom will the thief pay? To the owner of the deposit.'"*
- I. *Then for Raba the first component of the paragraph is a problem!*
- J. *Raba will say to you, "This is the sense of the passage: 'If the bailee paid, being unwilling to stand on his oath and so paying off, to whom should the thief pay? To him with whom the deposit was left.'"*
 - K. If the owner laid claim on the bailee, and he took an oath, and then the thief was discovered, and the bailee demanded payment from him, and he confessed the theft, but when the owner of the bailment demanded payment from him, he denied the theft, and witnesses came along — when the thief confessed to the bailee, did he exempt himself from paying the indemnities, or did he not become exempt through confessing to the bailee?
 - L. Said Raba, "If the oath was a true oath, the thief would become exempt through his confession to the bailee [Kirzner: as in this case the trust in the bailee has not been impaired and the implied mandate not cancelled]. But if he took the oath falsely, the thief would not become exempt through his confession to the bailee [Kirzner: who could no longer be trusted and thus had no right to represent the depositor any more]."
 - M. *Raba raised this question: "If the bailee was going to take a false oath but it did not happen that he did so, what is the law?"*
 - N. *That question stands.*
 - O. *R. Kahana stated the Tannaite formulation in that way. R. Tabyumi repeated it in the following language: "Raba raised this question: 'If the bailee took a false oath, what is the law?' The question stands."*

- V.14 A.** If the owner asked the bailee to return the beast, who paid the value of the beast, and then the thief was identified, and when the owner demanded payment from him, he confessed, but when the bailee demanded payment from him, he denied the claim, and then witnesses appeared against him, has the thief exempted himself from paying the indemnity through his confession to the owner, or is that not the case?
- B. *Do we say that the bailee is entitled to say to the owner, "Since you have gotten the value of your bailment, you have no further interest in this*

matter”? Or can the owner say to him, “Just as you did a favor for me [by paying off the claim and not resisting it], so we are willing to do a favor for you and are out hunting the thief. Let’s take back what was ours, and you get back what was yours”?

C. *That question stands.*

V.15 A. *It has been stated:*

B. If the bailment was stolen through violence, and the thief was caught —

C. said Abbaye, “If the bailee was uncompensated, if he wanted, he may go to court with [the thief], and if he wanted, he may take an oath [and the owner of the animal then will deal with the thief]. If the bailee was paid, he goes to court with the thief, but he may not take an oath.”

D. Raba said, “The same rule applies to both classes of bailee: He must go to court with the thief and may not take an oath.”

E. *May we say that at issue between them is the position of R. Huna bar Abin, for R. Huna bar Abin sent word, “If the bailment was stolen through violence, and the thief was caught — if the bailee was uncompensated, if he wanted, he may go to court with [the thief], and if he wanted, he may take an oath [and the owner of the animal then will deal with the thief]. If the bailee was paid, he goes to court with the thief, but he may not take an oath.”*

F. *Raba will say to you, “Here with what case do we deal? It is one in which the paid bailee went ahead and took an oath before the thief was caught.”*

G. *But lo, the formulation is, if he wanted, he may go to court with [the thief], and if he wanted, he may take an oath [which means that up to that point no oath had been taken (Kirzner)]!*

H. *This is the sense of the statement: If the bailee was uncompensated, if he wanted, he may go to court with [the thief], and if he wanted, he may take an oath.*

V.16 A. *Rabbah the Younger raised this question: “If the bailment was stolen through violence, and the thief brought the animal back to the house of the bailee, where it died through negligence on the bailee’s part, what is the law? Do we say that, since the bailment was stolen through violence, this marks the end of his bailment? Or, perhaps, since the bailment was brought back to him, it has been restored to him in the status of a bailment?”*

B. *The question stands.*

I.1 asks about the authority for a clause in the Mishnah. **II.1-2+3** clarify a secondary question, provoked but left open by the rule of the Mishnah, to which that rule is a piece of evidence. **III.1** again raises a question not demanded by Mishnah exegesis but assuredly relevant to our passage. **IV.1, 2-6** to begin with clarify from various angles the way in which the law of the Mishnah applies and then include an appendix of formally parallel items. **IV.6** shades over into the topical framework addressed at **V.1ff.**, namely, the effects of a false oath. But **IV.6** clearly forms part of the prior composite, and that composite has been introduced in connection with the Mishnah-clause treated at **IV.1**. Another perspective would then treat all that follows as a secondary expansion of **IV.6**, but that seems to me an indefensible view, and matters break down as I have indicated in my graphic commentary. Thus I introduce the designated Mishnah-clause and maintain that **V.1-16**. then go over the issues of the false oath; the set is divided into subdivisions, as indicated.

9:7G-M

- G. [If one said], “Where is my bailment?”
- H. he said to him, “It got lost.”
- I. “I impose an oath on you!”
- J. And he said, “Amen.”
- K. Then witnesses come along and give testimony against him that he had eaten it up —
- L. he pays back the principal.
- M. [If] he had confessed on his own, he pays back the principal, the Added Fifth, and a guilt-offering.

9:8

- A. “Where is my bailment?”
- B. He said to him, “It was stolen.”
- C. “I impose an oath on you!”
- D. And he said, “Amen” —
- E. Then witnesses come along and testify against him that he stole it,
- F. he pays twofold restitution.
- G. [If] he had confessed on his own, he pays the principal, an Added Fifth, and a guilt-offering.

9:9

- A. He who steals from his father and takes an oath to him, and then [the father] dies —
- B. lo, this one pays back the principal and an Added Fifth to his [father's other] sons or brothers [and brings the guilt-offering].
- C. But if he does not want to do so or does not have that to pay back,
- D. he takes out a loan,
- E. and the creditors come along and collect what is owing.

9:10

- A. He who says to his son, “Qonam! You will not derive benefit from anything that is mine!” —
- B. if the father died, the son may inherit him.
- C. [109A] [But if he had specified that the vow applied] in life and after death, if the father died, the son may not inherit him.
- D. And he must return [what he has of the father's] to his sons or to his brothers.
- E. And if he does not have that to repay, he takes out a loan,
- F. and the creditors come along and collect what is owing.

I.1

- A. [Where there is no other heir to the estate], said R. Joseph, “Then he must pay what is owing for the theft even to the charity box.”
- B. Said R. Pappa, “And he has to say, ‘This is what has been stolen from my father.’”

C. *Why should he have to [pay what is owing for the theft even to the charity box]? Have we not learned in the Mishnah: [If the victim] forgave him the value of the principal but did not forgive him the value of the Added Fifth, [if] he forgave him for this and for that, except for something less a perutah out of the principal [M. 9:6B-C]? Therefore he is subject to forgiveness.*

D. *Said R. Yohanan, “There is no conflict, the one represents the position of R. Yosé the Galilean, the other the position of R. Aqiba. For it has been taught on Tannaite authority: “But if the man has no kinsmen to recompense the trespass to...” (Num. 5: 8) — Now [since all Israelites are related], is it possible that any Israelite would not have a redeemer? But the Scripture here speaks of taking what belongs to*

the estate of a proselyte [who has no Israelite heirs, by definition]. Lo, if one stole money from a proselyte and took a false oath to him and heard that the proselyte had died, so he took the money due and the trespass-offering to Jerusalem, but there he met the proselyte, who converted the sum into a loan, if the proselyte then were to die, the robber would acquire title to the funds that he still held,' the words of R. Yosé the Galilean. And R. Aqiba says, 'He has no remedy unless he gives up the amount that he has stolen.' *In the opinion of R. Yosé the Galilean, there is no difference whether it is to himself or to others, the plaintiff may in all cases remit the liability [as to M. 9:6B-C]; in the opinion of R. Aqiba, there is no difference whether it is to himself or to others, the plaintiff may in all cases not remit the liability. In the opinion of R. Yosé the Galilean, the same rule as pertains in the case of the proselyte would apply even when the proselyte did not convert the amount into a loan; the reason that the language, who converted the sum into a loan, is used is to show you how far R. Aqiba is willing to go, specifically, even if he had turned it into a loan, he still has no remedy until he gets rid of what he has stolen."*

E. *Objected R. Sheshet, "If that were the case, then R. Yosé the Galilean ought to have told us his position in the case in which the claimant remits it to himself, then all the more so to others! And R. Aqiba ought to have told us that if it is impossible for him to remit to others, then all the more so to himself!"*

F. *Rather, said R. Sheshet, "Both passages really represent the position of R. Yosé the Galilean. And when R. Yosé the Galilean made the statement that he did, that he can remit the liability, that is so only in such a way that others get the benefit, but if he himself were to get the benefit, he may not remit the theft; the reason that the robber would acquire title to what he had in hand is that the proselyte had converted the sum due to him into a loan."*

G. *Raba said, "Both statements represent the position of R. Aqiba. When R. Aqiba took the view that he could not remit the liability, that means to himself, but so far as doing so to other people, he may remit it."*

H. **[109B]** *Then does it follow that R. Yosé the Galilean took the position that he could remit it even to himself? If that were the case, then how in the world would there ever be an instance of restitution to*

the priests for robbery committed against a proselyte, as the All-Merciful has required?

I. Said Raba, *“With what case do we deal here? It is one in which he stole from a proselyte and falsely took an oath to him and then the proselyte died, and after he died, he confessed what he had done. Now at the moment at which he made the confession, God acquired title to what had been stolen and assigned it to the priests [at Num. 5: 8].”*

I.2 A. *Rabina raised this question: “If one robbed from a woman proselyte, what is the law? Do we say that Scripture said, ‘man’ (Num. 5: 8) — not woman, or perhaps Scripture just used its common expression but did not mean to exclude a woman from the rule?”*

B. *Said R. Aaron to Rabina, “Come and note that which has been taught on Tannaite authority: ‘The man’ — so I am informed that the rule pertains to a man. How do I know that it also applies to a woman? It further states, ‘That the trespass be restored’ (Num. 5: 8) — lo, there is a second such reference [encompassing a woman as well]. But then why does Scripture speak specifically of ‘the man’? It is to indicate that the rule applies only if someone has achieved manhood, at which point it is necessary to find out whether he had kinsmen or not, but in the case of a minor that is not required, since we may be sure he had no redeemers.”*

I.3 A. *Our rabbis have taught on Tannaite authority:*

B. *“The Lord’s, even the priest’s” (Num. 5: 8). [Where this stranger has no heir, his property is assigned to the priests. In context that means to the officiating priests of the Temple. Accordingly,] the Lord has acquired it [what has been stolen from the stranger] and assigned it to the priestly troop that is then officiating.*

C. *You maintain that reference is made to the priest that is then officiating.*

D. *But perhaps it is to any priest that the person wants [to hand over the stolen property]?*

E. *When Scripture states, “Besides the ram of the atonement, with which atonement shall be made for him” (Num. 5: 8), lo, [we know that] Scripture must speak of a priest who is a member of the troop of priests then officiating in the Temple. [The priest who offers the atoning sacrifice receives the capital and Added Fifth].*

- F. [The implication is that] a field that goes forth at the Jubilee [not having been redeemed by those who had inherited and then consecrated it] also is given to the priests who are members of the troop officiating at that time.

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

- B. If the robber was a priest, how do we know that he may not say, “Since the stolen goods revert to the priesthood, and lo, it is in my possession already, so I’ll keep it. And that is, after all, a matter of sheer logic: If when it belongs to others, this one has a claim on it, if it is in his own domain, is that not a matter a fortiori?!”
- C. R. Nathan states matters in this form: “If something of which he had no share prior to its entering his domain, when it enters his domain, cannot be taken away from him, [Kirzner: a priest may come and offer his own sacrifice at any time and retain the meat and skin for himself without sharing it with the priests of the division in service; once he gave it to another priest, who had no title to it prior to that time, however, he cannot reclaim it from him], something of which he had a share even before it came into his possession [for example, payment for a robbery committed against a proselyte, of which he had a share as soon as it was handed over to anyone of his division], then surely something in which he had a share even before it came into his domain should not be taken from him once it has come into his domain [as when he was the robber]! But no, for you have said that that is the rule in the case of something in which he has no share, for just as he has no share in it, so others have no share in it, will you say the same of something he has stolen, for just as he has a share in it, so others have a share in it? So, it must follow, Scripture states, ‘And every man’s Holy Things shall be his’ (Num. 5:10) [Kirzner: so the right to sacrifice the trespass-offering would be his; the meat therefore belongs to him, in which case the payment for the robbery should remain with him].”
- D. *Here with what case do we deal? It is with a priest that is unclean.*
- E. If it is with a priest that is unclean [Kirzner: and since he cannot offer the trespass-offering, he cannot retain the payment], *does this then fall into the class of something in which he has a share anyhow?*
- F. [Kirzner: The proposition that a priest may not retain for himself payment for a robbery he has committed on a proselyte, even though he has a right to the animal sacrifice and to the meat thereof,] *derives from the following proposition: We draw a verbal analogy through the appearance of the term “to the priest” at Num. 5: 8 and the use of the same term at Lev. 27:21, with*

reference to the rule governing a field of permanent possession, as has been taught on Tannaite authority:

- G. “His possession [that is, of the field] shall belong to the priest” (Lev. 27:21). What is the meaning of that statement? How do we know that in the case of a field which is going to be turned over to the priests at the Jubilee year, but which one of the priests redeemed, that **he may not say, “Since it goes forth to the priests in the Jubilee, and since, lo, it is in my domain, lo, it is mine” [M. Ar. 7:3D]**? And surely it is logical that, since I can acquire ownership of what is in the hands of others, I should surely be able to acquire ownership of what is in my own hands a fortiori! Scripture says, “His possession,” meaning “a possession which is his,” and this is not his. How so? **It goes forth from his possession and is divided among all his brethren, the priests [M. Ar. 7:3E].**

I.5 A. *Our rabbis have taught on Tannaite authority:*

B. How on the basis of Scripture do we know that a priest may come to present his offerings at any occasion and at any time that he wants?

C. Scripture states, “And come with all the desire of his soul...and minister” (Deu. 18: 6).

D. And how do we know that the fee for the service and the hide belong to him?

E. Scripture states, “And every one’s Holy Things shall be his” (Num. 5:10), lo, how so? If he was blemished [and unable to make the offerings but permitted to eat his share], he gives the offering to a priest of that particular division, and the fee for the liturgy and the hide belong to him. **[110A]** And if he was aged or sick, he gives it to any priest of his choice, and the fee for service and the hide are assigned to the members of that division.

F. *Now what is the sense of this allusion to his being aged or sick? If he could still carry out the act of service, then the fee for the service and the hide also should belong to him? And if he could not get well enough to perform the act of service, then how can he appoint a surrogate for that purpose?*

G. *Said R. Pappa, “He can with exceptional effort perform the right, so in respect to the act of service which he can have carried out only with exceptional service, it is still valid, and so he may appoint a surrogate, but as to eating, if the eating could have been done only*

with exceptional effort, this would be an unusual act of eating, which is null; in that case the fee for the act of service and the hide belong to the members of the division.”

- I.6** A. Said R. Sheshet, “If one of the priests in the officiating division was unclean, he may hand over the communal-offering to any priest he wants, and the fee for the service and the hide are assigned to the members of the division in service at that time.
- B. *How are we to imagine such a situation? If there are priests in a condition of cultic cleanness, then how could the unclean ones do a thing? And if there were no priests who were not unclean, then how could the fee for the service and the hide belong to the members of the division who were unclean and unable to eat Holy Things?*
- C. Said Raba, “Say: ‘[The fee for service and the hide,] the blemished, but cultically clean members of that division.’”
- D. Said R. Ashi, “If the high priest was in the status of one who was bereaved on that very day, he may hand over the sacrifice to any priest of his choice, and the fee for service and hide are assigned to the members of that division.”
- E. *So what is he telling us that we have not already learned on the strength of a Tannaite formulation: **The high priest may offer a sacrifice even though he has suffered a bereavement on that very day, but he may not eat of the meat nor have any share in it in the evening [T. Zeb. 11:2].***
- F. *You might have supposed that, when the All-Merciful showed special favor to the high priest, it was only so that he should himself perform the sacrifice, but not so that he could appoint a surrogate; so we are informed that that is not the case.*

I.1 augments the rule of the Mishnah and compares the present rule with an intersecting one. Nos. 2, 3, 4+5-6 complement the exposition of a secondary theme introduced in the exposition at No. 1. This, too, seems somewhat run-on.

9:11

- A. **He who steals from a proselyte and takes a [false] oath to him, and then [the proselyte] dies —**
- B. **lo, this person pays the principal and Added Fifth to the priests,**
- C. **and the guilt-offering to the altar,**
- D. **since it is said, “But if the man has no kinsman to whom restitution may be made for the guilt, the restitution for guilt which is made unto the**

Lord shall be the priest's, beside the ram of atonement whereby atonement shall be made for him" (Num. 5: 8).

- E. [If the thief] was bringing up the money and the guilt-offering [in line with A-D], and he died,
- F. the money is to be given to his [the thief's] sons.
- G. And the guilt-offering is set out to pasture until it suffers a disfiguring blemish, then it is sold, and the money received for it falls to the chest for the purchase of a freewill-offering.

9:12

- A. If he [who had stolen from a proselyte] had paid over the money to the men of the priestly watch on duty, and then [the thief] died,
- B. the heirs cannot retrieve the funds from their possession,
- C. since it is said, "Whatsoever any man gives to the priest shall be his" (Num. 5:10).
- D. [If] he gave the money to the priestly watch of Jehoiarib [which is prior], and the guilt-offering to the priestly watch of Jedaiah [which is later], he has carried out his obligation.
- E. [If he gave] the guilt-offering to the priestly watch of Jehoiarib and the money to the priestly watch of Jedaiah,
- F. if the guilt-offering is yet available, the family of Jedaiah should offer it up.
- G. And if not, he should go and bring another guilt-offering.
- H. For he who brings back what he had stolen before he brought his guilt-offering has fulfilled his obligation.
- I. But if he brought his guilt-offering before he brought back what he had stolen, he has not fulfilled his obligation.
- J. [If] he handed over the principal but did not hand over the Added Fifth, the Added Fifth does not stand in the way [of offering the guilt-offering and so completing his obligation].

I.1

- A. *Our rabbis have taught on Tannaite authority:*
- B. ["But if the man has no kinsman to whom restitution may be made for the guilt, the restitution for guilt which is made unto the Lord shall be the priest's, beside the ram of atonement whereby atonement shall be made for him"]

(Num. 5: 8).] “The guilt-offering” — this refers to the principal; “...the restitution...” — this refers to the Added Fifth.

- C. Or perhaps that is not the case, but rather, “the guilt-offering” refers to the ram.

D. *And what difference does it make?*

E. *It would then exclude that which Raba said, for said Raba, “What one has stolen from a proselyte which he has returned by night — one has not carried out his obligation, nor if he returned it by halves has he carried out his obligation, since the All-Merciful has classified it as a guilt-offering.”*

- F. When Scripture says, “beside the ram of atonement,” you must surely say that “the guilt-offering” is principal [the ram, secondary].

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

- B. [“But if the man has no kinsman to whom restitution may be made for the guilt, the restitution for guilt which is made unto the Lord shall be the priest’s, beside the ram of atonement whereby atonement shall be made for him” (Num. 5: 8).] “The guilt-offering” — this refers to the principal; “...the restitution...” — this refers to the Added Fifth.

- C. Or perhaps that is not the case, but rather, “the guilt-offering” refers to the Added Fifth.

D. *And what difference does it make?*

E. *It would involve excluding the rule of our Mishnah, in which we have learned: [If] he handed over the principal but did not hand over the Added Fifth, the Added Fifth does not stand in the way [of offering the guilt-offering and so completing his obligation], for in this case, to the contrary, not paying the Added Fifth would stand in the way of completing his obligation!*

- F. When Scripture says, “And he shall recompense his trespass with the principal thereof and add to it a fifth thereof” (Num. 5: 7), you must surely say that “the guilt-offering” is principal.

I.3 A. *It has further been taught on Tannaite authority:*

- B. [“But if the man has no kinsman to whom restitution may be made for the guilt, the restitution for guilt which is made unto the Lord shall be the priest’s, beside the ram of atonement whereby atonement shall be made for him”

(Num. 5: 8).] “The guilt-offering” — this refers to the principal; “...the restitution...” — this refers to the Added Fifth.

- C. For this verse addresses robbery committed against a proselyte.
- D. But perhaps “restitution” speaks of the double indemnity, since we deal with a theft committed against a proselyte.
- E. When Scripture says, “And he shall recompense his trespass with the principal thereof and add to it a fifth thereof” (Num. 5: 7), you must surely say that Scripture speaks of money that is paid as principal.

I.4 A. *Reverting to the body of the foregoing:* Said Raba, “What one has stolen from a proselyte which he has returned by night — one has not carried out his obligation, nor if he returned it by halves has he carried out his obligation, *since the All-Merciful has classified it as a guilt-offering.*”

B. And, said Raba, “If in making restitution for what has been robbed from a proselyte, there is not the value of a penny for each priest of the officiating division to which restitution is made, one has not carried out his obligation. *What is the scriptural basis for that rule?* Scripture has said, ‘The trespass be recompensed,’ meaning, restitution must be made to each priest.”

Three Theoretical Questions Raised by Raba

- I.5** A. *Raba raised this question:* “If the recompense were not sufficient for the division of Jehoiarib, but it was sufficient **[110B]** for the division of Jedaiah, what is the law? [The former division was numerous, the latter not.]”
- B. *How can we imagine such a situation? If we say that the restitution was given to Jedaiah during the time of service of Jedaiah’s division, then surely there would have been enough!* [Kirzner: Why consider the number of priests of a different division?]
- C. *The question is necessary to address a case in which the restitution was paid to Jedaiah during the time of service of the division of Jehoiarib.*
- D. *Now what is the law? Do we say, since it is not the time of the service of that division, the act is null? Or perhaps, since the restitution to begin with was not suitable for Jehoiarib, it was to begin with meant to go to Jedaiah?*
- E. *The question stands.*
- I.6** A. *And Raba asked,* “As to the priests, what is the law on their setting one payment for a robbery committed against a proselyte against another one

[giving a division of the priests more of one, less of another]? *Do we say that, since Scripture has classified the restitution as a guilt-offering, then, just as in the case of a guilt-offering, one such offering cannot be set against another [but each must be passed out among all the priests of the officiating division (Kirzner)], so also with respect for the restitution of what has been stolen from a proselyte, one such act of restitution cannot be set against another [but each must be divided among all the priests of the officiating division]? Or perhaps, being merely a monetary payment [and not an actual guilt-offering], that consideration is null?"*

- B. *He went and solved the problem: "Scripture has classified the restitution as a guilt-offering."*
- C. *R. Aha b. Raba repeated that explicitly as a Tannaite formulation: "Said Raba, 'With respect for the restitution of what has been stolen from a proselyte, one such act of restitution cannot be set against another. What is the scriptural basis for that view? Scripture has classified the restitution as a guilt-offering.'"*

I.7 A. *Raba asked this question: "In relationship to the payment for restitution of funds stolen from a proselyte, are the priests classified as heirs or as recipients of gifts?"*

B. *What difference does it make?*

C. *A case in which, for instance, one stole leaven that has been retained through Passover [and so now is absolutely worthless and must be destroyed].*

D. *If you say that they are classified as heirs, then what they have inherited is what they have [whether or not they can use it for any purpose], but if they are recipients of gifts, the All-Merciful has spoken of giving a gift, and in this case, nothing would be given to them, since the leaven is regarded as mere ashes.*

E. *R. Zeira asked the question in this way: "Even if you should propose that they are in the status of recipients of gifts, there still is no issue, since this is the gift that was due to the proselyte that the All-Merciful has commanded be given to the priests. What the question really is concerns, for instance, ten animals that fell to the portion of a priest in payment for a robbery committed on a proselyte. Does the priest have to set aside one of them as tithe or not? Are the priests*

classified as heirs? Then we invoke the master's statement, 'Heirs who have bought animals out of funds of the estate are liable to tithe.' Or if they are recipients of gifts, then we invoke the rule of the Mishnah: He who buys animals or receives them as a gift is exempt from having to tithe them [M. Bekh. 9:3]. What is the law"?

- F. *Come and take note: Twenty-four gifts for the priesthood were given to Aaron and his sons, and all of them were granted through a generalization (Num. 18: 8) followed by a particularization (Num. 18:9-18) followed by a generalization (Num. 18:19), and "a covenant of salt" (Num. 18:8-19), so that if one carries them out, it is as though he has carried out the entirety of the generalization, particularization, and generalization, covering all sacrifices that comprise the covenant of salt; and to violate them is to violate the entirety of the generalization, particularization, and generalization, covering all sacrifices that comprise the covenant of salt. These are they: ten to be eaten inside the Temple, four in Jerusalem, ten within the borders of the Land of Israel. Ten to be eaten in the precincts of the Temple: a sin-offering of an animal, sin-offering of a bird, guilt-offering for a known sin, guilt-offering for a sin that is subject to doubt, peace-offering of the community, log of oil in the case of a person afflicted with the skin ailment, residue of the wave-offering, two loaves, show bread, and residue of meal-offerings. The four to be eaten in Jerusalem: the firstling, first of the first fruits, portions separated from the thank-offering for the priesthood and the ram of the Nazirite, and the hides of most Holy Things. The ten to be eaten within the borders of the Land of Israel: food designated as priestly rations [heave-offering], the priestly rations taken up from the tithe, dough-offering, first fleece, portions of the unconsecrated animals assigned to the priesthood, the beast that serves for the redemption of the firstborn son, the beast that serves for the redemption of the firstling of an ass, a field of possession, a field that has been devoted, and what has been handed over in restitution for a robbery committed against a proselyte [T. Hal. 2:1ff.]. Now what has been handed over in restitution for a robbery committed against a proselyte clearly has been designated as a gift, and that certainly proves that priests are classified in this aspect as recipients of gifts.*
- G. *Sure does.*

- II.1** A. [If] he gave the money to the priestly watch of Jehoiarib [which is prior], and the guilt-offering to the priestly watch of Jedaiah [which is later], he has carried out his obligation:
- B. *Said Abbaye, "That rule yields the inference that paying over the money forms an intrinsic part of the process of atonement. For if it constitutes no share in the atonement, I should say that it ought to be handed over to the heirs, on the ground that he would never have parted with the money on the understanding that he would lose the money and yet gain no atonement."*
- C. *Well, then, what about the case of the sin-offering, the owner of which died? Should it not then revert to a condition of secularity [and not be left to die, as is required at M. Tem. 2:2]? For if it were not with that presupposition, the owner would never have designated it as a sin-offering and so consecrated it. [Why should he lose the animal and not achieve atonement?]*
- D. *Say: The sin-offering, the owner of which died, is subject to a law that has been given by tradition, which is that it is left to die.*
- E. *Well, then, what about the case of a guilt-offering, the owner of which has died? That, too, should revert to the status of secularity, since the owner would never have designated it for the present purpose [had he known that it would not achieve his goals].*
- F. *Say: The guilt-offering, the owner of which died, is subject to a law that has been given by tradition, which is that it is left to die, specifically: In any case in which an animal designated as a sin-offering would be left to die, an animal designated as a guilt-offering is left to pasture [until blemished].*
- G. *Well, how about the case of the deceased childless brother's widow, who comes as a candidate for levirate marriage before a person suffering repulsive skin diseases? She should be able to avoid the connection even without a rite of removing the shoe [which formerly ends the relationship], on the theory that she would never have agreed to the original betrothal [to the deceased] without the understanding that [should he die, she would not have to enter into any relationship whatever with his repulsive brother]!*
- H. *In that case, we ourselves attest that she was ready unconditionally to accept [111A] the betrothal, in line with what R. Simeon b. Laqish said, for said R. Simeon b. Laqish, "It is better to dwell bodies united than to dwell a widow."*
- III.1** A. [If] he gave the money to the priestly watch of Jehoiarib [which is prior], and the guilt-offering to the priestly watch of Jedaiah [which is later], he has carried out his obligation. [If he gave] the guilt-offering to the

priestly watch of Jehoiarib and the money to the priestly watch of Jedaiah, if the guilt-offering is yet available, the family of Jedaiah should offer it up. And if not, he should go and bring another guilt-offering:

- B. *Our rabbis have taught on Tannaite authority:*
- C. “[If he gave] the guilt-offering to the priestly watch of Jehoiarib and the money to the priestly watch of Jedaiah, he should restore the money to where the guilt-offering is,” the words of R. Judah.
- D. And sages say, “He should bring the guilt-offering to where the money is” [T. B.Q. 10:18E-G].

III.2 A. *What would be the circumstance to which that rule is addressed? If we say that he handed over the guilt-offering to Jehoiarib during the priestly watch of Jehoiarib, and the money to Jedaiah during the watch of Jedaiah, then this watch has acquired title to what it has, and that watch has acquired title to what that watch has.* [Kirzner: Why did Judah order payment to be taken away from Jedaiah and handed over to Jehoiarib?]

B. *Said Raba, “Here with what situation do we deal? The penitent has handed over the guilt-offering to Jehoiarib in the time of the priestly division of Jehoiarib’s service, but the money to Jedaiah during the period of the division of Jehoiarib’s service, too! R. Judah takes the view that since it is not the time of service of the division of Jedaiah, we inflict a sanction on Jedaiah; therefore the money is to be restored to accompany the guilt-offering. And rabbis take the view that it is the priestly watch of Jehoiarib that has acted improperly in accepting the guilt-offering prior to the advent of the money; they are therefore the ones who are to be sanctioned and the guilt-offering is to be handed over to where the money is going.”*

III.3 A. *It has been taught on Tannaite authority:*

B. *Said Rabbi, “In accord with the position of R. Judah, if the members of the division of Jehoiarib went ahead and offered the guilt-offering, the penitent should go and bring another guilt-offering, and it should be offered up by the division of Jedaiah, and the latter has acquired title to what they have in hand.”*

C. *Say: Then what good would the invalid guilt-offering be?*

D. *Said Raba, “For its hide.”*

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

B. Said Rabbi, “In accord with the position of R. Judah, if the animal designated as a guilt-offering is still available, the animal should be restored to where the money is.”

C. *But lo, R. Judah maintains that the money goes to whoever has the beast?*

D. *With what case do we deal here? It is one in which the division of Jehoiarib has already gone out of service, without having demanded the money accepted by Jedaiah, and so he informs us that this is regarded as their having waived their rights to the money in favor of the members of the division of Jedaiah.*

III.5 A. *It has been further taught on Tannaite authority:*

B. Said Rabbi, “In accord with the position of R. Judah, if the animal designated as a guilt-offering is still available, the money should be restored to where the animal is.”

C. *So what else is new! That is after all what he has said in so many words.*

D. *Here with what sort of a case do we deal? It is one in which both of the priestly divisions have gone out of service and laid no claim on one another. You might have thought that each has waived its claim on the other. So we are informed that since there was no demand from either upon the other, we rule that the status quo ante must be restored.*

IV.1 A. **For he who brings back what he had stolen before he brought his guilt-offering has fulfilled his obligation. But if he brought his guilt-offering before he brought back what he had stolen, he has not fulfilled his obligation:**

B. *What is the scriptural foundation for this ruling?*

C. Said Raba, “Said Scripture, ‘Let the trespass be restored to the Lord, even to the priest, beside the ram of the atonement whereby an atonement shall be made for him’ (Num. 5: 8) — *from which it follows that the money has to be paid first.*”

D. *Said to Raba one of the rabbis, “What about this verse: ‘You shall offer these beside the burnt-offering in the morning’ (Num. 28:23)? Does this, too, yield*

the inference that the additional offerings are to come first? And has it not been taught on Tannaite authority: How on the basis of Scripture do we know that nothing is to come prior to the daily whole-offering of the morning? Scripture states, 'And the fire upon the altar shall be burning in it; it shall not be put out; and the priest shall burn wood on it every morning, and lay the burnt-offering in order upon it, and he shall burn thereon the fat of the peace-offering' (Lev. 6: 5)? And said Raba, "the burnt-offering" means the first burnt-offering'?"

- E. *He said to him, "I derive the rule [not from the language 'beside' but] from the language, 'whereby an atonement shall be made for him,' which means that the atonement has not yet been made."*

V.1 A. [If] he handed over the principal but did not hand over the Added Fifth, the Added Fifth does not stand in the way of offering the guilt-offering and so completing his obligation:

- B. *Our rabbis have taught on Tannaite authority:*
- C. How on the basis of Scripture do we know that if one has brought what he has to give back because of sacrilege but not his guilt-offering, or his guilt-offering but not the sacrilege, he has not carried out his obligation? Scripture states, "With the ram of the trespass-offering and it shall be forgiven him" (Num. 28:23).
- D. How do we know on the basis of Scripture that if he presented his guilt-offering before presenting what he owes for sacrilege, he has not carried out his obligation? Scripture says, "With the ram of the trespass-offering and it shall be forgiven him" (Num. 28:23), meaning, the guilt-offering has already made it good.
- E. Might one then suppose that just as the ram and the guilt-offering are essential to the rite, so the Added Fifth is essential to the right?
- F. Scripture states, "With the ram of the trespass-offering and it shall be forgiven him" (Num. 28:23), meaning, the ram and the guilt-offering are essential to the rite in connection with Holy Things, but the Added Fifth is not.
- G. The rule regarding Holy Things could be derived from the ruling governing common things, and the rule governing common things could be derived from the rule governing Holy Things:
- H. The rule regarding Holy Things could be derived from the ruling governing common things: just as a guilt-offering there (Num. 5: 6-8) speaks of the principal, so "the guilt-offering" here refers to principal.

- I. And the rule governing common things could be derived from the rule governing Holy Things: just as the Added Fifth in the matter of Holy Things is not indispensable to the rite, so the Added Fifth in the other context is not indispensable.

I.1-3 complement the Mishnah with Tannaite materials, which are analyzed in a single pattern. No. 4, continued at Nos. 5-7, forms an appendix to No. 1. **II.1** draws from our Mishnah's rule a further inference. **III.1** complements the Mishnah with a Tannaite clarification, and Nos. 2-4 form a talmud to No. 1. **IV.1** finds a scriptural basis for the Mishnah's rule. **V.1** complements the Mishnah with a Tannaite clarification.