

CHAPTER ELEVEN

THE STRUCTURE AND SYSTEM OF BABYLONIAN TALMUD BABA MESIA

Whether or not the Talmud of Babylonia is carefully organized in large-scale, recurrent structures and guided by a program that we may call systematic forms the principal question addressed by an academic commentary. The preceding chapters therefore have pointed toward the presentation set forth here.

By “structure” I mean, a clearly-articulated pattern that governs the location of fully-spelled out statements. By “system,” I mean, a well-crafted and coherent set of ideas that explain the social order of the community addressed by the writers of a document, a social philosophy, a theory of the way of life, world view, and character of the social entity formed by a given social group. I see a collective, anonymous, and political document, such as the one before us, as a statement to, and about, the way in which people should organize their lives and govern their actions. At issue then in any document such as the remarkable one before us is simple: does this piece of writing present information or a program, facts to whom it may concern, or a philosophically and aesthetically cogent statement about how things should be?

The connection between structure and system is plain to see. From the way in which people consistently frame their thoughts, we move to the world that, in saying things one way rather than in some other, they wish to imagine the world in which they wish to live, to which they address these thoughts. For if the document exhibits structure and sets forth a system, then it is accessible to questions of rationality. We may ask about the statement that its framers or compilers wished to make by putting the document together as they did. But if we discern no structure and perceive no systematic inquiry or governing points of analysis, then all we find here is inert and miscellaneous information, facts but no propositions, arguments, viewpoints.

Now the Talmud commonly finds itself represented as lacking organization and exhibiting a certain episodic and notional character. That view moreover characterizes the reading and representation of the document by learned and experienced scholars, who have devoted their entire lives to Talmud study and exegesis. It must follow that upon the advocate of the contrary view — the one implicit in the representation of the document for academic analysis — rests the burden of proof. I set forth the allegation that the Talmud exhibits a structure and follows a system and therefore exhibits a commonly-intelligible rationality. The claim to write an academic commentary explicitly states that proposition. For the tractate before us, I have therefore to adduce evidence and argument.

I maintain that through the normal procedures of reasoned analysis we may discern in the tractate a well-crafted structure. I hold that the structure made manifest, we may further identify the purpose and perspective, the governing system of thought and argument, of those who collected and arranged the tractate's composites and put them together in the way in which we now have them. By "structure" I mean, how is a document organized? and by "system," what do the compilers of the document propose to accomplish in producing this complete, organized piece of writing? The answers to both questions derive from a simple outline of the tractate as a whole, underscoring the types of compositions and composites of which it is comprised. Such an outline tells us what is principal and what subordinate, and how each unit — composition formed into composites, composites formed into a complete statement — holds together and also fits with other units, fore and aft. The purpose of the outline then is to identify the character of each component of the whole, and to specify its purpose or statement. The former information permits us to describe the document's structure, the latter, its system.

While the idea of simply outlining a Talmud-tractate beginning to end may seem obvious, I have never made such an outline before, nor has anyone else.* Yet, as we shall now see, the character of the outline dictates all further analytical initiatives. Specifically, when we follow the layout of the whole, we readily see the principles of organization that govern. These same guidelines on organizing discourse point also to the character of what is organized: complete units of thought, with a beginning, middle, and end, often made up of smaller, equally complete units of thought. The former we know as composites, the latter as compositions.

*I have provided complete outlines for the Mishnah and for the Tosefta in relationship to the Mishnah, and, not always in outline form, for the Midrash-compilations of late antiquity as well.

Identifying and classifying the components of the tractate — the composites, the compositions of which they are made up — we see clearly how the document coheres: the plan and program worked out from beginning to end. When we define that plan and program, we identify the facts of a pattern that permit us to say in a specific and concrete way precisely what the compilers of the tractate intended to accomplish. The structure realizes the system, the program of analysis and thought that takes the form of the presentation we have before us. From what people do, meaning, the way in which they formulate their ideas and organized them into cogent statements, we discern what they proposed to do, meaning, the intellectual goals that they set for themselves.

These goals — the received document they wished to examine, the questions that they brought to that document — realized in the layout and construction of their writing, dictate the points of uniformity and persistence that throughout come to the surface. How people lay out their ideas guides us into what they wished to find out and set forth in their writing, and that constitutes the system that defined the work they set out to accomplish. We move from how people speak to the system that the mode of discourse means to express, in the theory that modes of speech or writing convey modes of thought and inquiry.

We move from the act of thought and its written result backward to the theory of thinking, which is, by definition, an act of social consequence. We therefore turn to the matter of intention that provokes reflection and produces a system of inquiry. That statement does not mean to imply I begin with the premise of order, which sustains the thesis of a prior

system that defines the order. To the contrary, the possibility of forming a coherent outline out of the data we have examined defines the first test of whether or not the document exhibits a structure and realizes a system. So everything depends upon the possibility of outlining the writing, from which all else flows. If we can see the order and demonstrate that the allegation of order rests on ample evidence, then we may proceed to describe the structure that gives expression to the order, and the system that the structure sustains.

The present work undertakes the exegesis of exegesis, for the Talmud of Babylonia, like its counterpart in the Land of Israel, is laid out as a commentary to the Mishnah. That obvious fact defined the character of my academic commentary, since we have already faced the reality that our Bavli-tractate is something other than a commentary, though it surely encompasses one. The problems that captured my attention derived from the deeper question of how people make connections and draw conclusions. To ask about how people make connections means that we identify a problem — otherwise we should not have to ask — and what precipitated the problem here has been how a composition or a composite fits into its context, when the context is defined by the tasks of Mishnah-commentary, and the composition or composite clearly does not comment on the Mishnah-passage that is subjected to comment.

The experience of analyzing the document with the question of cogency and coherence in mind therefore yields a simple recognition. Viewed whole, the tractate contains no gibberish but only completed units of thought, sentences formed into intelligible thought and self-contained in that we require no further information to understand those sentences, beginning to end. The tractate organizes these statements as commentary to the Mishnah. But large tracts of the writing do not comment on the Mishnah in the way in which other, still larger tracts do. Then how the former fit together with the latter frames the single most urgent question of structure and system that I can identify.

Since we have already examined enormous composites that find their cogency in an other than exegetical program, alongside composites that hold together by appeal to a common, prior, coherent statement — the Mishnah-sentences at hand — what justifies my insistence that an outline of the document, resting on the premise that we deal with a Mishnah-commentary, govern all further description? To begin with, the very possibility of outlining Babylonian Talmud tractate Sotah derives from the simple fact that the framers have given to their document the form of a commentary to the Mishnah. It is in the structure of the Mishnah-tractate that they locate everything together that they wished to compile. We know that is the fact because the Mishnah-tractate defines the order of topics and the sequence of problems.

Relationships to the Mishnah are readily discerned; a paragraph stands at the head of a unit of thought; even without the full citation of the paragraph, we should find our way back to the Mishnah because at the head of numerous compositions, laid out in sequence one to the next, clauses of the Mishnah-paragraph are cited in so many words or alluded to in an unmistakable way. So without printing the entire Mishnah-paragraph at the head, we should know that the received code formed the fundamental structure because so many compositions cite and gloss sentences of the Mishnah-paragraph and are set forth in sequence dictated by the order of sentences of said Mishnah-paragraph. Internal evidence alone suffices, then, to demonstrate that the structure of the tractate rests upon the Mishnah-tractate cited and discussed here. Not only so, but the sentences of the Mishnah-

paragraphs of our tractate are discussed in no other place in the entire Talmud of Babylonia in the sequence and systematic exegetical framework in which they are set forth here; elsewhere we may find bits or pieces, but only here, the entirety of the tractate.

That statement requires one qualification, and that further leads us to the analytical task of our outline. While the entire Mishnah-tractate of Sotah is cited in the Talmud, the framers of the Talmud by no means find themselves required to say something about every word, every sentence, every paragraph. On the contrary, they discuss only what they choose to discuss, and glide without comment by large stretches of the tractate. A process of selectivity, which requires description and analysis, has told the compilers of the Talmud's composites and the authors of its compositions* what demands attention, and what does not. Our outline has therefore to signal not only what passage of the Mishnah-tractate is discussed, but also what is not discussed, and we require a general theory to explain the principles of selection ("making connections, drawing conclusions" meaning, to begin with, making selections). For that purpose, in the outline, I reproduce the entirety of a Mishnah-paragraph that stands at the head of a Talmudic composite, and I underscore those sentences that are addressed, so highlighting also those that are not.

This statement requires refinement. I do not know that all available compositions have been reproduced, and that the work of authors of compositions of Mishnah-exegesis intended for a talmud is fully exposed in the document as we have it. That is not only something we cannot demonstrate — we do not have compositions that were not used, only the ones that were — but something that we must regard as unlikely on the face of matters. All we may say is positive: the character of the compositions that address Mishnah-exegesis tells us about the concerns of the writers of those compositions, but we cannot claim to outline all of their concerns, on the one side, or to explain why they chose not to work on other Mishnah-sentences besides the ones treated here. But as to the program of the compositors, that is another matter: from the choices that they made (out of a corpus we cannot begin to imagine or invent for ourselves) we may describe with great accuracy the kinds of materials they wished to include and the shape and structure they set forth out of those materials. We know what they did, and that permits us to investigate why they did what they did. What we cannot know is what they did not do, or why they chose not to do what they did not do. People familiar with the character of speculation and criticism in Talmudic studies will understand why I have to spell out these rather commonplace observations. I lay out an argument based on evidence, not on the silences of evidence, or on the absence of evidence — that alone.

It follows that the same evidence that justifies identifying the Mishnah-tractate as the structure (therefore also the foundation of the system) of the Talmud-tractate before us also presents puzzles for considerable reflection. The exegesis of Mishnah-exegesis is only one of these. Another concerns the purpose of introducing into the document enormous compositions and composites that clearly hold together around a shared topic or proposition, e.g., my appendix on one theme or another, my elaborate footnote providing information that is not required but merely useful, and the like. My earlier characterization of composites as appendices and footnotes signalled the fact that the framers of the document chose a not-entirely satisfactory way of setting out the materials they wished to include here, for large components of the tractate do not contribute to Mishnah-exegesis in any way at all. If these intrusions of other-than-exegetical compositions were proportionately modest, or of topical composites negligible in size, we might dismiss them as appendages, not structural components that bear much of the weight of the edifice as a whole. Indeed, the language that I chose for identifying and defining these composites —

footnotes, appendices, and the like — bore the implication that what is not Mishnah-commentary also is extrinsic to the Talmud's structure and system.

But that language served only for the occasion. In fact, the outline before us will show that the compositions are large and ambitious, the composites formidable and defining. Any description of the tractate's structure that dismisses as mere accretions or intrusions so large a proportion of the whole misleads. Any notion that "footnotes" and "appendices" impede exposition and disrupt thought, contribute extraneous information or form tacked-on appendages — any such notion begs the question: then why fill up so much space with such purposeless information? The right way is to ask whether the document's topical composites play a role in the re-presentation of the Mishnah-tractate by the compilers of the Talmud. We have therefore to test two hypotheses:

1. the topical composites ("appendices," "footnotes") do belong and serve the compilers' purpose,

or

2. the topical composites do not participate in the re-presentation of the Mishnah-tractate by the Talmud and do not belong because they add nothing and change nothing.

The two hypotheses may be tested against the evidence framed in response to a single question: is this topical composite necessary? The answer to that question lies in our asking, what happens to the reading of the Mishnah-tractate in light of the topical composites that would not happen were we to read the same tractate without them? The outline that follows systematically raises that question, with results specified in due course. It suffices here to state the simple result of our reading of the tractate, start to finish: the question of structure, therefore also that of system, rests upon the position we identify for that massive component of the tractate that comprises not Mishnah-commentary but free-standing compositions and composites of compositions formed for a purpose other than Mishnah-commentary.

The principal rubrics are given in small caps. The outline takes as its principal rubrics two large-scale organizing principles.

The first is the divisions of the Mishnah-tractate to which the Talmud-tractate serves as a commentary. That simple fact validates the claim that the tractate exhibits a fully-articulated structure. But the outline must also underscore that the Mishnah-tractate provides both more and less than the paramount outline of the Talmud-tractate. It is more because sentences in the Mishnah-tractate are not analyzed at all. These untreated Mishnah-sentences are given in bold face lower case caps, like the rest of the Mishnah, but then are specified by underlining and enclosure in square brackets.

Second, it is less because the structure of the tractate accommodates large composites that address topics not defined by the Mishnah-tractate. That brings us to the second of the two large-scale modes of holding together both sustained analytical exercises and also large sets of compositions formed into cogent composites. These are treated also as major units and are indicated by Roman numerals, alongside the Mishnah-paragraphs themselves; they are also signified in small caps. But the principal rubrics that do not focus on Mishnah-commentary but on free-standing topics or propositions or problems are not given in boldface type. Consequently, for the purposes of a coherent outline we have to

identify as autonomous entries in our outline those important composites that treat themes or topics not contributed by the Mishnah-tractate.

I. Mishnah-Tractate Baba Mesia 1:1-2

A. TWO LAY HOLD OF A CLOAK — THIS ONE SAYS, “I FOUND IT!” — AND THAT ONE SAYS, “I FOUND IT!” -

1. I:1: What need do I have to repeat in the Mishnah, this one says, “I found it!” — and that one says, “I found it!” — this one says, “It’s all mine!” — and that one says, “It’s all mine!”? Let the Tannaite authority repeat only a single case.

2. I:2: May one claim that the Mishnah-passage before us in requiring the taking of an oath to settle the matter does not accord with the principle of Ben Nannos.

3. I:3: May one claim that the Mishnah-passage in requiring the taking of an oath to settle the matter before us does not accord with the principle of Sumkhos?

4. I:4: May one claim that the Mishnah-passage in requiring the taking of an oath to settle the matter before us does not accord with the principle of R. Yosé?

a. I:5: Gloss on a tangential point in the foregoing, the reference to M. Shabu. 7:5 at I.2.

5. I:6: It has been taught on Tannaite authority by R. Hiyya: One person claims, “You have a maneh a hundred zuz of mine in your possession.” The other says, “I have nothing belonging to you whatsoever in my possession.” And witnesses testify concerning him that he has in his possession fifty zuz — he pays over to him fifty zuz, and then takes an oath concerning the remainder of the money, that is, the other fifty zuz.

a. I:7: Amplification of a detail in the foregoing.

6. I:8: Continuation of the analysis of I:6: When the statement was made that a Tannaite authority has taught along these same lines, as the view of R. Hiyya, are the two cases comparable at all? In the case introduced by Hiyya, the lender has witnesses to half of the amount claimed as the loan, but the borrower has no witnesses that he does not in fact owe the other half of the loan, for if he had witnesses that he did not owe him anything, R. Hiyya would not have imposed the requirement of an oath at all.

7. I:9: And as to the position of him who has said, “The claim of ‘Here is yours before you’ is exempt from the requirement of taking an oath,” why is it necessary to invoke a Scriptural verse to demonstrate that land is exempt from the law of an oath?

a. I:10: Illustrative case.

B. THIS ONE SAYS, “IT’S ALL MINE!” — AND THAT ONE SAYS, “IT’S ALL MINE!” — THIS ONE TAKES AN OATH THAT HE POSSESSES NO LESS A SHARE OF IT THAN HALF, AND THAT ONE TAKES AN OATH THAT HE POSSESSES NO LESS A SHARE OF IT THAN HALF, AND THEY DIVIDE IT UP.

THIS ONE SAYS, “IT’S ALL MINE!” — AND THAT ONE SAYS, “HALF OF IT IS MINE!” THE ONE WHO SAYS, “IT’S ALL MINE!” TAKES AN OATH THAT HE POSSESSES NO

LESS OF A SHARE OF IT THAN THREE PARTS, AND THE ONE WHO SAYS, “HALF OF IT IS MINE!,” TAKES AN OATH THAT HE POSSESSES NO LESS A SHARE OF IT THAN A FOURTH PART. THIS ONE THEN TAKES THREE SHARES, AND THAT ONE TAKES THE FOURTH.

1. II:1: Is it concerning the portion that he claims he possesses that he takes the oath, or concerning the portion that he does not claim to possess? The implication is that the terms of the oath are ambiguous. By swearing that his share in it is not “less than half,” the claimant might mean that it is not even a third or a fourth (which is ‘less than half’), and the negative way of putting it would justify such an interpretation. He could therefore take this oath even if he knew that he had no share in the garment at all, while he would be swearing falsely if he really had a share in the garment that is less than half, however small that share might be.

2. II:2: Continuation of the foregoing: Now, since this one is possessed of the cloak and standing right there, and that one is possessed of the cloak and is standing right there, why in the world do I require this oath?

3. II:3: As above: But as to that which R. Huna has said when we have a bailee who offers to pay compensation for a lost bailment rather than swear it has been lost, since he wishes to appropriate the article by paying for it, “They impose upon him the oath that the bailment is not in his possession at all,”

a. II:4: Clarification of foregoing.

4. II:5: R. Zira asked, “If in our very presence, one of the litigants seized the object, what is the law?”

5. II:6: It has been taught on Tannaite authority by R. Tahalipa, the Westerner, before R. Abbahu: “If two people are holding on to a cloak, this one takes the portion that his hand reaches, and that one takes the portion that his hand reaches, and the rest is divided equally.”

6. II:7: Said Raba, “If the cloak was gold-embroidered, they divide it up.”

7. II:8: Two were holding on to a bond — “the lender says, ‘It’s mine and fell from me and I found it.’ The borrower says, ‘It’s yours, but I paid it off’ — let the bond be confirmed by its signatories verifying their signatures,” the words of Rabbi. Rabban Simeon b. Gamaliel says, “Let them divide it up.”

a. II:9: Amplification of a detail of the foregoing.

b. II:10: As above.

c. II:11: As above.

d. II:12: As above.

e. II:13: As above.

f. II:14: As above.

8. II:15: With reference to the decision that if two people have picked up an ownerless object, they can keep it, with each taking half of the value, the other having the other half, said Rammi bar Hama, “That is to say, ‘He who raises up an object that has been found for his fellow — his fellow has acquired possession of it.’ For if you should imagine that his fellow has not acquired possession, the

cloak should be treated as though this part were lying on the ground, and that part were lying on the ground, and neither this party nor that party should acquire possession of it. From the point of view of each claimant the other person's half would have to be regarded as if it were still lying on the ground. But such an acquisition does not constitute legal possession, because the law demands that we must acquire possession of the whole article in order to obtain title thereto. Consequently if a third person came and snatched the garment, neither of the two could dispute his right to claim at least half.

a. II:15: Gloss of foregoing. As to the conclusion drawn by R. Ammi bar Hama, to what portion of the Mishnah-passage does he refer?

C. TWO WERE RIDING ON A BEAST, OR ONE WAS RIDING AND ONE WAS LEADING IT — THIS ONE SAYS, “IT’S ALL MINE!” — AND THAT ONE SAYS, “IT’S ALL MINE!” — THIS ONE TAKES AN OATH THAT HE POSSESSES NO LESS A SHARE OF IT THAN HALF, AND THAT ONE TAKES AN OATH THAT HE POSSESSES NO LESS A SHARE OF IT THAN HALF. AND THEY DIVIDE IT. BUT WHEN THEY CONCEDE THAT THEY FOUND IT TOGETHER OR HAVE WITNESSES TO PROVE IT, THEY DIVIDE THE BEAST’S VALUE WITHOUT TAKING AN OATH.

1. III:1: Said R. Joseph, “R. Judah said to me, ‘I have heard from Mar Samuel two cases: ‘If one party is riding on the beast and the other leading it, one has acquired possession and the other not,’ and I do not know to which of the two the stated decision applies.”

a. III:2: Secondary amplification: Said R. Helbo said R. Huna, “In buying a beast from his fellow, by means of taking over the reins, one has acquired possession. In the case of finding a lost beast or acquiring the estate of a proselyte who has no heirs, merely by taking over the reins one has not acquired possession of the beast.”

b. III:3: R. Eleazar raised the following question: “He who says to his fellow, ‘Draw this beast so as to effect acquisition of the trappings that are on it but not the beast, which has not been sold,’ what is the law? Does the language, “so as to effect acquisition,” bear the instruction, “acquire”? The language used by the seller, “so that you may acquire,” does not convey direct authorization, such as the buyer must receive so that he can acquire the trappings.

II. Mishnah-Tractate Baba Mesia 1:3

A. IF ONE WAS RIDING ON A BEAST AND SAW A LOST OBJECT, AND SAID TO HIS FELLOW, “GIVE IT TO ME,” BUT THE OTHER TOOK IT AND SAID, “I TAKE POSSESSION OF IT”- THE LATTER HAS ACQUIRED POSSESSION OF IT. IF AFTER HE GAVE IT OVER TO THE ONE RIDING ON THE BEAST, HE SAID, “I ACQUIRED POSSESSION OF IT FIRST,” HE HAS SAID NOTHING WHATSOEVER

1. I:1: We have learned in the following Mishnah-paragraph: One who picked some produce designated as peah and said, “Lo, this is for so-and-so, that poor man” — R. Eliezer says, “He has acquired ownership on behalf of the poor person.” But sages say, “Let the householder give the produce to the first poor

person to be found since householders cannot determine how peah is distributed” (M. **Peah. 4:9A-C**). Said Ulla said R. Joshua b. Levi, “The cited dispute concerns the case of a rich man’s gleaning for a poor man, for R. Eliezer takes the view that since if the rich man wants, he can declare all his property ownerless and gain for himself the status of a poor person, so that the peah-offering of which he claims to dispose is suitable for him anyhow, since he may effect possession for himself, he also may effect possession for a poor man, while sages take the position that while we may invoke one such argument of “since,” (“since if the rich man wants...since he may effect possession for himself”) but we do not invoke two of them. But if it is a poor man’s gleaning for a rich person, all parties concur that he has made acquisition in behalf of the rich man, since he has the right to take the gleanings for his own property and then to dispose of them as he wishes.”

2. I:2: Both R. Nahman and R. Hisda say, “‘He who raises up a lost object for his fellow — his fellow has not effected ownership of the object.’ What is the reason for that ruling? You have a case of one who seizes a debtor’s property on behalf of a creditor, thus causing loss to the debtor’s other creditors, and one who seizes a debtor’s property on behalf of a creditor, thus causing loss to the debtor’s other creditors has not effect acquisition in that manner.” The one who lifts up the property for someone else does not gain and deprives others of the chance of acquiring the object. That is the analogy to the case of someone who acquires a debtor’s property in behalf of a creditor, not benefiting for himself but depriving others of a chance to recover their money. The creditor in whose behalf the man has seized the property has not asked the man to do so, so the intervention is illegal and infringes on the rights of other creditors.

3. I:3: Said R. Hiyya bar Abba said R. Yohanan, “He who picks up a lost object for his fellow — his fellow has acquired ownership of the object.” And if you introduce the contrary view of our Mishnah-passage, it deals with a case in which the man said to him, “Give it to me,” but he did not say to him, “Acquire rights of ownership in my behalf.”

III. Mishnah-Tractate Baba Mesia 1:4A-B

A. IF HE SAW A LOST OBJECT AND FELL ON IT, AND SOMEONE ELSE CAME ALONG AND GRABBED IT, THIS ONE WHO GRABBED IT HAS ACQUIRED POSSESSION OF IT.

1. I:1: Said R. Simeon b. Laqish in the name of Abba Kahana Bardela, “‘The four cubits surrounding a person deemed to constitute his private domain, wherever he may be located effect acquisitions in his behalf.’ What is the reason for that rabbinical ordinance? Rabbis ordained the law in that way so that people would not come to blows.”

a. I:2: Gloss of foregoing. R. Sheshet said, “When sages made the ordinance concerning the four cubits, it pertained to a side street which is not crowded. But as regards a main artery, which may be crowded, no such ordinance was made by rabbis.”

B. A FURTHER SAYING ATTRIBUTED TO SIMEON B. LAQISH-ABBA KAHANA:

1. I:3: Said R. Simeon b. Laqish in the name of Abba Kahana Bardela, “A minor-girl does not have the right to acquire an object through a courtyard that belongs to her, nor does she have the right to effect acquisition through the four cubits assigned to her. If she is married, the husband cannot divorce her by throwing a writ of divorce into her courtyard or into the space within four cubits of her person.”

IV. Mishnah-Tractate Baba Mesia 1:4C-I

A. IF HE SAW PEOPLE RUNNING AFTER A LOST OBJECT — AFTER (1) A DEER WITH A BROKEN LEG, (2) PIGEONS WHICH COULD NOT FLY, AND HE SAID, “MY FIELD HAS EFFECTED POSSESSION FOR ME,” IT HAS EFFECTED POSSESSION FOR HIM.

IF (1) THE DEER WAS RUNNING ALONG NORMALLY, OR (2) IF THE PIGEONS WERE FLYING, AND HE SAID, “MY FIELD HAS EFFECTED POSSESSION FOR ME,” HE HAS SAID NOTHING WHATSOEVER.

1. I:1: Said R. Judah said Samuel, “But that rule applies only when he was standing beside his field on the spot.”

2. I:2: And so too did Ulla say, “But that rule applies only when he was standing beside his field on the spot.”

a. I:3: Gloss of a detail of the foregoing: If he saw people running after a lost object — after (1) a deer with a broken leg, (2) pigeons which could not fly, and he said, “My field has effected possession for me,” it has effected possession for him. And R. Jeremiah said in the name of R. Yohanan, “And that law applies when he could run after them and catch up with them in the field.”

V. Mishnah-Tractate Baba Mesia 1:5

A. (1) THINGS WHICH ARE FOUND BY HIS MINOR SON OR DAUGHTER, (2) THINGS WHICH ARE FOUND BY HIS CANAANITE SLAVE BOY OR SLAVE GIRL, (3) THINGS FOUND BY HIS WIFE — LO, THEY BELONG TO HIM.

1. I:1: Said Samuel, “On what account have they ruled, ‘What a minor finds belongs to his father’? The reason is that when he finds something, he runs it over to his father and does not hold it back in his own possession.”

a. I:2: Secondary amplification of a tangential detail in the foregoing.

2. I:3: Samuel’s view that the reason the Mishnah-paragraph assigns an object found by a minor to the father is that the minor has no right of possession differs from that of R. Hiyya b. Abba.

B. (1) THINGS FOUND BY HIS ADULT SON OR DAUGHTER, (2) THINGS FOUND BY HIS HEBREW SLAVE BOY

1. II:1: Why should that be the rule? Should the servant not be in the status of a hired hand?

C. ...OR SLAVE GIRL:

1. III:1: What sort of slave girl?

D. (3) THINGS FOUND BY HIS WIFE WHOM HE HAS DIVORCED, EVEN THOUGH HE HAS NOT YET PAID OFF HER MARRIAGE SETTLEMENT — LO, THEY BELONG TO THEM.

1. IV:1: If he has divorced her, it is perfectly obvious that she keeps what she has found; the husband has no further claim.

VI. Mishnah-Tractate Baba Mesia 1:6

A. IF ONE FOUND BONDS OF INDEBTEDNESS, IF THEY RECORD A LIEN ON THE DEBTOR'S PROPERTY, HE SHOULD NOT RETURN THEM. FOR A COURT WILL EXACT PAYMENT ON THE STRENGTH OF THEM. IF THEY DO NOT RECORD A LIEN ON PROPERTY, HE SHOULD RETURN THEM, FOR A COURT WILL NOT EXACT PAYMENT ON THE STRENGTH OF THEM," THE WORDS OF R. MEIR. AND SAGES SAY, "ONE WAY OR THE OTHER, HE SHOULD NOT RETURN THEM. FOR A COURT WILL EXACT PAYMENT ON THE STRENGTH OF THEM."

1. I:1: What are the details of the case with which we deal here? If we say that it is a case in which the debtor concedes that the debt is due, then, even if the bonds record a lien on the debtor's property, why should the finder not return them? Lo, the debtor has conceded the claim anyhow. And if the debtor does not concede that the debt is owing, then even if the bonds do not record a lien on the debtor's property, why should the finder ever return them? Even though the plaintiff may not collect from mortgaged property, from unencumbered property, nonetheless, he may collect on the strength of the newly-found bond!

a. I:2: Now we explained the Mishnah's statement, If one found bonds of indebtedness, if they record a lien on the debtor's property, he should not return them, to refer to a case in which he debtor concedes the validity of the loan, and it was on account of the consideration that we take account of the possibility that the bond was written for secure the loan in Nisan, but the loan was not actually made until Tishré months later. The result will be that the lender later on may come and unlawfully seize property from those who have purchased it during the interval between the writing of the bond and the actually making of the loan and that purchase was perfectly legal and also is not subject to the indenture of the bond at all, so far as R. Assi is concerned, who has said that the matter refers to bonds that transfer ownership, the passage at hand then refers to bonds that do not transfer ownership, just as we have said. But as to Abbaye, who has said, "The witnesses on the bond acquire possession of the property for him by means of their signatures, and that is so even if it is not a deed of transfer," what is to be said in explanation of our Mishnah-paragraph?

2. I:3: Resuming the analysis of I:1: Said R. Eleazar, "The dispute in our Mishnah between Meir and sages concerns a case in which the debtor does not concede the debt at all. For R. Meir takes the view that in the case of a bond that does not record a lien on the debtor's property, one may not collect on the strength of such a bond either from indentured property or from property that is not subject to indenture.' Rabbis, on the other hand, hold that while he cannot collect from encumbered property, he may exact payment from unencumbered property. But

when the borrower concedes the validity of the document, all parties confer that one should return the bond. For we do not take account of the possibility that the debt may have in fact been paid off, and a conspiracy between the lender and borrower may have been planned with the borrower dropping the document because he had already paid the debt, and then he conspired with the lender to retrieve from purchasers of the borrower's land the property they had purchased, on the claim that the debt has not been paid; then the borrower and lender will split the property." And R. Yohanan said, "The dispute concerns a case in which the debtor does concede the validity of the bond. For R. Meir takes the view that in the case of a bond that does not record a lien on the debtor's property, one may not collect on the strength of such a bond either from indentured property or from property that is not subject to indenture.' Rabbis, on the other hand, hold that while he cannot collect from encumbered property, he may exact payment from unencumbered property.

a. I:4: There is a teaching on Tannaite authority in accord with the position of R. Yohanan and in contradiction to the position of R. Eleazar in one aspect, and a contradiction to Samuel in two.

I. I:5: Continuation and refinement of foregoing.

3. I:6: Abbaye said, "Reuben who sold a field to Simeon with a guarantee against seizure by Reuben's creditors, and a creditor of Reuben came and went and seized the field from Simeon — Reuben may go and sue the creditor, and the creditor cannot say to Reuben, 'I have no business to do with you.' For Reuben may say to the creditor, 'What you seized from Simeon comes back on me since I shall have to refund the purchase money. I am concerned with the action against Simeon and can stop you from seizing his land because of my counter-claim.'"

4. I:7: One who sells a field to his fellow, and the field turns out not to belong to him — Rab said, "The buyer has a claim both for a refund of his money and also for compensation for improvements e.g., the crop he has lost, or improvements he has made in the field." Samuel said, "He has a claim for a refund for his money but not for compensation for improvements he made in the field."

a. I:8: Continuation of foregoing.

I. I:9: As above: But does Samuel take the view that if one purchases a field from a con-man and then loses the field and recovers the original investment, he has no claim for compensation for improvement made in the field? And lo, Samuel said to R. Hinena bar Shilat who was a scribe, "Consult the seller, when you draw up a deed of sale, and write, 'best property, improvement, and produce into the deed.'"

A. I:10: Gloss of foregoing:

B. I:11: Analysis of a detail of the foregoing.

5. I:12: If the buyer knew full well that the field did not belong to him who sold it and bought it nonetheless, Rab said, "He can claim compensation for the purchase price of the field, but not for the value of the improvement. The sale of the field was illegal, and the buyer never really acquired it. He cannot be expected to claim

compensation for improving a field that he did not own anyhow.” And Samuel said, “Even a claim for compensation for the money he laid out he does not have.”

a. I:13: Samuel asked Rab, “If the robber who sold the field went and bought it from the original owners, what is the law?” He said to him, “What is it that the first party has sold to the second the robber to the purchase who bought the field from it? It is every right that the former might subsequently acquire to the field. When the robber sold the field, he made over to the buyer any right that the robber might subsequently acquire in regard to the field, and therefore the robber has no right to claim the field from the person who bought it from him. It is assumed that the robber only bought the field to legalize the sale to the person who bought it from him.”

6. I:14: It is obvious that if someone stole a field and sold it, then sold it to another person or bequeathed it to his heirs or gave it away as a present and then bought it from the original owner, we must assume that in buying the field he did not intend to secure the field for the first buyer. If the robber sold the field a second time or disposed of it in some other way after selling it to the first party, it is obvious that his subsequent action in buying the field from the original owner was not due to a desire to secure the field for the first buyer and must have been prompted by a different motive. The first buyer would not then be entitled to keep the field, which would legally belong to the person to whom it was subsequently sold, given, or bequeathed.

a. I:15: Secondary expansion of foregoing.

7. I:16: Said R. Huna said Rab, “He who says to his fellow, ‘The field that I am buying, when I shall have bought it, is bought for you as of this moment’ — the other has acquired possession of the field as soon as the seller has bought the field from the original owner, it is the property of the buyer and the seller ends the transaction.”

8. I:17: Said Samuel, “He who finds a deed of transfer in the marketplace should return it to the owner. For if the operative consideration were that the deed should not be returned because it may have been written for the purpose of a loan which was not consummated, lo, the borrower pledged himself to let the lender have the property in any case, and if the operative consideration for not returning the document is that the debt may already have been paid, we do not take account of the possibility that the debt has been paid, for if it were the case that it had been paid, then they would have made a tear in the document.”

9. I:18: Said R. Abbahu said R. Yohanan, “He who in the marketplace finds a bond covering a debt, even though it contains the endorsement of the court, should not return it to the owner.’ Now in a case in which there is no endorsement of the court on the bond, there is no question that one should not return the document to the owner. For there is the possibility of claiming, ‘It was written to secure a loan, but the loan was never made.’ But even in a case in which there is an endorsement of the court on the bond, which means that the document is confirmed, one should not return the document to the owner, for we take account of the possibility that the debt already has been paid.”

a. I:19: Secondary amplification of a subordinate theme in the foregoing.

10. I:20: Said Rabbah bar bar Hana said R. Yohanan, “If one party claimed, ‘You have a maneh of mine in your possession,’ and the defendant says, ‘You have nothing at all in my possession,’ and witnesses give testimony that he does indeed have something of the plaintiff’s in his possession, but then the defendant went and said, ‘I paid it off to you,’ he is a confirmed liar as to that transaction.”

B. COMPOSITE OF STATEMENTS ASSIGNED TO R. YOHANAN

1. I:21: Said R. Abin said R. Ilaa said R. Yohanan, “‘If one owed an oath to another and said, ‘I already took the oath,’ and witnesses give testimony that he did not take the oath,’ he is confirmed as a liar as to that oath.”

2. I:22: Said R. Assi said R. Yohanan, “He who in the marketplace finds a bond of indebtedness in which an endorsement of the court is written, as well as bearing the date of that very day, he should return it to the owner. For if the consideration of not returning it is that it was written for a loan that never took place, lo, the document contains the endorsement of the court, and if the consideration for not returning it is that it may already have been paid off, does a debt contract on a given day get paid off on that very day? That is surely not a possibility that is to be taken into consideration.” R. Kahana said, “The document is to be returned to the owner when concedes that he has not paid.”

3. I:23: Said R. Hiyya bar Abba said R. Yohanan, “Whoever makes a plea after the action of a court has been decreed has said nothing.” The plea of the defendant in such an action that he has discharged his obligation cannot be accepted unless it is corroborated by witnesses or other legal evidence. How come? Every act of a court is treated as though it constituted a document put into the hand of the claimant.

VII. Mishnah-Tractate Baba Mesia 1:7

A. IF HE FOUND (1) WRITS OF DIVORCE FOR WOMEN:

1. I:1: The reason given for not returning a writ of divorce is that the one who is answerable for them changed his mind and decided not to hand them over. Lo, if he had said, “Give them over,” they hand them over, and even though that is a long time later on. We do not take account of the possibility that it is a different writ of divorce, lost by some other person, in which the names just happen to coincide with the found document’s.

2. I:2: R. Zira compared a Mishnah-passage with a corresponding Tannaite teaching outside of the Mishnah and pointed out a contradiction between them, which he then harmonized: “We have learned in the Mishnah, He who is bringing a writ of divorce and lost it — if he found it on the spot, it is valid. And if not, it is invalid (M. **Git. 3:3A-C**). That has now to be contrasted with the following Tannaite teaching not included in the Mishnah: ‘If in the marketplace one has found a writ of divorce for a woman, when the husband concedes its validity, it is to be returned to the wife, but if the husband does not concede its validity, one should return it to neither this one nor that one’ (T. **Baba Mesia 1:7A-C**). Now

on Tannaite authority, it has been taught, ‘when the husband concedes its validity, it is to be returned to the wife’ — and even after a considerable interval!”

a. I:3: Rabbah bar bar Hanah lost a writ of divorce in the school house. When it was found, he said, “If the consideration of distinguishing traits pertains, then I have one pertinent to it; if the operative consideration is that I recognize it, then I am able to recognize it.

b. I:4: Gloss of an item in I:2:

B. (2) WRITS OF EMANCIPATION FOR SLAVES:

1. II:1: Our rabbis have taught on Tannaite authority: If in the marketplace one found a writ of emancipation for a slave, when the master concedes its validity, he should return it to the slave. If the master does not concede its validity, he should return it neither to this party nor to that party.

C. (3) WILLS, (4) DEEDS OF GIFT, OR (5) RECEIPTS FOR THE PAYMENT OF MARRIAGE SETTLEMENTS, LO, HE SHOULD NOT RETURN THEM. FOR I MAINTAIN THAT THEY WERE WRITTEN OUT, BUT THEN THE ONE WHO IS ANSWERABLE FOR THEM CHANGED HIS MIND AND DECIDED NOT TO HAND THEM OVER.

1. III:1: Our rabbis have taught on Tannaite authority: What is the formula of wills? “This shall be established and executed” so that, if when the writer dies, his property is going to go to Mr. So-and-so. What is the formula of deeds of gift? A document in which it is written, “As of this date, but taking effect when I die.”

a. III:2: The reason that these documents are not to be handed over is that the donor has not said, “Give.” But if he had said, “Give,” then the document is valid and the gift is to be made.

2. III:3: If one finds the receipt for the payment of a marriage settlement, when the wife concedes it is valid, one returns it to the husband. If the wife does not concede that it is valid, one should return it neither to this party nor to that party. Now, in any event, when the wife concedes its validity, he should return it to the husband — but why not take account of the possibility that he had it written in Nisan but did not hand it over until Tishri, and the wife may then have gone and sold the value of her marriage-settlement to a third party for some consideration, and when the husband produces the receipt, showing the document was written in Nisan, he may unlawfully seize property from those who bought the value of the marriage-settlement in the interim.

VIII. Mishnah-Tractate Baba Mesia 1:8

A. IF ONE FOUND (1) DOCUMENTS OF EVALUATION, (2) LETTERS OF ALIMONY, (3) DEEDS OF HALISAH RITES OR (4) OF THE EXERCISE OF THE RIGHT OF REFUSAL, (5) DEEDS OF ARBITRATION,

1. I:1: What is the definition of deeds of arbitration? Here in Babylonia it has been explained as “documents containing records of pleadings.”

B. OR ANY DOCUMENT WHICH IS PREPARED IN A COURT, LO, THIS ONE SHOULD RETURN THEM.

1. II:1: For there was the case of a writ of divorce that was found in the courthouse of R. Huna, in which it was written, "At Shavire, a place located by the canal Rakis." Said R. Huna, "We take account of the possibility that there are two towns bearing the name Shavire."

C. IF HE FOUND THEM WRAPPED UP (1) IN A SACHEL OR (2) A CASE:

1. III:1: What is a sachel? Rabbah b. b. Hanah said, "A small bag." What is a case? Rabbah bar Samuel said, "A case used by old people"

D. (3) A BUNDLE OF DOCUMENTS, OR (4) A PACKAGE OF DOCUMENTS, LO, THIS ONE SHOULD RETURN THEM.

1. IV:1: How many documents add up to a bundle of documents? Three rolled together. And how many documents add up to a package of documents? Three tied together.

E. HOW MANY ARE IN A PACKAGE OF DOCUMENTS? THREE TIED TOGETHER.

1. V:1: When announcing the find, what does the finder identify as what he has turned up? The number of documents.

F RABBAN SIMEON B. GAMALIEL, "IF ONE FOUND A DOCUMENT WHICH INVOLVED A SINGLE INDIVIDUAL WHO BORROWED FROM THREE PERSONS, HE SHOULD RETURN IT TO THE BORROWER.

1. VI:1: For if it should enter your mind that they belong to the three lenders, then how did the documents happen to be brought together?

G. BUT IF THE DOCUMENT CONCERNED THREE BORROWERS FROM A SINGLE INDIVIDUAL, HE SHOULD RETURN IT TO THE LENDER."

1. VII:1: For if you should imagine that they belong to the borrowers who got the documents back after paying off the bond, what are the documents doing together?

H. IF HE FOUND A DOCUMENT AMONG THOSE BELONGING TO HIM, AND HE DOES NOT KNOW WHAT IT IS, LET IT LIE THERE UNTIL ELIJAH COMES. IF HOWEVER THERE WERE POSTSCRIPTS NOTES OF CANCELLATION ALONG WITH THEM, LET HIM ACT IN ACCORD WITH WHAT IS WRITTEN IN THE POSTSCRIPTS:

1. VIII:1: Said R. Jeremiah bar Abba said Rab, "A note of cancellation that is produced by the lender not the borrower, even if written in his own hand, is regarded as a joke and invalid. And that is the rule not only in a case in which it is written in the handwriting of a scribe, in which case one may claim, 'the scribe happened to meet the lender and wrote the note so the lender could have it ready when the borrower would call to pay and ask for a receipt that the loan has been paid off,' but even if it is in his own handwriting and there is no reason that the lender should have written such a receipt before the borrower had paid his debt, it is still invalid. The lender was thinking in writing the receipt, 'Perhaps the borrower may come this evening and pay me, and if I do not give him the note of cancellation, he won't pay me the money. So I'll write it now, and when he brings me the money, I'll give it to him.'"

a. VIII:2: Gloss of a detail of the foregoing.

IX. Mishnah-Tractate Baba Mesia 2:1

A. WHICH LOST ITEMS ARE FINDERS-KEEPERS, AND WHICH ONES IS HE LIABLE TO PROCLAIM IN THE LOST-AND-FOUND? THESE LOST ITEMS ARE HIS THE FINDER'S: "IF HE FOUND (1) PIECES OF FRUIT SCATTERED ABOUT:

1. I:1: ...pieces of fruit scattered about: how much? Said R. Isaac, "A qab of fruit within four cubits."

2. I:2: R. Jeremiah raised this question: "What is the law if one finds a half-qab spread over two cubits? Is the reason that, should we find a qab of fruit within four cubits belongs to the finder, it is quite a bother, so people will not take the trouble to come back and collect it so the owner abandons his right to it, and in the case of two cubits spread over two cubits, since it is not a lot of trouble to collect, someone will not abandon his right to that amount of produce? Or perhaps the operative consideration is that that volume of produce is not worth much, and so too, in the case of a half qab spread over two cubits, since it is surely not worth very much, one gives up his rights of ownership to it?"

3. I:3: It has been stated: As to whether or not the expectation that an owner of an object will give up hope of recovering his lost article so that he gives up ownership and the finder may keep the object does not constitute an act of giving up ownership and so abandonment. — that is, the matter of anticipated abandonment of the hope of recovering a lost article; if an article is found before the loser has become aware of his loss, and the circumstances are such that the loser would have abandoned the hope of recovering the article had he known that he lost it — Abbayye said, "This does not constitute an act of abandonment of the object, and the finder does not effect acquisition of it; it remains the property of the original owner." Raba said, "It is an act of abandonment."

a. I:4: Illustrative case.

4. I:5: Resuming the discussion of I:3.

a. I:6: Gloss of foregoing.

B. (2) COINS SCATTERED ABOUT, (3) SMALL SHEAVES IN THE PUBLIC DOMAIN:

1. II:1: Said Rabbah, "And that is the rule even when they bear a distinguishing trait." It follows that, in Rabbah's view, a distinguishing trait that can be blotted out is null. Raba said, "The rule in the Mishnah pertains to a case only in which there is no distinguishing mark, but as to something that bears a distinguishing mark, one is liable to announce his discovery and look for the loser."

2. II:2: Now how are we to imagine the case of small sheaves in public domain? If the sheaves do not have a distinguishing mark, then even though found in private domain, what is there to announce e.g., what characteristics can be described, there being none? Then is it not a case in which the sheaves have a distinguishing mark, and lo, it has been taught on Tannaite authority, ...small sheaves in the public domain...lo, these belong to the finder. It follows that a distinguishing mark that can be blotted out is null, and that is a refutation of the position of Raba.

3. II:3: Said R. Zebid in the name of Raba, “The governing principle in respect to the disposition of lost-and-found is this: Since the loser has said, ‘Woe is me for the loss,’ he will despair of recovering his property and therefore finders-keepers.”

C. (4) CAKES OF FIGS, (5) BAKERS’ LOAVES, (6) STRINGS OF FISH,

1. III:1: Why does the finder get to keep them? The knot on the string surely serves as a distinguishing trait for identifying them. The law pertains to a fisherman’s knot, which is commonplace.

2. III:2: People asked R. Sheshet, “As to the number of fish, does that constitute a distinguishing trait or not?”

D. “...(7) PIECES OF MEAT, (8) WOOL SHEARINGS AS THEY COME FROM THE COUNTRY OF ORIGIN, (9) STALKS OF FLAX, OR (10) TONGUES OF PURPLE — LO, THESE ARE HIS,” THE WORDS OF R. MEIR. AND R. JUDAH SAYS, “ANYTHING WHICH HAS AN UNUSUAL TRAIT IS HE LIABLE TO PROCLAIM. HOW SO? IF HE FOUND A FIG CAKE WITH A POTSHERD INSIDE IT, A LOAF WITH COINS IN IT:”

1. IV:1: Why assign them to the finder? Let the weight of the meat serve as a distinguishing trait? We deal with a case in which the weight of meat in this category is uniform.

a. IV:2: Gloss of foregoing.

I. IV:3: Illustrative case.

2. IV:4: R. Bibi asked R. Nahman, “Does the location of a found object constitute a distinguishing trait or not?”

a. IV:5: Illustrative case.

E. R. SIMEON B. ELEAZAR SAYS, “ANY NEW MERCHANDISE LACKING AN IDENTIFICATION MARK HE IS NOT LIABLE TO PROCLAIM.”

1. V:1: What is the meaning of “new merchandise”?

a. V:2: Illustrative case.

2. V:3: Tannaite complement: R. Simeon b. Eleazar concedes that in the case of new utensils that are familiar to the eye, one has to proclaim having found them. And what are such new utensils that are not familiar on sight, which one is not obligated to announce having found? For example, poles of needles, knitting needles, bundles of axes.

a. V:4: Gloss of foregoing.

3. V:5: Continuation of V.3. So did R. Simeon b. Eleazar say, “He who rescues something from the mouth of a lion, wolf, or bear, or from a riptide in the sea or a sudden surge of a river, and he who finds something in a large plaza or campground or any area where crowds congregate — lo, these are deemed forthwith to be his, for the owner despairs of ever getting it back” (T. **Baba Mesia 2:2A-E**).

4. V:6: The following question was raised: when R. Simeon b. Eleazar made this statement, did it pertain only to places in which the majority of the population is Canaanite and unlikely to return lost objects to their rightful owners, but in a locale in which the majority of the population is Israelite, he would not take the same

view, that the owner would despair of getting his property back, of perhaps his view applies also to a place in which most of the population is Israelite?

- a. V:7: Illustrative story.
- b. V:8: Illustrative story.
- c. V:9: Illustrative story.
- d. V:10: Illustrative story.
- e. V:11: Illustrative story.
- f. V:12: Illustrative story.
- g. V:13: Illustrative story.

X. Mishnah-Tractate Baba Mesia 2:2

A. AND WHICH ONES IS HE LIABLE TO PROCLAIM? IF HE FOUND (1) PIECES OF FRUIT IN A UTENSIL OR A UTENSIL AS IS, (2) COINS IN A PURSE OR A PURSE AS IS, (3) PILES OF FRUIT,

1. I:1: The operative consideration is that one has found pieces of fruit in a utensil ...or coins in a purse... Lo, if the if the produce is in front of the utensil or the money in front of the purse, lo, these belong to the finder.

B. ...(4) PILES OF COINS,

1. II:1: This bears the implication that the number of lost objects constitute a distinguishing mark.

C. ...(5) THREE COINS, ONE ON TOP OF THE OTHER, (6) SMALL SHEAVES IN PRIVATE DOMAIN, (7) HOMEMADE LOAVES, (8) WOOL SHEARINGS AS THEY COME FROM THE CRAFTSMAN'S SHOP, (9) JARS OF WINE, OR (10) JARS OF OIL — LO, THESE IS HE LIABLE TO PROCLAIM.

1. III:1: Said R. Isaac, "In towers, that is, on condition that the coins form a pyramid."

2. III:2: Said R. Hanina, "The rule of the Mishnah pertains only to a case in which the coins bear the mint-marks of three kings reigns. But if all are of the mint mark of the same king, the finder is not obligated to proclaim his find."

3. III:3: What does one proclaim? The number. Why then must it be three coins and not two? Even if they were two, one should also have to proclaim the find.

4. III:4: R. Jeremiah raised the following question: "If they were laid out in a circle, or in a row, or in a triangle, or as a ladder, what is the law?"

5. III:5: R. Ashi raised the following question: "If they are arranged in the manner of a Hermes' way-mark, what is the law?"

6. III:6: Tannaite complement: He who finds a sela in the market place and his fellow claims it, saying, "The one I lost is new," "it is of the reign of Nero" "it is of the kingdom of such-and-such" — he has said nothing at all. For a distinguishing mark does not apply to a coin. And not only so, but even if the person's own name is written right on the coin, lo, it nonetheless belongs to the one who finds it.

XI. Mishnah-Tractate Baba Mesia 2:3A-F

A. IF BEHIND A FENCE OR A HEDGE ONE FOUND PIGEONS TIED TOGETHER, OR ON PATHS IN FIELDS, LO, THIS ONE SHOULD NOT TOUCH THEM.

1. I:1: What is the operative consideration for the prohibition of M. 2:3A-C? Since these are guarded places, we invoke the principle that these are places in which people hide things, and if one takes them, their owner has no means of identifying them. One therefore has to leave them be, until the owner comes and takes them.

B. IF HE FOUND A UTENSIL IN A DUNG HEAP, IF IT IS COVERED UP, HE SHOULD NOT TOUCH IT. IF IT IS UNCOVERED, HE TAKES IT BUT MUST PROCLAIM THAT HE HAS FOUND IT.

1. II:1: An objection was raised from the following: If one has found an object on a dung-heap, he is liable to make proclamation, for it is usual for things on the dung-heap to be cleared out.

XII. Mishnah-Tractate Baba Mesia 2:3G-M

A. IF HE FOUND IT IN A PILE OF DEBRIS OR IN AN OLD WALL, LO, THESE BELONG TO HIM.

1. I:1: As to M. 2:3G, If he found it in a pile of debris or in an old wall, lo, these belong to him, so the finder does not have to announce his find, a Tannaite authority said, “because the finder can say to him, ‘These derive from the Amorites of days of yore’”

B. IF HE FOUND IT IN A NEW WALL, IF IT IS LOCATED FROM ITS MIDPOINT AND OUTWARD, IT IS HIS. IF IT IS LOCATED FROM ITS MIDPOINT AND INWARD, IT BELONGS TO THE HOUSEHOLDER:

1. II:1: Said R. Ashi, “The position of a knife is determined by its handle, the position of a purse by its straps.” If a knife is found in a wall cavity, if the handle points inwards, it belongs to the owner of the house; outwards, it is assumed to ‘have been placed there by a passer-by.

2. II:2: A Tannaite authority stated, “If the hole in the wall is filled by the object, the finder and the householder divide the object.”

C. IF HE HAD RENTED THE HOUSE TO OTHERS, EVEN IF HE FOUND IT IN THE HOUSE, LO, THESE ARE HIS.

1. III:1: But why should that be the case? Let the object be assigned to the last tenant. Have we not learned in the Mishnah: Money that was found before cattle dealers — throughout the year, it is deemed money in the status of second tithe. If it is found on the Temple mount, it is assumed to be unconsecrated money. If it is found in Jerusalem during a pilgrim festival, it is assumed to be money in the status of second tithe, but at all other times of the year it is deemed to be unconsecrated (M. Sheq. 7:2A-E).

a. III:2: And furthermore said Raba, “If one has seen a coin fall and has taken it prior to the owner’s despairing of returning it, having the intention of stealing it, he transgresses all of these commandments: ‘You shall not rob’ (Lev. 19:11), ‘You shall return them’ (Deu. 22: 1), ‘And you may not hide yourself’ (Deu. 22: 3).”

XIII. Mishnah-Tractate Baba Mesia 2:4

A. IF HE FOUND UTENSILS IN A STORE, LO, THESE ARE HIS. IF A UTENSIL WAS LOCATED BETWEEN THE COUNTER AND THE STOREKEEPER, IT BELONGS TO THE STOREKEEPER. IF HE FOUND THEM IN FRONT OF THE MONEY CHANGER, LO, THEY ARE HIS. IF HE FOUND THEM BETWEEN THE STOOL OF THE MONEY CHANGER AND THE MONEY CHANGER, LO, THESE BELONG TO THE MONEY CHANGER.

1. I:1: Said R. Eleazar, “Even if the money is located on the table they belong to the finder.”

B. HE WHO PURCHASES PRODUCE FROM HIS FELLOW, OR SENT PRODUCE TO HIS FELLOW, IF HE FOUND COINS AMONG THE PRODUCE, LO, THESE ARE HIS. IF THERE THEY WERE BOUND TOGETHER, HE TAKES THE MONEY BUT PROCLAIMS THAT HE HAS FOUND IT.

1. II:1: Said R. Simeon b. Laqish in the name of R. Yannai, “The rule pertains only to the case in which one has purchased produce from a merchant. But if one buys from a householder, he is liable to return what he has found.”

XIV. Mishnah-Tractate Baba Mesia 2:5

A. ALSO A GARMENT WAS COVERED AMONG ALL OF THESE THINGS WHICH ONE MUST PROCLAIM, LISTED AT DEU. 22: 1-3: “YOU SHALL NOT SEE YOUR BROTHER’S OX OR HIS SHEEP GO ASTRAY AND WITHHOLD YOUR HELP FROM THEM; YOU SHALL TAKE THEM BACK TO YOUR BROTHER. AND IF HE IS NOT HEAR YOU OR IF YOU DO NOT KNOW HIM, YOU SHALL BRING IT HOME TO YOUR HOUSE, AND IT SHALL BE WITH YOU UNTIL YOUR BROTHER SEEKS IT; THEN YOU SHALL RESTORE IT TO HIM; AND SO YOU SHALL DO WITH HIS ASS; SO YOU SHALL DO WITH HIS GARMENT; SO YOU SHALL DO WITH ANY LOST THING OF YOUR BROTHER’S WHICH HE LOSES AND YOU FIND; YOU MAY NOT WITHHOLD YOUR HELP”. SO WHY WAS IT SINGLED OUT? TO USE IT FOR AN ANALOGY, TO TELL YOU: JUST AS A GARMENT EXHIBITS DISTINCTIVE TRAITS, IN THAT IT HAS SPECIAL MARKS OF IDENTIFICATION, AND IT HAS SOMEONE TO CLAIM IT, SO FOR EVERYTHING WHICH HAS SPECIAL MARKS AND WHICH HAS SOMEONE TO CLAIM ONE IS LIABLE TO MAKE PROCLAMATION.

1. I:1: What is the sense of “in all these things”? Said Raba, “How come Scripture specified ‘ox,’ ‘ass,’ ‘sheep,’ and ‘garment’ at Deu. 22: 1-3? All these had specifically to be named. For if Scripture had referred only to garment, I might have concluded that the rule pertains to a case in which there is the possibility of attestation of the garment or if the garment bears distinguishing traits on its own. But as to an ass, if there is attestation of the character of its saddle, or if the saddle bears distinguishing traits, but not the ass itself, we are not obligated to return it

the ass. So Scripture specified the ass, indicating that even if the ass is recognized only by the distinguishing traits, one still has to return the beast.”

2. I:2: Our rabbis have taught on Tannaite authority: “...so you shall do with any lost thing of your brother’s, which he loses and you find” (Deu. 22: 3) — this excludes a lost article worth less than a perutah. R. Judah says, “‘...and you find it...’ excluding a lost item that is worth less than a perutah.

a. I:3: Gloss of foregoing: Said Raba, “The loss of a perutah that subsequently depreciated to less than that value is what is at issue between Judah and rabbis.

3. I:4: The question was raised: is the validity of distinguishing characteristics as the criterion for the return of lost objects ordained by the Torah or only on the authority of rabbis?

a. I:5: Secondary refinement of foregoing: Said Raba, “Should you conclude that the validity of appeal to distinguishing characteristics is not derived from the Torah, then how come we return a lost article relying upon distinguishing characteristics? It is because one who finds a lost article is satisfied that the article should be handed over on the strength of distinguishing characteristics, so that, should he lose something, the same will happen to him and he will get his property back on the strength of distinguishing characteristics.”

I. I:6: Expansion of foregoing: Said Raba, “Should you propose that the validity of appealing to distinguishing characteristics in returning a lost object rests upon the rule of the Torah...” Should you propose? But you have just proved that the validity of appealing to distinguishing characteristics in returning a lost object rests upon the rule of the Torah for one can spell the matter out as we have just now stated.

A. I:7: Continuation of foregoing, with reference to a special case.

XV. Mishnah-Tractate Baba Mesia 2:6

A. AND FOR HOW LONG IS ONE LIABLE TO MAKE PROCLAMATION OF HAVING FOUND A LOST OBJECT? “UNTIL HIS NEIGHBORS ARE INFORMED ABOUT IT,” THE WORDS OF R. MEIR:

1. I:1: It has been taught on Tannaite authority: “neighbors” refers to neighbors of the owner of the lost property.

B. R. JUDAH SAYS, “UNTIL THREE FESTIVALS HAVE GONE BY. AND FOR SEVEN DAYS AFTER THE FINAL FESTIVAL, SO THAT ONE MAY HAVE THREE DAYS TO GO HOME AND THREE DAYS TO COME BACK AND ONE DAY ON WHICH TO PROCLAIM THAT HE HAS LOST THE OBJECT:”

1. II:1: Objection was raised from the following: On the third day of Marheshvan they pray for rain. Rabban Gamaliel says, “On the seventh day of that month, the fifteenth day after the festival, so that the last Israelite returning home may reach

the Euphrates river” (M. **Ta. 1:3A-C**). Judah thinks it takes three days to get home, while Gamaliel thinks it takes fifteen.

a. II:2: Said Rabina, “Our Mishnah-passage bears the implication that when one makes an announcement, what he announces is the loss of a garment and who claims it must present information on distinguishing characteristics. For if you suppose that the discovery of a lost article was announced without further information, one would have to add yet another day to the process, so that one may examine his possessions.”

2. II:3: Tannaite complement: On the occasion of the first festival of proclaiming that one has made a find, one states, “This is the first festival in the required sequence.” On the occasion of the second festival, one states, “This is the second festival in the required sequence.” On the occasion of the third festival, however, one states the matter without further specification.

3. II:4: Tannaite complement: At the outset whoever found a lost object would make proclamation for three successive festivals and after the final festival for seven days so that one may have three days to go home and three days to come back and one day on which to proclaim that he has lost the object. After the Temple was destroyed they made the rule that one should make proclamation for an object that has been found for thirty days. Bavli: ...that proclamation should be made in the synagogues and school houses.. And from the time of danger onward Bavli: when the grabbers became many, they made the rule that one should merely inform his neighbors and relatives and acquaintances and townsfolk, and that suffices (T. **Baba Mesia 2:17**).

a. II:5: R. Ammi found a purse containing money. A certain man saw that he was frightened. He said to him, “Go, take it for yourself, for we are not Persians, who take the view that lost objects belong to the government.

4. II:6: There was a stone for making claims in Jerusalem. Whoever had lost something went there, and whoever had found something did the same. The finder went and announced that he had found something, and the loser went and set forth the distinguishing traits of the object and got it back.

XVI. Mishnah-Tractate Baba Mesia 2:7A-D

A. IF A CLAIMANT HAS DESCRIBED WHAT HE HAS LOST BUT NOT SPECIFIED ITS SPECIAL MARKS, ONE SHOULD NOT GIVE IT TO HIM.

1. I:1: “It is the lost article that one proclaims.” R. Nahman said, “It is the garment that one proclaims.”

a. I:2: Further analysis of foregoing.

B. AND AS TO A KNOWN DECEIVER, EVEN THOUGH HE HAS SPECIFIED ITS SPECIAL MARKS, ONE SHOULD NOT GIVE IT TO HIM, AS IT IS SAID, “UNTIL YOUR BROTHER SEEKS CONCERNING IT “(DEU. 22: 2) — UNTIL YOU WILL EXAMINE YOUR BROTHER TO FIND OUT WHETHER OR NOT HE IS DECEIVER.

1. II:1: Tannaite complement: At first whoever came along and could give a good description of the distinctive traits of an object would take it. When deceivers

became many, they made the rule that the claimant would have to give a good description of the distinguishing traits of the object that he claims but also bring proof that he himself is no deceiver

a. II:2: Illustrative case.

XVII. Mishnah-Tractate Baba Mesia 2:7E-K

A. ANY SORT OF THING WHICH IS ABLE TO PERFORM LABOR AND WHICH EATS IS TO BE KEPT BY THE FINDER AND IS TO PERFORM LABOR AND IN EXCHANGE IS ALLOWED TO EAT.

1. I:1: Is this to go on forever?

B. AND SOMETHING WHICH DOES NOT PERFORM LABOR BUT WHICH NONETHELESS HAS TO BE FED IS TO BE SOLD, AS IT IS SAID, “YOU WILL RETURN IT TO HIM” (DEU. 22: 2). PAY ATTENTION TO HOW TO RETURN IT TO HIM!

1. II:1: “And you shall return it to him” (Deu. 22: 2) — see to how you return it to him, so that a calf may not be fed to other calves, a foal to other foals, a goose to other geese, a cock to other cocks; if a number of these is found, it should not be necessary to sell one to provide food for the others, but as soon as they cease to earn their keep they must all be sold.

C. WHAT IS THE RULE COVERING THE PROCEEDS? R. TARFON SAYS, “LET THE FINDER MAKE USE OF THEM. THEREFORE, IF SOMETHING HAPPENS TO THEM, HE IS LIABLE TO MAKE THEM UP.” R. AQIBA SAYS, “HE SHOULD NOT MAKE USE OF THEM. THEREFORE, IF SOMETHING HAPPENS TO THEM, HE IS NOT LIABLE TO MAKE THEM UP.”

1. III:1: The dispute concerns only the case in which the finder did make use of the proceeds. If he had not made use of it, all concur that if the proceeds should be lost, he is not culpable in any way.

2. III:2: Said R. Judah said Samuel, “The law accords with the position of R. Tarfon.”

a. III:3: Illustrative case. Rahbah had in hand some money belonging to an estate. He came before R. Joseph and asked him, “What is the ruling as to making use of the funds?” He said to him, “This is what R. Judah said Samuel said, “The law accords with the position of R. Tarfon.””

XVIII. Mishnah-Tractate Baba Mesia 2:8

A. IF HE FOUND SCROLLS, HE READS IN THEM ONCE EVERY THIRTY DAYS. IF HE DOES NOT KNOW HOW TO READ, HE AT LEAST UNROLLS THEM.

1. I:1: Said Samuel, “He who finds tefillin in the marketplace sells them for money forthwith and sets the money aside.” Objected Rabina, “If he found scrolls, he reads in them once every thirty days. If he does not know how to read, he at least unrolls them. Rolling them is what he is to do. Selling them and holding on to the proceeds is not what he must do.”

2. I:2: He who borrows a scroll of the Torah from his fellow — lo this one should not lend it to a third party. He opens it and reads in it, condition that he not commence to learn a subject in them to begin with, nor should someone else read alongside him. So too, he who deposits a scroll of the Torah with his fellow — the other unrolls it every twelve months, opens it and reads in it.

a. I:3: Gloss of a detail of the foregoing.

b. I:4: As above.

c. I:5: As above.

B. BUT HE SHOULD NOT COMMENCE TO LEARN A SUBJECT IN THEM TO BEGIN WITH, NOR SHOULD SOMEONE ELSE READ ALONGSIDE HIM.

1. II:1: Objection was raised as follows: “He may not read in it a passage and then repeat it, nor may he read in it a passage and then translate it. He may not open in it more than three columns at one time, more than three read out of the same scrolls.

C. IF HE FOUND A PIECE OF CLOTHING, HE SHOULD SHAKE IT OUT ONCE EVERY THIRTY DAYS:

1. III:1: Does that then imply that shaking out is good for a garment? But has not R. Yohanan said, “One who has a professional weaver in his house shakes out his garment every day because the fluff caused by the weaving necessitates it.” So shaking is done only because it is necessary.

a. III:2: Further statements of R. Yohanan.

b. III:3: As above.

D. AND SPREAD IT OUT AS NEEDED — BUT NOT TO SHOW OFF:

1. IV:1: The question was raised: what is the rule if doing so served both the requirement of the object but also the interest of the one who has found it?

E. OF UTENSILS OF SILVER AND OF COPPER ONE MAKES USE — FOR THEIR OWN GOOD BUT NOT TO WEAR THEM OUT. UTENSILS OF GOLD AND OF GLASS HE SHOULD NOT TOUCH UNTIL ELIJAH COMES:

1. V:1: Tannaite complement: He who finds wooden utensils uses them so that they may not rot. As to copper ones: one may use them for hot liquids but not in the fire, because it wears them out. As to utensils of silver, one may make use of them for cold but not for hot liquids, because hot liquids blacken them. Of shovels and axes one makes use with something soft, but not something hard, because that damages them. As to utensils of gold or glass, one is not to touch them until Elijah comes. And just as you specify these rules with regard to a lost object, so these rules apply with regard to a bailment.

F. IF HE FOUND A SACK OR LARGE BASKET OR ANYTHING WHICH HE WOULD NOT USUALLY PICK UP, LO, THIS ONE DOES NOT HAVE TO LOWER HIMSELF AND PICK IT UP

1. VI:1: What is the scriptural foundation for this rule?

2. VI:2: Said Rabbah, “If he hit the beast, he is liable to take care of it.”

3. VI:3: The question was raised: if it is appropriate to return the beasts in the field but not in the town, what is the rule? Do we say that a fully-effected act of returning the beasts is required, and since it is inappropriate for him to return the beast in town, he is under no obligation to do a thing, or perhaps in the field at any rate he is obligated to return the beast, and since he has incurred the obligation in the field, he bears the obligation to do so in town too?

4. VI:4: Said Raba, “In any case in which one would lead back his own beast, he must lead back his fellow’s as well, and in any case in which he would go and unload and reload his own beast, he must go and unload and reload his fellow’s beast as well.”

a. VI:5: Illustrative case.

I. VI:6: Amplification of the moral principle introduced in the foregoing.

A. VI:7: Gloss of the foregoing.

XIX. Mishnah-Tractate Baba Mesia 2:9

A. WHAT IS LOST PROPERTY:

1. I:1: Now were all those examples already given not in the class of lost property that the definition given at M. **2:9A-F** is required?

2. I:2: Does the definition if one found an ass or a cow grazing by the way apply without time-limit?

3. I:3: If one saw water flowing along, he is liable to dam it up (T. **Baba Mesia 2:28A**). Said Raba, “and so you shall do with all lost things of your brother’s’ (Deu. 22: 3) — this encompasses the loss of real estate by a flood.”

B. IF ONE FOUND AN ASS OR A COW GRAZING BY THE WAY, THIS IS NOT LOST PROPERTY. IF HE FOUND AN ASS WITH ITS TRAPPINGS UPSET, A COW RUNNING IN THE VINEYARDS, LO, THIS IS LOST PROPERTY.

1. II:1: There is a contradiction in the body of the stated rule. Specifically, you have stated, If one found an ass or a cow grazing by the way, this is not lost property. It is a case, then, in which the ass or cow is grazing by the way that we do not classify as lost property. Lo, if it was running on the way or if it was a cow running in the vineyards, lo, this is lost property. But then examine the concluding statement: If he found an ass with its trappings upset, a cow running in the vineyards, lo, this is lost property. It is the case, then, in which it is running among the vineyards that it is lost property. Lo, if it is merely running on the way or grazing among the vineyards, this then is not lost property.

C. IF ONE RETURNED IT AND IT RAN AWAY, RETURNED IT AND IT RAN AWAY, EVEN FOUR OR FIVE TIMES, HE IS LIABLE TO CONTINUE TO RETURN IT, SINCE IT IS SAID, “YOU SHALL SURELY BRING THEM BACK TO YOUR BROTHER” (DEU. 22: 1).

1. III:1: One of the rabbis said to Raba, “May I not interpret the verse, ‘Bringing them back —’ one time, ‘...you shall surely bring them back’ — two times?” He said to him, “ ‘Bringing them back — even a hundred times is implicit. ‘...you

shall surely bring them back’ — I know only that one is to bring the beast back to his household. How do I know that one has to restore the beast to his garden patch or to his ruins? Scripture says, ‘...you shall surely bring them back’ — under all circumstances.”

D. COMPOSITE OF CASES IN WHICH THE DUPLICATED VERB-ROOT IS ASSIGNED EXEGETICAL MEANING

1. III:2: “If you chance to come upon a bird’s nest in any tree or on the ground, with young ones or eggs and the mother sitting upon the young or upon the eggs, you shall not take the mother with the young; sending, you shall send the mother free, but the young you may take to yourself” (Deu. 22: 6-7):

2. III:3: One of the rabbis said to Raba, “May I not interpret the verse ‘Rebuking, you shall rebuke your brother’ (Lev. 19:17) in this way: “Rebuking — one time, you shall rebuke your brother — two times?”

3. III:4: “If you see the ass of one who hates you lying under its burden, you shall refrain from leaving him with it, helping, you shall help him to lift it up” (Exo. 23: 5): I know only that that is the case when the master is there with the beast. How do I know that the rule applies even when the master is not there with the beast? Scripture says, “helping, you shall help him to lift it up” — under all circumstances.

4. III:5: “You shall not see your brother’s ass or his ox fallen down by the way and withhold your help from them; helping, you shall help him to lift them up again” (Deu. 22: 4): I know only that that is the case when the master is there with the beast. How do I know that the rule applies even when the master is not there with the beast? Scripture says, “helping, you shall help him to lift them up again” — under all circumstances.

5. III:6: “He who smote him, dying, shall surely die” (Num. 35:21): I know only that the law applies to the form of death that is decreed in Scripture for him. How do I know that if you cannot inflict upon him the death penalty that is provided by Scripture, you are permitted to put him to death through any form of the death penalty that you have at your disposal?

6. III:7: “Returning, you shall surely return the pledge to him when the sun goes down” (Deu. 24:13): I know only that the rule pertains when the pledge is exacted from the borrower within the domain of the court. What about a case in which the pledge is not exacted within the domain of the court?

7. III:8: “If, taking a pledge, you take to pledge your neighbor’s garment, you shall deliver it to him by the time that the sun sets” (Exo. 22:25): I know only that the pledge must be returned if the creditor exacted the pledge with the sanction of the court. How do I know that that is the case even if the pledge was not exacted with the sanction of the court?

8. III:9: “Opening, you shall open your hand to your brother, to your poor” (Deu. 15:11): I know that that is the rule for the poor of your own town. How do I know that the rule applies to the poor of another town?

9. III:10: “Giving, you shall surely give him” (Deu. 15:10): I know only that one must give a large sum. How do I know that a small sum also is to be given?

10. III:11: “Furnishing him, you shall furnish him liberally” (Deu. 15:14): I know only that if the household of the master has been blessed on account of the slave, that one must give a present. How do I know that even if the household of the master was not blessed on account of the slave, a gift must be given?

11. III:12: “And lending him, you shall surely lend him sufficient for his need” (Deu. 15: 8): I know only that when the other has nothing and does not want to support himself from charity, that Scripture makes explicit that the donation must be deemed only a loan.

E. IF HE LOST WORK TIME TO THE VALUE OF A SELA, HE MAY NOT SAY TO HIM, “GIVE ME A SELA.” BUT HE PAYS HIM A SALARY FOR HIS LOST TIME CALCULATED AT THE RATE PAID TO AN UNEMPLOYED WORKER.

1. IV:1: It was taught on Tannaite authority: But he pays him a salary for his lost time calculated at the rate paid to an unemployed worker

F. IF THERE IS A COURT THERE, HE MAY STIPULATE BEFORE THE COURT FOR COMPENSATION FOR LOST TIME. IF THERE IS NO COURT THERE, BEFORE WHOM MAY HE MAKE SUCH A STIPULATION? HIS OWN WELFARE TAKES PRECEDENCE.

1. V:1: Issur and R. Safra formed a partnership. R. Safra went and in the presence of two persons divided the stock without Issur’s knowledge. When he came before Rabbah son of R. Huna to confirm the division of the property and dissolve the partnership, he said to him, “Go and bring the three witnesses before whom you made the division. Or two out of the three to say that there had been three present, or at least two witnesses that you divided in the presence of three other witnesses. “ He said to him, “How do you know that this is the rule?” He said to him, “Because we have learned in the Mishnah, If there is a court there, he may stipulate before the court for compensation for lost time. If there is no court there, before whom may he make such a stipulation? His own welfare takes precedence.”

XX. Mishnah-Tractate Baba Mesia 2:10

A. IF HE FOUND IT LOOSE IN A STABLE, HE IS NOT LIABLE TO RETURN IT. IF HE FOUND IT IN THE PUBLIC DOMAIN, HE IS LIABLE TO TAKE CARE OF IT.

1. I:1: Said Raba, “The stable that is under discussion here does not cause the animal to stray but also is not guarded.”

2. I:2: If he found it loose in a stable, he is not liable to return it. Said R. Isaac, “But that is on condition that it is standing within the town boundary. It follows that if he finds it in the street, even within the town boundary, he still has to return it.”

B. AND IF IT WAS A GRAVEYARD, AND IF HE WAS A PRIEST OR A NAZIRITE HE SHOULD NOT CONTRACT CORPSE UNCLEANNESS ON ITS ACCOUNT. IF HIS FATHER SAID TO HIM, “CONTRACT CORPSE UNCLEANNESS,” OR IF UNDER NORMAL CIRCUMSTANCES HE SAID TO HIM, “DON’T RETURN IT,” HE SHOULD NOT OBEY HIM:

1. II:1: How do we know that, if his father said to him, “Contract corpse uncleanness,” or if under normal circumstances he said to him, “Don’t return it,” he should not obey him. one should not obey him? As it is said, “You shall fear every man his mother and his father and keep my Sabbaths: I am the Lord your God” (Lev. 19: 3) — you all are obligated to honor me.

C. IF HE UNLOADED IT AND LOADED IT UP AGAIN, UNLOADED IT AND LOADED IT UP AGAIN, EVEN FOUR OR FIVE TIMES, HE IS LIABLE TO CONTINUE TO DO SO, FOR IT IS WRITTEN, “YOU WILL SURELY HELP WITH HIM” (EXO. 23: 5). IF HE WENT AND SAT DOWN, AND SAID, “SINCE THE RELIGIOUS DUTY IS YOURS, IF YOU WANT TO UNLOAD IT, GO UNLOAD IT,” THE OTHER IS EXEMPT FROM DOING A THING. FOR IT IS WRITTEN, “WITH HIM.” IF THE OWNER WAS OLD OR SICK, HE IS LIABLE.

IT IS A RELIGIOUS DUTY ENJOINED BY THE TORAH TO UNLOAD THE BEAST, BUT NOT TO LOAD IT UP:

1. III:1: What is the sense of the words, “but not to load it up”?

D. R. SIMEON SAYS, “ALSO: TO LOAD IT UP.”

R. YOSÉ THE GALILEAN SAYS, “IF THERE WAS ON THE BEAST MORE THAN ITS PROPER LOAD, HE IS NOT OBLIGATED TO THE OWNER, SINCE IT IS SAID, ‘UNDER ITS BURDEN’ — A BURDEN WHICH IT CAN ENDURE.”

1. IV:1: R. Simeon says, “Also: to load it up” — without collecting a fee. Unloading is to be done for free, but loading up for a fee. R. Simeon says, “Both this and that are to be done for free.”

a. IV:2: Gloss of foregoing. Said Raba, “On the basis of the position of both authorities, we may infer that the concern for the anguish of animals is a law based on the authority of the Torah. For even R. Simeon took the position that he did that unloading, as much as loading, requires explicit reference in Scripture only because the verses are not articulated. But if they were, we could have reached the conclusion on the basis of an argument a fortiori that one is bound to unload.” And on what grounds? Surely it would be on the grounds of the anguish of animals.”

2. IV:3: “If you see the ass of him who hates you or his ass going astray, you shall bring it back to him. If you meet the ass of one who hates you lying under its burden, you shall refrain from leaving him with it, you shall help him lift it up” (Exo. 23:33-34): “If you see” — might one think it is even from a distance? Scripture states, “If you meet your enemy’s ox or his ass going astray, you shall surely bring it back to him.”

3. IV:4: And he must accompany it for a parasang.

XXI. Mishnah-Tractate Baba Mesia 2:11

A. IF ONE HAS TO CHOOSE BETWEEN SEEKING WHAT HE HAS LOST AND WHAT HIS FATHER HAS LOST, HIS OWN TAKES PRECEDENCE.

1. I:1: What is the scriptural source of this rule “his own takes precedence”?

B. IF HE HAS TO CHOOSE BETWEEN SEEKING WHAT HE HAS LOST AND WHAT HIS MASTER HAS LOST, HIS OWN TAKES PRECEDENCE. IF HE HAS TO CHOOSE

BETWEEN SEEKING WHAT HIS FATHER HAS LOST AND WHAT HIS MASTER HAS LOST, THAT OF HIS MASTER TAKES PRECEDENCE. FOR HIS FATHER BROUGHT HIM INTO THIS WORLD. BUT HIS MASTER, WHO HAS TAUGHT HIM WISDOM, WILL BRING HIM INTO THE LIFE OF THE WORLD TO COME. BUT IF HIS FATHER IS A SAGE, THAT OF HIS FATHER TAKES PRECEDENCE.

IF HIS FATHER AND HIS MASTER WERE CARRYING HEAVY BURDENS, HE REMOVES THAT OF HIS MASTER, AND AFTERWARD REMOVES THAT OF HIS FATHER. IF HIS FATHER AND HIS MASTER WERE TAKEN CAPTIVE, HE RANSOMS HIS MASTER, AND AFTERWARD HE RANSOMS HIS FATHER. BUT IF HIS FATHER IS A SAGE, HE RANSOMS HIS FATHER, AND AFTERWARD HE RANSOMS HIS MASTER.

1. II:1: “The master of which they have spoken is the one who taught him wisdom, not the master who taught him Scripture or Mishnah,” the words of R. Meir. R. Judah says, “It is anyone from whom he has gained the greater part of his learning.” R. Yosé says, “Even someone who has enlightened his eyes in his repetition of a single Mishnah-paragraph — lo, this is his master”

a. II:2: Samuel tore his garment as a mark of mourning for one of the rabbis, who had merely taught him the meaning of the phrase, one of the keys goes into the duct as far as the arm pit and the other opens the door directly.

b. II:3: Said Ulla, “Disciples of sages who are located in Babylonia stand up in respect to one another and tear their garments in mourning for one another.

c. II:4: R. Hisda asked his teacher, R. Huna, “What is the law governing the case of a disciple whom the master needs on account of education received from others, of which the present master is ignorant?”

d. II:5: R. Isaac bar Joseph said R. Yohanan: “The decided law accords with the position of R. Judah at II.1.D.” R. Aha bar R. Huna said R. Sheshet: “The decided law accords with the position of R. Yosé at II.1.E.”

C. COMPOSITE ON THE MERIT OF LEARNING VARIOUS COMPONENTS OF THE TORAH

6. II:6: Those who are occupied with study of Scripture — it is a meritorious quality that is not all that meritorious. ...with the Mishnah — it is a meritorious quality on account of which reward is gained. ...with the Gemara — you have no greater meritorious action than that.

a. II:7: How on the basis of Scripture was the lesson derived that “one should always pursue study of the Mishnah more avidly than study of the Gemara”?

b. II:8: Continuation of exegetical foundations of foregoing.

XXII. Mishnah-Tractate Baba Mesia 3:1

A. HE WHO DEPOSITS WITH HIS FELLOW A BEAST OR UTENSILS, AND THEY WERE STOLEN OR LOST,

1. I:1: Why specify both beast and utensils?

B. 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.

1. II:1: Said R. Hiyya bar Abba said R. Yohanan, “The sense is not that he actually has paid, but, since he has said, ‘I will pay,’ even though he has not actually paid, the rule pertains. We have learned in the Mishnah: if the bailee made restitution and was unwilling to take an oath. It follows that if he has paid, the rule pertains, and if not, it does not pertain. Then let me cite the concluding clause: If the bailee took an oath and did not want to pay compensation, if the thief was found, he pays twofold restitution. The reason then is that he did not want to do so. Lo, if he wanted to do so, even though he did not actually pay the rule pertains. It follows that from this formulation there are no inferences to be drawn.”

2. II:2: Said R. Pappa, “An unpaid bailee, once he has said, ‘I have acted negligently,’ the original owner, the bailer thereby assigns the double payment to him forthwith, should the thief be found and fail to confess but be declared guilty and have to pay that sum, since had he wanted, he could have freed himself by pleading that the beast had been stolen. As to a paid bailee, one he has claimed, ‘It was stolen,’ the original owner, the bailer thereby assigns the double payment to him forthwith, should the thief be found and fail to confess but be declared guilty and have to pay that sum, since had he wanted, he could have freed himself by pleading that the beast had been hurt or had died. As to a borrower, even though he has said, ‘Lo, I shall pay restitution,’ the original owner, the bailer in no way assigns the double payment to him, for in what manner could he otherwise have exempted himself? If it was by the plea that the beast had died on account of the work that it was doing for which the borrower bears no responsibility, there having been a flaw in the beast, which should have been able to do that work, that is a very rare occurrence indeed.”

a. II:3: Secondary expansion of foregoing: It is self-evident that, if the bailee declared, “I will not pay,” but then said, “I will pay,” then his situation is that he has said, “I will pay,” and we draw the correct conclusions, as just now spelled out. But if he has said, “I will pay,” and then he went and said, “I will not pay,” what is the law?

3. II:4: With reference to the clause of the Mishnah, if the bailee made restitution and was unwilling to take an oath, said R. Huna, “We nonetheless impose upon the bailee the oath that the beast is not in his possession. What is the reason? We

take account of the possibility that he may have coveted the beast and told the story that it was stolen so as to have the chance to buy it.”

a. II:5: Case: Somebody deposited jewels with his neighbor. When he asked for them back, saying, “Give me my jewels,” the other replied, “I don’t know where I put them.”

4. II:6: It is self-evident that if an evaluation is made in behalf of the creditor, and he went and valued it for his own creditor, we say to the second creditor, “You are no better than the man into whose power you have come. Just as he would have had to return the goods if the debtor could repay the loan, so you must do so as well.

5. II:7: Where without waiting for a court order of distraint the debtor gave it to the creditor in settlement for his debt, there is a dispute between R. Aha and Rabina. One party maintains, “It is to be returned.” The other party said, “It need not be returned.”

6. II:8: And at one point may the creditor enjoy the usufruct of the property under an order of distraint? Rabbah said, “From the point at which he gets the court order.” Abbaye said, “When the witnesses to that document sign their names, they impart ownership to him.” Raba said, “When the days of publicly announcing that the estate to be distrained is up for public sale to go to the highest bidder are complete. When that time has passed, if the estate is not sold, the creditor has a right to the usufruct

XXIII. Mishnah-Tractate Baba Mesia 3:2

A. HE WHO RENTS A COW FROM HIS FELLOW, AND THEN LENT IT TO SOMEONE ELSE, AND IT DIED OF NATURAL CAUSES — LET THE ONE WHO RENTED IT TAKE AN OATH THAT IT DIED OF NATURAL CAUSES, AND THE ONE WHO BORROWED IT THEN PAYS COMPENSATION TO THE ONE WHO RENTED IT OUT:

1. I:1: Said R. Idi bar Abin to Abbaye, “Now in what way has the one who rented the cow acquired ownership of that cow so that he is not responsible for it but is paid by the borrower? Is it by the oath that it has died a natural death? Then let the one who hired the cow out say to the one who has rented it, ‘Get out and take your oath with you, and I’ll bring my suit against the one who has borrowed the cow!’”

2. I:2: Said R. Zira, “There are times that the owner hands over many cows to the one who rents a cow for a fee. How would that be the case? If Mr. X rented a cow from the owner for a hundred days and then Mr. Y went and borrowed it from him for ninety days out of the hundred, so that when the ninety days were complete, Mr. X would have another ten days in which to use the cow, and then Mr. X went and rented it out from him for eighty days, then Mr. Y went and borrowed it from him for seventy days, and the cow died within the period of borrowing, for each span of borrowing the owner is liable to supply a cow.”

3. I:3: Said R. Jeremiah, “There are circumstances in which both parties, the one who rents the cow and the one who borrows it from him, are obligated to a sin-offering and there are circumstances in which both parties the one who rents the

cow and the one who borrows it from him are obligated to a sin-offering; there are occasions on which the one who rents out the beast is liable to a sin-offering and the one who borrows it to a guilt-offering, there are occasions on which the one who rents out the beast is liable to a guilt offering and the one who borrows it to a sin offering.

4. I:4: It has been stated: A bailee who entrusted the bailment to another bailee — Rab said, “He is exempt. He is not liable for anything for which he would not have been liable had he guarded the bailment himself.” R. Yohanan said, “He is liable even for accidents that were not to be prevented, for which he would not have been liable had he kept the bailment himself.”

5. I:5: It has been stated: If the bailee was negligent in respect to the cow and it wandered off into a meadow where it died of natural causes, Abbayye in the name of Rabbah said, “He is liable.” Raba in the name of Rabbah said, “He is exempt from liability to pay restitution.”

B. SAID R. YOSÉ, “HOW SHOULD THIS ONE DO BUSINESS WITH HIS FELLOW’S COW? BUT THE FUNDS PAID FOR THE COW ARE TO RETURN TO THE OWNER.”

1. II:1: Said R. Judah said Samuel, “The decided law is in accord with R. Yosé.”

XXIV. Mishnah-Tractate Baba Mesia 3:3-5

A. 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.” “THE FATHER OF ONE OF YOU DEPOSITED A MANEH WITH ME, AND I DO NOT KNOW THE FATHER OF WHICH ONE OF YOU IT WAS,” HE PAYS OFF A MANEH TO THIS ONE AND A MANEH TO THAT ONE, FOR HE HAS ADMITTED IT ON HIS OWN.

1. I:1: From the statement, he pays off a maneh to this one and a maneh to that one it follows that since when one party lays claim and the confessed thief says, “I don’t know if it is yours or your fellow’s,” we do not rule that the money should be left in escrow, we lay out money even on the basis of a doubt and do not rule, “Let the money stand with the one who is presumed to own it. But that inference is contradicted by the following: Two who deposited something with one person, this one leaving a maneh, and that one leaving two hundred zuz — this one says, “Mine is the deposit of two hundred zuz,” and that one says, “Mine is the deposit of two hundred zuz” — he pays off a maneh to this one, and a maneh to that one, and the rest is left until Elijah comes. Why leave the money in escrow?

a. I:2: Gloss of a detail of the foregoing.

b. I:3: As above.

2. I:4: Said Abbayye to Raba, “Did R. Aqiba not say to Tarfon, ‘This is not the way to remove the man from the transgression, unless he pays off the value of what was stolen to each one.’ It follows that we lay out money even on the basis of a doubt and do not rule, “Let the money stand with the one who is presumed to own it. Now note the contradiction in the following: If the house fell on him and on his mother and we do not know who died first and hence who inherits, so that the heirs of the son say, ‘The mother died first,’ and the heirs of the mother say,

‘The son died first,’ these and those parties agree that they divide it. Said R. Aqiba, ‘I concur in this case that the property remains in its former status’” (M. **B.B. 9:10**). Here, then, money does not change hands when there is doubt.

3. I:5: Said Rabina to R. Ashi, “And has Raba really said that in any case in which two distinct packages are deposited, one has to pay close attention? But has not Raba — and some say, R. Pappa — said, ‘All concur in the case of two persons who left bailments of lambs with a shepherd that the shepherd leaves the bailment between them and takes his leave.’”

B. TWO WHO DEPOSITED SOMETHING WITH ONE PERSON, THIS ONE LEAVING A MANEH, AND THAT ONE LEAVING TWO HUNDRED ZUZ — THIS ONE SAYS, “MINE IS THE DEPOSIT OF TWO HUNDRED ZUZ ,” AND THAT ONE SAYS, “MINE IS THE DEPOSIT OF TWO HUNDRED ZUZ “ — HE PAYS OFF A MANEH TO THIS ONE, AND A MANEH TO THAT ONE, AND THE REST IS LEFT UNTIL ELIJAH COMES. SAID R. YOSÉ, “IF SO, WHAT HAS THE DECEIVER ACTUALLY LOST? BUT LEAVE THE WHOLE SUM UNTIL ELIJAH COMES AND NO ONE WILL BE PAID OFF.

AND SO IS THE RULE FOR TWO UTENSILS, ONE WORTH A MANEH, AND ONE WORTH A THOUSAND ZUZ — THIS ONE SAYS, “THE BETTER ONE IS MINE,” AND THAT ONE SAYS, “THE BETTER ONE IS MINE” — HE GIVES THE SMALLER ONE TO ONE OF THEM. AND FROM THE FUNDS RECEIVED FROM THE SALE OF THE LARGER ONE, HE GIVES THE COST OF A SMALLER ONE TO THE OTHER PARTY. AND THE REST OF THE MONEY RECEIVED FOR THE SALE OF THE LARGER ONE IS LEFT UNTIL ELIJAH COMES. SAID R. YOSÉ, “IF SO, WHAT HAS THE DECEIVER ACTUALLY LOST? BUT LEAVE THE WHOLE SUM RECEIVED FOR THE SALE OF BOTH UTENSILS) UNTIL ELIJAH COMES.”

1. II:1: It was necessary to present both the instance of M. 3:4, the claim on the deposit of funds and the instance of M. 3:5, the claim on the deposit of objects. For had we been given the first case, in that one rabbis will have taken the position that they did, because there is no loss, but in the latter case, where the loss involved in the breakage of the larger utensil is great, I might argue that they concur with R. Yosé. And if we had been given only the second case, involving the two utensils, I might have taken the view that in that case, R. Yosé takes the view that he does, but in the other, he concurs with sages. So it was necessary to present them both

XXV. Mishnah-Tractate Baba Mesia 3:6

A. HE WHO DEPOSITS PRODUCE WITH HIS FELLOW EVEN IF IT IS GOING TO GO TO WASTE — THE FELLOW SHOULD NOT TOUCH IT.

1. I:1: What is the reasoning behind the rule? Said R. Kahana, “A person prefers his own qab of produce over nine of his neighbor’s.” And R. Nahman bar Isaac said, “We take account of the possibility that the bailer has declared the produce to be heave-offering and tithe in behalf of produce that he has in some other location. If he had done so, then obviously the bailee should not touch the produce, which is in the status of priestly rations and not available for sale or use by common folk.”

2. I:2: With respect to the dispute, the fellow should not touch it. Rabban Simeon b. Gamaliel says, “He sells them in the presence of a court, for he is in the position of one who thereby restores what is lost to its rightful owner”, said Rabbah bar bar Hanah said R. Yohanan, “There is a dispute when the rate of wastage is normal, But when the rate of wastage is abnormal, all concur that the produce is to be sold by court order.”

a. I:3: Gloss of foregoing.

B. RABBAN SIMEON B. GAMALIEL SAYS, “HE SELLS THEM IN THE PRESENCE OF A COURT, FOR HE IS IN THE POSITION OF ONE WHO THEREBY RESTORES WHAT IS LOST TO ITS RIGHTFUL OWNER.”

1. II:1: It has been stated: R. Abba b. R. Jacob said R. Yohanan: “The decided law accords with the position of Rabban Simeon b. Gamaliel.” And Raba said R. Nahman: “It accords with sages.”

C. COMPOSITE ON WHETHER OR NOT A RELATIVE MAY DISPOSE OF THE PROPERTY OF A CAPTIVE,

1. II:2: From the position stated here in the view of Rabban Simeon b. Gamaliel we may infer that a relative may dispose of the property of a captive, while from the position of rabbis we may infer that a relative may dispose of the property of a captive. If someone is taken captive leaving untended estates, may his next of kin take possession to save it from loss? Simeon b. Gamaliel says the bailee may sell the produce to save it, so the same reasoning would allow the next of kin to do the same.

a. II:3: A captive that has been taken prisoner — Rab said, “A relative does not take over the management of his property.” Samuel said, “A relative does take over the management of his property.” If they have heard that he has died, all parties concur that a relative does not take over the management of his property.

l. II:4: Whether a captive that has been taken prisoner does or does not take over the management of his property is a dispute between Tannaite authorities as well, for it has been taught on Tannaite authority....

A. II:5: Gloss of a clause of the foregoing.

B. II:6: As above.

2. II:7: Said R. Judah said Samuel, “A captive who was taken away leaving standing grain that was to be reaped, grapes that were to be vintaged, dates that were to be harvested, or olives that were to be gathered, the court takes over his estate and appoints a guardian to reap, vintage, harvest, and gather, and then the next of kin is permitted to take over the estate.”

3. II:8: Said R. Huna, “A minor is not permitted to take over the estate of a captive, nor a relative to take over the estate of a minor, nor a relative of a relative to take over the estate of a minor.”

a. II:9: Illustrative case.

b. II:10: As above.

XXVI. Mishnah-Tractate Baba Mesia 3:7

A. HE WHO DEPOSITS PRODUCE WITH HIS FELLOW — LO, THIS ONE WITH WHOM THE BAILMENT IS LEFT, WHEN RETURNING IT, MAY EXACT FROM THE OWNER THE FOLLOWING DEDUCTIONS DUE TO NATURAL DEPLETION OF THE PRODUCE: (1) FOR WHEAT AND RICE:

1. I:1: But rice decreases by more than that!

B. NINE QABS AND A HALF FOR A KOR; (2) FOR BARLEY AND DURRA, NINE QABS TO A KOR;

(3) FOR SPELT AND LINSEED, THREE SEAHs TO A KOR

1. II:1: Said R. Yohanan said R. Hiyya, “This refers to linseed in its calyxes.”

C. ALL IS RELATIVE TO THE QUANTITY, ALL IS RELATIVE TO THE TIME IT IS LEFT.

1. III:1: It was taught on Tannaite authority: so it is per kor per year.

D. SAID R. YOHANAN B. NURI, “BUT WHAT DIFFERENCE DOES QUANTITY OR TIME MAKE TO MICE? WILL THEY NOT EAT PLENTY WHETHER IT IS FROM A LARGE VOLUME OR A SMALL VOLUME OF GRAIN? BUT HE MAY NOT EXACT FROM THE OWNER THE STATED REDUCTIONS, EXCEPT FROM A SINGLE KOR ALONE.”

1. IV:1: It has been taught on Tannaite authority: They said to R. Yohanan b. Nuri, “Much of the grain deteriorates, and much is scattered besides what the rats take, so it does depend on quantity.”

2. IV:2: It has been taught on Tannaite authority: Under what circumstances? When he has combined the bailment of grain with his own produce. But if the deposited produce was kept by itself, he may simply say to him, “Here is what is yours before you.”

E. R. JUDAH SAYS, “IF IT WAS A LARGE VOLUME OF PRODUCE, HE MAY NOT EXACT FROM THE OWNER THE STATED REDUCTIONS, FOR IT INCREASES IN BULK AS IT IS STORED AWAY.”

1. V:1: What constitutes “a large volume of produce”?

2. V:2: A Tannaite authority taught before R. Nahman, “Under what circumstances does Judah’s rule pertain? If he measured out grain from him from his own granary and returned it to him out of the granary. But if he measured it for him out of his house and returned it to him out of his house, he may not make a deduction for decreases, because the quantity then increases.”

XXVII. Mishnah-Tractate Baba Mesia 3:8

A. HE EXACTS A REDUCTION OF A SIXTH FOR WINE. R. JUDAH SAYS, “A FIFTH.”

HE EXACTS REDUCTION OF THREE LOGS OF OIL PER HUNDRED — A LOG AND A HALF FOR THE SEDIMENT, AND A LOG AND A HALF FOR ABSORPTION INTO THE WALLS OF THE CLAY JARS.

1. I:1: There is no dispute at M. **3:8A-B**. One authority refers to the conditions prevailing in his locale, and the other to the conditions that pertain in his.

2. I:2: In the locale of R. Judah they would put forty-eight jugfuls into the standard barrel, a barrel was sold at six zuz, and R. Judah retailed six jugfuls at a zuz.

B. IF IT WAS REFINED OIL, HE MAY NOT EXACT A REDUCTION FOR THE SEDIMENT. IF THE JARS WERE OLD, HE MAY NOT EXACT A REDUCTION FOR ABSORPTION:

1. II:1: But it is not possible that the barrel will not absorb any of the oil!

C. R. JUDAH SAYS, “ALSO: HE WHO SELLS REFINED OIL TO HIS FELLOW THROUGH THE YEAR — LO, THE LATTER MUST ACCEPT UPON HIMSELF AGREE TO A REDUCTION OF A LOG AND A HALF PER HUNDRED BECAUSE OF SEDIMENT.”

1. III:1: Said Abbaye, “When you look into the matter, you will note that, in the view of R. Judah, lees may be mixed with the oil, and in rabbis view, lees may not be mixed with the oil. In the view of R. Judah, lees may be mixed with the oil: that is why the purchaser must accept the lees, for the seller can say to him, ‘If I had wanted to mix it up for you, could I not have done so? So now too, take it as is.’”

2. III:2: A Tannaite authority taught: All the same are the purchaser and the depositor when it comes to the scum of oil or wine.

XXVIII. Mishnah-Tractate Baba Mesia 3:9

A. HE WHO DEPOSITS A JAR WITH HIS FELLOW, AND THE OWNER DID NOT SPECIFY A PLACE FOR IT, AND SOMEONE MOVED IT AND IT WAS BROKEN — IF IN THE MIDST OF HIS HANDLING IT, IT WAS BROKEN, AND IF HE MOVED IT TO MAKE USE OF IT FOR HIS OWN NEEDS, HE IS LIABLE. IF HE MOVED IT FOR ITS NEEDS, HE IS EXEMPT. IF AFTER HE HAD PUT IT DOWN, IT WAS BROKEN, WHETHER HE HAD MOVED IT FOR HIS OWN NEEDS OR FOR ITS NEEDS, HE IS EXEMPT. IF THE OWNER SPECIFIED A PLACE FOR IT, AND SOMEONE MOVED IT AND IT WAS BROKEN — WHETHER IT WAS IN THE MIDST OF HIS HANDLING IT OR WHETHER IT WAS AFTER HE HAD PUT IT DOWN, IF HE HAD MOVED IT FOR HIS OWN NEEDS, HE IS LIABLE. BUT IF HE HAD MOVED IT FOR ITS NEEDS, HE IS EXEMPT.

1. I:1: In accord with whose principle is the Mishnah’s rule? It is R. Ishmael, who has said that we do not require the owner’s knowledge and consent. The issue is whether, in returning an object to the owner, one is obligated to inform the owner that he has done so. The first clause states that if one moved the jar for his own purpose, puts it down, and then the jar is broken, he is not responsible. Now when he moves it for his own purpose, he is regarded as having stolen it, since the bailee must not make any use of the bailment. When a person steals an object, he is responsible for it until he returns it and informs the owner that he has returned it. Ishmael holds, however, that the owner’s knowledge is not necessary. When he puts the barrel down, the bailee thereby has returned it to the owner, and this is without the owner’s knowledge. The Mishnah in the present passage likewise treats the bailee as not responsible, so the rule accords with Ishmael’s principle.

2. I:2: R. Jacob bar Abba explained the passage before Rab to speak of a case in which the bailee had taken the jar with the intention of stealing it in which case the qualifications introduced earlier need not apply.

a. I:3: Secondary expansion of the foregoing. Rab and Levi — one said, “Unlawful use of an object must involve actual damage for liability to be incurred.” And the other said, “Unlawful use of an object need not involve actual damage for liability to be incurred.”

I. I:4: Raba said, “If the consideration of unlawful use of a bailment had not been mentioned in the case either of the unpaid bailee or the paid bailee, and the rule governing that matter can have been derived from the case of a borrower. One who borrows a beast is responsible even for accidents, and when a bailee makes unauthorized use of the bailment, he becomes a borrower, one who has borrowed without permission. If a borrower, who has the beast with the full knowledge and consent of the owner, is responsible even for unpreventable accidents, then unpaid and paid bailees who have utilized the beast not with the owner’s consent surely should be responsible. And why was the law stated in connection with them both? It is to teach you the further stringent rule that even if there is no damage to the beast, unlawful use imposes liability.”

XXIX. Mishnah-Tractate Baba Mesia 3:10

A. HE WHO DEPOSITS COINS WITH HIS FELLOW — IF THE LATTER (1) WRAPPED THEM UP AND THREW THEM OVER HIS SHOULDER, (2) GAVE THEM OVER TO HIS MINOR SON OR DAUGHTER, OR (3) LOCKED THEM UP IN AN INADEQUATE WAY, HE IS LIABLE TO MAKE THEM UP IF THEY ARE LOST, BECAUSE HE DID NOT TAKE CARE OF THEM THE WAY PEOPLE USUALLY TAKE CARE OF THINGS. BUT IF HE DID TAKE CARE OF THEM THE WAY PEOPLE USUALLY TAKE CARE OF THINGS, HE IS EXEMPT.

1. I:1: As for all the other instances, for example, gave them over to his minor son or daughter, or locked them up in an inadequate way, he is liable to make them up if they are lost, because he did not take care of them the way people usually take care of things. But as to the matter of having wrapped them up and thrown them over his shoulder, what else was he supposed to have done?

a. I:2: Our rabbis have taught on Tannaite authority: He who goes to measure his grain in his granary should say the following. When he has begun to take the measure of the grain, he says, “Blessed is the One who sends a blessing on this crop.” But if he took the measure and then said the blessing, lo, this is a vain prayer, since a blessing is common not in what is already weighed, measured, or counted out, but only in what is hidden from sight, as it is said, “The Lord shall command the blessing upon you in your hidden things” (Deu. 28: 8).

3. I:3: Said Samuel, “Safeguarding money can be done only by burying it in the ground.”

a. I:4: Said R. Aha b. R. Joseph to R. Ashi, “There we have learned: Leaven which is supposed to be removed from sight on Passover on which ruins collapsed is regarded as having been removed since it is inaccessible. ‘Rabban Simeon b. Gamaliel says, “It is any that the dog cannot sniff out.”’

And a Tannaite authority has taught in this connection: ‘how far can a dog sniff out? Three handbreadths’ depth into the ground.’ Now here what is the law on placing money in the ground? Do we require that the bailee bury the money to a depth of three handbreadths, or is that not so?”

I. I:5: Illustrative case. There was a man who deposited money with his fellow. He put it in a cot of bulrushes, and the money was stolen.

II. I:6: Illustrative case. Somebody left money with his fellow. He said to him, Give me my money back.” The bailee replied, “I don’t know where I put it.”

III. I:7: Illustrative case. Somebody left money with his fellow, who entrusted it with his mother. She put it in her work basket, and the basket was stolen.

IV. I:8: Illustrative case. A guardian of the estate of orphans bought an ox on their behalf and entrusted it to a herdsman. It had no molars or teeth with which to eat, so it died. The alternative was to slaughter the beast properly and sell it for food.

V. I:9: Illustrative case. Somebody deposited hops with his neighbor. The bailee also had a pile of hops. He told his brewer, “Take them from this pile of hops,” but he took them from the other pile.

XXX. Mishnah-Tractate Baba Mesia 3:11

A. HE WHO DEPOSITS COINS WITH A MONEY CHANGER — IF THEY ARE WRAPPED UP, THE MONEY CHANGER SHOULD NOT MAKE USE OF THEM. THEREFORE IF THEY GOT LOST, HE IS NOT LIABLE TO MAKE THEM UP AS AN UNPAID BAILEE (M. 2: 7).

1. I:1: Merely because the coins are wrapped up, the money changer is not to make use of them? Could the binding not be only for safety, not to indicate the intention that the money changer not utilize the coins?

B. IF THEY WERE LOOSE, HE MAY MAKE USE OF THEM. THEREFORE IF THEY GOT LOST, HE IS LIABLE TO MAKE THEM UP.

HE WHO DEPOSITS COINS WITH A HOUSEHOLDER, WHETHER THEY ARE WRAPPED UP OR WHETHER THEY ARE LOOSE — THE HOUSEHOLDER SHOULD NOT MAKE USE OF THEM. THEREFORE IF THEY GOT LOST, HE IS NOT LIABLE TO MAKE THEM UP. “THE STOREKEEPER IS IN THE CLASSIFICATION OF AND SO SUBJECT TO THE SAME RULE AS THE HOUSEHOLDER,” THE WORDS OF R. MEIR. R. JUDAH SAYS, “THE STOREKEEPER IS IN THE CLASSIFICATION OF AND SO SUBJECT TO THE SAME RULE AS THE MONEY CHANGER.”

1. II:1: That is the law even if they were subject to an unavoidable accident.

XXXI. Mishnah-Tractate Baba Mesia 3:12A-D

A. HE WHO MAKES IMPROPER USE OF A BAILMENT — THE HOUSE OF SHAMMAI SAY, “HE SUFFERS A DISADVANTAGE, WHETHER THE VALUE RISES OR FALLS.”

1. I:1: Said Rabbah, “One who steals wine from his fellow, which to begin with was worth a zuz, and now is worth four zuz — if the jug broke or the man drank the wine, he pays four zuz. But if it breaks on its own for some reason that the thief could not have stopped he pays a zuz. What is the reason? Since if the jug were in hand, it would be returned to the owner just as is, it is only at the moment at which the thief drinks the wine or breaks the jug that he has robbed the owner of his wine, and we have learned, All robbers pay compensation according to the value of the theft at the moment of robbery (M. **Baba Qamma 9:1K**).”

B. THE HOUSE OF HILLEL SAY, “HE RESTORES THE BAILMENT AS IT WAS AT THE MOMENT AT WHICH HE TOOK IT OUT TO USE IT FOR HIS OWN PURPOSES .” R. AQIBA SAYS, “HE RESTORES IT AS IT WAS AT THE MOMENT AT WHICH IT WAS CLAIMED.”

1. II:1: Said R. Judah said Samuel, “The decided law accords with the position of R. Aqiba.

XXXII. Mishnah-Tractate Baba Mesia 3:12E-L

A. HE WHO EXPRESSES IN THE PRESENCE OF WITNESSES THE INTENTION OF MAKING USE OF A BAILMENT — THE HOUSE OF SHAMMAI SAY, “HE IS LIABLE FOR ANY DAMAGE DONE TO THE BAILMENT, AS IF HE HAD MADE USE OF IT .” AND THE HOUSE OF HILLEL SAY, “HE IS LIABLE FOR DAMAGES INCURRED ONLY WHEN HE WILL ACTUALLY MAKE USE OF THE BAILMENT, SINCE IT IS SAID, ‘IF HE HAS NOT PUT HIS HAND TO HIS NEIGHBOR’S PROPERTY’ (EXO. 22: 7).”

1. I:1: What is the source of this ruling? It is as our rabbis have taught on Tannaite authority: “Then the householder shall be brought to the judges...for all manner of trespass” (Exo. 22: 8) — the House of Shammai say, ‘This teaches that one is responsible for intentionality as much as for deed. And the House of Hillel say, “He is liable for damages incurred only when he will actually make use of the bailment, since it is said, ‘If he has not put his hand to his neighbor’s property’ (Exo. 22: 7).”

B. IF HE TIPPED OVER THE JUG AND TOOK A QUARTER-LOG OF LIQUID FROM IT, AND IT BROKE — HE PAYS ONLY THE VALUE OF THE QUARTER-LOG HE HAS ACTUALLY REMOVED.

1. II:1: Said Rabbah, “That is the law only in the case that the jug broke. But if the wine soured, he pays the entire value.”

C. BUT IF HE RAISED IT UP SO MAKING ACQUISITION OF IT, AND TOOK A QUARTER-LOG OF LIQUID FROM IT AND IT BROKE, HE PAYS THE VALUE OF THE WHOLE JUG.

1. III:1: Said Samuel, “The sense of ‘took’ need not be literal at all. But once the thief has raised it up to take some of the wine, even though he has not actually taken it, he is liable.”

2. III:2: Asked R. Ashi, “If one has lifted up a purse in order to take a denar from it, what is the law? Is it only in the case of wine that we rule that wine is guarded only by other wine, while a zuz can be guarded on its own, or perhaps the care that is taken for a purse is not the same as the care that is given to a single denar?”

XXXIII. Mishnah-Tractate Baba Mesia 4:1-2

A. (1) GOLD ACQUIRES SILVER, BUT SILVER DOES NOT ACQUIRE GOLD. (2) COPPER ACQUIRES SILVER, BUT SILVER DOES NOT ACQUIRE COPPER. (3) BAD COINS ACQUIRE GOOD COINS, BUT GOOD COINS DO NOT ACQUIRE BAD COINS.

1. I:1: Rabbi Judah the Patriarch repeated the Tannaite teaching to his son, R. Simeon, as “Gold acquires silver, but silver does not acquire gold.” He said to him, “My lord, in your youth you taught it to us in the language, ‘silver acquires gold, but gold does not acquire silver.’ Now you go and teach it to us in your old age, ‘Gold acquires silver, but silver does not acquire gold.’” When he was young, what was his theory of matters, and when he was old, what was his theory of matters? When he was young, his theory was that gold, which is the more precious commodity, is deemed money, and silver, which is the less valued commodity, is in the status of produce; so the delivery of the produce is what effects the transfer of title to the money. But in his old age, he reasoned that silver, which is current, is equivalent to money, while gold, which does not circulate, is deemed produce, and the produce is what effects the transfer of title to the money.

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

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

c. I:4: Said Raba, “This Tannaite authority takes the position that gold is in the classification of coinage, for it has been taught on Tannaite authority: The perutah of which they have spoken is the eighth part of an Italian issar (M. **Ed. 4:7C**).

2. I:5: There we have learned: The House of Shammai say, “One should not convert his silver selas consecrated as second tithe into gold denars.” And the House of Hillel permits converting silver coins for gold coins.(M. **M.S. 2: 5**). R.

Yohanan and R. Simeon b. Laqish: One said that the dispute concerns the exchange of selas for denarii, with the House of Shammai holding that the silver coins are classified as money, and gold classified as produce, and money may not be redeemed by produce given in exchange for the money; the process must be only money for produce, not produce for money already in the status of second tithe. In the view of the House of Hillel, silver coin is in the classification of produce, gold in the classification of money, and produce may be redeemed for gold denarii. But all concur that actual produce may be redeemed by gold denarii. How come? Because, by analogy with silver coin on the view of the House of Hillel. Hence silver, in the opinion of the House of Hillel, though classified as produce in relationship to gold, is deemed as money in relationship to produce. So is gold according to the House of Shammai; though it is regarded as produce in relationship to silver, it is classed as money in relationship to produce.

a. I:6: We may draw the conclusion, moreover, that it is R. Yohanan who takes the view that they do not redeem it in this way in the view of the House of Hillel even real produce may not be redeemed by gold denarii. For R. Yohanan said, "It is forbidden to lend a denar for the return of a denar since the denar may appreciate in the interval, and that would then lead to usury."

3. I:7: Rab and Levi: One says, "Coins can effect a barter." The other says, "Coins cannot effect a barter."

a. I:8: We have learned in the Mishnah: Gold acquires silver. Is that not in a transaction of barter, proving that coins can effect a barter? No, it is only as cash when handed over in payment for silver coins, but not as a mere symbolic delivery of barter.

I. I:9: Said R. Pappa, "Even in the view of him who has said, 'Coins cannot effect a barter,' while coins cannot effect a barter, they can still be acquired through barter. Once the owner of the coin takes possession of an object either delivered to him symbolically or in exchange against it, the ownership of the money vests in the other party. For it may be classified as produce, in accord with the opinion of R. Nahman. So even though in R. Nahman's view, produce cannot effect a barter, it can be acquired through barter, and the same rule pertains to coinage."

4. I:10: And so said Ulla, "Coins cannot effect a barter." And so said R. Assi, "Coins cannot effect a barter." And so said Rabbah bar bar Hanah said R. Yohanan, "Coins cannot effect a barter."

5. I:11: We have learned in the Mishnah: All sorts of movable objects effect acquisition of one another. And in this connection said R. Simeon b. Laqish, "Even a purse full of coins when exchanged for a purse full of coins — so money can effect a barter."

6. I:12: Said Rabbah said R. Huna, "If someone said to another party, 'Sell it to me for these coins, the other has effected acquisition of the item. But the seller still has a claim of fraud against the buyer if the money is less than the true value of the object by a sixth. Should that be the case, the seller can claim to cancel the

transaction. Not having known how much coinage was in hand, A told B to sell the article for those coins, and B has agreed. The exchange is a valid one. Normally delivering the money does not effect the transfer of title, but here it does..”

a. I:13: Gloss on foregoing.

7. I:14: When A wishes to gain possession of an article belonging to B by means of a symbolical delivery of an object, with what is the transfer of title to the purchaser effected? Does A have to provide the article for effecting the title, the article he delivers being a symbolical exchange for that which he is to acquire, or B, the object he delivers being symbolical of that which he really intends giving? Rab said, “It is done with utensils belonging to the purchaser.” For it pleases the purchaser to have the seller take possession of what he is giving in barter, so that he may complete the transaction and gain title of ownership. And Levi said, “It is done with utensils belonging to the seller.”

a. I:15: Gloss on foregoing.

I. I:16: As above.

8. I:17: Transfer of title may take place with a utensil even though the utensil is not worth a perutah. Said R. Nahman, “That teaching pertains only to a utensil, but not to produce which, if used for this purpose, must be worth at least a perutah.” R. Sheshet said, “That teaching pertains even to produce.”

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

B. (4) A COIN LACKING A MINT MARK ACQUIRES A MINTED COIN, BUT A MINTED COIN DOES NOT ACQUIRE A COIN LACKING A MINT MARK. (5) MOVABLE GOODS ACQUIRE COINS, BUT COINS DO NOT ACQUIRE MOVABLE GOODS. THIS IS THE GOVERNING PRINCIPLE: ALL SORTS OF MOVABLE OBJECTS EFFECT ACQUISITION OF ONE ANOTHER.

1. II:1: What is the meaning of “a coin lacking a mint mark”?

C. HOW SO? IF THE BUYER HAD DRAWN PRODUCE INTO HIS POSSESSION BUT NOT YET PAID OVER THE COINS, HE NONETHELESS CANNOT RETRACT. IF HE HAD PAID OVER THE COINS BUT HAD NOT YET DRAWN THE PRODUCE INTO HIS POSSESSION, HE HAS THE POWER TO RETRACT.

1. III:1: Said R. Yohanan, “By the law of the Torah, the transfer of money does effect the transfer of title from one man to the other, and why has it been said that only an act of drawing effects the transfer of ownership? It is a precautionary measure, lest one say to the other, ‘It is your wheat that was burned in the loft.’” R. Simeon b. Laqish said, “The act of drawing as the sole medium for the transfer of title is explicitly set forth by the law of the Torah and it is not merely in the status of a precautionary measure; transfer of money does not serve.”

a. III:2: Secondary development of foregoing.

b. III:3: As above.

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

d. III:5: As above. Continuing III:4.

e. III:6: As above. And so said R. Nahman, ““By the law of the Torah, the transfer of money does effect the transfer of title from one man to the other.” Now Levi taught in his collection of teachings on Tannaite authority and found the following.

D. TRULY HAVE THEY SAID: HE WHO EXACTED PUNISHMENT FROM THE MEN OF THE GENERATION OF THE FLOOD AND THE GENERATION OF THE DISPERSION IS DESTINED TO EXACT PUNISHMENT FROM HIM WHO DOES NOT KEEP HIS WORD.

1. IV:1: Abbaye said, “He is informed of that fact being warned that God punishes those who renege.” Raba said, “He is cursed formally.”

a. IV:2: As to a deposit, to which the probative case of IV:1 refers — Rab says, “One effects title only to the value of the deposit.” R. Yohanan says, “One effects title to the whole purchase represented by the deposit.” The point of relevance comes at the end: And what is the difference between real estate and movables? Real estate, title to which is transferred through the payment of money, is wholly acquired through the transfer of a pledge or deposit or security, while movables, subject only to the curse, He who exacted punishment, are acquired not wholly but only up to the value of what is left as a pledge.

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

A. IV:4: Illustrative case.

1. IV:5: Expansion of foregoing.

2. IV:6: Now has R. Yohanan really said violating a verbal transaction does involve a breach of faith? But has not Rabbah b. b. Hana said R. Yohanan said, “He who says to his fellow, ‘I am giving you a present’ can retract.”

3. IV:7: Illustrative case.

E. R. SIMEON SAYS, “WHOEVER HAS THE MONEY IN HIS HAND — HIS HAND IS ON TOP.”

1. V:1: It has been taught on Tannaite authority: Said R. Simeon, “When is that the case? When both the money and the produce are in the possession of the seller. But if the money is in the possession of the seller, but the produce is in the possession of the purchaser, he cannot retract, because the money is in his hand.” “In his hand” — but it is in the hand of the seller! Say, “It is because the money’s worth is in his hand and he has already received the goods.”

a. V:2: Illustrative case.

XXXIV. Mishnah-Tractate Baba Mesia 4:3

A. FRAUD OVERREACHING IS AN OVERCHARGE OF FOUR PIECES OF SILVER OUT OF TWENTY-FOUR PIECES OF SILVER TO THE SELA — ONE-SIXTH OF THE PURCHASE PRICE.

1. I:1: Rab said, “What we have learned to repeat in the Mishnah is, ‘a sixth of the purchase price reckoned at true value’ one-sixth of the purchase price. And Samuel said, “A sixth of the money paid also was taught.”

a. I:2: We have learned in the Mishnah: ` Fraud overreaching is an overcharge of four pieces of silver out of twenty-four pieces of silver to the sela — one-sixth of the purchase price. Does this not mean that one has sold something forth twenty for twenty four, so a sixth of the money paid also is covered by the Mishnah’s teaching?

b. I:3: We have learned in the Mishnah: R. Tarfon gave instructions in Lud: “Fraud is an overcharge of eight pieces of silver to a sela — one — third of the purchase price.” Does this not mean that one sold something worth sixteen for twenty-four, so a third of the money that was paid is covered and the rule then refutes Rab’s reading of the Mishnah?

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

d. I:5: In the opinion of rabbis, does an overcharge of less than a sixth immediately represent an act of renunciation by the seller, or is that the case only when he has had time to show the purchase to a merchant or a relative?

e. I:6: If a purchase is annulled, in the view of rabbis, may one retract without time-limit, or perhaps one may retract only within the time it would take to show the article to a merchant or a relative.

f. I:7: Said Raba, “The decided law is this: if the fraud is less than a sixth of variation from true value, the transaction is irrevocable. If it is more than a sixth, the transaction is null. If it is precisely a sixth, the transaction is valid, but the overcharge has to be returned. And in both cases, the complaint must be made within the span of time that is required to show the object to a merchant or a relative.”

B. FOR HOW LONG IS IT PERMITTED TO RETRACT IN THE CASE OF FRAUD? SO LONG AS IT TAKES TO SHOW THE ARTICLE TO A MERCHANT OR A RELATIVE.

R. TARFON GAVE INSTRUCTIONS IN LUD: FRAUD IS AN OVERCHARGE OF EIGHT PIECES OF SILVER TO A SELA — ONE-THIRD OF THE PURCHASE PRICE.” SO THE MERCHANTS OF LUD REJOICED. HE SAID TO THEM, “ALL DAY LONG IT IS PERMITTED TO RETRACT.” THEY SAID TO HIM, “LET R. TARFON LEAVE US WHERE WE WERE.” AND THEY REVERTED TO CONDUCT THEMSELVES IN ACCORD WITH THE RULING OF SAGES.

1. II:1: Said R. Nahman, “This was taught only in connection with the purchaser. But as to the seller, he always has a right to retract.”

a. II:2: Illustrative case.

b. II:3: As above.

c. II:4: As above.

XXXV. Mishnah-Tractate Baba Mesia 4:4

A. ALL THE SAME ARE THE BUYER AND THE SELLER: BOTH ARE SUBJECT TO THE LAW OF FRAUD. JUST AS FRAUD APPLIES TO AN ORDINARY PERSON, SO IT APPLIES TO A MERCHANT.

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

B. R. JUDAH SAYS, “FRAUD DOES NOT APPLY TO A MERCHANT WHO CANNOT LAY CLAIM TO HAVING BEEN DEFRAUDED.”

1. II:1: Is it merely because he is a merchant that he cannot claim he has been defrauded?

C. HE WHO HAS BEEN SUBJECTED TO FRAUD — HIS HAND IS ON TOP. IF HE WANTED, HE SAYS TO HIM, “RETURN MY MONEY.” OR, IF HE WANTED, HE SAYS TO HIM, “GIVE ME BACK THE AMOUNT OF THE FRAUD.”

1. III:1: In accord with which authority is our Mishnah-teaching? It accords with neither R. Nathan nor with R. Judah the Patriarch.

2. III:2: He who says to his fellow, “I make this sale to you on the stipulation that you may not lay claim of fraud by reason of variation from true value against me” — Rab said, “He nonetheless may lay claim of fraud by reason of variation from true value against him.” Samuel said, “He may not lay claim of fraud by reason of variation from true value against him.”

a. III:3: Amplification of foregoing in a Tannaite complement: He who does business on trust the buyer, B, trusts the seller, A, as to the price he paid for the goods, and is willing to allow him a certain percentage for profit — lo, this one should not calculate inferior goods on trust and superior ones at par, but either wholly on trust or wholly at par. He must pay the cost of portage, transportation, and storage, but he does not get paid for his own trouble, since he already has been paid in full

XXXVI. Mishnah-Tractate Baba Mesia 4:5-6

A. HOW MUCH MAY A SELA BE DEFECTIVE AND STILL NOT FALL UNDER THE RULE OF FRAUD? R. MEIR SAYS, “FOUR ISSARS, AT AN ISSAR TO A DENAR” R. JUDAH SAYS, “FOUR PONDIONS, AT A PONDION TO A DENAR “ R. SIMEON SAYS, “EIGHT PONDIONS, AT TWO PONDIONS TO A DENAR.”

1. I:1: An objection was raised: How much may a sela be defective so that it falls under the rule of fraud?

2. I:2: What is the difference between a sela, in which there is broad disagreement on the per centage of variation from true value that involves fraud, and a garment, in which excluding Tarfon there is no disagreement on the per centage of variation

from true value that involves fraud all parties concurring that it is one-sixth of true value?

a. I:3: Reversion to a secondary gloss of I:1.

I. I:4: Gloss of foregoing.

II. I:5: Gloss of foregoing.

III. I:6: As above.

IV. I:7: As above.

B. HOW LONG IS IT PERMITTED TO RETURN A DEFECTIVE SELA? IN LARGE TOWNS, FOR THE LENGTH OF TIME IT TAKES TO SHOW TO A MONEY CHANGER. AND IN VILLAGES, UP TO THE EVE OF THE SABBATH.

1. II:1: What is the difference in the case of a sela that we distinguish between town and village, while in the case of a garment we make no such distinction?

C. IF THE ONE WHO GAVE IT RECOGNIZES IT, EVEN AFTER TWELVE MONTHS HE IS TO ACCEPT IT FROM HIM. BUT IF THE ONE WHO GAVE THE COIN REFUSES TO TAKE IT BACK, HE HAS NO VALID CLAIM AGAINST THE OTHER EXCEPT RESENTMENT.

1. III:1: To what circumstance does this rule apply, to towns? But you have said, In large towns, for the length of time it takes to show to a money changer. Then is it in villages? But you have said, And in villages, up to the eve of the Sabbath.

D. HE MAY GIVE IT FOR PRODUCE IN THE STATUS OF SECOND TITHE, FOR EASY TRANSPORTATION TO JERUSALEM, AND NEED NOT SCRUPLE, FOR IT IS ONLY CHURLISHNESS TO REFUSE A SLIGHTLY DEPRECIATED COIN.

1. IV:1: Said R. Pappa, “This implies that one who is too meticulous about the coins that are given to him is called churlish, but that is the case only if the coins are sufficient in volume of precious metal to circulate.”

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

a. IV:3: Gloss of foregoing.

I. IV:4: Gloss of the gloss.

II. IV:5: Continuation of the foregoing.

III. IV:6: Continuation of the foregoing. Our rabbis have taught on Tannaite authority: “If a man wishes to redeem any of his tithe, he shall add a fifth to it” (Lev. 27:31): “any of his tithe” — but not all of the produce he has designated as tithe, excluding then the case of produce in the status of second tithe that is not worth even a perutah and this cannot be redeemed through an exchange of produce and money. It has been stated: R. Ammi said, “The tithe

itself is not worth a perutah.” R. Assi said, “The added fifth is less than the specified perutah. Even if the produce is worth more than a perutah, no redemption is possible if the fifth to be added is less than a perutah.”

E. COMPOSITE ON THE ADDED FIFTH

1. IV:7: The question was raised: as to the added fifth, is it calculated on the principal or on the principal plus the addition, if the principal is worth 20 zuz, must one add 4 zuz, a fifth of the principal, or 5, a fifth of the principal plus the added fifth?

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

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

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

b. IV:11: Said R. Yohanan, “All concur in the case of that which has been consecrated and then redeemed in which case, the added fifth must be paid, that even without the payment of the added fifth, it is held to be redeemed, since the Temple treasurers will claim the added fifth in the market place.”

3. IV:12: Said R. Ammi bar Hama, “Lo, they have said, ‘That which has been consecrated to the Temple cannot be secularized through an exchange of land of equivalent value, for the All-Merciful has said, “Then he shall give the money and it shall be assured to him” (Lev. 27:19) meaning, money but not land.’ But as to the required added fifth, what is the law as to rendering the originally consecrated thing secular through an exchange of land?”

4. IV:13: Said Raba, “With regard to robbery it is written, ‘He shall even restore it in the principal, and he shall add the fifth part more thereto’ (Lev. 5:24), and in this regard we have learned: If he restored the principal and took a false oath concerning the added fifth claiming he had already paid it when he had not, he must add a fifth to that fifth, and so on, until the principal is less than a perutah in worth. With regard to food in the status of priestly rations, it is written, “‘And if a man eat of the holy thing unwittingly, then he shall add the fifth part thereof to it’ (Lev. 22:14), and in this regard we have learned: If one eats priestly rations unwittingly, he must pay back the principal and an added fifth, and that is whether he has eaten, drunk, or anointed with it; whether or not it was clean or unclean priestly rations, he must pay a fifth and a fifth of the fifth. With respect to food that has been designated second tithe, we have neither a verse of Scripture nor a teaching of sages, nor has it come up for us as a problem.

a. IV:14: Gloss of foregoing.

5. IV:15: A Tannaite authority repeated before R. Eleazar, “‘And if it be of the unclean beast, if an unclean animal was consecrated then he shall redeem it according to your estimation and shall add a fifth part thereto’ (Lev. 27:27). Just as the unclean beast is singular in that it was originally consecrated and the whole of it belongs to Heaven and the laws of sacrilege apply to it, so anything that was originally consecrated, wholly belonging to heaven, is subject to the laws of sacrilege.”

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

a. IV:17: Gloss of foregoing.

XXXVII. Mishnah-Tractate Baba Mesia 4:7

A. DEFRAUDING THROUGH OVERREACHING INVOLVES AN OVERCHARGE OF FOUR PIECES OF SILVER FOR WHAT ONE HAS BOUGHT FOR A SELA = ONE SIXTH OVER TRUE VALUE. AND A CLAIM INVOLVING A COURT-IMPOSED OATH MUST BE FOR A CLAIM OF AT LEAST TWO SILVER MAAHS. AN ADMISSION MUST BE FOR AT LEAST WHAT IS WORTH A PERUTAH.

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

B. THERE ARE FIVE KINDS OF RULES INVOLVING THAT WHICH IS WORTH A PERUTAH: (1) AN ADMISSION MUST BE FOR AT LEAST WHAT IS WORTH A PERUTAH. (2) A WOMAN IS BETROTHED FOR THAT WHICH IS WORTH A PERUTAH. (3) HE WHO DERIVES USE TO THE VALUE OF A PERUTAH FROM THAT WHICH BELONGS TO THE SANCTUARY HAS COMMITTED SACRILEGE. (4) HE WHO FINDS THAT WHICH IS WORTH A PERUTAH IS LIABLE TO MAKE PROCLAMATION. (5) HE WHO STEALS FROM HIS FELLOW SOMETHING TO THE VALUE OF A PERUTAH AND TAKES A FALSE OATH TO THE CONTRARY AND THEN CONFESSES HIS CRIME MUST BRING IT AFTER HIM, EVEN TO MEDIA.

1. II:1: Why not include also, “The minimum case involving overreaching must be at least of the value of a perutah”?

a. II:2: Gloss of foregoing.

XXXVIII. Mishnah-Tractate Baba Mesia 4:8

A. THERE ARE FIVE INSTANCES IN WHICH AN ADDED FIFTH APPLIES: (1) HE WHO EATS (1) HEAVE OFFERING, (2) HEAVE OFFERING OF TITHE, (3) HEAVE OFFERING OF TITHE TAKEN FROM DOUBTFULLY TITHED PRODUCE, (4) DOUGH OFFERING, AND (5) FIRST FRUITS, WHEN HE MAKES RESTITUTION ADDS A FIFTH TO THE VALUE OF THE PRINCIPAL. (2) HE WHO REDEEMS PAYS COINS TO BRING TO JERUSALEM IN PLACE OF PRODUCE DERIVING FROM A FOURTH-YEAR PLANTING OR FROM HIS SECOND TITHE ADDS A FIFTH. (3) HE WHO REDEEMS THAT WHICH HE HAS CONSECRATED ADDS A FIFTH. (4) HE WHO DERIVES BENEFIT TO THE EXTENT OF A PERUTAH FROM THAT WHICH HAS BEEN CONSECRATED WHEN HE MAKES RESTITUTION ADDS A FIFTH. (5) HE WHO STEALS FROM HIS FELLOW THAT WHICH IS WORTH A PERUTAH AND TAKES A FALSE OATH TO HIM WHEN HE WISHES TO CONFESS AND EFFECT RESTITUTION ADDS A FIFTH.

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

XXXIX. Mishnah-Tractate Baba Mesia 4:9

A. THESE ARE MATTERS WHICH ARE NOT SUBJECT TO A CLAIM OF FRAUD ON ACCOUNT OF OVERCHARGE: (1) SLAVES, (2) BILLS OF INDEBTEDNESS WHICH ARE DISCOUNTED AND SOLD, (3) REAL ESTATE,

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

a. I:2: he who sells his deeds to a perfume dealer — they are subject to the consideration of overreaching.

B. ...AND (4) THAT WHICH HAS BEEN CONSECRATED.

1. II:1: Scripture has said, “And if you sell to your neighbor or buy from your neighbor, you shall not wrong one another” (Lev. 25:14) — “one’s brother” but not that which has been consecrated.

C. OTHER MATTERS TO WHICH THE LAW OF OVERREACHING DOES NOT APPLY

1. II:2: R. Zira raised the question, “Does the law of overreaching pertain to hiring a worker or not? Scripture has said, ‘And if you sell to your neighbor’ (Lev. 25:14) — thus excluding a case of employment.

2. II:3: Raba raised the question, “As to wheat that is sown in the soil a man was engaged to sow a field with wheat, and the wheat belongs to the worker, what is the law? Does overreaching pertain to that transaction or not?”

3. II:4: Said Raba said R. Hasa, “R. Ammi raised the question: if these listed items slaves, bills of indebtedness which are discounted and sold, real estate, and that

which has been consecrated are not subject to the rule of overreaching, are the subject to the rules governing the nullification of a sale or not? The law permits a complete cancellation for a variation from true value of more than a sixth.”

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

5. II:6: There we have learned in the Mishnah: He who says, “Lo, this is instead of that,” “...the substitute of that,” “...the exchange of that,” — lo, this is a substitute. He who says, “Lo, this is unconsecrated through that,” — it is not a substitute. And if it was a blemished consecrated animal, it goes forth for unconsecrated purposes, but one must make good its full value (M. **Tem. 5:5A-D**). Said R. Yohanan, “It goes forth for unconsecrated purposes by the law of the Torah, but one must make good its full value by the decree of rabbis.” And R. Simeon b. Laqish said, “Also one must make good its full value by the law of the Torah.” What can be at issue between the two? If we say that it is within the limit of overreaching in that the substitute is worth less than the original only by an amount that constitutes overreaching, not cancellation of the transaction, then in such a case would R. Simeon b. Laqish say one must make good its full value by the law of the Torah? And have we not learned in the Mishnah: These are matters which are not subject to a claim of fraud on account of overcharge: (1) slaves, (2) bills of indebtedness which are discounted and sold, (3) real estate, and (4) that which has been consecrated.

a. II:7: Gloss of foregoing.

D. ...THEY ARE NOT SUBJECT TO TWOFOLD RESTITUTION:

1. III:1: What is the source in Scripture for this rule?

E. ...NOR IN THE CASE OF A CONSECRATED OX OR SHEEP TO FOURFOLD OR FIVEFOLD RESTITUTION.

1. IV:1: How come?

F. AN UNPAID BAILEE IS NOT REQUIRED TO TAKE AN OATH ON THEIR ACCOUNT, THAT HE HAS NOT INFLICTED DAMAGE.

1. V:1: What is the source in Scripture for this rule?

G. AND A PAID BAILEE DOES NOT HAVE TO PAY COMPENSATION ON THEIR ACCOUNT, IF THEY ARE STOLEN OR LOST.

1. VI:1: What is the source in Scripture for this rule?

H. AN UNPAID BAILEE IS NOT REQUIRED TO TAKE AN OATH ON THEIR ACCOUNT, THAT HE HAS NOT INFLICTED DAMAGE.

1. VII:1: An objection was raised on the basis of the following: If townsfolk sent their sheqel-tax payment to the temple in Jerusalem to pay for the public sacrifices, and the money was stolen or lost, if this took place after the heave-offering of the coins had been taken up the messengers take an oath to the Temple treasurers that they were not at fault. But if not, the messengers take an oath to the townsfolk,

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

I. AND A PAID BAILEE DOES NOT HAVE TO PAY COMPENSATION ON THEIR ACCOUNT, IF THEY ARE STOLEN OR LOST:

1. VIII:1: R. Joseph bar Hama objected to Rabbah, “On the one side we have learned: And a paid bailee does not have to pay compensation on their account, if they are stolen or lost. But there is the following contradiction: He a Temple treasurer who hires a worker to watch his cow or to watch his child or to guard his crop should not give him his wage for the Sabbath labor at all. Therefore the guard is not responsible to him to make restitution for whatever may take place on the Sabbath, should harm befall that day. If he was hired by the week, by the month, or by the year, or by the septennate, he pays him his salary for the Sabbath as well. Therefore the guard is responsible to him to make restitution for whatever may take place on the Sabbath. He should not say to him, ‘Pay me my salary for the Sabbath,’ but he says to him, ‘Pay me for ten days’ (T. [Shabbat 17:26-28](#)). Is not the meaning of the phrase Therefore the guard is responsible to him to make restitution to pay for the loss? And the upshot is that a paid bailee does have to pay compensation on their account, if they are stolen or lost?”

J. R. SIMEON SAYS, “HOLY THINGS FOR WHICH ONE IS LIABLE FOR REPLACEMENT SHOULD THEY BE LOST ARE SUBJECT TO A CLAIM OF FRAUD ON ACCOUNT OF OVERCHARGE. HOLY THINGS FOR WHICH ONE IS NOT LIABLE FOR REPLACEMENT SHOULD THEY BE LOST ARE NOT SUBJECT TO A CLAIM OF FRAUD ON ACCOUNT OF OVERCHARGE”

1. IX:1: A Tannaite expert repeated before R. Isaac bar Abba, “Holy Things for which one is liable for replacement should they be lost if someone received a consecrated animal and then denied having received it but then repented and confessed, he is liable to bring a guilt offering, Lev. 5:21-25, because for I invoke in their regard the verse, ‘If a soul sin and commit a trespass against the Lord and lie’ (Lev. 5:21). But for those consecrated beasts for which one is not liable to pay restitution should they be lost, a bailee is not liable, because I invoke in this regard the verse, ‘If a soul sin against his neighbor and lie.’”

K. R. JUDAH SAYS, “ALSO: HE WHO SELLS A SCROLL OF THE TORAH, A BEAST, OR A PEARL — THEY ARE NOT SUBJECT TO A CLAIM OF FRAUD BY REASON OF OVERCHARGE.” THEY SAID TO HIM, “THEY HAVE SPECIFIED ONLY THESE.”

1. X:1: R. Judah says, “The sale of a scroll of the Torah is not subject to the law of overreaching, because it is beyond price, a beast or a pearl, because a person wants to buy them for a match with their counterpart and therefore there is no limit to what he is going to be willing to pay.” They said to him, “But is it not so that every sort of object a man may want to match up with its pair?” (T. [B.M. 3:24A-D](#)).

2. X:2: It has been taught on Tannaite authority: R. Judah b. Petera says, “A horse, battle-ax, and good sword in time of war are not subject to a claim of fraud by reason of overcharge” (T. **B.M. 3:24E**).

XL. Mishnah-Tractate Baba Mesia 4:10

A. JUST AS A CLAIM OF FRAUD APPLIES TO BUYING AND SELLING SO A CLAIM OF FRAUD APPLIES TO SPOKEN WORDS. ONE MAY NOT SAY TO A STOREKEEPER, “HOW MUCH IS THIS OBJECT?” KNOWING THAT HE DOES NOT WANT TO BUY IT. IF THERE WAS A PENITENT, ONE MAY NOT SAY TO HIM, “REMEMBER WHAT YOU USED TO DO!” IF HE WAS A CHILD OF PROSELYTES, ONE MAY NOT SAY TO HIM, “REMEMBER WHAT YOUR FOLKS USED TO DO!” FOR IT IS SAID, “AND A PROSELYTE YOU SHALL NOT WRONG NOR OPPRESS” (EXO. 22:20):

1. I:1: “You will not wrong one another” (Lev. 25:17). Scripture speaks of wrongs committed by acts of speech.
2. I:2: Said R. Yohanan in the name of R. Simeon b. Yohai, “Far more common is fraud in spoken words than fraud in matters of property. For of the former it is written, ‘and you shall fear your God,’ but that is not said of the latter.”
3. I:3: A Tannaite authority recited before R. Nahman bar Isaac, “Whoever embarrasses his fellow in public is as though he shed blood.”
4. I:4: Said Abbayye to R. Dimi, “In the West, about what are people most meticulous?” He said to him, “Not embarrassing somebody.”
5. I:5: Said Rabbah bar bar Hana said R. Yohanan, “It would be better for someone to have sexual relations with a woman who may or may not be married but not embarrass his fellow in public.”
6. I:6: Mar Zutra bar Tubiah said Rab said, and some say, said R. Hana bar Bizna said R. Simeon Hasida, and some say, said R. Yohanan in the name of R. Simeon b. Yohai, “It would be better for someone to through himself into a fiery furnace than to embarrass his fellow in public.”
7. I:7: Said R. Hinena son of R. Idi, “What is the meaning of the verse of Scripture, ‘You shall not wrong one another’ (Lev. 25:14)?”
8. I:8: Said Rab, “One should always be careful about not wronging his wife in words, since she cries easily, she is readily wronged.”
9. I:9: R. Eleazar said, “From the day on which the house of the sanctuary was destroyed, the gates of prayer have been locked.”
10. I:10: And Rab said, “Whoever follows his wife’s advice falls into Gehenna: ‘But there was not like Ahab, who sold himself to work wickedness in the sight of the Lord, whom Jezebel, his wife, stirred up’ (1Ki. 21:25).”
11. I:11: Said R. Hisda, “All gates are locked, except for the gates that receive complaints against overreaching, as it is said, ‘Behold, the Lord stood by a wall of wrongs, and in his hand were the wrongs’ (Amo. 7: 7).”
12. I:12: Said R. Abbahu, “There are three sins before which the curtain is not locked: overreaching, robbery and idolatry.”

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

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

B. THE WIFE’S PRAYER: ALL GATES ARE LOCKED, EXCEPT FOR THE GATES THAT RECEIVE COMPLAINTS AGAINST OVERREACHING

1. I:15: There we have learned: If one cut a clay oven into parts and put sand between the parts, R. Eliezer declares the oven broken-down and therefore insusceptible to uncleanness. And sages declare it susceptible. And this is what is meant by the oven of Akhnai M. Kel. 5:10. Why the oven of Akhnai? Said R. Judah said Samuel, “It is because they surrounded it with argument as with a snake and proved it was insusceptible to uncleanness.”

C. REVERSION TO THE MAIN LINES OF EXPOSITION

1. I:16: He who abuses the proselyte violates three negative commandments, and one who oppresses him violates two.

2. I:17: R. Eliezer the Elder says, “On what account has the Torah admonished against wronging the proselyte in thirty-six passages, and others say, in forty six? It is because he has a very strong impulse to do evil.”

3. I:18: What is the meaning of the verse of Scripture, “You shall not wrong a stranger nor oppress him, for you were strangers in the land of Egypt” (Exo. 22:20)? R. Nathan says, “If you have a fault, do not impute it to your fellow.”

XLI. Mishnah-Tractate Baba Mesia 4:11-12C

A. THEY DO NOT COMMINGLE ONE SORT OF PRODUCE WITH ANOTHER SORT OF PRODUCE, EVEN NEW AND NEW PRODUCE, PLUCKED IN THE SAME GROWING SEASON, AND IT GOES WITHOUT SAYING, NEW WITH OLD.

1. I:1: With reference to the statement, They do not commingle one sort of produce with another sort of produce, even new and new produce, plucked in the same growing season, and it goes without saying, new with old, it is not necessary to say that when the new produce is at four seahs per sela while the old is priced at three, they may not be commingled. But even if the new is at three and the old is at four, they may not be commingled, because the higher price of the new grain is that one wishes to age them. The higher price of the new grain is not due to its superiority but to the fact that there is no market that year and merchants are buying ahead for the following, while if they store last year’s grain, it may be too old when they need it. Hence when one stipulates that he wants old grain, it is evidence that he needs it for immediate use, and it may not be mixed with new, though this is more expensive.

B. TO BE SURE, IN THE CASE OF WINE THEY HAVE PERMITTED COMMINGLING STRONG WITH WEAK, BECAUSE IT IMPROVES IT.

1. II:1: Said R. Eleazar, “That is to say, every passage in which the language, ‘to be sure’ or: ‘in truth’ is stated, that constitutes the decided law.”

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

C. THEY DO NOT COMMINGLE THE LEES OF WINE WITH WINE. BUT ONE MAY HAND OVER TO A PURCHASER THE LEES OF THE WINE HE IS BUYING.

1. III:1: Now in the opening clause you have said they may not be commingled at all. And should you reply that what is the intention of the language, But one may hand over to a purchaser the lees of the wine he is buying, is that he must simply inform him of what is being handed over, since you have stated in the concluding clause, He whose wine got mixed with water may not sell it in a store, unless he informs the purchaser, nor to a merchant, even though he informs him, it stands to reason that the opening clause is framed for a situation in which the seller has not informed the buyer at all!

D. HE WHOSE WINE GOT MIXED WITH WATER MAY NOT SELL IT IN A STORE, UNLESS HE INFORMS THE PURCHASER, NOR TO A MERCHANT, EVEN THOUGH HE INFORMS HIM. FOR THE LATTER BUYS IT ONLY TO DECEIVE OTHERS THEREBY.

1. IV:1: Raba brought wine from a shop. He mixed it and tasted it, but it was not good tasting, so he returned it to the shop. Said to him Abbaye, “But lo, we have learned in the Mishnah: nor to a merchant, even though he informs him.”

E. IN A PLACE IN WHICH IT IS THE CUSTOM TO PUT WATER IN WINE, ONE MAY DILUTE IT.

A MERCHANT PURCHASES GRAIN FROM FIVE THRESHING FLOORS AND PUTS IT ALL INTO ONE STORAGE-BIN, WINE FROM FIVE WINE-PRESSES AND PUTS IT INTO A SINGLE STORAGE-JAR – ON CONDITION THAT HE NOT INTEND TO COMMINGLE WINE OF DIVERSE QUALITY FOR THE PURPOSE OF FRAUD.

1. V:1: In a place in which it is customary to put water into wine for a half, a third, or a quarter of the volume of the whole, they put it in, and people must not vary from the established custom of the locale.

XLII. Mishnah-Tractate Baba Mesia 4:12D-L

A. R. JUDAH SAYS, “A STOREKEEPER SHOULD NOT HAND OUT PARCHED CORN AND NUTS TO LITTLE CHILDREN, BECAUSE IN THAT WAY HE MAKES IT THEIR HABIT TO BUY FROM HIM.” BUT SAGES PERMIT.

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

B. AND HE SHOULD NOT CUT THE PREVAILING PRICE. BUT SAGES SAY, “IF HE DOES SO, HIS MEMORY WILL BE BLESSED.”

1. II:1: What is the reasoning behind the position of rabbis permitting price-competition?

C. “HE SHOULD NOT SIFT CRUSHED BEANS,” THE WORDS OF ABBA SAUL. AND SAGES PERMIT. BUT THEY CONCEDE THAT HE SHOULD NOT SIFT THEM SOLELY AT THE ENTRY OF THE STORAGE BIN, FOR HE WOULD DO SO ONLY TO CREATE A FALSE PICTURE OF THE QUALITY OF WHAT IS IN THE BIN.

1. III:1: Which sages are represented here?

D. THEY DO NOT BEAUTIFY WHAT THEY SELL — EITHER MAN, BEAST, OR UTENSILS.

1. IV:1: Tannaite complement: They do not curry a beast or blow up the intestines for sale, and they do not put meat in water to increase its weight

a. IV:2: Gloss of foregoing: Why paint human beings?

XLIII. Mishnah-Tractate Baba Mesia 5:1

A. WHAT IS INTEREST, AND WHAT IS INCREASE WHICH IS TANTAMOUNT TO TAKING INTEREST? WHAT IS INTEREST? HE WHO LENDS A SELA WHICH IS FOUR DENARS FOR A RETURN OF FIVE DENARS, TWO SEAHs OF WHEAT FOR A RETURN OF THREE — BECAUSE HE BITES OFF TOO MUCH.

1. I:1: Since, as a matter of fact, the Tannaite authority of our Mishnah neglects the matter of interest, which is the Torah’s namely, usury on a transaction of a loan and defines it only in its rabbinical sense the illustration of increase in the Mishnah involves a rabbinical extension of the law, it follows that in the law of the Torah, interest and increase are essentially the same thing. But Scripture, for its part, speaks of interest in the context of money, and increase in the context of food! So why not differentiate them here?

2. I:2: Our rabbis have taught on Tannaite authority: “You shall not give him any money upon interest (neshekh) nor lend him your food for increase (marbit)” (Lev. 25:37) — I know only that interest pertains to liquid capital, and increase to produce. How do I know that the prohibition of interest pertains to produce? Scripture states, “You shall not lend upon usury to your brother interest of money, interest of food” (Deu. 23:20). And how do we know that the prohibition of increase pertains to liquid capital?

a. I:3: Rabina said, “It is not necessary to derive proof from verses of Scripture to prohibit either interest in produce or increase with liquid capital.”

3. I:4: Said Raba, “Why did the All-Merciful make explicit reference to the prohibition against increase, robbery, and overreaching since all three involve taking something to which one is not entitled. Prohibiting one would have yielded the same rule for all three.”

a. I:5: Gloss of foregoing. As to “you shall not steal” (Lev. 19:11), for what purpose did the All-Merciful write that commandment?

b. I:6: As above. Said R. Yemar to R. Ashi, “As to the explicit prohibition of false weights that the All-Merciful has stated in writing, what need do I have for it since this is just another form of robbery?”

4. I:7: Our rabbis have taught on Tannaite authority: “You shall do no unrighteousness in judgment, in lineal measure, in weight, or in liquid measure (Lev. 19:35): “lineal measure:” this refers to surveying land, indicating that one should not survey for one party in the summer and for the other in the rainy season when the measuring cord is longer.

a. I:8: Said Raba, “Why did the All-Merciful make mention of the exodus of Egypt when speaking of the matters of increase, fringes, and weights? “You shall take no usury from him nor increase...I am the Lord your God who brought you out of the Land of Egypt” (Lev. 25:36, 38); fringes: “Speak to the children of Israel and command them to make fringes on the borders of their garments...I am the Lord your God who brought you out of the land of Egypt” (Num. 15:38, 41); weights: “Just balances, just weights, a just ephah, and a just hin shall you have, I am the Lord your God who brought you out of the land of Egypt” (Lev. 19:36)?”

b. I:9: Rabina came to Sura on the Euphrates. Said to him R. Hanina of Sura on the Euphrates to Rabina, “Why is it that the All-Merciful mentioned the exodus from Egypt when speaking of forbidden creeping things ‘You shall not make yourselves unclean with any sort of creeping thing that creeps on the earth, for I am the Lord who brings you up out of the land of Egypt’ (Lev. 11:44,45)?”

B. AND WHAT IS INCREASE? HE WHO INCREASES PROFITS IN COMMERCE IN KIND:

1. II:1: But then is the prior example — He who lends a sela which is four denars for a return of five denars, two seahs of wheat for a return of three — not a case of increase? Said R. Abbahu, “The first instance involves the prohibition on the strength of the law of the Torah, the second, what is prohibited by their sages’ authority.” And so said Raba, “The first instance involves the prohibition on the strength of the law of the Torah, the second, what is prohibited by their sages’ authority.”

2. II:2: As to the distinction between direct interest and indirect interest, said R. Eleazar, “Direct interest may be reclaimed in court, while indirect interest may not be recovered in court.” R. Yohanan said, “Even direct interest also may not be recovered in court.”

3. II:3: Said R. Safra, “In any case in which, according to gentile law, one will exact what is owing from the debtor to the creditor, in accord with our law, we make restitution from the creditor to the debtor, and in any case in which, by gentile law, we do not exact payment from the debtor to the creditor, in accord with our law, we do not make restitution from the creditor to the debtor.”

C. HOW SO? IF ONE PURCHASES FROM ANOTHER WHEAT AT A PRICE OF A GOLDEN DENAR 25 DENARS FOR A KOR, WHICH WAS THEN THE PREVAILING PRICE, AND THEN WHEAT WENT UP TO THIRTY DENARS. IF HE SAID TO HIM, “GIVE ME MY WHEAT, FOR I WANT TO SELL IT AND BUY WINE WITH THE PROCEEDS” — AND HE SAID TO HIM, “LO, YOUR WHEAT IS RECKONED AGAINST ME FOR THIRTY DENARS, AND LO, YOU HAVE A CLAIM OF WINE ON ME” — BUT HE HAS NO WINE.

1. III:1: So if he does not have any wine, what difference does it make? Have we not learned on Tannaite authority the following: They do not strike a bargain for the price of produce before the market price is announced. Once the market price is announced, they strike a bargain, for even though this one does not have the produce for delivery, another one will have it ?

a. III:2: Gloss of a detail of the foregoing.

2. III:3: Rabbah and R. Joseph both say, “What is the reason that rabbis have said, ‘One may contract to supply produce at the current market price, even if he does not have any at that moment’? Because the other can say to him, ‘Take your favor and toss it into a bush! How do you do me any good? If I had the money, I could have bought the produce cheaply in Hini or Shili. The purchaser derives no benefit by advancing money to the seller. The question of usury does not arise.”

3. III:4: Both Rabbah and R. Joseph said, “One who hands over money in advance at the early market price after harvest but before trade has gotten under way and yielded a fixed price, thus at a low price; that is permitted if the seller has the grain in hand has to put in an appearance at the granary.”

4. III:5: Said R. Nahman, “The generative principle of interest is this: any fee paid for waiting on the return of one’s money is deemed forbidden.”

5. III:6: And said R. Nahman, “One who borrows money from his neighbor and found a surplus in the money received, if it is a sum about which one can have made an error, he must return it; if not, then it is deemed a gift that he has given him.”

a. III:7: Gloss of the foregoing. If someone gives money to a gardener for gourds, at the rate of ten gourds of a span’s length for a zuz, and says to him, “I will give you gourds a span’s length,” if he has them, it is a permitted transaction, but if not, it is a forbidden one since he may give him larger gourds in return for waiting for the gourds, and that looks like usury.

6. III:8: Said Abbaye, “It is permitted for someone to say to his fellow, ‘Here are four zuz for a barrel of wine; if the wine turns sour, it is subject to your ownership and you have to provide a replacement but if it goes down or goes up in value, it is in my domain.’”

XLIV. Mishnah-Tractate Baba Mesia 5:2A-C

A. HE WHO LENDS MONEY TO HIS FELLOW SHOULD NOT LIVE IN HIS COURTYARD FOR FREE. NOR SHOULD HE RENT A PLACE FROM HIM FOR LESS THAN THE PREVAILING RATE, FOR THAT IS TANTAMOUNT TO USURY.

1. I:1: 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 lent the other money and dwells in his courtyard, he does have to pay him rent.”

a. I:2: Illustrative case, in which the foregoing principle figures.

2. I:3: Said Abbaye, “If someone lent money on interest to his fellow and wheat is selling at four grivas for a zuz, and the debtor gave him five, when we reclaim the

direct interest from him which the court can and will do, we exact only four from him, in the theory that the fifth was just a cheap rate and not deemed part of the interest that had been paid.”

3. I:4: And said Abbayye, “If someone is collecting four zuz of interest from his fellow, and the other gave him in addition a cloak, when we retrieve the interest, we make him give back the four zuz but not the cloak.”

4. I:5: Said Raba, “If someone had a claim of twelve zuz of interest on his neighbor and the debtor rented him his courtyard, ordinarily worth ten zuz, for twelve, when we exact the interest-payment from him, we make him give back twelve.”

XLV. Mishnah-Tractate Baba Mesia 5:2D-K

A. ONE MAY EFFECT AN INCREASE IN THE RENT CHARGE NOT PAID IN ADVANCE, BUT NOT THE PURCHASE PRICE NOT PAID IN ADVANCE. HOW SO? IF ONE RENTED HIS COURTYARD TO HIM AND SAID TO HIM, “IF YOU PAY ME NOW IN ADVANCE, LO, IT’S YOURS FOR TEN SELAS A YEAR, BUT IF YOU PAY ME BY THE MONTH, IT’S A SELA A MONTH” — IT IS PERMITTED.

1. I:1: What is the difference between the first case and the second?

B. BUT IF HE SOLD HIS FIELD TO HIM AND SAID TO HIM, “IF YOU PAY ME THE ENTIRE SUM NOW, LO, IT’S YOURS FOR A THOUSAND ZUZ. BUT IF YOU PAY ME AT THE TIME OF THE HARVEST, IT’S TWELVE MANEH 1,200 ZUZ” — IT IS FORBIDDEN.

1. II:1: Said R. Nahman, “An increased credit price silent usury, selling goods on credit at more than cash price but without stipulating that the addition is on account of credit is permitted.”

2. II:2: Said R. Pappa, “The increased credit price that I collect is permitted. What is the reason? My beer will not deteriorate if I keep it longer, and I don’t need the money. So by giving the purchaser the beer earlier, I give a benefit to him.”

3. II:3: Said R. Hama, “The increased credit price that I collect is permitted.”

4. II:4: The decided law accords with the position of R. Hama, The decided law accords with the position of R. Eleazar, and the decided law accords with the position of R. Yannai, who said, “What is the difference between the provisions and the value of the provisions.”

XLVI. Mishnah-Tractate Baba Mesia 5:3

A. IF ONE SOLD HIM A FIELD, AND THE OTHER PAID HIM PART OF THE PRICE, AND THE VENDOR SAID TO HIM, “WHENEVER YOU WANT, BRING ME THE REST OF THE MONEY, AND THEN TAKE YOURS THE FIELD” — IT IS FORBIDDEN.

1. I:1: Who enjoys the usufruct of the field? R. Huna said, “The seller enjoys the usufruct.” R. Anan said, “It is handed over to a third party.”

2. I:2: R. Safra taught on Tannaite authority in connection with the rules of interest set forth in the house of R. Hiyya: “There are times that both the seller and the buyer are permitted to enjoy the usufruct, times that both are forbidden to enjoy

the usufruct, times that the seller is permitted and the buyer forbidden to enjoy the usufruct, and times that the buyer is permitted and the seller forbidden to enjoy the usufruct.”

3. I:3: If one mortgaged a house or mortgaged a field, and the creditor said to him, “When you want to sell them you must sell them to me only at such-and-such a stipulated price,” that is forbidden. But if he said, “...at its actual worth,” that is a permitted.”

4. I:4: If one sold a house or sold a field and said to him, “When I have the money, you must return them to me,” it is a forbidden transaction. If the lender said, “When you have the money, I will resell the house or field to you,” that is permitted.

a. I:5: Somebody sold an estate to his neighbor without surety. He saw that the other was troubled, and said to him, “Why are you troubled? If people seize the field from you in payment for a debt that I owe a third party, I will repay you out of the finest quality of property that I own, even covering your improvements and produce.”

b. I:6: A dying man issued a writ of divorce for his wife, and then groaned and signed. She said to him, “Why sigh? Should you recover, I will be yours.”

B. IF ONE LENT HIM MONEY ON THE SECURITY OF HIS FIELD AND SAID TO HIM, “IF YOU DO NOT PAY ME BY THIS DATE THREE YEARS HENCE, LO, IT IS MINE” — LO, IT IS HIS. AND THUS DID BOETHUS B. ZONIN DO, ON INSTRUCTION OF SAGES.

1. II:1: Said R. Huna, “If he made that stipulation at the moment of handing over the money, the whole of the field becomes his property if the loan is not repaid. If this was after the transmittal of the funds, he has acquired only the portion of the field that is in proportion to the worth of the money that he has lent.” And R. Nahman said, “Even if the stipulation was made after lending the money, the whole of the field becomes his.”

a. II:2: R. Nahman carried out a decision with reference to a case at the exilarch’s court where he was judge in accord with his version of the matter. R. Judah ripped up the deed that he had issued. Said the exilarch to Nahman, “R. Judah has ripped up your deed.”

2. II:3: Mar Yanuqa and Mar Qashisha, sons of R. Hisda, said to R. Ashi, “This is what the Nehardeans say in R. Nahman’s name, “A come-on in its time effects the transfer of ownership of property, but not in its time, it does not effect the transfer of property.”

3. II:4: Said R. Pappa, “A come-on sometimes effects transfer of ownership of property and sometimes does not. If the creditor came upon the debtor sitting around in a pub, the come-on does effect the transfer of property, but if he found him going around in search of the money, then it does not effect transfer of property.”

4. II:5: And R. Pappa said, “Even though our rabbis have ruled that a come-on does not effect the transfer of property, still, it does create a mortgage from which payment may be exacted.” Though the creditor may not seize the whole field,

which is probably worth more than the debt, he can claim payment from that particular field and refuse to deal with some other field.”

a. II:6: Somebody sold land to his neighbor subject to security that if the seller’s creditor’s should seize the land from the buyer in collection of the seller’s debts, the seller will make it up to the buyer. The buyer said to the seller, “If someone should seize it from me, will you compensate me out of the very best of the best land that you own?”

b. II:7: Rab bar Sheba owed money to R. Kahana. He said to him, “If I do not pay you by such-and-such a date, you may collect the debt from this wine.”

5. II:8: Said R. Nahman, “Now that our rabbis have stated, ‘A come-on does not effect the transfer of ownership,’ in the case to which the Mishnah has referred, If one sold him a field, and the other paid him part of the price, and the vendor said to him, “Whenever you want, bring me the rest of the money, and then take your

6. II:9: Said Raba, “I was in session before R. Nahman, and I wanted to refute his position that an act of renunciation made in error is invalid by reference to the law of overreaching, but he realized, and so drew attention to the case of the barren woman. Lo, there is the case of overreaching, which is surely an act of renunciation in error, and it is not deemed an act of renunciation. But he realized and so drew attention to the case of the barren woman: lo, there is the case of the barren woman, for lo, a barren woman effects an act of renunciation in error, and it is a valid act of renunciation.”

a. II:10: A woman once said to a man, “Go and buy me land from my relatives,” and he went and bought it for her. Said the seller to him, “If I can find the funds, will she return it to me?”

7. II:11: Said Abbaye to Rabbah, “What is the rule governing a mortgage a field was mortgage with no stipulation about the crops, and the creditor took them? Is the operative consideration in the preceding case that there has been no prior stipulation, and here too there is no stipulation so the crops are not returnable? Or perhaps the consideration there is that it is a sale, while here it is a loan?”

a. II:12: Said R. Pappi, “Rabina made a practical decision in a case, reckoning the value of the crops and ordering the return.

8. II:13: Said Mar b. R. Joseph in the name of Raba, “In respect to a mortgage, in a locale in which it is the custom to make the creditor quit whenever the loan is repaid but until that point he is in possession and enjoys the usufruct of the field that is subject to the mortgage, if he took the usufruct to the amount of the loan, he is removed from the property the usufruct is treated as repayment and the creditor has no further claim, but if he consumed more than the amount of the loan, they do not exact restitution from him, nor if one loan balanced against another in that, if the debtor owes him more money on another mortgage, the excess usufruct does not go to his credit against that mortgage.

9. II:14: Said Raba b. R. Joseph in the name of Raba, “In respect to a mortgage, in a locale in which it is the custom to make the creditor quit whenever the loan is repaid but until that point he is in possession and enjoys the usufruct of the field

that is subject to the mortgage, one may enjoy the usufruct only if there is a fixed annual deduction for every year of the usufruct, by which the creditor allows a fixed deduction from the debt, even though the usufruct should amount to less; then that is not a loan but a temporary sale, so even if the usufruct exceeds the allowance, it is not classed as interest .”

10. II:15: Both R. Pappa and R. Huna b. R. Joshua say, “In respect to a mortgage, in a locale in which it is the custom to make the creditor quit whenever the loan is repaid but until that point he is in possession and enjoys the usufruct of the field that is subject to the mortgage, the creditor’s creditor cannot exact the payment of his debt from the field. If the creditor dies and the usufruct of the estate passes on to his children, the deceased’s creditor cannot demand repayment out of the usufruct of the field. For since it must be returned whenever the loan is repaid, the heirs have no possible title to the land itself, but to its usufruct, and that is movable property, which cannot be seized from the heirs in payment of the deceased’s debt. Furthermore, the first-born does not take a double portion in such a property, and the advent of the seventh year cancels the privilege of the usufruct like any other loan on a written bond.

11. II:16: And Mar Zutra said in the name of R. Pappa, “In respect to a mortgage, in a locale in which it is the custom to make the creditor quit whenever the loan is repaid but until that point he is in possession and enjoys the usufruct of the field that is subject to the mortgage, they make him quit even the dates on the mattings. But if he has already picked them up and put them into baskets, they are his.

12. II:17: Now it is obvious that in a locale in which it is the custom to make the creditor quit whenever the loan is repaid, if the creditor had said to the borrower as a stipulation, “I shall quit the property only at a certain time,” then it is a valid stipulation.

13. II:18: If the debtor said, “I am going to bring you the money,” the creditor may not make use of the usufruct in the interim. If the debtor said, “I make the effort to bring you the money” — Rabina said, “The creditor may make use of the usufruct.” And Mar Zutra b. R. Mari said, “He may not make use of the usufruct.”

a. II:19: R. Kahana, R. Pappa, and R. Assi did not take the usufruct with a deduction against the principal of the loan. Rabina did do so.

14. II:20: Said R. Ashi, “The elders of Mata Mehasia said to me, ‘A mortgage bearing no further stipulations is valid for one year.’”

15. II:21: And said R. Ashi, “The elders of Mata Mehasia said to me, ‘What is the meaning of “a pledge”? It is that it remains with the mortgagee.’”

16. II:22: Said Raba, “The law is not in accord with the credit interests of R. Papa, the bonds of the Mahozeans, or the tenancies of Neresh....”

XLVII. Mishnah-Tractate Baba Mesia 5:4

A. THEY SET UP A STOREKEEPER FOR HALF THE PROFIT, OR GIVE HIM MONEY TO PURCHASE MERCHANDISE FOR SALE AT THE RETURN OF THE CAPITAL PLUS HALF THE PROFIT, ONLY IF ONE IN ADDITION PAYS HIM A WAGE AS A WORKER.

1. I:1: It has been taught on Tannaite authority: a wage as a worker that is unemployed (T. **B.M. 4:11B**).

B. THEY SET THE HENS OF ANOTHER PERSON TO HATCH ONE'S OWN EGGS IN EXCHANGE FOR HALF THE PROFIT, AND ASSESS AND COMMISSION ANOTHER PERSON TO REAR CALVES OR FOALS FOR HALF THE PROFIT, ONLY IF ONE PAYS HIM A SALARY FOR HIS LABOR AND HIS UPKEEP.

BUT WITHOUT FIXED ASSESSMENT THEY ACCEPT CALVES OR FOALS FOR REARING FOR HALF THE PROFITS, AND THEY RAISE THEM UNTIL THEY ARE A THIRD GROWN — AND AS TO AN ASS, UNTIL IT CAN CARRY A BURDEN, AT WHICH POINT PROFITS ARE SHARED.

1. II:1: It was necessary to specify both matters.

2. II:2: Tannaite complement: How much is his salary? “Whether much or little,” the words of R. Meir.

C. THE REMAINDER OF THE TALMUD-PASSAGE BEFORE US PERTAINS TO M. 5:5A-E, WHICH IS AS FOLLOWS: THEY ASSESS AND PUT OUT FOR REARING A COW, AN ASS, OR ANYTHING WHICH WORKS FOR ITS KEEP, FOR HALF THE PROFITS. IN A LOCALE IN WHICH THEY ARE ACCUSTOMED TO DIVIDE UP THE OFFSPRING FORTHWITH, THEY DIVIDE IT FORTHWITH. IN A PLACE IN WHICH THEY ARE ACCUSTOMED TO RAISE THE OFFSPRING, THEY RAISE. RABBAN SIMEON B. GAMALIEL SAYS, “THEY ASSESS AND PUT OUT A CALF WITH ITS DAM, A FOAL WITH ITS DAM:”

1. III:1: Our rabbis have taught on Tannaite authority: They do not make an agreement to divide the profits in the case of goats, sheep, or anything that does not work for its feed. R. Yosé b. R. Judah says, “They do make an agreement to divide the profits in the case of goats, because in exchange for their feed they give milk, sheep, because they give wool by being shorn or by being passed through water or by being plucked, and chickens, because they lay eggs” (T. **B.M. 5:4A-D**).

2. III:2: Our rabbis have taught on Tannaite authority: A woman may rent out her chicken to her neighbor for the chicken to set on the eggs in exchange for two fledglings. A woman who said to her neighbor, “I have a chicken, you have eggs, let's divide the fledglings” — R. Judah permits. R. Simeon prohibits (T. **B.M. 4:24-25**).

3. III:3: Our rabbis have taught on Tannaite authority: In a locale in which it is customary to pay in coin for the wages for carrying the beast, they pay, and people are not to diverge from the local custom. Rabban Simeon b. Gamaliel say, “They put out a calf with its dam, a foal with its dam M. B.M. 5:5E, and even in a locale in which it is customary to pay in coin for the wages for carrying the beast” (T. **B.M. 5:5D-F**). But does not R. Simeon require compensation for tending and food?

4. III:4: Said R. Nahman, “The decided law accords with the view of R. Judah, and the decided law accords with the view of R. Yosé b. R. Judah, and the decided law accords with the view of Rabban Simeon b. Gamaliel.”

a. III:5: Against the sons of R. Ilish was issued a bond which stipulated half-profits, half-loss. That is, a bond by which he had undertaken to trade on such terms, and the arrangement is forbidden as involving interest.

5. III:6: Said Rab, “If one says, ‘Take the excess above a third of the profits as your remuneration,’ such an agreement is permitted. If one gives calves or foals to a breeder on a half profit half loss basis, which is forbidden, but adds that should it appreciate by more than a third of its present value, the excess belongs to the breeder, that constitutes payment, though such appreciation is uncertain.”

a. III:7: R. Eleazar of Hagronia bought a cow and handed it over to his share-cropper. He fattened it up and the owner gave him the head as his fee, as well as half the profit.

6. III:8: Our rabbis have taught on Tannaite authority: He who assesses and takes over the rearing of a beast from his fellow — how long is he liable to take care of it? Sumkhos says, “In the cases of asses, eighteen months, and in the case of animals living in folds, twenty-four months.”

7. III:9: A further teaching on Tannaite authority: He who assesses and takes care of the rearing of a beast from his fellow — how long is he liable to take care of it? In the case of small cattle, for thirty days.

In the case of large cattle, fifty days.

a. III:10: R. Manassia bar Gada took his half and half of his partner’s half. The case came before Abbayye, who ruled, “Who divided for you assessing the value and making sure you took only half a share? And further more, this is a place in which it is customary to breed until the animals are fully grown, and we have learned: In a place in which they are accustomed to raise the offspring, they raise (M. **B.M. 5:5D**, below).

a. III:11: Two Kuteans made an agreement together with one investing the money, the other trading with it. One of them went and divided the money without the knowledge and consent of the other. They came to R. Pappa for a ruling. He said to the plaintiff, “What difference does this action of his make? For thus did R. Nahman rule, ‘Money held in partnership is deed to be already divided.’”

I. III:12: Gloss of foregoing.

b. III:13: R. Hama used to rent out a zuz for a peshita a day and this was not interest, because the borrower would be exempt, as would any one else who rented out an object, in the case of an unavoidable accident.

13. III:14: Said Raba, “One is permitted to say to his fellow, ‘Here are these four zuz, take the money and lend it to so-and-so even on interest,’ for the Torah has forbidden only interest that is paid from the borrower to the lender.”

14. III:15: So Abba Mar, son of R. Pappa, would take balls of wax from wax dealers and say to his father to lend them money.”

XLVIII. Mishnah-Tractate Baba Mesia 5:5

A. THEY ASSESS AND PUT OUT FOR REARING A COW, AN ASS, OR ANYTHING WHICH WORKS FOR ITS KEEP, FOR HALF THE PROFITS. IN A LOCALE IN WHICH THEY ARE ACCUSTOMED TO DIVIDE UP THE OFFSPRING FORTHWITH, THEY DIVIDE IT FORTHWITH. IN A PLACE IN WHICH THEY ARE ACCUSTOMED TO RAISE THE OFFSPRING, THEY RAISE. RABBAN SIMEON B. GAMALIEL SAYS, “THEY ASSESS AND PUT OUT A CALF WITH ITS DAM, A FOAL WITH ITS DAM.” (AND) ONE MAY PAY INCREASED RENT IN EXCHANGE FOR A LOAN FOR THE IMPROVEMENT OF ONE’S FIELD, AND ONE NEED NOT SCRUPLE BY REASON OF INTEREST.

1. I:1: Our rabbis have taught on Tannaite authority: One may pay increased rent in exchange for a loan for the improvement of one’s field and one need not scruple by reason of interest — how so? If one has accepted the tending of a field in exchange for ten kors of wheat and then said to him, “Give me two hundred denars and I shall fertilize it, and then I’ll pay you twelve kors of wheat in a year’s time” — that is permitted. But they may not pay increased rent in exchange for a loan for the improvement of one’s ship, shop, or any thing that does not earn its keep (T. **B.M. 5:13B-F**).

2. I:2: Said R. Nahman said Rabbah bar Abbuha, “There are occasions at which one may one may offer increased rent for a shop, specifically, for a loan for decorations; or for a ship, to build a sail-yard on it.

3. I:3: As to a ship: Said Rab, “An agreement covering both the fee for rental and the sharing of the loss is permitted.” That is, rent a ship at the lessee’s risk in case it is damaged or sunk.

B. THE SPECIAL PROBLEM OF THE DISPOSITION OF THE CAPITAL OF AN ESTATE

1. I:4: Said R. Anan said Samuel, “As to the capital of an estate, it is permitted to lend it out at interest.”

2. I:5: Said Rabbah bar Shila said R. Hisda, and some say, said Rabbah bar R. Joseph bar Hama said R. Sheshet, “ “As to the capital of an estate ‘money belonging to orphans’, it is permitted to lend it out on terms that leave them near for profit but far from loss.”

a. I:6: Our rabbis have taught on Tannaite authority: If one is near to profit and distant from loss, he is wicked; near to loss and distant from profit, he is exemplary; near this and that, far from this and from that — that is the trait of ordinary folk.

b. I:7: Gloss of I:5.

XLIX. Mishnah-Tractate Baba Mesia 5:6

A. THEY DO NOT ACCEPT FROM AN ISRAELITE A FLOCK ON ““IRON TERMS”“ THAT THE ONE WHO TENDS THE FLOCK SHARES THE PROCEEDS OF THE FLOCK BUT RESTORES THE FULL VALUE OF THE FLOCK AS IT WAS WHEN IT WAS HANDED OVER TO HIM, SO THAT THE OTHER IS “NEAR TO PROFIT AND FAR FROM LOSS”, BECAUSE THIS IS INTEREST. BUT THEY DO ACCEPT A FLOCK ON “IRON TERMS” FROM

GENTILES. AND THEY BORROW FROM THEM AND LEND TO THEM ON TERMS OF INTEREST. AND SO IS THE RULE FOR THE RESIDENT ALIEN.

1. I:1: Is this because this is interest then to imply that the flock remains in the domain of the contractor and not of the Israelite?

B. USURY AND GENTILES. “HE WHO AUGMENTS HIS WEALTH BY INTEREST AND INCREASE GATHERS IT FOR HIM WHO IS KIND TO THE POOR” (PRO. 28: 8):

1. I:2: Who is meant by the words, for him who is kind to the poor”?

2. I:3: Said R. Nahman, “Huna said to me, ‘This verse serves only to encompass interest that comes even from a gentile.’”

a. I:4: Secondary complement to the foregoing.

3. I:5: Tannaite complement: Said R. Yosé, “Come and see the blindness of those who lend on interest. A person calls his fellow wicked, and undertakes to destroy his very life, so they bring witnesses, a scribe, a pen and ink, and write and seal: ‘So and so has denied the God of Israel.’”

4. I:6: Tannaite complement: R. Simeon b. Eleazar says, “Of whoever has liquid capital and lends it not on interest, Scripture says, ‘who does not put out his money at interest and does not take a bribe against the innocent; he who does these things shall never be moved’ (Psa. 15: 5) — thereby you have learned that whoever does lend money at interest — his property will tremble.”

5. I:7: “You who are of purer eyes than to behold evil and cannot look on wrong, why do you look on faithless men and are silent when the wicked swallows up the man more righteous than he” (Hab. 1:13): Said R. Huna, “...the wicked swallows up the man more righteous than he’ he may swallow up, but one who is entirely righteous he cannot swallow up.”

6. I:8: Rabbi Judah the Patriarch says, “The righteous proselyte mentioned in the context of selling oneself as a slave and the resident alien mentioned in connection with interest — I do not know the sense of the matter.”

a. I:9: Gloss of foregoing.

b. I:10: Gloss of foregoing.

c. I:11: Gloss of foregoing.

7. I:12: “You shall not lend him your money at interest, nor give him your food for profit.” But you may serve as a surety for him for one who is borrowing money on interest.

C. AN ISRAELITE MAY LEND OUT THE CAPITAL OF A GENTILE ON THE SAY-SO OF THE GENTILE, BUT NOT ON THE SAY-SO OF AN ISRAELITE. IF THE GENTILE HAD BORROWED MONEY FROM AN ISRAELITE, ONE MAY NOT LEND IT OUT ON INTEREST WITH THE ISRAELITE’S KNOWLEDGE AND CONSENT.

1. II:1: An Israelite may lend out the capital of a gentile on the say-so of the gentile, but not on the say-so of an Israelite. How so? An Israelite who borrowed money from a gentile and wants to pay it back to him — if his fellow came up him and said to him, “Give it to me and I’ll hand it over for you just as you would hand it over to him” — it is prohibited. But if he made this request from a gentile, it is

permitted. And so too, a gentile who borrowed money from an Israelite and wants to pay it back to him — if another Israelite came upon him and said to him, “Give the money to me just as you would have given them to him” — it is permitted. But if he made this request from an Israelite, it is prohibited (T. **B.M. 5:16-17**).

a. II:2: R. Ashi said, “When we invoke the principle, the law of agency does not apply to a gentile, that applies only to the separation of heave-offering from the crops of an Israelite for use as priestly rations. But in all other matters of the Torah, the law of agency does apply to a gentile.”

b. II:3: Rabina said, “Granting that a gentile cannot serve as an agent, on the authority of the rabbis one may nonetheless effect rights of possession in his behalf, by the analogy of a minor.”

2. II:4: An Israelite who borrowed money on interest from a gentile and recorded the principal and interest against him as a loan, and the creditor became a proselyte, if it was prior to his conversion that he recorded the principal and interest against him as a loan, he may collect the principal and collect the interest. If it was after he converted that he did so, he may collect the principal but he may not collect the interest. And so too a gentile who borrowed money from an Israelite for interest and recorded it to him as a loan and the gentile then converted, if it was prior to his conversion that he recorded the principal and interest against him as a loan, he may collect the principal and collect the interest. If it was after he converted that he did so, he may collect the principal but he may not collect the interest. R. Yosé says, “A gentile who borrowed money from an Israelite on interest, one way or the other, the Israelite may collect the principal and may collect the interest” (T. **B.M. 5:21**).

3. II:5: “A bond in which is inscribed provision of interest — they penalize the holder, who may collect on the strength of that bond neither principal nor interest,” the words of R. Meir. And sages say, “He may collect the principal but he may not collect the interest” (cf. T. **B.M. 5:22D-E**).

a. II:6: Amplification of the foregoing: We have learned in the Mishnah: Antedated bonds are invalid, but postdated bonds are valid M. **Shebiit 10:5B**. But why should the predated ones be entirely invalid? Granted that one may not collect what is owing as indicated by the earlier, false date, let one collect on the basis of the second, and valid date! The creditor may not seize land sold after the date of the bond but prior to the actual loan, but why should he not seize land sold after the loan was made?

b. II:7: Case: Someone pledged an orchard to his neighbor for a span of ten years. The creditor had the usufruct of the field for five years. He then said to the debtor, “If you will sell it to me, well and good, but if not, I will conceal the mortgage deed and claim that I bought it from you.”

L. Mishnah-Tractate Baba Mesia 5:7

A. THEY DO NOT STRIKE A BARGAIN FOR THE PRICE OF PRODUCE BEFORE THE MARKET PRICE IS ANNOUNCED. ONCE THE MARKET PRICE IS ANNOUNCED, THEY

STRIKE A BARGAIN, FOR EVEN THOUGH THIS ONE DOES NOT HAVE THE PRODUCE FOR DELIVERY, ANOTHER ONE WILL HAVE IT SO THIS IS NOT TRADING IN FUTURES.

1. I:1: Said R. Assi said R. Yohanan, “One who does not have the goods in hand may not make a contract to supply over a period of time goods at the current market price.” Said R. Zira to R. Assi, “Did R. Yohanan say that that was so even in the case of a great fair even though prices then are stable and a fair indication of value?”

2. I:2: They do not strike a bargain for the price of produce before the market price is announced. Once the price has been announced, they may then strike a bargain. For even if the seller has no produce, another one has. If the new produce was going at four to a zuz and the old at three, one may make an agreement only when the price has come forth for both the old and the new and equalized. If gleaned grain was at four, while what everybody had was at three, one may not enter a contract at the fixed maximum price until the same market price has been established for both the gleaner and the wholesale merchant (T. **B.M. 6: 1**)

3. I:3: Said R. Nahman, “Even though a contract may not be made until the prices are equally, that applies only if the vendor supplies gleanings or ordinary stock, but if the vender is a gleaner, supplying only gleanings, then they may make a contract for gleanings at the price of gleanings.”

4. I:4: Said R. Sheshet said R. Huna, “They do not borrow money on the market price that is, with the stipulation that if the money is not repaid by a certain date, provisions will be supplied in place of the money at the market price prevailing at the time of the loan, a price that is lower than that which will prevail later.”

5. I:5: If one was bringing a cargo from one place to another, and someone said to him, “Hand it over to me, and I shall pay you the price you would get there” — if the cargo remains within the domain of the seller, it is a permitted transaction, but if it is within the domain of the purchaser, it is prohibited. If one was bringing produce from one place to another, and someone came upon him and said to him, “Hand them over to me, and I shall provide you with produce that I have in that place” — if he has produce there, then it is a permitted transaction, and if not, it is forbidden. But ass-drivers accept produce from a householder where it is cheaper and sell it where it is more expensive, and they do not have to scruple by reason of violating the prohibition against price-gouging (T. **B.M. 4:7-8**).

a. I:6: Illustrative case.

I. I:7: Gloss of the foregoing.

6. I:8: As to an orchard is it permitted to advance money at a fixed price for the produce of the orchard before it is ripe to be delivered when it is ripe? This price will be less than the price for the ripe fruit.

7. I:9: Said Samuel to those factors who supply seed grain to be returned in new grain, “Turn over the ground of the field, so that you may acquire rights to the field itself, since, if not, it will be treated as a loan made by you and the transaction will be forbidden.”

8. I:10: Raba said to those who watch over grain fields, “Go out and work in the barn, since your wages will not be payable until you have finished those tasks, for a salary is payable only at the end of the work.”

9. I:11: Our rabbis said to Raba, “You are enjoying interest, for everybody takes four zuz and dismisses the tenant in Nisan, but you wait until Iyyar and collect six.” The additional money appears to be payment for waiting the extra months for the rent.

a. I:12: Illustrative case.

10. I:13: Said Raba of Barnesh to R. Ashi, “Now note, sir, how the rabbis are collecting interested, because they pay money for wine in Tishri and receive in return the choicest quality in Tebeth.”

a. I:14: Rabina gave money to people in Aqra diShanwata, who provided an additional jug. He went to R. Ashi and asked, “Is this permitted?”

11. I:15: Said R. Pappa to Raba, “See, sir, how these rabbis pay money for people’s head tax and then impose labor-tasks upon them.”

a. I:16: R. Seoram, brother of Raba, would seize people of a bad name and make them carry Raba’s palanquin. Said Raba to him, “You have acted quite properly.”

12. I:17: Said R. Hama, “Someone who gives his fellow money to buy wine for him, and the other is negligent and does not buy wine for him — the other must make restitution to him at the rate at which wine is sold in the market of Belshafat.”

13. I:18: Said Raba, “If three people gave money to one person to buy something for them, and he bought only for one of them, the purchase is treated as though it were for all three. But this statement applies only if the agent did not make up a separate sealed bundle of the money of each of the purchasers. If he did so, then the one for whom he made the purchase is the one for whom he made the purchase, and those for whom he has bought nothing have gotten nothing.”

14. I:19: Said R. Pappi in the name of Raba, “The mark on wine-barrels confers possession.”

B. IF) ONE WAS THE FIRST AMONG THE REAPERS OF A GIVEN CROP, HE MAY STRIKE A BARGAIN WITH HIM FOR (1) GRAIN ALREADY STACKED ON THE THRESHING FLOOR:

1. II:1: Said Rab, “If two stages in the processing are lacking, one may strike a bargain, but if three are mixing, one may not.” And Samuel said, “If lacking are stages in the processing that are conducted by man, then even if a hundred are lacking, still, one may strike a bargain, but if the stages in the processing are those for which Heaven is responsible, then even if one is lacking, one may not strike a bargain.”

C. ...OR FOR (2) A BASKET OF GRAPES:

1. III:1: But lo, they have to be heated, put in the press, subjected to treading, and being drawn into the pit.

D. ...OR FOR (3) A VAT OF OLIVES:

1. IV:1: But lo, it still has to be heated, placed between the boards of the olive press, pressed, and drawn into the oil pit!

E. ...OR FOR (4) THE CLAY BALLS OF A POTTER:

1. V:1: How come? Lo, the clay still has to be moulded, dried, put in the oven, burned, and taken out!

F. ...OR FOR (5) LIME AS SOON AS THE LIMESTONE HAS SUNK IN THE KILN:

1. VI:1: How come? It still has to be burned, removed from the kiln, and crushed!

G. OR FOR (4) THE CLAY BALLS OF A POTTER:

1. VII:1: Our rabbis have taught on Tannaite authority: “They do not strike a bargain for the clay balls of a potter until they are kneaded into lumps,” the words of R. Meir. Said R. Yosé, “Under what circumstances? In the case of clay made of white earth, but as for clay made of black earth, for instance, in Kefar Hanania and its neighborhood or Kefar Shihin and its neighborhood, one may strike a bargain, for even if one merchant has none, someone else will have some” (T. **B.M. 6:3D-I**).

a. VII:2: Amemar gave money to the manufacturer as soon as he had stocked himself with the necessary clay. In accord with which of the two authorities cited above did he do so? It can have been neither in accord with R. Meir, for he has said, “until they are kneaded into lumps,” nor in accord with R. Yosé, for he has said, “for even if one merchant has none, someone else will have some.”

H. AND ONE STRIKES A BARGAIN FOR THE PRICE OF MANURE EVERY DAY OF THE YEAR SINCE THE RATE OF PRODUCTION IS CONSTANT. R. YOSÉ SAYS, “THEY DO NOT STRIKE A BARGAIN FOR MANURE BEFORE THE MANURE IS ON THE DUNG HEAP.” AND SAGES PERMIT.

1. VIII:1: The sages take exactly the same view as the initial authority who is anonymous.

I. AND ONE MAY STRIKE A PRICE AT THE HEIGHT OF THE MARKET, THE CHEAPEST RATE PREVAILING AT THE TIME OF DELIVERY. R. JUDAH SAYS, “EVEN THOUGH ONE HAS NOT MADE A BARGAIN AT THE CHEAPEST RATE PREVAILING AT THE TIME OF DELIVERY, ONE MAY SAY TO HIM, ‘GIVE IT TO ME AT SUCH-AND-SUCH A RATE, OR GIVE ME BACK MY MONEY.’”

1. IX:1: Somebody gave money in advance for the dowry owing from his father-in-law ordering the trousseau in behalf of the father-in-law. He then acted in behalf of the father-in-law in placing the order. The father in law can repudiate the agent, the son-in-law, for not having done the task in the proper way, since he has failed to make the necessary stipulation. But the dowry depreciated before delivery. They came before R. Pappa. He said to the purchaser, “If you made an agreement with him for the price at the height of the market which was of course the lowest, then take the merchandise at the prevailing price at this time; but if not, you must take it at the present price.”

LI. Mishnah-Tractate Baba Mesia 5:8

A. A MAN MAY LEND HIS TENANT FARMERS WHEAT TO BE REPAID IN WHEAT, IF IT IS FOR SEED, BUT NOT IF IT IS FOR FOOD, FOR RABBAN GAMALIEL WOULD LEND HIS TENANT FARMERS WHEAT TO BE REPAID IN WHEAT WHEN IT WAS USED FOR SEED.

IF ONE LENT THE WHEAT WHEN THE PRICE WAS HIGH AND WHEAT BECAME CHEAP, OR IF HE LENT THE WHEAT WHEN THE PRICE WAS CHEAP AND WHEAT BECAME EXPENSIVE, HE WOULD COLLECT FROM THEM AT THE CHEAPEST PRICE, NOT BECAUSE THAT IS WHAT THE LAW REQUIRES, BUT BECAUSE HE WISHED TO IMPOSE A STRICT RULE UPON HIMSELF.

1. I:1: A man may lend his tenant farmers wheat to be repaid in wheat, if it is for seed. Under what circumstances? That is when the tenant has not yet gone down to work his field. But if he has gone down to his field, lo, he is equivalent to any other person and it is prohibited (T. **B.M. 6:8A-D**).

2. I:2: Our rabbis have taught on Tannaite authority: A man may say to his neighbor, “Lend me a kor of wheat,” and stipulate a monetary return; if the grain depreciates in price, he may pay him off in wheat, and if it is appreciates, he may pay him off in cash.

LII. Mishnah-Tractate Baba Mesia 5:9

A. A MAN SHOULD NOT SAY TO HIS FELLOW, “LEND ME A KOR OF WHEAT, AND I’LL PAY YOU BACK AT A KOR OF WHEAT AT THRESHING TIME.” BUT HE SAYS TO HIM, “LEND IT TO ME UNTIL MY SON COMES BRINGING ME WHEAT,” OR, “... UNTIL I FIND THE KEY.”

1. I:1: Said R. Huna, “If someone has a seah which he cannot just then get, he may borrow a seah, if he has two, he may borrow two.” R. Isaac says, “Even if he has only a single seah of grain, he may borrow on the strength of it any number of kors of wheat.”

B. HILLEL PROHIBITS EVEN THIS PROCEDURE.

1. II:1: Said R. Nahman said Samuel, “The decided law accords with the statement of Hillel.”

C. AND SO DOES HILLEL SAY, “A WOMAN SHOULD NOT LEND A LOAF OF BREAD TO HER GIRL FRIEND UNLESS SHE STATES ITS VALUE IN MONEY. FOR THE PRICE OF WHEAT MAY GO UP, AND THE TWO WOMEN WILL TURN OUT TO BE INVOLVED IN A TRANSACTION OF USURY.”

1. III:1: Said R. Judah said Samuel, “This is the position of Samuel, but sages say, ‘They may lend without further stipulation and pay back without further stipulation.’” And said R. Judah said Samuel, “Members of an association who are meticulous in their relationships with one another violate the prohibitions covering measure, weight, number, borrowing, and repaying on the Festival, and, in Hillel’s view, of usury as well.”

LIII. Mishnah-Tractate Baba Mesia 5:10-11

A. A MAN MAY SAY TO HIS FELLOW, “WEED WITH ME, AND I’LL WEED WITH YOU,” “HOE WITH ME, AND I’LL HOE WITH YOU.” BUT HE MAY NOT SAY TO HIM, “WEED WITH ME, AND I’LL HOE WITH YOU,” “HOE WITH ME, AND I’LL WEED WITH YOU.”

ALL THE DAYS OF THE DRY SEASON ARE DEEMED EQUIVALENT TO ONE ANOTHER. ALL THE DAYS OF THE RAINY SEASON ARE DEEMED EQUIVALENT TO ONE ANOTHER.

ONE SHOULD NOT SAY TO HIM, “PLOUGH WITH ME IN THE DRY SEASON, AND I’LL PLOUGH WITH YOU IN THE RAINY SEASON.”

RABBAN GAMALIEL SAYS, “THERE IS USURY PAID IN ADVANCE, AND THERE IS USURY PAID AT THE END. HOW SO? IF ONE WANTED TO TAKE A LOAN FROM SOMEONE AND SO SENT HIM A PRESENT AND SAID, ‘THIS IS SO THAT YOU’LL MAKE A LOAN TO ME,’ — THIS IS USURY PAID IN ADVANCE. IF ONE TOOK A LOAN FROM SOMEONE AND PAID HIM BACK THE MONEY AND THEN SENT A GIFT TO HIM AND SAID, ‘THIS IS FOR YOUR MONEY, WHICH WAS USELESS TO YOU WHEN IT WAS IN MY HANDS,’ — THIS IS USURY PAID AFTERWARD.”

R. SIMEON SAYS, “THERE IS USURY PAID IN WORDS. ONE MAY NOT SAY TO HIM, ‘YOU SHOULD KNOW THAT SO-AND-SO FROM SUCH-AND-SUCH A PLACE IS ON HIS WAY.’”

1. I:1: R. Simeon b. Yohai says, “How do we know that one who lends his neighbor a maneh — if the neighbor does not usually greet him first, it is forbidden for him now to greet him first? Scripture states, ‘Usury of any word which may be usury’ (Deu. 23:20) — even words can constitute a form of usury.”

B. THESE WHO PARTICIPATE IN A LOAN ON INTEREST VIOLATE A NEGATIVE COMMANDMENT: (1) THE LENDER, (2) BORROWER, (3) GUARANTOR, AND (4) WITNESSES. SAGES SAY, “ALSO (5) THE SCRIBE.” (1) THEY VIOLATE THE NEGATIVE COMMANDMENT, “YOU WILL NOT GIVE HIM YOUR MONEY UPON USURY” (LEV. 25:37). (2) AND THEY VIOLATE THE NEGATIVE COMMAND, “YOU WILL NOT TAKE USURY FROM HIM” (LEV. 25:36). (3) AND THEY VIOLATE THE NEGATIVE COMMAND, “YOU SHALL NOT BE A CREDITOR TO HIM” (EXO. 22:25). (4) AND THEY VIOLATE THE NEGATIVE COMMAND, “NOR SHALL YOU LAY UPON HIM USURY” (EXO. 22:25). (5) AND THEY VIOLATE THE NEGATIVE COMMAND, “YOU SHALL NOT PUT A STUMBLING BLOCK BEFORE THE BLIND, BUT YOU SHALL FEAR YOUR GOD. I AM THE LORD” (LEV. 19:14)

1. II:1: Said Abbaye, “The lender violates all of them. The borrower violates on the counts of, ‘You shall not cause your brother to take usury’ (Deu. 23:20), ‘but to your brother you shall offer no usury’ (Deu. 23:21), ‘and you shall not put a stumbling block before the blind’ (Lev. 25:37). The surety and the witness violate only ‘neither shall you lay upon him usury’ (Deu. 25:21).”

2. II:2: R. Simeon says, “Those who lend on interest — more than they make they lose. And not only so, but they treat as a fraud our lord, Moses, the sage, and his Torah, saying, ‘If Moses knew how much money we could make, he would never have written the prohibition of interest’” (T. 6:17I-L).

3. II:3: When R. Dimi came, he said, “How do we know that one who lends a maneh to his fellow and knows that he does not have the money to repay is forbidden even to pass before him?”

4. II:4: Said R. Judah said Rab, “Whoever has money and lends it not in the presence of witnesses violates the law, ‘you shall not put a stumbling block before the blind’ (Lev. 19:14).”

5. II:5: Said rabbis to R. Ashi, “Rabina carries out everything that our rabbis have said.” He sent this message to him on the eve of the Sabbath: “May the master send me ten zuz, for a small plot of land has come my way for purchase.” He replied, “Let the master bring witnesses and we shall write a bond.” “Even for me too!” “For the master in particular, since, being absorbed in your studies, you may forget the loan and bring a curse down upon me.”

6. II:6: Three appeal to the court but get no response: who has money and lends them without witnesses, he who acquires a master for himself, and a man whose wife runs his life.

LIV. Mishnah-Tractate Baba Mesia 6:1-2

A. HE WHO HIRES CRAFTSMEN, AND ONE PARTY DECEIVED THE OTHER — ONE HAS NO CLAIM ON THE OTHER PARTY EXCEPT A COMPLAINT WHICH IS NOT SUBJECT TO LEGAL RECOURSE.

1. I:1: What is stated here is not “one or another retracted” on the agreement but rather, one party deceived the other, bearing the sense that the workers deceived one another. But how can such a situation be imagined?

2. I:2: It is self-evident that if the employer said to the major domo to hire workers for three zuz a day, and he went and said to them, four, but they said to him, “It is with the stipulation that we are paid in accord with what the major domo has said,” then they have in mind the one who has engaged them and did not stipulate for less. But what is the rule if the householder said to hire workers at four zuz a day, and he went and said to them, “for three,” and they said, “it will be as the householder has stipulated”? What is the upshot? Do we maintain that it was in reliance upon what the major domo has said, so that they have said to him, “You are reliable for us that that is what the householder has said to you,” or perhaps the workers rely on the statement of the householder?

a. I:3: Amplification of I:1. What is stated here is not “one or another retracted” on the agreement but rather, one party deceived the other, bearing the sense that the workers deceived one another, if you prefer, I may say that the Tannaite authority treats reversion as equivalent to deception. For if has been taught on Tannaite authority: He who hires workers and they deceived the householder, or the householder deceived them, they have no claim on one another except a complaint. Under what circumstances? When the workers did not show up.

I. I:4: A Tannaite authority repeated before Rab, “he pays them their wages in full.” He said to him, “My uncle said, ‘If it were I, I would have paid them only at the rate of unemployed workers,’ and

yet you say, he pays them their wages in full? But surely it has been taught in this same connection, But one who actually travels with a load is not the same as one who travels empty-handed, and one who does the work is not treated as equivalent to one who comes and sits and does nothing.”

II. I:5: Sayings of Raba, beginning with one relevant to the analysis of the foregoing: This is in line with what Raba said, “One who hires workers to cut dykes, and it rained and filled the land with water making the work impossible, if he had examined the field the previous evening, then the loss is assigned to the workers, while if he had not examined the field in the previous evening, the loss is assigned to the employer, and he has to pay them as unemployed workers.”

b. I:6: Amplification of Tannaite complement set forth at I:3.

c. I:7: Amplification of Tannaite complement set forth at I:3.

d. I:8: Amplification of Tannaite complement set forth at I:3.

e. I:9: Amplification of Tannaite complement set forth at I:3.

f. I:10: Amplification of Tannaite complement set forth at I:3.

g. I:11: Amplification of Tannaite complement set forth at I:3.

h. I:12: Amplification of Tannaite complement set forth at I:3.

i. I:13: Amplification of Tannaite complement set forth at I:3.

j. I:14: Amplification of Tannaite complement set forth at I:3.

k. I:15: Amplification of Tannaite complement set forth at I:3.

I. I:16: Raba also said, “One who lent a hundred zuz to his fellow, and the other paid him back one zuz at a time — this does constitute a valid repayment, but the other has a righteous complaint against the borrower, saying to him, ‘You have caused me to lose my capital.’”

A. I:17: Illustrative case.

1. I:18: Continuation of foregoing.

B. IF ONE HIRED AN ASS DRIVER OR WAGON DRIVER TO BRING PORTERS AND PIPES FOR A BRIDE OR A CORPSE, OR WORKERS TO TAKE HIS FLAX OUT OF THE STEEP, OR ANYTHING WHICH GOES TO WASTE IF THERE IS A DELAY, AND THE WORKERS WENT BACK ON THEIR WORD — IN A SITUATION IN WHICH THERE IS NO ONE ELSE AVAILABLE FOR HIRE, HE HIRES OTHERS AT THEIR EXPENSE, OR HE DECEIVES THEM BY PROMISING TO PAY MORE AND THEN NOT PAYING UP MORE THAN HIS ORIGINALLY STIPULATED COMMITMENT.

HE WHO HIRES CRAFTSMEN AND THEY RETRACTED — THEIR HAND IS ON THE BOTTOM. IF THE HOUSEHOLDER RETRACTS, HIS HAND IS ON THE BOTTOM. WHOEVER CHANGES THE ORIGINAL TERMS OF THE AGREEMENT — HIS HAND IS ON THE BOTTOM. AND WHOEVER RETRACTS — HIS HAND IS ON THE BOTTOM.

1. II:1: To what extent may he hire others at their expense?

LV. Mishnah-Tractate Baba Mesia 6:3

A. HE WHO RENTS OUT AN ASS TO DRIVE IT THROUGH HILL COUNTRY BUT DROVE IT THROUGH A VALLEY, TO DRIVE IT THROUGH A VALLEY BUT DROVE IT THROUGH THE HILL COUNTRY, EVEN THOUGH THIS ROUTE IS TEN MILS AND THAT ROUTE IS TEN MILS, AND THE ASS DIED — THE ONE WHO RENTED IT IS LIABLE.

HE WHO RENTS OUT AN ASS TO DRIVE IT THROUGH HILL COUNTRY, BUT HE DROVE IT THROUGH A VALLEY. IF IT SLIPPED, IS EXEMPT. BUT IF IT SUFFERED HEAT PROSTRATION, HE IS LIABLE.

IF HE HIRED IT OUT TO DRIVE IT THROUGH A VALLEY, BUT HE DROVE IT THROUGH HILL COUNTRY, IF IT SLIPPED, HE IS LIABLE. AND IF IT SUFFERED HEAT PROSTRATION, HE IS EXEMPT. BUT IF IT WAS ON ACCOUNT OF THE ELEVATION, HE IS LIABLE.

1. I:1: What is the difference between the first case, in which no distinction among causes of death is drawn, and the second case, in which a distinction is drawn among the causes of death?

B. HE WHO RENTS OUT AN ASS, AND IT WENT BLIND

1. II:1: What is the meaning of the word translated, “it went blind”?

a. II:2: Somebody once said, “I saw vermin in the king’s garments.” They said to him, “In linen or in wool ones?” Some say, “He answered, ‘In linen ones,’ and they forthwith put him to death.”

C. ...OR WAS SEIZED FOR ROYAL SERVICE — THE ONE WHO PROVIDED IT HAS THE RIGHT TO SAY TO THE ONE WHO RENTED IT, “HERE’S YOURS RIGHT BEFORE YOU” AND HE NEED NOT REPLACE IT FOR THE STATED PERIOD. IF IT DIED OR BROKE A LEG, THE ONE WHO PROVIDED IT OUT IS LIABLE TO PROVIDE HIM WITH ANOTHER ASS.

1. III:1: Said Rab, “That statement he one who provided it has the right to say to the one who rented it, “Here’s yours right before you” and he need not replace it for the stated period pertains only to the case in which the ass was seized for royal service and is not going to be returned, but if it was seized for royal service and is going to be returned, the owner does have to replace the ass.” And Samuel said, “Whether it is seizure for royal service involving return of the ass or not involving return of the ass, if the ass is taken in its normal course, the owner can say to him, ‘Here’s yours right before you,’ but if it was not taken in its normal course, the owner cannot say to him, ‘Here’s yours right before you’ but is liable to provide another beast in its stead.”

2. III:2: Said Rabbah bar R. Huna said Rab, “He who rents an ass to ride on it and the ass dies on him in the middle of the journey must pay the fee for half the journey and has no complaint against the one who hired the ass out other than a mere gripe.”

3. III:3: Our rabbis have taught on Tannaite authority: He who rents a boat and it sank in mid-journey — R. Nathan says, “If he has paid the rent for the boat, he cannot retrieve it, but if not, he does not have to pay it.”

4. III:4: Our rabbis have taught on Tannaite authority: One who rents a ship and then unloads it at the midway point on the journey pays him the fee for half of the journey and the ship-owner has against him only a gripe.

5. III:5: Our rabbis have taught on Tannaite authority: One who rents a an ass to ride on it may also load on it his clothing, water bottle, and provisions for that journey. If it was to be more than this, the ass-driver may stop him. The ass-driver may load on it barley, straw, and provisions enough for one day Tosefta: to reach a lodging. If it was to be more than this, the householder stops him (T. **B.M. 7:11A-E**).

6. III:6: Our rabbis have taught on Tannaite authority: One who rents an ass to give a man a ride should not give a woman a ride. If he hired it to give a woman a ride, it may be used by a man. As to giving a ride to a woman, the ass gives her a ride without regard to whether she is large or small, and even whether she is pregnant or nursing (T. **B.M. 7:10G-H**).

LVI. Mishnah-Tractate Baba Mesia 6:4

A. HE WHO HIRES A COW TO PLOUGH IN THE HILL COUNTRY BUT PLOUGHED IN THE VALLEY, IF THE PLOW-SHARE WAS BROKEN, IS EXEMPT. IF HE HIRED THE COW TO PLOUGH IN THE VALLEY AND PLOUGHED IN THE HILL COUNTRY, IF THE PLOW-SHARE WAS BROKEN, HE IS LIABLE. IF HE HIRED A COW TO THRESH PULSE AND HE THRESHED GRAIN, IF THE COW SLIPPED AND FELL, HE IS EXEMPT. IF HE HIRED IT TO THRESH GRAIN AND HE THRESHED PULSE, IF THE COW SLIPPED AND FELL, HE IS LIABLE, BECAUSE PULSE IS SLIPPERY.

1. I:1: If the lessor did not change the conditions of the agreement, who must pay? The problem is this: two workers were needed for plowing, one who used the goad to direct the animal, one who forced the coulter into the earth. These workers were furnished by the owner. If the agreement was not broken, so that the lessor is free from liability, then which of the two workers is liable? Said R. Pappa, "The one who handles the share is the one who must pay." R. Sheshet b. R. Idi said, "The one who handles the coulter must pay."

2. I:2: Said R. Yohanan, "He who sells a cow to his fellow stipulating that there are blemishes on it, saying to him, 'She is a borer,' 'she is a biter,' 'she is a butter,' 'she is prone to lie down,' if there was some other blemish on it and he inserted it in the listing of the other blemishes, lo, this is a purchase made in error. But if he told him about that blemish and did not refer to any other blemish, this is not a purchase made in error (T. **B.B. 4:6A-F**)."

LVII. Mishnah-Tractate Baba Mesia 6:5

A. HE WHO HIRED AN ASS TO CARRY WHEAT ON IT AND HE CARRIED BARLEY ON IT IS LIABLE. IF HE HIRED IT TO CARRY WHEAT AND CARRIED STRAW ON IT, HE IS LIABLE, SINCE THE GREATER BULK IS HARD TO CARRY. IF HE HIRED IT TO CARRY A LETEKH OF WHEAT AND IT CARRIED A LETEKH OF BARLEY, HE IS EXEMPT. BUT IF HE ADDED TO ITS BURDEN, HE IS LIABLE. AND HOW MUCH DOES HE ADD TO ITS

BURDEN SO AS TO BE LIABLE? SUMKHOS SAYS IN THE NAME OF R. MEIR, “A SEAH FOR A CAMEL, AND THREE QABS FOR AN ASS.”

1. I:1: It has been stated: Abbaye said, “The correct formulation of the Mishnah-passage at is, is as great a strain as weight.” Raba said, “The correct formulation of the Mishnah-passage , is a strain when added to weight.”
2. I:2: Our rabbis have taught on Tannaite authority: For a porter, a qab is an overload and makes one culpable for damages, for a canoe, an artaba, for a ship, a kor, and for a large liburna, three kors.

LVIII. Mishnah-Tractate Baba Mesia 6:6-7

A. ALL CRAFTSMEN ARE IN THE STATUS OF PAID BAILEES RESPONSIBLE FOR BOTH NEGLIGENCE AND THEFT.

1. I:1: May we then conclude that our Mishnah-paragraph does not accord with the position of R. Meir? For it has been taught on Tannaite authority: One who rents a beast — under what classification does he pay restitution if the beast is damaged or lost? R. Meir says, “He is in the status of an unpaid bailee.” R. Judah says, “He is in the status of a paid bailee.” Since the man pays for the benefit he receives, he is taking care of the beast gratuitously, while Judah holds that since the beast benefits the man, he is a paid bailee, even though he is paying for the benefit.

B. BUT ANY OF THEM WHO SAID, “TAKE WHAT IS YOURS AND PAY ME OFF BECAUSE THE JOB IS DONE” ENTERS THE STATUS OF AN UNPAID BAILEE RESPONSIBLE FOR NEGLIGENCE BUT NOT THEFT.

1. II:1: We have learned in the Mishnah: If the borrower said, “Send it along,” and he did send it along, but it died, the borrower is liable. And so is the rule as to returning the beast (M. **B.M. 8:3J-M**). A gratuitous borrower is liable for every mishap. If he explicitly instructs the lender to send it to him, he is responsible for it as soon as the lender entrusts it to a person for delivery, and therefore if it perishes on the road, he must make it good. Likewise, if the borrower entrusts it to his agent for return, without receiving explicit instructions to that effect from the lender, he remains responsible for it until it is actually returned.
2. II:2: Huna Mar bar Maremar before Rabina was contrasting teachings on Tannaite authority against one another and reconciling them. He said, “We have learned in the Mishnah, But any of them who said, “Take what is yours and pay me off because the job is done” enters the status of an unpaid bailee responsible for negligence but not theft. And that rule pertains also to a case in which he has said, ‘I have finished the work.’ But then note the contradiction: If the borrower said, “Send it along,” and he did send it along, but it died, the borrower is liable. And so is the rule as to returning the beast.
3. II:3: The question was raised: “Is the meaning, ‘he is not liable’ as a borrower but he is liable as a paid bailee? Or is the meaning, ‘as a paid bailee’ also he is not subject to liability?”

a. II:4: Case: Somebody sold an ass to his fellow. The other said to him, "I am going to take it to such-and-such a place. If it is sold, well and good, and if not, I shall bring it back to you." He went but did not sell it, and when he was coming back, it was accidentally injured. The case came before R. Nahman, who imposed liability upon him.

C. IF ONE PERSON SAID TO ANOTHER, "YOU KEEP WATCH FOR ME, AND I'LL KEEP WATCH FOR YOU," BOTH ARE IN THE STATUS OF A PAID BAILEE.

1. III:1: But why should this be the rule? Is this not a case of bailment in which the owner is in the service of the bailee? So here too, while the bailee has the article in his care, the owner is in the service of the bailee under the conditions of bailment agreed upon here.

a. III:2: Case: There was a group of aloe-dealers, and every day one of them would bake for all of them. One day they said to one of their group, "Go, bake for us."

b. III:3: As above. There were these two men who were going along the way, one tall, the other short. The tall one was riding an ass and wearing a linen sheet, while the short one was wearing a woolen cloak and was going on foot. When they came to a river, he took his cloak and put it on the ass and took the other man's linen garment and covered himself with it. The water swept the linen away. When the case came before Raba, he held the short man liable.

c. III:4: As above. Somebody rented an ass to his neighbor and said to him, "Make sure not to go by way of the Peqod canal, which is watery, but by way of Neresh, which is not watery. But he went by way of the Peqod canal and the ass died.

D. "KEEP WATCH FOR ME," AND THE OTHER SAID TO HIM, "LEAVE IT DOWN BEFORE ME," THE LATTER IS IN THE STATUS OF UNPAID BAILEE.

1. IV:1: Said R. Huna, "If he said to him, 'Leave it before you,' he is neither an unpaid bailee nor a paid bailee." He has refused the bailment altogether.

2. IV:2: The question was raised: If the man said, "Put it down," without further stipulation, what is the rule?

a. IV:3: May we say that the same issue faced the following Tannaite authorities:

E. IF ONE MADE A LOAN AND TOOK A PLEDGE, HE IS IN THE STATUS AS TO CARE OF THE PLEDGE OF A PAID BAILEE. R. JUDAH SAYS, "IF HE LENT HIM MONEY, HE IS IN THE STATUS OF AN UNPAID BAILEE. IF HE LENT HIM PRODUCE, HE IS IN THE STATUS OF A PAID BAILEE."

1. V:1: May we conclude that our Mishnah-passage does not accord with the view of R. Eliezer.

a. V:2: Further investigation of the result of the foregoing: May one say that since the pledge is not worth the money that is lent, the dispute between Aqiba and Eliezer concerns the principle assigned to Samuel?

F. ABBA SAUL SAYS, “IT IS PERMITTED FOR A PERSON TO PUT OUT ON HIRE A PLEDGE LEFT BY A POOR MAN, AND SO REDUCE THE DEBT ON ITS ACCOUNT LITTLE BY LITTLE, FOR HE IS LIKE ONE WHO GIVES BACK WHAT SOMEONE HAS LOST.”

1. VI:1: Said R. Hanan bar Ammi said Samuel, “The decided law accords with the view of Abba Saul.”

LIX. Mishnah-Tractate Baba Mesia 6:8

A. THE BAILEE WHO MOVES A JAR FROM ONE PLACE TO ANOTHER AND BROKE IT, WHETHER HE IS AN UNPAID BAILEE OR A PAID BAILEE, MUST TAKE AN OATH THAT THE JAR WAS BROKEN BY ACCIDENT AND NOT THROUGH HIS WILLFUL NEGLIGENCE, AND SO HE IS EXEMPT FROM HAVING TO MAKE IT UP.

1. I:1: Our rabbis have taught on Tannaite authority: The bailee who moves a jar from one place to another and broke it, whether he is an unpaid bailee or a paid bailee, must take an oath that the jar was broken by accident and not through his willful negligence, and so he is exempt from having to make it up,” the words of R. Meir. R. Judah says, “An unpaid bailee takes an oath, a paid one simply makes restitution.”

B. R. ELIEZER SAYS, “IN EITHER CASE HE IS TO TAKE AN OATH. BUT I WONDER WHETHER EITHER THIS ONE OR THAT ONE CAN IN FACT TAKE A VALID OATH.”

1. II:1: Does the foregoing bear the implication that R. Meir takes the view that one who stumbles and damages an object by that cause is not deemed negligent, for if the barrel was broken in the course of being moved, at the very least it is as though it were damaged through his stumbling; and since Meir rules that he must swear that he had not been negligent, it follows that stumbling is not negligence?

a. II:2: Case. Somebody was once moving a jug of wine in the Manor of Mahoza, and he broke it on a projection of Mahoza. When the case came before Raba, he said to him, “The manor of Mahoza is a place where people congregate, so go, bring evidence so as to exempt yourself from having to make restitution.”

b. II:3: Case. Somebody said to his neighbor, “Go and buy me four hundred barrels of wine.” He went and bought them for him. Then he went to him and said, “I bought you four hundred barrels of wine, but they turned sour.”

c. II:4: Case. R. Hiyya bar Joseph made the ordinance in Sikara that those who carry burdens on a yoke, which break, must pay half of the value in restitution.

d. II:5: Case. As to Rabbah b. R. Huna, some bearers broke a barrel of wine that was his. He seized their clothes in restitution, and they went and complained to Rab. He said to him, “Return their clothes.”

LX. Mishnah-Tractate Baba Mesia 7:1

A. HE WHO HIRES DAY WORKERS AND TOLD THEM TO START WORK EARLY OR TO STAY LATE — IN A PLACE IN WHICH THEY ARE ACCUSTOMED NOT TO START WORK

EARLY OR NOT TO STAY LATE, HE HAS NO RIGHT TO FORCE THEM TO DO SO. IN A PLACE IN WHICH THEY ARE ACCUSTOMED TO PROVIDE A MEAL, HE MUST PROVIDE A MEAL. IN A PLACE IN WHICH THEY ARE ACCUSTOMED TO MAKE DO WITH A SWEET, HE PROVIDES IT.

1. I:1: The rule at M. **7:1A-C** is self-evident. Not at all, it was required to cover the case of an employer who paid a higher wage than was usual. What might you have thought? That he may say to them, “Now, since I have added to your salary, it was with the intent that you would come early and work for me until nightfall.”

2. I:2: R. Simeon b. Laqish said, “A worker — as to his entry into town, that is on his own time, but as to his exit to the fields, that is on his employer’s time the working day on the field extended from sunrise until the stars appear, and the laborer returns home on his own time, afterward; but he goes to work in the time of the employer, starting from home at sunrise. For it is said, ‘The sun rises, the animals gather themselves together and lay down in their dens. Man goes forth to his work and to his labor until the evening’ (Psa. 104:22).”

a. I:3: Further exegesis of the same proof-text: R. Zira interpreted — and some say that R. Joseph repeated on Tannaite authority — “What is the meaning of the verse, ‘You make darkness and it is night, when all the beasts of the forest creep forth. The sun rises, the animals gather themselves together and lay down in their dens. Man goes forth to his work and to his labor until the evening’ (Psa. 104:20f)?

B. COMPOSITE ON ELEAZAR B. R. SIMEON

1. I:4: R. Eleazar b. R. Simeon came across an officer who was out hunting for thieves. He said to him, “How can you prevail against them? Are they not compared to wild beasts, as it is written, “it is night, when all the beasts of the forest creep forth’?”

2. I:5: One day a certain fuller met him, calling him, “Vinegar son of Wine.”

a. I:6: The same thing happened to R. Ishmael b. R. Yosé. Elijah met him and said to him and said to him, “How long are you going to betray the people of our God for slaughter.”

3. I:7: When R. Ishmael b. R. Yosé and R. Eleazar b. R. Simeon bumped into each other, a yoke of oxen could go in-between them and not touch them. A certain high-class lady said to them, “Your children can’t possibly be yours!”

a. I:8: Said R. Yohanan, “The waist-line of R. Ishmael b. R. Yosé was the same as a bottle that can hold nine qabs.” Said R. Pappa, “The waist-line of R. Yohanan was the same as a bottle that can hold five qabs,” and others say, “Three.”

C. COMPOSITE ON YOHANAN

1. I:9: Said R. Yohanan, “I am a survivor of the brightest and the best of Jerusalem.” One who wants to see how beautiful R. Yohanan was should bring a silver goblet as it comes out of the crucible, fill it up with the seeds of a red pomegranate, circle the brim with a crown of red roses, and put it at the border between sun and shade; the lustrous glow will approximate R. Yohanan’s beauty

2. I:10: R. Yohanan would go and sit at the gate of the bath. When Israelite women would come up from having taken their required bath having completed their menstrual period and now prepared themselves for sexual relations, he would say to them, “Cross my path, so they may bear sons as beautiful and learned in the Torah as I am.”

3. I:11: One day R. Yohanan was swimming in the Jordan. R. Simeon b. Laqish then a famous guerilla saw him and jumped into the Jordan after him. Yohanan said to him, “May your strength be for the Torah.” He said to him, “May your beauty be for women.” He said to him, “If you repent, I will give you my sister, who is more beautiful than I am.”

4. I:12: One day there was a dispute in the school house on the following matter: As to a sword, knife, dagger, spear, hand-saw, and scythe — at what point in making them do they become susceptible to become unclean? It is when the process of manufacturing them has been completed at which point they are deemed useful and therefore susceptible. And when is the process of manufacturing them completed? R. Yohanan said, “When one has tempered them in the crucible.” R. Simeon b. Laqish said, “When one has furbished them in water.”

D. CONTINUING THE COMPOSITE ON ELEAZAR B. R. SIMEON

5. I:13: Even so despite the fact that his fat did not putrefy, R. Eleazar B. R. Simeon did not find his fears allayed, so he accepted upon himself suffering as a penance.

6. I:14: Said Rabbi, “By keeping Eleazar b. R. Simeon from the school house, where his knowledge produced the decision that a flux was not menstrual, and hence sexual relations could take place, how much procreation did the wicked state that had coopted his services prevent in Israel.”

7. I:15: When he lay dying, he said to his wife, “I know that the rabbis are angry with me and are not going to attend to my corpse in a proper manner. Let me therefore lie in my upper chamber instead of burying me, and don’t be afraid of me.”

8. I:16: Others say, “R. Simeon b. Yohai Eleazar’s father appeared to them in a dream, saying to them, ‘I have one pigeon in your midst, which you refuse to bring to me.’”

9. I:17: Rabbi sent word to speak with his wife about marriage. She sent back word to him, “Will a utensil that has been used for holy things be used for common things? There in the Land of Israel they say, ‘Where the master of the household hangs up his weapons, will the shepherd hang up his wallet?’”

a. I:18: Gloss on I:17.

i. I:19: Complement to the gloss.

a. I:20: Gloss on I:17.

I. I:21: Gloss on I:20.

II. I:22: As above.

III. I:23: As above.

10. I:24: Rabbi happened to go to the town of R. Eleazar b. R. Simeon. He said to the people there, “Does that righteous man have a son?” They said to him, “He does indeed have a son, and every whore who is paid two pays him eight.”

11. I:25: When he died, they brought his body to the cave where his father was buried. They found the vault encircled by a snake. They said to it, “Snake, snake, open your mouth, and let the son go in to join his father.” The snake would not open its mouth.

a. I:26: Topical supplement to I:24. Rabbi happened to go to the town of R. Tarfon. He said to the people there, “Does that righteous man who used to swear by the life of his children have a son?” They said to him, “He had no surviving son, but he has a son of a daughter, and every whore who is paid two pays him eight.”

E. PRESERVING THE TORAH IN ONE’S FAMILY. THE GENEALOGY OF LEARNING

1. I:27: Said R. Parnak said R. Yohanan, “Whoever is a disciple of a sage, with a son who is a disciple of a sage, and a grandson who is a disciple of a sage — Torah will never again depart from his seed for ever, as it is said, ‘As for me, this is my covenant with them, says the Lord. My spirit is upon you, and my words which I have put in your mouth shall not depart out of your mouth, nor out of the mouth of your seed, nor out of the mouth of the seed of your seed, says the Lord, from now and for ever’ (Isa. 59:21).”

a. I:28: R. Joseph sat for forty fasts, and they pronounced for him, “shall not depart out of your mouth.” He sat for forty more fasts, and they pronounced for him, “shall not depart out of your mouth, nor out of the mouth of your seed.” He sat for forty more fasts, and they pronounced for him, “shall not depart out of your mouth, nor out of the mouth of your seed, nor out of the mouth of the seed of your seed.” He said, “From now on I don’t have to fast any more. The Torah will seek its natural home.”

b. I:29: When R. Zira went up to the Land of Israel, he sat for a hundred fasts so that the Talmud of Babylonia would be forgotten by him, so that it would not distress him.

2. I:30: Said R. Judah said Rab, “What is the meaning of this verse: ‘Who is the wise man, who may understand this? And who is he to whom the mouth of the Lord has spoken, that he may declare why the land perishes’ (Jer. 9:11)? This matter did the sages say, but they could not explain it. Prophets said it but could not explain it. Finally the Holy One, himself, explained it on his own: ‘And the Lord said, Because they have forsaken my Torah, which I have put before them’ (Jer. 9:12).”

3. I:31: R. Hama said, “What is the meaning of the verse, ‘Wisdom rests in the heart of him who has understanding, but that which is in the midst of fools is made known’ (Pro. 14:33)? ‘Wisdom rests in the heart of him who has understanding:’ this refers to a disciple of sages who is the son of a disciple of sages. ‘but that which is in the midst of fools is made known:’ this refers to a disciple of sages who is the son of an ignoramus.”

4. I:32: Said R. Jeremiah to R. Zira, “What is the meaning of the verse, ‘The small and the great are there in the world to come, and the servant is free from his master’ (Job. 3:19)? Don’t we know that ‘The small and the great are there’? Rather, whoever makes himself small on account of teachings of the Torah in this world is made great in the world to come, and whoever makes himself into a slave on account of the teachings of the Torah in this world is made a free man in the world to come.”

5. I:33: R. Simeon b. Laqish was marking out the burial vaults of the rabbis. When he came to the grave of R. Hiyya, it was hidden from him. He was upset. He said, “Lord of the world, did I not delve deeply into the Torah the way he did?” A heavenly echo came forth and said to him, “You delved deeply into the Torah as he did, but you did not disseminate Torah the way he did.”

6. I:34: When R. Hanina and R. Hiyya would argue, R. Hanina said to R. Hiyya, “Are you going to have a fight with me? God forbid, if the Torah were to be forgotten from Israel, I could restore it through my deep master of its logic.”

7. I:35: Said R. Zira, “Last night R. Yosé b. R. Hanina appeared to me. I said to him, ‘Next to whom are you stationed?’”

8. I:36: Said R. Habiba, “R. Habiba bar Surmaqi told me, ‘I saw one of the rabbis whom Elijah would visit. In the morning his eyes looked fine, but in the evening they looked as though they were burned in fire. ‘I said to him, “What is the meaning of this,” and he said to me, “I asked Elijah to show me the rabbis as they go up to the heavenly session. He said to me, ‘You can look upon all of them except the carriage of R. Hiyya. On it you shall not gaze.’ What is their sign? ‘In the case of all of them, angels go along with them as they go up or come down, except for the carriage of R. Hiyya, who goes up and comes down on his own.’”

9. I:37: Elijah would frequent the session of Rabbi. One day, which was the New Moon, he waited for him, but he did not come. Rabbi said to Elijah, when he saw him next, “What is the reason that the master delayed?” He said to him, “I was waiting until I awoke Abraham from his sleep and washed his hands and he said his prayer, then I put him to rest again, and I did the same with Isaac and Jacob.”

10. I:38: Samuel the astronomer was Rabbi’s physician. Rabbi had eye trouble. He said to him, “May I mix a salve for you?” He put a phial of medicines under his pillow, and he was cured. Rabbi was eager to ordain him, but the matter was not realized. He said to him, “Don’t be upset. I have myself seen in the book of the first Man, in which is written, ‘Samuel the astronomer will be called a sage but he will never be called a rabbi, but the healing of Rabbi will come about through him. And it is further written in the same document, “Rabbi and R. Nathan mark the end of the Mishnah-accumulation, R. Ashi and Rabina, the end of instruction, and your mnemonic, “Until I went to the sanctuary of God, then I understood their end” (Psa. 73:17).”

11. I:39: Said R. Kahana, R. Hama, son of the daughter of Hassa, told me that Rabbah b. Nahmani died in a persecution. And here is the story.”

a. I:40: Supplement to a detail of the foregoing.

F. EVERYTHING ACCORDS WITH THE PRACTICE OF THE PROVINCE.

1. II:1: What does “everything” mean to encompass?

G. M'SH B: R. YOHANAN B. MATYA SAID TO HIS SON, “GO, HIRE WORKERS FOR US.” HE WENT AND MADE AN AGREEMENT WITH THEM FOR FOOD WITHOUT FURTHER SPECIFICATION. NOW WHEN HE CAME TO HIS FATHER, THE FATHER SAID TO HIM, “MY SON, EVEN IF YOU SHOULD MAKE FOR THEM A MEAL LIKE ONE OF SOLOMON IN HIS DAY, YOU WILL NOT HAVE CARRIED OUT YOUR OBLIGATION TO THEM.

1. III:1: The contrast between Everything accords with the practice of the province and even if you should make for them a meal like one of Solomon yields the question, does the cited precedent mean to contradict the law?

H. FOR THEY ARE CHILDREN OF ABRAHAM, ISAAC, AND JACOB:

1. IV:1: For they are children of Abraham, Isaac, and Jacob: is that to imply that the meals of our father, Abraham, were better than those of Solomon?

a. IV:2: Gloss of foregoing.

b. IV:3: As above.

I. THE MEALS OF ABRAHAM. GENESIS 18:7

1. IV:4: “And Abraham ran to the herd and got a tender and good calf” (Gen. 18: 7). And said R. Judah said Rab, ““a calf” means one, ‘tender,’ two, and ‘good’ three.”

a. IV:5: Complement to the foregoing.

2. IV:6: Said R. Judah said Rab, “Whatever Abraham himself did for the ministering angels , the Holy One, blessed be he, himself did for his children. Whatever Abraham did for the ministering angels through an errand-boy, the Holy One, blessed be he, did for his children through an angel.”

3. IV:7: “Let a little water, I pray you, be brought and wash your feet” (Gen. 18: 4): Said R. Yannai b. R. Ishmael, “They said to him, ‘And did you suspect that we were Arabs who bought down to the dust of their feet? Ishmael has already come forth from you who is not an idolator.”

4. IV:8: “And the Lord appeared to him in the oaks of Mamre, and he sat at his tent door in the heat of the day. He lifted up his eyes and looked, and behold, three men stood in front of him. When he saw them, he ran from the tent door to meet them and bowed himself to the earth, and said, ‘My lord if I have found favor in your sight, do not pass by your servant’” (Gen. 18: 1-3): What is the meaning of “in the heat of the day”?

5. IV:9: Who were these three men?

6. IV:10: How come with reference to Abraham it is written, “And they said, So do as you have said” (Gen. 18: 5), while in connection with Lot, it is written, “And he pressed them greatly” (Gen. 19: 3)?

7. IV:11: It is written, “And I will get a piece of bread” (Gen. 18: 5) but also, “And Abraham ran to the herd” (Gen. 18: 7). Said R. Eleazar, “On the strength of that contrast the lesson is taught that righteous people say a little but do a lot.”

8. IV:12: It is written, “meal,” and then, “fine meal” (Gen. 18: 6). Said R. Isaac, “On the basis of that contrast we draw the conclusion that a woman is more grudging than a man is when it comes to guests.”

9. IV:13: It is written, ‘Knead it and make cakes upon the hearth’ (Gen. 18: 6) but also, “And he took butter and milk and a calf” (Gen. 18: 8), but he didn’t bring them any bread! Said Ephraim the Contentious, a disciple of R. Meir, in the name of R. Meir, “Our father Abraham was a person who ate unconsecrated food in a state of cultic cleanness, and our mother, Sarah, on that day was in her menstrual period so the bread, if it were baked by her and brought, would be made cultically unclean by her, hence none was served.”

10. IV:14: “But Sarah denied, saying, ‘I did not laugh,’ for she was afraid. He said, ‘No, but you did laugh!’” (Gen. 18:14-15): This tells you that our mother Sarah was modest.

11. IV:15: It was taught on Tannaite authority by R. Yosé, “Why are dots written on the letters A, Y, and W in the word ‘to him’ which is made up of the letters A L Y W? The cited letters A Y W may be read, ‘where is he?’ The Torah thereby teaches proper conduct, for someone should always ask about the welfare of the hostess.”

12. IV:16: “After I have grown old and my husband is old, shall I have pleasure?” Said R. Hisda, “After the flesh got worn and the skin wrinkled, the flesh became pleasurable, the wrinkles were smoothed out, and beauty was restored.”

13. IV:17: It is written, “So Sarah laughed to herself, saying, ‘After I have grown old and my husband is old, shall I have pleasure?’” And by contrast: “The Lord said to Abraham, ‘Why did Sarah laugh and say, “Shall I indeed bear a child, now that I am old?”’! So the Holy One, blessed be he, did not set the question in the way in which she had spoken it!

14. IV:18: “And she said, ‘Who would have said to Abraham that Sarah would have given children suck’ (Gen. 21: 7):” Since the reference is to children in the plural, in point of fact how many children did Sarah suckle?

15. IV:19 Until the time of Abraham there was no such thing as old age. One who wanted to speak with Abraham might well speak with Isaac and one who wanted to speak with Isaac might well speak with Abraham. Abraham came along and begged for mercy, and old age came about, as it is said, “And Abraham was old, getting along in years” (Gen. 24: 1). Until Jacob, there was no such thing as illness, but Jacob came along and begged for mercy, and illness came about, as it is said, “And someone told Joseph, behold your father is sick” (Gen. 48: 1).

a. IV:20: Supplement to a detail of the foregoing.

J. BUT BEFORE THEY BEGIN WORK, GO AND TELL THEM, ‘WORK FOR US ON CONDITION THAT YOU HAVE A CLAIM ON ME AS TO FOOD ONLY FOR A PIECE OF BREAD AND PULSE ALONE.’”

1. V:1: Said R. Aha b. R. Joseph to R. Hisda, “Have we learned in the Mishnah, ‘bread made of pulse’ or ‘bread and pulse’?”

K. RABBAN SIMEON B. GAMALIEL SAYS, “HE HAD NO NEED TO SPECIFY THAT IN SO MANY WORDS. EVERYTHING IN ANY CASE ACCORDS WITH THE PRACTICE OF THE PROVINCE.”

1. VI:1: What is “everything” meant to encompass?

LXI. Mishnah-Tractate Baba Mesia 7:2

A. AND THESE HAVE THE RIGHT TO EAT THE PRODUCE ON WHICH THEY WORK BY RIGHT ACCORDED TO THEM IN THE TORAH: HE WHO WORKS ON WHAT IS AS YET UNPLUCKED MAY EAT FROM THE PRODUCE AT THE END OF THE TIME OF PROCESSING; AND HE WHO WORKS ON PLUCKED PRODUCE MAY EAT FROM THE PRODUCE BEFORE PROCESSING IS DONE; IN BOTH INSTANCES SOLELY IN REGARD TO WHAT GROWS FROM THE GROUND. BUT THESE DO NOT HAVE THE RIGHT TO EAT THE PRODUCE ON WHICH THEY LABOR BY RIGHT ACCORDED TO THEM IN THE TORAH: HE WHO WORKS ON WHAT IS AS YET UNPLUCKED, BEFORE THE END OF THE TIME OF PROCESSING; AND HE WHO WORKS ON PLUCKED PRODUCE AFTER THE PROCESSING IS DONE, IN BOTH INSTANCES SOLELY IN REGARD TO WHAT DOES NOT GROW FROM THE GROUND.

1. I:1: What is the scriptural source for this rule?

2. I:2: “When you come into your neighbor’s vineyard, you may eat your fill of grapes, as many as you wish, but you shall not put any into your vessel” (Deu. 23:24): “you may eat”: — but not suck out the juice.

B. OTHER RULES ON RANDOMLY EATING UNTITHED PRODUCE; THE POINT AT WHICH PRODUCE IS LIABLE TO TITHING

1. I:3: Said R. Yannai, “Produce from which tithes and offerings have not been separated is not held to be liable for the designation of those holy parts until it sees the front of the house that is, until it is taken into the house through the front door, not through the roof or the backyard, as it is written, ‘Then you shall say before the Lord, your God, I have removed the sacred portion out of my house’ (Deu. 26:13).”

a. I:4: Further discussion of the foregoing.

I. I:5: Analytical discussion of a detail of the foregoing.

II. I:6: Continuation of the problem of the foregoing.

C. WORKERS AND CATTLE MAY EAT PRODUCE ON WHICH THEY WORK: FURTHER RULES AND THE SCRIPTURAL BASIS THEREFOR

1. I:7: We have found evidence that a man may eat when employed in working on what is attached to the soil, and the ox may eat when working on what is plucked up Deu. 25:4: “You shall not muzzle an ox when it treads out the grain. But how do we know that a man may nibble when working on what is plucked up?

2. I:8: How do we know that an ox may nibbled on what is unplucked?

3. I:9: With reference to the verse, “You shall not muzzle an ox in its threshing,” Our rabbis have taught on Tannaite authority: As to threshing, what is distinctive in threshing is that it concerns something that grows in the ground, and a worker

eats what is threshed, so anything that grows in the ground, and a worker eats what is threshed, is under the same law, omitting then one who milks, presses curdled milk, and makes cheese, since these acts of labor do not pertain to what grows from the earth, and on that account a worker may not nibble on what he is producing (T. **B.M. 8:7G-H**).

4. I:10: With reference to the verse, “You shall not muzzle an ox in its threshing,” there is a further teaching that our rabbis have taught on Tannaite authority: As to threshing, what is distinctive in threshing is that it concerns something that the worker eats when the processing is done, so anything that the worker eats when the processing is done is covered by the law, excluding then one who weeds among garlic and onions, since that work does not mark the completion of the processing of that crop, the worker may not nibble as he works (T. **B.M. 8:7I-J**).

5. I:11: With reference to the verse, “You shall not muzzle an ox in its threshing,” there is a further teaching that our rabbis have taught on Tannaite authority: As to threshing, what is distinctive in threshing is that it is a process that does not complete the work on the crop, such that the crop is then liable to the designation of tithes, so that the worker may nibble as he goes along, so at any stage in the labor in which the work of processing is not completed such that the crop is then liable to the designation of tithes, the worker may nibble as he goes along, excluding then separating dates and dried figs. In that case, the processing is completed so that the crop is then liable to the designation of tithes, and the worker may not nibble as he works (T. **B.M. 8:7K-L**).

6. I:12: With reference to the verse, “You shall not muzzle an ox in its threshing,” there is a further teaching that our rabbis have taught on Tannaite authority: As to threshing, what is distinctive in threshing is that it is a process that does not complete the work on the crop, such that the crop is then liable to the separation of dough offering, so that the worker may nibble as he goes along, so at any stage in the labor in which the work of processing is not completed such that the crop is then liable to the separation of dough offering, the worker may nibble as he goes along, excluding then kneading, shaping the dough, and baking. These are processes that are undertaken in such wise that the dough is liable to the separation of dough offering, and the worker may not nibble while doing the work (T. **B.M. 8:7E-F**).

7. I:13: The question was raised: what is the law as to the worker’s parching the grain in the fire and eating it? Is this analogous to eating grapes along with something else which is forbidden or not? It may be argued that since grapes may not be eaten with bread, because thereby an unreasonably large quantity is consumed, the same holds good of parched grain, which is more palatable than unparched.

a. I:14: Amplification of a detail of the foregoing.

10. I:15: When cows are stamping grain — barley grain was soaked in water, dried in an oven, and threshing by the treading of cows, which process removed the husks — or threshing grain that has been designated as priestly ration or as tithes, there is no prohibition in regard to “you shall not muzzle the ox when he treads the

grain” (Deu. 25: 4). But for appearances’ sake, he should bring a basket of that species and bind it on the muzzle of the animal (T. **B.M. 8:10A-B**).

11. I:16: The question was raised to R. Sheshet, “If the beast ate and excreted — what is the law? Is the prohibition of muzzling on account of the fact that the crop benefits the beast and here it does not benefit the beast; or is the prohibition of muzzling because the beast sees the crop and being muzzled, is distressed, and here too there is distress if the beast is muzzled?”

12. I:17: “What is the rule as to saying to a gentile, ‘Muzzle my cow and thresh with it’? Do we say that, when we invoke the principle, a statement to a gentile to carry out a certain action is a matter concerning Sabbath rest only and applies only to the Sabbath, since work on that day is forbidden with the sanction of stoning, but as to the prohibition of muzzling, which is prohibited merely as a negative commandment, the consideration that one may not tell a gentile to do what an Israelite cannot do does not apply, or perhaps there is no such distinction and the prohibition pertaining to an Israelite also may not be violated by a gentile acting on instructions from an Israelite?”

13. I:18: The question was raised by R. Ammi bar Hama, “What is the law as to putting a thorn in its mouth to prevent the beast from nibbling on the crop?”

14. I:19: R. Jonathan asked R. Simai, “If one muzzled the ox outside before it entered the field, what is the rule?”

15. I:20: Our rabbis have taught on Tannaite authority: He who actually muzzles the cow and he who pairs heterogeneous animals which is not to be done in ploughing is exempt from liability. You have none who is liable to be flogged except the one who actually leads or drives the muzzled ox while it is ploughing — him alone

16. I:21: If one muzzled the beast effectively keeping it from nibbling as it threshes by shouting at it, or if one drove heterogeneous animals by voice commands — R. Yohanan said, “He is liable to flogging.” And R. Simeon b. Laqish said, “He is exempt.”

17. I:22: Our rabbis have taught on Tannaite authority: He who muzzles a cow and threshes with it is flogged and has to pay the owner of the cow four qabs for a cow and three qabs for an ass. But lo, is it not the established principle that one is not both flogged and also put to death, or flogged and also required to pay a penalty?

D. FURTHER ON THE MATTER OF THE PROHIBITION OF HYBRIDIZATION

a. I:23: What is the law as to leading into a stable two heterogeneous animals of opposite sex? Does doing so transgress Lev. 19:19: ‘You shall not cause your cattle to gender with a diverse kind’ and does the prohibition extend to the opportunity or apply only to actually making the two copulate?”

b. I:24: Said R. Judah, “In the case of the copulation of a beast with another of its own species, one is permitted to place the penis in the vagina, even as one places the painting stick in the tube, and even on the count of obscenity there is no objection. What is the operative consideration? It is

because the man is engaged by doing his job and will not think inappropriate thoughts.”

c. I:25: Said R. Ashi, “This matter was set before me by the members of the household of R. Nehemiah, head of the exile: ‘What is the law as to leading into a stable an animals and another of its species together with another not of its species? Do we maintain that since there is one of its own kind, the animal will be attracted to that one, or perhaps it is not permitted?’

LXII. Mishnah-Tractate Baba Mesia 7:3

A. IF ONE WAS WORKING WITH HIS HANDS BUT NOT WITH HIS FEET, WITH HIS FEET BUT NOT WITH HIS HANDS, EVEN CARRYING WITH HIS SHOULDER, LO, HE HAS THE RIGHT TO EAT THE PRODUCE ON WHICH HE IS WORKING.

1. I:1: What is the scriptural basis for the ruling?

B. R. YOSÉ B. R. JUDAH SAYS, “HE MAY EAT THE PRODUCE ON WHICH HE IS WORKING ONLY IF HE WORKS WITH BOTH HIS HANDS AND HIS FEET.”

1. II:1: What is the scriptural basis for the ruling?

2. II:2: Rabbah b. R. Huna raised the question, “In the view of R. Yosé b. R. Judah, if one threshes with geese and fowl, what is the rule? Is it necessary merely that the work be done with all the beast’s strength, and that requirement is met here? Or perhaps the beast must work with both forelegs and hind-legs, a provision that, in the nature of things, cannot be met here?”

3. II:3: Said R. Nahman said Rabbah bar Abbuha, “Before the workers have walked in the winepress both lengthwise and crosswise may eat grapes but not drink wine. When they have walked in the winepress both lengthwise and crosswise, they may both eat grapes and drink wine.”

LXIII. Mishnah-Tractate Baba Mesia 7:4

A. IF THE LABORER WAS WORKING ON FIGS, HE HAS NOT GOT THE RIGHT TO EAT GRAPES. IF HE WAS WORKING ON GRAPES, HE HAS NOT GOT THE RIGHT TO EAT FIGS. BUT HE DOES HAVE THE RIGHT TO REFRAIN FROM EATING UNTIL HE GETS TO THE BEST PRODUCE AND THEN TO EXERCISE HIS RIGHT TO EAT. AND IN ALL INSTANCES THEY HAVE SAID THAT HE MAY EAT FROM THE PRODUCE ON WHICH HE IS LABORING ONLY IN THE TIME OF WORK. BUT ON GROUNDS OF RESTORING LOST PROPERTY TO THE OWNER, THEY HAVE SAID IN ADDITION: WORKERS HAVE THE RIGHT TO EAT AS THEY GO FROM FURROW TO FURROW EVEN THOUGH THEY DO NOT THEN WORK, AND WHEN THEY ARE COMING BACK FROM THE PRESS SO SAVING TIME FOR THE EMPLOYER;

1. I:1: The question was raised, “If one was working on this vine, what is the law as to his eating the grapes on another vine? Do we require applying the rule in such a way that it is in particular of the kind on which you put the householder’s tools that you may eat the produce, and lo, that condition has been met, or perhaps it is of the variety of produce on which you put the householder’s tools that you

may eat, and lo, that is condition is not met? And, further, if you should take the view that if one was working on this vine, one should not eat the grapes on another vine, then how can an ox nibble on what is attached to the ground since the same rule applies to man and beast?

B. ...AND IN THE CASE OF AN ASS NIBBLING ON STRAW IN ITS LOAD, WHEN IT IS BEING UNLOADED.

1. II:1: But while the beast is being unloaded, whence will it eat?

LXIV. Mishnah-Tractate Baba Mesia 7:5-7

A. A WORKER HAS THE RIGHT TO EAT CUCUMBERS, EVEN TO A DENAR'S WORTH, OR DATES, EVEN TO A DENAR'S WORTH. R. ELEAZAR HISMA SAYS, "A WORKER SHOULD NOT EAT MORE THAN THE VALUE OF HIS WAGES." BUT SAGES PERMIT. BUT THEY INSTRUCT THE MAN NOT TO BE A GLUTTON AND THEREBY SLAM THE DOOR IN HIS OWN FACE TO FUTURE EMPLOYMENT.

A MAN MAKES A DEAL WITH THE HOUSEHOLDER NOT TO EXERCISE HIS RIGHT TO EAT PRODUCE ON WHICH HE IS WORKING IN BEHALF OF HIMSELF, HIS ADULT SON, OR DAUGHTER, IN BEHALF OF HIS ADULT MANSERVANT OR WOMAN-SERVANT, IN BEHALF OF HIS WIFE, BECAUSE THEY CAN EXERCISE SOUND JUDGMENT AND KEEP THE TERMS OF THE AGREEMENT. BUT HE MAY NOT MAKE A DEAL IN BEHALF OF HIS MINOR SON OR DAUGHTER, IN BEHALF OF HIS MINOR BOY SERVANT OR GIRL SERVANT, OR IN BEHALF OF HIS BEAST, BECAUSE THEY CAN NOT EXERCISE SOUND JUDGMENT AND KEEP THE TERMS OF THE AGREEMENT.

HE WHO HIRES WORKERS TO WORK IN HIS FOURTH-YEAR PLANTINGS THE PRODUCE OF WHICH IS TO BE EATEN NOT AT RANDOM BUT ONLY IN JERUSALEM OR TO BE REDEEMED FOR MONEY TO BE BROUGHT UP TO JERUSALEM (LEV. 19:24) LO, THESE DO NOT HAVE THE RIGHT TO EAT. IF IN ADVANCE HE DID NOT INFORM THEM OF THE CHARACTER OF THE PRODUCE AND THE PROHIBITIONS AFFECTING IT, HE HAS TO REDEEM THE PRODUCE AND PERMIT THEM TO EAT OF IT. IF HIS FIG CAKES SPLIT UP, HIS JARS OF WINE BURST OPEN WHILE YET UNTITHED, AND WORKERS ARE HIRED TO REPRESS THE FIGS AND RE-BOTTLE THE WINE, LO, THESE DO NOT HAVE THE RIGHT TO EAT THEM. IF HE DID NOT INFORM THEM THAT THE PRODUCE ON WHICH THEY WOULD BE WORKING WAS UNTITHED AND THEREFORE NOT AVAILABLE FOR THEIR RANDOM CONSUMPTION, HE HAS TO TITHE THE PRODUCE AND ALLOW THEM TO EAT OF IT.

1. I:1: Do sages M. 7:5D take the same view as the initial authority M. 7:5A! Why the repetition?

2. I:2: The question was raised: Does the worker in nibbling on the crop as he works eat of his own property or does he eat of what belongs to Heaven?

LXV. Mishnah-Tractate Baba Mesia 7:8A-B

A. THOSE WHO KEEP WATCH OVER PRODUCE HAVE THE RIGHT TO EAT IT BY THE LAWS OF THE PROVINCE, BUT NOT BY WHAT IS COMMANDED IN THE TORAH.

1. I:1: Said Rab, “The rule is to be repeated only with reference to those who keep watch over gardens and orchards, but as to those who keep watch over wine-vats and grain stocks have the right to nibble by the law of the Torah.” Samuel said, “The rule is to be repeated only with reference to those keep watch over wine-vats and grain stocks, but those who keep watch over gardens and orchards have not got the right to nibble either by the law of the Torah or by the laws of the province.”

LXVI. Mishnah-Tractate Baba Mesia 7:8C-L

A. THERE ARE FOUR CLASSES OF BAILEES: (1) AN UNPAID BAILEE, (2) A BORROWER, (3) A PAID BAILEE, (4) AND A LESSEE. (1) IN THE CASE OF DAMAGE TO THE BAILMENT, AN UNPAID BAILEE TAKES AN OATH IN ALL CASES OF LOSS OR DAMAGE AND BEARS NO LIABILITY WHATSOEVER. (2) IN THE CASE OF DAMAGE TO THE BAILMENT, THE BORROWER PAYS IN ALL CIRCUMSTANCES OF DAMAGES TO A BAILMENT. (3, 4) IN THE CASE OF DAMAGE TO THE BAILMENT, THE PAID BAILEE AND THE LESSEE TAKE AN OATH THAT THEY HAVE NOT BEEN NEGLIGENT CONCERNING A BEAST WHICH HAS SUFFERED A BROKEN BONE, OR WHICH HAS BEEN DRIVEN AWAY, OR WHICH HAS DIED. BUT THEY PAY COMPENSATION FOR THE ONE WHICH WAS LOST OR STOLEN.

1. I:1: Who is the Tannaite authority who takes the view that there are four classes of bailees?

a. I:2: Illustrative case.

b. I:3: Illustrative case.

c. I:4: Illustrative case.

LXVII. Mishnah-Tractate Baba Mesia 7:9-10E

A. A SINGLE WOLF DOES NOT COUNT AS AN UNAVOIDABLE ACCIDENT. TWO WOLVES ARE REGARDED AS AN UNAVOIDABLE ACCIDENT. R. JUDAH SAYS, “IN A TIME THAT WOLVES COME IN PACKS, EVEN A SINGLE WOLF IS AN UNAVOIDABLE ACCIDENT.” TWO DOGS DO NOT COUNT AS AN UNAVOIDABLE ACCIDENT. YADUA THE BABYLONIAN SAYS IN THE NAME OF R. MEIR, “IF THEY COME FROM ONE DIRECTION, THEY DO NOT COUNT AS AN UNAVOIDABLE ACCIDENT. IF THEY COME FROM TWO DIRECTIONS, THEY COUNT AS AN UNAVOIDABLE ACCIDENT.”

1. I:1: Has it not been taught on Tannaite authority: “A single wolf does count as an unavoidable accident”?

B. A THUG — LO, HE COUNTS AS AN UNAVOIDABLE ACCIDENT.

(1) A LION, (2) WOLF, (3) LEOPARD, (4) PANTHER, OR (5) SNAKE — LO, THESE COUNT AS AN UNAVOIDABLE ACCIDENT. UNDER WHAT CIRCUMSTANCES? WHEN THEY COME ALONG ON THEIR OWN. BUT IF HE TOOK THE SHEEP TO A PLACE IN WHICH THERE WERE BANDS OF WILD ANIMALS OR THUGS, THESE DO NOT CONSTITUTE UNAVOIDABLE ACCIDENTS.

IF A BEAST DIED OF NATURAL CAUSES, LO, THIS COUNTS AS AN UNAVOIDABLE ACCIDENT. IF ONE CAUSED IT DISTRESS AND IT DIED E.G., OF COLD OR HUNGER,

THIS DOES NOT COUNT AS AN UNAVOIDABLE ACCIDENT. IF IT WENT UP TO THE TOP OF A CRAG AND FELL DOWN, LO, THIS IS AN UNAVOIDABLE ACCIDENT. IF HE BROUGHT IT UP TO THE TOP OF A CRAG AND IT FELL DOWN AND DIED, IT IS NOT AN UNAVOIDABLE ACCIDENT.

1. II:1: Why should that be so? Let one man stand up against another man!

2. II:2: The question was raised: if there is an armed robber and an armed shepherd, what is the law? Do we say here too, let one man stand up against another man? or perhaps this one is prepared to give his life, while that one is not prepared to give his life?

LXVIII. Mishnah-Tractate Baba Mesia 7:10F-H, 11

A. AN UNPAID BAILEE MAY STIPULATE THAT HE IS EXEMPT FROM HAVING TO TAKE AN OATH, AND A BORROWER, THAT HE IS EXEMPT FROM HAVING TO PAY COMPENSATION, AND A PAID BAILEE AND A HIRER, THAT THEY ARE EXEMPT FROM HAVING TO TAKE AN OATH OR FROM HAVING TO PAY COMPENSATION.

WHOEVER EXACTS A STIPULATION CONTRARY TO WHAT IS WRITTEN IN THE TORAH — HIS STIPULATION IS NULL. AND ANY STIPULATION WHICH REQUIRES AN ANTECEDENT ACTION — THAT STIPULATION IS NULL.

1. I:1: Since Scripture specifies the liability of the several classes of bailees, why is it the rule that one may make such stipulations? Do these not constitute stipulations contrary to what is written in the Torah, and whoever makes a stipulation contrary to what is written in the Torah — his stipulation is null!

2. I:2: It has been taught on Tannaite authority: A paid bailee may stipulate that he will be in the classification of a borrower. How? Is it merely with words? Surely one cannot assume additional responsibilities, over and above the normal, by mere words.

B. BUT ANY CONDITION WHICH CAN BE CARRIED OUT IN THE END AND IS STIPULATED AS A CONDITION IN THE BEGINNING — THAT STIPULATION IS VALID.

1. II:1: Said R. Tabela said Rab, “This represents the view of R. Judah b. Tema, but sages say, ‘Even so it turns out at the end that he cannot carry out the stipulation, if he made that stipulation with him to begin with, the stipulation is valid.’”

LXIX. Mishnah-Tractate Baba Mesia 8:1

A. HE WHO BORROWS A COW, AND (1) BORROWED THE SERVICE OF ITS OWNER WITH IT, OR (2) HIRED ITS OWNER WITH IT — OR (1) BORROWED THE SERVICE OF THE OWNER, OR (2) HIRED HIM, AND AFTERWARD BORROWED THE COW TOO, AND THE COW DIED — THE BORROWER IS EXEMPT, SINCE IT IS SAID, “IF THE OWNER IS WITH IT, HE SHALL NOT PAY COMPENSATION” (EXO. 22:14).

BUT IF HE BORROWED THE COW, AND AFTERWARD (1) BORROWED THE SERVICE OF THE OWNER, OR (2) HIRED HIM, AND THE COW DIED, THE BORROWER IS LIABLE, SINCE IT IS SAID, “IF THE OWNER IS NOT WITH IT, HE SHALL CERTAINLY PAY COMPENSATION” (EXO. 22:13).

1. I:1: Since the concluding part of the rule states, or hired him, and afterward borrowed the cow too, it follows that the first part of the clause, in which it is said, with it, means, with it literally — they are borrowed simultaneously. But how can you find a case in which this can be done literally? For the cow is acquired through an act of drawing, while the owners through a stated promise.

B. SYSTEMATIC EXEGESIS OF M. SHABU. 8:1-6: THERE ARE FOUR CLASSES OF BAILEES: (1) AN UNPAID BAILEE, (2) A BORROWER, (3) A PAID BAILEE, (4) AND A LESSEE. (1) IN THE CASE OF DAMAGE TO THE BAILMENT, AN UNPAID BAILEE TAKES AN OATH IN ALL CASES OF LOSS OR DAMAGE AND BEARS NO LIABILITY WHATSOEVER. (2) IN THE CASE OF DAMAGE TO THE BAILMENT, THE BORROWER PAYS IN ALL CIRCUMSTANCES OF DAMAGES TO A BAILMENT. (3, 4) IN THE CASE OF DAMAGE TO THE BAILMENT, THE PAID BAILEE AND THE LESSEE TAKE AN OATH THAT THEY HAVE NOT BEEN NEGLIGENT CONCERNING A BEAST WHICH HAS SUFFERED A BROKEN BONE, OR WHICH HAS BEEN DRIVEN AWAY, OR WHICH HAS DIED. BUT THEY PAY COMPENSATION FOR THE ONE WHICH WAS LOST OR STOLEN. IF ONE SAID TO AN UNPAID BAILIFF, "WHERE IS MY OX?" (1) HE SAID TO HIM, "IT DIED," BUT IN FACT IT HAD BEEN LAMED, DRIVEN OFF, STOLEN, OR LOST, (2) "IT WAS LAMED," BUT IN FACT IT HAD DIED, OR BEEN DRIVEN OFF, STOLEN, OR LOST, (3) "IT WAS DRIVEN OFF," BUT IN FACT IT HAD DIED, BEEN LAMED, STOLEN OR LOST, (4) "IT WAS STOLEN," BUT IN FACT IT HAD DIED, OR BEEN LAMED, DRIVEN OFF, OR LOST, (5) "IT WAS LOST, "BUT IN FACT IT HAD DIED, BEEN LAMED, DRIVEN OFF, OR STOLEN, "I IMPOSE AN OATH ON YOU," AND HE SAID, "AMEN" — HE IS EXEMPT (M. SHEBUOT 8: 2). "WHERE IS MY OX?" (1) AND THE BAILIFF SAID TO HIM, "I HAVE NO IDEA WHAT YOU'RE TALKING ABOUT" — BUT IN FACT IT HAD DIED OR BEEN LAMED OR DRIVEN OFF OR STOLEN OR LOST — "I IMPOSE AN OATH ON YOU," AND HE SAID TO HIM, "AMEN" — HE IS EXEMPT. (2) "WHERE IS MY OX?" HE SAID TO HIM, "IT GOT LOST" — "I IMPOSE AN OATH ON YOU" — AND HE SAID, "AMEN" — AND WITNESSES TESTIFY AGAINST HIM THAT HE HAD EATEN IT — HE PAYS HIM COMPENSATION FOR THE PRINCIPAL. IF HE CONCEDED ON HIS OWN, HE PAYS COMPENSATION FOR THE PRINCIPAL, THE ADDED FIFTH, AND A GUILT OFFERING. (3) "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 STOLEN IT — HE PAYS TWOFOLD COMPENSATION. IF HE CONFESSED ON HIS OWN, HE PAYS THE PRINCIPAL, AN ADDED FIFTH, AND A GUILT OFFERING BUT NOT TWOFOLD COMPENSATION (M. 5: 4) (M. [Shebuot 8: 3](#)). (4) HE SAID TO SOMEONE IN THE MARKET, "WHERE IS MY OX WHICH YOU STOLE?" AND HE SAYS, "I NEVER STOLE IT," 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. 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. [Shebuot 8: 4](#)). HE SAID TO A BORROWER, "WHERE IS MY OX?" (1) HE SAID TO HIM, "IT DIED," BUT IN FACT IT HAD BEEN LAMED OR DRIVEN AWAY, STOLEN, OR LOST — (2) "IT WAS LAMED," BUT IN FACT IT HAD DIED OR BEEN DRIVEN OFF OR STOLEN OR LOST — (3) "IT WAS DRIVEN OFF," BUT IT HAD DIED OR BEEN LAMED OR STOLEN OR LOST — (4) "IT WAS STOLEN," AND IN FACT IT HAD DIED OR BEEN LAMED OR DRIVEN OFF OR LOST — (5) "R WAS LOST," AND IN FACT IT HAD DIED OR BEEN LAMED, DRIVEN OFF, OR

STOLEN — “I IMPOSE AN OATH ON YOU” AND HE SAID, “AMEN” — HE IS EXEMPT (M. **Shebuot 8: 5**). “WHERE IS MY OX? “ — HE SAID TO HIM, “I HAVE NO IDEA WHAT YOU’RE TALKING ABOUT” — AND IT HAD IN FACT DIED OR BEEN LAMED OR DRIVEN OFF OR STOLEN OR LOST — “I IMPOSE AN OATH ON YOU” AND HE SAID, “AMEN” — HE IS LIABLE. IF HE SAID TO A PAID BAILEE OR A RENTER, “WHERE IS MY OX?” (1) HE SAID TO HIM, “IT DIED,” BUT IN FACT IT HAD BEEN LAMED OR DRIVEN OFF — (2) “IT HAS BEEN LAMED,” BUT IN FACT IT HAD DIED OR BEEN DRIVEN OFF — (3) “IT HAS BEEN DRIVEN OFF,” AND IN FACT IT HAD DIED OR BEEN LAMED — (4) “IT HAS BEEN STOLEN,” AND IN FACT IT HAD BEEN LOST — (5) “IT HAS BEEN LOST,” AND IN FACT IT HAD BEEN STOLEN — “I IMPOSE AN OATH ON YOU,” — AND HE SAID, “AMEN” — HE IS EXEMPT. “IT DIED OR WAS LAMED OR DRIVEN OFF,” AND IN FACT, IT HAD BEEN STOLEN OR LOST — “I IMPOSE AN OATH ON YOU,” AND HE SAID, “AMEN” — HE IS LIABLE. “IT WAS LOST OR WAS STOLEN,” BUT IN FACT IT HAD DIED OR BEEN LAMED OR BEEN DRIVEN OFF — “I IMPOSE AN OATH ON YOU,” AND HE SAID, “AMEN” — HE IS EXEMPT. THIS IS THE GOVERNING PRINCIPLE: WHOEVER BY LYING CHANGES HIS CLAIM FROM ONE SORT OF LIABILITY TO ANOTHER SORT OF LIABILITY, FROM ONE COUNT OF EXEMPTION TO ANOTHER COUNT OF EXEMPTION, OR FROM A COUNT OF EXEMPTION TO A REASON FOR LIABILITY, IS EXEMPT. IF HE CHANGED HIS CLAIM, BY LYING FROM GROUNDS FOR LIABILITY TO A REASON FOR EXEMPTION FROM HAVING TO MAKE RESTITUTION, HE IS LIABLE. THIS IS THE GOVERNING PRINCIPLE: WHOEVER FALSELY TAKES AN OATH SO AS TO LIGHTEN THE BURDEN ON HIMSELF IS LIABLE. WHOEVER TAKES AN OATH SO AS TO MAKE MORE WEIGHTY THE BURDEN ON HIMSELF IS EXEMPT (M. **Shebuot 8: 6**).

1. I:2: What is the scriptural source for these classifications?

2. I:3: IN THE CASE OF DAMAGE TO THE BAILMENT, THE PAID BAILEE AND THE LESSEE TAKE AN OATH THAT THEY HAVE NOT BEEN NEGLIGENT CONCERNING A BEAST WHICH HAS SUFFERED A BROKEN BONE, OR WHICH HAS BEEN DRIVEN AWAY, OR WHICH HAS DIED EXO. 22: 9. BUT THEY PAY COMPENSATION FOR THE ONE WHICH WAS LOST OR STOLEN. Now there is no problem as to the matter of theft, for it is explicitly written, “but if it is stolen from him, he shall make restitution to its owner.” But how do we know the rule in the case of loss?

3. I:4: IN THE CASE OF DAMAGE TO THE BAILMENT, THE BORROWER PAYS IN ALL CIRCUMSTANCES OF DAMAGES TO A BAILMENT. Now in the case of an animal that is injured or that dies, there is no problem, since it is stated explicitly, “If a man borrows anything of his neighbor and it is hurt or dies, the owner not being with it, he shall make full restitution.”

4. I:5: IN THE CASE OF DAMAGE TO THE BAILMENT, THE BORROWER PAYS IN ALL CIRCUMSTANCES OF DAMAGES TO A BAILMENT: how do we know that in the case of a borrower, one is liable to make restitution should the animal be stolen or lost?

5. I:6: So answering the question, how do we know that in the case of a borrower, one is liable to make restitution should the animal be stolen or lost, we have found that a borrower is responsible for theft or loss. How do we know that he may be

exempt from responsibility in the case of theft or loss when the owner of the borrowed beast is present?

6. I:7: It has been stated: If there is negligence on the part of a borrower while the owner of the beast is at hand — there is a dispute between R. Aha and Rabina. One said, “He is liable.” The other said, “He is exempt from liability.”

7. I:8: Responding to the question, If there is negligence on the part of a borrower while the owner of the beast is at hand, said R. Hamnuna, “Under all circumstances, the borrower is liable — unless it is a cow, and the owner is ploughing with it when in the bailee’s service, or it is an ass, and he is driving it alone, or the owner is in the bailee’s service from the time that the loan is made until the beast is injured or dies.”

a. I:9: With reference to the dispute of Josiah and Jonathan to which reference is made at I:4: “‘For every one who curses his father and his mother shall surely be put to death’ (Lev. 20: 9). I know that the rule covers only one who has cursed both his father and his mother. How do I know that the rule is the same if he cursed his father without his mother, or his mother without his father? Scripture states, ‘His father and his mother he has cursed, his blood shall be upon him’ (Lev. 20: 9) — he has cursed his father, he has cursed his mother,” the words of R. Josiah. R. Jonathan says, “The opening part of the verse bears the implication either that he has cursed both of them simultaneously or that he has cursed one of them by himself, unless the Scripture explicitly states that it must be ‘together’” — Abbaye accepts the premise of R. Josiah and explains the verses in accord with his principle, while Raba accepts the premise of R. Jonathan and explains the verses in accord with his principle.

9. I:10: R. Ashi said, “Scripture has said, ‘And if a man borrows anything of his neighbor’ — but not his neighbor with the beast, then ‘and it is hurt or dies, the owner not being with it, he shall make full restitution.’ If his neighbor were present at the time of the loan, he would have been exempt.”

10. I:11: R. Ammi b. Hama raised this question: “If one has borrowed the beast with the purpose of committing bestiality with it, what is the law? Do we require that the loan accord with standard practice, and people do not borrow for such a purpose? Or perhaps the operative reason here is that the borrower derives pleasure from the loan, and here too he has pleasure so the rule of Scripture applies here as well?”

a. I:12: Secondary expansion of a detail of the foregoing.

b. I:13: As above.

13. I:14: Said R. Ilsh to Raba, “He who says to his slave, ‘Go and lend yourself with my cow’ — what is the law? That is a question to be raised both from the viewpoint of him who says that acts of the agent of a person are equivalent to acts of the person himself, and also from the viewpoint of him who says that acts of the agent of a person are equivalent to acts of the person himself.

14. I:15: R. Ammi bar Hama asked, “In respect to the property of one’s wife, does the husband fall into the category of a borrower or a lessee?” It is assumed that

the question is whether he is responsible as is a borrower or as is a hirer for accidents when working with his wife's property in the category of that of which he enjoys the usufruct, but of which she bears ownership in such wise that the gain or loss is assigned to her; this is called plucking-property.

15. I:16: R. Ammi bar Hama asked, "If the husband has the right of usufruct in his wife's property that had in fact been declared consecrated to the Temple, and made use of the property, who is responsible for an inadvertent act of sacrilege and has to bring the offering that is required on that account?"

16. I:17: The question was raised: "If the animal became emaciated on account of the work that it did, what is the rule?" Do we hold the borrower liable for loss in the value of the beast?"

a. I:18: Illustrative case. Somebody borrowed an axe from his neighbor, and it broke. The case came to Raba, who ruled, "Go and bring witnesses that you did not use it in any unusual way, and you will be exempt from liability."

b. I:19: Illustrative case. Somebody borrowed a bucket from his neighbor, which broke. When the case came before R. Papa, who ruled, "Go and bring witnesses that you did not use it in any unusual way, and you will be exempt from liability."

c. I:20: Illustrative case. Somebody borrowed a cat from his fellow. The mice formed a battalion against it and killed it. R. Ashi went into session and raised the question, "What is the rule in such a case? When the cat perished, it was on account of the work that it perished, or is that not the operative consideration?"

17. I:21: Said Raba, "One who wants to borrow something from his fellow but be exempt from liability to make up the loss should say to him, 'Could you give me a drink of water,' which represents a loan along with the service of the owner. But if the lender is smart, he will say to him, 'Borrow it by threshing with it, and then I'll give you a drink.'"

18. I:22: Said Raba, "Someone who teaches children, gardens, butchers, draws blood, or cuts hair — in all such cases, if they lend something while at work, the loan is in the category of one that is in service along with the owners."

a. I:23: Maremar bar Hanina leased a mule to the people of Be Hozai. He went out to help them load it up. Through negligence on their part it died. They came before Raba, who imposed liability on them. Said rabbis to him, "But this is a case in which there was negligence while the owner was present."

LXX. Mishnah-Tractate Baba Mesia 8:2

A. HE WHO BORROWS A COW — IF HE BORROWED IT FOR HALF A DAY AND HIRED IT FOR HALF A DAY, OR BORROWED IT FOR ONE DAY AND HIRED IT FOR THE NEXT DAY, OR BORROWED ONE COW AND HIRED ANOTHER — AND THE COW DIED — THE LENDER SAYS D, (1) "THE BORROWED ONE DIED" — (2) "ON THE DAY C ON

WHICH IT WAS BORROWED, IT DIED” (3) “AT THE TIME B THAT IT WAS BORROWED, IT DIED,” — AND THE BORROWER SAYS, “I DON’T KNOW” — THE BORROWER IS LIABLE. THE HIRER LESSEE SAYS, (1) “THE HIRED ONE DIED,” (2) “ON THE DAY ON WHICH IT WAS HIRED, IT DIED,” (3) “AT THE TIME THAT IT WAS HIRED, IT DIED” — AND THE OTHER PARTY SAYS, “I DON’T KNOW” — THE HIRER IS EXEMPT:

1. I:1: This rule implies that if someone says to another, “You have a maneh of mine in your possession,” and the other says, “I don’t know,” the latter is liable to pay. Then may we say that we have a refutation of R. Nahman?

a. I:2: Clarification of a detail: What would be an example of a dispute between them involving the taking of an oath?

b. I:3: As above.

B. IF THIS PARTY CLAIMS THAT THE BORROWED ONE DIED, AND THAT PARTY CLAIMS THAT THE HIRED ONE DIED, THE ONE WHO RENTS IT IS TO TAKE AN OATH THAT THE RENTED ONE DIED:

1. II:1: Why should there be an oath? What that one claims this one does not concede, and what that one concedes, this one does not claim!

C. IF THIS ONE SAYS, “I DON’T KNOW,” AND THAT ONE SAYS, “I DON’T KNOW,” THEN LET THEM DIVIDE THE LOSS.

1. III:1: Who is the authority for this ruling?

2. III:2: R. Abba bar Mammel raised the question, “What is the rule governing the case of a beast that is borrowed together with the owner’s service, and while the beast was still in the domain of the borrower, he rented it for a further period, and at the time it was rented out, the owner was not in his service, as he had been when the initial loan was made, then the bailment was rented out without the owner’s service?

LXXI. Mishnah-Tractate Baba Mesia 8:3

A. 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. IF THE BORROWER HAD SAID TO HIM, “SEND IT WITH MY SON,” “... MY SLAVE,” “...MY MESSENGER,” OR “... WITH YOUR SON,” “... WITH YOUR SLAVE,” “... WITH YOUR MESSENGER,” OR IF THE LENDER HAD SAID TO HIM, “LO, I’M SENDING IT TO YOU WITH MY SON,” “MY ... SLAVE,” “MY ... MESSENGER “ OR “... WITH YOUR SON,” “... YOUR SLAVE,” “... YOUR MESSENGER,” AND THE BORROWER SAID, “SEND IT ALONG,” AND HE DID SEND IT ALONG, BUT IT DIED, THE BORROWER IS LIABLE. AND SO IS THE RULE AS TO RETURNING THE BEAST.

1. I:1: and the one who lent it out sent it along with slave: but the slave is equivalent to his master so why should the borrower be liable if it was the borrower who instructed the lender to send it that way, since the slave’s equivalency to the master means that it is as though the slave never left the domain of the master!

2. I:2: Said R. Huna, “He who borrows an axe from his friend, once he has chopped wood with it, he makes acquisition of it. If he does not chop wood with it, he does not acquire it.”

3. I:3: Said Samuel, “One who stole a cake of pressed dates, made up of fifty dates, which, if sold together, are forth fifty zuz less one, but if sold one by one, are forth fifty, if he stole from secular property, to an ordinary person he repays fifty zuz less one. If he stole dates that had been consecrated, to the sanctuary he repays fifty zuz and a fifth more. But that rule does not play if he does damage, in which case he does not pay the added fifth.”

4. I:4: Said Raba “Porters who broke a barrel of wine belonging to a shopkeeper, which on a market day he can sell for five zuz, and on other days for four, if they return it to him on a market day, they return a barrel of wine; on other days, they return five zuz. That rule applies only if he has no wine for sale left, but if he has wine for sale, he should have sold that. And they deduct the payment for his trouble and the value of the tapping”

LXXII. Mishnah-Tractate Baba Mesia 8:4

A. 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 THAT ONE SAYS, “IT WAS AFTER I MADE THE PURCHASE” — LET THEM DIVIDE THE PROCEEDS:

1. I:1: Why should they divide the disputed property? Let us see in whose domain the beast or the child is located, and let the other party produce evidence, since he who proposes to extract property from another bears the burden of proof!

B. IF HE HAD TWO SLAVES, ONE BIG AND ONE LITTLE, OR TWO FIELDS, ONE BIG AND ONE LITTLE — THE PURCHASER SAYS, “I BOUGHT THE BIG ONE,” AND THE OTHER ONE SAYS, “I DON’T KNOW” — THE PURCHASER HAS ACQUIRED THE BIG SLAVE. THE SELLER SAYS, “I SOLD THE LITTLE ONE,” AND THE OTHER SAYS, “I DON’T KNOW” — THE LATTER HAS A CLAIM ONLY ON THE LITTLE ONE, THIS ONE SAYS, “THE BIG ONE,” AND THAT ONE SAYS, “THE LITTLE ONE” — LET THE SELLER TAKE AN OATH THAT IT WAS THE LITTLE ONE WHICH HE HAD SOLD:

1. II:1: Why should he have to take an oath? What this party has claimed, that party has not conceded, and what that party has conceded, this one has not claimed!

C. THIS ONE SAYS, “I DON’T KNOW” AND THAT ONE SAYS, “I DON’T KNOW” — LET THEM DIVIDE UP THE DIFFERENCE

1. III:1: Lo, to whom is authorship of this Mishnah-paragraph to be assigned? It is Sumkhos, for he has said, “Money that is subject to doubt is to be divided among the claimants without the imposition of an oath on either party.”

LXXIII. Mishnah-Tractate Baba Mesia 8:5

A. HE WHO SELLS OLIVE TREES FOR FIREWOOD AND BEFORE THEY HAD BEEN CHOPPED DOWN, THEY PRODUCED FRUIT WHICH YIELDED LESS THAN A QUARTER-

LOG OF OLIVE OIL TO A SEAH — LO, THIS BELONGS TO THE OWNER OF THE OLIVE TREES NOT TO THE OWNER OF THE LAND, WHO SOLD ONLY THE TREES, NOT THE GROUND. IF THEY PRODUCED A QUARTER-LOG OF OIL FOR A SEAH, THIS ONE SAYS, “MY OLIVE TREES MADE IT,” AND THAT ONE SAYS, “MY GROUND MADE IT” — LET THEM DIVIDE IT UP.

1. I:1: What circumstances can be in mind here? If we deal with a case in which he had stipulated, “Cut them down right away,” then even a quarter-log of olive also should go to the landowner. If he had said to him, “Whenever you want, cut them down,” then even a quarter-log of oil should also be assigned to the owner of the olive trees.

B. IF THE RIVER OVERFLOWED ONE’S OLIVE TREES AND SET THEM DOWN IN THE FIELD OF HIS FELLOW WHERE THEY BORE FRUIT, THIS ONE SAYS, “MY OLIVE TREES MADE IT,” AND THAT ONE SAYS, “MY GROUND MADE IT” LET THEM DIVIDE IT UP:

1. II:1: Said Ulla said R. Simeon b. Laqish, “That rule pertains only to a case in which the trees were uprooted along with their clumps of earth and after three years after they were swept away. But during a period of three years, all is assigned to the owner of the olive trees, for he may say to him, ‘Had you planted them during the spell of three years, would you be eating the fruit?’ The fruit of a tree cannot be eaten within the first three years after planting, in line with Lev. 19:23. Within three years the finder has no claim at all, since it is only because of their own clumps of soil that the produce of the tree may be used and no benefit derives from the new soil.

2. II:2: A Tannaite authority repeated: If one party said, “I wish to take away my olive trees,” they do not pay any attention to him.

a. II:3: Amplification of a principle introduced tangentially by the foregoing: We have learned there in the Mishnah: He who leases a field from a gentile separates heave offering and tithes and then gives to him his rental from the tithed produce. R. Judah says, “Also, he who sharecrops his father’s field for a gentile separates tithes and then gives to him his portion from the tithed produce” (M. **Dem. 6:2A-B**). They interpreted the passage in this way: “What is the meaning of his father’s field? A field in the land of Israel. And why do they call it his father’s field? It is a field of Abraham, Isaac, and Jacob. And Judah further maintains the position that a gentile has no rights of true possession in the Land of Israel in such wise as to exempt his property from the obligation to separate tithes from the crops. And further one who sharecrops is as one who rents at a fixed rent: just as one who rents, whether the field produces a crop or not, must tithe crops and pay him, because he is as though he repaid a debt, so too one who leases a field is in the position of settling a debt and so much tithe the crops first and then pay him.”

l. II:4: It has been stated: he who without permission goes down into his neighbor’s field and plants a crop — Said Rab, “They make an assessment of what he owes, and his hand is on the bottom.” He is paid for the cost of planting or for the improvements, whichever

is less. And Samuel said, “They make an estimate of how much someone would want to pay to have this field planted.”

II. II:5: It has been stated: He who without permission invaded the ruin belonging to his fellow and rebuilds the house and then the other says to him, “I want my timber and stones” — R. Nahman said, “They obey him.” R. Sheshet said, “They do not obey him.”

LXXIV. Mishnah-Tractate Baba Mesia 8:6

A. HE WHO RENTS A HOUSE TO HIS FELLOW WITHOUT A LEASE — IN THE RAINY SEASON, FROM THE FESTIVAL TO PASSOVER. HE HAS NOT GOT THE RIGHT TO EVICT HIM. AND IN THE DRY SEASON, HE MAY EVICT HIM IF HE GIVES THIRTY DAYS’ NOTICE. AND IN THE CASE OF LARGE TOWNS, ALL THE SAME ARE THE DRY SEASON AND THE RAINY SEASON, HE MUST GIVE NOTICE OF TWELVE MONTHS. AND IN THE CASE OF STORES, ALL THE SAME ARE SMALL TOWNS AND LARGE CITIES, HE MUST GIVE NOTICE OF TWELVE MONTHS:

1. I:1: What characterizes the rainy season? It is that, when a person rents a house in the rainy season, he rents it for the whole of the rainy season. But the same may be said for the dry season — when one rents a house, it is for the whole of the dry season that he does so.

2. I:2: Said R. Assi, “If the lease on the house encompassed a single day of the rainy season, the landlord cannot evict the tenant from the Festival to Passover.”

3. I:3: It is obvious that if the landlord’s house fell down and he had not given any notice to the tenant to leave, the landlord may say to the tenant, “You are no better than I am and just as I could not have known that the house would fall down, so that I could not provide myself with other housing, the same is the case for you. The tenant therefore has to leave at the end of the year, since the fact that no houses are available operates now just as strongly in the landlord’s favor, for he could not have known that his house would fall in.

a. I:4: Case.

B. RABBAN SIMEON B. GAMALIEL SAYS, “IN THE CASE OF A STORE RENTED TO BAKERS OR DYERS, HE MUST GIVE NOTICE OF THREE YEARS.”

1. II:1: It is because they encompass a great deal of space so it is difficult to find adequate space for this kind of operation in a brief period of time, and ample notice must be given.

LXXV. Mishnah-Tractate Baba Mesia 8:7

A. HE WHO RENTS OUT A HOUSE TO HIS FELLOW — HE WHO RENTS IT OUT IS LIABLE TO PROVIDE (1) A DOOR, (2) BOLT, AND (3) LOCK, AND ANYTHING WHICH IS MADE BY A CRAFTSMAN. BUT AS TO ANYTHING WHICH IS NOT MADE BY A CRAFTSMAN, THE ONE WHO RENTS THE HOUSE MAKES IT FOR HIMSELF:

1. I:1: Our rabbis have taught on Tannaite authority: He who rents out a house to his fellow — he who rents it out is liable to provide doors, make windows, strengthen the ceiling, and supply supports for the joists. The tenant has to

provide the ladder to get up to the loft, to make the parapet, fix a gutter spout, and plaster the roof.

2. I:2: Our rabbis have taught on Tannaite authority: He who rents a house to his fellow — it is the obligation of the tenant to provide a mezuzah. But when he leaves, he may not take it in hand and leave. But if it is leased from a gentile, he must take it with him when he leaves.

B. SHIT LEFT IN A RENTED COURTYARD BY CATTLE BELONGING TO A THIRD PARTY IS ASSIGNED TO THE HOUSEHOLDER. THE RENTER HAS A CLAIM ONLY ON THE REFUSE OF AN OVEN OR STOVE ALONE.

1. II:1: What sort of case is before us? If we say that it is a courtyard that has been rented to the tenant, and that the oxen belong to the tenant? Then why is the dung the householder's? Rather, is it a courtyard that has not been rented to the tenant, and oxen that belong to the landlord? Then it is obvious that the shit belongs to the householder!

LXXVI. Mishnah-Tractate Baba Mesia 8:8

A. HE WHO RENTS OUT A HOUSE TO HIS FELLOW FOR A YEAR — IF THE YEAR WAS INTERCALATED AND RECEIVED AN EXTRA MONTH OF ADAR, IT IS INTERCALATED TO THE ADVANTAGE OF THE TENANT. IF HE RENTED IT TO HIM BY THE MONTH, IF THE YEAR WAS INTERCALATED, IT IS INTERCALATED TO THE ADVANTAGE OF THE LANDLORD. M'SH B: IN SEPPHORIS A PERSON HIRED A BATHHOUSE FROM HIS FELLOW FOR TWELVE GOLDEN DENARS PER YEAR, AT THE RATE OF ONE GOLDEN DENAR PER MONTH AND THE YEAR WAS INTERCALATED. THE CASE CAME BEFORE RABBAN SIMEON B. GAMALIEL AND BEFORE R. YOSÉ. THEY RULED, "LET THEM DIVIDE THE MONTH ADDED BY THE INTERCALATION OF THE YEAR."

1. I:1: Is the precedent cited to contradict the rule?

2. I:2: R. Yannai was asked, "If the tenant said, 'I paid,' and the landlord said, 'I didn't get,' who has to bring the proof?"

3. I:3: Said Raba said R. Nahman, "Someone who rented a house to his fellow for ten years and wrote out a deed lacking a date, and then said to him, 'You have held on to the house for five years,' is believed."

4. I:4: Said R. Nahman, "One borrows something 'in its good state' for ever — the lender states, 'I lend it to you in its good state,' meaning, as long as it is fit for its purpose, and so, even if he returns it, he can take it again whenever he needs it."

LXXVII. Mishnah-Tractate Baba Mesia 8:9

A. HE WHO RENTS OUT A HOUSE TO HIS FELLOW, AND THE HOUSE FELL DOWN, IS LIABLE TO PROVIDE HIM WITH ANOTHER HOUSE. IF IT WAS A SMALL HOUSE, HE MAY NOT MAKE IT LARGE. IF IT WAS A LARGE HOUSE, HE MAY NOT MAKE IT SMALL. IF IT WAS A SINGLE-FAMILY DWELLING, HE MAY NOT MAKE IT A DUPLEX. IF IT WAS A DUPLEX, HE MAY NOT MAKE IT A SINGLE-FAMILY DWELLING. HE MAY NOT PROVIDE FEWER WINDOWS THAN HAD BEEN IN THE HOUSE WHICH FELL DOWN NOR MORE WINDOWS, EXCEPT WITH THE CONCURRENCE OF BOTH PARTIES.

1. I:1: To what circumstance does the rule pertain? If he had stipulated, “This house,”: then when it falls down, he is exempt from any further obligation, and if he had said, “a house,” without further stipulation, why can he not provide two houses in place of one, or a large house in place of a small house?

LXXVIII. Mishnah-Tractate Baba Mesia 9:1

A. HE WHO LEASES A FIELD FROM HIS FELLOW AS TENANT FARMER OR SHARECROPPER, IN A PLACE IN WHICH THEY ARE ACCUSTOMED TO CUT THE CROPS, HE MUST CUT THEM. IF THE CUSTOM IS TO UPROOT THE CROPS, HE MUST UPROOT THEM:

1. I:1: A Tannaite authority repeated: in a locality in which people are accustomed to cut off the crops, one has not got the right to uproot them; to uproot them, one has not got the right to cut them off, and either party may prevent the other from diverging from the usual practice.

B. IF THE CUSTOM IS TO PLOUGH AFTER REAPING AND SO TO TURN THE SOIL, HE MUST PLOUGH.

1. II:1: That’s obvious!

C. ALL IS IN ACCORD WITH THE PREVAILING CUSTOM OF THE PROVINCE.

1. III:1: What is it “all” is meant to encompass?

D. JUST AS THEY SPLIT UP THE GRAIN, SO THEY SPLIT UP THE STRAW AND STUBBLE:

1. IV:1: Said R. Joseph, “In Babylonia the custom is not to give the straw to the sharecropper.”

3. IV:2: Said R. Joseph, “The lowest, middle, and top layers, and thorn stakes, must be provided by the landowner; the shrubs, by the tenants. whatever is required to mark the boundary line of the field must be supplied by the landlord; whatever is required for additional protection of the crop must be supplied by the sharecropper.”

E. JUST AS THEY SPLIT UP THE WINE, SO THEY SPLIT UP THE DEAD BRANCHES AND REED PROPS.

1. V:1: What are the canes for?

F. AND BOTH PARTIES TO THE AGREEMENT MUST PROVIDE REED PROPS.

1. VI:1: What is the point of this statement?

LXXIX. Mishnah-Tractate Baba Mesia 9:2

A. HE WHO LEASES A FIELD FROM HIS FELLOW, WHICH IS AN IRRIGATED FIELD, OR AN ORCHARD FIELD — IF THE WATER SOURCE WENT DRY, OR THE TREES WERE CUT DOWN, THE TENANT MAY NOT DEDUCT THE DAMAGES FROM THE RENTAL:

1. I:1: What is the imagined situation to which this rule pertains? If it is a case in which the principal source of water dried up, then why cannot the tenant reduce

the rent? Let him say, “It’s a catastrophe for everybody and you too must share the loss”?

2. I:2: Said R. Pappa, “The first two Mishnah-paragraphs pertain to cases in which there is either a fixed rental lease or a lease based on a percentage of the crop, but in the later Mishnah-paragraphs in the chapter, the rules that apply to a percentage lease do not apply to a fixed rental, and those that apply to a fixed rental do not apply to a percentage lease.”

B. IF HE HAD SAID TO HIM, “LEASE ME THIS IRRIGATED FIELD,” OR “... THIS ORCHARD FIELD,” AND THE WATER SOURCE WENT DRY, OR THE TREES WERE CUT DOWN, THE TENANT MAY DEDUCT THE DAMAGES FROM THE RENTAL:

1. II:1: Why should that be the rule? Let the landlord say to him, “What I meant to tell you was simply the name of the field in general but I never guaranteed the source of the water.”

LXXX. Mishnah-Tractate Baba Mesia 9:3

A. HE WHO AS A SHARECROPPER LEASES A FIELD FROM HIS FELLOW AND THEN LETS IT LIE FALLOW — THEY MAKE AN ESTIMATE OF HOW MUCH THE FIELD IS SUITABLE TO PRODUCE, AND THE TENANT PAYS THAT AMOUNT TO THE LANDLORD. FOR THUS DOES HE WRITE TO HIM IN THE WRIT OF OCCUPANCY OR LEASE, “IF I LET THE FIELD LIE FALLOW AND DO NOT WORK IT, I SHALL MAKE IT UP TO YOU AT ITS HIGHEST RATE OF YIELD.”

1. I:1: R. Meir would base rulings on the interpretation of common speech. R. Judah would base rulings on the interpretation of common speech. Hillel the Elder would base rulings on the interpretation of common speech.

a. I:2: Illustrative case. Rabina incised in the marriage-contract of his daughter a larger amount than he was actually giving.

b. I:3: Illustrative case. Someone once said, “Give four hundred zuz to my daughter as her marriage contract.” Sent R. Aha, son of R. Avia, to R. Ashi, “Does the four hundred zuz mean the actual dowry, so in the contract eight hundred are to be written, or is it four hundred zuz to be written, which are the real sum of two hundred zuz?”

c. I:4: Illustrative case. Someone once leased a field from his fellow and said, “If I do not cultivate it, I will give you a thousand zuz.” He left a third of it uncultivated. Ruled the Nehardeans, “It is right and proper that he should give him three hundred thirty-three and a third zuz.”

d. I:5: Illustrative case.

e. I:6: Illustrative case.

B. COLLECTION OF SAYINGS OF RABA ON TRADING AGREEMENTS

1. I:7: The Nehardeans said, “A trading contract by which an investor gives a trader money to invest on their joint behalf, with the investor taking a greater share of the risk, the trader a greater share of the profit, e.g., half the profit but two-thirds of the loss, or a third of the profit but half the loss, being assigned to the

investor, thus avoiding the appearance of usury is classed partially as a loan, partially as a bailment. Rabbis made the contract in such a way that it is equally satisfactory to the lender and to the borrower.” Now that you have said that it is classed partially as a loan, partially as a bailment, if the trader wants to use the money to buy beer with the part that is the loan, he may do so. Raba said, “Not at all, for it is called a trading contract, for he may say to him, ‘When I gave you the money, it was to do business with it, and not to drink beer with it.’”

2. I:8: Said Raba, “If there are one trading agreement and two bonds, the loss is assigned to the creditor. If there are two trading agreements and one bond, the loss is assigned to the debtor.” If the investor invests two bales of goods and draws up one bond, if there is a loss upon one and a profit on the other, it is all counted as one investment and he gets a third of the net profit upon both. If he draws up a separate instrument for each, he bears half of the loss incurred on one and gets a third of the profit on the other, and so is at a disadvantage. If two trading agreements were arranged on different dates but record in one note, the upshot is the opposite and to the investor’s disadvantage.

3. I:9: And said Raba, “If someone accepted a trading agreement from his fellow and lost money on it but made good the loss by special effort and had not yet told the investor of the loss, he cannot say to him, ‘Deduct the loss that took place,’ because the other can say, ‘You took the trouble of making up the loss so as to avoid the reputation of being a loser.’”

4. I:10: And said Raba, “If two men accepted a trading agreement with one another and made a profit, and prior to the terminal date of the agreement one said to the other, ‘Come, let’s make the division,’ and if the other said to him, ‘Let’s reinvest and make more,’ it is only right that he may prevent the termination of the agreement. If the one claims, ‘Let me have half the profits,’ the other can say, ‘The profit is mortgaged for the principal,’ and if he says, ‘Give me half the profits and half the principal,’ he can say, ‘the parts of the trading agreement are interdependent.’ If he says, ‘Let’s divide the profit and the principal, and if you incur a loss, I will bear it with you,’ he can answer, ‘No, the luck ‘star’ of two will be better than the luck of one.’”

LXXXI. Mishnah-Tractate Baba Mesia 9:4

A. HE WHO LEASES A FIELD FROM HIS FELLOW AND DID NOT WANT TO WEED IT, AND SAID TO THE LANDLORD, “WHAT DIFFERENCE DOES IT MAKE TO YOU? I’M GOING TO GIVE YOU THE RENTAL ANYHOW!” — THEY PAY NO ATTENTION TO HIS CLAIM. FOR THE LANDLORD HAS THE RIGHT TO SAY TO HIM, “TOMORROW YOU’RE GOING TO LEAVE THIS FIELD, AND IT’S GOING TO GIVE ME NOTHING BUT WEEDS!”

1. I:1: If the tenant should say, “I’ll plow it for you later on,” the landlord can say, “I want good wheat.” If the tenant should say, “I’ll buy you good wheat from the market,” the landlord can say, “I want wheat from my own soil.”

LXXXII. Mishnah-Tractate Baba Mesia 9:5

A. HE WHO LEASES A FIELD FROM HIS FELLOW, AND IT DID NOT PRODUCE A CROP, IF THERE WAS IN IT NONETHELESS SUFFICIENT GROWTH TO PRODUCE A HEAP OF GRAIN, THE LESSEE IS LIABLE TO TEND IT. SAID R. JUDAH, “WHAT SORT OF MEASURE IS ‘A HEAP’? BUT: IF THE FIELD YIELDS ONLY SO MUCH GRAIN AS HAD BEEN SOWN THERE, FOR RE-SEEDING NEXT YEAR, HE IS LIABLE TO TEND IT.”

1. I:1: Our rabbis have taught on Tannaite authority: He who leases a field from his fellow, and it did not produce a crop, if there was in it nonetheless sufficient growth to produce a heap of grain, the lessee is liable to tend it. For thus he writes in the lease: “I shall plow, sow, weed, cut,¹ and make a pile of grain before you, and you will then come and take half of the grain and straw. And for my work and expenses, I shall take the other half” (T. **B.M. 9:13A-D**).

a. I:2: Gloss of foregoing. And how much is meant by sufficient growth to produce a heap of grain?

B. FURTHER DEFINITIONS OF VOLUME AND OTHER FIXED MEASURES

1. I:3: There we have learned in the Mishnah: Wild olives and grapes — the House of Shammai declare susceptible to uncleanness. And the House of Hillel declare insusceptible to uncleanness (M. **Uqs. 3:6D-F**). What is meant by “wild olives”?

2. I:4: Our rabbis have taught on Tannaite authority: The Zab and the clean person who climbed up on a tree which was shaky, or on a branch that was shaky on a firm tree, the clean person, having been on an object that has been shaken by a person afflicted by flux, such as is described in Lev. 15 (M. **Zab. 3:1G-H**) What then would be a tree that was shaky?

3. I:5: There we have learned on Tannaite authority: He who walks through a grave area on stones that he cannot move, on a man, or on a strong cow, is clean. He who walks through a grave area on stones that he can dislodge, on a weak man, or on a weak cow, is unclean (M. **Oh. 18:6A-B**). What is the definition of a weak man?

a. I:6: Gloss of a detail of the foregoing.

b. I:7: As above.

C. R. JUDAH, “WHAT SORT OF MEASURE IS ‘A HEAP’? BUT: IF THE FIELD YIELDS ONLY SO MUCH GRAIN AS HAD BEEN SOWN THERE, FOR RE-SEEDING NEXT YEAR, HE IS LIABLE TO TEND IT:”

1. II:1: And how much is required for re-seeding?

2. II:2: There was have learned in the Mishnah: As for wind that has scattered sheaves over an area from which gleanings have not been collected, with the result that it is not clear what produce belongs to the householder, and what produce belongs to the poor — they estimate how much of the field’s produce is likely to be subject to the restrictions of gleanings and the householder gives this amount of the produce to the poor. Rabban Simeon b. Gamaliel says, “He gives to the poor the amount of produce that is thrown to the ground when sowing the field” (M.

Peah. 5:1D-F). And how much is the amount of produce that is thrown to the ground when sowing the field?

LXXXIII. Mishnah-Tractate Baba Mesia 9:6

A. HE WHO LEASES A FIELD FROM HIS FELLOW, AND LOCUSTS ATE IT UP, OR IT WAS BLIGHTED — IF IT IS A DISASTER AFFECTING THE ENTIRE PROVINCE, HE MAY DEDUCT THE DAMAGES FROM HIS RENTAL. IF IT IS NOT A DISASTER AFFECTING THE ENTIRE PROVINCE, HE MAY NOT DEDUCT IT FROM HIS RENTAL.

1. I:1: What is the definition of a disaster affecting the entire province?
2. I:2: Said Ulla, “In the West they raised this question: “If one furrow was blasted over the entire length? If one furrow was left unblasted over the entire length? If pits lay between the blasted area? If they were separated by a field of fodder? If a different cereal separated the blasted area? If wheat different seed from barley? If others were smitten by blasting and his crop by mildew, or others by mildew and his by blasting? What is the law?”
3. I:3: If the landlord had said to the tenant, “Sow it with wheat,” but he went and sowed it with barley, and then the greater part of the plain was blasted and his barley was blasted. What is the result? Do we rule, “He may plead, ‘If it were sown with wheat, it also would have been blasted?’
4. I:4: If all of the fields belonging to the landlord were blasted, and this one also along with them, but the greater part of the plain was otherwise not blasted, what is the ruling?
5. I:5: If all of the fields of the tenant were blasted, along with the greater part of the plain, and this field also was blasted with them, do we then rule, “Since the greater part of the plain was blasted, he may make his deduction”? Or perhaps, since all his fields were blasted, the tenant can say to him, “It is because of your bad luck, since, after all, all your fields have been smitten”?
6. I:6: As to the rule that a deduction may be made when there is a blight affecting the entire province, said Samuel, “That rule applies only if the tenant sowed the field and the crop sprouted but the locust ate it up; but if he did not sow the field at all, that is not the case.
7. I:7: One Tannaite teaching states, the tenant must sow the field a first time and a second, but not a third if there is a blight, he has to resow the field, and if he does not do so, he can make no deduction even on account of a widespread affliction. But he does not have to do it yet a third time. Another Tannaite teaching states, the tenant must sow the field a third time but not a fourth. There is no contradiction among these rulings, for the one represents the view of Rabbi, the other, Rabban Simeon b. Gamaliel. the one represents the view of Rabbi, who has said, through two occurrences a presumptive pattern is established; the other, Rabban Simeon b. Gamaliel, who has said, a series is established by three occurrences.

B. R. JUDAH SAYS, “IF HE HAD LEASED IT FOR A FIXED CASH PAYMENT, WHETHER OR NOT IT WAS A DISASTER AFFECTING THE ENTIRE PROVINCE HE MAY NOT DEDUCT THE DAMAGES FROM HIS RENTAL.

1. II:1: Someone rented land for sowing garlic by the bank of the Malka Saba canal, on terms of a money rental. Then the Malka Saba canal was dammed up so there was not enough water to grow garlic. When the case came before Raba, he ruled, “It is not commonplace for the Malka Saba canal to be dammed up; this is a disaster affecting the entire province; go, take a deduction.”

LXXXIV. Mishnah-Tractate Baba Mesia 9:7

A. HE WHO LEASES A FIELD FROM HIS FELLOW IN RETURN FOR TEN KORS OF WHEAT A YEAR, IF THE FIELD WAS SMITTEN AND PRODUCED POOR-QUALITY GRAIN, THE TENANT PAYS HIM OFF FROM PRODUCE GROWN IN THE FIELD. IF THE GRAIN WHICH IT PRODUCED WAS OF GOOD QUALITY, HE HAS NOT GOT THE RIGHT TO SAY TO HIM, “LO, I’M GOING TO BUY YOU GRAIN IN THE MARKETPLACE.” BUT HE PAYS HIM OFF WITH PRODUCE GROWN IN THE FIELD.

1. I:1: For a fee of several kors of barley, somebody leased a field to grow fodder. Once the crop of fodder was grown in thirty days, he went and re-plowed the field and sowed it with barley. The barley was blighted. R. Habiba of Sura on the Euphrates sent word to Rabina, “What is the rule in such a case? Do we or do we not compare the case to the one covered by the law, if the field was smitten and produced poor-quality grain, the tenant pays him off from produce grown in the field?”

2. I:2: Somebody leased a vineyard from his fellow in exchange for ten barrels of wine. The wine produced by the grapes of the vineyard turned sour. R. Nahman considered ruling, “This is along the lines of the Mishnah: if the field was smitten and produced poor-quality grain, the tenant pays him off from produce grown in the field.”

LXXXV. Mishnah-Tractate Baba Mesia 9:8

A. HE WHO LEASES A FIELD FROM HIS FELLOW TO SOW BARLEY IN IT MAY NOT SOW IT WITH WHEAT. IF HE LEASED IT TO SOW WHEAT, HE MAY SOW IT WITH BARLEY. RABBAN SIMEON B. GAMALIEL PROHIBITS DOING SO.

1. I:1: Said R. Hisda, “What is the scriptural basis for the ruling of R. Hisda? As it is written, ‘The remnant of Israel shall not do iniquity nor speak lies; neither shall a deceitful tongue be found in their mouth’ (Zep. 3:13).”

2. I:1: An objection was raised to the rule of M. **9:8D-F**: The collection of alms for Purim must be distributed on Purim. And the collection of alms for a given town must be distributed in that town. They do not investigate too closely to see whether or not the poor are deserving. But they buy calves for the poor and slaughter them, and the poor consume them. And what is left over should not fall to the fund for charity. “Out of funds collected for Purim a poor person should not make a strap for his sandal, unless he so stipulated in the council of the citizens

of that town,” the words of R. Jacob stated in the name of R. Meir. But Rabban Simeon b. Gamaliel imposes a lenient ruling in this matter. The passage continues: But they should be used only for food for the holiday.” R. Meir says, “He who borrows money from his fellow to purchase produce with it should not purchase utensils with it. If he borrowed money for the purchaser of utensils, he should not buy produce with it, for he thereby deceives the lender.” (T. **Meg. 1:5A-K**). Said Abbaye, “The reason of R. Simeon accords with the position of the master Rabbah b. Nahmani, who has said, ‘If one wishes to let his land become sterile, let him sow it one year with wheat, the next with barley, one year lengthwise, the next crosswise.

B. IF HE LEASED IT TO SOW GRAIN HE MAY NOT SOW IT WITH PULSE, TO SOW PULSE, HE MAY SOW IT WITH GRAIN. RABBAN SIMEON B. GAMALIEL PROHIBITS DOING SO.

1. II:1: R. Judah repeated the law to Rabin, “‘If one rented a field for grain, he may sow it with pulse.’”

C. OTHER SAYINGS OF JUDAH TO RABIN B. R. NAHMAN

1. II:2: Said R. Judah to Rabin b. R. Nahman, “My brother Rabin, “Cress that grows among flax is not subject to prohibition by reason of robbery. Those that stand at the borders of the field are forbidden.”

2. II:3: Said R. Judah to Rabin b. R. Nahman, “My brother Rabin, “Some of these fruits of mine are really yours, and yours are really mine. People whose land abuts, with a tree that stretches on both sides, customarily assign the tree to the field where the roots tend.”

3. II:4: Said R. Judah to Rabin b. R. Nahman, “My brother Rabin, don’t buy land near a town.” For said R. Abbahu said R. Huna said Rab, “It is forbidden for someone to stand over his neighbor’s field when the crop is fully standing so as not to cast an evil eye on the crop through his envy.”

4. II:5: “May the Lord remove from you all sickness” (Deu. 7: 5): Said Rab, “This refers to the evil eye.” And of the verse, “May the Lord remove from you all sickness” (Deu. 7: 5) Samuel said, “This refers to the wind.” Of the verse, “May the Lord remove from you all sickness” (Deu. 7: 5) R. Hanina said, “This refers to the cold.” For said R. Hanina, “Everything is in the hand of Heaven, except for cold drafts: ‘Cold drafts are in the way of the arrogant, he who is careful shall be far from them’ (Pro. 22: 5).”

D. OTHER SAYINGS ON COLD, THEN ON THE IMPORTANCE OF BREAKFAST

a. II:6: Our rabbis have taught on Tannaite authority: Thirteen things were said about breakfast literally: bread in the morning: it saves one from heat and cold, from winds and demons; it puts wisdom into the innocent and gives one a victory in a lawsuit; it makes one able to study and teach Torah; it allows one to have his opinions heeded and to hold on to his learning; he who eats breakfast does not perspire; he desires his wife and does not lust after other women; breakfast kills worms in the intestines.

1. II:7: Said Rabbah to Raba bar Meri, “What is the source of the saying, ‘Sixty runners sprint but can’t catch up with someone who

eats breakfast'? Also the saying of rabbis, 'Get up early and eat breakfast, in summer because of the heat, in winter, because of the cold'?"

E. MISCELLANY ON THE DISPOSITION OF LAND SUBJECT TO COMMON OWNERSHIP OR TO CONFLICTING CLAIMS; OBLIGATIONS TO THE COMMON GOOD, PREEMPTION OF PROPERTY, AND RELATED MATTERS

1. II:8: Said R. Judah to R. Ada the surveyor, "Do not treat surveying contemptuously, because every single bit of land is suitable for planting garden saffron."

2. II:9: R. Ammi proclaimed, "All vegetation on the shoulder-breadth of the barge-paths on both sides of the river cut down and keep clear the path needed by the barge-pullers."

a. II:10: Rabbah bar R. Huna had a forest by the river bank. They said to him, "Will the master cut down the trees?" He said to them, "Let the landowners above and below my property first clear their land, and then I'll cut down mine too."

b. II:11: Rabbah bar R. Nahman was going along in a boat. He saw a forest on the river bank. He said to them, "Whose is it?" They said to him, "It belongs to Rabbah b. R. Huna." He cited the verse, "'Yes, the hand of the princes and rulers has been chief in this trespass' (Ezr. 9: 2)." He said to them, "Cut it down, cut it down."

3. II:12: Said R. Judah, "As to dredging the river, the ones living down below must help the ones living up above, but the ones living up above don't have to help the ones living down below. And in regard to rain water, the reverse is the rule." Freedman: If there are obstacles on the upper parts of the river, the water flow is adversely affected for the lower too. But there is no profit for the upper inhabitants to clear the lower portions, for the greater the ease with which the water runs downwards, the less water is left for them. With regard to the need of draining rainwater from roads and the like, those on the upper reaches must aid the lower, because if the water down below is not carried away, the upper will not drain off; but those living below have no benefit in the draining of the town situated at the upper reaches of the river.

4. II:13: Said Samuel, "One who takes possession of the wharfage of a canal may be impudent, but they do not evict him since Persian law assigns land to whoever pays the land tax for the property. If someone paid the tax, he could hold that land."

5. II:14: Said R. Judah said Rab, "One who seizes land that is located between fields belonging to brothers or partners may be impudent, but they do not evict him." But R. Nahman said, "They do too evict him. But if the operative consideration is only because of the right of preemption, he may not be evicted."

6. II:15: If someone came and asked his advice the advice of a neighbor who has the right to preempt a piece of property and said, "Shall I go and buy it," and he said to him, "Go and buy it," is it or is it not necessary for him to acquire

possession of the land from the other confirming that the other has given up his right of preemption?

7. II:16: If someone sold a griva of land in the middle of his estate, we examine the case: if the land is of the best or of the worst quality, the sale is confirmed. But if not, then it is a mere evasion.

8. II:17: A gift of land is not subject to the law of preemption. Said Amemar, "If the donor had deeded Freedman: security of tenure 'in case it is seized for the donor's debt, another piece of land will be supplied, it is subject to the law of preemption. If one has sold all his property to a single purchaser, the law of preemption does not apply because the purchase might refuse to buy the rest if he must give up any portion thereof. If one sold the land to the original owner, the law of preemption does not apply. If one buys land from or sells it to, a gentile, the law of preemption does not apply. If one buys land from a gentile, it is because the purchaser can say to the abutting neighbor, 'I have driven away a lion from your boundaries.' If he sells land to a gentile, it is because the gentile is not subject to the law, 'You shall do that which is good and right in the sight of the Lord' (Deu. 6:18). Still, the seller is excommunicated until such time as he accepts responsibility for any damages that the gentile may cause."

9. II:18: If the choice is a sale to neighbors in town or neighbors in the country, the former take priority. If A is selling a field and B is his neighbor in town, having a house next to his, while C is a neighbor of a field belonging to A but not of that which is up for sale, so that neither is a neighbor of the field to be sold, priority must be given to the urban neighbor, B. This does not refer to preemption at all.

10. II:19: If one offers well-formed coins and the other full-weight coins, the law of pre-emption does not apply. If the coins of the abutting neighbor are bound up, and those of the purchaser unsealed, there is no right of pre-emption.

LXXXVI. Mishnah-Tractate Baba Mesia 9:9

A. HE WHO LEASES A FIELD FROM HIS FELLOW FOR A PERIOD OF ONLY A FEW YEARS MAY NOT SOW IT WITH FLAX. AND HE HAS NO RIGHT TO CUT BEAMS FROM A SYCAMORE. IF HE LEASED IT FROM HIM FOR SEVEN YEARS, IN THE FIRST YEAR HE MAY SOW IT WITH FLAX. AND HE HAS EVERY RIGHT TO CUT BEAMS FROM A SYCAMORE.

1. I:1: Said Abbaye, "To cut beams from a sycamore he has no right, but to the improvement of the sycamores that takes place during his rental he has every right and the increase in their value is assessed and assigned to him." And Raba said, "Even to the improvement of the sycamores he has no right."

a. I:2: Case. R. Pappa leased a field to grow fodder. Some young trees sprouted in the field. When he was going to return the field, he said to the owners, "Give me the value of the improvement constituted by the trees."

b. I:3: Case. R. Bibi bar Abbaye leased a field and surrounded it with a ridge, from which sorb bushes grew. When he handed the field back at the end of his lease, he said to the owner of the field, "Pay me for the improvements that I brought about namely, the bushes."

c. I:4: Case. R. Joseph had a garden who leased a field from him. The man died and left five sons-in-law. R. Joseph said, “Up to now there was one, now there are five. Up to now they did not depend on one another to do the work and so they caused me no loss, but now they will, and therefore they are going to cause me losses.”

d. I:5: Case. There was a gardener who said to them, “If I cause a loss, I will quit.” He did cause a loss. Said R. Judah, “He is to be evicted without payment for the improvements.” R. Kahana said, “He may be evicted but he is to be paid for the value of the improvements.”

e. I:6: Case. Ronia was the gardener of Rabina. He caused loss. He evicted him. The case came before Raba. He said to him, “See, master, what he has done to me.” He said to him, “He acted quite properly.” He said to him, “Lo, he gave me no warning.” He said to him, “It is not necessary to give a warning.”

f. I:7: Case. A certain gardener said to them, “Give me the value of the improvements that I have made to the leasehold, since I want to go up to the Land of Israel.” The case came before R. Pappa bar Samuel, who said to them, “Give him the value of the improvements that he has made.”

l. I:8: Gloss of a detail of the foregoing.

g. I:9: Case. Somebody left a vineyard with his fellow as a pledge for a span of ten years, but the vine aged after five and no longer produced fruit. Abbaye said, “The trunks are classified as produce.” Raba ruled, “The trunks are classified as principal. Land must be bought with the proceeds of the wood, and the the creditor enjoys the usufruct of the land.”

h. I:10: As above. A certain bond was written with the time-span specified as “years” without further stipulation. The creditor said, “It meant three years.” The debtor said, “It meant two years.” The creditor went ahead and made use of the usufruct of the field anticipating the ruling of the court.

2. I:11: The creditor says, “The mortgage was for five years,” the debtor says, “It was for three” — He says to him, “Produce your bond,” and the other says, “The bond has been lost” — said R. Judah, “The creditor’s allegation is accepted. Since he could have pleaded, ‘I bought the land outright for three years of usufruct establish a presumption of ownership in the absence of a deed of sale, he has claimed less than he could have, and his claim is accepted.’”

3. I:12: A share-cropper says, “I went down to work the field for half the profits,” and the landlord says, “I brought you into the property for a third of the profits” — who is believed? R. Judah said, “The householder is believed.” R. Nahman said, “All follows the local custom.”

4. I:13: If the estate claims, “We have made the improvements and the creditor of the deceased has no claim on the increased value of an estate effected by the heirs,” while the creditor pleads, “Your father made them” — who is required to bring proof? R. Hanina considered ruling, “The land remains in the presumed ownership of the estate, so the debtor bears the burden of bringing proof.”

LXXXVII. Mishnah-Tractate Baba Mesia 9:10-11

A. HE WHO LEASES A FIELD FROM HIS FELLOW FOR ONE SEPTENNATE AT THE RATE OF SEVEN HUNDRED ZUZ — THE SEVENTH YEAR COUNTS IN THE NUMBER OF YEARS. IF HE LEASED IT FROM HIM FOR SEVEN YEARS AT THE RATE OF SEVEN HUNDRED ZUZ, THE SEVENTH YEAR DOES NOT COUNT IN THE NUMBER OF YEARS.

1. I:1: Our rabbis have taught on Tannaite authority: How on the basis of Scripture do we know, A day worker collects his wage any time of the night?

2. I:2: Our rabbis have taught on Tannaite authority: From the inference to be drawn from the verse, “The wages of a hired servant shall not remain with you all night until the morning” (Lev. 19:13), do I not know that it means, “until morning”? Then why does Scripture specify, “until the morning”?

3. I:3: Our rabbis have taught on Tannaite authority: He who says to his neighbor, “Go and hire workers for me” — neither party then is subject to violation of the commandment, “The wages of a hired servant shall not remain with you all night until the morning” (Lev. 19:13) (T. **B.M. 10:5F**).

4. I:4: Judah bar Maremar would say to his major domo, “Go and hire workers for me, and say to them, ‘The householder is responsible for your wages.’” Maremar and Mar Zutra would hire workers in behalf of one another.

B. (1) A DAY WORKER COLLECTS HIS WAGE ANY TIME OF THE NIGHT. (2) AND A NIGHT WORKER COLLECTS HIS WAGE ANY TIME OF THE DAY. (3) A WORKER BY THE HOUR COLLECTS HIS WAGE ANY TIME OF THE NIGHT OR DAY. A WORKER HIRED BY THE WEEK, A WORKER HIRED BY THE MONTH, A WORKER HIRED BY THE YEAR, A WORKER HIRED BY THE SEPTENNATE — IF HE COMPLETED HIS PERIOD OF LABOR BY DAY, COLLECTS ANY TIME THAT DAY. IF HE COMPLETED HIS PERIOD OF LABOR BY NIGHT, HE COLLECTS HIS WAGE ANY TIME DURING THE REST OF THAT NIGHT AND THE FOLLOWING DAY.

1. II:1: Said Rab, “An hourly worker who works by day may collect his wage all day long. An hourly worker engaged by night can collect his wages all night.” Samuel said, “An hourly worker by day collects his wages all day long, and an hourly worker by night collects his wages all night long and all the following day.”

2. II:2: In this connection they have said: He who holds back the wages of a hired hand transgresses on account of five negative commandments, because of not oppressing (Lev. 19:13), because of not stealing (Lev. 19:13), because of the verse that says, “The wages of a hired worker will not abide with you all night until morning” (Lev. 19:13); “you shall give him hire on the day he earns it before the sun goes down, because he is poor” (Deu. 24:15) (T. **B.M. 10:3A-C**).

3. II:3: What is the difference between oppressing and robbery? Said R. Hisda, “‘Go and come again,’ ‘go and come again’ — that is oppression deferring payment that will some day be made. ‘You indeed have a claim on me, but I’m not going to pay’ — that is out and out robbery.”

LXXXVIII. Mishnah-Tractate Baba Mesia 9:12

A. ALL THE SAME ARE A FEE TO BE PAID TO A HUMAN BEING, A FEE TO BE PAID FOR USE OF A BEAST, AND A FEE TO BE PAID FOR THE RENTAL OF UTENSILS: EACH IS SUBJECT TO THE RULE, “IN HIS DAY YOU SHALL GIVE HIM HIS FEE” (DEU. 24:15). EACH IS SUBJECT TO THE RULE, “THE WAGES OF A HIRED WORKER WILL NOT ABIDE WITH YOU AT NIGHT UNTIL THE MORNING” (LEV. 19:13).

1. I:1: With reference to the statement, A resident alien is subject to the rule, “In his day you shall give him his fee” (Deu. 24:15) since Deu. 24:14 refers to the alien. But he is not subject to the rule, “The wages of a hired worker will not abide with you all night until morning” who is the authority behind the rule at hand? It is not the initial Tannaite authority, who interpreted the language, “of your brethren,” nor is it R. Yosé b. R. Judah.

a. I:2: Gloss of a detail of the foregoing. With reference to the verse, “And sets his life upon it:” — whoever holds back a worker’s salary is as if he takes his life from him, R. Huna and R. Hisda: One said, “The life of the robber.” The other said, “The life of the victim.”

B. UNDER WHAT CIRCUMSTANCES? WHEN THE WORKER HAS LAID CLAIM ON HIS WAGES. IF HE DID NOT LAY CLAIM ON HIS WAGES, THE EMPLOYER DOES NOT TRANSGRESS THE BIBLICAL REQUIREMENT.

1. II:1: Our rabbis have taught on Tannaite authority: “The wages of a hired hand will not abide all night.” Might one think that that is the case even if the worker did not demand his wages? Scripture says, “...with you...,” meaning, with your knowledge and consent.

C. IF THE EMPLOYER GAVE HIM A DRAFT ON A STOREKEEPER OR MONEY CHANGER, THE EMPLOYER DOES NOT TRANSGRESS THE BIBLICAL REQUIREMENT.

1. III:1: The question was raised: may the worker go back to the employer or not if the shopkeeper did not provide the goods? Has the employer carried out his obligations, or is there recourse? R. Sheshet said, “He does not have recourse.” Rabbah said, “He has recourse.”

2. III:2: 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 not 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?”

D. AN EMPLOYEE — IF HE CLAIMED HIS SALARY WITHIN THE STATED TIME TAKES AN OATH THAT HE HAS NOT BEEN PAID AND COLLECTS HIS SALARY. IF THE STATED TIME HAS PASSED AND HE DID NOT COLLECT HIS SALARY, HE DOES NOT TAKE AN OATH AND COLLECT HIS SALARY.

1. IV:1: As to an employee, how come rabbis ordained that he is to take an oath and collect his wages? Usually, the one who takes an oath does so so that he will not have to pay money, not so that he will collect money. Said R. Judah said Samuel, “Laws of exceptional importance were repeated here.”

E. BUT IF THERE ARE WITNESSES THAT HE HAD IN FACT LAID CLAIM FOR HIS SALARY, LO, THIS ONE TAKES AN OATH AND COLLECTS HIS SALARY. A RESIDENT ALIEN IS SUBJECT TO THE RULE, “IN HIS DAY YOU SHALL GIVE HIM HIS FEE” (DEU. 24:15) SINCE DEU. 24:14 REFERS TO THE ALIEN. BUT HE IS NOT SUBJECT TO THE RULE, “THE WAGES OF A HIRED WORKER WILL NOT ABIDE WITH YOU ALL NIGHT UNTIL MORNING.”

1. V:1: But still he demands the money now in our very presence so what difference does it make that he demanded payment before, in the presence of other witnesses?

LXXXIX. Mishnah-Tractate Baba Mesia 9:13A-H

A. HE WHO LENDS MONEY TO HIS FELLOW SHOULD EXACT A PLEDGE FROM HIM ONLY IN COURT, AND THE AGENT OF THE COURT SHOULD NOT GO INTO HIS HOUSE TO TAKE HIS PLEDGE, AS IT IS SAID, “YOU WILL STAND OUTSIDE” (DEU. 24:11). IF THE BORROWER HAD TWO UTENSILS, THE LENDER TAKES ONE AND LEAVES ONE. AND HE RETURNS HIS PILLOW BY NIGHT, AND PLOUGH BY DAY. BUT IF THE DEBTOR DIED, THE CREDITOR DOES NOT RETURN THE OBJECTS TO THE ESTATE. RABBAN SIMEON B. GAMALIEL SAYS, “EVEN TO THE BORROWER HIMSELF HE RETURNS THE OBJECT ONLY FOR THIRTY DAYS. AFTER THIRTY DAYS HAVE PASSED, HE MAY SELL THE OBJECTS, WITH THE PERMISSION OF THE COURT.”

1. I:1: Said Samuel, “The agent of the court may forcibly seize the object, but he may not enter to take the pledge.”

2. I:2: One must not take as a pledge things with which one prepares food. And to a rich man one leaves a couch, a couch and a mattress, and to a poor man, a couch, a couch and matting. That is for him, but as to his wife and sons and daughters, one need not leave such things. Just as an assessment is made for a debtor so also is the same in the case of valuations. One has to leave the debtor enough to make a living. If one vows one's valuation, a poor man's means are assessed and the valuation is reduced.

a. I:3: Gloss of foregoing.

3. I:4: A Tannaite authority recited before R. Nahman, “Just as they make an assessment for valuations, so they make an assessment in the case of a debtor.”

4. I:5: The question was raised: what is the law as to making an assessment for a debtor? Do we indeed derive the law governing an assessment in the case of poverty, pertaining in the present context, from the law governing valuations or not, basing our comparison on reference in both pertinent verses to poverty? “And if your brother grows poor, then you shall relieve him” (Lev. 25:37); valuations: “But if he is poorer than your estimation...according to the means of him who vowed shall the priest value him (Lev. 27: 8). Hence, just as the means test is

applied in the latter case, exempting the one who has taken the vow from his full obligations, so is the rule in the former case. Or do we not do so?

5. I:6: Rabbah bar Abbuha came upon Elijah, standing in a cemetery of gentiles. He said to him, “What is the law as to making an assessment of the debtor’s needs in the case of a debtor?”

6. I:7: Our rabbis have taught on Tannaite authority: “And if he is a poor man, you shall not sleep in his pledge; when the sun goes down, you shall restore to him the pledge, that he may sleep in his cloak and bless you” (Deu. 24:12-13): so if he is wealthy, you may sleep in it.

7. I:8: Our rabbis have taught on Tannaite authority: He who lends money to his fellow has not got the right to exact a pledge from him, but he is not liable to return it to him, and he violates all of these laws “And if he is a poor man, you shall not sleep in his pledge; when the sun goes down, you shall restore to him the pledge, that he may sleep in his cloak and bless you” (Deu. 24:12-13), and “you shall return it to him by the time that the sun goes down” (Exo. 22:25).

8. I:9: R. Shizbi repeated on Tannaite authority before Raba, “‘you shall return it to him by the time that the sun goes down’ (Exo. 22:25) —this refers to the garments used by night. ‘And if he is a poor man, you shall not sleep in his pledge; when the sun goes down, you shall restore to him the pledge, that he may sleep in his cloak and bless you’ (Deu. 24:12-13) — this refers to the garments used by day.”

9. I:10: Said R. Yohanan, “If someone took a pledge of the debtor, returned it, and the debtor died, may he seize it from the estate?”

10. I:11: Our rabbis have taught on Tannaite authority: “When you make your neighbor a loan of any sort, you shall not go into his house to fetch his pledge. You shall stand outside” (Deu. 24:10-11) — you may not go into his house, but you may go into the house of the one who has made himself a surety for the loan.

11. I:12: Another interpretation of the verse, “When you make your neighbor a loan of any sort, you shall not go into his house to fetch his pledge. You shall stand outside” (Deu. 24:10-11) — you may not go into his house, but you may go into his house to collect for portage fees, payment for hiring asses, the bill for the inn, and the bill to pay the service of artists.

XC. Mishnah-Tractate Baba Mesia 9:13I-J

I. FROM A WIDOW, WHETHER POOR OR RICH, THEY DO NOT TAKE A PLEDGE, SINCE IT IS SAID, “YOU WILL NOT TAKE A WIDOW’S GARMENT AS A PLEDGE” (DEU. 24:17).

1. I:1: Our rabbis have taught on Tannaite authority: From a widow, whether poor or rich, one has no right to take a pledge, since it is said, ‘You will not take a widow’s garment as a pledge’ (Deu. 24:17),” all the same are a poor one and a rich one,” the words of R. Judah. R. Simeon says, “‘From a poor widow one has not got the right to exact a pledge. But from a rich widow one takes a pledge and

does not give it back night by night, lest this one start coming and going to her house and give her a bad name” (T. **B.M. 10:10A-F**).

XCI. Mishnah-Tractate Baba Mesia 9:13K-O

A. HE WHO SEIZES MILLSTONES TRANSGRESSES A NEGATIVE COMMANDMENT, AND IS LIABLE ON THE COUNT OF TAKING TWO DISTINCT UTENSILS, SINCE IT IS SAID, “HE SHALL NOT TAKE THE MILL AND THE UPPER MILLSTONE AS A PLEDGE” (DEU. 24: 6). AND NOT CONCERNING A MILL AND THE UPPER MILLSTONE ALONE DID THEY SPEAK, BUT CONCERNING ANY UTENSIL WITH WHICH THEY PREPARE FOOD, AS IT IS SAID, “FOR HE SEIZES A MAN’S LIFE AS A PLEDGE” (DEU. 24: 6).

1. I:1: Said R. Huna, “If one has seized as a pledge the lower millstone, he is subjected to a flogging on two counts, one on the count of the lower millstone, the other on the count of ‘For he seizes a man’s life as a pledge’ (Deu. 24: 6). For seizing as a pledge the lower and the upper millstones, he is flogged on three counts: one on the count of the lower millstone, the second on the count of the upper millstone, and the third on the count of ‘For he seizes a man’s life as a pledge.’” And R. Judah said, “If he seized as a pledge the lower millstone he is flogged on one count, if he took the upper millstone he is flogged on one count, if he took both the lower and the upper millstones he is flogged on two counts only. ‘For he seizes a man’s life as a pledge’ (Deu. 24: 6) refers to other matters altogether.”

a. I:2: Complement to the foregoing. There is a Tannaite teaching that accords with the principle of R. Judah:

1. I:3: Illustrative case. There was a man who seized as a pledge a butcher’s knife. The case came before Abbayye, who said to him, “Go, return it to him, because it is a utensil with which people prepare food, but then come back to court in connection with the debt.”

XCII. Mishnah-Tractate Baba Mesia 10:1

A. A HOUSE AND AN UPPER STORY BELONGING TO TWO PEOPLE THAT FELL DOWN — THE TWO OF THEM DIVIDE THE WOOD, STONE, AND MORTAR. AND THEY TAKE ACCOUNT OF WHICH STONES ARE MORE LIKELY TO HAVE BEEN BROKEN AND ASSIGN THEM TO THE LIKELY OWNER OF THEM:

1. I:1: Since the language is used, And they take account of which stones are more likely to have been broken and assign them to the likely owner of them, it follows that it is possible to find out whether the house fell through pressure or through shock. But if that is the case, then, as to the opening clause, why rule, the two of them divide the wood, stone, and mortar? Rather, let us see: if it fell through a shock, then what is the remnant of the upper story was broken; if it was through pressure, then what is part of the lower portion was damaged. If the lower part of the house received a shock like that of a battering ram, it may be assumed that the broken stones are of that portion. If the shock was evenly distributed, as in a

wind, then the broken stones are of the upper story, since they had a greater distance to fall.

B. IF ONE OF THEM RECOGNIZED SOME OF THE STONES BELONGING TO HIM, HE TAKES THEM:

1. II:1: What does that party claim? If he agrees, then the rule is self-evident. If the other party does not concur, then why should this one have the right to take them?

C. ...BUT THEY COUNT AS PART OF HIS SHARE IN THE RECKONING:

1. III:1: Raba considered ruling that this refers to his share of the broken materials, from which it follows that, since he has said, "I don't know," his position is weakened substantially. Said to him Abbaye, "To the contrary, the position of the other is weakened substantially, for since he knows only that these belong to him but has no information on the other, he should be entitled to no more than these, and the other party should get the rest."

XCIII. Mishnah-Tractate Baba Mesia 10:2

A. A HOUSE AND AN UPPER STORY BELONGING TO TWO PEOPLE — IF THE FLOOR OF THE UPPER ROOM WAS BROKEN, AND THE HOUSEHOLDER DOES NOT WANT TO REPAIR IT, LO, THE OWNER OF THE UPPER STORY GOES DOWN AND LIVES DOWNSTAIRS, UNTIL THE OTHER WILL REPAIR THE UPPER STORY FOR HIM:

1. I:1: if the floor of the upper room was broken — to what extent? Rab said, "Over the greater part thereof." Samuel said, "For four handbreadths." What is at issue here? If the landlord has originally said to him, "I rent you this upstairs," lo, it is gone. And if he simply had said, "I rent you an upstairs," then let him rent another.

2. I:2: R. Abba bar Mamel raised the question, "When the tenant takes up residence downstairs, does he live there by himself, as had formerly been the case, or do both of them dwell there, since the landlord can plead, 'I did not rent it to you so that you should then evict me'?"

B. R. YOSÉ SAYS, "THE ONE WHO LIVES BELOW SUPPLIES THE BEAMS, AND THE ONE WHO LIVES ABOVE SUPPLIES THE PLASTER."

1. II:1: To what does roofing refer? R. Yosé bar Hanina said, "Reeds, thorns, and clay." Said R. Simeon b. Laqish, "Boards."

a. II:2: In the same condominium these two people lived, one on top, the other below. The plaster of the ceiling between the two floors broke, so when the one on top washed with water, it dripped down and caused damage to the one downstairs. Who has to make the repairs? R. Hiyya bar Abba said, "The one on top has to make the repairs." R. Ilai in the name of R. Hiyya bar Yosé said, "The one on the bottom makes the repairs." May we then say that R. Hiyya bar Abba and R. Ilai engage in the same dispute as R. Yosé and Rabbis? The one who has said that the one on top has to make the repairs maintains that it is incumbent on the one who causes the damage to desist causing damage, and the one who says that the one on the

bottom makes the repairs takes the view that the one who is injured has to stop being the victim.

XCIV. Mishnah-Tractate Baba Mesia 10:3

A. A HOUSE AND AN UPPER STORY BELONGING TO TWO PEOPLE WHICH FELL DOWN — IF THE RESIDENT OF THE UPPER STORY TOLD THE HOUSEHOLDER OF THE LOWER STORY TO REBUILD, BUT HE DOES NOT WANT TO REBUILD, LO, THE RESIDENT OF THE UPPER STORY REBUILDS THE LOWER STORY AND LIVES THERE, UNTIL THE OTHER PARTY COMPENSATES HIM FOR WHAT HE HAS SPENT. R. JUDAH SAYS, “ALSO: IF SO, THIS ONE IS THEN LIVING IN HIS FELLOW’S HOUSING. SO IN THE END HE WILL HAVE TO PAY HIM RENT. BUT THE RESIDENT OF THE UPPER STORY BUILDS BOTH THE HOUSE AND THE UPPER ROOM, AND HE PUTS A ROOF ON THE UPPER STORY, AND HE LIVES IN THE LOWER STORY, UNTIL THE OTHER PARTY COMPENSATES HIM FOR WHAT HE HAS SPENT.”

1. I:1: Said R. Yohanan, “In three passages R. Judah has repeated for us the rule that it is forbidden for someone to derive benefit from somebody’s else’s property. The first is in the Mishnah passage at hand.”

2. I:2: Said R. Aha bar Adda in the name of Ulla, “If the owner of the lower story of the condominium wants to change the building materials in the house, from hewn to unhewn stones, he is permitted to do so; if he wants to change from unhewn to hewn stones, he is forbidden literally: they listen to him, they do not listen to him, and so throughout; if he wants to change from whole bricks to half bricks, he is permitted, from half to whole, he is forbidden; if he wants to make a ceiling of cedar, he is permitted, of sycamore, he is forbidden; if he wants to cut down on the number of windows, he is permitted, to increase them, he is forbidden; if he wants to elevate the story, he is forbidden, to cut it down in height, he is permitted. If he wishes to make an alteration that strengthens the lower story and adds to its weight, so that it can better bear the burden of the upper story, he is permitted. But he may not weaken it.

3. I:3: What if neither party can afford to rebuild? It has been taught on Tannaite authority: If this party has not got funds to rebuild, and that party does not have funds to rebuild, the owner of the upper story has no claim on the land.

XCV. Mishnah-Tractate Baba Mesia 10:4, 5A-N

A. AND SO TOO: AN OLIVE PRESS WHICH IS BUILT INTO A ROCK, AND A GARDEN IS ON TOP OF IT ON ITS ROOF, ABOVE, AND THE ROOF WAS BROKEN — LO, THE OWNER OF THE GARDEN HAS THE RIGHT TO GO DOWN AND SOW THE AREA BELOW, UNTIL THE OTHER PARTY WILL REBUILD VAULTING FOR HIS OLIVE PRESS. THE WALL OR THE TREE WHICH FELL DOWN INTO PUBLIC DOMAIN AND INFLECTED INJURY — THE OWNER IS EXEMPT FROM HAVING TO PAY COMPENSATION:

1. I:1: if the floor of the upper room was broken — to what extent? Rab said, “Over the greater part thereof.” Samuel said, “For four handbreadths.”

B. IF THEY GAVE HIM TIME TO CUT DOWN THE TREE OR TO TEAR DOWN THE WALL, AND THEY FELL DOWN DURING THAT INTERVAL, THE OWNER IS EXEMPT. IF THEY FELL DOWN AFTER THAT TIME, THE OWNER IS LIABLE.

1. II:1: How much time is allowed by the court? Said R. Yohanan, “Thirty days.”

C. HE WHOSE WALL WAS NEAR THE GARDEN OF HIS FELLOW, AND IT WAS DAMAGED AND FELL DOWN — AND THE OWNER OF THE GARDEN SAID TO HIM, “CLEAR OUT YOUR STONES” BUT THE OTHER SAID TO HIM, “THEY’RE YOURS!” — THEY PAY NO ATTENTION TO THE LATTER. BUT IF AFTER THE OTHER PARTY HAD ACCEPTED THE OWNERSHIP OF THE STONES UPON HIMSELF, THE ORIGINAL OWNER OF THE WALL SAID TO HIM, “HERE’S WHAT YOU LAID OUT! NOW I’LL TAKE MINE!” — THEY DO NOT PAY ATTENTION TO THE FORMER.

1. III:1: Since the final clauses states, “Here’s what you laid out!” it stands to reason that it is the owner of the garden who has removed the rubble. Then the operative consideration is that he has cleared away the rubble. It must follow that if he had not cleared away the rubble, the rule would not be the same and the rubble would not belong to the garden owner. But why should this be the rule? Let his field effect ownership in his behalf! For R. Yosé b. R. Hanina said, “A person’s courtyard effects ownership in his behalf, even without his knowledge and consent.”

D. HE WHO HIRES A WORKER TO WORK WITH HIM IN CHOPPED STRAW AND STUBBLE, AND THE WORKER SAID TO HIM, “PAY ME MY WAGE,” AND THE EMPLOYER SAID TO HIM, “TAKE WHAT YOU’VE MADE FOR YOUR WAGE!” — THEY DO NOT PAY ATTENTION TO THE EMPLOYER.

1. IV:1: It was necessary to teach both cases that the Mishnah-paragraph treats here, for had we been given only the first case, but the other said to him, “They’re yours!” — they pay no attention to the latter, the operative consideration is that the owner of the garden has no claim of a wage upon him; here however the worker has a claim of a wage, and I might maintain that the employer is obeyed, since people say, “From your debtor take even bran in payment of the debt.” Had we been told only the present rule, in the present case, But if, after the worker had accepted the proposition), the employer said to him, “Here’s your salary, and now I’ll take mine!” — they do not pay attention to the employer, the operative consideration is that the worker has the claim of a wage on him, but in the former instance, where there is no claim of a wage on the other, I might have supposed that the other is obeyed. So it was necessary to specify both cases.

E. BUT IF, AFTER THE WORKER HAD ACCEPTED THE PROPOSITION), THE EMPLOYER SAID TO HIM, “HERE’S YOUR SALARY, AND NOW I’LL TAKE MINE!” — THEY DO NOT PAY ATTENTION TO THE EMPLOYER.

1. V:1: But has it not been taught on Tannaite authority: “they do pay attention to him”?

2. V:2: Said Rabbah, “Whether merely watching over that which is ownerless effects ownership represents a dispute among Tannaite authorities. For we have learned: Those who guard the aftergrowth of the Sabbatical year are paid out of Temple funds. A sheaf of the earliest barley crop was brought as a heave offering

in the Temple, so too, two loaves made of the first wheat that ripens. They had to belong to the public and could not be property of any individual. People were hired and paid out of public funds to watch over a field of grain to see which sheaves ripened earliest. There was no sowing in the seventh year, so there could be only crops grown from seed that had fallen the previous year. This crop was ownerless, as is all seventh year produce, and the Tannaim now dispute whether the watchman had to accept payment or not. R. Yosé says, 'He who wants has the right to volunteer and to serve as an uncompensated guardian.' They said to him, 'You say so, but then the grain does not come from what is publicly owned.' Now is this not what is at issue: the initial authority takes the view that if one watches over a crop that is ownerless, he has acquired title to it, so if he is given a salary, it is acceptable, and if not, it is not acceptable, while R. Yosé takes the view that watching over what is ownerless does not effect title, so only when the community go and get the grain is title effected over that grain? And as to the language, 'You say so, but then the grain does not come from what is publicly owned,' this is its sense: 'From what you say that he does not have to accept a fee for his labor and on the basis of our ruling that watching over that which is ownerless confers title, the sheaf of first barley and the two loaves of bread do not derive from grain that belongs to the community!'"

XCVI. Mishnah-Tractate Baba Mesia 10:5/O-X

A. HE WHO BRINGS OUT HIS MANURE TO THE PUBLIC DOMAIN — WHILE ONE PARTY PITCHES IT OUT, THE OTHER PARTY MUST BE BRINGING IT IN TO MANURE HIS FIELD. THEY DO NOT SOAK CLAY IN THE PUBLIC DOMAIN, AND THEY DO NOT MAKE BRICKS. AND THEY KNEAD CLAY IN THE PUBLIC WAY, BUT NOT BRICKS. HE WHO BUILDS IN THE PUBLIC WAY — WHILE ONE PARTY BRINGS STONES, THE BUILDER MUST MAKE USE OF THEM IN. AND IF ONE HAS INFLICTED INJURY, HE MUST PAY FOR THE DAMAGES HE HAS CAUSED. RABBAN SIMEON B. GAMALIEL SAYS, "ALSO: HE MAY PREPARE FOR DOING HIS WORK ON SITE IN THE PUBLIC WAY FOR THIRTY DAYS BEFORE THE ACTUAL WORK OF BUILDING."

1. I:1: May we say that our Mishnah-paragraph does not accord with the view of R. Judah?
2. I:2: Said Abbaye, "R. Judah, Rabban Simeon b. Gamaliel, and R. Simeon all take the position that in the case of all those concerning whom they have said, 'They are permitted to obstruct the public way,' if there was damage done, one is liable to pay compensation."
3. I:3: Our rabbis have taught on Tannaite authority: If the quarry-man has delivered the stones for building to a stone cutter, the stone cutter is liable. If the stone cutter had handed them over to a porter, the porter is liable. If the porter had delivered them to the bricklayer, the bricklayer is liable. If the bricklayer has handed them to the foreman, the foreman is liable. If after he had laid the stone upon the row it caused damage, all are responsible.

XCVII. Mishnah-Tractate Baba Mesia 10:6

A. TWO TERRACED GARDENS, ONE ABOVE THE OTHER — AND VEGETABLES BETWEEN THEM — R. MEIR SAYS, “THEY BELONG TO THE GARDEN ON TOP.” R. JUDAH SAYS, “THEY BELONG TO THE GARDEN BELOW.” SAID R. MEIR, “IF THE ONE ON TOP WANTS TO TAKE AWAY HIS DIRT, THERE WILL NOT BE ANY VEGETABLES THERE.” SAID R. JUDAH, “IF THE ONE ON THE BOTTOM WANTS TO FILL UP HIS GARDEN WITH DIRT, THERE WON’T BE ANY VEGETABLES THERE.” SAID R. MEIR, “SINCE EACH PARTY CAN STOP THE OTHER, THEY CONSIDER FROM WHENCE THE VEGETABLES DERIVE SUSTENANCE WHICH IS FROM THE DIRT.”

1. I:1: Said Raba, “As to the roots, all parties concur that they are assigned to the upper garden’s owner. Where there is a dispute, it concerns the leaves. R. Meir takes the view that we assign the leaves to the roots, and R. Judah takes the view that we do not assign the leaves to the roots.”

B. SAID R. SIMEON, “ANY VEGETABLES WHICH THE ONE ON TOP CAN REACH OUT AND PICK — LO, THESE ARE HIS. AND THE REST BELONG TO THE ONE DOWN BELOW.”

1. II:1: Said the household of R. Yannai, “And that is on condition that he does not strain himself.”

2. II:2: The question was raised by R. Anan, and some say, R. Jeremiah: “If one can reach the leaves but not the roots, or the roots but not the leaves, what is the law?”

3. II:3: Said R. Ephraim, the scribe, a disciple of R. Simeon b. Laqish, in the name of R. Simeon b. Laqish, “The law accords with the position of R. Simeon.”

Points of Structure

1. DOES BABYLONIAN TALMUD-TRACTATE BABA MESIA FOLLOW A COHERENT OUTLINE GOVERNED BY A CONSISTENT RULES?

The Mishnah's statements read one-by-one and in sequence define the structure of the Talmud. Even where the Talmud introduces compositions and composites organized around problems not defined by the Mishnah, these extraneous entries are inserted into position in relationship to some point of relevance to the Mishnah, however tangential. There is no large-scale legal problem that is considered wholly on its own and not in conjunction with the Mishnah. Large-scale non-legal composites, e.g., the set of stories involving Eleazar b. R. Simeon, are parachuted down as appendages to secondary or tertiary discussions of problems relevant to the Mishnah.

2. WHAT ARE THE SALIENT TRAITS OF ITS STRUCTURE?

As usual, first comes Mishnah-exegesis in a narrow sense: [1] meanings of words and phrases; [2] the foundations in Scripture for statements in the Mishnah; [3] the named authority behind an anonymous and therefore authoritative statement of the Mishnah. Then comes analysis of legal theory encompassing the case of the Mishnah or exemplified in the law of the Mishnah. Finally, in orderly sequence, will come topical exercises that deal with the theme of the Mishnah's law, but in some fresh way.

3. WHAT IS THE RATIONALITY OF THE STRUCTURE?

All considerations of order, sequence, and appropriate juxtaposition ("why this, not that?" and "what has this to do with that?") derive to begin with from the program of the Mishnah. Where that is not the case, a secondary expansion may be introduced as the amplification of a tangential point that is made in a composition devoted to Mishnah-exegesis; but that amplification may then go its own way and bear in its wake a massive construction, a composite of its own. One recurring example of that phenomenon is the sustained inquiry into the relationship of law to Scripture, that is, how Scripture generates law, with special attention to conflicting positions that the same verse of Scripture sustains, and the conflicting principles of exegesis or hermeneutics that generate the conflict in positions. So what we have is Mishnah-exegesis, then amplification — not much more.

4. WHERE ARE THE POINTS OF IRRATIONALITY IN THE STRUCTURE?

The composites that violate the prevailing norms of rationality are to be divided into two parts: [1] composites that fall within the circle of the Mishnah's theme, or even its legal principles, or even the details of its case; [2] composites that take shape entirely independent of anything we now find in the Mishnah, e.g., amplification of Scripture, the names of the same authority and tradent(s). Among the latter, we have also to distinguish among free-standing composites that by inference or implication affect the character of the Mishnah-exposition that the Talmud provides and those that in no way intersect with, let alone affect, our grasp of the Mishnah's themes and their implications. For some tractates, the free-standing composite takes over and changes perspective on the Mishnah's topic, the Talmud's amplification of that topic, or our very grasp of what is at stake in the law. For others, such as this one, the inserted, large-scale and autonomous

(“miscellaneous”) composites in no way affect the character of the larger context in which they make their appearance. For the three Babas, the one important point at which the Talmud has included enormous and affective composites, those that materially recast our perspective upon the very topic of the Mishnah and its talmudic extension, is Baba Batra. There, only in the third of the three tractates of civil law, as we shall see, are introduced themes and even specific propositions that require us to see in a quite fresh perspective the Mishnah’s entire program.

In this tractate, that “more” to which I referred at the end of the penultimate paragraph is found in the following composites, which, in my outline, seem to me to stand on their own and not in relationship to a clause or sentence in the Mishnah. Those described here prove to provide a secondary expansion or augmentation of the Mishnah’s own topic, on the one side, or of a tangential point in the Talmud’s amplification of the Mishnah, on the other. In the unit below, I deal with the composites that stand on their own in my outline and that also do not relate to Mishnah-exegesis in any way.

The free-standing units that turn out to expand the Mishnah’s topic are as follows: III.B, a further saying inserted by reason of a shared attributive formula; VI.B, a composite of statements assigned to the same authority as is cited in VI.A and addressed to the same legal problem; XIX.D, a composite of cases illustrated the same exegetical procedure as predominates at XIX.C, that is, a topical appendix; XXI.C, dealt with below; XXV.C: This is a secondary refinement of the statement of the Mishnah, explicitly alluding to that point of connection, From the position stated here in the view of Rabban Simeon b. Gamaliel we may infer that a relative may dispose of the property of a captive, while from the position of rabbis we may infer that a relative may dispose of the property of a captive, though the composite then goes its own way; XXXVI.E: the composite on the added fifth takes shape round its own theme and then is parachuted down as a thematic appendix, joined to the context of Mishnah-commentary and amplification because of a tangential reference in the immediately-prior composition; XXXIX.C: the same is to be said of XXXIX.C — Other Matters to which the Law of Overreaching Does Not Apply; XL.B: discussed below; XLVIII.B: this is a special problem that flows from the generic problem subject to discussion in Mishnah-commentary; XLIX.B: the point that one may take usury from, or pay usury to, gentiles is introduced because the Mishnah itself has spoken about allowing in relationship to gentiles contractual arrangements that cannot be set with Jews. So while the passage takes shape around its own, vital question, it still remains well within the topical program of Mishnah-commentary; LX. B, C, D, E, I: dealt with below; LXI. B: this is a thematic extension of the Mishnah’s topic; LXI.C: here we have a comment not on the Mishnah but on its general proposition; LXI.D: dealt with below; LXXX.B: here we have a well-formed and cogent composite: sayings by a single authority on a single theme, which, moreover, intersects with that of the Mishnah; LXXXII.B: all we have here is more definitions of the kind that is required for Mishnah-exegesis, a topical appendix; LXXXV.C: this is a composite of sayings assigned to a single authority, tacked on but free-standing in program and consequence; LXXXV.D: this is an add-on to the foregoing; LXXXV.E: discussed below.

There are two other points to notice. The first is a very strange one: LXIX.B, a beautifully composed talmud-composite, entirely focused upon a Mishnah-composition — but not for our tractate’s Mishnah. The composite is standard in its order and interests: what is the Scripture source? how explain the Mishnah’s formulation? the logic behind a

Mishnah-rule, and the like. If this composite were situation in Mishnah-tractate Shebuot, we should have classified it as standard Mishnah-commentary and amplification. But located here, the composite stands out and demands an explanation. But for my part, even though the topical program of our Mishnah-tractate at this very passage invites the theme and its exposition that are before us, still, I cannot account for the inclusion here of another tractate's Mishnah-paragraph together with its Talmud. It would carry us far afield now to compare the two Talmuds that the same Mishnah-paragraph, M. Shebu. 8:1ff., has been given. Work on the history of the materials now set forth in our Talmud, on the other hand, will be considerably advanced in due course by comparative Talmud-studies: how the same passage is treated in various contexts. That work will have to commence with this strange passage. At this stage in my outline of the Talmud (with *A Complete Outline* III to appear first in the sequence), I cannot point to another example of the same strange phenomenon.

Second, I find one genuinely disruptive item, which is LXXXV.E. This item in a very general way intersects with the Mishnah's theme, though none of its propositions that are before us. Here is an item that is genuinely miscellaneous in both character and location. The people who compiled these important sayings and those who inserted the set here did so in accord with principles — whether of form, whether of a substantive character — I cannot discern. My explanation of both form and substance is general and does not eliminate the paramount possibility that a program of legal exposition and of large-scale formation of such expositions different from the one guiding the Mishnah-commentary that dictates the character of most of the Talmud and the majority of its constituent components guided work quite different from that before us.

Points of System

1. DOES THE BABYLONIAN TALMUD-TRACTATE SERVE ONLY AS A REPRESENTATION OF THE MISHNAH-TRACTATE OF THE SAME NAME?

The answer is, not only but mainly. And that answer is validated by our examination of the free-standing composites. Most of these connect to the Mishnah or to the Talmud's composites of Mishnah-amplification, as we have now seen.

2. HOW DO THE TOPICAL COMPOSITES FIT INTO THE TALMUD-TRACTATE AND WHAT DO THEY CONTRIBUTE THAT THE MISHNAH-TRACTATE OF THE SAME NAME WOULD LACK WITHOUT THEM?

For this tractate, as we shall now observe, the free-standing units that in no way contribute to the amplification of the Mishnah's topics or propositions make no impact upon the Talmud's on-going discussion of those topics and propositions; they in no way change our perspective on matters, e.g., by introducing a subject that places into a different context the very rules and problems on which we concentrate here. That is to say, in my view, every topical composite before us is introduced for formal, and not for substantive, considerations. The upshot is that the miscellaneous items make no impact upon the presentation of the Mishnah's statement that the Talmud effects with such remarkable power.

XXI.C: Since the Mishnah speaks of the contrast between the sage and the father, the former enjoying supernatural standing, a further issue is raised: the differentiation among sages in accord with their specialties: Those who are occupied with study of Scripture — it is a meritorious quality that is not all that meritorious. ...with the Mishnah — it is a meritorious quality on account of which reward is gained. ...with the Gemara — you have no greater meritorious action than that. This does not vastly change the character of the larger context in which it is located. Rather, it represents a secondary refinement of the point of differentiation introduced in the Mishnah and clarified in the prior segments of the Talmud.

XL.B: The Wife's Prayer: All gates are locked, except for the gates that receive complaints against overreaching. That theme, which XL.A introduces, accounts for the insertion of the vast complex on Eliezer b. Hyrcanus, his excommunication, and the like. I see no important point in that important composite that has any bearing on the reading of the Mishnah-passage at hand, on the one side, or on the Talmud immediately preceding, on the other. Here is a case in which the inserted composite is included for formal reasons, that is, as an exemplification of a point already made, and not for any supererogatory purpose that I can discern. The insertion impedes rather than advances the on-going discussion. It does not shed a new light on what is the primary issue at hand. It does not vastly change our perception even of the issues of the law that are before us. Proof of the essentially-inert character of this enormous insertion lies in XL.C, which follows: the passage simply reverts to the prior discussion, as though nothing intervened.

LX.B, C, D, E: The massive composite on Eleazar b. R. Simeon + Yohanan is parachuted down because it commences with an exegesis of Psa. 104:20, which plays a role in the immediately preceding composition. On that basis, this enormous complex of materials is entered. It has no bearing upon anything in context, and its insertion makes no impact upon that larger context. The one point that can have made its impact upon our Mishnah-tractate and its exposition is E, the genealogy of learning; but that passage, which would have been welcome earlier when we contrasted the father and the Torah-teacher, here is a mere appendage, tacked on for obvious reasons, self-evident at the immediately-receding item.

LX.I: The meals of Abraham and associated items, a systematic amplification of Gen. 18:7 and surrounding materials, is inserted because of the reference in the Mishnah to the children of Abraham, on the one side, and the obligation to provide appropriate meals for them, on the other. So in topic if not in form the insertion qualifies as Mishnah-amplification. An available set of compositions is situated precisely where it should be for the purpose of clarifying what is at stake in the Mishnah.

LXI:D: This is a mere topical appendix, nothing more;

3. CAN WE STATE WHAT THE COMPILERS OF THIS DOCUMENT PROPOSE TO ACCOMPLISH IN PRODUCING THIS COMPLETE, ORGANIZED PIECE OF WRITING?

The compilers of Bavli Baba Mesia have accomplished a vast, systematic, and orderly exposition of the Mishnah-tractate that they have selected for their work. They have represented its law in a vast and encompassing context, in that way transforming law into jurisprudence, and, at some points, jurisprudence into philosophy, on the one side, or theology, on the other. Theirs was the work of commentary — but commentary that vastly enhanced the text subject to the commentary. Learning the lessons of intellect, mastering the rules of analysis, applied reason and practical logic, that the Talmud's sages here have exemplified, future lawyers of Judaism would govern holy Israel's everyday and practical life in accord with a law that was animated by philosophy and motivated by theology: the Torah's, as our sages of blessed memory formulated both.