The Soncino Babylonian Talmud

Book IV

Folios 91a-119a

BABA MEZI'A

TRANSLATED INTO ENGLISH WITH NOTES
and Introductory Essay

FOLIOS 1 - 24b
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FOLIOS 25a TO THE END
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Baba Mezi'a 91a

Not that one is permitted to make an exchange, but that if he did the exchange is valid, and he receives forty [lashes]![1] He replied: That accords with R. Judah, who maintained that one is flagellated for [violating] a negative precept which involves no action.[2] But can you make this agree with R. Judah? Does not the first clause state: All have power to exchange, both men and women. Now, we pondered thereon, what is 'all' intended to add?[3] [And we answered,] An heir.[4] And this does not agree with R. Judah: for if it did, surely he maintained that an heir can neither exchange nor lay hands?[5] — This Tanna agrees with R. Judah in one ruling,[6] and disagrees in another.[7]

Our Rabbis taught: If one muzzles a beast and threshes therewith, he is flagellated, and pays [to the owner of the cow] four *kabs* in the case of a cow, and three *kabs* for an ass.[8] But [is it not a principle], one is not flagellated and executed; nor is one flagellated and made to pay? — Abaye replied: This is in accordance with R. Meir, who maintained, One is flagellated and also made to pay.[9] Raba said:[10] The Torah forbade the hire [of a harlot], even if one had relations with his mother.[11] R. Papa said: He becomes liable for its food from the moment of *meshikah*,[12] whereas flagellation is not incurred until muzzling.[13]

R. Papa said: The following problems were propounded to me by the disciples of R. Papa b. Abba, and I gave stringent rulings,[14] one in accordance with the law, the other not in accordance with the law.[15] They asked of me: May dough be kneaded with milk? And I ruled that it was forbidden, this being in accordance with the law. For it has been taught: Dough may not be kneaded with milk, and if it is, the whole loaf is forbidden, because it may lead to transgression.[16] Likewise, an oven may not be greased with tail fat,[17] and if it is, the whole loaf [baked therein] is forbidden, until the oven is heated through.[18] The other problem they propounded of me was: May two heterogeneous animals [of opposite sexes] be led into a stable?[19] And I answered them that it is forbidden, this not being in accordance with the law. For Samuel said: In the case of adulterers, they [sc. the witnesses] must have seen them in the posture of adulterers;[20] but in respect to diverse species, they must have seen him assisting [the copulation] even as [one places the] painting stick in the tube.[21]

R. Ahadboi b. Ammi raised an objection: Had Scripture stated, Thou shalt not cause thy cattle to gender,[22] I might have thought [it to mean], One must not hold a beast when the male [even of its own kind] copulates with it; therefore it is said, with a diverse kind. Surely then this proves that in the case of different species one may not even hold [the female]! — By 'holding', 'assisting' is meant, and why is it designated 'holding'? As a more delicate term.

Rab Judah said: In animals of the same species, one may 'assist' [at copulation] even as [one places the painting] stick in the tube, and it is not even forbidden on account of obscenity. Why? Because he is engaged in his work.[23] R. Ahadboi b. Ammi raised an objection:

1. Tem. 2a. This refers to Lev. XXVII, 33; neither shall he change it (sc. the consecrated animal): and if he change it at all, then both it and the change thereof shall be holy. The first clause of the passage states that all have power to exchange, and then it goes on to say that that does not mean that one may exchange, but merely that his action is valid, the substitute too becoming holy, and that his action is punished by flagellation. Now, this offence consists only of speech, and hence this Mishnah refutes Resh Lakish's view that speech is an unsubstantial action.
2. But those who require an action do not consider speech sufficient.
3. V. p. 496, n. 3.
4. I.e., if the heir exchanged the animal consecrated by his deceased father, the substitute is valid.
5. Upon certain sacrifices the owner laid his hands prior to its slaughter. If the owner died,

R. Judah maintained that the heir could not perform this ceremony.
6. Viz., that a person is flagellated for a negative precept involving no action.
7. Maintaining against R. Judah that the heir can exchange.
8. That is the estimated quantity they eat per day. V. H.M. 338. 4. Isserles.
9. V. B.K 71a.
10. [MS. Rome inserts: 'It may even be in accordance with the Rabbis, but this is stated if he wishes to appear justified before Heaven (lit., 'at the hands of Heaven'), even as is the case with the hire, for the Torah forbade, etc.' This renders clearer the argument that follows, v. Tosaf.]
11. V. Deut. XXIII, 19: Thou shalt not bring the hire of a whore … into the house of the Lord thy God for any vow. Now, 'hire' and 'whore' are quite unspecified, even if the latter is his own mother, in which case he is liable to death for incest. This proves that notwithstanding his liability to death, in which the money payment is merged, he strictly speaking (should he wish 'to appear justified before Heaven') must pay her the fee. For if she has no claim upon him at all, then even if he does pay her, it is not the hire of a harlot, but an ordinary gift to her which is not forbidden as a vow. Again, since it is recognized as a debt, if the harlot forcibly seized it from him, he cannot demand its return. So here too: though he is flagellated for threshing with a muzzled ox, he is morally indebted to its owner, and that is the meaning of the Baraitha, 'and pays.', etc. Or, if the owner seized it from him, he need not return it.
12. V. Glos.
13. Though two penalties cannot be imposed, that is only when incurred simultaneously. But these two are not, the one preceding the other.
14. Lit., 'I answered them in the direction of prohibition.'
15. But merely with an extra degree of stringency.
16. The bread may not be eaten with meat, consequently it is altogether forbidden, even with non-meat foods.
17. Which is forbidden fat.
18. To glow heat to remove all traces of the fat.
19. The question is whether this is a transgression of Lev. XIX, 19: Thou shalt not cause thy cattle to gender with a diverse kind. Does 'cause' mean to give the opportunity only, as here, or actually to make the two copulate?
20. I.e., when witnesses testify to adultery, it is not necessary for them to witness fornication in order to impose punishment.
21. Only then is Lev. XIX, 19, quoted in n. 4 infringed; hence, R. Papa's ruling that they may not even be led into one stable was merely a matter of additional stringency, not the Biblical law.
22. Without adding 'with a diverse kind'.
23. Therefore it will not lead to impure thoughts. But one may not look upon the animals copulating, because the spectacle may excite evil passions.

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Had Scripture stated, Thou shalt not cause thy cattle to gender, I should have thought [it to mean], One must not hold a beast for the male to copulate with it; therefore it is said, with a diverse kind. Hence, only in regard to different species is it forbidden; but in the same species, it is permitted. Yet even there, only holding is permitted — but not 'assisting'. — What is meant by 'holding'? 'Assisting'. And why is it called 'holding'? As a delicate term.

R. Ashi said: This question was put to me by the scholars of Rabbana[1] Nehemiah, the Resh Galutha:[2] May an animal be led into a stable together with one of its own species and another heterogeneous to it? [Do we argue,] Having its own kind, it will be attracted thereto; or perhaps, even so, it is not [permitted]? And I answered them that it is forbidden; not because the law is so, but on account of the licentiousness of slaves.[3]

***MISHNAH*. IF HE [THE LABOURER] WORKS WITH HIS HANDS BUT NOT WITH HIS FEET, OR WITH HIS FEET BUT NOT WITH HIS HANDS; [AND] EVEN IF HE WORKS WITH HIS SHOULDERS [ONLY], HE MAY EAT. R. JOSE SON OF R. JUDAH SAID: [HE MAY NOT EAT] UNLESS HE WORKS WITH HIS HANDS AND FEET.**

***GEMARA*. What is the reason [of the first Tanna]? — *When thou comest into they neighbor's vineyard*[4] implies, for whatever work he may do.**

R. JOSE SON OF R. JUDAH SAID: [HE MAY NOT EAT] UNLESS HE WORKS WITH HIS HANDS AND FEET. What is the reason of R. Jose son of R. Judah? — He [the

laborer] is likened to the ox:[5] just as the ox [does not eat unless] it works with its hands and feet,[6] so the laborer too must work with his hands and feet.

Rabbah son of R. Huna propounded: According to R. Jose son of R. Judah, what if one threshes with geese and fowls?[7] Is it necessary that [the work shall be done] with all its [sc. the creature that threshes] strength, which provision is complied with? Or perhaps, it must work with its fore-feet and hind-feet, which is here absent? — The problem remains unsolved.

R. Nahman said in Rabbah b. Abbuha's name: Laborers, before they walk both lengthwise and crosswise in the winepress, may eat grapes but drink no wine. Having walked lengthwise and crosswise in the winepress, they may eat grapes and drink wine.[8]

MISHNAH. WHEN HE [THE LABOURER] IS WORKING AMONG FIGS, HE MUST NOT EAT OF GRAPES; AMONG GRAPES, HE MUST NOT EAT OF FIGS. YET HE MAY RESTRAIN HIMSELF UNTIL HE COMES TO THE CHOICE QUALITY [FRUIT] AND THEN EAT.[9] NOW, WITH RESPECT TO ALL OF THEM [SC. THE LABOURERS], PERMISSION WAS GIVEN ONLY WHEN THEY ARE ACTUALLY AT WORK;[10] BUT IN ORDER TO SAVE THE EMPLOYER'S TIME,[11] THEY[12] RULED, LABOURERS MAY EAT AS THEY WALK FROM ROW TO ROW,[13] AND WHEN RETURNING FROM THE WINEPRESS. AND AS FOR AN ASS, [IT MAY EAT] WHILST BEING UNLADEN.[14]

GEMARA. The scholars propounded: Whilst working on one vine, may he [the laborer] eat of another?[15] Is it merely necessary [that thou shalt eat only] of the kind which thou puttest into the employer's baskets,[16] which [requirement] is fulfilled; or is it stipulated that [thou shalt eat only] that [i.e., the tree from] which thou puttest into the employer's baskets, which is here lacking? [But] should you say, when working on one vine he may not eat of another, how can an ox eat of what is attached to the soil?[17] — R. Shisha the son of R. Idi replied: It is possible in the case of a straggling branch.[18] Come and hear: IF HE [THE LABOURER] IS WORKING AMONG FIGS, HE MUST NOT EAT OF GRAPES. This implies that he may eat of figs [when working] on figs, on the same conditions that [he may not eat of] figs [when working] on grapes:[19] but should you say, If he works on one vine he may not eat of another, how is this possible? — R. Shisha, the son of R. Idi said: It is possible in the case of an overhanging branch.[20]

Come and hear: BUT HE MAY RESTRAIN HIMSELF UNTIL HE COMES TO THE CHOICE QUALITY [FRUIT], AND THEN EAT. But should you say: Whilst employed on one vine he may eat of another, let him go, bring [the choice fruit] and eat it [and why restrain himself]? — There it is [forbidden] because of loss of time; [in that case,] there is no question.[21] Our problem arises only if he has his wife and children with him:[22] what then? — Come and hear: NOW, WITH RESPECT TO ALL OF THEM [SC. THE LABOURERS], PERMISSION WAS GIVEN ONLY WHEN THEY ARE ACTUALLY AT WORK, BUT IN ORDER TO SAVE THE EMPLOYER'S TIME, THEY RULED, LABOURERS MAY EAT AS THEY WALK FROM ROW TO ROW, AND WHEN RETURNING FROM THE WINE-PRESS. Now, it was assumed that walking [from vine to vine] is regarded as actual work [it being necessary thereto], yet he may eat only in order to save the employer's time, but not by Scriptural law; thus proving that whilst engaged on one vine he may not eat of another! — No. In truth I may assert that whilst engaged on one vine he may eat of another; but walking is not regarded as actual work. Others say, it was assumed that walking is not regarded as actual work, and only on that account may he not eat by Scriptural law, because he is not doing work; but if he were doing actual work, he might eat even by Biblical law, thus proving that whilst engaged on one vine he may eat of another! — No; in truth I may assert that

whilst engaged on one vine he may not eat of another;

1. So the text as emended by Rashal: Rabbana was a Babylonian title.
2. V. p. 387, n. 8.
3. Which might receive an impetus by such an act.
4. Deut. XXIII, 25.
5. V. top of 89a.
6. I.e., with its fore and hind-feet, both of course, being employed in threshing.
7. May their beaks be muzzled or not?
8. Laborers trod out the wine from the grapes by walking upon them lengthwise and crosswise. Now, when they have walked only in one direction, the wine is not yet visible, therefore they must confine themselves to the grapes, since the laborer may eat only of that upon which he is engaged. But when they have walked in both directions, the expressed wine is visible, and therefore they may drink thereof.
9. I.e., he is not bound to eat as soon as he feels hungry, but may wait until he reaches the best.
10. But not to finish their work and then eat.
11. Lit., 'to restore lost property to the owners.'
12. The Rabbis.
13. Though they are not actually working then.
14. This is discussed in the Gemara.
15. I.e., cut a cluster of grapes from one vine of choicer quality and then come and work upon another.
16. The phraseology is based upon Deut. XXIII, 25: but thou shalt not put any in thy vessel, which implies that the laborer may eat only of that which he does put into the employer's vessel.
17. For, as stated *supra* 89a, the same conditions govern both man and beast. Now, as the ox stands in front of the cart into which the grapes are laden the laborers naturally gather the grapes not from the vine in front of the ox, but behind it, which is level with the cart. Hence, the ox cannot possibly eat of the vine upon which it is employed (Rashi). Tosaf.: When the ox is threshing grain attached to the soil, its mouth cannot reach the ears upon which it actually treads. Now, in the case of detached corn, that does not matter, because the whole is regarded as one bundle; but in the case of growing corn, each little tuft is regarded as separate.
18. A vine which stretches from behind the ox to in front of it, so Rashi. Tosaf.: A luxuriant growth, i.e., long ears of corn which reach from the feet of the ox to its mouth. Hence, the Talmudic objection being answered, the problem remains.
19. I.e., on a different tree.
20. I.e., when one vine overhangs another, and when a vine overhangs a fig-tree. Actually, he has to work upon both, since one must be disentangled from the other. In that case he may eat of the overhanging vine whilst working on the other, but not of the overhanging fig-tree.
21. It is certainly forbidden.
22. There is no loss of time, as they can bring it.

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and walking is regarded as actual work.[1]

AND AS FOR AN ASS, [IT MAY EAT] WHILST BEING UNLADEN. But when it is unladen, whence can it eat?[2] **Say until it is unladen.**[3] **We have [thus] learnt [here] what our Rabbis taught: An ass and a camel can eat of the load on their backs, providing that he [the driver] does not personally take thereof and feed them.**

***MISHNAH*. A LABOURER MAY EAT CUCUMBERS, EVEN TO THE VALUE OF A *DENAR*, OR DATES, EVEN TO THE VALUE OF A *DENAR*. R. ELEAZAR HISMA SAID: A LABOURER MUST NOT EAT MORE THAN HIS WAGE. BUT THE SAGES PERMIT IT; YET ONE IS ADVISED NOT TO BE GREEDY, AND THUS SHUT THE DOOR IN HIS FACE.**[4]

***GEMARA*. Are not the Sages identical with the first Tanna? — They differ as to whether [the laborer] is advised [not to be greedy]. The first Tanna holds that he is not advised; whilst the Rabbis**[5] **maintain that he is. Alternatively, they differ in respect of R. Assi's dictum. For R. Assi said: Even if engaged merely to gather a single cluster, he may eat it.**[6] **R. Assi also said: Even if he [as yet] vintaged only one cluster, [having been engaged for the day,] he may eat it. Now, both [dicta] are necessary. For if the first [only] were stated, I would think that that is so, since there is nothing [else] to put into the employer's vessels;**[7] **but when there is something to put into the employer's vessels, I would think that he must first put [some**

there] and then eat. Whilst if the second statement [only] were made, I would think that the reason is that it can be eventually fulfilled;[8] but where it cannot be eventually fulfilled,[9] I might think that he may not eat. Hence both are necessary.

[Reverting to the Mishnah:] Alternatively, I can say, they differ in respect of Rab's dictum. For Rab said: I found a secret scroll of the School of R. Hiyya[10] wherein it was written, Issi b. Judah said: *When thou comest into thy neighbor's vineyard*[11] Scripture refers to the coming in of any man.[12] Whereon Rab commented: Issi makes life impossible for any one.[13]

R. Ashi said: I repeated the [above] teaching before R. Kahana. [Thereupon] he observed:[14] Perhaps [Issi b. Judah referred] to those who labor for their food, working and eating.[15] And Rab?[16] — Even then, a man prefers to engage laborers to vintage his vineyard, rather than that any one should enter.

The scholars propounded: Does the laborer eat his own [sc. when partaking of the fruit upon which he is engaged], or does he eat of Heaven's [gift]?[17] What practical difference does this make? If he said, 'Give it [the fruit that I might have eaten] to my wife and children.' Now, should you say that he eats his own, we must give it to them. But if he eats of Heaven's [gift], then upon him Scripture conferred this privilege, but not upon his wife and children. What is our ruling? — Come and hear: A LABOURER MAY EAT CUCUMBERS, EVEN TO THE VALUE OF A *DENAR*, OR DATES, EVEN TO THE VALUE OF A *DENAR*. Now, should you say that he eats of his own, when he is engaged for a *danka*,[18] shall he eat for a *denar*?[19] — What then: he eats of Heaven's [gift]? Yet after all, being engaged for a *danka*, shall he eat for a *denar*![20] Hence, what must you reply? That the All-Merciful privileged him;[21] so here too,[22] the All-Merciful conferred that privilege upon him.[23]

Come and hear: R. ELEAZAR HISMA SAID: A LABOURER MUST NOT EAT MORE THAN HIS WAGE. BUT THE SAGES PERMIT IT. Now, surely they differ in respect of this: one [sc. R. Eleazar Hisma] maintains that he eats his own,[24] whilst the other holds that he eats the [gift] of Heaven! — No. All agree that he eats his own, but here they differ with respect to the interpretation of [then thou mayest eat grapes thy fill] according to thy soul. One Master[25] maintains, 'according to thy soul' means that for which thou riskest thy life;[26] whilst the other Master [R. Eleazar] interprets, 'As thyself': just as if thou muzzlest thyself thou art exempt [from punishment], so the laborer, if thou muzzlest him,[27] thou art exempt.[28]

Come and hear: If a *nazir*[29] said, 'Give [the grapes I might have eaten] to my wife and children,' he is not heeded. Now should you say, he eats his own, why is he disregarded? — There it is because, 'Go, go, thou Nazirite,' say we, 'take the most devious route, but approach not the vineyard.'[30]

Come and hear: If a laborer said, 'Give [the grapes] to my wife and children,' we do not heed him. Now should you say, he eats his own, why not? — What is meant by 'a laborer'? A *Nazir*. But the case of a *Nazir* has been taught, and also that of a laborer! — Were they then taught together?[31]

Come and hear: Whence do we know that if a laborer said, 'Give [the fruit] to my wife and children,' he is not heeded? From the verse, But thou shalt not put any in thy vessel.[32] And should you reply, This too refers to a *Nazir*; if so, is it on account of 'but thou shalt not put any in thy vessel': surely it is because, 'Go, go, thou Nazirite', we say, etc.! — That is indeed so, but since he is referred to as a laborer, the verse relating to a laborer is cited.[33]

Come and hear: If one engages a laborer to dry figs,[34]

1. And yet were it not for the consideration of the employer's time, he would not be permitted to eat.
2. Its whole burden is removed at once, and then it is led away.
3. I.e., as long as it is laden, it may eat of its burden.
4. I.e., he will be unable to obtain employment, if he eats too greedily.
5. The Sages.
6. The first Tanna accepts this, and means thus: A laborer may eat cucumbers even if he was engaged only to work on these which he actually eats, whilst the Sages permit him to eat more than his wage (for which reason the Rabbis make mention of his wage, whilst the first Tanna omits all reference thereto), but not all that for which he was engaged.
7. And Scripture having permitted the laborer to eat, he cannot be bidden to refrain.
8. Viz., the putting into the employer's utensils.
9. I.e., if he was engaged only for that cluster, and he eats it.
10. [H]: Oral law being unwritten, when one particularly desired to remember a *halachah*, he recorded it but kept it secret (Rashi). [Kaplan, J. *op. cit*., p. 277, argues with great plausibility that the concealment of the scroll had nothing to do with the interdict of writing *halachah* records, but was due to its contents which, as will be seen, were not well adapted to unrestricted publicity. The same scroll contained another teaching by the same Tanna, which likewise was liable to abuse. Shab. 6b; 96b.]
11. Deut. XXIII, 25.
12. Not only a laborer.
13. Social life is impossible if any person may enter and eat of one's crops. — Now, the first Tanna agrees with Rab, and hence says, only A LABOURER MAY EAT, etc.; but the Sages maintain that any person may enter; hence they say that the laborer may eat more than his wage, since even if no wage is due at all — i.e., if he is not an employee he may still eat.
14. [Following reading of Alfasi and Asheri. Cur. edd. omit 'he observed'. Render accordingly: 'R. Ashi said, I put the (following) question (lit., 'discussion') to R. Kahana. Perhaps, etc.' Cf. B.B. 114a; v. Strashun, S.]
15. I.e., any man, even when not engaged by the owner, may enter a vineyard, assist in the vintaging, and eat. But it is unreasonable to suppose that Issi b. Judah permitted all and sundry to enter any man's vineyard, eat his fill, and make no return.
16. If that be the correct interpretation, why does Rab object?
17. I.e., is it actually part of his salary, and in the nature of a bonus, or a special Divine favor bestowed upon the laborer?
18. V. Glos.
19. Surely it is unreasonable that the additional bonus shall far exceed the wage actually stipulated.
20. For it is likewise unreasonable that the privilege conferred by Scripture shall exceed his actual due.
21. Notwithstanding that it exceeds his wage.
22. I.e., even if he is assumed to eat his own.
23. To eat even more than his wages, and still it is an addition thereto.
24. And therefore the bonus cannot exceed the principal.
25. I.e., the Sages.
26. Lit., 'soul'. I.e., in return for ascending the tree to gather the fruit, thereby endangering his life, the laborer may eat, That being so, there is no limit to the quantity.
27. V. p. 509, n. 5.
28. There thus being no warrant for the laborer to eat more than his wage.
29. V. Glos. The reference is to a laborer, a Nazirite, engaged on vintaging. A Nazirite is forbidden to eat grapes.
30. This was proverbial: a man must not venture into temptation. Hence while it may be that the laborer eats of his own, here he is penalized for having accepted employment in a vineyard at all.
31. Both refer to the same, but were not taught together. V. *supra* 34a.
32. I.e., only he may eat, but none on his behalf.
33. But merely as a support, the law itself being Rabbinical, as stated in n. 7.
34. Figs were dried in the field and then pressed into cakes, the laborer being engaged for this purpose.

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he [the laborer] may eat and is exempt from tithes.[1] [But if he stipulates, 'I accept the work] on condition that I and my son eat, or, 'that my son eat for my wage:'[2] he may eat, and is exempt; and his son may eat, but is liable.[3] Now should you say, he eats his own, why is his son liable?[4] — Said Rabina: Because it looks like purchase.[5]

Come and hear: If one engages laborers to work upon his fourth year plantings,[6] they may not eat;[7] but if he [the employer] did not inform them [that they were of the fourth

year], he must redeem [the fruit][8] and let them eat it.[9] Now should you Say, he eats of Heaven's [gift], why must he redeem [the fruit] and let them eat it? Surely the All-Merciful conferred no privilege upon them in respect of that which is forbidden! — There it is because it looks like an erroneous bargain. [If so,] consider the second clause: If his figs cakes were broken,[10] or if his barrels of wine burst open,[11] they may not eat.[12] But if he did not inform them,[13] he must tithe [the fruit and wine] and let them partake [thereof].[14] Now should you say, He eats of Heaven's [gift], why must he tithe and let them eat: surely the All-Merciful conferred no privilege upon him in respect of what is forbidden! And should you reply, Here too it is because [otherwise] it looks like an erroneous bargain, [I can rejoin,] now as for the breaking of his fig-cakes, it is well, since it does look like an erroneous bargain; but if his barrels burst, where is the erroneous bargain? Surely he [the laborer] knew that they were *tebel* in respect of tithes! — R. Shesheth replied: It means that his barrels burst open into the tank.[15] But has it not been taught: Wine [is subject to tithes] when it descends into the tank?[16] — This agrees with R. Akiba, who ruled [it is not liable] until the scum is removed; so that they [the laborers] can say to him, 'We did not know [thereof].' But can he not retort, 'The possibility of its having been skimmed should have occurred to you'? — It refers to a locality where the same person who draws [the wine from the tank into barrels first] skims it. And now that R. Zebid learned out of the Baraitha of R. Oshaia:[17] Wine [is subject to tithes] when it is run into the tank and skimmed. R. Akiba said: When it is skimmed in barrels:[18] you may even say that the barrels did not burst open into the tank; yet they can say, 'We did not know that it had been skimmed.' But can he not say to them, 'The possibility of its having been skimmed should have occurred to you'? — It refers to a place where the same person who closes it[19] also skims it.

Come and hear: A man may stipulate [to receive payment instead of eating] for himself, his son or daughter that are of age, his manservant and maidservant that are of age, and his wife; because they have understanding.[20] But he may not stipulate [thus] for his son or daughter that are minors, his manservant or maidservant that are minors, nor in respect of his beasts; because they have no understanding.[21] Now it is being assumed that he[22] provides them with food, should you then say that he [the laborer] eats of Heaven's [gift], it is well: consequently, one may not stipulate [to deprive them of their rights]. But if you maintain that he eats of his own, let him stipulate [thus] even for minors![23] — In this case it means that he does not provide them with food.[24] If so, [for] adults too [he cannot stipulate thus]! — Adults know [their rights] and forego them. But R. Hoshaia taught: A man may stipulate [as above] for himself and his wife, but not in respect of his beast;[25] for his son and daughter, if adults, but not if minors; for his Canaanite manservant and maidservant, whether adults or minors. Now presumably, both[26] mean that he provides them with food, and they differ in the following: one Master [sc. that of the Baraitha] maintains that he [the laborer] eats of his own;[27] whereas the other holds that he eats of Heaven's! — No; all hold that he eats his own, yet there is no difficulty: here [in the Mishnah] he does not provide them with food,[28] whereas in the Baraitha he does. How do you explain it: that he provides them with food? If so, let him stipulate for [his son and daughter if] minors too? — The All-Merciful did not privilege him to cause distress to his son and daughter.[29] Now, how do you explain the Mishnah? That he does not provide them with food!

1. Having yet to be dried, their work is not finished, v. *supra* 87a.
2. Rashi: for the wage stipulated, so that he would draw no pay. Tosaf: instead of me.
3. For it is as though he bought them (Ma'as. II, 7). V. *supra* 88a-b; cf. p. 507, n. 3.
4. For then it is part of his wage, still the Bible exempted him, though eating fruit as part of one's wage is akin to purchase. Then surely the same should hold good of his son!

5. More so than when he himself eats, regard being had to the stipulation he made.
6. The fruit of a tree in the fourth year of its planting was to be eaten in Jerusalem, like the second tithe; v. Lev. XIX, 24.
7. Whilst working, since it must be taken to Jerusalem.
8. These fruits, just as those of the second tithe, could be redeemed, the redemption money to be expended in Jerusalem, whilst the fruit could then be eaten anywhere as ordinary *hullin* (v. Glos.).
9. V. *infra* 93a.
10. I.e., after having been pressed into cakes, the cakes were accidentally broken up, and laborers were engaged to re-press them.
11. And he hired laborers to re-fill them.
12. Since, as stated *supra* 89a, when fruit is already liable to tithes, the laborers may not eat.
13. That they had been pressed once, and so were liable to tithes.
14. V. *infra* 93a.
15. In which wine is stored, so that the laborer might have thought that it had not been barreled yet.
16. And the laborers could have then known that they were liable to tithing.
17. [Var. lec.: R. Zebid son of R. Hoshaia. V. A. Z, (Sonc. ed.) p. 27, n. 4.]
18. Rashi: When it has been skimmed in the barrels; after being filled in the barrels it ferments again and more scum settles on top, which must be removed.
19. By pasting in the bung.
20. They know that they are entitled to eat, but forego their rights.
21. V. *infra* 93a. The understanding of a minor is not legally recognized.
22. The father or owner who hires them out.
23. Since all their rights belong to him, and just as he receives their wages, so he can receive the food due to them as part wages.
24. So that he has no right even to their wages. This is on the assumption that when the master provides no food, he is not entitled to their work. This is a subject of dispute; v. *infra* 93a top.
25. Because of the prohibition of muzzling.
26. The Mishnah first quoted, which states that this stipulation may not be made for one's servants, if minors; and the Baraitha, which permits it.
27. Therefore his master may stipulate this, v, n. 1.
28. Hence he cannot stipulate.
29. Though entitled to their work, and providing them with food, he causes them to suffer by not eating of that upon which they are actually engaged.

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That agrees with the view that the master cannot say to his slave, 'Work for me, yet I will not feed you.' But on the view that he can say so, what can you answer?[1] — Both [teachings] therefore deal with a case where he does not provide them with food, but they differ on this very matter: one Master[2] maintains that he can [demand their work and refuse their food]; and the other[3] holds that he cannot. Then what of R. Johanan, who ruled that the master can say this: does he forsake the Mishnah and follow the Baraitha?[4] — But all agree that he eats of Heaven's [gift), and he [certainly) cannot stipulate.[5] In what sense then did R. Hoshaia teach that he can stipulate? — [In regard to] food.[6] Then by analogy, in respect of an animal [a similar arrangement is that the hirer should feed it with) straw;[7] then let him stipulate! Hence they must differ therein: one Master [sc. of the Baraitha] maintains that he eats his own; whereas the other holds that he eats of Heaven's [gift].

MISHNAH. A MAN MAY STIPULATE [TO RECEIVE PAYMENT INSTEAD OF EATING] FOR HIMSELF, HIS SON OR DAUGHTER THAT ARE OF AGE, HIS MANSERVANT AND MAIDSERVANT THAT ARE OF AGE, AND HIS WIFE; BECAUSE THEY HAVE UNDERSTANDING. BUT HE MAY NOT STIPULATE [THUS] FOR HIS SON OR DAUGHTER THAT ARE MINORS, HIS MANSERVANT OR MAIDSERVANT THAT ARE MINORS, NOR IN RESPECT OF HIS BEASTS; BECAUSE THEY HAVE NO UNDERSTANDING.[8] IF ONE ENGAGES LABOURERS TO WORK UPON HIS FOURTH YEAR PLANTINGS, THEY MAY NOT EAT; BUT IF HE DID NOT INFORM THEM [THAT THEY WERE OF THE FOURTH YEAR], HE MUST REDEEM [THE FRUIT] AND LET THEM EAT IT. IF HIS FIG-CAKES WERE BROKEN, OR HIS BARRELS OF WINE BURST OPEN, THEY MAY NOT EAT. BUT IF HE DID

NOT INFORM THEM, HE MUST TITHE [THE FRUIT OR WINE] AND LET THEM PARTAKE [THEREOF].[9] THOSE WHO GUARD FRUITS MAY EAT THEREOF, IN ACCORDANCE WITH GENERAL CUSTOM,[10] BUT NOT BY SCRIPTURAL LAW.

***GEMARA*. THOSE WHO GUARD FRUITS [etc.] Rab said: This was stated only of those who look after gardens and orchards;[11] but those who guard wine-vats and [grain] stocks may eat [even] by Biblical law.[12] In his [Rab's] opinion guarding is counted as labor. But Samuel said: This was stated only of those who guard wine-vats and [grain] stocks; but those who look after gardens and orchards may eat neither by Biblical law nor by general custom. In his view, guarding is not considered labour.[13]**

R. Aha son of R. Huna raised an objection. He who guards the [red] heifer defiles his garments.[14] Now should you maintain, Guarding is not considered labor, why does he defile his garments?[15] — Rabbah b. 'Ulla said: As a precautionary measure, lest he move a limb thereof.[16]

R. Kahana raised an objection: He who guards four or five cucumber beds[17] must not eat his fill of one of them, but proportionately of each. Now if guarding is not considered labor, why eat at all?[18] — R. Shimi b. Ashi replied: This refers to those which are removed [from the plant].[19] But then this work is finished for tithes![20] — Their blossom had not yet been cut off.[21]

R. Ashi said: Reason supports Samuel. For we learnt: Now, the following [laborers] may eat by Scriptural law: he who is engaged upon what is attached to the soil, when the labor thereof is completed; and upon what is detached,[22] , etc. This implies that some eat not by Scriptural law but in accordance with general custom. Then consider the second clause: But the following do not eat. What is meant by 'do not eat'? Shall we say, they do not eat by Scriptural law, yet eat in accordance with general custom — then is it not identical with the first clause? Hence it must surely mean that they eat neither by Scriptural nor by unwritten law. And who are they? 'He who is engaged upon that which is attached to the soil before its labor is completed.'[23] How much more so then they who look after gardens and orchards!

***MISHNAH*. THERE ARE FOUR BAILEES: A GRATUITOUS BAILEE, A BORROWER, A PAID BAILEE AND A HIRER. A GRATUITOUS BAILEE MUST SWEAR FOR EVERYTHING.[24] A BORROWER MUST PAY FOR EVERYTHING.[25] A PAID BAILEE OR A HIRER MUST SWEAR CONCERNING AN ANIMAL THAT WAS INJURED,[26] CAPTURED [IN A RAID] OR THAT PERISHED;[27] BUT MUST PAY FOR LOSS OR THEFT.**

***GEMARA*. Which Tanna [maintains that there are] four bailees? — R. Nahman said in Rabbah b. Abbuha's name: It is R. Meir. Said Raba to R. Nahman: Does any Tanna dispute that there are four bailees?[28] — He replied: I mean this: Which Tanna holds that a hirer ranks as a paid bailee? R. Meir. But we know R. Meir to hold the reverse? For it has been taught: How does a hirer pay? R. Meir said, As an unpaid bailee. R. Judah ruled, As a paid one! Rabbah b. Abbuha learnt it reversed.[29] If so, are there four? Surely there are only three![30] — R. Nahman b. Isaac replied: There are indeed four bailees, but they fall into three classes.[31]**

A shepherd was once pasturing his beasts by the banks of the River Papa,[32] when one slipped and fell into the water [and was drowned]. He then came before Rabbah, who exempted him [from liability], with the remark, 'What could he have done?

1. **On the hypothesis that he eats his own. According to the latter view the slave is supported by charity.**
2. **The Baraitha.**
3. **The Mishnah.**
4. **Surely not, since the former is more authentic than the latter.**
5. **That the slaves shall not eat.**
6. **I.e., he may arrange for the owner of the vineyard to feed the slave before he starts**

work, so that he has no appetite for the grapes.
7. Before it starts threshing the more valuable grain.
8. V. *supra* p. 533, n. 7.
9. V. *supra* p. 532.
10. Lit., 'the laws of the land'.
11. Their fruits being attached to the soil, and they do not remove them; hence they may not eat by Scriptural law.
12. Since these are detached.
13. Hence, when it is exercised upon detached fruits, the guardian may eat by general custom; but if they are attached, he may not eat at all.
14. V. Num. XIX. All who take part in the preparation of the red heifer, from the slaughter onwards, defile their garments.
15. Since it is not an occupation in the legal sense.
16. Which would really render him unclean through contact. Thus the defilement of the guardian is only by Rabbinical law, in contradistinction to those who perform a positive action, whose defilement is Scriptural.
17. Belonging to as many persons.
18. Since on this view he may not eat of what is attached, even by general custom.
19. I.e., they are detached.
20. V. *supra* p. 89a.
21. V. *supra* 88b.
22. *Supra* 504.
23. V. p. 504.
24. I.e., if the bailment is lost or destroyed through any cause, excepting negligence, the unpaid trustee must swear to the occurrence, and is free from liability.
25. Whatever the mishap, he is liable to pay.
26. Lit., 'broken'.
27. A paid bailee is exempt from liability in these cases; therefore he must swear that it really was so.
28. Surely not! The four bailees enumerated in the Mishnah must exist.
29. I.e., according to his reading of the Baraitha, R. Meir ruled that he ranked as a paid trustee, and R. Judah as an unpaid one.
30. Since the hirer ranks as a paid bailee. This difficulty arises in any case, and the phrase 'if so' does not imply here that if the hirer ranked as an unpaid bailee there is no difficulty, but is merely introductory (Tosaf.). But in the parallel passage of Shebu. 49a the phrase is absent from Rashi's version.
31. Lit., 'their laws are three', a hirer and a paid bailee being in the same category.
32. V. *supra*, p. 496, n. 1.

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He guarded [them] as people guard.'[1] Abaye protested, 'If so, had he entered the town when people generally enter it [leaving his charges alone], would he still be exempt?' — 'Yes', he replied. 'Then had he slept a little when other people sleep, would he also be exempt?' — 'Even so,' was his answer. Thereupon he raised an objection: The following are the accidents for which a paid bailee is not responsible: E.g., *And the Sabeans fell upon them* [sc. the oxen and asses], *and took them away; yea, they have slain the servants with the edge of the sword*![2] — He replied, 'There the reference is to city watchmen.'[3]

He further raised an objection: To what extent is a paid bailee bound to guard? Even as far as, *Thus I was; in the day the drought consumed me, and the frost by night*?[4] — There too, he answered, the reference is to the city watchman. Was then our father Jacob a city watchman? he asked. — [No.] He merely said to Laban, 'I guarded for you with super-vigilance, as though I were a city watchman.'

He raised another objection: If a shepherd, who was guarding his flock, left it and entered the town, and a wolf came and destroyed [a sheep]; or a lion, and tore it to pieces, we do not say, 'Had he been there, he could have saved them;' but estimate his strength: if he could have saved them, he is responsible; if not, he is exempt.[5] Surely it means that he entered [the town] when other people generally do? — No. He entered when people do not generally enter. If so, why is he not responsible? Where there is negligence in the beginning, though subsequently an accident supervenes, he is liable![6] — It means that he heard the voice of a lion, and so entered. If so, why judge his strength? What could he then have done? — He should have met it with [the assistance of other] shepherds and staves. If so, why particularly a paid bailee? The same applies even to an unpaid one. For you yourself, Master, did

say: If an unpaid bailee could have met [the destroyer, e.g., a lion] with other shepherds and staves, but did not, he is responsible! — An unpaid bailee [must obtain their help only when he can procure them] gratuitously; whereas a paid bailee must even [engage them] for payment. And to what extent?[7] — Up to their value.[8] But where do we find that a paid trustee is responsible for accidents?[9] — Subsequently he collects the money from the owner. Said R. Papa to Abaye: If so, how does he benefit him? — It makes a difference on account of the attachment of the animals[10] or the additional trouble.[11]

R. Hisda and Rabbah son of R. Huna disagree with Rabbah's dictum, for they maintain: [The owner can say], 'I paid you wages precisely in order that you should guard with greater care.'

Bar Adda, the carrier, was leading beasts across the bridge of Naresh,[12] when one beast pushed another and threw it into the water. On his appearing before R. Papa, the latter held him responsible. 'But what was I to do?' he protested. — 'You should have led them across one by one,' he replied. 'Do you know of your sister's son[13] that he could have led them across one by one?' he asked.[14] — 'Your predecessors before you have already complained, but none pay heed to them,' he replied.

Aibu entrusted flax to Ronia. Then Shabu[15] came and stole it from him;[16] but subsequently the thief's identity became known. Then he [the trustee] came before R. Nahman, who ruled him liable.[17] Shall we say that he disagrees with R. Huna b. Abin. For R. Huna b. Abin sent word:[18] If it [the bailment] was stolen through an accident, and then the thief's identity became known, if he was a gratuitous bailee, he can either swear [that he had not been negligent] or settle with him;[19] if a paid trustee, he must settle with him, and cannot swear! — Said Raba: There,[20] officers were about, and had he [Ronia] cried out, they would have come and protected him.[21]

***MISHNAH*. [IF] ONE WOLF [ATTACKS], IT IS NOT AN UNAVOIDABLE ACCIDENT;[22] IF TWO [ATTACK], IT IS AN UNAVOIDABLE ACCIDENT. R. JUDAH SAID: WHEN THERE IS A GENERAL VISITATION OF WOLVES, EVEN [THE ATTACK OF] ONE IS AN UNAVOIDABLE ACCIDENT.[23] [THE ATTACK OF] TWO DOGS IS NOT AN UNAVOIDABLE ACCIDENT. JADDUA THE BABYLONIAN SAID ON R. MEIR'S AUTHORITY: IF THEY ATTACK FROM THE SAME SIDE, IT IS NOT AN UNAVOIDABLE ACCIDENT; FROM TWO DIFFERENT DIRECTIONS, IT IS. A ROBBER'S [ATTACK] IS AN UNAVOIDABLE ACCIDENT. [DAMAGE DONE BY] A LION, BEAR, LEOPARD, PANTHER AND SNAKE RANKS AS AN UNAVOIDABLE ACCIDENT. WHEN IS THIS? IF THEY CAME [AND ATTACKED] OF THEIR OWN ACCORD: BUT IF HE [THE SHEPHERD] LED THEM TO A PLACE INFESTED BY WILD BEASTS AND ROBBERS, IT IS NO UNAVOIDABLE ACCIDENT. IF IT DIED A NATURAL DEATH, IT IS AN UNAVOIDABLE ACCIDENT: [BUT] IF HE MALTREATED IT[24] AND IT DIED, IT IS NO UNAVOIDABLE ACCIDENT. IF IT ASCENDED TO THE TOP OF STEEP ROCKS AND THEN FELL DOWN, IT IS AN UNAVOIDABLE ACCIDENT; BUT IF HE TOOK IT UP TO THE TOP OF STEEP ROCKS AND IT FELL AND DIED, IT IS NO UNAVOIDABLE ACCIDENT.**

***GEMARA*. But has it not been taught: [The attack of] one wolf is an accident? — R. Nahman b. Isaac replied: That is when there is a visitation of wolves, and is R. Judah's view.**

[THE ATTACK OF] A ROBBER IS AN UNAVOIDABLE ACCIDENT. But why so: let man stand against man — Said Rab: This refers to an armed robber.

The scholars propounded: What of an armed robber and an armed shepherd? Do we say, man must stand against man; or perhaps, the former is prepared to risk his life, but this cannot be expected of the latter? — Reason teaches that the one risks his life, but not the other.[25] Abaye asked Raba: What if the

shepherd met him [sc. the robber] and said to him, 'Thou vile thief! We are stationed in such and such a place;

1. Therefore it is not like any ordinary loss, for which a paid trustee is responsible, but like an accident, for which he is exempt.
2. Job I, 15: this proves that they are free from liability only for exceptional and unpreventable mishaps.
3. Appointed to watch at night, and upon whose vigilance the safety of the town depends; greater care is demanded from them.
4. Gen. XXXI, 40.
5. V. *supra* 41a.
6. V. *supra*, 42a. Thus here too, he might have averted some slight mishap, had he been at his post; and therefore by deserting it he displayed negligence and should be liable, notwithstanding that subsequently the damage was unpreventable.
7. Is he bound to hire helpers?
8. Sc. of his charges.
9. Unless he engages helpers at his own cost; it being assumed that this is the meaning of obtaining assistance for payment.
10. Their owner prefers these to be saved, because he knows them, even if the cost of saving is as much as buying different ones.
11. Of procuring other animals.
12. [*Supra* p. 468, n. 3. It was situated on the canal Nars, a tributary of the Euphrates, Obermeyer, *op. cit*. p. 307.]
13. I.e., your co-religionist.
14. How can you assume that this would have been possible or convenient?
15. A certain armed robber (Rashi).
16. The theft being carried out in such a way that it could be regarded as an unpreventable accident from the point of view of the trustee.
17. Though it was an accident; yet since the thief was known, it was for the trustee — an unpaid one — to sue him. This was the assumed reason for his liability.
18. From Palestine to Babylon.
19. I.e., pay him. But he is given the option of freeing himself by an oath, and in this he disagrees with R. Nahman.
20. in the case of Ronia.
21. Therefore the theft was due to negligence, and his liability was due to that, and not to the fact that the thief's identity was eventually discovered.
22. The shepherd could have warded him off, and therefore, being a paid bailee, he is responsible.
23. For then they are particularly fierce.
24. E.g., by starvation or exposure.
25. Hence it is an unavoidable accident.

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we have this number of men, this number of dogs, so many sharp-shooters are assigned to us;' and he came and robbed him of them? — He replied: Then he has led them to the place of wild beasts and robbers.[1]

***MISHNAH*. A GRATUITOUS BAILEE MAY STIPULATE TO BE FREE FROM AN OATH;[2] A BORROWER, FROM PAYMENT; A PAID BAILEE AND A HIRER, FROM AN OATH[3] OR PAYMENT.[4] A STIPULATION CONTRARY TO A SCRIPTURAL ENACTMENT IS NULL; ALSO, EVERY STIPULATION WHICH IS PRECEDED BY THE ACTION[5] IS NULL; AND WHATEVER CAN BE FULFILLED EVENTUALLY, AND IT IS STIPULATED AT THE OUTSET, THE STIPULATION IS VALID.**

***GEMARA*. But why so? Is it not a stipulation contrary to Scriptural law, which is null?[6] This agrees with R. Judah, who maintained: In civil matters[7] the stipulation is valid. For it has been taught: If one says to a woman, 'Behold, thou art betrothed unto me on condition that thou hast upon me no claims of sustenance, raiment and conjugal rights', she is betrothed, but the condition is null; this is R. Meir's view. R. Judah said: In respect of money matters, his condition is valid.[8]**

But can you assign it to R. Judah? Then consider the second clause: A STIPULATION CONTRARY TO A SCRIPTURAL ENACTMENT is NULL: does not this agree with R. Meir? — That is no difficulty; in truth, it is R. Judah's view, but this second clause does not refer to civil matters. Then consider the latter clause: EVERY STIPULATION WHICH IS PRECEDED BY AN ACTION IS NULL. Now, whom do you know to hold this view? R. Meir. For it has been taught: Abba Halafta, of Kefar Hananiah,[9] said on R. Meir's authority: If the condition [is stated] before the act, it is valid; if the reverse, it is not! — But it is all in accordance with R. Meir: yet here it is different, because at the very outset he accepted no liability.[10]

It has been taught: And a paid bailee may stipulate to be [liable] as a borrower: How: with [mere] words?[11] — Said Samuel: If he acquires it from his hand.[12] R. Johanan said: You may even say that he does not acquire it from his hand; yet in return for the benefit he receives in that he achieves thereby a reputation for being trustworthy, he renders himself fully responsible.

AND WHATEVER CAN BE FULFILLED EVENTUALLY, etc. R. Tabla said in Rab's name: This is the view of R. Judah b. Tema. But the Sages say: Even if it is impossible to fulfill it eventually, and one stipulates it at the beginning, the stipulation is valid. For it has been taught: [If one says,] Here is thy divorce, on condition that thou ascendest to Heaven or descendest to the deep, on condition that thou swallowest a hundred cubit cane or crossest the great sea on foot; if the condition is fulfilled, the divorce is valid, but not otherwise.[13] R. Judah b. Tema said: In such a case it is a [valid] divorce. R. Judah b. Tema stated a general rule: That which can never be fulfilled, and he [the husband] stipulates it at the beginning, it is only to repel her,[14] and is valid.

R. Nahman said in Rab's name: The *halachah* is as R. Judah b. Tema. R. Nahman b. Isaac said: Our Mishnah too proves it,[15] for it states: WHATEVER CAN BE FULFILLED EVENTUALLY, AND IT IS STIPULATED AT THE OUTSET, THE STIPULATION IS VALID. Hence, if it is impossible of fulfillment, the stipulation is null. This proves it.[16]

CHAPTER VIII

***MISHNAH*. IF A MAN BORROWS A COW AND BORROWS OR HIRES ITS OWNER WITH IT,[17] OR IF HE FIRST HIRES THE OWNER AND THEN BORROWS THE COW, AND IT DIES, HE IS NOT RESPONSIBLE, FOR IT IS WRITTEN, BUT IF THE OWNER THEREOF BE WITH IT, HE SHALL NOT MAKE IT GOOD.[18]**

1. **To provoke robbers and challenge them to attack is the equivalent of going into danger.**
2. **In case he pleads that it was stolen or lost.**
3. **If they plead an unavoidable accident.**
4. **For loss or theft.**
5. **E.g., if A arranges that B shall perform a certain action on a certain condition, but states the action before the condition, the stipulation is invalid. The law of stipulation is based on that made by Moses in respect to the request of the Gaddites and Reubenites, q.v.; And Moses said unto them, If ye will do this thing, if ye will go armed before the Lord (Num. XXXII, 20-22). Just as the condition was mentioned there first, so must it be in all cases (Rashi). [Maim. Yad, Ishshuth VI, 2, explains simply, 'If the condition was made after the action had already taken place.']**
6. **The degrees of liability of the different bailees are stated explicitly, and also partly deduced from Scripture.**
7. **Lit., 'in a monetary matter'.**
8. **Hence she has no claims of sustenance and raiment, but is entitled to conjugal rights.**
9. **[A village in Galilee, v. Klein, S., NB, p. 28.]**
10. **Before the bailment came into his hand, he explicitly stated the extent of liability he was prepared to accept; hence, when he receives his charge, his responsibility is already limited. But one cannot be only partly married; therefore, notwithstanding his stipulation, he must hear the full liability involved in marriage.**
11. **Surely one cannot assume additional responsibilities, over and above the normal, by mere words!**
12. **I.e., performed one of the acts whereby possession is affected. These acts were also valid to legalize a liability which one wished to assume.**
13. **I.e., it is assumed that he meant the act to be invalid.**
14. **I.e., to distress and make her think that he is not divorcing her.**
15. **That the *halachah* is so.**
16. **Since it is taught anonymously.**
17. **I.e., the owner lending his personal service.**
18. **Ex. XXII, 14.**

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BUT IF HE FIRST BORROWS THE COW, AND ONLY SUBSEQUENTLY BORROWS OR HIRES ITS OWNER, AND IT DIES, HE IS LIABLE, AS IT IS WRITTEN, THE OWNER THEREOF NOT BEING WITH IT,[1] HE SHALL SURELY MAKE IT GOOD.[2]

GEMARA. Since the second clause states, AND THEN BORROWS THE COW, it follows that when the first clause reads, WITH IT, it is literally meant.[3] But is it possible that it shall be literally WITH IT; the cow is acquired only by *meshikah*, whereas its owner is acquired by his promise?[4] — I can answer either that the cow was standing in the borrower's courtyard, so that *meshikah* is not wanting;[5] or alternatively, that he [the borrower] said to him, 'You yourself are not lent [to me] until I perform *meshikah* on your cow.'

We have learnt elsewhere: There are four bailees: a gratuitous bailee, a borrower, a paid bailee, and a hirer. A gratuitous bailee swears for everything. A borrower pays for everything. A paid bailee or a hirer swears concerning an animal that was injured, captured, or that perished; but pays for loss or theft.[6] Whence do we know these things? — For our Rabbis taught: The first section refers to a gratuitous bailee, the second to a paid one, and the third to a borrower.[7] Now, as for the third referring to a borrower, it is well, for it is explicit: And if a man borrow aught of his neighbor, and it be hurt, or die, the owner thereof being not with it, he shall surely make it good.[8] But as for the first treating of an unpaid bailee and the second of a paid one, perhaps it is the reverse? — It is reasonable [to assume] that the second refers to a paid bailee, since he is responsible for theft and loss. On the contrary, [is it not more logical that] the first refers to a paid bailee, since he is liable to restitution of twice the principal in a [false] plea of theft?[9] — Even so [to pay] the principal without the option of an oath is a heavier liability than to pay double after a [false] oath, the proof being that the borrower, though all the benefit is his, yet pays only the principal.[10] But is it so, that in the case of a borrower all the benefit is his? But does it [sc. the animal borrowed] not require food? — [It is all his,] when it [the animal] is standing on a common.[11] But it needs [special] guarding![12] — Where there is a town watch. Alternatively, do not say, all the benefit is his, but, most of the benefit is his.[13] Or again, [refer it] to the borrowing of utensils.[14]

'A paid bailee or a hirer swears concerning an animal that was injured, captured, or perished; but pays for loss or theft.' Now, as for theft, it is well, for it is written, And if it indeed be stolen from him, he shall make restitution unto the owner thereof;[15] but whence do we know it of loss? — For it has been taught: *'And if it indeed be stolen'*;[16] from this I know only theft: whence do I know loss? From the expression, *'And if it indeed be stolen'*, implying no matter how [it disappears].[17] Now, that agrees with the view that we do not say that the Torah employs human phraseology; but on the view that we do say that the Torah employs human phraseology, what can you say?[18] — In the West[19] they said, It follows *a fortiori*: if he must pay for theft, which is near to accident, then surely he is liable for loss, which is more akin to negligence. And the other?[20] — That which is derived by an *a fortiori* argument, Scripture [often] takes the trouble to write.

'And a borrower pays for everything.' Now, as for the animal that is injured, or perishes, it is well, for it is written, 'And if a man borrow aught of his neighbor, and it be hurt or die'; but whence do we know that a borrower is responsible for capture? And should you say, Let us derive it from the case of injury and death: [it may be rejoined,] as for these, [he is responsible] because they are accidents which may be foreseen; but can you say that capture [is the same], Seeing that it is an unforeseeable accident? — But [deduce it thus:] Injury and death are stated [as cause of liability] in the case of a borrower, and they are likewise enumerated in the case of a paid bailee: just as there, capture falls within the same category,[21] so here too, capture is included. But this may be refuted: as for a paid bailee, [it is mentioned] as a cause of exemption; but can you say the same of a borrower, [for whom you would include it] as a cause of liability? — But [it may be derived] in accordance with R. Nathan's teaching. For it has been taught: R. Nathan

said: ['And if a man borrow aught of his neighbor, and it be hurt,] or [die]': 'or' extends the law to capture.[22] But is not this 'or' needed as a disjunctive? For I might think that he is responsible only if it is injured and also dies; therefore Scripture states otherwise. Now, on R. Jonathan's view, it is well; but on R. Joshia's, what can you say? For it has been taught: For any man that curseth his father and his mother [shall surely be put to death]:[23] from this I know only [that he is punished for cursing] his father and his mother; whence do I know [the same] if he cursed his father without his mother, or his mother without his father? From the passage, his father and his mother he hath cursed; his blood shall be upon him: implying a man that cursed his father; a man that cursed his mother:[24] this is R. Joshia's opinion. R. Jonathan said: The [beginning of the] verse implies either the two together or each separately,

1. Or 'with him' (the bailee).
2. Ibid. 13.
3. I.e., they are both borrowed simultaneously.
4. When the owner says. 'I lend you my personal services and my cow', he himself is immediately at the service of the borrower, whereas the cow does not pass into his possession, to bear responsibility for it, until he actually performs *meshikah* (v. Glos.).
5. Since it is already in his possession, whilst *meshikah* is only an expedient for bringing it into his possession.
6. V. *supra* Mishnah 93a for notes.
7. The reference is to Ex. XXII, 6-8; 9-12; and 13f. The first states that the bailee is exempt from responsibility in the case of theft: the second, only in the case of the animal dying, etc., but not for theft. The third explicitly deals with borrowing.
8. Ibid. 13.
9. V. Ibid. 7, 8. This is interpreted in B.K. 63b as referring to the payment due by the bailee for a false plea of theft.
10. Though undoubtedly his liabilities are the greatest of all bailees.
11. The borrower living on a common, and since Scripture does not specify the locality of the borrower, even such is meant.
12. Which involves extra cost.
13. And still the argument holds good.
14. Requiring neither food nor a special watch.
15. Ibid. 11.
16. The emphasis of 'indeed' is expressed, as usual, by the double form of the verb, [H], the infinitive followed by the imperfect.
17. This is deduced from the emphatic form.
18. For this emphasis is a normal idiom, and on the latter view, its purpose is not to extend the law.
19. Palestine.
20. He who maintains that we do not say that the Torah employs human phraseology, and interprets emphatic forms to include loss; but surely this follows from an *a fortiori* reasoning!
21. Since it is explicitly mentioned in v. 9.
22. V. B.K. 43b.
23. Lev. XX, 9.
24. At the beginning of the sentence that curseth is in immediate proximity to his father: at the end, cursing is mentioned nearest to his mother, showing that each is separate.

Baba Mezi'a 95a

unless the verse had explicitly stated 'together'![1] — You may say so even according to R. Joshia: it [sc. 'or'] is unnecessary here for the purpose of separation. Why? It is a matter of logic: what is the difference whether it is wholly killed or only partly?[2]

Whence do we know that a borrower is responsible for theft and loss? And should you say, It follows from injury and death: [I would rejoin,] as for these, [he is responsible] because it is impossible to take the trouble of finding it again;[3] will you then say [the same] in the case of theft and loss, seeing that with trouble it may be found?[4] — But [it may be derived] even as it has been taught: [And if a man borrow aught of his neighbor,] and it be hurt, or die — from this I know [the law] only for injury and death: whence do I know it for theft and loss? — You can reason a *minori*: if a paid bailee, who is not responsible for injury and death, is nevertheless liable for theft and loss; then a borrower, who is liable for the former, is surely liable for the latter too! And this is an a *minori* argument which cannot be refuted. Why state that it 'cannot be refuted'?[5] — For should you object, It may be refuted, thus: as for a paid bailee, [he is responsible for theft

and loss] because he must make restitution of twice the principal [if discovered] in a [false] plea of [loss through] an armed robber,[6] [I would reply,] yet notwithstanding, the fact that the borrower is responsible for the principal[7] is a greater severity. Alternatively, he maintains that an armed robber is a gazlan.[8]

We have thus learned[9] responsibility;[10] whence do we know freedom from liability?[11] And should you say, It is deduced from injury and death: [it might be argued,] as for these, [he is free] because they are unavoidable accidents? — But it follows from a paid bailee. And whence do we know it of a paid bailee himself? — The liability of a paid bailee is equated to that of a borrower: just as there, when the owner is lent for personal service, he [sc. the borrower] is free thereof, so here too [in the case of a paid bailee], when the owner is lent for personal service, he is free thereof. How is this deduced? If by analogy,[12] that may be refuted, as [in fact] we have refuted it, since they [sc. injury, etc.] are accidents![13] — But Scripture saith, 'And if a man borrow': the *waw* [copulative 'and'] indicates conjunction with[14] the preceding subject, and the upper section is determined by the lower.[15] But even so, [the law of] a borrower cannot be deduced from [that of] a paid bailee, since it [the similarity] may be refuted. As for a paid bailee, that [sc. his non-liability for theft when the owner is in his service] is because he is exempt in the case of injury and death: will you say the same of a borrower, who is liable for these? — But [reason this]: Whence do we know that a borrower is liable for theft and loss [at all]? [Is it not] because we deduce it from a paid bailee?[16] Then it is sufficient that the conclusion of an a *minori* proposition shall be as its premise: just as theft and loss in the case of a paid bailee, when the owner is in his service, impose no liability; so also with respect to theft and loss in the case of a borrower, when the owner is in his service there is no responsibility. Now, that is well on the view that we accept this limitation;[17] but on the view that rejects it, what can you say? — But [answer thus]: Scripture saith, 'And if a man borrow': the '*waw*' indicates conjunction with the preceding subject, and so the lower section illumines the upper and is itself illumined thereby.[18]

It has been stated: When there is culpable negligence [on the part of an unpaid bailee], and the owner is in [his service] — R. Aha and Rabina dispute therein: One maintains that he is liable; the other that he is exempt. He who rules that he is liable maintains that a Scriptural verse may be interpreted [as applying] to the immediately preceding subject, but not to the one anterior thereto: consequently, But if the owner thereof be with it, etc.,[19] does not refer to a gratuitous bailee;[20] on the other hand, negligence [as a cause of liability] is not stated in connection with a paid bailee and a borrower. Therefore, liability [for negligence] in the case of the paid bailee and borrower too follows a *minori* from a gratuitous bailee. But that there should be no liability for it, when the owner is in their service, that cannot be maintained even in respect of a paid bailee and a borrower.[21] Why so? Because when Scripture states in respect of a borrower and a paid bailee,[22] But if the owner thereof be with it, he shall not make it good, it refers only to those cases of liability which are explicitly stated.[23] Whilst he who maintains that he is not responsible, is of the opinion that the verse may be interpreted as bearing upon the preceding subject and the one anterior thereto; hence, when it is stated, But if the owner thereof [etc.], it refers to a gratuitous bailee too.

We learnt: IF A MAN BORROWS A COW AND BORROWS ITS OWNER WITH IT, OR BORROWS A COW[24] AND HIRES THE OWNER WITH IT, OR IF HE FIRST BORROWS OR HIRES THE OWNER AND THEN BORROWS THE COW, AND IT DIES, HE IS NOT RESPONSIBLE. But a gratuitous bailee is not mentioned![25] — But even on your reasoning, is then a paid bailee mentioned?[26] Hence [it must be said,] the Tanna states [only] what

1. I.e., the *waw* implies both conjunction and separation, and in the absence of an explicit statement to the contrary it is assumed to connote separation. v. Sanh. 85b. Hence, in his view the 'or' is unnecessary, and may teach the inclusion of capture; but in R. Joshia's view it is necessary, and so the question remains.
2. For an injury is the equivalent of partial death, with respect to the value of the animal.
3. I.e., the loss is absolute.
4. Hence it may be argued that the owner must seek them, and the borrower is free from liability.
5. The emphatic assertion suggests that the Tanna has a particular refutation in mind, but maintains that it is false.
6. V. *supra*. The same holds good here.
7. When he really is attacked by an armed robber.
8. Lit., 'robber', who robs by open violence and is not subject to the twofold payment (v. B.K. 79b), as distinct from gannab, a thief who steals in secret. Consequently, the punishment of twofold payment does not apply to a paid bailee who falsely pleads an attack by an armed robber.
9. Lit., 'found'.
10. I.e., that a borrower is responsible for theft and loss.
11. In the case of theft or loss, when the owner of the bailment has lent his personal service too.
12. [H] Lit., 'what (do) we find?' i.e., as we find a paid bailee and a borrower responsible for certain mishaps, and we also find that the former ceases to be responsible when the owner of the bailment is personally in his service, so the same is assumed of the latter.
13. Whereas theft is not so unpreventable.
14. Lit., 'adds to'.
15. [H]. I.e., the *waw* indicates that the provisions of each section, in part at least, apply to the other. Hence, since the lower states that a borrower is exempt when the owner lends his personal service, the same holds good in the upper section dealing with a paid trustee.
16. As stated *supra*.
17. Lit., 'that agrees (that we say), Dayyo, it is sufficient.' v. B.K. 25a.
18. Hence, just as a borrower is free from responsibility when the owner is in his service, where he would otherwise be liable, sc. for injury and death, so the paid bailee is free in similar circumstances where he would otherwise be liable, viz., for theft and loss. And just as a paid bailee is not responsible in these cases, so likewise a borrower. Now, since the whole is thus deduced by analogy, it is not subject to refutation. But above, only the first half was deduced by analogy (hekkesh, v. Glos.), the second half being derived a *minori*; and an a *minori* reasoning (Kal wa-homer, v. Glos.) is subject to refutation.
19. Mentioned in the case of borrower.
20. Which is two sections remote from the borrower.
21. Notwithstanding that in cases of mishaps this fact does free them from liability.
22. The first explicitly, and the second by exegesis.
23. But not for negligence, the liability for which is derived a *minori*.
24. [This phrase does not occur in our Mishnah but is introduced by the Talmud in the text to exclude the possible assumption that the reference here is to the hiring of the cow. V. Strashun, a.l.]
25. Which proves that the service of the owner does not free him where he would otherwise be responsible, viz., in the case of culpable negligence, thus refuting the contrary view.
26. Though all agree that he is exempt from his liabilities if the owner is in his service.

Baba Mezi'a 95b

is explicitly written, and not what is exegetically derived.

Come and hear: If he borrows it [sc. the animal], and borrows its owner along with it; if he hires it and hires the owner with it; if he borrows it, and hires the owner along with it; or if he hires it and borrow its owner with it; even if the owner is working elsewhere,[1] and it dies, he is not liable. Now, it was assumed that this Tanna agrees with R. Judah that a hirer ranks as a paid bailee: thus we see that this Tanna includes what is derived exegetically, yet omits an unpaid trustee! — This agrees with R. Meir, who maintains that a hirer ranks as a gratuitous trustee; and so he states [the law] of an unpaid bailee, and the same applies to a paid bailee. If you wish,[2] I can say it is as Rabbah b. Abbuha reversed [the dispute] and taught: How does a hirer pay? R. Meir said, As a paid bailee; R. Judah said, As an unpaid bailee.[3]

R. Hamnuna said: He is always responsible unless it [the bailment] be a cow, and he [its owner] plows therewith [in the bailee's service], or an ass, and he drives it along, and

unless the owner is in the bailee's service from the time the loan is made until it is injured or dies. Thus we see that in his view, 'But if the owner thereof be with it,' refers to the whole transaction.[4]

Raba raised an objection: If he borrows it [sc. the animal], and borrows its owner along with it; if he hires it and hires the owner with it; if he hires it and borrows its owner with it; or if he borrows it and hires the owner along with it; even if the owner is working elsewhere, and it dies, he is not liable. Surely, that means on different work![5] — No; it means on the same work [as the animal was doing]. Then how can it be elsewhere? — [It means] that he went along breaking up [the ground] ahead of it. But since the second clause refers to [working] near it, it follows that the first clause means [actually] a different work! For the second clause states: If he [first] borrows it [sc. the animal] and then borrows its owner; if he hires it and then hires its owner with it, even if the owner is plowing at its side, and it perishes, he [the borrower or hirer] is responsible! — I will tell you: Both the first clause and the last refer to the same work; and the first clause teaches something of noteworthy interest, and the second likewise. The first clause teaches something of noteworthy interest: though he [the owner] is actually by its side, but yet engaged on the same work, since the owner was in his service from the time the loan was made, he [the bailee] is not responsible. And the second likewise teaches us something of noteworthy interest: though he [the owner] is by its side, yet since the owner was not in his service from the time of the loan, he is responsible. How so? Now, if you concede that the first clause refers to different work and the second to the same, it is well: that very fact is remarkable.[6] But if you suggest that both the first clause and the second refer to the same work, what is there remarkable? Both[7] are on the same work![8] And moreover it has been taught:[9] From the verse, But if the owner thereof be with it, he shall not make it good, do I not know, by implication, that if the owner thereof is not with it, that he must make it good? Why then is it [explicitly] stated, And the owner thereof not being with it, [he shall surely make it good]? To teach you: if he is in his service when the loan is made, he need not be so at the time of injury or death; but though in his service at the time of injury or death, he must also have been so with him at the time of loan.[10] And another [Baraitha] further taught:[8] From the verse, The owner thereof being not with it, he shall surely make it good, do I not know by implication, that if the owner thereof is in his service, that he is free from liability? Why then is it stated, But if the owner thereof be with it [etc.]? To teach you: Once it [the animal] has left the lender's possession, its owner being [simultaneously] in his service, even for a single hour, and it dies, he [the borrower] is free from liability.[11] The [complete] refutation of R. Hamnuna is indeed unanswerable.[12]

Abaye, holding with R. Joshia, explains the verses in accordance with him; Raba, agreeing with R. Jonathan, interprets them on the basis of his views.[13] [Thus:] 'Abaye, holding with R. Joshia, explains the verses in accordance with him,' 'The owner thereof being not with it, he shall surely make it good': hence, it is only because he was not with him on both occasions;[14] but if he were with him on one occasion but not on the other, he would be free from responsibility.[15] But [on the Other hand], it is written, 'But if the owner thereof be with it he shall not make it good': hence, it is only because he was with him on both occasions, but if he was with him on one occasion but not on the other, he is responsible. [This contradiction is] to teach you: If he was with him at the time of the loan, he need not have been with him at the time of the injury or death; but though he were with him at the time of the injury or death he must also have been with him when the loan was made.[16]

1. I.e., not in the same place as the animal, yet in the service of the borrower or hirer.
2. [Should you for some reason prefer to ascribe this anonymous Baraitha to R. Judah (Rashi).]

3. According to this, the Baraitha is taught on the basis of R. Judah's views.
4. I.e., the owner must be in the borrower's service all the time, and employed on the labor done with the borrowed ox or ass.
5. This refutes R. Hamnuna.
6. That though he is free from responsibility when the owner is in his service even for different work, he is nevertheless liable if he is not in service from the very beginning, even if engaged on the same work at the time of death.
7. Whether he breaks up the ground before it, or guards it from behind.
8. And thus there stands Raba's cited objection to R. Hamnuna.
9. In refutation of R. Hamnuna's ruling.
10. This proves that 'and the owner thereof not being with it' refers directly to the time of the loan, and not as R. Hamnuna holds, to the whole time of the transaction.
11. This Baraitha is identical with the preceding and differs only in form.
12. The first part of his statement from the first teaching, and the latter from the last two Baraithas cited.
13. For the dispute of R. Joshia and R. Jonathan, v. *supra* 94b. The Talmud now explains how the Tannaim deduce that the owner must be pledged to the borrower's service at the time of the loan, but not when the injury or death occurs.
14. Of the loan and the injury or death.
15. Since the beginning of the verse mentions both the loan and the mishap, the second half, the owner thereof, etc., must refer to both likewise, i.e., the owner was not with him when he borrowed, nor when it died. That is the natural interpretation according to R. Joshia's view that the *waw* is definitely conjunctive, so that (and it die) links the whole verse.
16. It is explained below why this is assumed, and not the reverse.

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'Raba, agreeing with R. Jonathan, interprets them on the basis of his views': 'The owner thereof being not with it, he shall surely make it good': this may imply that he is in his service either on both occasions or on one; in both cases he is free from responsibility. On the other hand, it is also written, 'But if the owner thereof be with it, he shall not make it good'; this too implies whether he is not with him on both occasions or only on one, he is liable. [Hence this contradiction is] to teach you: If he was with him at the time of the loan, he need not have been with him at the time of the injury or death; but though he were with him at the time of the injury or death he must also have been with him when the loan was made.

But may I not reverse it? — It is logical that the time of the loan is stronger [in remitting liability], in that it brings it [the animal] into his possession. On the contrary, are not injury and death more likely [to cancel responsibility], since he then becomes [actually] liable for accidents? — Were there no loan, what would injury and death effect?[1] But if not for injury and death, what liability is imposed by borrowing?[2] — Even so, [the responsibility imposed by] borrowing is greater, since he thereby becomes responsible for his food.[3]

R. Ashi said: Scripture saith, 'And if a man borrow aught of his neighbor,' [implying, aught of his neighbor,] but not his neighbor with it [sc. the animal], then, 'he shall surely make it good:' hence, if his neighbor is with him [when he borrows], he is free from liability.[4] If so, what is the need of, 'the owner thereof being not with … But if the owner thereof be with it'?[5] — But for these, I should have thought that this [sc. aught of his neighbor] is the ordinary Scriptural idiom.[6]

Rami b. Hama propounded: What [is the law] if he borrows it in order to commit bestiality therewith? Must the loan be as people generally borrow, whereas people do not borrow for such a purpose?[7] Or perhaps the reason is because of the pleasure [he derives from the loan]: in which case here too he has pleasure?[8] What [again, is the law] if he borrows it for appearance's sake?[9] Is it necessary that something of monetary value shall be lent,[10] which [condition is fulfilled] here? Or perhaps, something of monetary value, by which he [the borrower] directly benefits, is required — which is not [the case here]? What if he borrows it for work worth less than a *perutah*: must there be monetary

value, and there is some? Or perhaps less than a *perutah* is of no account? What if he borrows two cows for a perutah's value of work? Do we say, consider[11] the borrower and lender, and there is [monetary value]? Or perhaps, the criterion is [the work of] the cows, and in [that of] each there is none?[12] What if he borrows from partners, one of whom lends himself to him? Must all its owners [be in the bailee's service], which condition is absent here? Or perhaps, he after all bears no liability for his half?[13] What if partners borrow, and he [the animal's owner] lends himself to one of them? Must there be [a pledge of service] to all the borrowers, which, however, is absent here? Or perhaps, for that half [of the partnership] to which he is pledged there is no responsibility? What if he borrows from a woman, and her husband pledges his service? Or what if a woman borrows, and he [the owner] lends himself to her husband?[14] Is a title to usufruct as a title in the principal itself,[15] or is it not?

Rabina asked R. Ashi: What if one says to his agent, 'Go and loan yourself [for service] on my account, together with my cow;' must there actually be its [sc. the bailment's] owner, which is absent here? Or perhaps, 'a man's agent is as himself;' hence the condition is fulfilled? — Said R. Aha, the son of R. Awia, to R. Ashi: As for the husband,[16] that is disputed by R. Johanan and Resh Lakish; with reference to an agent, that is disputed by R. Jonathan and R. Joshia.

'As for the husband, that is disputed by R. Johanan and Resh Lakish.' For it has been stated: If one sells his field to his neighbor for its usufruct, R. Johanan said: He must bring [the first fruits] and recite [the confession];[17] Resh Lakish maintained: He brings [the first fruits], but does not recite [the confession]. 'R. Johanan said: He must bring [the first fruits] and recite [the confession]' because he holds that a title to usufruct is equal to a title to the principal itself. 'Resh Lakish maintained: He brings [the first fruits] but does not recite,' — a title to usufruct is not as a title to the principal itself.[18]

'With reference to an agent, that is disputed by R. Jonathan and R. Joshia.' For it has been taught: If one says to his epitropos,[19] 'All vows which my wife may vow from now until I return from such a place, annul for her,' and he does so, I might think that they are annulled, therefore Scripture writes, Her husband may establish it, or her husband may make it void:[20] this is R. Joshia's view. R. Jonathan said: We find in the whole Torah that a man's agent is [legally] as himself.[21]

R. 'Ilish asked Raba: What [is the law] if one says to his slave, 'Go and loan yourself together with my cow'? The problem arises whether it be maintained that a man's agent is as himself or not. [Thus:] The problem arises on the view that a man's agent is as himself, for that may apply only to an agent who is subject to [Scriptural] commands, but not to a slave, who is not subject thereto.[22] Or, on the other hand, even on the view that a man's agent is not as himself, that may hold good of an [independent] agent, but as for a slave, 'the hand of a slave is as the hand of his master'?[23] — He replied: It is logical that 'the hand of a slave is as the hand of his master.'[24]

Rami b. Hama propounded: Does the husband rank as a borrower in his wife's property,

1. I.e., though the actual payment must be made on account of these, it is the fact of loan which conditions it.
2. Surely, none at all!
3. The point of the discussion is this. It is evident that Scripture remits liability when the owner is in the bailee's service. Hence the question is, what actually imposes that liability which is to be remitted? And the Talmud answers that it is the act borrowing, rather than injury or death, which imposes it, since borrowing certainly imposes another liability, viz., that of food.
4. Thus, the verse itself intimates that the owner must not be with him, i.e., in his service, at the time of borrowing.

5. Since, according to R. Ashi, it is intimated in the words he quotes.
6. So that no deduction could be made from the 'of' with respect to of non-liability when owner is in the service of the bailee. Now, however, that such is explicitly stated, and, moreover, the apparent contradiction intimates that the owner must be in his service at a particular time, the beginning of the verse, cited by R. Ashi, shows that the time of borrowing is meant.
7. Hence he is not liable for accidents.
8. That the borrower is usually responsible for accidents.
9. I.e., that he should be thought wealthy, and so obtain credit.
10. In order to impose liability.
11. Lit., 'go' according to'.
12. This problem, of course, arises only on the supposition that a cow must do a perutah's worth of work.
13. Sc. of the partner who pledged his service.
14. The reference is to the class of property designated [H] 'goods of plucking' — of which the husband enjoys the usufruct, whilst the principal belongs to the wife.
15. In which case the husband and wife are partners, and so this will depend on the previous problem.
16. I.e., the problem concerning him.
17. V. *supra*, p. 518, n. 9. Though the usufruct only belongs to him, he can nevertheless say, And now, behold, I have brought the first fruits of the land, which thou, O Lord, hast given me (Deut. XXVI, 10).
18. V. B.B. 136b.
19. His general steward, appointed in loco domini.
20. Num. XXX, 14.
21. Hence the vows are annulled. The same reasoning applies to the problem under discussion.
22. V. *supra*, 71b and 72a.
23. I.e., having no independent existence, his actions are certainly like those of his master.
24. Hence it is accounted as though the owner is in the borrower's service.

Baba Mezi'a 96b

or as a hirer?[1] — Said Raba: His very subtlety has led him into error; what will you? If he ranks as a borrower, it is a loan when the owner is in his service; if a hirer, it is a hiring in similar circumstances?[2] — But when does Rami b. Hama's problem arise? If he hired a cow from her and then married her[3] — what [is the law] then? Does he rank as a borrower or as a hirer? Does he rank as a borrower, and so the [present] loan, when the owner is in his service,[4] abrogates hiring effected when the owner was not in his service? Or, perhaps, he ranks as a hirer, and the status of a hirer remains unchanged? But wherefore this differentiation? [If it is maintained that] should he rank as borrower, the borrowing effected when the owner is in his service cancels the hiring effected without the owner being engaged in his service, why not apply the same principle even if he is considered a hirer, and say that the [new] hiring effected with the owner in his service abrogates the [old] hiring effected without the owner's being in his service? — But when does Rami b. Hama's problem arise? E.g., if she hired a cow from a stranger[5] and then was married [not to the owner]. Now, on the view of the Rabbis, who maintain that the borrower must pay the hirer, there is no problem, for it is certainly a case of a loan plus the owner's service. Where the problem arises is on the view of R. Jose, who ruled, the cow must be returned to its first owner. [Hence the question,] what [is the law] then? Does he rank as a borrower or as a hirer?[6] — Said Raba: The husband ranks neither as a borrower nor as a hirer, but as a purchaser.[7] This follows from the dictum of R. Jose son of R. Hanina. For R. Jose son of R. Hanina said: In Usha it was enacted:[8] If a woman sells of her 'property of plucking' in her husband's lifetime, and then dies, her husband [as her heir] can claim it from the purchaser.[9]

Rami b. Hama propounded: When the husband [obtains the privilege of usufruct] in his wife's property [which belonged to *hekdesh*], who is liable to a trespass offering?[10] Raba [thereupon] observed: Who then should be liable to a trespass offering? The husband? He is willing to acquire a right in what is permitted, but not in what is forbidden! The wife?[11] But she [herself] does not [particularly] wish him [the husband] to acquire even what is permitted![12] The *Beth din*?[13] When did the Rabbis enact that the

husband ranks as a purchaser, only in respect of what is permitted, not in respect of what is forbidden! — But, said Raba, the husband is liable to a trespass offering when he actually expends it, just as in general, when one withdraws money of *hekdesh* [and converts it] into *hullin*.

The scholars propounded: What if it [the borrowed animal] became emaciated through its work?[14] Said one of the Rabbis, R. Helkiah the son of R. Awia by name:[15] Then it follows that if it died through the work, he is certainly responsible. But let him say to him [the lender], 'I did not borrow for exhibition in a show case!'[16] — But, said Raba, not only is it unnecessary to state that if it became emaciated through work he is not responsible, but even if it died through work, he is still not liable, because he can say, 'I did not borrow it that it should stand in a showcase.'

A man once borrowed an axe from his neighbor, and it broke. When he came before Raba, he said to him, 'Go and bring witnesses that you did not put it to foreign use, and you are free from liability.' But what if there are no witnesses? — Come and hear: For a man once borrowed an axe from his neighbor, and it broke. When he came before Rab, he said to him, 'Go and return him a good axe.' Said R. Kahana and R. Assi to Rab:

1. It is assumed that the question is whether he is responsible for accidents when working with his wife's, 'property of plucking,' (q.v., p. 555, n. 4) or not, as a borrower or as a hirer respectively.
2. Since the wife is pledged to her husband's service from the time of marriage.
3. Or if he borrowed, etc., hiring being mentioned as the more usual (Tosaf.).
4. As explained in n. 2.
5. Lit., 'from the world.'
6. For this dispute of the Rabbis and R. Jose v. *supra* 35b Now, since the Rabbis maintain that the borrower is concerned only with the lender, not with the first owner, then in this case we consider only the husband's relationship to his wife, and therefore he is not responsible for accidents. But on R. Jose's view that the borrower is referred direct to the first owner, who, of course, is not in his service, the question is whether he ranks as a borrower, and is responsible for accidents, or as a hirer, who is not. In return for the usufruct the husband is bound to ransom his wife if captured, and that liability may give him the rank of a hirer in relation to his wife.
7. Hence he is not liable
8. Usha was a city of Galilee, near Shefar'am, Tiberias and Sepphoris, where an important Rabbinical synod was held on the cessation of the Hadrianic religious persecution, about the middle of the second century; v. B.B. (Sonc. ed.) p. 207, n. 3.
9. Which proves that the husband is accounted a previous purchaser.
10. E.g., if she inherited property after marriage, which included, unknown to her husband, money belonging to *hekdesh* (v. Glos.). By a Rabbinical enactment, the husband becomes a beneficiary in respect of the usufruct of anything inherited by his wife after marriage. Now, it was assumed that the very fact that the husband is empowered to spend this money for its usufruct is as though it were already removed from the possession of *hekdesh*, even if it has not been actually expended. Since such removal, if done unintentionally, imposes a liability to a trespass offering, Rami b. Hama asked upon whom it falls.
11. For conferring the right upon her husband.
12. The privilege was conferred upon him by a Rabbinical enactment, not by her desire.
13. For conferring that privilege.
14. Is the borrower liable for the loss in value or not?
15. [This is the only instance where his name occurs.]
16. Lit., to 'be placed under a bridal canopy.'

Baba Mezi'a 97a

is that the law?[1] Thereupon Rab was silent. And [indeed] the law agrees with R. Kahana and R. Assi, that he returns him the broken axe and makes up its full value.

A man borrowed a bucket from his neighbor, and it broke. When he came before R. Papa, he said to him, 'Go and bring witnesses that you did not put it to foreign use, and you will be free from liability.'

A man borrowed a cat from his neighbor; the mice then formed a united party and killed it.

Now, R. Ashi sat and pondered thereon: How is it in such a case? Is it as though it had died through its work, or not? Thereupon R. Mordecai said to R. Ashi: Thus did Abimi of Hagronia say in Raba's name: A man whom woman killed — [for him] there is no judgment nor judge![2] Others say: It ate many mice, whereby it sickened and died. Now, R. Ashi sat and cogitated thereon: How is it in this case? — Said R. Mordechai to R. Ashi: Thus did Abimi of Hagronia say: A man whom women killed[3] — for him there is no judgment nor judge.

Raba said: If a man wishes to borrow something from his neighbor and yet be free from responsibility, he should say to him, 'Give me a drink of water,' so that it constitutes a loan together with the owner's service. But if he [the lender] is wise, he should answer him, '[First] borrow it by threshing with it, and then I will give you a drink.'

Raba said: A teacher of children, a gardener,[4] a butcher, a cupper and a town barber[5] — all [if they lend something] whilst at work, are treated in regard to the loan as being in the service [of the borrower].

The scholars said to Raba: 'You, Master, are loaned to us.'[6] This enraged him: 'You wish to deprive me of my possessions!'[7] he exclaimed. 'On the contrary, you are loaned to me! For I can change you over from one tractate to another, whilst you cannot!'[8] But neither was entirely correct. He was lent to them during the Kallah days,[9] whilst they were loaned to him for the rest of the year.

Meremar b. Hanina hired a mule to inhabitants of Be Hozae[10] and went forth to assist them in loading it, but through a negligent act on their part it died. When they came before Raba, he held them liable. His disciples objected: But it is negligence with the owner [in service]! So he was ashamed. Subsequently it was ascertained that he had gone forth to supervise the loading.[11] Now, on the view that for negligence with the owner in service there is no responsibility, it is well; for that reason he was ashamed. But on the view that one is liable, why was he ashamed? — They were not negligent with respect thereto, but it was stolen, and it died a natural death in the thief's possession; and they came before Raba, who ruled them responsible. Thereupon the Rabbis protested to Raba: But it was theft whilst the owner was in their service! But subsequently it was ascertained that he had gone out to supervise its loading.

***MISHNAH*. IF ONE BORROWS A COW, BORROWING IT FOR HALF A DAY AND HIRING IT FOR HALF A DAY; OR IF HE BORROWS IT FOR ONE DAY AND HIRES IT FOR THE NEXT; OR IF HE HIRES ONE AND BORROWS ANOTHER, AND ONE COW DIES, THE LENDER ASSERTING THAT THE BORROWED ONE DIED, OR IT DIED ON THE DAY WHEN IT WAS BORROWED,**

1. **Is not the law rather that the broken axe is returned and the loss made up? v. B.K. 10b.**
2. **I.e., no redress. He is not worthy of being called a man! The same applies to a cat that is eaten by mice.**
3. **Through excessive gratification.**
4. **Who plants gardens for others on a percentage.**
5. **[[H] others: a notary [H] cf. B.B. (Sonc. ed.) p. 106, n. 7.]**
6. **I.e., 'you are pledged to our service, to teach us.'**
7. **I.e., 'to borrow from me and be exempt from liability.'**
8. **I.e., 'I can select for subject of study any tractate I fancy, and you have not the right to protest.'**
9. **Kallah, general assembly, refers to the months of Adar and Ellul, before Passover and the High Festivals respectively, when popular lectures were given on the coming Festivals. During this time the teacher was restricted to those particular subjects, and therefore stood in the service of his disciples. On Kallah v. B.B. (Sonc. ed.) p. 60, n. 7.**
10. **V. p. 508, n. 2.**
11. **To see that it was not overloaded. Hence he was not in their service at all, and so Raba's verdict was just.**

Baba Mezi'a 97b

OR DURING THE HOUR FOR WHICH IT WAS BORROWED; AND THE OTHER REPLIES, 'I DO NOT KNOW', HE MUST PAY. IF THE HIRER ASSERTS: THE HIRED ONE DIED, [OR], IT DIED ON THE DAY WHEN IT WAS HIRED, OR IT DIED DURING THE HOUR FOR WHICH IT WAS HIRED, AND THE OTHER REPLIES, 'I DO NOT KNOW,' HE IS NOT LIABLE. BUT IF ONE ASSERTS THAT IT WAS THE BORROWED ONE AND THE OTHER THAT IT WAS THE HIRED ONE, THE HIRER MUST SWEAR THAT THE HIRED ONE DIED [WHICH FREES HIM FROM LIABILITY]. IF THE ONE SAYS, 'I DO NOT KNOW,' AND THE OTHER SAYS, 'I DO NOT KNOW,' THEY MUST DIVIDE.[1]

***GEMARA*. Hence it follows, [that if A says to B,] 'You owe me a *maneh*,' and B pleads, 'I do not know,' he is bound to pay. Shall we say that this refutes R. Nahman? For it has been taught: [If A says to B,] 'You owe me a *maneh*,' and B pleads, 'I do not know,' R. Huna and Rab Judah rule that he must pay; R. Nahman and R. Johanan say: He is not liable! — It is as R. Nahman answered [elsewhere], e.g., there is a dispute between them involving an oath; so here too, it means that there is a dispute between them involving an oath.**[2] **What is meant by a dispute involving an oath? — As Raba's [dictum].**

1. **I.e., share the loss.**
2. **I.e., his plea was such that he should have taken an oath, and being unable, since he said, 'I do not know', he must pay instead, but when A claims a *maneh*, and B simply answers, 'I do not know', he is not thereby liable to an oath, and hence is free altogether.**

Baba Mezi'a 98a

For Raba said: [If A says to B,] 'You owe me a *maneh*,' to which he replies, 'I [certainly] owe you fifty [*zuz*], and as for the rest, I do not know,' since he cannot swear,[1] **he must pay [all]. [On these lines,] the first clause [of our Mishnah] is conceivable when two, and the second, when three [cows are involved]. [Thus:] 'The first clause, when two [are involved].' A said to B, 'I gave you two cows, loaned for half a day and hired for half (or, [he says: they were] loaned for one day, and hired for another) and both died during the time they were borrowed.' To which B replied, 'One indeed did die then, but as for the other, I do not know whether it was during the time it was borrowed or the period of hire,' — since he cannot swear, he must pay.**

'And the second clause, where three [cows are involved].' [Thus:] A said to B, 'I gave you three cows, two loaned and one hired, and the two loaned ones died.' To which the borrower replied, 'Tis true that one borrowed animal died; but as for the other, I do not know whether the borrowed one died and the one alive is the hired one, or the hired one died and the one alive is the borrowed;' since he cannot swear, he must pay.

And according to Rami b. Hama, who maintained that the four bailees must partially deny and partially admit [liability],[2] **the first clause is possible only when three, and the second when four [animals are involved]. 'The first clause when three [are involved]': A said to B, 'I gave you three cows, half a day on loan and half on hire, (or, [he says, I gave you them] one day, on loan and one on hire,) and the three died, all in the period when they were borrowed.' To which the borrower replied, 'As for one, the claim is entirely unfounded [I never received it]; the second did die in the period when it was borrowed; of the third, I do not know whether it died during the time it was borrowed or the period when it was hired.' Since he cannot swear, he must pay.**

'And the second clause, where four [animals are involved].' A said to B, 'I gave you four cows, three loaned and one hired, and the three loaned ones died.' To which the borrower replied,

1. As one who partly admits and partly denies liability; *supra* 3a.
2. V. *supra* 5a; in his view, 'I do not know' does not constitute denial; only a plea such as 'I have returned that particular animal,' or 'I never received it.'

Baba Mezi'a 98b

'As for one, the claim is entirely unfounded; with respect to the second, it is true that a borrowed one died; and as to the others, I do not know whether it was the hired one that died and the one alive is the borrowed one, or whether it was the borrowed one that died and the one alive is the hired one;' and since he cannot swear he must pay.

BUT IF ONE ASSERTS THAT IT WAS THE LOANED ONE, AND THE OTHER THAT IT WAS THE HIRED ONE, THE HIRER MUST SWEAR THAT THE HIRED ONE DIED. But why so? What he claims from him he does not admit; and what he admits he does not claim?[1] — Said 'Ulla: [He swears] through the superimposition [of an oath]. For he [the lender] can demand, 'You must at least swear that it died of natural causes; and since you must swear thus, swear also that the hired one died.'[2]

IF BOTH SAY, 'I DO NOT KNOW,' THEY MUST DIVIDE. Who is the author of this? — Symmachus, who ruled: When money lies in doubt, it is divided.[3]

R. Abba b. Mammel propounded: What [is the ruling] if the borrowing was made together with the owner's [service], but subsequently it [the bailment] was hired without the owner?[4] Do we say, the borrowing stands alone, and the hiring stands alone? Or perhaps the hiring is a continuation of the loan, since he is responsible for theft and loss?[5] And should you rule that hiring is a continuation of the loan, what if he hired it together with the owner's [service], and then borrowed it without the owner? Shall we say that borrowing is certainly not included in hiring?[6] Or perhaps, being partly related thereto, it is wholly related thereto. And should you rule that we do maintain that partial relationship is regarded as complete relationship, what if one borrowed it with the owners [service], hired it without the owner's, and borrowed it again [without the owner]? Does the borrowing revert to its former status? Or perhaps, the hiring breaks the connection? [Likewise,] if it was hired with the owner's [service], then borrowed, and then hired again [the last two without] — do we Say, the hiring reverts to its former status? Or perhaps, the intermediate borrowing breaks the connection? These problems remain unsolved.

MISHNAH. IF A MAN BORROWS A COW, AND HE [THE LENDER] SENDS IT TO HIM BY HIS SON, SERVANT OR AGENT; OR BY THE SON, SERVANT OR AGENT OF THE BORROWER, AND IT DIES [ON THE ROAD], HE IS NOT LIABLE. BUT IF THE BORROWER SAID TO HIM, 'SEND IT TO ME BY MY SON, SERVANT, OR AGENT,' OR 'BY YOUR SON, SERVANT OR AGENT, OR IF THE LENDER SAID TO HIM, 'I AM SENDING IT TO YOU BY MY SON, SERVANT OR AGENT,' OR 'BY YOUR SON, SERVANT OR AGENT, AND THE BORROWER REPLIED, 'SEND IT,' AND HE SENT IT, AND IT DIED [ON THE ROAD], HE IS RESPONSIBLE. AND THE SAME HOLDS GOOD WHEN HE RETURNS IT.[7]

1. Though the Mishnah was made to refer to a number of animals, that was only according to R. Nahman; whereas on the view of R. Huna and Rab Judah the Mishnah is literally understood. But in that case, there is no partial admission and partial rejection of the claim, the admission being in respect of something not claimed at all.
2. [H], lit., 'rolling oath,' v. *supra* 3a. Thus, here, the lender can plead, 'Even on your own plea, you must still swear that it died naturally, not through your negligence.' (This answer rejects Rami b. Hama's ruling that no oath is imposed at all upon bailees, even when they plead loss, theft, death, etc., unless there is also partial rejection of the claim, as above.) Since the bailee is thus bound to swear, another oath, viz., that the hired one and not the borrowed one died, is administered. The superimposed oath is Biblical, v. Sot. 18a.

3. v. *supra* 2b.
4. I.e., whilst the animal was yet in the borrower's possession, he hired it for a further period; at the time of hiring, its owner was not in his service, though he was when the loan was made.
5. I.e., by becoming a hirer, he adds nothing to the liabilities of a borrower, and since he bears this responsibility on account of the first *meshikah* as a borrower, his present responsibility is but a continuation of the first.
6. Since there is greater responsibility in the former than in the latter.
7. If the lender instructs him to send it back, the borrower is free from the risks of the road, but not otherwise.

Baba Mezi'a 99a

GEMARA. If he sends it by his [sc. the lender's] servant, [why does the Mishnah state that] he is liable?[1] Is not the hand of the servant as the hand of his master?[2] — Said Samuel: This refers to a Hebrew servant, whose body does not belong to him [his master]. Rab said: It may refer even to a heathen servant, yet it is considered as though he [the borrower] said to him, 'Strike it with a stick and it will come [to me].'[3]

An objection is raised: If one borrows a cow, and sends it to him [the borrower] by his son or agent, he is liable [for accidents on the road]; by his servant, he is not. Now, on Samuel's view it is well: our Mishnah refers to a Hebrew servant; the Baraitha to a heathen servant. But according to Rab, is there not a difficulty? — Rab can answer you: Do not answer [above], it is considered as though he said to him, etc.; it means that he had [actually] said to him, 'Strike it with a stick, and it will come.'[4] For it has been stated: [If A said to B,] 'Lend me your cow;' and he asked him, 'By whose hand shall [I send it]?' to which he replied, 'Strike it with a stick, and it will come,' said R. Nahman, in the name of Rabbah b. Abbuha in Rab's name: Once it leaves the lender's possession and it dies, he [the borrower] is responsible.

Shall we say that the following [Baraitha] supports him:[5] [If A said to B,] 'Lend me your cow, and he asked him, 'By whose hand [shall I send it]?' to which he replied, 'Hit it with a stick, and it will come:' once it leaves the lender's possessions and it dies, he [the borrower] is responsible? — R. Ashi said: [No. For] we deal here with a case where the borrower's court was within the lender's, so that when he sends it, it will certainly go there.[6] If so, why state it? — It is necessary to state it only when there are narrow passages [in various directions in the courtyard]. I might think that he [the borrower] does not place full reliance [on its coming to him, for] perhaps it may stand there [sc. in a by-path] and not come to him: therefore we are taught that he places full reliance [that it will come].

R. Huna said: If a man borrows an axe from his neighbor and he cleaves [wood] therewith, he acquires it; if he does not cleave [wood] therewith, he does not acquire it. In what respect? Shall we say, in respect of [unavoidable] accidents?[7] But wherein does it differ from a cow, [for which he is responsible] from the time of the loan?[8] — Hence in respect of returning it. Once he cleaves [wood] therewith, the lender cannot retract;[9] if not, the lender can retract.

Now, he [R. Huna] is in conflict with R. Ammi. For R. Ammi said: If a man lends an axe belonging to the Sanctuary, he is liable for trespass in respect of its goodwill value, and his neighbor may use it[10] forthwith.[11] Now, if he [the borrower] does not acquire it [until he actually uses it], why is he [the lender] liable for trespass, and why may his neighbor use it forthwith? Let him return it, gain no title thereto, and so not be liable for trespass![12]

He [R. Huna] is also in conflict with R. Eleazar. For R. Eleazar said: Just as they [the Rabbis] instituted *meshikah* for purchasers,[13] so did they institute *meshikah* for bailees. It has been taught likewise: Just as they instituted *meshikah* for purchasers, so did they institute *meshikah* for bailees. And just as

1. If the borrower instructed him to send it.
2. So that it is as though it had never left the lender's possession.
3. And as soon as it leaves the domain of the owner, the responsibility rests on the borrower.
4. I.e., in the Mishnah the borrower did instruct the lender to let it come of itself, whereby he immediately assumed the risks of the road; and he is not freed of the liability merely because the lender sent his servant to accompany it.
5. Rab.
6. The borrower's courtyard led into the lender's; in that case he assumes responsibility. But if part of the highway is to be traversed, he would not assume responsibility. The Baraitha accordingly affords no support to Rab.
7. I.e., he gains title thereto to be liable for unavoidable accidents.
8. Even before use.
9. But it belongs to the borrower for the whole period of the loan.
10. Lit., 'cleave therewith.'
11. For unwittingly removing an article from the possession of the Sanctuary one had to pay thereto the principal plus a fifth of the value of the benefit of such removal. In this case, his benefit is only the goodwill of the borrower to whom he lent it, upon which a monetary value is placed. Further, having thus removed it from the possession of *hekdesh*, it becomes *hullin* (v. Glos.), and therefore the borrower may freely use it, at the very outset, as soon as it comes into his hand.
12. Hence it follows that in R. Ammi's opinion it becomes the borrower's by the act of *meshikah* (v. Glos.), even before he uses it.
13. As the means of gaining legal possession.

Baba Mezi'a 99b

real estate is acquired by means of money, a deed, or *hazakah*,[1] so is hiring affected by the same means. But what has hiring to do [with these]?[2] — R. Hisda said: It refers to the renting[3] of real estate.

Samuel said: If a man robbed his neighbor of a cake of pressed dates containing fifty dates, which, sold together, bring fifty [perutahs] less one; whilst, sold separately, realize fifty perutahs, — in the case of secular property,[4] he must repay forty nine [perutahs]; in the case of *hekdesh*[5] he must pay fifty, plus the fifth thereof. This, however, is not so in the case of one who injures [property belonging to] *hekdesh*, for such a one does not add a fifth. For a Master stated: And if a man eat of the holy thing [unwittingly, then he shall put the fifth part thereof unto it, etc.]:[6] this excludes one who injures [the holy thing]. To this R. Bibi b. Abaye demurred: In the case of secular property, why must he pay [only] fifty less one? Can he not say, 'I would have sold them singly'? — R. Huna the son of R. Joshua replied: We learnt, The area of a *se'ah*[7] in that field is assessed.[8]

Shall we say that in Samuel's opinion the law appertaining to secular property is not the same as that of the [Most] High?[9] But we learnt: If he [the steward in charge of the sanctuary] took a stone or beam of *hekdesh*,[10] he is not guilty of trespass. If he gave it to his neighbor, he [the steward] is guilty of trespass, but not the latter.[11] If he built it into his house, he is not liable for trespass unless he dwells in [and enjoys the use of] it to the value of a *perutah*.[12] Now, R. Abbahu sat before R. Johanan and said in Samuel's name: This proves that if a man dwells in his neighbor's courtyard without his permission, he must pay him rent![13] — Did not R. Johanan observe to him,[14] Samuel retracted from that [inference]? But how do you know that he retracted from the latter; perhaps he retracted from the former?[15] — No: [he must have retracted from the latter,] in accordance with Raba's[16] dictum; for Raba said: *Hekdesh* without [its owner's] knowledge is as secular property with [its owner's] knowledge.[17]

Raba said: If carriers broke a shopkeeper's barrel of wine, which on a market day is sold for five [*zuz*], but on other days for four, if they make a return on the market day, they return a barrel of wine; but if on other days,[18] they must return five [*zuz*].[19] That, however, holds good only if he had no [other] wine for sale; but if he had [some left after the market], then he should have sold that. And they deduct the payment for his trouble and the value of the tapping.[20]

1. V. Glos.
2. It was assumed that it refers to the hiring of movable property, in respect of which money, etc., does not effect possession.
3. Lit., 'hiring.'
4. Lit., 'to an ordinary man.'
5. V. Glos. I.e., if he stole them from the sanctuary.
6. Lev. XXII, 14.
7. V. Glos.
8. v. B.K. 55b. If an animal enters a field and eats part of the crops, the value of the crops themselves are not assessed for the purpose of damages, but the decrease in the sale value of the *se'ah* area in which the damage was done, — an assessment which is obviously less than the former. This shows that in respect to repayment a lenient attitude is taken, and the same applies here.
9. I.e., *hekdesh*.
10. Intending to put it to secular use.
11. The steward is guilty of having removed it from the possession of *hekdesh*; for which very reason his neighbor is not guilty, since it is no longer *hekdesh*. Cf. p. 566, n. 5.
12. Me'ii. 19b; v. B.K. 20b.
13. Just as one is guilty of trespass in living under that beam, though the beam is so built in as to leave it unaltered, which shows that there is a debt due to *hekdesh* for this. Now, this inference of Samuel proves that he regards *hekdesh* and secular property on a par.
14. [This is the reading of BaH; cur. edd.: 'R. Johanan said to him,' which Rashi omits; cf. B.K. 20b.]
15. I.e., the law of stealing dates.
16. *Var. lec.*: Rabbah's.
17. I.e., if one makes use of *hekdesh*, even if the steward is ignorant thereof, he is just as liable as when one makes use of secular property and its owner knows and demands repayment. The reason is that the real owner of *hekdesh* is God, Who always knows. This proves that the two are not equal, and therefore Samuel is more likely to have retracted from the latter.
18. After the market day.
19. But he can refuse a barrel of wine, since he could have obtained a higher price on market day.
20. The cost of making a bung hole for the wine to be drawn. According to another reading, the crier's fee, who announced that he had wine for sale, v. *supra* 40b.

Baba Mezi'a 100a

MISHNAH. IF A MAN EXCHANGED A COW FOR AN ASS, AND IT CALVED; AND LIKEWISE IF HE SOLD HIS MAIDSERVANT, AND SHE BORE A CHILD, THE ONE MAINTAINING, 'IT WAS BEFORE I SOLD HER,' WHILST THE OTHER SAID, 'IT WAS AFTER I BOUGHT HER' — THEY MUST DIVIDE.[1] IF HE [THE VENDOR] HAD TWO SERVANTS, ONE AN ADULT AND THE OTHER A CHILD; OR LIKEWISE TWO FIELDS, ONE LARGE AND ONE SMALL, THE PURCHASER MAINTAINING, 'I BOUGHT THE LARGE ONE,' WHILST THE OTHER SAYS, 'I DO NOT KNOW,' HE ACQUIRES THE LARGE ONE. IF THE VENDOR SAYS, 'I SOLD THE SMALL ONE,' AND THE OTHER SAYS, 'I DO NOT KNOW,' HE RECEIVES ONLY THE SMALL ONE. IF ONE [THE VENDEE] CLAIMS THAT IT WAS THE LARGE ONE, AND THE OTHER THAT IT WAS THE SMALL ONE, THE VENDOR MUST SWEAR THAT HE HAD SOLD THE SMALL ONE. IF THIS ONE SAYS, 'I DO NOT KNOW,' AND THE OTHER SAYS, 'I DO NOT KNOW,' THEY MUST DIVIDE.

GEMARA. Why should they divide? Let us see in whose possession it [sc. the calf or child] is, and then apply to the other the principle, He who claims from his neighbor has the onus of bringing proof? — R. Hiyya b. Abin said in Samuel's name: It means that it [the calf] was standing in a meadow; the maidservant, too, was in the market-stand.[2] Then let us presume the ownership of the first master, and apply to the other the principle, He who claims from his neighbor bears the onus of proof?[3] — This agrees with Symmachus, who ruled: When the ownership of property is in doubt, it is divided [among the claimants] without an oath. Now, when did Symmachus rule thus? Where [each] claimant pleads, 'Perhaps [it is mine];' but did he maintain it likewise when each states, '[I am] certain'?[4] — Said Rabbah son of R. Huna: Even so: Symmachus ruled thus even when each states '[I am] certain.' Raba said: In truth, Symmachus ruled thus only when each pleads, 'perhaps,' but not when each states, '[I am] certain:' but read [in the Mishnah]: The vendor maintains, 'Perhaps it was before I sold [her],' and the vendee, 'Perhaps it was after I bought [her].'

We learnt: IF THIS ONE SAYS, 'I DO NOT KNOW, AND THE OTHER SAYS, 'I DO NOT KNOW,' THEY MUST DIVIDE. Now, on Raba's view, it is well; since the last clause refers to when both state 'perhaps', the first may likewise refer to a case where both plead 'perhaps'. But according to Rabbah son of R. Huna, who maintained: Indeed, Symmachus ruled thus even when both plead 'certain' — if they divide even on certain claims,[5] is it necessary to teach it when their claims are uncertain? — As for that, it is no argument. The last clause is stated in order to throw light on the first: [viz.,] that you should not say that the first clause refers [only] to a doubtful plea on both sides, but where both contend with certainty, it is not so;[6] therefore the last clause teaches the case of 'perhaps', on the part of both, from which it follows that the first refers to a plea of certainty by both;[7] and even then, they must divide.

We learnt: IF ONE [THE VENDEE] CLAIMS THAT IT WAS THE LARGE ONE, AND THE OTHER [THE VENDOR] THAT IT WAS THE SMALL ONE, THE VENDOR MUST SWEAR THAT HE HAD SOLD THE SMALL ONE. Now, on Raba's view, that Symmachus gave his ruling only where each [claimant] is uncertain, but not when they are both positive, it is well: hence he must swear.[8] But according to Rabbah son of R. Huna, who maintained that the ruling of Symmachus does indeed hold good even when both are positive, why should the vendor swear? Let them divide! — Symmachus admits [that one must swear] where an oath is necessary by Biblical law, as we interpret this below.

IF HE HAD TWO SERVANTS, ONE AN ADULT AND THE OTHER A CHILD, etc. Why should he swear? What he claims he does not admit, and what he admits he does not claim?[9] Moreover, it is a case of 'Here it is'?[10] Moreover, an oath is not taken with respect to slaves?[11] — Rab said: It means that he demands money: [the vendee claims] the price of an adult slave, whilst [the vendor offers] the value of a child slave; similarly, the value of a large field and that of a small one [are involved].[12] Samuel said: It means that he [the purchaser] claims raiment for an adult slave, and the vendor offers raiment for a child slave;[13] or [the dispute concerns] the sheaves of a large field and those of a small one.

1. **When a man buys an animal, it does not become his even after payment, until he performs *meshikah*. Hence there is no possibility of conflict, since it must be known whether it had calved before or after *meshikah*. But when an exchange is made, as soon as *meshikah* is performed on one animal the complete exchange is affected on both. Hence the dispute could arise with respect to the cow only in the case of an exchange. But in respect of the maidservant the dispute is possible even in the case of a sale, because possession of her is effected by paying the purchase price.**
2. **A narrow path adjoining the open road where slaves, cattle, etc., are sold. Thus they were in neither's possession. The Talmud could have answered that they were standing in the street, but, it is unusual to be in the street for a lengthy time (Tosaf.).**
3. **For when the ownership of an object is in dispute, one may presume that it has not changed hands, unless there is proof to the contrary.**
4. **As in the Mishnah, v. *supra* 3b, and B.K. 38b.**
5. **Since, on his view, the first part of the Mishnah refers to such.**
6. **I.e., they do not divide.**
7. **As it is superfluous to state two identical clauses.**
8. **Since they were both positive.**
9. **V. *supra* pp. 19 and 563, n. 1.**
10. **Helak, v. *supra* p. 13. n. 5. When the vendor admits the sale of the child, he offers it immediately to the claimant, and there is a view that in such case there is no oath.**
11. **V. Shebu. 42b.**
12. **Hence all three difficulties are removed: with respect to the second, the vendor admits that he owes the value of a child slave, etc., but does not immediately offer it.**
13. **Where the purchase of raiment for a slave is in dispute.**

Baba Mezi'a 100b

[You say] 'Raiment', but [surely] what he claims he does not admit, and what he admits

he does not claim! — Even as R. papa said [below], when it is on the roll; so here too, when it is on the roll.[1] Now, this presented a difficulty to R. Hoshaia:[2] does then the Mishnah state 'raiment'? It states 'a slave'! — But, said R. Hoshaia, it means, e.g., that he claimed a slave together with his raiment, or a field with its sheaves. But still the difficulty remains: With respect to raiment, what he claims he does not admit; and what he admits he does not claim! — Said R. papa: It refers to cloth on the roll.[3] This presented a difficulty to R. Shesheth: Does he [the Tanna] wish to teach us that [movable property] binds [immovable]? But we have already learnt it: Unsecured chattels bind secured property in respect of an oath![4] — But, said R. Shesheth, [the Tanna of the Mishnah] is R. Meir, who maintained that a slave ranks as movable chattels. But the difficulty still remains: what he claims he does not admit; what he admits he does not claim. — He [the Tanna] is of R. Gamaliel's opinion. For we learnt: If he [the plaintiff] claims wheat, whilst the other [the defendant] admits [owing] barley, he is free [from an oath]. R. Gamaliel held him liable. Yet even so, it is still a case of 'Here it is!' — Said Raba: In the case of the slave [which he admitted], he [the seller] had cut off his hand; and in the case of the field, he had dug in its pits, ditches, and cavities.[5]

But are we not informed that R. Meir holds the reverse? For we learnt: If a man took by violence a cow, and it aged, or slaves, and they aged, he must pay their value at the time of the robbery.[6] R. Meir said: In the case of slaves he can say to him [the owner], 'Behold, here is yours before you!'[7] — That is no difficulty. It is as Rabbah b. Abbuha[8] reversed [the Mishnah] and read: R. Meir said: He must pay their value at the time of the robbery; but the Sages ruled: In the case of slaves he can say to him [the owner], 'Behold, here is yours before you.' But [there is this difficulty]: How do we know that R. Meir holds that real estate is equated to slaves: just as an oath is taken for slaves, so also is an oath taken for real estate? Perhaps [in his opinion] there is an oath only in respect of slaves, but not for immovable property?[9] — You cannot think so. For it has been taught: If a cow is exchanged for an ass, and it calved; likewise, if one sells his maidservant, and she bore a child, one says, 'It happened in my possession,' and the other is silent, the former acquires it. If each says, 'I do not know,' they divide; if each pleads, 'It happened in my ownership,' the vendor must swear that she bore whilst in his possession, because all who take an oath in accordance with Scriptural law, swear to be freed from liability:[10] this is R. Meir's view. But the Sages rule: No oath is taken in respect of slaves or lands.[11] Surely then it follows that in R. Meir's opinion an oath is taken [even on lands]. But how is this to be inferred? perhaps they argue by analogy:[12] Just as you admit to us in the matter of lands [that there is no oath], so should you admit in respect to slaves? The proof[13] is this: We learnt, R. Meir said: Some things are similar to real estate, yet do not rank as such; but the Sages dispute it. E.g., [If A claims from B,] 'I delivered you ten laden vines,' and B replies, 'There were only five,' — R. Meir makes him liable; but the Sages say: That which is attached to the soil is as the soil.[14] Whereon R. Jose son of R. Hanina said: They differ with respect to grapes which are ready for vintaging: one Master [sc. R. Meir] regards them as already vintaged;[15] whilst the other maintains that they are not as already vintaged! But after all, it must be explained as R. Hoshaia:[16] and as to your difficulty, '[does the Tanna wish to teach that movable property] binds [immovable]?' It is necessary. For I might think that a slave's garment is as the slave himself; likewise the sheaves of a field are as the field itself:[17] therefore we are taught [otherwise].

'If each says, "I do not know," they must divide.'[18] With whom does this agree? With Symmachus, who ruled: When the ownership of property is in doubt, it is divided. Then consider the latter clause: 'If each pleads, "It happened in my ownership," the vendor must swear that she bore whilst in his

possession.' Now according to Rabbah son of R. Huna, who maintained: Indeed, Symmachus gave his ruling even where both make positive statements; why should he swear? Surely they ought to divide! — Symmachus admits [that one must swear] when an oath is required by Biblical law; [the circumstances being] that he [the owner] had cut off her [sc. the slave's] hand, and in accordance with Raba's explanation.[19]

MISHNAH. IF ONE SELLS HIS OLIVE TREES FOR THEIR WOOD,[20] AND THEY YIELD LESS THAN A QUARTER *LOG* [OF] OIL] PER *SE'AH* [OF OLIVES],[21] IT IS THE PURCHASER'S.[22] BUT IF THEY PRODUCED [OLIVES YIELDING] A QUARTER *LOG* [OF OIL] PER *SE'AH*, ONE [THE PURCHASER] CLAIMING, 'MY OLIVE TREES PRODUCED THEM;' AND THE OTHER [THE VENDOR] MAINTAINING, 'IT WAS MY LAND WHICH CAUSED THE YIELD,' THEY MUST DIVIDE. IF THE RIVER SWEPT AWAY A MAN'S OLIVE TREES AND DEPOSITED THEM IN HIS NEIGHBOUR'S FIELD [AND THERE THEY PRODUCED OLIVES] [AND] ONE MAINTAINS, 'MY OLIVE TREES PRODUCED THEM,' WHEREAS THE OTHER CLAIMS, 'MY LAND CAUSED THE YIELD,' THEY DIVIDE.

GEMARA. How is it meant? If he stipulated, 'Cut [them] down immediately,' then even [if the oil yield is] less than a quarter *log* [per *se'ah*], it should belong to the landowner; whilst if he stipulated, 'Cut [them] down whenever you desire,' even when it is a quarter *log*, it ought to be the purchaser's? — It is necessary to state this only when he made no stipulation: [in which case] when there is less than a quarter *log*, one is not particular;[23] when [however] there is a quarter *log*, people are particular. R. Simeon b. Pazzi[24] said: The quarter *log* that was stated

1. I.e., not the actual garment is in dispute, but the amount of cloth; one says it was for an adult slave; the other, that it was for a child slave.
2. [Read with MSS.: Rab Hoshaia; Cur. edd.: R(abbi) Hoshaia.]
3. Though no oath is administered on real estate and slaves, yet where an oath is due on account of movable property, one is administered for the former too (v. p. 11, n. 3).
4. 'Unsecured' and 'secured' refer to movable and immovable property respectively. V. preceding note.
5. Subsequent to the transaction, so that he does not offer immediately all he has admitted, as he would have to make the damage good.
6. B.K. 95a. Because when he committed the theft, they passed into his possession, and there and then the liability for repayment fell upon him.
7. Because slaves, like real estate, cannot be stolen, i.e., they never quit the original ownership through theft, and are considered to be, and grow old, in the legal possession of their rightful owner. This contradicts what has been stated, namely, that R. Meir treats slaves as movables.
8. [Read with MSS.: Rab; v. B.K. 96b.]
9. Whilst our Mishnah states that an oath is administered when it is disputed which field was sold, so that our Mishnah cannot after all represent the view of R. Meir.
10. I.e., the plaintiff is not permitted to swear to sustain his claim, but only the defendant, in order to refute it.
11. B.K. 96b.
12. Lit., 'perhaps they say to him, "just as".'
13. That R. Meir agrees that there is no oath for lands.
14. Shebu. 44b.
15. Hence he says, they are similar to land, in that they are attached thereto, yet do not rank as such, being regarded as already vintaged hence detached, and subject to the laws of oaths. — This shows that for land itself there is no oath, in R. Meir's opinion.
16. [V. *supra* p. 571, n. 6. The reading, 'Rab Hoshaia' is confirmed here by MSS.M.]
17. Hence there should be no oath.
18. The quotation is from the Baraitha, not the Mishnah, as is seen from the second clause quoted, which is absent in the Mishnah.
19. *Supra* p. 572.
20. I.e., that the purchaser should cut them down for wood.
21. I.e., they were left in the soil for some time, and produced very inferior olives, in a *se'ah* of which there was less than a quarter *log* of oil.
22. Lit., 'they belong to the owner of the olive trees.'
23. About the benefit derived by the purchaser from his soil.
24. *Var. lec*.: b. Lakish.

Baba Mezi'a 101a

is exclusive of expenses.[1]

IF THE RIVER SWEPT AWAY A MAN'S OLIVE-TREES. 'Ulla said in the name of Resh Lakish: This was stated only if they were uprooted together with their clods of earth, and after three years [of having been swept away]; but within the three years, it all belongs to the owner of the olive trees, for he can say to him [the landowner]: 'Had you planted them, could you have eaten of them within three years?'[2] But cannot he answer: 'Had I planted them, I would have enjoyed the whole of their usufruct after three years; whereas now you share it with me?'[3] But, when Rabin came,[4] he said in the name of Resh Lakish: This holds good only if they were uprooted together with their clods, and within three years; but after three years, it all belongs to the field-owner. For he can say to him, 'Had I planted them myself, would I not have enjoyed their entire usufruct after three years?'[5] But let him answer: 'Had you planted them, you could not have enjoyed anything at all within three years, whereas as it is, you share half with me!' — Because he can retort, 'Had I planted, they would have been small, and I could have sown beets and vegetables under them.'[6]

A Tanna taught: If he said, 'I wish to take my olive trees,' he is not heeded. Why? — R. Johanan said: That Palestine may be well cultivated. Said R. Jeremiah: For such an answer a master is necessary.[7]

We learnt elsewhere: R. Judah said: If one leases a field of his father's from a heathen,[8] he must tithe [all the crops] and then give him [the heathen] his share.[9] Now, the scholars understood it thus: What is meant by 'a field of his fathers' is Palestine. And the reason it is called the 'field of his fathers' is because it is a field of Abraham, Isaac and Jacob. And he [R. Judah] holds: A heathen cannot acquire a title in Palestine to free [the crops] from tithes; also, one who leases [on a percentage] is as a renter [at a fixed rent]: just as a renter must tithe crops and pay him, whether the field produces or not,[10] because it is as repaying a debt: so also, he who leases a field is as though he were settling a debt: and therefore must first tithe the crops and then pay him. R. Kahana said to R. Papi — others state, to R. Zebid: But what of [the Baraitha] that was taught: R. Judah said: If one leases a field of his fathers from a heathen oppressor,[11] he must tithe [the crops] and pay him [his percentage] — why particularly from an oppressor? Does not the same hold good even if he is not an oppressor? — But in truth, a heathen can acquire a title in Palestine to free [crops] from tithes, whilst a lessee is not as a renter, and 'a field of his fathers' is meant quite literally.[12] But him [the son] the Rabbis penalised,[13] because since it is more precious to him [than to others], he will go and lease it [on such disadvantageous terms]; whereas others would not [accept it on such terms].[14] But why did the Rabbis penalize him? — R. Johanan said: In order that it might come absolutely into his possession.[15] Said R. Jeremiah: For such an answer a master is needed. It has been stated: If one enters his neighbor's field and plants it without permission, Rab said: An assessment is made, and he is at a disadvantage.[16] Samuel said: We estimate what one would pay to have such a field planted. Said R. Papa: There is no conflict. The latter [Samuel] refers to a field suitable for planting;[17] the former [Rab] to a field unsuitable for planting.

Now, this ruling of Rab was not explicitly stated, but inferred from a general ruling. For a man came before Rab.[18] 'Go and assess it for him,' said he.[19] He demurred, 'But I do not desire it.'[20] Said he to him, 'Go and assess it for him, and he shall be at a disadvantage.' 'But I do not desire it,' he reiterated. Subsequently he saw that he had fenced and was guarding it, whereupon he said to him, 'You have revealed your mind that you desire it. Go and assess it for him, and he [the planter] shall be at an advantage.'

It has been stated: If one enters his neighbor's ruins and rebuilds them without permission, and then says to him, 'I want my timber and stones back' — R. Nahman said: His request is granted. R. Shesheth said: His request is not granted.

An objection is raised: R. Simeon b. Gamaliel said: Beth Shammai maintain, His request is granted; Beth Hillel hold, It is not granted. Shall we then say that R. Nahman ruled in accordance with Beth Shammai![21] — He agrees with the following Tanna. For it has been taught: His request is acceded to: this is the opinion of R. Simeon b. Eleazar. R. Simeon b. Gamaliel said: Beth Shammai maintain, His request is granted; Beth Hillel, It is not.[22]

What is our decision on the matter? — R. Jacob said in R. Johanan's name:

1. I.e., after deducting the cost of gathering and pressing, there remains the value of a quarter *log* of oil per *se'ah* of olives.
2. The fruit of a tree may not be eaten within the first three years of planting (v. Lev. XIX, 23). Further, if an old tree is swept away together with the clods of earth in which it grew, and deposited elsewhere and takes root; if these clods were sufficient for its subsequent growth, it still ranks as an old tree, and the three-year prohibition does not apply (v. 'Orl. I, 3); otherwise it does, the trees being regarded as newly planted. Hence Resh Lakish observes on the Mishnah: Only when the trees are swept away with their clods, and three years have passed, is the field-owner entitled to half; because had he planted them, when first swept away, with their clods, the three year prohibition would already have ended, and he can consequently claim that the tree-owner benefits from his soil. But within three years he has no claim at all, since it is only in virtue of their own clods that the fruit is permissible, and so no benefit at all is derived from the new soil.
3. And in virtue of this, he is entitled to half within three years too.
4. From Palestine to Babylon.
5. Whilst the cost of buying young olive trees for planting is trifling, and insufficient to justify half of the present usufruct going to the owner of the olive trees (Tosaf.). — The same applies above.
6. 'But with your olive trees being large, with spreading roots, I lost the entire use of the soil.'
7. Without R. Johanan one would not have conjectured it.
8. On a fixed percentage.
9. Dem. VI, 2.
10. The rent being paid in crops.
11. [[H], As a result of the Roman War Vespasian had declared fields in Judea his private property and distributed them among his soldiers from whom the original owners had finally to lease them. V. Buchler, Der gal. 'Amh. p. 35, and Klein, S. NB p. 12ff.]
12. And it means that the Gentile had stolen it from his ancestral field.
13. That he must tithe the whole field, and then give the Gentile his percentage of the whole harvest, as before tithing.
14. Therefore, others were not required to tithe the whole.
15. Finding the terms so onerous, he will be induced to buy it back.
16. He is paid for the cost of planting or for the improvements, whichever is less.
17. Trees, rather than for sowing.
18. In a case similar to the foregoing.
19. I.e., go and assess the value of the trees he planted.
20. 'I wish to grow cereals, not plant trees.'
21. It is a general principle that in every dispute between Beth Shammai and Beth Hillel, the *halachah* is as the latter.
22. But according to R. Simeon b. Eleazar there is no dispute, and R. Nahman agrees with him.

Baba Mezi'a 101b

In the case of a house, his demands are ignored; in the case of a field,[1] they are granted. Why so in the case of a field? — For the sake of the cultivation of Palestine. Others say: Because of the impoverishment of the soil.[2] Wherein do they differ?[3] — In respect to the Diaspora.[4]

***MISHNAH*. IF ONE RENTS A HOUSE TO HIS NEIGHBOUR IN WINTER, HE CANNOT EVICT HIM FROM THE FESTIVAL[5] UNTIL PASSOVER. IN SUMMER, [HE CANNOT EVICT HIM FOR] THIRTY DAYS. IN LARGE CITIES, WHETHER IN SUMMER OR IN WINTER, [THE PERIOD IS] TWELVE MONTHS. BUT WITH RESPECT TO SHOPS, WHETHER IN TOWNS OR IN LARGE CITIES,**

[HE NEED NOT QUIT FOR] TWELVE MONTHS.[6] R. SIMEON B. GAMALIEL SAID: A BAKER'S SHOP AND A DYER'S SHOP ARE FOR THREE YEARS.

***GEMARA*. Why is it different in winter? Because when one rents a house in winter it is for the whole of the winter![7] Then does not the same apply to summer, for when one rents a house it is for the whole summer? — But as for winter, this is the reason, because houses are not available for renting.[8] Then consider the second clause: BUT IN LARGE CITIES, WHETHER IN SUMMER OR IN WINTER, [THE PERIOD IS] TWELVE MONTHS. Hence, if this period expires in winter, he can evict him — but why, seeing that no house is available for renting? — Said Rab Judah: This refers to the notice that must be given. And this is what it [the Mishnah] teaches: If one rents his house to his neighbor for an unspecified period, he cannot evict him in winter [if the year expires then] between the Festival and Passover, unless he gave him notice [in the summer] thirty days before. It has been taught likewise: When they [the Sages] said thirty days or twelve months, it was only in respect of notice. And just as the landlord must inform him [that he will not renew the lease], so must the tenant give notice [that he will not re-rent it]. For otherwise he can say to him, 'Had you notified me, I would have taken the trouble to find a good tenant for it.'[9]**

R. Assi said: If it [the lease] entered one day into winter, he cannot evict him from the Festival until Passover.[10] But we learnt: THIRTY DAYS! — He means thus: If one of these thirty days fell in winter, he cannot evict him from the Festival until Passover.[11] R. Huna said: Yet if he wishes to increase the rent, he can do so.[12] R. Nahman demurred: This is like holding him by the secrets to force him to give up his cloak![13] But this [that he can raise the rent] holds good only if house rents advanced [in general].

Now, it is obvious that if his own [sc. the landlord's] house fell in, [and no notice to quit had been given,] he can say to him, 'You are no better than I.'[14] If he sold, rented, or gifted it [to another], he [the tenant] can say to him [the new owner], 'You are no better than the man whence you derive your rights.'[15] If he appointed it a home for his son after marriage,[16] we consider [the matter], if it were possible for him [the landlord] to have informed him [that it would be needed for his son], then he should have informed him.[17] But if not, he can say to him, 'You are no better than I.'[18]

A man once bought a boat-load of wine. Having nowhere to store it, he asked a certain woman, 'Have you a place for renting?' She replied, 'No.' So he went and married her, whereupon she gave him a place for storage. He then went home, wrote a divorce, and sent it to her. So she went, hired carriers against that itself,[19] and had it put out in the road. Said R. Huna, son of R. Joshua: As he did, so shall be done unto him, his requital shall recoil upon his head. Not only if it is not a courtyard that stands to be rented; but even if it is a courtyard that is for renting, she can say to him, 'To anybody else I am willing to rent it, but not to you, because you appear to me like a lion in ambush.'

R. SIMON B. GAMALIEL SAID: A BAKER'S SHOP AND A DYER'S SHOP ARE FOR THREE YEARS. It has been taught: Because they give very much credit.

***MISHNAH*. IF ONE RENTS A HOUSE TO HIS NEIGHBOUR, THE LANDLORD MUST PROVIDE THE DOOR, DOOR-BOLT, LOCK, AND EVERYTHING WHICH REQUIRES A SKILLED WORKER. BUT WHAT DOES NOT REQUIRE A SKILLED WORKER MUST BE DONE BY THE TENANT. THE DUNG BELONGS TO THE LANDLORD, AND THE TENANT IS ENTITLED ONLY TO THAT WHICH ISSUES FROM THE OVEN OR THE POT RANGE.[20]**

***GEMARA*. Our Rabbis taught: If a man rents a house to his neighbor, the landlord must**

erect doors, make the windows, strengthen the ceiling, and support the joists.[21] The tenant must provide the ladder [for ascending to the loft] parapet,[22] fix a gutterspout,[23] and plaster his roof.

R. Shesheth was asked: Who must provide the *mezuzah*?[24] Is then the *mezuzah* a problem? Did not R. Mesharsheya Say: The obligation of the *mezuzah* lies upon the inhabitant? But [the question is,] who must provide the place for the *mezuzah*?[25] — Said R. Shesheth to them: We have learnt it: BUT WHAT DOES NOT REQUIRE A SKILLED WORKER, MUST BE DONE BY THE TENANT; and this too requires no skill, [for] it can be [placed]

1. I.e., if one plants his neighbor's field without permission, and then desires to remove the plants.
2. The plants, in drawing their sustenance from the soil, have impoverished it, and the owner of the field is entitled to some compensation.
3. These two answers.
4. The first reason does not hold good there, and so his request is acceded to; the second does, hence it is ignored.
5. 'The Festival', without a qualifying epithet, always means the Festival of Tabernacles.
6. Because the shopkeeper gives credit, and he may lose it if he moves frequently.
7. It being assumed at this stage that 'in winter' means 'for winter.'
8. I.e., 'in winter' and 'in summer' are meant literally, as the time of renting, the period being unspecified.
9. Therefore he must pay him damages.
10. This was assumed to mean, if the year expired even one day in winter, he cannot be evicted the whole winter, irrespective of any notice given.
11. I.e., the whole of the thirty days' notice must fall in summer.
12. Though he cannot evict him without due notice, he can nevertheless raise the rent at the expiration of the year without it.
13. To permit him to raise the rent is the same as permitting him to evict.
14. The tenant must quit the house at the end of the year, because the fact that no houses are available operates now just as strongly in the landlord's favor, for he too could not have known that his house would fall in.
15. Lit., 'come'. I.e., just as he could not have evicted me, so you cannot either.
16. So Rashi; Jast.: he gave it to his son as a bridal room,
17. Otherwise, he cannot evict him.
18. So he must quit.
19. To pay them out of that very wine,
20. I.e., the ashes, which, like the dung, were valuable as manure. This is discussed in the Gemara.
21. If these became damaged.
22. Round the roof of the house; v. Deut. XXII, 8.
23. Rashi: a board that was placed near the eaves to carry off the water. Jast.: a detachable tube for that purpose. It was a simple affair, for the fixing of which no skill was required.
24. V. Glos.
25. It was fixed on the doorpost, in which, if of stone, a cavity was made to contain it. Now, who must make this cavity?

Baba Mezi'a 102a

in a woodentube.[1]

Our Rabbis taught: If one rents a house to his neighbor, the tenant must provide a *mezuzah*. But when he quits it, he must not take it with him, excepting if it be leased from a Gentile, in which case he must remove it when he quits. And it once happened that a man took it away with him, and he lost[2] his wife and two children. A story is quoted in contradiction![3] — Said R. Shesheth: It refers to the first clause.[4]

THE DUNG BELONGS TO THE LANDLORD, AND THE TENANT IS ENTITLED ONLY TO THAT WHICH ISSUES FROM THE OVEN OR THE POT RANGE. To what does this refer? Shall we say, to a courtyard which was rented to the tenant, and to oxen belonging to the tenant, then why is it [the dung] the landlord's? But if a courtyard which was not leased to the tenant,[5] and the landlord's oxen are meant, is it not obvious? — It is necessary to teach this only in respect of a courtyard belonging to the landlord and oxen that had strayed thither from elsewhere.[6] Now, this supports R. Jose son of R. Hanina, who said: A man's courtyard affects a title on his behalf even without his knowledge.[7]

An objection is raised: If a man declared, 'Any lost property that may enter therein to-day, let my courtyard effect possession thereof on my behalf,' his declaration is valueless. Now if R. Jose son of R. Hanina's ruling, that a man's courtyard affects a title on his behalf even without his knowledge, is correct, why is his declaration valueless? — The reference here is to an unguarded courtyard.[8] If so, consider the second clause: If a rumor was spread in town that he had found something,[9] his declaration holds good. Now if it is an unguarded courtyard, what if such a rumor did spread? — Since a rumor was spread, people keep aloof from it [in recognition of his ownership], and so it becomes as a guarded courtyard.

An objection is raised: The manure [i.e., the ashes] which comes forth from the oven and the pot-range, and that which is caught from the air,[10] belong to him [the tenant]; but that of the stable and the courtyard, to the landlord.[11] Now if R. Jose son of R. Hanina's dictum is correct, [viz.,] that a man's courtyard effects a title for him even without his knowledge, then when he [the tenant] catches it up from the air, why does it belong to him? Is it not the air of his [the landlord's] courtyard?[12] — Abaye answered: It means that he fastened a utensil to the body of the cow.[13] Raba answered: [An object in] the air, in which it is not destined to come to rest, is not regarded as at rest.[14] But does Raba regard this as certain? Did he not propound: What if one threw a purse by one door and it issued from another — is [an object in] the air, in which it is not destined to come to rest, regarded as at rest, or not?[15] — In that case, there is nothing whatsoever to stop it;[16] but here a utensil is interposed.

'But that of the stable and the courtyard [belongs] to the landlord.' Need both be taught?[17] — Abaye said: It means thus: But that of the stable in the courtyard belongs to the landlord.[18] Said R. Ashi: From this it follows that he who rents his courtyard in general terms does not rent the stable therein.

An objection is raised: [Wild] doves of the dovecote, and doves of the loft,[19] are subject to the laws of sending away,[20] and are forbidden as robbery, [but only] for the sake of peace.[21] Now if R. Jose son of R. Hanina's dictum, that a man's courtyard effects a title on his behalf without his knowledge, is correct, then apply here the verse, *If a bird's nest* chance to be *before thee*,[22] excluding that which is [always] at thy disposal![23] — Raba explained: As for the egg, when the greater part of it has issued [from the body of the fowl], it is subject to the law of sending away,[24] whilst he [the owner of the court] does not acquire it until it falls into the courtyard; and when it is stated, 'They are subject to the law of sending away,' [it means] before it falls into the court. If so, why are they forbidden as robbery?[25] [That refers] to the dam. Alternatively it may refer to the eggs, after all: but when the greater part thereof has issued, his intention is set thereon.[26] But now that Rab Judah said in Rab's name: The eggs must not be taken as long as the dam is sitting upon them, for it is written, *But thou shalt in any wise let the dam go* [first, and only then] *take the young to thee*,[27] you may say that it holds good even if it [the egg] fell into his courtyard: [nevertheless it is subject to the law of sending away, because] wherever he himself might acquire it, his courtyard acquires it for him; but where he himself might not acquire it,[28] his courtyard cannot acquire it for him either. If so, are they forbidden as robbery [only] for the sake of peace? If he [the stranger] sends the dam away, it is real robbery;[29] whilst if not, she is to be sent away![30] — This refers to a minor, who is not obliged to send her away.[31] But is a minor subject to provisions enacted for the sake of peace?[32] — It means thus: The father of the minor must return them for the sake of peace.

MISHNAH. IF ONE RENTS A HOUSE TO HIS FELLOW FOR A YEAR, AND THE YEAR WAS INTERCALATED,[33] THE INTERCALATION IS IN THE TENANT'S FAVOUR.[34] IF HE LET IT TO HIM BY THE MONTH, AND THE YEAR

WAS INTERCALATED, THE INTERCALATION IS IN THE OWNER'S FAVOUR.[35] IT HAPPENED IN SEPPHORIS THAT ONE RENTED A BATHHOUSE FROM HIS NEIGHBOUR FOR TWELVE GOLD *DENARII* PER ANNUM, AT A GOLD *DENAR* PER MONTH;

1. Lit., 'the tube of a reed.' And attached to the doorpost; i.e., it is not essential to have a cavity at all.
2. Lit., 'buried'.
3. Assuming that it referred to a Gentile landlord.
4. Where he had rented it from an Israelite.
5. I.e., he had rented the house only.
6. And it may be assumed that the owner of the oxen renounces his rights to the dung, and so the courtyard gives the landlord a title thereto.
7. V. *supra* 11a. Just as here, though the landlord is ignorant that dung is being deposited in his courtyard, it immediately becomes his.
8. Which cannot effect possession; v. *supra loc. cit*.
9. E.g., that a hind with a broken leg had entered his field and could go no further, or that the river's overflow had deposited fish in his land.
10. I.e., if the tenant placed a utensil to catch the manure as it falls, before it reaches the ground.
11. This was understood to refer to a courtyard not rented to the tenant.
12. I.e., before it even falls into the tenant's utensil, it must have entered the air of the landlord, and is therefore his.
13. So that the dung is immediately received by it, without going through the air at all.
14. The air above one's ground is accounted as the ground itself, in respect of an object that may enter it, only if it will eventually come to rest on that ground. Here, however, though the dung passes through the air of the landlord's courtyard, it will not come to rest there on account of the tenant's utensils, and therefore the air does not affect possession for him.
15. V. *supra* 12a.
16. From coming to rest — excepting, of course, its own momentum.
17. Surely one is sufficient, since the same principle operates in both cases.
18. Even if the courtyard is rented to the tenant.
19. In both cases they seek their food abroad, but come to nest in the dovecote or the loft.
20. I.e., when they are sitting on eggs, one must not take both them and the eggs, but must send the dam away, Deut. XXII, 6f.
21. I.e., strictly speaking, they are ownerless, being semi-wild; nevertheless, for the sake of peace, the Rabbis recognized the title of the owner of the dovecote, and so another must not take them.
22. Deut. XXII, 6.
23. I.e., the law applies only to wild doves, under no ownership, but not when they are thine and in thy courtyard.
24. In the case of a wild bird, if one wished to take the egg at that moment, he would have to send the dam away.
25. Since the courtyard has not yet effected possession for him.
26. Therefore, though in strict law they are not yet his, for the sake of peace a stranger may not take them.
27. Ibid. 'The young' is understood to mean the eggs too.
28. Since the dam is sitting upon it.
29. Since, on the dam being sent away, the eggs immediately become the property of the courtyard owner.
30. Before the eggs can be taken, so that they are forbidden in any case.
31. Not being of an age when precepts are incumbent upon him.
32. Surely not!
33. The Jewish year is partly lunar, partly solar. I.e., it consists of twelve months, which give 355 or 356 days. But at the same time, the Festivals must fall in the proper seasons, Passover in the vernal equinox and Tabernacles in the autumnal equinox. Since this depends on the solar year, which consists of 365 days, the deficiency was made good by the addition periodically of an extra month to the year; v. Sanh. 11a.
34. He cannot be charged rent for the extra month.
35. Though a lease for an unspecified period is for a year, the lessee must pay rent for the extra month.

Baba Mezi'a 102b

AND THE MATTER CAME BEFORE RABBAN SIMEON B. GAMALIEL AND R. JOSE, WHO ORDERED THEM TO DIVIDE THE INTERCALATED MONTH.

***GEMARA*. A story is quoted in contradiction [of the ruling given]! — The text is defective, and is thus meant: But if he said to him, '[I**

let it to you] for twelve golden *denarii* per annum, at a golden *denar* per month,' they must share. And IT HAPPENED IN SEPPHORIS THAT ONE RENTED A BATHHOUSE FROM HIS NEIGHBOUR FOR TWELVE GOLD *DENARII* PER ANNUM, AT A GOLD *DENAR* PER MONTH, AND THE MATTER CAME BEFORE RABBAN SIMEON B. GAMALIEL AND R. JOSE, WHO ORDERED THEM TO DIVIDE THE INTERCALATED MONTH.

Rab said: Were I there, I would have awarded the whole of it to the owner. Now, what does this teach us — that the last expression alone is regarded?[1] But Rab has already said it once. For R. Huna said in the name of the college of Rab:[2] [If the agreed price is] an istera, a hundred *ma'ahs*, then a hundred *ma'ahs* [are due];[3] if a hundred *ma'ahs*, an istera [are arranged], an istera [is meant]?[4] — If from there, I might have thought that [the second term] defines the first;[5] therefore we are informed otherwise.[6]

Samuel said: We refer to a case where he [the landlord] comes [to claim rent] in the middle of the month. But if he comes at the beginning, it is all the landlord's; at the end, it is all the tenant's.[7] Now, did Samuel reject the principle that the last term only is regarded? But Rab and Samuel both said: [If A says to B,] 'I sell you a *kor* for thirty [sela'im],' he can retract even at the last *se'ah*.[8] [But if he says,] 'I sell you a *kor* for thirty, a *sela'* per *se'ah*,' then as he [the vendee] takes each, he acquires it![9] — The reason there is that he has taken possession;[10] so here too, has he not taken possession?[11]

But R. Nahman ruled: Land remains in the presumptive possession of its owner.[12] Now, what does this teach us — that the last term is decisive? But that is Rab's teaching![13] [He informs us that it is thus] even if the terms were reversed.[14]

R. Jannai was asked: If the tenant maintains, 'I have paid [rent],' and the landlord pleads, 'I have not received [it],' upon whom rests the onus of proof? But when [does the dispute take place]? If within the term, we have learnt it; if after, we have [likewise] learnt it! For we learnt: If the father died within the thirty days, the presumption is that he [the firstborn] has not been redeemed, unless proof is adduced to the contrary; after thirty days, he is presumed to have been redeemed, unless told that he was not![15] The question is only [when the dispute arises] on the day that completes the term: does one pay on the day which completes the term, or not? — R. Jannai replied: We have learnt it:

1. I.e., if an agreement is made, of which the two terms are contradictory, as here, the latter alone counts.
2. Though the expression be Rab may simply mean 'the schoolmen', without any particular reference to Rab (cf. Weiss, Dor. III. 141, and Bacher, Ag. der Bab. Am. 2), it is here understood as the college of Rab, the dictum being assigned actually to him.
3. An istera is half a *zuz* = 96 Perutahs or *ma'ahs*.
4. Which shows that in all cases the second expression is decisive.
5. I.e., an istera, for which I will accept 100 light-weight *ma'ahs*, so that they are only worth an istera. In that case, the second term is binding because it defines the first.
6. That the two terms are indeed contradictory, both there and here, and that the second is decisive.
7. Reverting to the Mishnah, which states that R. Simeon b. Gamaliel and R. Jose ruled that the intercalated month is divided, he applies to it the principle that possession establishes a title. Hence, if the landlord comes to demand the rent for the extra month in the middle of the month, the tenant retains the half month which he has already enjoyed, but must pay for the second half, since the house undoubtedly belongs to the landlord, whilst the ownership of it for the next half month is disputed. The rest of Samuel's dictum is based on the same principle.
8. If the vendee begins to carry it away, the possession is not effected until *meshikah* is performed upon the whole, which ranks as a single purchase, and even when only a *se'ah* remains, both parties can cancel the bargain.
9. Each *se'ah* counting as a separate transaction, which is completed when *meshikah* is performed thereon, v. B.B. 105a. This shows that the second expression, 'a *sela'* per *se'ah*,'

is the decisive one, not the first, and so contradicts Samuel's previous dictim.
10. Actually, it is doubtful whether the first or the last term is binding, and on that account the vendee acquires each *se'ah* as he takes it, since he is then in possession.
11. Therefore the tenant does not pay for what he has already enjoyed.
12. Hence the intercalated month belongs to the landowner, and he may demand rent even at the end of the month.
13. Why then should R. Nahman state it?
14. Because it does not depend on order, but on presumption.
15. Bek. 49a. This refers to the redemption of the firstborn. Cf. Num. XVIII, 16: And those that are to be redeemed from a month old shalt thou redeem. Hence, if the father died within the month, it is assumed that he had not redeemed the child before the obligation matured; on the other hand, if he died after, it is assumed that he had redeemed him at the proper time. Now, rent is payable at the end of the year, and the same principle holds good.

Baba Mezi'a 103a

A hired laborer [engaged for a period], on the expiration of his term swears and is paid.[1] Thus, it is only the employee whom the Rabbis subjected to an oath, because the employer is occupied with his laborers. But here, the tenant is believed on oath.[2]

Raba said in R. Nahman's name: If one leased a house to his neighbor for ten years, and wrote a deed to that effect [but without dating it,] and then alleged, 'You have held it for five years,' he is believed.[3] Said R. Aha of Difti to Rabina: If so, if A lent B one hundred *zuz* against a bond, and then B said, 'I have repaid you half,' is he also believed?[4] — He replied: What comparison is there? In that case, the purpose of the bond is to ensure repayment. Had he really repaid him, he should have written the fact on it, or obtained a receipt. But here he can say, 'The reason I wrote you a deed was that you should not claim ownership through unbroken possession.'[5]

R. Nahman said: One can borrow [an article] 'in its good state' for ever.[6] Said R. Mari the son of Samuel's daughter:[7] Providing, however, that he formally acquired it from him.[8] R. Mari son of R. Ashi observed: He must return him the handle.[9]

Raba said: If one asks his neighbor, 'Lend me a hoe for hoeing *this* garden,' he may hoe [only] that garden; 'for hoeing a garden,' he may hoe any garden; 'for hoeing gardens', he may hoe all his gardens[10] and return him the handle.

R. Papa said: If one says to his neighbor, 'Lend me this well [for irrigation],' and it falls in, he cannot rebuild it.[11] '[Lend me] a well,' and it falls in, he can rebuild it,[12] [But if he Says: 'Lend me] the place for a well,' he can go on sinking shafts in his land until he chances upon [a water supply]. It is also necessary that he shall have formally acquired it from him.[13]

MISHNAH. IF ONE RENTS A HOUSE TO HIS NEIGHBOUR, AND IT FALLS IN [WITHIN THE PERIOD OF LEASE], HE MUST PROVIDE[14] HIM WITH ANOTHER. IF IT WAS A SMALL ONE, HE CANNOT FURNISH HIM WITH A LARGE ONE, OR VICE VERSA. NOR CAN HE OFFER HIM TWO INSTEAD OF ONE, OR ONE INSTEAD OF TWO. HE MAY NEITHER DIMINISH NOR INCREASE THE NUMBER OF WINDOWS, EXCEPTING BY COMMON AGREEMENT.

GEMARA. What are the circumstances? If he stipulated, 'This house', then if it falls, he is quit [of any further obligation]. Whilst if he said, 'A house,' without specifying which, why cannot he provide two instead of one, or a large house instead of a small? — Said Resh Lakish: It means that he had said to him, 'The house which I let to you is of this length.' If so, why teach it?[15] — But when Rabin came,[16] he said in the name of Resh Lakish: It means that he said, 'I let you a house like this one.' But still [the difficulty remains,] Why state it? — It is necessary to teach it only if it [the house shown as a model] stood on the river bank. I might think, what is meant by 'like this'? One

situated on the river bank.[17] Therefore we are taught [otherwise].

CHAPTER IX

***MISHNAH*. IF ONE LEASES A FIELD FROM HIS NEIGHBOUR,[1] WHERE IT IS THE USAGE TO CUT [THE CROPS], HE MUST CUT; TO UPROOT [THEM], HE MUST UPROOT [THEM]; TO PLOW AFTER IT,[2] HE MUST PLOW AFTER IT. IT IS ALL DETERMINED BY LOCAL CUSTOM. AND JUST AS THEY DIVIDE THE GRAIN.[3] SO THEY ALSO SHARE IN THE STRAW AND STUBBLE. AND JUST AS THEY DIVIDE THE WINE, SO DO THEY SHARE**

1. **Shebu. 45b; *infra* 111a. If there is a dispute between him and the employer on the last day, the latter alleging that he has already paid him, the former swears that he was not paid, and receives his wages. Though it is a general rule that the defendant swears to be free from payment (v. p. 572, n. 6), the Rabbis made an exception in this case, because an employer, busy with his workers, may very easily imagine that he has paid one instead of another.**
2. **As is usually the case, though it is the day on which the term expires.**
3. **On the same principle as R. Nahman's dictum on 102b, q.v.**
4. **Surely not: yet the cases are analogous.**
5. **V, B.B. III, 1. But not to show how long the tenancy had lasted. [According to this interpretation, which follows Rashi, it is assumed that the deed, although in the possession of the tenant, served to give the matter publicity and thus preclude the possibility of the tenant claiming ownership on the strength of undisturbed occupation over a number of years. Tosaf., however, in the name of R. Han., preserves a preferable reading to the effect that the deed was drafted by the tenant in favor of the owner and recorded that he had hired the house for ten years from a certain date at so much per year. After five years the tenant says to the landowner, 'You hold already rent for five years,' whereas the landowner maintains, 'I hold rent for three years only;' in that case the tenant is believed on oath, because the tenant can say to the landowner, 'The reason I wrote you a deed was that I should not claim ownership through unbroken possession.']**
6. **I.e., if the lender states, 'I lend it to you in its good state,' it means 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.**
7. **He was begotten by a Gentile, who turned proselyte by the time of his birth; and is therefore called by his maternal grandfather, not by his own father.**
8. **I.e., had performed an act effecting possession, or, as in this case, a right to the use of an article.**
9. **If the article is broken or damaged and unfit for its purpose, he must return the remains, since it was not a gift but only a loan (Rashi). [Wilna Gaon: He may not repair it and retain it for further use.]**
10. **And we do not say that he may have only two.**
11. **The borrower cannot rebuild and claim that it is lent to him as long as he needs it, since he specified, 'This well,' and it is no longer the same when rebuilt.**
12. **And retain it until he has irrigated all his fields.**
13. **V. note 3.**
14. **Lit., 'set up'.**
15. **It is obvious.**
16. **From Palestine to Babylon.**
17. **I.e., the locality.**
18. **□ Lev. V, 24.**
19. **As the payment of the Fifth is not an essential condition in the process of atonement.**
20. **V. p. 598, n. 12.**
21. **v. p. 598. n. 11.**

Baba Mezi'a 103b

IN THE BRANCHES [CUT FROM THE VINE] AND THE CANES [USED FOR SUPPORTING THE VINES]. AND BOTH SUPPLY THE CANES.[1]

***GEMARA*. It has been taught: Where it is the usage to cut [off the crops], he must not uproot; to uproot, he must not cut. And each can restrain the other [from varying the usual procedure]. 'To cut, he must not uproot:' the one [the lessor] can say. 'I want my field manured with stubble;'[2] and the other may say, 'It is too much labour[3] [to uproot thus]'.[4] 'To uproot, he must not cut.' The one [the lessor] can say, 'I wish my field to be cleared [of stubble];' and the other, 'I need the stubble.'[5] 'And each can restrain the other [from varying the usual procedure].' Why state this?[6] — This gives the reason.**

[Thus:] Why may he not uproot when the usage is to cut, and vice versa? Because each can restrain the other.

TO PLOW AFTER IT, HE MUST PLOW AFTER IT. Is this not obvious? — It is necessary only for a place where weeding is not done [whilst the corn is standing]; and he [the lessee] went and weeded it. I might think that he can plead, 'I weeded it in order to be exempt from [subsequent] plowing.' Therefore we are taught that he should have distinctly stated this [beforehand].

IT IS ALL DETERMINED BY LOCAL CUSTOM. What does ALL include?[7] — It includes that which our Rabbis taught: Where it is customary to lease the trees together with the field, they are leased;[8] where it is not customary to do so, they are not leased. 'Where it is customary to lease the trees together with the field, they are leased.' But is this not obvious? — It must be taught only where [fields] are generally leased for a third [share to be the owner's]; and he went and leased it for a quarter share. I might think that he can plead. 'I gave it to you at a lower rental on the understanding that you would receive no share of the trees.' Therefore we are informed that he should have distinctly stated this [beforehand].

'Where it is not customary to do so, they are not leased.' But is it not obvious? — It must be taught only where it is generally rented for a quarter share, and he [the lessee] went and rented it for a third [to be received by the lessor]. I might think that he can plead. 'I offered you a higher rental on the understanding that I would receive a share of the trees.' We are therefore informed that he should have distinctly stated this.

JUST AS THEY DIVIDE THE GRAIN, SO THEY ALSO SHARE IN THE STRAW AND STUBBLE. R. Joseph said: In Babylon it is the practice not to give [a share of the] straw to the *aris*.[9] What is the practical bearing of this? — That if there is a person who does give, it is his generosity, and he creates no precedent.[10]

R. Joseph said: The lowest, the middle and the uppermost layers[11] and the thorn stakes[12] must be furnished by the landowner; the shrubs themselves, by the tenant. This is the general principle: whatever is essential for guarding the boundary line [of the field] must be provided by the landlord; that which is required for additional protection, by the *aris*.

R. Joseph said: The mattock, shovel, [irrigation] bucket and hose must be furnished by the lessor; whilst the tenant must cut the dykes.[13]

AND JUST AS THEY DIVIDE THE WINE, SO DO THEY SHARE IN THE BRANCHES AND CANES. What is the purpose of canes? The School of R. Jannai said: [The reference is to] smooth canes, used for propping up the vines.

AND BOTH SUPPLY THE CANES. Why state this?[14] — This gives a reason. Why do they both share the canes? Because they BOTH SUPPLY THE CANES.

MISHNAH. IF ONE LEASES A FIELD FROM HIS NEIGHBOUR,[15] WHICH IS DEPENDENT ON IRRIGATION, OR IS STOCKED WITH TREES, AND THE SPRING [WHICH IRRIGATED THE FIELD] DRIES UP, OR THE TREES ARE FELLED, HE CANNOT REDUCE THE RENTAL. BUT IF HE SAYS, 'LEASE ME THIS FIELD WHICH REQUIRES IRRIGATION,' OR 'THIS FIELD, WHICH CONTAINS TREES,' AND THE SPRING DRIES UP OR THE TREES ARE FELLED, HE MAY MAKE A DEDUCTION FROM THE RENTAL.

GEMARA. How is it meant? Shall we say. the main river[16] dried up; then why cannot he reduce the rent? Let him say. 'It is a universal blow!'[17] — Said R. Papa: It means that the tributary dried up, [by which the water was brought to the field,] so that he [the lessor] can say to him,

1. Necessary each year for the vines.
2. Therefore! want the grain cut, which leaves the stalks in the earth.

3. Lit., 'I am not able.'
4. If the lessor wishes it to be plucked. Therefore neither can demand a variation of the local usage.
5. For my cattle, and so I do not wish it to remain in the soil.
6. It is included in the first clause.
7. V. p. 496, n. 3.
8. I.e., if a field is leased for sowing grain, and it contains some trees too, though the lessee has no work in connection with the latter, he receives his share thereof, if such is the local usage.
9. v. Glos.
10. Lit., 'It is a benevolent eye and we learn nothing from him.'
11. An earthen rampart was erected round the field. One layer of earth was placed first ([H] < [H] cf. [H], the first fruits); this being trodden in, another was added ([H] < [H] more, additional), and then these were surmounted ([H] < [H] riding upon) by a third.
12. A fence was made round the field by placing stakes and drawing thorny shrubs across them.
13. Through which the water is conducted from the river to the field.
14. It is obvious, since it is taught that they share in them.
15. At a fixed rental in crops.
16. Which supplied the spring.
17. In which all must share the loss; v. *infra* 105b.

Baba Mezi'a 104a

'You should have brought up the water in buckets.'

R. Papa said: These first two Mishnahs [of this chapter] hold good in the cases of both a fixed rental lease and a percentage lease;[1] but in the subsequent [Mishnahs] those which 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.[2]

BUT IF HE SAID, 'LEASE ME THIS FIELD WHICH REQUIRES IRRIGATION,', etc. But why so? Let him [the lessor] say to him, 'I merely defined it for you by name.'[3] Has it not been taught: If one says to his neighbor, 'I sell you a beth *kor*[4] of land'; even if it contains only a *lethech*,[5] it [the bargain] is fulfilled, because he sold him only a place by name; providing, however, that it is called beth *kor*. 'I sell you a vineyard,' even if it contains no vines, it is a valid sale, because he sold him only a name; providing, however, that it is called vineyard. 'I sell you an orchard,' even if it contains no pomegranates it becomes his, because he sold him only a name; providing that it was called orchard.[6] Thus we see that he can plead, 'I merely defined it by name:' so here too, let him plead, 'I merely defined it for you by name'! — Samuel replied: There is no difficulty. In the latter case the lessor stated this to the lessee; In the former, [i.e., the Mishnah] the lessee spoke thus to the lessor. If the lessor stated it to the lessee, it is mere name; if the lessee says it to the lessor, it particularizes.[7] Rabina said: In both cases it means that the lessor stated this to the lessee. [Nevertheless,] since he states, 'THIS FIELD,' it follows that we are dealing with a case where he is standing therein; then why tell him that it is dependent on irrigation?[8] Hence he must have meant, 'A field dependent on irrigation as now situated.'[9]

MISHNAH. IF ONE LEASES A FIELD [AT A PERCENTAGE] FROM HIS NEIGHBOUR AND NEGLECTS IT, WE ASSESS IT HOW MUCH IT OUGHT TO PRODUCE, AND HE MUST PAY HIM [THE AGREED PERCENTAGE]. FOR THUS HE WRITES HIM, 'SHOULD I NEGLECT AND NOT TILL IT, I WILL PAY OF THE BEST.'[10]

*GEMARA*R. Meir used to interpret common terms [of speech or writing]. For it has been taught: R. Meir said: 'If I neglect and do not till it, I will pay of the best.[11] R. Judah used to interpret common terms. For it has been taught: R. Judah said: A husband must bring a sacrifice of the rich for his wife, and likewise for every obligatory sacrifice of hers; because he writes thus for her [in the *kethubah*: 'I undertake] your liabilities incurred by you hitherto.'[12]

Hillel the Elder[13] used to interpret common speech. For it has been taught: The men of Alexandria used to betroth[14] their wives, and

when they were about to take them for the *huppah*[15] ceremony, strangers would come and tear them away. Thereupon the Sages wished to declare their children bastards.[16] Said Hillel the Elder to them, 'Bring me your mother's *kethubahs*.' When they brought them, he found written therein, 'When thou art taken for the *huppah*, be thou my wife.' And on the strength of this they did not declare their children bastards.[17]

R. Joshua b. Karhah interpreted common speech. For it has been taught: R. Joshua b. Karhah said: If a man makes a loan to his neighbor, he must not seize from him a pledge that is worth more than the debt;[18] because he writes thus unto him:[19] 'The repayment which is due to you from me shall be to the full value of this [pledge]'.[20] Now, the reason [that he may claim the value of the pledge] is [only] because he wrote thus; hence, had he not written thus, he would have no title thereto. But did not R Johanan say: If he [the creditor] took a pledge from him, returned it to him, and then he [the debtor] died, the former may distrain it from his children?[21]

1. I.e., the statements that where it is customary to cut the grain, it may not be uprooted (IX, I), and that no allowance is made for the failing of a spring (IX, 2), are independent of whether the leaseholder pays a fixed rent or a percentage of the crops.
2. This is explained on each Mishnah.
3. But did not guarantee the source of irrigation.
4. Lit., 'an area requiring a *kor* of seed,' fifty cubits square taking a *se'ah* of seed (1 *kor* = 30 se'ahs).
5. Half a *kor*.
6. B.B. 7a.
7. I.e., it must be a field that contains these amenities of irrigation.
8. Surely the lessee sees that for himself!
9. I.e., the water flowing direct to the field without the labor of transport.
10. This can obviously refer only to a lease on a percentage rental. If the rent is fixed, there is no room for computation.
11. I.e., though it is not a Rabbinical enactment that this clause be stated in the conveyance, yet since it was a common practice to insert it, R. Meir paid heed to it, and gave his rulings accordingly.
12. Certain sacrifices were variable, depending on their owner's financial position (v. Lev. V, 1 — 13; XII, 1-8). Now, in a strictly legal sense, every married woman is poor, since she has no proprietary rights. Nevertheless, if he is wealthy, he must bring the sacrifice of a rich person. This rendering is according to the text in our editions, and means: The husband undertakes to settle her liabilities, in respect of sacrifices (Tosaf.) incurred before marriage, e.g., for leprosy. And presumably he is certainly liable for sacrifices which she incurs after marriage, e.g., for childbirth. Rashi, quoting the Sifra, gives this reading. R. Judah said: Therefore, if he divorces her, he is free from this liability; for thus she writes (in the receipt for the settlement of her *kethubah*), '(I free you) from all the liabilities hitherto borne by you in respect of myself.'
13. I.e., the famous Hillel, head of the great school, Beth Hillel. So called to distinguish him from R. Hillel, an amora of the fourth century.
14. [H] the first stage of marriage, v. Glos. s.v. *Kiddushin*.
15. V. Glos.
16. Being born in adultery.
17. Though normally the *kiddushin* effected marriage, in that the woman became forbidden to strangers as a married person. yet since the *kethubahs* distinctly stated that it was to be valid only when the huppah was performed, Hillel recognized the children of those unions as legitimate. V. Halevy. Doroth, I, 3, p. 103. This is an interesting foreshadowing of the modern practice which combines the *kiddushin* and the huppah. [It is suggested that the clause inserted by the Alexandrian Jews was mainly designed to free the husband from all obligations until actual marriage. v. Epstein. M. Jewish Marriage Contract, p. 295.]
18. This refers to a pledge taken after the loan, when repayment is due.
19. I.e., if the creditor returns the pledge for an appreciable length of time, it is first assessed and this statement written.
20. Hence, if it exceeded the debt, he would be receiving interest.
21. And it is not regarded as movable property of orphans on which the creditor cannot distrain. This proves that he has a title to it even without that proviso.

Baba Mezi'a 104b

— The writing [of that clause] serves to countervail depreciation.[1]

R. Jose interpreted common terms. For it has been taught: R. Jose said: Where it is the practice to treat the *kethubah* as an ordinary debt,[2] he [the husband] can collect it [from her father] likewise as a debt.[3] [When it is the local usage] to double [the dowry],[4] he [the husband] can collect [from her father] only half [the Written sum]. The Neharbeleans[5] used to collect a third.[6] Meremar used to empower [the husband] to collect even the addition. Said Rabina to Meremar: But has it not been taught: [Where it is the usage] to double, he can collect only half? — There is no difficulty: In the one case, possession was formally effected;[7] in the other, it was not.

Rabina was writing a large amount for [the dowry of] his daughter [more than he was actually giving]. Said they [the other side] to him, 'Let us effect a formal possession from you.' To which he replied, 'If a formal possession, then no doubling; if doubling, no formal possession.

A certain man once said, 'Give my daughter four hundred *zuz* as her *kethubah*.' R. Aba, son of R. Awia, sent an enquiry to R. Ashi: Does it mean, four hundred *zuz* [as the actual dowry], hence eight hundred [to be written]; or four hundred *zuz* [as the sum to be recorded], the equivalent of two hundred *zuz* [the real dowry].[8] R. Ashi replied: We see: if he said, 'Give her four hundred *zuz*,' eight hundred [are to be recorded]; but if he said, 'Write her four hundred zuz', he meant two hundred actual. Others state: R. Ashi replied, We see: if he said, 'For her *kethubah*,' it is four hundred actual, and eight hundred [written]; if he said, 'In her *kethubah*,' it means four hundred [written], which is two hundred actual. Yet that is incorrect: whether he said, 'For her *kethubah*,' or, 'In her *kethubah*,' it means four hundred [written], which is two hundred [actual]. Unless he says, 'Give her', without further qualifications.

A certain man once leased a field from his neighbor and stated: 'If I do not cultivate it, I will give you a thousand *zuz*.'[9] Now, he left a third uncultivated. Said the Nehardeans: It is but just that he should pay him three hundred thirty-three one-third *zuz*. But Raba said: It is an *asmakta*,[10] and an *asmakta* effects no title. But in Raba's view, wherein does it differ from what we learnt: 'SHOULD I NEGLECT AND NOT TILL IT, I WILL PAY OF THE BEST?'[11] — In that case, there was no exaggeration; but here, since he stated such a large sum, it was a mere exaggeration [not to be taken seriously].

A certain man once leased a field[12] for sesame. He sowed wheat instead, but the wheat appreciated to the value of sesame.[13] Now, R. Kahana thought to rule: He [the tenant] can make a deduction [from the percentage due] on account of the [diminished] impoverishment of the soil. But R. Ashi said to R. Kahana: People say, 'Let the soil become impoverished rather than its owner.'[14]

A certain man once leased a field for sesame. He sowed wheat, however, but the wheat subsequently exceeded the sesame in value. Now, Rabina thought to rule that he [the lessor] must give him [the tenant] the increased value.[15] Said R. Aha of Difti to Rabina: Was he [the tenant] the only cause of the higher value, and the earth not at all?[16]

The Nehardenas said: An *'iska*[17] is a semi loan and a semi trust, the Rabbis having made an enactment which is satisfactory to both the debtor and the creditor.[18] Now that we say that it is a semi loan and a semi trust, if he [the trader] wishes to drink beer therewith [i.e., for the loan part] he can do so.[19] Raba said: [No.] It is therefore called '*iska* [business] because he can say to him, 'I gave it to you for trading, not for drinking beer.' R. Idi b. Abin said: And if he [the trader] dies, it ranks as movable property in the hands of his children.[20] Raba said: It is therefore called '*iska*, that if he dies, it shall not rank as movable property in the hands of his heirs.[21]

Raba said: If there is one '*iska* and two bonds, it is to the investor's disadvantage.[22]

1. If the pledge depreciated in value, the creditor would lose, but for that clause, which assures him that he will receive its full value as at the time he returns it, and in virtue of which he is empowered to seize other objects of the debtor's.
2. I.e., if a woman is widowed, she is empowered to sue for her marriage settlement, part of which had formed in the first place the dowry given to her husband by her father or family, just as for an ordinary debt.
3. Since it will he subsequently reclaimed from him, he can legally claim it from the father at the time of marriage, or subsequently.
4. I.e., to state double the amount for the actual dowry in the *kethubah* to make it appear greater, whilst actually only half the stated amount is payable on widowhood or divorce. [This was inserted as a mark of honor to the bridal couple. v. Epstein. M. ap. cit., p. 104.]
5. Nehar Bil, E. of Bagdad. v. Sanh. (Sonc. ed.) p. 89, n. 1].
6. They used to state in the *kethubah* treble the actual amount.
7. By means of a *kinyan* (v. Glos.). The husband then acquires a title to the whole.
8. It was in a place where the amount was doubled.
9. A percentage lease is referred to.
10. V. Glos.
11. And, as seen from the Mishnah, the statement is binding.
12. V. n. I.
13. A sesame crop is more valuable than a wheat crop; on the other hand, it exhausts the soil more. But in this case, owing to an advance in the price of wheat, the crop lost nothing through the change, and there was the further profit that the soil was less exhausted than it would otherwise have been.
14. I.e., he should have carried out his contract and not jeopardized the owner's receipts. He therefore cannot make a deduction now.
15. I.e., that the lessor receives his percentage only on the potential sesame crop.
16. Both contributed, hence both share.
17. V. Glos.
18. I.e., half the capital value of the stock is a pure loan for which the trader bears full responsibility; the other half is a bailment, so that the investor bears all risks of depreciation. To avoid the charge of usury, however, the trader generally received two — thirds of the profit. V. *supra* 68b.
19. I.e., he need not use it for business at all.
20. The half which is a loan is counted as movable chattels, which are not subject to seizure for debt from the heirs. Hence the investor loses it.
21. I.e., it is permanent trading stock, and therefore always available for the satisfaction of the investor's claims.
22. As stated *supra* 68b, the investor generally received a third of the profits, but stood half the losses. Now, if he invests two bales of goods and draws up one bond: if there is a loss upon one and a profit upon the other, it is all counted as one investment, and he receives a third of the net profit upon both. But if he draws up a separate instrument for each, he bears half of the loss incurred on one, and receives only a third of the profit earned on the other, and so is at a disadvantage.

Baba Mezi'a 105a

If two '*iska*s were arranged but only one bond drawn up, it is to the debtor's disadvantage.[1]

Raba also said: If a man accepted an '*iska* from his fellow, and lost thereon; but then made it good by an effort, yet had not informed him [the investor of the loss], he cannot [then] say to him, 'Deduct the previous loss incurred;'[2] because he can retort, 'You took the trouble of making it good to avoid the odium of inefficiency.'[3]

Raba also said: If two men accept[4] an '*iska* and make a profit, and one says to the other, 'Come, let us divide now' [before the time for winding up]: then if the other objects [saying], 'Let us earn more profits,' he can legally restrain him [from closing the transaction]. [For] if he claims, 'Give me half the profits,' he can reply, 'The profit is mortgaged for the principal.'[5] Whilst if he proposes, 'Give me half the profits and half of the principal,'[6] he can answer, '[The parts of the] '*iska* are interdependent.'[7] Whilst if he proposes, 'Let us divide the profit and the principal, and should you incur a loss I will bear it with you:' he can answer, 'No. The fortune of two is better than that of one.'

***MISHNAH*. IF A MAN LEASES A FIELD FROM HIS NEIGHBOUR AND REFUSES TO WEED**

IT, SAYING, WHAT DOES IT MATTER TO YOU, SEEING THAT I PAY YOU YOUR RENTAL?' HIS PLEA IS NOT HEEDED, BECAUSE HE [THE LESSOR] CAN REPLY, 'TOMORROW YOU MAY LEASE IT, AND IT WILL BE OVERGROWN WITH WEEDS.'[8]

GEMARA. And should he [the tenant] say, 'I will plow it afterwards,'[9] he can reply, 'I want good wheat.'[10] And should he say, 'I will buy for you wheat from the market,' he can answer, 'I want wheat from my own soil.' Should he reply, 'Then I will weed for you the area necessary for your portion,' he can retort, 'You will bring my land unto disrepute.'[11] But we learnt, because IT WILL BE OVERGROWN WITH WEEDS![12] — But [he is not heeded] because he can answer him, 'Once a bung falls out, it is fallen.'[13]

MISHNAH. IF A MAN LEASES A FIELD TO HIS NEIGHBOUR, AND IT DOES NOT YIELD [A SATISFACTORY CROP]: IF THERE IS ENOUGH TO MAKE A STACK, HE [THE TENANT] IS BOUND TO GO ON WORKING THEREIN.[14] SAID R. JUDAH: WHAT STANDARD IS A STACK?[15] BUT [THE STANDARD IS] IF THERE IS ENOUGH FOR RESOWING.[16]

GEMARA. Our Rabbis taught: If a man leases a field from his neighbor, and it does not yield [a satisfactory crop], and there is enough to make a stack, he [the tenant] is bound to go on working therein, because he writes him thus:[17] 'I will stand, plow, sow, cut, bind, thresh, winnow, and set up a stack before you, and you will come and receive half; whilst I will receive half in return for my labor and expenses.' And how much is meant by, 'enough to make a stack'? — R. Jose son of R. Hanina said: Sufficient for the winnowing fan to stand therein.[18] The scholars propounded: What if the winnowing fan protrudes from both sides?[19] — Come and hear: R. Abbahu said: I received an explanation thereof from R. Jose son of R. Hanina: Providing that the receiver does not see the sun.[20]

It has been stated: Levi said: Three se'ahs; the School of R. Jannai said: Two; Resh Lakish said: The two se'ahs mentioned are exclusive of expenses.[21]

We learnt elsewhere: Wild olives and grapes — Beth Shammai declare them unclean; Beth Hillel, Clean.[22] What is meant by 'wild [perize] olives?' — Said R. Huna: Wicked olives [i.e., which yield very little oil]. R. Joseph said: And what verse [warrants this interpretation]? — *Also the robbers* [perize] *of thy people shall exalt themselves to establish the vision; but they shall fail*.[23] R. Nahman b. Isaac said: It is from this verse: *If he beget a son that is a robber* [pariz] *a shedder of blood*.[24] And what is the standard of wild olives?[25] — R. Eleazar said: Four *kabs* per loading.[26] The School of R. Janna said: Two se'ahs. But there is no dispute: the former treats of a place when one *kor* is put into the press at a time; the latter, where three *kors* are put into the press.[27]

Our Rabbis taught:

1. If two '*iskas* were arranged on different dates, but recorded in one note, the result is the converse of the preceding, and hence to the trader's disadvantage.
2. I.e., bear half of that loss, whilst receiving only a third of the profits earned subsequently.
3. Lit., 'Not to be called, one who causes losses in investments.'
4. From an investor, a period being fixed for its winding up.
5. In case there are subsequent losses.
6. For the return of which the trader is personally responsible to the investor.
7. 'You might profit on your half, and I lose on mine; but both halves are security for each other.'
8. This can apply only to a fixed rental lease, for in the case of a percentage lease the tenant obviously cannot argue thus.
9. The Gemara continues the argument of the Mishnah. should the tenant say, 'I will plow the field after the harvest.' (V. *supra*).
10. The rental being a fixed measure of the wheat grown by the tenant. But if the field is not weeded, the crop is of poor quality.
11. If it is seen overgrown with weeds.
12. Which shows that that is an all-sufficing reply.

13. And the wine that gushes out cannot be replaced. So here too, even if the tenant offers to plow the field after the harvest, he can reply, 'Once weeds have taken root, they cannot be entirely eradicated.'
14. Though he wishes to cease work, the yield being in, sufficient reward for his labor.
15. Surely the same limit cannot apply to all fields, irrespective of size!
16. I.e., if the yield is at least sufficient to resow the field the following year.
17. In the tenancy agreement.
18. If put into the pile, it will stand upright.
19. Whilst the stack is sufficient to maintain it upright, the whole breadth of the fan is not covered in, but protrudes from both sides of the pile. Does the law of the Mishnah and Baraitha apply in this case or not?
20. The receiver is the lower part of the shovel which receives the grain; this must be entirely covered in by the pile, i.e., 'not see the sun,' and the sides of the shovel are part of the receiver.
21. This quantity must be left clear, in order for the tenant to be bound to go on cultivating the field.
22. Beth Shammai regard them as fit to be eaten, hence they are subject to the uncleanness of food; Beth Hillel maintain that they are not fit, and therefore exempt from that law.
23. Dan. XI, 14.
24. Ezek. XVIII, 10.
25. How little oil must they produce to be put in this category?
26. [H], the beam of the olive press. If when that is fully laden with olives there is not more than four *kabs* yield, they are designated 'wild olives.'
27. The presses varied in size, which explains the varying definitions. One *se'ah* = 6 *kabs*, hence 2 se'ahs = 3 times 4 *kabs*.

Baba Mezi'a 105b

If they ascended a tree of feeble strength, or a feeble branch, he is unclean.[1] How is 'a tree of feeble strength' defined? — The School of R. Jannai said: If its roots lack sufficient breadth for a quarter [*kab*] to be hollowed out of it.[2] What is the definition of a feeble branch? — Resh Lakish said: That which is hidden in the grip of the hand.[3]

We learnt elsewhere: If a man travels through grave area[4] over [loose] stones that can be moved, if he travels upon a man or beast of feeble strength, he is unclean.[5] What is meant by 'a man of feeble strength'? — Resh Lakish said: One whose knees knock together because of the rider upon him. What is meant by 'a beast of feeble strength'? — The School of R. Jannai 'said: If the rider causes it to excrete [through the strain].

The School of R. Jannai said: In respect of prayer and phylacteries [the limit of a burden is] four *kabs*. What is the reference in respect of prayer? — As it has been taught: If a man bears a burden on his shoulder, and the time for prayer arrives, if it is less than four *kabs*, he slings it over his back, and prays; if four *kabs*, he must place it on the ground, and then pray. What is the reference in respect of phylacteries? — As it has been taught: If a man is carrying a load on his head, and phylacteries are on his head [at the same time],[6] if the phylacteries are crushed under it, it is forbidden; otherwise, it is permitted. Of what burden was this said? — A burden of four *kabs*.

R. Hiyya taught: If a man carries out manure on his head, and has phylacteries on his head [at the same time], he must not remove them to the side, nor fasten them to his loins, because such is a contemptuous treatment; but must bind then, on his arm in the place of phylacteries.[7] On the authority of the school of R. Shila it was said: Even their wrapper[8] may not be placed on the head [as a burden] whilst the phylacteries are being worn. And how much?[9] — Said Abaye: Even a sixteenth of a Pumbedithean weight.[10]

SAID R. JUDAH: WHAT STANDARD IS A STACK? BUT [THE STANDARD IS] IF THERE IS ENOUGH FOR RESOWING. And how much is needed for resowing? — R. Ammi said in R. Johanan's name: Four se'ahs per *kor*.[11] — R. Ammi, giving his own opinion, said: Eight se'ahs per *kor*. An old man said to R. Mama, son of Rabbah b. Abbuha: I will explain it to you. During R. Johanan's lifetime the land was fertile;[12] during that of R. Ammi it was poor.

We learnt elsewhere: If the wind scattered the sheaves,[13] we compute how much gleanings it [that field] was likely to provide, and so much must be given to the poor. R. Simeon b. Gamaliel said: The poor must be given the measure for resowing.[14] And how much is that? — When R. Dimi came,[15] he said in the name of R. Eleazar — others state, in the name of R. Johanan: Four *kabs* per *kor*.

R. Jeremiah propounded: Does that mean, for a *kor* that is sown, or for a *kor* that is harvested?[16] [Further, if it means for a *kor* that is sown,] is it for hand sowing or by oxen?[17] — Come and hear: For when Rabin came, he said in the name of R. Abbahu in the name of R. Eleazar — others say, in the name of R. Johanan: Four *kabs* for a *kor* of seed. But the question still remains: for hand sowing or by oxen? The problem remains unsolved.

MISHNAH. IF A MAN LEASES A FIELD FROM HIS NEIGHBOUR, AND IT [THE CROP] IS EATEN BY GRASSHOPPERS, OR BLASTED [BY TEMPEST], IF IT WAS A WIDESPREAD EPIDEMIC,[18] HE CAN DEDUCT FROM THE RENTAL; IF IT WAS NOT A WIDESPREAD EPIDEMIC, HE MAY NOT DEDUCT FROM THE RENTAL. R. JUDAH SAID: IF HE LEASED IT ON A MONEY RENTAL,[19] THEN IN BOTH CASES HE MAY MAKE NO DEDUCTIONS FROM THE RENTAL.[20]

GEMARA. How far must it extend to be called a widespread epidemic? — Rab Judah said: E.g., if the greater part of the plain [in which this field lay] was blasted.[21] 'Ulla said: If four fields, on the four sides thereof, were blasted. 'Ulla said: They propounded in the West [sc. the academies of Palestine]: What if one furrow over the entire length was blasted? What if one furrow was left [unblasted] over their entire length?[22] What if pits lay between?[23] What if they were separated by a field of fodder?[24]

1. *Zab*. III, 1. This refers to a person who suffers from issue and a clean person. Now, if the two sit on an object in such a manner that one causes the other to move, e.g., on the two ends of a see-saw, on a rickety branch, whether the unclean person supports the weight of the clean person or vice versa, even if they do not come into actual contact, the clean person is defiled. Now, when they both ascend a feeble tree, which bends under their weight, or a feeble branch, even if the tree itself is strong. the same result ensues, one bending over — technically called 'leaning' — through the other, hence the clean person is defiled.
2. The measures were in standard shapes, so that a certain minimum breadth would be required for this.
3. I.e., it is so thin that the hand entirely encircles it (Rashi). Jast.: when it is hidden under (fully covered with) moss.
4. [H] Lit., 'a field of a *Peras* square.' *Peras* = half (the length of a furrow of 100 cubits), and it is a term applied to a field declared unclean on account of a grave that was plowed therein. Maim. and Asheri on Oh. XVII, 1 translate [H] as derived from [H] to extend, i.e., the area over which the bones may extend. Others derive it from [H] to break, i.e., an area of splintered bones; v. Jast.
5. The person who actually walks on this field becomes unclean, even if it contains no loose stones. But if one rides upon a man or beast, without himself coming into contact with the field, he becomes unclean only if he causes loose stones to be moved. Hence two conditions are necessary for his defilement: (i) that the field shall contain loose stones; (ii) that the man or beast ridden upon shall be weak and bowed down by the weight of the rider, so that he disturbs the stones more than he would otherwise have done. But if the bearers are so strong that the rider makes no difference to their gait, the latter is clean.
6. In Talmudic times the phylacteries were worn during the day even whilst one was engaged in his ordinary Pursuits.
7. I..e, the upper half, above the elbow.
8. I.e., in which the phylacteries are put away when not in use, as at night.
9. Must he the weight of a burden, to be forbidden on the head when the phylacteries are being worn.
10. I.e., even the smallest weight is forbidden.
11. I.e., in an area where a *kor* ought to grow only four se'ahs grew, which is the quantity needed for sowing such an area.
12. Hence the lesser quantity sufficed.
13. Over the field, and so they became mingled with the gleanings that must be left for the poor, and it is not known which is which.
14. *Pe'ah* V, 1.
15. From Palestine to Babylon.

16. I.e., is it for an area that requires a *kor* of seed that four *kabs* are estimated as gleanings, or for an area that produces a *kor*?
17. Sowing was done either by hand, a man walking along and scattering the seed, or by oxen drawing a cart with a perforated bottom, in which the seed was placed. The latter method was more wasteful, and required a greater quantity of seed for a given area than the former.
18. Lit., 'a regional mishap'.
19. Generally the rental was paid in crops.
20. [This Mishnah applies only to a fixed rental, for with a percentage rental there can be no deduction, both sharing whatever the yield may be.]
21. [Maim. and Asheri (on basis of slightly different reading): 'most of the fields in that city', v. Wilna Gaon's Glosses.]
22. Must the whole of the four fields have suffered, or is it sufficient that a furrow over the whole length of each shall have been affected? And if that is insufficient, what if the entire fields were affected with the exception of a furrow in each?
23. There were no fields immediately contiguous, but the field was surrounded by pits, on the outer edges of which lay other fields, which were affected. Does this come within the scope of the definition or not?
24. Which was unaffected, whilst the fields beyond were.

Baba Mezi'a 106a

What if they were separated by a different cereal?[1] Further, is wheat as different seed in relation to barley, or not?[2] What if others were smitten by blasting, and his by mildew, or others were smitten by mildew and his by blasting? The problems remain unsolved.

What if he [the lessor] said to him [the lessee], 'Sow it with wheat,' and he went and sowed it with barley, and then the greater part of the plain was blasted, and his barley too was blasted: do we say that he can argue, 'Had I sown wheat, it also would have been blasted'; or perhaps he can answer him, 'Had you sown it with wheat, [the Scriptural promise,] *Thou shalt also decree a thing, and it shall be established for thee*,[3] would have been fulfilled unto me?'[4] — It is reasonable that he can in fact answer him, 'Had you sown it with wheat, [the promise,] *'Thou shalt also decree a thing, and it shall be established for thee: and the light shall shine upon thy ways'* would have been fulfilled unto me.

What if all the lessor's fields were blasted, and this one was blasted, yet the greater part of the plain was unaffected? Do we say, Since the greater part of the plain was unaffected, he can make him no deduction? Or perhaps, since all his lands were blasted, he can say to him, 'This transpired on account of your evil fate,[5] the proof being that all your fields have been blasted'? — It is reasonable that he can answer him, 'Had it been on account of my bad luck, a little would have remained [unaffected], as it is written, *For we are left but few of many*.'[6]

What if all the lessee's fields were blasted, and the greater part of the plain too, and this field also was blasted along with them? Do we say, Since the greater part of the plain was affected, he can deduct his? Or perhaps, since all his fields were blasted, he [the lessor] can say to him, 'It is due to your misfortune, the proof being that all your fields have been smitten'? — It is logical that he can indeed say to him, 'It is due to your misfortune.' Why so? Here too let him answer, 'Had it been on account of my ill-luck, a little would have remained to me, in fulfillment of the verse, For we are left few of many'? — Because he can retort, 'Were you worthy that aught should remain to you, something of your own would have escaped.'[7]

An objection is raised: If it was a year of blasting or mildew, or the seventh year, or years like those of Elijah,[8] they are not included in the count.[9] Now blasting and mildew are stated as analogous to years like those of Elijah: just as during the years of Elijah there was no produce at all, so in the former too. But if there were some harvests [elsewhere], it is accounted to him,[10] and we do not term it an epidemic![11] — Said R. Nahman b. Isaac: There it is different, because Scripture says, According to the number of years of the harvests, he shall sell into thee,[12] [meaning], years in which the

world enjoys harvests.[13] R. Ashi objected before R. Kahana: If so, the seventh should be included in the count, since there are harvests outside Palestine! — The seventh year, replied he, is excluded by royal decree.[14] Mar Zutra, the son of R. Mari, said to Rabina: If so, the seventh year should not rank for rebate; why then did we learn, He must pay a *sela'* and a pundion per annum?[15] — He replied, There it is different, because it [the seventh year] is fit for fruits to be spread out therein.[16]

Samuel said: This [sc. that a deduction may be made when there is a widespread epidemic] was taught only if he [the lessee] sowed it [the field], it [the crop] grew and was eaten by grasshoppers;[17] but not if he failed to sow it altogether, because he can say to him, 'Had you sown it, the promise, *They shall not be ashamed in the evil time,' and in the days of famine they shall be satisfied*,[18] would have been fulfilled for me.'[19] R. Shesheth raised an objection: If a shepherd, who was guarding his flock, left it and entered the town; and then a wolf came and killed [a sheep], or a lion [came], and tore it to pieces, we do not say, 'Had he been there, he could have saved them,' but judge his strength: if he could have saved them, he is responsible; if not, he is exempt.[20] But why so? Let him say to him, 'Had you been there, the verse, *Thy servant slew both the lion and the bear*,[21] would have been fulfilled for me!' — Because he can answer, 'Had you been worthy that a miracle should happen on your behalf, it would have happened, as in the case of R. Hanina b. Dosa, whose goats brought in bears by their horns.'[22] But cannot he reply, 'Granted that I am not worthy of a great miracle,[23] yet am I worthy of a minor one!'[24]

1. If it be resolved that fodder is not a separation, what if it was surrounded by fields of different cereals, but still for human beings; these being unaffected, whilst those beyond, which were the same, being affected?
2. If it be answered that fields of different seed break the continuity and are disregarded, what if a wheat field was surrounded by fields of barley?
3. Job XXII, 28.
4. I.e., the promise that my hopes and prayers would be fulfilled; but these were for wheat, not barley.
5. [[H], lit., 'cause'; Ginsberg, L. *MGWJ*, LXXVIII, p. 19.]
6. Jer. XLII, 2. When misfortune is decreed upon a person, it is not absolute. That itself proves that in this case it was not due to the lessor's bad fortune, but was a natural phenomenon.
7. Where all the lessor's fields have been affected, he can argue, 'Something has in fact been left to me, viz., the rent I receive, even though reduced. This proves that it is my fate that something should be left to me, and therefore if this blasting were due to my evil fortune, some of my fields would have escaped, in accordance with the verse. But nothing at all has been left to you, which shows that you are excluded from that promise; so that after all it may be your peculiar fate that is responsible' (Tosaf.).
8. I.e., of drought.
9. 'Ar. 29b. This refers to a sale of land when the law of Jubilee was in force. The vendor always retained the option of repurchase, but not before the estate had been in the vendee's possession for at least two years. But if one of these was a year of blasting, etc., it was not counted.
10. The vendee is regarded as having enjoyed a year's harvest, to be taken into account in assessing the redemption price, which was calculated on a pro-rata basis, according to the number of years to the Jubilee and the length of time the vendee had been in possession.
11. To be charged to the first owner. This contradicts the Mishnah.
12. Lev. XXV. 15.
13. And this is the verse from which pro rata redemption after two years is deduced ('Ar. 29b). Hence, even if there is a widespread blight in which the whole plain is smitten, yet since some harvests are reaped elsewhere, the year is taken into account.
14. I.e., since Scripture forbade sowing in the seventh year, it was specifically excluded from the years of produce; hence is regarded as non-existent.
15. 'Ar. 25a. The reference is to Lev. XXVII, 16-19: And if a Man shall sanctify unto the Lord a field of his possession, then thy estimation shall be according to the seed thereof an *homer* of barley seed shall be valued at fifty *shekels* of silver. If he sanctify his field from the year of jubilee, accordingly to thy estimation it shall stand. But if he sanctify the

field after the jubilee, then the priest shall reckon unto him the money according to the years that remain, even unto the year of jubilee, and it shall be abated from thy estimation. Now, the Mishnah states that according to this reckoning, for every year that remains a *sela'* and a pundion, which is 1/48th of a *sela'*, is due. This shows that the fifty *shekels* are divided into 49, the number of years in a jubilee (excluding the jubilee itself). But if the Sabbatical years, not being years of seed, are excluded, there are only 42 years of seed into which the fifty must he divided, which gives almost a *sela'* and a *denar* per annum.

16. I.e., some use can be made of the seventh year, and the Bible did not specify 'years of harvests' in this connection.
17. I.e., blighted.
18. Ps. XXXVII, 19.
19. Therefore no deduction can he made, notwithstanding the widespread epidemic.
20. *Supra* 41a.
21. I Sam. XVII, 36.
22. Complaints being made that his goats were damaging the crops, he exclaimed, 'If it be so, let bears devour them; if not, let them capture bears and bring them in by their horns.' In the evening his goats came in, drawing the bears by their horns! V. Ta'an. 25a.
23. That my flock should be saved even in your absence.
24. That it should be saved through your presence.

Baba Mezi'a 106b

— This indeed is a difficulty.

One [Baraitha] teaches: He [the tenant] must sow it [the field] the first and second time, but not the third.[1] But another [Baraitha] teaches: He must resow it a third time, but not a fourth! — There is no difficulty: the former is according to Rabbi; the latter, R. Simeon b. Gamaliel. The former is according to Rabbi, who maintained that a presumption is established by an occurrence happening twice. The latter, R. Simeon b. Gamaliel, who held that a presumption is established only when it occurs three times.[2]

Resh Lakish said: This was taught only if he sowed it, it grew, and was devoured by locusts. But if he sowed it, and it did not grow at all, the lessor can say to him, 'Go on repeatedly sowing [the field] during the extra period of sowing.' And until when is that? — Said R. Papa: Until the *aris*[3] comes from the field and kimah is situated overhead.[4]

An objection is raised: R. Simeon b. Gamaliel said on the authority of R. Meir, and R. Simeon b. Menasya said likewise: [The second] half of Tishri, Marcheshvan, and the first half of Kislev is seed-time; [the second] half of Kislev, Tebeth, and half Shebat are the winter months; [the second] half of Shebat, Adar, and [the first] half of Nisan, cold months; [the second] half of Nisan, Iyar, and [the first] half of Sivan is the period of harvests; [the second] half of Sivan, Tammuz, and the first half of Ab are summer; the second half of Ab, Ellul and the first half of Tishri, hot months. R. Judah counted [these periods] from [the beginning of] Tishri; R. Simeon, from Marcheshvan.[5] Now, who gives the most lenient interpretation?[6] R. Simeon [who counts from Marcheshvan]; and yet he does not extend the [sowing] season so far! — There is no difficulty. The latter refers to a field leased for early sowing;[7] the former, to one leased for late sowing.[8]

R. JUDAH SAID: IF HE LEASES IT ON A MONEY RENTAL. A certain man leased a field by the bank of the River Malka Saba[9] on a money rental, for sowing garlic. But the River Malka Saba became dammed up.[10] When he came before Raba, he said to him, 'It is unusual for the River Malka Saba to become dammed; this is a widespread blow; [therefore] go and deduct.' But the Rabbis protested to Raba, did we not learn, R. JUDAH SAID: IF HE LEASED IT ON A MONEY RENTAL, THEN IN BOTH CASES HE MAY MAKE NO DEDUCTION? — He replied: None pay heed to this ruling of R. Judah.

MISHNAH. IF A MAN LEASED A FIELD AT AN ANNUAL RENTAL OF TEN *KORS* WHEAT, AND IT [THE FIELD] WAS SMITTEN,[11] HE CAN PAY HIM THEREOF.[12] IF, [ON THE OTHER HAND,] THE WHEAT GROWN WAS

OF CHOICE QUALITY, HE [THE TENANT] CANNOT SAY, 'I WILL PURCHASE WHEAT IN THE MARKET [FOR YOUR RENTAL],' BUT MUST PAY HIM THEREOF.[13]

GEMARA. A man leased a field to grow fodder for [several] *kors* of barley. [The field] having produced a crop of fodder,[14] he plowed and resowed it with barley, which was, however, blighted. So R. Habiba, of Sura on the Euphrates,[15] sent to Rabina: How is it in such a case? Is it analogous to the law, IF IT WAS SMITTEN, HE CAN PAY HIM THEREOF, or not? — He replied: How compare? In that case the soil had not performed the owner's behest; but here it had.[16]

A certain man leased a vineyard from his fellow for ten barrels of wine: but that wine[17] turned sour. Now, R. Nahman thought to rule, This is the same as our Mishnah: IF IT WAS SMITTEN, HE CAN PAY HIM THEREOF. But R. Ashi said to him: What analogy is there? There the soil had not performed its duty, whilst here it had.[18] Yet R. Ashi admits in the case of grapes that had become wormy, or a field whose sheaves were smitten.[19]

MISHNAH. IF ONE LEASES A FIELD FROM HIS NEIGHBOUR TO SOW BARLEY, HE MUST NOT SOW WHEAT;[20] [TO SOW] WHEAT, HE MAY SOW BARLEY. BUT R. SIMEON B. GAMALIEL FORBIDS IT. [IF RENTED FOR] CEREALS, HE MAY NOT SOW PULSE; BUT IF [FOR] PULSE HE MAY SOW CEREALS.[21] R. SIMEON B. GAMALIEL FORBIDS IT.

GEMARA. R. Hisda said: What is R. Simeon b. Gamaliel's reason? — Because it is written, The remnant of Israel shall not do iniquity nor speak lies; neither shall a deceitful tongue be found in their mouth.[22]

An objection is raised: The Purim collections must be utilized for Purim only, and no scrutiny is made in the matter. The poor may not even buy shoe-straps therewith, unless this was stipulated in the presence of members of the community: this is the ruling of R. Jacob, who stated it in the name of R. Meir; but R. Simeon b. Gamaliel

1. Having sown the field once, and it was blighted, he must resow it; otherwise he can make no deduction even if the epidemic was widespread. But if it was smitten again, he need not sow it a third time.
2. V. Sanh. 81b. Hence, the crops having been twice blighted, there is a presumption that they will be smitten a third time too, according to Rabbi; and therefore without sowing a third time, he may deduct. But in the view of R. Simeon b. Gamaliel, they must be blighted three times before he may presume thus.
3. V. Glos.
4. Kimah is the name of a constellation, conjectured by Jast. to be Daco, not the Pleiades. In the month of Adar, corresponding to mid-February to March, the kimah appears to be overhead at the time the peasant finishes his work, viz., about four in the afternoon. Thus R. Papa states that the seed time is up to Adar.
5. The passage is an explanation of the terms mentioned in Gen. VIII, 22: *While the earth remaineth, seed-time* ([H]) *and harvest* ([H]), *and cold* ([H]) *and heat* ([H]), *summer* ([H]) *and winter* ([H]), *and day and night shall not cease.*
6. Who starts the seasons latest, and so gives the latest period for seed-time.
7. E.g., Wheat and rye.
8. Barley and pulse, which are sown in Adar.
9. [The large canal in the district of Mahuza; v. Obermeyer, *op. cit.* p. 170.]
10. At a higher point than the field, so that it was insufficiently watered for garlic to grow.
11. The crops being blasted or mildewed.
12. Of the crops grown in that field, notwithstanding their poor quality.
13. [This Mishnah, too, obviously deals with a fixed rental.]
14. This requires only thirty days.
15. [Whilst the town of Sura lay on the Sura canal, its west side was situated on the Euphrates, Obermeyer, *op. cit.* 293.]
16. I.e., in the Mishnah it had been leased for barley, and the barley had been smitten. Therefore the lessor must accept his rent out of the crop. Here, however, the fodder, for which it had been rented, had not been affected, and it had never been leased for barley; consequently, he must supply him with sound barley, as the original understanding had been.

17. Viz., which was manufactured from the grapes of that vineyard.
18. The grapes were sound; therefore he must buy him good wine.
19. Then the lessor must accept payment out of the crop. Though the sheaves were already detached from the soil, yet since they had to be spread out on the field for drying, they still needed the soil, and therefore it is as though they were smitten whilst growing.
20. Because wheat exhausts the soil more than barley. This can refer only to a fixed rental; for in the case of a percentage rental, since a wheat crop is of greater value than a barley crop, he may sow wheat, as stated *supra* 104a: Let the field be impoverished, rather than its owner.
21. The reasoning is the same as in the case of barley and wheat. [MS.M. reverses the position of cereals and pulse, a reading adopted by Maim. and Alfasi, cf. n. 5 below.]
22. Zeph. III, 13.

Baba Mezi'a 107a

is lenient in the matter.[1] — Said Abaye: R. Simeon b. Gamaliel's reason is in accordance With you, Master.[2] For the Master said: If one wishes his land to become sterile, let him sow it one year with wheat and the following with barley, one year lengthwise and the following crosswise.[3] Yet that is only if he does not plow it [after the harvest] and repeat [before sowing]; but if he does, no harm is done.

[IF RENTED FOR] CEREALS, HE MAY NOT SOW PULSE, etc. Rab Judah taught Rabin: [If rented for] cereals, he may sow pulse. Said he to him: But did we not learn, [IF RENTED FOR] CEREALS, HE MAY NOT SOW PULSEE? — He replied: There is no difficulty; this [sc. my ruling] refers to ourselves; the other, to them [the Palestinians].[4]

Rab Judah said to Rabin son of R. Nahman: My brother Rabin! The cress that grows among flax is not forbidden [to strangers] as robbery;[5] but that which grows on the borders [of the field] is so forbidden. Yet if it has become hardened for sowing,[6] even that which grows among the flax is forbidden as robbery. Why? — Because the damage is already done.[7]

Rab Judah said to Rabin son of R. Nahman: [Some of] these [fruits] of mine are really yours; and some of yours are really mine.[8] And the practice of abutting neighbors is to regard a tree as belonging to the field whither its roots tend. For it has been stated: If a tree stands by the boundary line [between two fields]: Rab said: Whither each is inclined, there it belongs; Samuel said: They share [therein].[9]

An objection is raised: If a tree stands by the boundary, they [the owners of the adjacent fields] share therein. This refutes Rab's ruling! — Samuel interpreted this on Rab's views as meaning that it takes up the whole [breadth of] the boundary.[10] If so, why state it? — It is necessary [to teach it] only when its weight overhangs in one direction.[11] But even so, why state it? — I might think that he [one field owner] can say, 'Divide thus.'[12] Therefore we are informed that he can reply, 'What reason is there for dividing in this manner? Divide it otherwise!'[13]

Rab Judah said to Rabin son of R. Nahman: My brother Rabin, do not buy a field that is near a town; for R. Abbahu said in the name of R. Huna in Rab's name: One may not stand over his neighbor's field when its crop is full grown.[14] But that is not so! For when R. Abba met Rab's disciples, and asked them: what comments did Rab make upon these verses: *Blessed shalt thou be in the city, and blessed shalt thou be in the field. Blessed shalt thou be when thou comest in, and blessed shalt thou be when thou goest out*?[15] They answered him: Thus did Rab say: *'Blessed shalt thou be in the city'* — that thy house shall be near a synagogue; *'and blessed shalt thou be in the field'* — that thy property shall be near the city; '*Blessed shalt thou be when thou comest in*' — that thou shalt not find thy wife in doubt of *niddah*[16] on returning home from thy travels; *'and blessed shalt thou be when thou goest out'* — that thine offspring shall be as thee.[17] Whereupon he observed:

R. Johanan did not interpret thus, but: *'Blessed shalt thou be in the city'* — that the privy closet shall be near to thy table,[18] but not the synagogue.[19] R. Johanan's interpretation is in accordance with his opinion, viz., One is rewarded for walking [to a synagogue]. '*And blessed shalt thou be in the field*' — that thy estate shall be divided in three [equal] portions of cereals, Olives, and vines. *'Blessed shalt thou be when thou comest in, and blessed shalt thou be when thou goest out'* — that thine exit from the world shall be as thine entry therein: just as thou enterest it without sin, so mayest thou leave it without![20]

1. V. *supra* 78b. This proves that R. Simeon b. Gamaliel does not forbid a change of this description, where the original owner suffers no loss.
2. Viz., Rabbah b. Nahmani; Abaye having been brought up in his house, he addressed him 'Mar', 'Master', 'Sir'.
3. I.e., sowing in such succession injures the fertility of the soil. Therefore, if he leased it for wheat, he may not sow it with barley, in the opinion of R. Simeon b. Gamaliel, lest wheat had been sown there the previous year.
4. Palestine is not so well watered, and the impoverishment of the soil is a real danger; hence, if rented for cereals, pulse must not be sown, as they are a greater drain upon the soil. But Babylonian soil being more marshy and humid, there is no such danger. [According to Maim. Yad, Sekiroth, VIII, 7, the position of cereals and pulse is reversed throughout the passages, cf. p. 610, n. 8.]
5. Because the injury it does to the flax is greater than its value, and the owner is pleased when people tear it out.
6. I.e., fully grown.
7. And it causes no further damage now.
8. Their fields were contiguous, and each had trees planted near the intervening border. Rab Judah observed that some of his trees, though planted in his own soil, extended their roots into that of his neighbor and drew nourishment thence. Therefore those fruits really belonged to Rabin, and vice versa.
9. Rashi translates: The tree stands near the boundary, whereon Rab rules that its ownership is fixed by the direction of its roots. Tosaf.: The tree stands actually on the boundary line, the roots spreading equally into both fields, and Rab rules that the ownership is fixed by its branches: it belongs to the field over which they preponderate.
10. Rashi: The roots tending equally in both directions. Tosaf.: The branches overspread the whole boundary.
11. Rashi: The weight of its branches and fruit are toward one side. Tosaf.: Though the branches are confined to the boundary, the fruit facing one field exceeds that which fronts the other.
12. I.e., you take the fruit facing your field, and I will take that facing mine.
13. E.g., instead of dividing the tree parallel to the length of the boundary, which gives one more than the other, divide it along its breadth.
14. Lit., 'when it is with its standing crop'. The reason is that he might injure it through the evil eye.
15. Deut. XXVIII, 3, 6.
16. V. Glos.
17. Translating the Heb. [H] 'in respect of that which goeth forth from thee.'
18. Metaphorically: there shall be adequate and readily accessible sanitation.
19. I.e., in his opinion it is not desirable that the synagogue shall be near at hand, because, as stated in the Gemara, one is rewarded for walking to the synagogue.
20. Reverting to the interpretation given in the name of Rab, the second passage contradicts Rab Judah's remark.

Baba Mezi'a 107b

— There is no difficulty: the latter dictum is meant when it [the field] is surrounded by a wall and a hedge;[1] the former, when it is not so surrounded.

***And the Lord shall take away from thee all sickness*.[2] Said Rab: By this, the [evil] eye is meant.[3] This is in accordance with his opinion [expressed elsewhere]. For Rab went up to a cemetery, performed certain charms,[4] and then said: Ninety-nine [have died] through an evil eye, and one through natural causes. Samuel said: This refers to the wind. Samuel follows his views, for he said: All [illness] is caused by the wind. But according to Samuel, what of those executed by the State? — Those, too, but for the wind [which enters and plays upon the wound], an ointment could be compounded for them [which would cause the severed parts to grow together], and they would recover. R. Hanina said: This refers to the cold.[5] For R. Hanina**

said: Everything is from Heaven, excepting cold draughts, as it is written, Cold draughts are in the way of the froward: he that doth keep his soul shall be far from them.[6] R. Jose b. Hanina said: This refers to the excretions, for a Master said: The nasal and aural excretions are injurious when in great quantities, but beneficial in small. R. Eleazar said: This refers to [diseases of the] gall. It has been taught likewise: By mahala ['sickness',[7] illness caused by the] gall is meant; and why is it called 'mahala'? Because it sickens the whole human frame. Alternatively, because eighty-three illnesses are dependent upon the gall,[8] and all of them may be rendered nugatory by eating one's morning bread with salt and drinking a jug-full of water.

Our Rabbis taught: Thirteen things were said of the morning bread: It is an antidote against heat and cold, winds and demons; instills wisdom into the simple, causes one to triumph in a lawsuit,[9] enables one to study and teach the Torah, to have his words heeded, and retain scholarship;[10] he [who partakes thereof] does not perspire, lives with his wife and does not lust after other women; and it kills the worms in one's intestines. Some say, it also expels jealousy and induces love.[11]

Rabbah asked Raba b. Mari: Whence comes the proverbial expression, 'Sixty runners speed along, but cannot overtake him who breaks bread in the morning;' also the Rabbinical dictum, 'Arise early and eat — in summer, on account of the heat, in winter, on account of the cold'? — He replied: Because it is written, *They shall not hunger nor thirst; neither shall the cold nor sun smite them*.[12] Thus, *'the cold or sun shall not smite them'*, because *'they shall not hunger nor thirst*.' Said he to him: You deduce it from that verse; but I, from this: *And ye shall serve the Lord your God, and he shall bless thy bread, and thy water*:[13] *'And ye shall serve the Lord your God'* — this refers to the reading of the *shema'*[14] and prayer; *'and he shall bless thy bread, and thy water'* — to bread and salt and a jug of water. Thenceforth: *And I will take sickness away front the midst of thee*.[15]

Rab Judah said to R. Adda the surveyor: Do not treat surveying lightly. because every bit [of ground] is fit for garden saffron.[16] Rab Judah [also] said to R. Adda the surveyor: The four cubits on the canal banks you may treat lightly, but those on the river banks do not measure at all.[17] Rab Judah is in harmony with his views, for Rab' Judah said: Four cubits on the banks of a canal belong to the estate owners it serves; but those on the banks of a river are common property.[18]

R. Ammi announced: Cut down [all vegetation] in the shoulder-breadth of bargees on both sides of the river.[19] R. Nathan b. Hoshia had sixteen cubits thus cut down. Thereupon the people of Mashrunia[20] came and smote him. He thought that it is as a public thoroughfare.[21] But that is incorrect; only there [for a public road] is so much necessary, but here it [the clear space] is required for hauling the ropes; therefore the full shoulder-width of the bargees is enough.

Rabbah son of R. Huna possessed a forest by the river bank. Being requested to make a clearing [by the water's edge], he replied, 'Let the owners above and below me first clear [their portion], and then I will cut down mine.' But how might he act so? Is it not written, *Gather yourselves together, yea, gather*:[22] which Resh Lakish translated, First adorn yourself, and then adorn others?[23] — In that Instance the [neighboring] forests belonged to Parzak, the Field-marshal.[24] Therefore he [Rabbah] said: 'If they cut down [their forests], I will do so likewise; but if not, why should I? For if they can still haul their ropes,[25] they have room for walking;

1. Which shut it out from sight; then it is advantageous to have it near the town, for convenience of transport, whilst at the same time it is not subject to the evil eye.
2. Ibid. VII, 15.
3. Rab translates: will take away from thee the cause of all sickness, which in his view is the evil eye.

4. Lit., 'did what he did,' and so translated by Rashi. By means of whispering certain charms over the graves he learnt what had caused the death of their occupants.
5. Deriving [H] from [H] to blow; others: cold and heat, connecting [H] with [H], a glowing coal. V. A.Z. (Sonc. ed.) p. 11, n. 2.
6. Prov. XXII, 5; i.e., sickness brought about through these causes are avoidable, but through all others are not.
7. With reference to Ex. XXIII, 25.
8. The numerical value of [H] is 83. V. B.K. (Sonc. ed.) p. 535, nn. 6-7
9. The contentedness and tranquility which result from it enables the litigant to make the best of his plea.
10. All these as in preceding note.
11. Rashi: when man's mind is confused, be is easily angered — hence. 'feed the brute.'
12. Isa. XLIX. 10.
13. Ex. XXIII. 25.
14. V. Glos.
15. Ibid.
16. A particularly choice quality of saffron. As a surveyor, he measured out land in business transactions, divided inheritances, etc.
17. No sowing was permitted within four cubits of the border of a canal so as not to damage its banks. These four cubits were marked off, and Rab Judah told R. Adda that he was not to be particular to measure them exactly. The four cubits on river banks were similarly treated, and Rab Judah observed that these need not be measured at all, but simply guessed.
18. Therefore they must be given very liberally, hence he told him merely to guess the measurement.
19. The bargees pulled the laden boats whilst they walked on the river bank. They naturally walked in a slanting fashion, bearing away from the river, and the full breadth that they might need had to be kept clear.
20. To whom the forest belonged.
21. For which sixteen cubits are given; B.B. 99b.
22. Zeph. II, I.
23. By connecting [H], the root of [H], with [H], 'to adorn.' Be just yourself, before demanding it of others.
24. V. *supra* p. 295, n. 8.
25. Notwithstanding that the noble's forests are not cleared.

Baba Mezi'a 108a

if not, they cannot walk there [in any case]'.[1]

Rabbah son of R. Nahman was travelling in a boat, when he saw a forest on the river bank. Said he: 'To whom does this belong?' — 'To Rabbah son of R. Huna', he was informed. He thereupon quoted, *'Yea, the hand of the princes and rulers hath been chief in this trespass*.[2] Cut it down, cut it down', he ordered. Then Rabbah son of R. Huna came and found it cut down. 'Whoever cut it down', he exclaimed, 'may his branches be cut down!'[3] It was related that during the whole lifetime of Rabbah son of R. Huna none of Rabbah son of R. Nahman's children remained alive.

Rab Judah said: All must contribute to the repair of the breaches in the wall,[4] even orphans; but not the Rabbis. Why? — The Rabbis need no protection.[5] But for the digging of wells [for drinking purposes] even the Rabbis are liable. But that is only if they [the townspeople] do not go out in bands;[6] if however, they do, [the Rabbis] are not [liable], because it is not In keeping with their dignity.[7]

Rab Judah said: When the river needs dredging,[8] those dwelling on the lower reaches must aid the upper inhabitants, but not vice versa.[9] But it is the reverse in respect to rain water.[10]

It has been taught likewise: If five gardens draw their water from the same well, and the well is damaged, all must assist the upper field; hence the lowest must aid all the rest, yet must repair by himself.[11] Likewise, if five courts run off their [surplus] water into one dyke, and the dyke is damaged, all must assist the lowest in the repairs;[12] hence the highest must assist all in repairing, yet must repair by himself [receiving no aid from the others.]

Samuel said: He who takes possession of the wharfage of a river is an impudent person, but cannot be [legally] removed.[13] But nowadays that the Persian authorities write [in the warrant of ownership], 'Possess it [sc. the field on the river bank] as far as the

depth of water reaching up to the horse's neck', he is removed.[14]

Rab Judah said in Rab's name: If one takes possession[15] [of an estate lying] between [the fields belonging to] brothers or partners, he is an impudent man, yet cannot be removed. R. Nahman said: He can even be removed too; but if it is only on account of the right of pre-emption, he cannot be evicted.[16] The Nehardeans said: He is removed even on the score of the right of pre-emption, for it is written, *And thou shalt do that which is right and good in the sight of the Lord*.[17]

What if one came to take counsel of him [sc. the neighbor who enjoys the right of pre-emption] and asked, 'Shall I go and buy it?' and he replied, 'Go and buy it': is formal acquisition from him necessary,[18] or not? — Rabina[19] ruled: No formal acquisition is necessary; the Nehardeans maintained: It is. And the law is that a formal acquisition is needed.[20] Now that you say that a formal acquisition is necessary, — if he did not acquire it of him [and bought the field], it advances or falls in his [the abutting neighbor's] ownership.[21] Now, if he bought it for a hundred [*zuz*], whereas it is worth two hundred, we see: if he [the original vendor] would have sold it to any one at a reduced figure, he [the abutting neighbor] pays him [the vendee] a hundred [*zuz*] and takes it. But if not [and it was a special favor to the vendee], he must pay him two hundred and only then take it. But if he bought it for two hundred, its value being only one hundred, — it was [at first] thought that he [the abutting neighbor] can say to him, 'I sent you for my benefit, not for my hurt.'[22] But Mar Kashisha, the son of R. Hisda,[23] said to R. Ashi: Thus did the Nehardeans say in R. Nahman's name: There is no law of fraudulent purchase in respect to real estate.[24]

If one sold a *griwa*[25] of land in the middle of his estate, we see: if it is of the choicest or of the most inferior quality, the sale is valid;

1. Since the noble could not be compelled to clear his forest, Rabbah's clearing would serve no purpose.
2. Ezra IX, 2.
3. I.e., may his children die!
4. As a measure of defense.
5. The merit of their learning protects them.
6. To dig it personally, but merely furnish the money for it.
7. On the whole passage v. B.B. (Sonc. ed.) p. 33.
8. Of mud and refuse which impede the free flow of the water.
9. If there are obstacles on the upper parts of the river, the water flow is adversely affected for the lower too. But on the other hand, 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.
10. Where the rainfall has to be drained away because it injures the roads, etc., those on the upper reaches must aid the lower, because if the lower water is not carried off the upper cannot be either. But those living below have no profit in the drainage of the town situated by the upper reaches of the river.
11. As before, it is in the interest of each that the water from above shall flow freely to his own field, but not that it shall continue after it has passed his estate. Therefore the lowest of all must assist in the repairing if the course is blocked above, but none need help him if it is blocked at his own estate.
12. If it was damaged at his court.
13. As stated above, p. 425, under Persian law, he who paid the land tax on a plot of land was entitled to it. A large clear space on the river bank was left for the purpose of unloading. It would appear that originally no one had a particular claim to it, and the revenue suffered accordingly. Hence, if one paid the land tax and seized it, he could not be legally removed; nevertheless, since this would cause considerable public inconvenience, he was stigmatized as an impudent man, lacking in civic responsibility.
14. Though the owners fence off their fields at some distance from the water's edge, the land actually belongs to them, and therefore none can legally seize it.
15. By paying the land tax thereon.
16. I.e., if the two fields on either side do not belong to brothers or partners, yet the owners allege that they had a prior right to pay the tax and take the land, and had intended doing so, in accordance with the right of pre-emption (v. p. 396, n. 6), their plea is unavailing.

17. Deut. VI, 18. This is regarded as an exhortation to the purchaser: 'Why buy a field just here, where it is more useful to its neighbor than another field not adjacent to his, when you can as easily buy a similar field elsewhere, seeing that it makes no difference to you?'
18. [The performance of a *kinyan* confirming the surrender of the abutting neighbor's right of pre-emption.]
19. Alfasi reads: R. Nahman.
20. Otherwise the neighboring estate owner can say, 'I merely stood aside whilst you established its price, as I knew that I would be charged more, being particularly anxious to obtain it.'
21. I.e., the purchase is legally invalid, the abutting neighbor retaining his option on it. Therefore if it appreciates after the purchase, he can insist on taking it over from the vendee at its value at the time of purchase, and the profit of the advance is his. Contrariwise, if it loses in value, he must pay the vendee its full original value.
22. For the vendee has in fact involuntarily become the neighbor's agent for purchase. Hence the latter can repudiate his act and insist on receiving it at its market value.
23. V. p. 388, n. 4.
24. Hence the neighbor must render the price paid by the vendee.
25. V. Glos.

Baba Mezi'a 108b

otherwise it is mere evasion.[1]

A gift is not subject to the law of pre-emption. Said Amemar: But if he [the donor] promised[2] security of tenure,[3] it is subject thereto.[4] When one sells *all* his property to one person, the law of pre-emption does not apply.[5] [Likewise, if it is sold] to its original owner, it is not subject to the law of pre-emption. If one purchases from or sells to a heathen, there is no law of pre-emption. 'If one purchases from a heathen' — because he [the purchaser] can say to him [the abutting neighbor], 'I have driven away a lion from your boundaries.' 'If he sells to a heathen' — because a heathen is certainly not subject to [the exhortation], *'And thou shalt do that which is right and good in the sight of the Lord*.' Nevertheless, he [the vendor] is placed under a ban, until he accepts responsibility for any injury that might ensue through him [the heathen]. A mortgage is not subject to the law of pre-emption. For R. Ashi said: The elders of Matha Mehasia told me, What is the meaning of mashkanta [a pledge, mortgage]? That it abides with him [the mortgagee].[6] What is its practical bearing? In respect to pre-emption. When one sells [an estate] that is far [from the vendor's domicile] in order to buy one that is near, or an inferior property to repurchase a better, the law of pre-emption does not apply.[7] [When an estate is sold] for poll tax, alimony [of a widow and her daughters] and funeral expenses, the law of pre-emption does not apply, for the Nehardeans said: For poll-tax, alimony, and funeral expenses an estate is sold without public announcement.[8] [A sale] to a woman, orphans, or a partner is not subject to the law of pre-emption.[9]

Of urban neighbors and rural neighbors, the former have priority;[10] of a neighbor [but not of the field to be sold] and a scholar, the latter takes precedence; of a relative and a scholar, the latter has priority. The scholars propounded: What of a neighbor and a relative? — Come and hear: *Better is a neighbor that is near that a brother that is far off*.[11]

If one offers well-formed coins, and the other full — weight coins,[12] the law of pre-emption does not apply. If these [the coins of the abutting neighbor] are bound up, and those [of the purchaser] unsealed, there is no pre-emption.[13] If he [the neighbor] says, 'I will go, take trouble, and bring money;' we do not wait for him. But if he says, 'I will go and bring money;' we consider: if he is a man of substance, who can go and bring the money [without delay], we wait for him; if not, we do not wait for him.

If the land belongs to one and the buildings [upon it] to another, the former can restrain the latter,[14] but the latter cannot restrain the former.[15] If the land belongs to one and the palm-trees [upon it] to another, the former can restrain the latter, but the latter cannot

restrain the former. [If a stranger wishes to purchase] the land for building houses, and [the abutting neighbor wants] the land for sowing, habitation is more important; and there is no law of pre-emption. If a rocky ridge or a plantation of young palm trees lay between [the fields], we consider: If he [the abutting neighbor] can enter therein even with a single furrow,[16] it is subject to the law of pre-emption, but not otherwise.[17] If one of four neighbors [on the four sides of a field] forestalled the others, the sale is valid; but if they all come together, it [the field] is divided diagonally.[18]

1. If A buys a small piece of land in the middle of B's estate, he immediately becomes a neighbor to the surrounding estate, just as C, the original neighbor on the outer side. Now, if the land bought by A is distinctly inferior or superior to the rest, it is natural that it should be sold separately, and the sale is genuine. But if it is just the same, it is obviously a mere fiction to make A the neighbor of B, and therefore C retains his rights of pre-emption.
2. Lit., 'wrote'.
3. I.e., in case it is seized for the donor's debt, another will be supplied.
4. Because it must have been a disguised sale, no person promising security for a gift.
5. Because the purchaser might refuse to buy the rest if he must give up any portion thereof.
6. [[H] from [H] 'to rest', 'abide'. The mortgagee is considered the nearest abutting neighbor; v. B.M. (Sonc. ed.) p. 396, n. 6.]
7. Since the vendor may suffer through the delay, and no privilege is given to one which entails a disadvantage to another.
8. In other cases of forced sale by order of the court, it was publicly announced so as to attract bidders. But these were regarded as matters of urgency, and therefore the announcement was dispensed with. For the same reason, one cannot wait for the neighboring estate-owner to avail himself of his privilege.
9. It was not held seemly that a woman should go about in search of land to buy; therefore the first purchase she makes is valid, even though it infringes upon the rights of pre-emption. The same privilege is accorded to orphans, on account of their generally defenseless state. With respect to partners, there are different interpretations. Rashi: If A and B are partners in a field, and C is their neighbor, A can sell his portion to B, and C cannot plead, 'Since I am a neighbor, I am entitled to buy half that portion, as in the case of two neighbors.' Tosaf. and R. Hai (quoted in Asheri a.l.): If A and B are partners in general, in land, or in business, A can sell a field to B (in which they are not partners) notwithstanding that C is a neighbor. In actual law, both interpretations are accepted; v. H.M. 175, 12 and 49.
10. If A is selling a field, and B is his neighbor in town, having a house next to his, whilst C is a neighbor of a field belonging to A, but not of that which is for sale, so that neither is a neighbor of the field to be sold, priority must be given to B, the urban neighbor. Thus, this does not refer to pre-emption at all. So Rashi, who bases his interpretation on the following arguments: (i) Whereas the whole of the preceding passage uses the phrase 'the law of neighborly pre-emption' ([H]), this passage speaks of priority, in quite a different phrase ([H]); (ii) Had the reference been to pre-emption, the previous passage should have included it, reading, (A sale) to a woman, orphans, a partner, and urban neighbor, and a scholar (as this passage continues) is not subject to pre-emption; (iii) Surely a scholar cannot infringe upon the pre-emption rights of an ignoramus! Tosaf. holds that the passage does refer to pre-emption, but treats of two neighbors. The weight of authority supports Rashi's view; v. H.M. 175, 50.
11. Prov. XXVII, 10.
12. V. p. 403, n. 4. If the neighbor offers the former and the purchaser the latter, or vice versa, the vendor can insist upon a particular preference.
13. If a neighbor and a stranger send money for the field, the former's coins being bound up and sealed in a package, whilst the latter's are open to view, and the vendor maintains that he is afraid to open the package, lest the sender claim that it contained more, he can sell to the stranger.
14. From selling them to a stranger, if he wishes to buy himself.
15. The landowner is regarded as permanent on the land, hence he can restrain the house-owner; not so the latter, who is held to have no permanent stake in the land.
16. I.e., the separation is not continuous.
17. Because the main reason of the right of pre-emption is that it is cheaper to cultivate two adjoining fields than two separate ones, as a long continuous furrow can be plowed and sown in a single operation.
18. v. figure.

Baba Mezi'a 109a

MISHNAH. IF A MAN LEASES A FIELD FOR BUT A FEW YEARS,[1] HE MUST NOT SOW IT WITH FLAX,[2] NOR HAS HE A RIGHT TO THE SYCAMORE BEAMS.[3] BUT IF HE LEASED IT FOR SEVEN YEARS, HE MAY IN THE FIRST YEAR SOW IT WITH FLAX, AND HAS A RIGHT TO THE SYCAMORE BEAMS.

GEMARA. Abaye said: He has no rights to the sycamore beams, but is entitled to the improvement in the sycamores themselves,[4] Raba said: He is not even entitled to the improvement.

An objection is raised: If one leases a field, when his lease expires[5] an assessment is made for him. Surely that means that the improvement in the sycamores are assessed for him! — No. The vegetables and beets are assessed for him. The vegetables and beets! Let him uproot and take them away! — It was before market day.[6]

Come and hear: If one leases a field, and the seventh year [i.e., the year of release] intervenes, an assessment is made for him. Does then the seventh year withdraw the land [from the lessee]?[7] — But read thus: If one leases a field, and the Jubilee arrives, an assessment is made for him. Yet even so, does then the Jubilee cancel a leasehold: Scripture [merely] forbade a sale in perpetuity![8] — But read thus: If one buys a field from his neighbor, and the Jubilee arrives, an assessment is made for him! And should you answer: Here too, the vegetables and beets are assessed for him, [I would reply] these are free to all in the Jubilee! Hence It must surely refer to the improvement of the sycamores![9] — Abaye explained the cited Baraitha on the basis of Raba's views: There it is different, because the Writ saith, Then the house that was sold shall go out [in the year of Jubilee]:[8] [only] that which was sold is returnable [to the first owner], but not the improvements. Then let us learn from it![10] — There it is a true sale, and Jubilee is a royal revocation.[11]

R. Papa leased a field for growing fodder. Now, some young trees sprouted up therein. When he [R. Papa] was about to quit, he said to them [the original owners]: Give me the improvement,[12] Said R. Shisha the son of R. Idi to R. Papa: If so, [had you leased] palm-trees, and these grew thicker [during the period of lease], would you then, Master, also demand the improvement? — He replied: There, I should not have taken possession for that purpose; but here I leased it[13] for that.[14] With whom does this agree? With Abaye, who maintained that he is entitled to the improvement In the sycamores? — It may agree even with Raba. There he [the lessee] suffers no loss [through the improvement of the sycamores]; here there is a loss. But he [the lessor] said to him, 'Wherein did I cause you to suffer loss? Through the [diminished] area for fodder. Then take the value of the fodder [that would have grown] in their place, and go.' He replied, 'I would have sown it with garden saffron,'[15] Said he to hini, 'You have [thus] shown that your intention was to remove [what you did sow] and depart:[16] then take your saffron and go. You are entitled only to the value of the wood.'[17]

R. Bibi b. Abaye leased a field and surrounded it with a ridge, from which there sprung forth sorb bushes. When he left the field [on the expiration of the lease], he said to them, 'Give me the improvements I effected.'[18] Said R. Papi: 'Because you come from Mamla, you speak words of no substance.[19] Even R. Papa claimed [improvements] only because he suffered loss; but here, what loss have you sustained?'

R. Joseph had a gardener.[20] Now, he died and left five sons-in-law. Said R. Joseph: Hitherto there was one, and now there are five; hitherto they did not rely on each other [to do the work] and so caused me no loss, whilst now they will, and cause me loss. [Therefore] he said to them: If you accept the improvements due to you and quit, it is well; if not, I will evict you without [giving you] the improvements. For Rab Judah — others

state, R. Huna — others state, R. Nahman — said: If a gardener dies, his heirs may be evicted without [receiving] the improvements. — But [nevertheless] that is incorrect.

A certain gardener said to his employers, 'Should I cause loss, I will quit.' He did [then] cause loss, Said Rab Judah: He must quit without [receiving] the improvements. R. Kahana said: He must quit, but receives the improvements [he effected]. Yet R. Kahana admits that if he said, 'I will quit without the improvements,' he is evicted without [receiving] improvements. Raba said: [Even then,] It is an *asmakta*,[21] which is not binding. But according to Raba, wherein does it differ from what we learnt: 'Should I neglect and not till it, I will pay with the best [crops]?'[22] — There he merely pays for the loss he caused;[23] here [it is sufficient that] we make a deduction on account of what he spoiled — whilst the rest must be given him.[24]

Ronia was Rabina's gardener. Having spoiled it, he was dismissed. Thereupon he went before Raba, complaining — 'See, Sir, how he has treated me.' 'He has acted within his rights,' he informed him. 'But he gave me no warning,' protested he. 'No warning was necessary,' he retorted. This is in accordance with Raba's views. For Raba said: Elementary teachers, a gardeners butcher, a cupper[25]

1. Less than seven years.
2. Because it greatly impoverishes the soil, which does not regain its fertility until after seven years. This can apply only to a lease on a fixed rental, for if on a percentage basis, the lessor himself profits thereby (Rashi); v. p. 597.
3. The branches of sycamore trees were lopped off and fashioned into beams for building purposes. But as they required seven years to grow again, a lessee for a short term has no right to them.
4. If the sycamores improved during his lease, the improvement is assessed, and the lessee is entitled thereto.
5. Lit., 'his time came to quit.'
6. And if they are stored, their value depreciates. Hence they are assessed, but left in the field.
7. This is an interjection.
8. Cf. Lev. XXV, 33.
9. This contradicts Raba.
10. In reference to a lease: Just as there, the vendee is entitled to improvements, so here too.
11. Of the sale. Hence, only what Scripture distinctly states is to return, sc. the purchase, is returnable, but not the improvements. But in the case of a lease the return is pursuant to a human agreement; hence, in Raba's view, it goes back just as it is, including the improvements.
12. The value of the trees.
13. Lit., 'descended therein.'
14. When leasing palm-trees, the lessee thinks only of the fruit, but when leasing a field for fodder, his mind is set upon anything that may grow there.
15. Which is much more valuable.
16. By answering, 'I would have sown it with saffron,' you have shown that you would have planted something which could be entirely removed when grown, and not that which, whilst the stock remained, would show you a profit on its improvement, e.g., young palm-trees.
17. I.e., you must regard these trees as though they were saffron and you had to remove them entirely, and thus you have no other claim but for the value of the timber.
18. The value of these bushes.
19. The Aruch holds Mamla to be a place name, whose inhabitants were short-lived. Because you come from such a place, you speak words that are short-lived i.e., use untenable arguments. Rashi: Because you are descendants of Eli (who were likewise short-lived, v I Sam. II, 31ff.) you speak, etc. [For another interpretation v. B.B. (Sonc. ed.) p. 582, n. 6.]
20. Who worked for half profit.
21. V. Glos.
22. *Supra* 104a. It is there stated that their condition is binding.
23. Since he neglects the whole field, he involves its owner in considerable loss, and there are no profits to offset it,
24. But he must not be deprived of all his share in the improvements, which exceeds the loss.
25. So translated by Rashi *supra* 97a. Here he translates: a circumciser.

Baba Mezi'a 109b

and the town scribe,[1] are all regarded as being permanently warned.[2] The general principle is this: for every loss that is

irrecoverable, [the workers] are regarded as being permanently warned.

A certain gardener said, 'Give me my improvements, as I wish to emigrate to Palestine.' When he came before R. Papa b. Samuel he ordered: 'Give him the improvements'. But Raba protested: 'Has only he effected the increased value, and not the soil?'[3] He replied, 'I meant half thereof.' 'But,' he protested, 'hitherto the owner took half and the gardener half; whereas now he must give a share to an *aris*!'[4] He replied, 'I meant a quarter of the improvement.' Now R. Ashi thought this to mean a quarter [of the residue],[5] which is a sixth [of the whole]. For R. Minyomi, the son of R. Nehumi, said: Where it is the practice for a gardener to receive half profits and an *aris* one third,[6] and a gardener wishes to quit, he is given [his share of the] profits and dismissed, [a share being computed in such a way] that the employer sustains no loss [through having to engage an arts]. Now, should you assume that he meant a quarter [of the residue after paying the *aris* his share], which is a sixth of the whole, it is well; but if you say that it means a literal quarter, the employer loses a twelfth![7] R. Aha, the son of R. Joseph, said to R. Ashi: But cannot he [the gardener] say to him, 'Do entrust your own portion to the *aris*; whilst as for me, I can do what I wish with my own share'?[8] — He replied: When you arrive at 'The slaughter of consecrated animals,' come and place your difficulties before me.[9]

The [above] text states: 'R. Minyomi, son of R. Nehumi said: Where it is the practice for a gardener to receive half profits and an arts one third, and a gardener wishes to quit, he is given [his share of] the profits and then dismissed, [a share being computed in such a way] that the employer sustains no loss.' R. Minyomi, son of R. Nehumi [also] said: Of an old [vine] trunk [the gardener receives] half;[10] but if the river inundated it,[11] he receives a quarter.[12]

A certain man pledged a vineyard with his fellow for ten years,[13] but it aged after five.[14] Abaye said: They [the aged trunks] rank as produce;[15] Raba ruled: As principal; therefore land must be bought therewith, of which he [the mortagee] enjoys the usufruct.

An objection is raised: If the tree withered or was cut down, both are forbidden to use it. What then shall be done? It must be sold for timber, land bought with the proceeds, and he [the mortgagee] takes the usufruct.[16] Surely 'withered' is similar to 'cut down': just as the latter means, in its due time, so the former too; and yet it is taught, 'It must be sold for timber, land bought with the proceeds, and he [the mortagee] takes the usufruct': thus proving that it ranks as principal? — No; 'cut down' is similar to 'withered: 'just as the latter [implies] before its time,[17] so the former too.

Come and hear: If aged vines and olive trees fell to her [as an inheritance],[18]

1. [Or 'barber', v. B.B. (Sonc. ed.) p. 106, n. 7.]
2. Of dismissal, should their work be unsatisfactory.
3. Surely the owner of the soil is entitled to at least half.
4. The gardener having left the work unfinished, an *aris* (v. Glos.) must be engaged, who will also demand his share, and so the owner loses thereby.
5. After allowing for the share of the *aris*, v. n. 9.
6. A gardener plants the vineyard, whereas an *aris* comes to a vineyard already in existence, hence he receives a smaller portion.
7. E.g., if the profits are six *denarii*, the gardener and the employer would each have received three. But now an *aris* must be engaged, who receives a third of the net profits, i.e., two *denarii*. Hence, if the gardener receives a quarter of the whole, i.e., 1 1/2 *denarii*, the employer is left with 2 1/2, a twelfth of the whole less than his due; but if he is allotted only a quarter of the residue, i.e., of 7 *denarii*, the employer is still left with his full share.
8. [Even if the gardener should receive a quarter, not a sixth, the employer stands to lose nothing, for the gardener can tell him to entrust the remaining three quarters to an *aris*, who will receive a third of it for his labor, and a half of the whole will still be left for the owner. Thus: 1/3 x 3/4 x 6 = 1 1/2 (share of the

aris); 3/4 x 6 - 1 1/2 = 3, half of the whole (share of the employer).]

9. 'The slaughter of consecrated animals' is in the name of a tractate of the Talmud, now called 'Sacrifices' ([H]), of great subtlety. I.e., 'I see from the question that you have a keen subtle mind — it will be particularly interesting to hear your comments on that Tractate.' Rashi gives two views on this remark. One, that he accepted its reasoning, and complimented him thereon; another, that he merely evaded it by a sarcastic reference to its oversubtlety.
10. When it no longer bears fruit and is cut down for its wood.
11. Either uprooting it entirely, or water-logging the soil and making the vine unfit for fruit, at least for a long time,
12. As a gardener who wishes to quit in the middle. In the first instance, the ageing of a vine is natural, and therefore it is tacitly understood that when no longer fruit-bearing it shall be treated as the rest. But an inundation is unnatural; hence it is considered as though the gardener had suddenly quitted it,
13. On a time mortgage. V. *supra* p. 394.
14. And was unable to produce. This was when it was expected to age.
15. Therefore they belong to the mortgagee.
16. V. *supra* 79a.
17. Because the ordinary withering due to age is expressed by 'aged', though that too may imply untimely withering, but 'withered' can only mean prematurely, Tosaf.
18. The reference is to a married woman, of whose inheritance the husband enjoys the usufruct, v. Keth. 79b.

Baba Mezi'a 110a

they are sold for timber and land bought with the proceeds, whereof he [the husband] enjoys the usufruct![1] — Read: 'and they aged.'[2] Alternatively: have we not explained it that, e.g., they fell to her in another field [not belonging to her]? so that the [entire] principal is destroyed.[3]

A certain note[4] stated an unspecified number of years. Now, the creditor maintained that it meant three; whilst the debtor insisted upon two. Thereupon the creditor anticipated [the findings of the court] and enjoyed the usufruct. Now, whom do we believe? — Rab Judah said: The land stands in the presumptive possession of its owner.[5] R. Kahana said: The usufruct is in the presumptive possession of him who enjoyed it.[6] And [indeed], the law is in accordance with R. Kahana, who maintained that the usufruct is in the presumptive possession of those who enjoyed it. But have we not an established principle that the law is in accordance with R. Nahman [in civil law], and he [himself][7] ruled that the land is in the presumptive possession of its owner?[8] — There it is in a matter that is not destined to be cleared up; here, however, it is a matter [the truth of which] may be finally revealed,[9] and a Court is not to be troubled twice.[10]

If the creditor maintains that it [the mortgage] was for five years, whilst the debtor says that it was for three: and when he challenges him, 'Bring forth your note,' he pleads, 'The note is lost,' — Rab Judah ruled: We believe the creditor, since he could have pleaded, 'I have bought it [outright].'[11] Said R. Papa to R. Ashi: R. Zebid and R. 'Awira disagree with Rab Judah's ruling. Why? — Since this document is for the purpose of collection,[12] he [the creditor] must have taken great care of it, and [now] he is actually Suppressing the document, thinking, 'I will enjoy its usufruct for an additional two years.' Rabina said to R. Assi: If so, a mortgage after the fashion of Sura, which was drawn up thus: 'On the completion of this number of years, this estate shall go out [of the mortgagee's possession] without further payment:' if he suppresses the mortgage deed and pleads, 'I have bought it' — is he then believed: would then the Rabbis have enacted a measure which may lead to loss? — He replied: There the Rabbis enacted that the mortgager should pay the land-tax and repair ditches.[13] But what of an estate that has no ditches and is not subject to land-tax? Then he should have made a formal protest,[14] he answered. But what if he did not protest? — Then he brought the loss upon himself.

If the *aris* claims, 'I entered [the field] on half profits'; whilst the landlord maintains, 'I

engaged him on a third profits'; who is believed? — Rab Judah said: The owner is believed; R, Nahman ruled: It all depends on local usage. Now, it was assumed that there is no dispute, the latter ruling[15] refers to a place where an *aris* receives half; the former, where he receives a third. But R. Mari, son of Samuel's daughter,[16] said to them [the scholars]: Thus did Abaye say: Even in places where the *aris* receives a half, there is still a dispute; Rab Judah ruling that the landlord is believed, since he could have pleaded, 'He is my hired laborer' or 'my gleaner.'[17]

If orphans maintain, 'We have created the improvements;' whilst the creditor contends, 'Your father created them:'[18] upon whom lies the onus of proof?

1. This proves that they rank as principal; for if as fruit, the husband might enjoy them direct.
2. Prematurely. Even Abaye admits that in such a case it does not count as produce, since it was unexpected.
3. If the husband uses it direct, whereas the principal of the legacy must remain the wife's. But if she inherited them in her own field or vineyard, the husband could sell them for timber and utilize the proceeds direct, since the soil is still left for the wife. The dispute of Abaye and Raba refers to a similar case, viz., where land and its trees were pledged. But if only trees, the field not belonging to the debtor, presumably Raba agrees that they rank as principal, not produce.
4. Concerning a mortgage in the fashion of Sura, (v. p. 394) which was that the land reverted to the debtor after an agreed period without further payment.
5. V. *supra* 102b, Thus, since there is a dispute about the third year, we presume that it belongs to the debtor, since he is its known owner, unless there is proof to the contrary; and therefore the creditor is forced to repay.
6. It being a general rule that the onus of proof lies on the plaintiff, who in this case is the debtor, since the creditor has already taken it.
7. So the text according to Rashi and Rashal.
8. V. *supra* 102b.
9. By the signatories to the note, who can attest the intended period.
10. If the return of the usufruct is ordered, witnesses may attest that the intended period was three years, and the matter will have to come before Court a second time.
11. For three years establish a presumption of ownership, in the absence of a deed of a sale; v. B.B. III. 1.
12. I.e., of the debt, in the form of usufruct; without it, the debtor could have evicted the creditor at the very outset.
13. Round about the field, for irrigation. Hence the true ownership is known.
14. I.e., a declaration that the land was not purchased by the creditor. This of course had to be done before three years.
15. That it depends on local usage, and since this was said in contradistinction to Rab Judah's dictum, it must mean that the *aris* is believed
16. V. p. 588, n. 2.
17. I.e., 'I have only hired him for a few days, and thus could have dismissed him with a small wage'; [H], here translated 'gleaner', was a sort of client or retainer (Jast.).
18. A creditor of the deceased has no claim upon the increased value of an estate effected by the heirs; but v. p. 630, n. 5.

Baba Mezi'a 110b

Now, R. Hanina thought to rule: The land stands in the presumptive ownership of the orphans; therefore the creditor must adduce proof. But a certain old man observed to him, Thus did R. Johanan rule: It is for the orphans to adduce proof. Why? — Since land stands to be seized [for debt] it is as though it were already seized;[1] hence the onus of proof lies upon the orphans.

Abaye said: We have learnt likewise: If it is doubtful which came first, he must cut it down without compensation.[2] This proves, since it stands to be cut down,[3] we say to him, 'Bring proof [that the tree was here first] and then receive [compensation];' so here too, since the note[4] is for the purpose of collection,[5] it is as though already collected, and therefore the orphans must prove [their contention]. [Subsequently] the orphans brought proof that they had effected the improvements. Now, R. Hanina thought to rule that when their claims are being satisfied,[6] it is done with land.[7] But that is incorrect: their claims are satisfied with money. This follows from R. Nahman's dictum. For R. Nahman said in Samuel's name: In three cases the improvements are

assessed and payment made in money, viz., [In the settlement of the debt of] the first born to the ordinary son; of the creditor or of the widow[8] who collected her *kethubah* to orphans; and of the creditors to the vendees.[9] Rabina objected before R. Ashi: Shall we say that in Samuel's opinion the creditor must return the improvement to the vendees?[10] Has then the vendee any title to the improvement: Surely Samuel said: A creditor collects the improvements! And should you reply, There is no difficulty, the one refers to an improvement touching the carriers; the other to an improvement not touching the carriers.[11] Surely cases arose daily where Samuel ordered distraint even of the improvement touching the carriers! — There is no difficulty: in one case, the value of the land and its improvement is claimed; in the other, the value of the land and its improvement is not claimed. But where the value of the land and its improvement is not claimed, [you say that] he must pay the vendee money [for his improvements] and can dismiss him. Now, that agrees well with the view that [even] if the vendee has money, he cannot pay off the creditor. But on the view that he can,[12] let him say to him, 'Had I money, I would have paid you off from the whole estate; now that I have no money, give me a griwa of land in any field, to the value of my improvements'? — The circumstances here are that he [the original debtor] had created it [the field] an hypothec,[13] declaring to him, 'Your payment shall come Only out of this.'[14]

MISHNAH. IF ONE LEASES A FIELD FOR A SEPTENNATE FOR SEVEN HUNDRED *ZUZ*, THE SABBATICAL YEAR IS INCLUDED. BUT IF HE LEASES IT FOR SEVEN YEARS FOR SEVEN HUNDRED *ZUZ*, IT IS NOT INCLUDED. A WORKER ENGAGED BY THE DAY CAN COLLECT [HIS WAGES] THE WHOLE OF THE [FOLLOWING] NIGHT; IF ENGAGED BY THE NIGHT, HE CAN COLLECT IT THE WHOLE OF THE [FOLLOWING] DAY.[15] IF ENGAGED BY THE HOUR, HE CAN COLLECT IT THE WHOLE DAY AND NIGHT.[16] IF ENGAGED BY THE WEEK, MONTH, YEAR, OR SEPTENNATE, IF HIS TIME EXPIRES BY DAY, HE CAN COLLECT [HIS WAGES] THE WHOLE OF THAT DAY; IF BY NIGHT, HE CAN COLLECT IT ALL NIGHT AND THE [FOLLOWING] DAY.

GEMARA. Our Rabbis taught: Whence do we know that a worker hired by day collects [his wages] all night? From the verse, *the wages of him that is hired shall not abide with thee all night until the morning*.[17] And whence do we know that a worker hired by the night collects it the whole of the [following] day? Because it is written, *At his day shalt thou give him his hire*.[18] But let us say the reverse?[19] — Wages are payable only at the end [of the engagement].[20]

Our Rabbis taught: From the implication of, *The wages of him that is hired shall not abide with thee all night*, do I not know that it means, until the morning? Why then is it written, until the morning? To teach that he [the employer] violates [the injunction] only until the first morning. But thereafter? — Said Rab: He transgresses, *Thou shalt not delay* [payment]. R, Joseph said: What verse [shows this]?[21] — Say not unto thy neighbor, *Go, and come again, and to-morrow I will give; when thou hast it by thee*.[22]

Our Rabbis taught: If one instructs his neighbor, 'Go out and engage for me workers,' neither transgresses the injunction, *Thou shalt not keep* [the wages] *all night*. The former, because he did not engage them;

1. And is in the theoretical possession of the creditor.
2. V. B.B. 24b. A space of fifty cubits around a city had to be left entirely free for the beauty of the town, If one had a tree within fifty cubits, which he had planted after the town-boundaries had been fixed there, he must remove it without compensation. If it had originally been planted outside fifty cubits, but then, owing to the town's extension, it came within the prohibited area, he receives compensation, but is still bound to cut it down. If, however, it is unknown which was there first, there is no compensation.
3. In any case.
4. [Read with some texts 'the land.']

5. The creditor can seize the land for his debt, including the improvements, save that, if effected by the heirs, he must pay for them.
6. For the return of the increased value. The literal rendering of the text is, 'Where we dismiss them' — by satisfying their claims.
7. They are given a portion of the land equal to the increase in value of the whole.
8. Lit., 'wife.'
9. (i) A firstborn receives a double share of the estate left by the deceased (Deut. XXI, 17), but not of the improvements effected after death. Now, if the division was not made immediately but sometime after death, and both the firstborn and the ordinary son had effected improvements upon the whole estate in the interval: when the firstborn subsequently takes his double share, it contains part of the joint improvements to which he is not entitled. An assessment is therefore made, and he must pay the ordinary sum for it, not by allotting him an additional piece of ground, but in money. Similarly (ii) when a widow or a creditor seizes the estate in satisfaction of their claim, which was improved by the heirs after the deceased's death, to which improvements they are not entitled. (iii) If a debtor sells land after contracting a written debt, the creditor can seize the land from the vendee, if the unsold estate is insufficient; but he must compensate the vendee for his improvements. This too is done with money, not land, but v. text on iii.
10. [So according to MS.M.; text incur. edd. is somewhat defective.]
11. Jast.: an improvement touching the carriers, i.e., an increase in the value of the crop, opp. to an increase in the value of the land; v. *supra* p. 89, n. 4.
12. Just as the original debtor.
13. V. *supra* p. 90 n. 5.
14. In that case all agree that the vendee cannot retain a portion of the land against his improvements.
15. In the sense that if he is paid any time during that day or night, his employer does not violate the injunctions against delaying payment. Lev. XIX, 13 and Deut. XXIV, 15.
16. V. *infra* Gemara.
17. Lev. XIX, 13; hence, if paid before morning, it is well.
18. Deut. ibid.
19. That the night worker must be paid during the night for which he is engaged, the first verse quoted being so interpreted: similarly the day worker.
20. Deduced from a verse *supra* 65a, q.v.
21. Actually there is no such injunction.
22. prov. III, 28.

the latter, because the wages [i.e., the labor for which wages are due] are not with him. How so? If he [the agent] assured them, 'I am responsible for your wages,' then he is responsible.[1] For it has been taught: If one engages a workman to labor on his [work], but directs him to that of his neighbor, he must pay him in full, and receive in turn from the owner [of the work actually done] the value whereby he benefited him! — It holds good only if he said to them, 'The employer is responsible for your wages.[2]

Judah b. Meremar used to instruct his attendant, 'Go and engage laborers for me, and say to them, Your employer is responsible for your wages.' Meremar and Mar Zutra used to engage [laborers] on each other's behalf.

Rabbah son of R. Huna said: *The market traders of Sura do not transgress [the injunction], The wages of him that is hired shall not abide all night* [etc,], because It is well known that they rely upon the market day.[3]

IF ENGAGED BY THE HOUR, HE CAN COLLECT IT ALL DAY AND NIGHT. Rab said: A man engaged by the hour for day work can collect [his wages] all day;[4] for night work, can collect [it] all night. Samuel maintained: A man engaged by the hour for day work can collect it all day; for night work, all night and the following day.

We learnt: IF ENGAGED BY THE HOUR, HE CAN COLLECT IT ALL DAY AND NIGHT, this refutes Rab![5] — Rab can answer you: It is meant disjunctively. [Thus:] If engaged by the hour for day work, he can collect his wages all day; for night work, he can collect it all night.

We learnt: IF ENGAGED BY THE WEEK, MONTH, YEAR OR SEPTENNATE, IF THE TIME EXPIRES BY DAY, HE CAN COLLECT HIS WAGE THE WHOLE OF THAT DAY; IF BY NIGHT, HE CAN

COLLECT [IT] ALL NIGHT AND THE FOLLOWING DAY![6] — Rab can answer you: It is a dispute of Tannaim. For it has been taught: A man engaged by the hour for day work collects his wage all day; for night work, all night: this is R. Judah's opinion. R. Simeon said: A man engaged by the hour for day work collects all day; for night work, all night and the [following] day. Hence it was said: Whoever witholds[7] the wages of a hired laborer transgresses these five prohibitions of five denominations and one affirmative precept as follows:[8] *Thou shalt not oppress thy neighbour;*[9] *neither rob him;*[10] *Thou shalt not oppress an hired servant that is poor;*[11] *The wages of him that is hired shall not abide all night with thee;*[12] *At his day shalt thou give him his hire*;[13] and, *neither shall the sun go down upon it.*[14] But Surely those that apply at day[15] do not apply at night, and those that apply at night do not apply at day! — Said R. Hisda: It refers to hiring in general.[16]

What is meant by 'oppression' and 'robbery'? — R. Hisda said: 'Go, and come again,[17] go and come again' — that is 'oppression';[18] 'You have indeed a charge upon me, but I will not pay it' — that is 'robbery'. To this R. Shesheth demurred:[19] For what form of 'oppression' did Scripture impose a sacrifice?[20] For that which is analogous to a bailment,[21] where one [falsely] repudiates a debt of money [or its equivalent]! — But, said R. Shesheth, 'I have paid you' — that is 'oppression'; 'You have indeed a charge upon me but I will not pay you' — that is 'robbery'. To this Abaye demurred:[22] What is 'robbery' for which Scripture imposed a sacrifice? — That which is analogous to a bailment, where one falsely repudiates a [debt of] money [or its equivalent]![23] — But, said Abaye, 'I never engaged you' — that is 'oppression'; 'I paid you' — that is 'robbery'. Now, as for R. Shesheth, how does 'oppression' differ from 'robbery', that he objected to the former, but not the latter?[24] — He can answer you: 'Robbery' implies that he first robs him and then repudiates [liability].[25] If so, may not 'oppression' too refer to subsequent repudiation?[26] — What comparison is there? As for the other [sc. 'robbery'], it is well, for it is written [*And lie unto his neighbor*] … *Or in a thing taken away by violence*,[27] which implies that he originally made admission to him. But with respect to 'oppression', is it then written, Or in a thing of oppression?[28] — *or hath oppressed his neighbor* is stated, implying that he had already oppressed him.[29] Raba said: 'Oppression' and 'robbery' are identical. Why then did Scripture divide them? — [To teach] that two negative precepts are infringed.

MISHNAH. WHETHER IT BE THE HIRE OF MAN, BEAST, OR UTENSILS, IT IS SUBJECT TO [THE LAW], AT HIS DAY THOU SHALT GIVE HIM HIS HIRE,[30] AND, THE WAGES OF HIM THAT IS HIRED SHALL NOT ABIDE WITH THEE UNTIL THE MORNING.[31] WHEN IS THAT? ONLY IF HE DEMANDED [IT] OF HIM; BUT OTHERWISE, THERE IS NO INFRINGEMENT. IF HE GAVE HIM AN ORDER TO A SHOPKEEPER OR A MONEY-CHANGER,[32] HE IS NOT GUILTY OF INFRINGEMENT. A HIRED LABOURER, WITHIN THE SET TIME,[33] SWEARS AND IS PAID.[34] BUT IF HIS SET TIME PASSED,[35] HE CANNOT SWEAR AND RECEIVE PAYMENT; YET IF HE HAS WITNESSES THAT HE DEMANDED PAYMENT (WITHIN THE SET TIME),[36] HE CAN [STILL] SWEAR AND RECEIVE IT. ONE IS SUBJECT TO [THE LAW], AT HIS DAY THOU SHALT GIVE HIM HIS HIRE, IN RESPECT OF A RESIDENT ALIEN,[37] BUT NOT TO THAT OF, THE WAGES OF HIM THAT IS HIRED SHALL NOT ABIDE WITH THEE UNTIL THE MORNING.

GEMARA. Who is the authority for our Mishnah? [For] it is neither the first Tanna who interpreted *'of thy brethren'*, or R. Jose son of R. Judah. To what is the reference? — It has been taught:

1. And therefore subject to the injunction.
2. Nevertheless, the employer is not subject to the prohibition, because he did not hire the workers himself.

3. Therefore it is implicitly understood and stipulated, as it were, that the worker is not to be paid before.
4. E.g., if he was engaged until midday, he must be paid during the rest of the day; otherwise the employer transgresses the injunctions quoted above; similarly the rest of the passage.
5. For Samuel can say that it applies to a night worker, but on Rab's view it can apply to
6. And finishing during the day or the night is the same as the case of an hour worker, and thus refutes Rab,
7. Lit., 'suppresses'.
8. [H] lit., 'names', i.e., designations of negative precepts, the designation being by the characteristic word of the injunction.
9. Lev. XIX, 13.
10. Ibid.
11. Deut. XXIV, 14.
12. Lev. ibid.
13. Deut. XXIV, 15 — these are affirmative precepts.
14. Ibid.
15. I.e., to a worker hired by the day.
16. I.e., these injunctions were written in connection with hiring workers, though it is indeed true that in no single instance are they all infringed together.
17. Prov. III, 28.
18. I.e., continually deferring payment, though intending to pay eventually.
19. [It is clear from Rashi that what follows is not a citation from a Baraitha, but a piece of R. Shesheth's own Biblical exegesis.]
20. V. Lev. V, 20, 25: *If a soul sin, and commit a trespass against the Lord, and lie unto his neighbor in that which was delivered to him to keep* ([H]), *or in fellowship, or in a thing taken away by violence* ([H]) *or hath oppressed his neighbor* ([H]) *… he shall bring his trespass offering unto the Lord.*
21. *'In that which was delivered to him to keep.'*
22. [Cf. p. 634, n. 14].
23. But admitting liability whilst refusing to pay is not repudiation.
24. For the same Baraitha [or 'exegesis', v. p. 634, n. 14] which refutes R. Hisda's definition of 'oppression,' refutes his own of 'robbery' too.
25. privately he admitted liability, but refused to pay, thereby robbing him; but when sued at court, he repudiated liability altogether. Thus his definition is not opposed to the other, which is based on Biblical exegesis.
26. I.e., R. Hisda's definition of oppression may be correct. Privately, he put him off repeatedly, but when sued, denied liability.
27. Ibid. This implies, the thing having already been taken away by violence, i.e., he refused to settle an admitted liability, he now lies concerning it and denies liability altogether, in accordance with R. Shesheth's amended definition.
28. Which would likewise imply having first oppressed him, he now denies liability.
29. Denying liability as soon as the worker asked for pay.
30. Deut. XXIV 15.
31. Lev.XIX 13.
32. To supply him to the extent of his wages.
33. When payment is due, as defined in preceding Mishnah.
34. V. p. 587, n. I.
35. I.e. if the set time has lapsed.
36. [Some texts rightly omit bracketed words, v. *infra* P. 113a.]
37. v, p. 407, n. 8.

Baba Mezi'a 111b

[Thou shalt not oppress an hired servant that is poor and needy, whether he be] of thy brethren — this excludes idolaters;[1] or of thy strangers — this means a righteous proselyte;[2] that are in thy gates — i.e., an alien who eats unclean food.[3] From this I know [the law only in respect of man's hire; whence do I know to extend it to animals and utensils? From, that are in thy land,[4] implying, all that are in thy land. And in respect of all[5] these injunctions,[6] all are transgressed. Hence it was said: The hire of man, animal, and utensils are identical in that they are subject to [the laws], At his day shalt thou give him his hire, and, the wages of him that is hired shall not abide with thee all night until the morning. R. Jose son of R. Judah said: In respect to a resident alien one is subject to [the law], At his day thou shalt give him his hire; but not to that of, Thou shalt not keep all night [the wages of him that is hired, etc.]. In respect of [the hire of] animals and utensils, only the injunction, Thou shalt not oppress [etc.],[7] is applicable. Now, who is [the authority for our Mishnah]? If the first Tanna, who interpreted 'of thy brethren,' the resident alien presents a difficulty.[8] If R. Jose. [the hire of] animals and utensils presents a difficulty![9] — Said Raba: This Tanna [of our Mishnah] is a Tanna of the School of R. Ishmael, who

taught: Whether it be the hire of man, beast, or utensil, it is subject [to the laws], At his day thou shalt give him his hire, and, The wages of him that is hired shall not abide with thee. In respect of a resident alien one is subject to [the law]. At his day thou shalt give him his hire, but not to, Thou shalt not keep. [etc.].

What is the reason of the first Tanna who interprets [the verse] 'of thy brethren'? — He deduces [identity of law] from the word 'hire' written twice.[10] R. Jose son of R. Judah, however, does not accept this deduction. But granted that he does not, yet one should be liable to [the law]. At his day thou shalt give him his hire, in respect of animals and utensils too![11] — R. Hanania learnt: Scripture saith, Neither shall the sun go down upon it, for he is poor;[12] [hence it applies only to] those who are subject to poverty or wealth, and so excludes animals and utensils, which are not subject to poverty and wealth. And the first Tanna, how does he interpret this [verse], 'for he is poor'? — It is necessary to show that the poor receive precedence over the wealthy.[13] And R. Jose son of R. Judah?[14] — That follows from, Thou shalt not oppress an hired servant that is poor and needy. And the first Tanna?[15] — One teaches the priority of the poor man over the rich; the other, the priority of the poor, over the needy.[16] And both are necessary. For if we were [merely] informed [of the poor man's priority over] the needy, [I would think that it is] because he [the needy] is not ashamed to demand it [his wage] from him. But as for the wealthy, who is ashamed to demand it from him, I might say that it is not so [viz., that the poor takes no precedence over him]. Whilst if we learnt this in respect to the wealthy, I would think that it is because he is not in need thereof; but as for the needy, who needs it [more], I might argue that it is not so.[17] Hence both are necessary.

Now as to our Tanna, in either case, [it is difficult]: if he accepts the deduction of 'hired' written twice, then even a resident alien should also be included;[18] if he rejects it, whence does he know [the inclusion of] animals and utensils? — In truth, he does not accept this deduction. Yet there[19] it is different, because Scripture writes, The wages of him that is hired shall not abide with thee all night until the morning: implying, whosoever's hire is with thee.[20] If so, then even a resident alien too [is meant]! — The Writ saith, [Thou shalt not oppress] thy neighbor: 'thy neighbor' [is specified], but not a resident alien. If so, then even animals and utensils too should be excluded! — But Surely 'with thee' is written![21] What reason have you to include animals and utensils and exclude a resident alien?[22] — It is logical that animals and utensils are to be included, since they come within the category of the property of 'thy neighbor', whereas [the hire of] a resident alien is not within this category.

Now the first Tanna, who interpreted 'of thy brethren,' what is his exegesis on 'thy neighbour'?[23] — He needs this, even as it has been taught: [Thou shalt not oppress] thy neighbor, but not an Amalekite.[24] An Amalekite? But that follows from 'of thy brethren! — One gives permission in regard to his 'oppression';[25] the other, in regard to [the retention] of his 'robbery'[26] And both are necessary. For if we were informed that [the retention] of his 'robbery' is permitted, that may be because he [the Amalekite] has not worked for him. But as for oppressing him [by withholding his wages] — I would think that that is not [permitted]. Whilst if we were taught thus about oppressing him, that may be because it [his wage] has not yet reached his [the Amalekite's] hand.[27] But as to his 'robbery' — I would think [the retention thereof] is not [allowed]. Hence both are necessary.

And R. Jose son of R. Judah, how does he interpret this verse, The wages of him that is hired shall not abide with thee all night until the morning?[28] — He needs it to teach the law stated by R. Assi, viz., even if he [the employer] engaged him only to vintage a single cluster of grapes, he is subject to, [It]

shall not abide, … all night, etc.[29] And the other?[30] — That follows from the verse, And setteth his soul [i.e., life] upon it, implying, anything for which he risks his life.[31]

1. Lit., 'others', the several injunctions insisting on prompt payment do not apply in regard to them.
2. V. supra p. 410, n. 8.
3. Lit., 'carcasses' i.e., a resident alien.
4. Deut. XXIV, 14.
5. Viz., the hire of an Israelite, proselyte, animal, utensil.
6. Viz., those of Deut. and Lev.
7. Deut. XXIV, 14.
8. According to the first Tanna all injunctions apply to a resident alien, in opposition to our Mishnah.
9. For R. Jose does not apply to them the injunction enumerated in our Mishnah.
10. Deut. XXIV, 14: Thou shalt not oppress an hired servant ([H]) that is poor and needy, whether he be of thy brethren, or of thy strangers that are in thy land within thy gates. — The latter part of the verse has been interpreted above as extending the injunction to the hire of a resident alien, animal, and utensils. Lev. XIX. 13: The wages of him that is hired ([H]) shall not abide with thee until the morning. Just as the first verse refers to an Israelite, resident alien, animals and utensils, so the latter too.
11. Since, by exegesis. Deut. XXIV, 14, the preceding verse, extends the law to these; v. n. 4.
12. Ibid. 15.
13. If he owes both their hire, or the hire of their animals, or utensils — and has sufficient for one only, the poor must be paid first.
14. Whence does he learn this?
15. Surely he agrees that this last verse teaches the priority of the poor man!
16. Heb. [H] (needy) < [H], denotes a desirous person who, in his utter destitution, which is greater than that of a [H] (a 'poor man'), longs for everything. In his longing he is not ashamed to ask, which a poor man is too proud to do.
17. That the poor has no priority over him.
18. In Deut, and Lev.
19. I.e., in respect to Deut. XXIV, 15: at his day, etc. Lev. XIX. 13: The wages of him, etc.
20. I.e., even of animals and utensils. And since the subject matter of this injunction is identical with that of Deut. XXIV, 15, that too is included.
21. Interpreted as above.
22. Perhaps it is the reverse.
23. Since the inclusion of animals, etc., is deduced from the use of 'hired' twice.
24. A substitution by the censor for original 'heathen'.
25. I.e., the withholding of his wages beyond the set time.
26. V. p. 506, n. 8.
27. Hence he takes nothing away from him that is actually in his possession.
28. Since he does not agree that 'with thee' extends the law to the hiring of animals and utensils,
29. I.e., not even the smallest sum due to a laborer may be withheld all that time.
30. The first Tanna, who interprets 'with thee' differently, — whence does he learn R. Assi's dictum?
31. V. p. 531, n. 3; hence, even the vintaging of a single cluster is included.

Baba Mezi'a 112a

And the other? — That is needed, even as it has been taught: And he setteth[1] his soul [i.e., life] upon it: why did this man [the laborer] ascend the ladder, suspend himself from the tree, and risk death itself; was it not that you should pay him his wages?[2] Another interpretation: And he setteth his soul upon it [teaches]: he who withholds an employee's wages is as though he deprived him of his life. R. Huna and R. Hisda [differ on this]: one says. The life of the robber [is meant];[3] the other, The life of the robbed. The view that the life of the robber is meant is based on the verse, Rob not the poor, because he is poor: neither oppress the afflicted in the gate:[4] which is followed by, For the Lord will plead their cause, and spoil the soul of those that spoiled them.[5] Whilst the opinion that it means the life of the robbed follows from, So are the ways of every one that is greedy of gain; he taketh away the life of its [rightful] owner.[6] And the other too: is it not written, he taketh away the life of its [rightful] owner? — It means, of its present owner.[7] And the other too: is it not written, and spoil the soul of those that spoiled them? — That states a reason. Thus: Why shall he spoil those that spoiled them? — Because they took their lives.[8]

WHEN IS THAT? ONLY IF HE DEMANDED IT OF HIM; BUT OTHERWISE, THERE IS NO INFRINGEMENT. Our Rabbis taught: The wages of him that is hired shall not abide all night. I might think this holds good even if he did not demand it. Therefore Scripture writes, 'with thee,' meaning., by thy desire.[9] I might think that even if he lacks it, he is still guilty: but Scripture states, 'with thee,' meaning, only when it [the hire] is with thee. I might think that it [the prohibition] is in force even if he gave him an order to a trader or a money-changer in his favor; but Scripture teaches, 'with thee',[10] but not if he gave him an order to a trader or a money-changer on his behalf.

IF HE GAVE HIM AN ORDER TO A SHOPKEEPER OR A MONEYCHANGER ON HIS BEHALF, HE IS NOT GUILTY OF INFRINGEMENT. The scholars propounded: Can he [the employee] return [to the employer] or not?[11] — R. Shesheth ruled: He cannot return [to him]; Rabbah held: He can return. Rabbah said: Whence do I infer this? — Since it is taught: HE IS NOT GUILTY OF INFRINGEMENT, it is implied, there is only no infringement, yet he can return to him [for payment].[12] But R. Shesheth explained: What is meant by, HE IS NOT GUILTY OF INFRINGEMENT? He is no longer within the ambit of infringement.[13]

R. Shesheth was asked: Does the injunction. '*The wages of him that is hired shall not abide all night*' hold good in respect of a contract or not?[14] Does the artisan obtain a title in return for the improvement [he effected] in the article, so that it [his wages] rank as a loan, or does he not, and hence it is considered wages?[15] — R. Shesheth replied: One does transgress [the law]. But has it not been taught: There is no transgression [in this case]? — There it means that he gave him an order to a shopkeeper or a money-changer.

Shall we say that the following supports him: If one gave his garment to an artisan [i.e., cloth, to make a garment, which he completed and then informed him [that it was ready], even after ten days he does not transgress [the law], 'Thou shalt not keep all night'. But if he delivered it to him [even] at midday, as soon as the sun sets upon it he is guilty of the transgression. Now, should you say that the artisan obtains a title in return for the improvement [he effects upon] the article, why is he guilty [of that transgression]? — R. Mari son of R. Kahana said: This refers to the removal of the woolly surface of a thick coat.[16] But why did he give it to him [to do this]? [Surely] to soften it! Then that is its improvement?[17] — But this holds good only if he engaged him for stamping,[18] every stamping manipulation for a *ma'ah*.[19]

1. Lit., 'lifteth up.'
2. So that for withholding it one is punished as for taking life.
3. I.e., he brings death upon himself,
4. Prov, XXII, 22.
5. Ibid. 23.
6. Ibid, I, 19.
7. Translating as the E.V.: which taketh away the life of the owners thereof.
8. Translating: and spoil those that spoiled (i.e., deprived them of) their lives.
9. But not by his, i.e., he claimed his wages immediately.
10. I.e., when the charge remains upon thee.
11. If the shopkeeper did not supply him. Do the employer's obligations in respect of him still continue, or is the employee considered to have transferred them to another? [Tosaf. rightly points out that the problem under consideration is only in reference to the injunctions relating to the payment within the set time, should the workman return to the employer and ask for his wages; for it is evident that the employer cannot relieve himself of his obligations by merely giving the workman a draft on a shopkeeper.]
12. For the passage implies that there is still a debt upon the employer, though that particular injunction is no longer applicable. [Tosaf.: The passage implies that there is no infringement as long as the workman relies on the trader for payment.]
13. Because there is no longer any charge upon him. [Or, because he is no longer under any obligation to pay within the set time. Tosaf.]
14. I.e., if the employee was not engaged by the day, but contracted to do a piece of work.

15. This question is discussed in B.K. 98b, *et seq*. One view is that when, e.g., wood is given to an artisan and he makes a box, it becomes legally his, on account of his improvements; and when he returns it to his employer it is in the nature of a sale. Hence, with respect to our subject, if the employer does not pay him, he owes him an ordinary debt, as a loan, and so the injunction is inapplicable. If, however, this view be rejected, it remains subject to the law of wages, and the prohibition holds good.
16. Which is not considered an improvement.
17. And so the difficulty remains.
18. A process of flattening cloth.
19. I.e., he did not contract for the whole piece of work at all, but was paid according to the amount done.

Baba Mezi'a 112b

A HIRED LABOURER, WITHIN THE SET TIME, SWEARS AND IS PAID. Why did the Rabbis enact that a hired laborer should swear and receive [payment]?[1] — Rab Judah said in Samuel's name: Great laws were taught here.[2] Are these then [traditional] 'laws'?[3] They are surely merely [Rabbinical] measures! — But said Rab Judah in Samuel's name: Important enactments were taught here. 'Important'? Does that imply the existence of unimportant ones?[4] — But, said R. Nahman in Samuel's name: Fixed[5] measures were taught here. Thus: The oath is the employer's privilege, but the Rabbis took it away from the employer and imposed it upon the employee, for the sake of his livelihood. And on account of the employee's livelihood, are we to cause loss to the employer?[6] — The employer himself is pleased that the employee should swear and be paid, so that workers should engage themselves to him. [On the contrary], the employee himself is pleased that the employer should take an oath and be exempt, so that he should engage him! — The employer is bound to engage [laborers]. But the employee too is forced to seek employment! — But [the reason is that] the employer is busily occupied with his labourers.[7] If so, let us award it [the wages] to him without an oath! — [The oath is] in order to appease the employer. Then let him pay him in the presence of witnesses.[8] — It is too much trouble. Then let him pay him in advance![9] — Both prefer credit.[10] If so,[11] even if the dispute concerns a stipulated amount,[12] it should be likewise so. Why then has it been taught: If the laborer maintains, 'You arranged with me for two [*zuz*].' and the other [sc. the employer] pleads, 'I arranged only for one,' the plaintiff must furnish proof?[13] — The stipulated wage is certainly well remembered. [Again] if so, even if the set time passed, he should also be believed. Why did we learn: BUT IF HIS SET TIME PASSED, HE CANNOT SWEAR AND RECEIVE PAYMENT? — It is a presumption that the employer will not transgress [the law]. The wages of him that is hired, etc. But have you not said that he is busy with his employees? — That is only before his obligation matures;

1. The general principle being the reverse; v. p. 572. n. 6.
2. I.e., of great importance, as the Talmud proceeds to explain.
3. Heb. [H], i.e., Scriptural, or traditionally ascribed to Moses.
4. I.e., worthy to be perpetuated.
5. Surely not!
6. Since legally it is his privilege to swear to be free from payment.
7. V. p. 587. n. 1.
8. The Rabbis should have enacted that workers must be paid in the presence of witnesses, with the result that if the employer pleads that he paid him without witnesses, the employee could then receive payment without swearing.
9. Let this be a Rabbinical measure, with the result that if the worker subsequently claims that he has not been paid, he will be disbelieved.
10. The employer, because he may not yet have the money; the employee, because he may lose it whilst working in the field.
11. Reverting to the final reason. If we assume that the employer, being busily engaged, might have forgotten the exact facts.
12. Lit., 'even if he stipulated.'
13. Shebu. 46a.

Baba Mezi'a 113a

but when it matures, he charges himself therewith and remembers it. But is the

employee then likely to transgress [the law, Thou shalt not rob?[1] — There [in the case of the employer] we have two presumptions [in his favor]; whilst here there is only one. Thus: In respect to the employer there are two presumptions. Firstly, that he will not transgress [the law]. [It] shall not abide all night, etc.; and secondly, that the employee will not permit delay of his payment. But in favor of the employee there is only the one presumption [stated above].

YET IF HE HAS WITNESSES THAT HE DEMANDED PAYMENT, HE CAN STILL SWEAR AND RECEIVE IT, But he [still] demands it now! Said R. Assi: It means that he demanded payment within the set time. But perhaps he paid him subsequently! — Abaye answered: He demanded it all the set time.[2] And [does this hold good] for ever![3] — Said R. Hama b. 'Ukba: [He is thus privileged only] for the period following[4] the day of his claim.[5]

MISHNAH. IF A MAN LENDS [MONEY] TO HIS FELLOW, HE MAY TAKE A PLEDGE OF HIM [WHEN THE DEBT MATURES] ONLY THROUGH THE COURT, AND HE MAY NOT ENTER HIS HOUSE TO TAKE THE PLEDGE, FOR IT IS WRITTEN, THOU SHALT STAND WITHOUT.[6] IF HE POSSESSED TWO ARTICLES, HE MUST TAKE ONE AND LEAVE ONE, RETURNING THE PILLOW AT NIGHT AND THE PLOW BY DAY. BUT IF HE [THE DEBTOR] DIES, HE NEED NOT RETURN [THE PLEDGE] TO HIS HEIRS. R. SIMEON B. GAMALIEL SAID: EVEN TO HIM HIMSELF [THE DEBTOR] HE MUST RETURN IT ONLY UP TO THIRTY DAYS; AFTER THAT, HE MAY SELL IT ON THE INSTRUCTIONS OF THE COURT.

GEMARA. Samuel said: Even the court officer[7] may only forcibly seize [it], but not [enter to] take a pledge.[8] But did we not learn: IF A MAN LENDS MONEY TO HIS FELLOW, HE MAY TAKE A PLEDGE OF HIM ONLY THROUGH THE COURT, which proves that a pledge may be taken by the court? — Samuel can answer you: Say, He may forcibly seize [outside the house] only through the court. That interpretation too is logical. For the second clause States: AND HE MAY NOT ENTER HIS HOUSE TO TAKE THE PLEDGE. To whom does this refer? Shall we say, to the creditor?[9] But that is known from the first clause! Hence it must surely refer to the court officer.[10] As for that, it is not proof. For[11] this is its meaning: IF A MAN LENDS MONEY TO HIS FELLOW, HE MAY TAKE A PLEDGE OF HIM ONLY THROUGH THE COURT, from which it follows that a pledge may be taken through the court. But the creditor himself may not even seize forcibly [outside], so that HE MIGHT NOT ENTER HIS HOUSE TO TAKE THE PLEDGE.[12]

R. Joseph raised an objection: *No man shall take the nether or the upper millstone to pledge*;[13] hence, other things may be taken to pledge. *Thou shalt not take a widow's raiment to pledge*:[14] implying, if it belongs to others, it may be taken in pledge.[15] By whom? Shall we Say, the creditor? But it is written, *Thou shalt not go into the house to fetch his pledge*.[16] Hence it must surely mean the court officer![17] — R. Papa, the son of R. Nahman, explained it before R. Joseph — others state, R. Papa, the son of R. Joseph, before R. Joseph: In truth, the creditor is meant, and it is to intimate that he violates two prohibitions.[18]

Come and hear: From the implication of the verse, *Thou shalt stand without*,[19] do I not know that the man of whom you claim shall bring it out? Then what is taught by, And the man? The inclusion of the court officer. Surely that means that he is like the debtor![20]

1. Surely not! Just as it is assumed that the employer must have paid him, because he would not transgress a Biblical injunction, so the same should be assumed of the employee, and therefore he should be believed,
2. Until the set time lapsed, the employer thus transgressing the Biblical prohibition.
3. Can we really say that whenever the laborer demands payment, even years after, he is believed on oath, since he has witnesses that he once demanded it of him during all the set time? Surely that is most inequitable!

4. Lit., 'against.'
5. E.g., if he was a day worker, engaged for Monday, he must be paid between Monday evening and Tuesday morning. If he has witnesses that he claimed his money during the whole of that period, he is believed on oath from Tuesday morning until evening, but not later. (So explained in H.M. 89, 3.)
6. Deut. XXIV. 11.
7. Lit., 'agent'.
8. [H] denotes to take by force; [H], to enter the house and take a pledge. Thus, he may only seize an article from him in the street, but not enter the house and distrain.
9. That he may not enter without the Permission of the Court.
10. Which supports Samuel's ruling.
11. [MS.M. and Tosaf. insert: There is a lacuna (in the text of the Mishnah).]
12. But as for the court officer, he may enter the house.
13. Ibid, 6.
14. Ibid. 17.
15. [The term [H], 'take to pledge', occurring here, as with the millstone, is taken to denote entering the house for the purpose.]
16. Ibid. 10.
17. Which proves that he may enter, and so refutes Samuel.
18. I.e., *no man shall take the nether*, etc., and, *Thou shalt not take a widow's*, etc., refers to the creditor himself; but these injunctions do not teach that other articles may be distrained, or that one may distrain upon any but a widow, for these two are forbidden in the verse, *Thou shalt not go into his house*, etc. Their purpose is to intimate that in respect of these, *two* injunctions are transgressed, viz., the general one last cited, and the specific one.
19. Ibid. 11.
20. That he and the debtor enter the house to take the pledge, translating, and the man — sc. the court officer — and he of whom thou dost claim, etc. This refutes Samuel.

Baba Mezi'a 113b

— No. It means that the court officer is like the creditor.[1]

Come and hear: *If thou at all take thy neighbor's raiment to pledge*:[2] this refers to the court officer. You say it refers to the court officer, but perhaps it is not so, the reference being to the creditor? When Scripture writes, *Thou shalt not go into his house to fetch his pledge*, it obviously speaks of the creditor.[3] Hence, to whom can I refer, *if thou at all take thy neighbor's raiment to pledge*? Surely to none but the court officer?[4] — It is a controversy of Tannaim. For it has been taught: When the court officer comes to take a pledge of him, he must not enter the house, but stand without, whilst he [the debtor] takes the pledge out to him; for it is written, *Thou shalt stand without, and also the man*.[5] Whereas another [Baraitha] taught: When the creditor comes to take a pledge of him, he must not enter the house, but stand without, whilst he [the debtor] enters, and brings him out his pledge. But when the court officer comes to take a pledge of him, he may enter the house and take it.[6] And he must not take in pledge articles used in the preparation of food. Further, a couch, a couch and a mattress must be left in the case of a wealthy man, and a couch, a couch and a matting for a poor man. Only for himself [the debtor] must these be left, but not for his wife, sons, and daughters. Just as an assessment is made in favor of a debtor,[7] so also is it made in the case of 'valuations'.[8] On the contrary! The main law of assessment is written in reference to 'valuations'. — But say: just as an assessment is made in the case of 'valuations', so also in favor of a debtor.

The Master said: 'Further, a couch, a couch and a mattress must be left to a wealthy man, and a couch, a couch and a matting for a poor man.' For whom [is the second couch]? Shall we say, For his wife, sons, and daughters? But you say, 'but not for his wife, sons and daughters'! Hence both are for himself. Then why two? — One at which he eats and the other on which he sleeps. Even as Samuel said, viz.: For all things I know the cure, except the following three: [i] eating bitter dates on an empty stomach; [ii] girding one's loins with a damp flaxen cord; and [iii] eating bread and not walking four cubits after it.[9]

A Tanna recited before R. Nahman: Just as assessment is made in the case of 'valuations', so is it also made for debtors. Said he to him: If we even sell [his property], shall we make

an assessment for him![10] But do we really sell [his property]? Did we not learn: AND HE MUST RETURN THE PILLOW AT NIGHT, AND THE PLOW BY DAY? — The Tanna recited the view of R. Simeon b. Gamaliel before him, whereupon he observed: Seeing that according to R. Simeon b. Gamaliel we even sell [his property], shall we make an assessment for him! For we learnt: R. SIMEON B. GAMALIEL SAID: EVEN TO HIM HIMSELF [THE DEBTOR] HE MUST RETURN IT ONLY UP TO THIRTY DAYS; AFTER THAT, HE MAY SELL IT ON THE INSTRUCTIONS OF THE COURT. But how do you know that R. Simeon b. Gamaliel means an outright sale: perhaps he means this: until thirty days he must return it as it is; after that, only what is fitting for him [the debtor] is returned, whilst what is not fitting for him is sold![11] — Should you think that R. Simeon b. Gamaliel accepts this view, there is nothing that is unfitting for him. For Abaye said: R. Simeon b. Gamaliel, R. Simeon,[12] R. Ishmael and R. Akiba, all maintain that all Israelites are princes. R. Simeon b. Gamaliel — for we learnt: Neither lof[13] nor the mustard plant [may be moved on the Sabbath].[14] R. Simeon b. Gamaliel gave permission in the case of lof, because it is food for ravens.[15] R. Simeon: For we learnt: Princes may anoint their wounds with rose oil on the Sabbath, since it is their practice to anoint themselves on week-days.[16] R. Simeon said: All Israel are princes.[17] R. Ishmael and R. Akiba: For we learnt: If one was a debtor for a thousand *zuz*, and wore a robe a hundred *manehs* in value, he is stripped thereof and robed with a garment that is fitting for him. But therein a Tanna taught on the authority of R. Ishmael and R. Akiba: All Israel are worthy of that robe.[18]

Now, on the original assumption that he [the debtor] was allowed what was fitting for him, whilst that which was unfitting for him was sold, [it may be asked:] as for a pillow and bolster, articles of inferior quality may suffice for him;[19] but in respect of a plow, what is there available?[20] — Raba b. Rabbah replied: [The Mishnah refers to] a silver strigil.[21] To this R. Haga demurred: But let him [the creditor] say to him: you are not thrown upon me![22] — Abaye answered him:

1. Translating: thou — sc. the creditor — shalt stand without together with the man, i.e., the court officer; whilst he of whom thou dost claim, etc.
2. Ex. XXII. 25.
3. Who is forbidden to enter.
4. Thus the two are placed in opposition, showing that the court officer may enter the house. This definitely refutes Samuel.
5. Sc. the court messenger; v, n. 2.
6. Thus the two Baraithas differ on Samuel's dictum.
7. He must be left sufficient to be able to earn a livelihood.
8. Vows whereby one's own value is promised to the Temple. Scripture set a fixed value, depending on the age and sex of the vower (Lev. XXVII. 1-8). But if he was poor, his means were assessed and the valuation reduced. Cf. ibid, 8: But if he be poorer than thy estimation, then he shall present himself before the priest, and the priest shall value him: according to the means of him that vowed shall the priest value him.
9. Before retiring. Rashi: hence one must have a couch for dining placed four cubits distant from the sleeping couch, so that he will be bound to take the necessary exercise!
10. To leave him sufficient money to buy these articles! — (Tosaf.).
11. E.g., if silk nightwear was seized, it is sold, and out of the proceeds cheaper nightwear is bought for the debtor, and the residue goes to the creditor. Thus even R. Simeon b, Gamaliel may agree that some exemption is made.
12. I.e., R. Simeon b. Yohai.
13. A plant similar to colocasia, with edible leaves and root, and bearing beans. It is classified with onions and garlic (Jast.). The beans are edible when boiled, but not raw.
14. It is a general principle that only those foodstuffs which are fit for consumption on the Sabbath may be moved on that day. Since, however, the lof beans may not be boiled, nor may the mustard grains be ground. on the Sabbath, they are not fit for food, and therefore must not be handled.
15. And since it was a royal practice to keep ravens — for sport or adornment — it is fitting that Jews too should keep them; (v. Shab. 126b) hence the lof has its uses on the Sabbath, and therefore may be moved from one place to another.
16. Even when they have no bruises, but merely for suppleness. Therefore it does not appear

as a healing ointment, and so is permitted on the Sabbath (v. Shab. 111a). (Healing in general is forbidden on the Sabbath, excepting in cases of urgency.)
17. Hence it is permitted for all.
18. Because they are of princely descent.
19. Lit., 'the difference (between these lower priced articles) is available for him (the creditor).'
20. Nothing inferior can be substituted, yet in respect of that too R. Simeon b. Gamaliel ruled that it was to be sold after thirty days.
21. A flesh scraper or brush, used for exciting the action of the skin, This too is called [H], and R. Simeon b. Gamaliel rules that after thirty days it must be sold, an inferior one bought, and the creditor pockets the difference.
22. 'I have no particular responsibility toward you.'

Baba Mezi'a 114a

Precisely so: He is indeed thrown upon him, because it is written, and thine shall be the righteousness.[1]

The scholars propounded: Is an assessment made for a debtor? Do we adduce [the law of] 'poverty' [written here] from that of 'valuations'[2] or not? — Come and hear: For Rabin sent word in his letter:[3] I asked this thing of all my teachers, and they gave me no answer thereon. But in truth, the following problem was raised:[4] If one Says. 'I vow a *maneh* for Temple purposes.'[5] is he assessed?[6] R. Jacob, on the authority of Bar Pada, and R. Jeremiah, on the authority of Ilfa, said: [It follows] a *minori* from an ordinary debtor: if no assessment is made even for a debtor, to whom [the p]edge] is returned;[7] then in regard to *hekdesh*,[8] where it [the pledge] is not returned, Surely, there is no assessment! But R. Johanan ruled: It is written, *[When a person shall make] a vow by thy valuation [shall the persons be for the Lord]*:[9] just as a means test is applied for 'valuations', so also for a vow to *hekdesh*. And the other?[10] — That is to teach the judgment [of a limb] according to its importance: just as in 'valuations' [a limb] is judged according to its importance, so in a vow to *hekdesh* too.[11]

But let there be an assessment for a debtor, a *minori* from 'valuations': If an assessment is made in the case of 'valuations', where [the pledge] is not returned: then surely there should be an assessment for a debtor, where [the pledge] is returned: — Scripture writes, *But if he be poorer than thy estimation: 'he'*, but not a debtor. And the other?[12] — This teaches that he must remain in his poverty from beginning to end.[13]

Now, in the case of [a vow to] *hekdesh*, let it [the pledge] be returned,[14] a *minori* from a debtor: If it [the pledge] is returned to a debtor, for whom there is no means test, surely it is returned in the case of [a vow to] *hekdesh*, seeing that an assessment is made there! — The Writ saith, *That he may sleep in his own raiment, and bless thee*.[15] thus excluding *hekdesh*, which needs no blessing. Does it not? But it is written, *When thou hast eaten and art full, then thou shalt bless the Lord thy God*![16] But Scripture saith, *And it shall be accounted as righteousness* [i.e., a charitable act] *unto thee*:[17] hence it [the law of returning] holds good only for him [the creditor] for whom the act of righteousness is necessary.[18] thus excluding *hekdesh* [as a creditor], which does not require [the merit of] righteousness.

Rabbah b. Abbuha met Elijah[19] standing in a non-Jewish cemetery. Said he to him: Is a means test to be applied in favor of a debtor? — He replied: We deduce [the law of] poverty [written here] from that of 'valuations'. In respect of 'valuations' it is written, *But if he be poorer than thy valuation* [*…according to the means of him that vowed shall the priest value him*]. Whilst of a debtor it is written, And if thy brother be waxen poor [*… then thou shalt relieve him*].

1. Deut. XXIV, 13; i.e., the creditor bears a peculiar responsibility towards the debtor, more so than other persons.
2. Debt: *And if thy brother be waxen poor* ([H]) *… then thou shalt relieve him*; Lev. XXV, 35. Valuations: *But if he be poorer* ([H]) *than thy estimation … according to the means of him that vowed shall the priest value him*; Ibid,

XXVII, 8. Hence, just as the means test is applied in the latter case, exempting the vower from his full obligations, so in the former too,

3. From Palestine.
4. At a session, and its answer is also an answer to the one under discussion.
5. Lit., 'Temple repair.' It is the technical term for anything needed in the Temple, except sacrifices.
6. If he could not pay it, and the Temple officers came to distrain for it, must his means be assessed, to exempt from sale such things as he needs?
7. A day article by day, and a night article by night, until the pledge is sold.
8. I.e., when we distrain for the payment of a vow to *hekdesh* (v. Glos.).
9. Ibid. 2. Now, *'vow'* ([H]) applies to any vow, whilst 'valuation' ([H]) to the dedication of one's own value (to sacred purposes). Since the two are written in conjunction, it follows that the same law applies to both.
10. R. Jacob, etc., who holds that there is no assessment for *hekdesh*. How do they interpret the juxtaposition of these two words?
11. If one said, 'I vow the "valuation" of my head, heart, liver or any vital organ,' he must give his entire value, since his whole life depends upon it. Hence, similarly. if one said, 'I vow the price of my heart, etc., to *hekdesh'* (not using the word [H]), he must give his entire value. — In a vow of 'valuations' [H], the amount is fixed according to age and sex, irrespective of the man's actual worth; whereas in an ordinary vow he is assessed at his value if sold as a slave. — In any case, from this discussion it clearly emerges that no assessment is made for a debtor.
12. The first Tanna of our Mishnah, who states: BUT IF HE (THE DEBTOR) DIED, HE NEED NOT RETURN THE PLEDGE TO HIS HEIRS, which implies that it is always returned to the debtor himself, showing that certain objects are assessed as vital and exempted from seizure.
13. If he vowed his 'valuation' whilst a poor man, but became wealthy before being assessed, he must pay in full. That is deduced from the emphatic 'he', i.e., at assessment too he must be too poor for the fixed valuation.
14. Day attire by day, and night attire by night. (Cf. p. 320. n. 5.)
15. Deut. XXIV, 13.
16. Ibid. VIII, 10, Thus, even God demands of man a blessing!
17. Ibid. XXIV, 13.
18. To be worthy of being deemed righteous before God.
19. It was believed that Elijah often appeared to saintly men.

Baba Mezi'a 114b

[He asked him further:] Whence do we know that a naked man must not separate [*terumah*]? — From the verse, That He see no unclean thing in thee.[1] Said he [Rabbah] to him: Art thou not a priest:[2] why then dost thou stand in a cemetery?[3] — He replied: Has the Master not studied the laws of purity?[4] For it has been taught: R. Simeon b. Yohai said: The graves of Gentiles do not defile, for it is written, *And ye my flock, the flock of my pastures, are men*;[5] only ye are designated *'men'*.[6] — He replied: I cannot even adequately study the four [orders]; can I then study six?[7] And why? he inquired. — I am too hard-pressed,[8] he answered. He then led him into Paradise and said to him: Remove thy robe and collect and take away some of these leaves. So he gathered them and carried them off. As he was coming out, he heard a remark, 'Who would so consume his [portion in] the world [to come] as Rabbah b. Abbuha has done?' Thereupon he scattered and threw them away. Yet even so, since he had carried them in his robe, it had absorbed their fragrance, and so he sold it for twelve thousand *denarii*, which he distributed among his sons-in-law.

Our Rabbis taught: *And if the man be poor, thou shalt not sleep in his pledge*:[9] hence, if he is wealthy, thou mayest sleep thus. What does this mean?[10] — Said R. Shesheth: This is the meaning: *And if the man be poor, thou shalt not sleep whilst his pledge is in thy possession*; but if he is wealthy, thou mayest do so.[11]

Our Rabbis taught: If a man lends [money] to his fellow, he may not take a pledge of him, nor is he bound to return it to him, and he transgresses all these injunctions.[12] What does this mean? — R. Shesheth said: This: If a man lends [money] to his fellow, he may not [himself] take a pledge of him; and if he did take a pledge of him [by means of a court officer], he is bound to return it;[13] whilst 'he

transgresses all these injunctions' refers to the last clause.[14] Raba said: It is thus meant: If a man lends money to his neighbor, he may not take a pledge of him [himself], and if he took a pledge of him [through the court], he must return it.[15] Now, when is this? If the pledge was not taken at the time of the loan.[16] But if it was taken at the time of the loan,[17] he is not bound to return it to him.[18] Whilst 'and he transgresses all these injunctions' refers to the first clause.[19]

R. Shizebi recited before Raba: *Thou shalt return it unto him until the sun goeth down*[20] — this refers to night attire; *in any case thou shalt deliver him the pledge again when the sun goeth down* — to an object of day attire. Said he to him: Of what use is an article of day attire by night,[21] and a night attire by day? Shall I then delete it? he asked. — No, was his reply. It reads thus: *Thou shalt return it unto him until the sun goeth down* — this refers to an article of day attire, which may be taken in pledge by night; *in any case thou shalt deliver him the pledge again when the sun goeth down* — to a night attire, which may be taken in pledge by day. R. Johanan said: If he took a pledge of him, [returned it,] and then he [the debtor] died, he may distrain it from his children. An objection is raised: R. Meir said: Now, since a pledge is taken, why is it returned?[22] 'Why is it returned?' [you ask.][23] — Surely Scripture ordered, Return it! But [say thus]: Since it is returned,

1. Ibid. XXIII, 15; man must not appear before God in an unclean state, which includes a state of nudity. When one separated *terumah*, he had to utter a benediction, and this is regarded as appearing before God.
2. According to legend, Elijah and Phineas (Aaron's grandson) were identical.
3. A priest must not defile himself through the dead. Standing in or near a grave effects such defilement.
4. [H]; this is also the name of the sixth order of the Talmud, treating of these laws. From Rabbah's answer, that he has had no time to study the six orders, it appears that he was referring to the actual order, though he proceeds to quote a Baraitha and not a Mishnah from that order.
5. Ezek. XXXIV, 31.
6. Cf. Num. XIX, 14: This is the law, when a man dieth in a tent; all that come into the tent, and all that is in the tent, shall be unclean seven days.
7. The four orders referred to are 'Festivals,' 'Women,' 'Damages,' and 'Consecrated Objects.' These were considered of permanent and practical importance, even the last named, though sacrifices were not practiced outside Palestine, because the study thereof was held to be the equivalent of actually offering them; Men. 110a. But the other two, viz., 'Seeds' and 'Purity,' were of no practical importance outside Palestine, and therefore not studied intensively (Rashi). Tosaf. a.l. however, observes that it is evident from the Talmud that they were well — versed in these two, and therefore conjectures that the reference is to the Tosefta (i.e., the additional Baraithas, excluded by Rabbi from his Mishnah compilation). In point of fact, the dictum quoted by Elijah here is not found in any Mishnah. It does not form part of our Tosefta either, but our Tosefta is not identical with that mentioned in the Talmud. V. also Weiss, Dor, lii, p. 186-7.
8. He was poor and had to eke out a living.
9. Deut. XXIV, 12. E.V.; *'with his pledge'*.
10. Surely the pledge, even of a wealthy man, may not be used by the creditor, since that constitutes interest!
11. Only in the case of a poor debtor must a night article be returned for the night, and a day one by day, but not in the case of a wealthy debtor.
12. Viz., *Thou shalt not sleep in his pledge: In any case, thou shalt deliver him the pledge when the sun goeth down* (Ibid. 12f); *Thou shalt deliver it unto him by that the sun goeth down* (Ex. XXII, 25). On [H], lit., 'names', v. p. 634. n, 3.
13. V. p. 650, n. 4,
14. If he does not return them, R. Shesheth thus assumes the text to be corrupt, and emends it considerably.
15. As before.
16. And is therefore in the nature of distraint.
17. As a security.
18. Every morning or evening, as the case may be, even if the debtor is in need of it.
19. Sc. distraint. Thus Raba does not emend any part of the existing text, but adds to it.
20. E.V.: 'Thou shalt deliver it unto him by that the sun goeth down,' Deut, XXIV, 13.
21. [Raba explains the phrases 'night attire' and 'day attire' as denoting attires taken in pledge respectively by night and day.]
22. How can the creditor's claims be satisfied?
23. This is an interjection.

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why is it again taken in pledge?[1] — So that the Sabbatical year should not cancel it [the debt].[2] and that it [the pledge] should not be accounted as movable property in the hands of his children.[3] Now, the reason is only that he took the pledge again;[4] but had he not taken the pledge again, it would not be so![5] — R. Adda b. Mattena replied: Are you not bound in any case to emend it? Then emend it thus: Since it is returned, why is it taken in pledge in the first place? That the Sabbatical year should not cancel it, and that it should not rank as movable property in the hands of his children.[6]

Our Rabbis taught: *Thou shalt not go into his house to fetch his pledge*: his [the debtor's] house thou mayest not enter, but thou mayest enter the house of the surety [to distrain]; and thus it is written, *Take his garment that is surety for a stranger*;[7] also, *My son, if thou be surety for thy friend, If thou hast stricken thy hand with a stranger, thou art snared with the words of thy mouth. Do this now, my son, and deliver thyself when thou art come into the hand of thy friend; go, humble thyself and make sure thy friend*:[8] thus, if thou owest him money, untie thy hand to him [i.e., pay him]; if not[9] bring many [of thy] friends round him.[10] Another interpretation:[11] His house thou mayest not enter, but thou mayest enter [to distrain] for porterage fees, payment for hiring asses, the hotel[12] bill, or artists' fees.[13] I might think that this holds good even if it[14] was converted into a loan: therefore Scripture writes, When thou dost lend thy brother anything.[15]

MISHNAH. A MAN MAY NOT TAKE A PLEDGE FROM A WIDOW, WHETHER SHE BE RICH OR POOR, FOR IT IS WRITTEN, THOU SHALT NOT TAKE A WIDOW'S RAIMENT TO PLEDGE.[16]

GEMARA. Our Rabbis taught: Whether a widow be rich or poor, no pledge may be taken from her: this is R. Judah's opinion. R. Simeon said: A wealthy widow is subject to distraint, but not a poor one, for you are bound to return [the pledge] to her, and you bring her into disrepute among her neighbors. Now, shall we say that R. Judah does not interpret the reason of the Writ, whilst R. Simeon does?[17] But we know their opinions to be the reverse. For we learnt: *Neither shall he multiply wives to himself, [that his heart turn not away]*;[18] R. Judah said: He may multiply [wives], providing that they do not turn his heart away. R. Simeon said: He may not take to wife even a single one who is likely to turn his heart away; what then is taught by the verse, *Neither shall he multiply wives to himself*? Even such as Abigail![19] — In truth, R. Judah does not Interpret the reason of Scripture; but here it is different, because Scripture itself states the reason: *Neither shall he multiply wives to himself, and his heart shall not turn away*. Thus, why *'shall he not multiply wives to himself'*? So *'that his heart turn not away*.' And R. Simeon [argues thus]: Let us consider. As a general rule, we interpret the Scriptural reason:[20] then Scripture should have written, *'Neither shall he multiply* [etc.].' whilst *'and his heart shall not turn away'* is superfluous, for I would know myself that the reason why he must not multiply is that his heart may not turn away. Why then is *'shall not turn away'* [explicitly] stated? To teach that he must not marry even a single one who may turn his heart.

MISHNAH. HE WHO TAKES A MILL IN PLEDGE TRANSGRESSES A NEGATIVE COMMANDMENT AND IS GUILTY ON ACCOUNT OF TWO [FORBIDDEN] ARTICLES, FOR IT IS WRITTEN, NO MAN SHALL TAKE THE NETHER OR THE UPPER MILLSTONE TO PLEDGE.[21] AND NOT THE NETHER AND THE UPPER MILLSTONES ONLY WERE DECLARED FORBIDDEN, BUT EVERYTHING EMPLOYED IN THE PREPARATION OF FOOD FOR HUMAN CONSUMPTION,[22] FOR IT IS WRITTEN, FOR HE TAKETH A MAN'S LIFE TO PLEDGE.[23]

GEMARA. R. Huna said: If a man takes to pledge the nether millstone, he is twice flagellated, [once] on account of the

[injunction against] the nether millstone, and [once] on account of, 'for he taketh a man's life to pledge,' for the nether and the upper millstones, he is thrice flagellated: (twice) on account of the nether and the upper millstones, and (once) on account of, 'for he taketh a man's life to pledge.' But Rab Judah maintained: For taking to pledge the nether millstone, he is flagellated once; for the upper millstone he is likewise flagellated once; for the nether and upper millstones he is flagellated twice; and as for, 'for he taketh a man's life to pledge'

1. Since it must be returned again the following day, what is the creditor's advantage?
2. When the creditor holds a pledge against his debt, it is not cancelled by the Sabbatical year. v. Shebu. 48b.
3. After death, v. p. 598.
4. And it was in the creditor's hands when the debtor died.
5. But would rank as any other legacy of movable property. which cannot be seized for the testator's debts, which refutes R. Johanan.
6. [Once the creditor takes it in pledge, it becomes his property. and when he returns it for the debtor's use, it is considered as a bailment.]
7. Prov. XX, 16.
8. Ibid. VI. 1-3.
9. But hast wronged him in some other way, slander, or an affront to his pride.
10. To apologize in their presence. This is a play on words and a comment on the last phrase: [H] (E.V. *'humble thyself'*) is read, [H] 'unloose the wrist (of thy hand)', [H], is translated, 'make thy neighbor proud' — by a public apology.
11. Lit., 'in a second direction.'
12. Lit., 'inn'.
13. I.e., for any debt incurred on account of service.
14. The payment due for service.
15. Deut. XXIV, 10.
16. Ibid. 17.
17. I.e., R. Judah applies the law to all, whilst R. Simeon seeks the reason of any Scriptural law, and having found it, exempts from the scope of the law those to whom it is inapplicable.
18. Ibid. XVII, 17.
19. The most righteous. This shows that R. Judah interpreted the Scriptural reason, whilst R. Simeon did not; v, Sanh. 21a.
20. On his view, i.e., where it is not stated.
21. Deut. XXIV, 6; hence, in taking the mill, which consists of both, he seizes two forbidden articles.
22. Lit., 'food of the soul.'
23. Ibid.

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— this refers to other articles.

Shall we say that Abaye and Raba differ in the same controversy as R. Huna and Rab Judah? For Raba said: If one ate it [the Paschal sacrifice] half roasted, he is flagellated twice: once on account of [the injunction against] half-roast [flesh]. and again because of the verse, [Eat not…] but roast with fire. [If he ate it] boiled, he is flagellated twice: once because of the prohibition against boiled [flesh], and again because of the Verse, [Eat not…] but roast with fire. For both half-roast and boiled, he is flagellated thrice, on account of [the injunction against] half-roast, boiled, and the injunction, Eat not … but roast with fire.[1] Abaye said: One is not flagellated on account of an implied prohibition.[2] Shall we assume that Abaye agrees with Rab Judah, Raba with R. Huna?[3] — Raba can answer you: My ruling agrees even with Rab Judah's. It is only there that Rab Judah maintains [his view], because, 'for he taketh a man's life,' does not [necessarily] imply the nether and the upper millstones; hence it must refer to other things: But here, what is the purpose of 'save roast with the fire'?[4] Hence it must be for [the addition of] a negative precept. Abaye can argue likewise: My ruling agrees even with R. Huna's. It is only there that R. Huna maintains [his view], because 'for he taketh a man's life'

1. This refers to: Eat not of it raw, nor sodden (i.e., boiled) at all with water, but roast with fire, Ex. XII, 9.
2. Thou shalt not eat it save roast with the fire: this is not a direct prohibition of a particular method of preparation, but includes everything that is not 'roast with the fire.'
3. On the hypothesis that the phrase, for he taketh a man's life to pledge, which specifies no article, is likewise a general or implied

prohibition, and R. Huna rules that it involves flagellation, whereas Rab Judah holds that it does not.

4. For semi-roasting and boiling includes every manner of preparation except roasting, and these are explicitly forbidden.

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is [an] additional [injunction],[1] and that being so, relate it to the nether and upper millstones [too].[2] But here, 'save roast with fire' is not [an] additional [prohibition], for it is needed for what has been taught: When one is subject to [the command], Arise and eat 'roast', one is [also] subject to, 'Eat not of it raw;' when he is not subject to the former, he is not subject to the latter.[3]

It has been taught in accordance with Rab Judah: If one takes in pledge a pair of barber's shears or a yoke of oxen, he incurs a double penalty.[4] But if he takes in pledge each part separately, he incurs only one penalty. And another [Baraitha] taught [likewise:] If one took a pair of barber's shears or a yoke of oxen in pledge. I might think that he incurs only one penalty, therefore Scripture teaches, No man shall take the nether or the user millstone to pledge; just as the nether and the upper millstones are distinguished in that they are two objects which [together] perform one operation, and a penalty is incurred for each separately, so all things which are two objects used [together] for one operation, a penalty is incurred for each separately.[5]

A certain man took a butcher's knife in pledge. On his coming before Abaye, he ordered him: Go and return it, because it is a utensil used in the preparation of food, and then come to stand at judgment for it [the debt].[6] Raba said: He need not stand at judgment for it, but can claim [the debt] up to its [sc. the pledge's] value.[7] Now, does not Abaye accept that logic? Wherein does it differ from the case of the goats which ate some husked barley, whereupon their owner came, seized them, and preferred a large claim [for damages]; and Samuel's father ruled that he can claim up to their value?[8] — In that case, It was not an object that is generally lent or hired, whereas in this case it is.[9] For R. Huna b. Abin sent word:[10] With respect to objects that are generally lent or hired, if a man claims, 'I have purchased them,' he is not believed.[11] Now, does then Raba disagree with this reasoning? But Raba himself ordered orphans to surrender scissors for woolen cloth and a book of aggada,[12] which are objects that are generally loaned or hired![13] — [No.] These too, since they depreciate in value, people are particular not to loan.

1. I.e., this is certainly required as an additional injunction against seizing any article employed in the preparation of food.
2. For once it is recognized as a separate injunction, there is no reason for excluding the millstones from its scope, notwithstanding that they are already mentioned; hence in respect of the millstones we have an additional prohibition.
3. I.e., the prohibition of half-roast meat holds good only on the evening of the fifteenth, when one is bidden to eat the roast of the Passover sacrifice, but not on the day of the fourteenth, before the obligation commences.
4. Barber's shears were so made that each half could be used separately. 'The yoke of oxen' is translated by Rashi: (i) a pair of oxen for plowing together with their yoke; (ii) the yoke alone, which he conjectures to have been jointed. Tosaf. on 113a s.v. [H], on the grounds that only objects directly used in the preparation of food are forbidden, translates (with a slightly different reading): a pair of vegetable scissors for trimming vegetables, and a pair of oxen that stamped out the corn. According to both interpretations, the scissors and the oxen (or their yoke) were divisible, and therefore rank as two distinct objects, thus involving a double penalty for the infringement of, *'for he taketh a man's life to pledge.'*
5. It is not altogether clear how these Baraithas support Rab Judah, nor whether they support him singly or only in conjunction with each other. Rashi maintains that the proof is adduced from the combination of the two. The mere fact that he is flagellated twice only, not three times, does not support him, since there is no verse to imply three in this case even on R. Huna's view, which is limited to the nether and upper millstones. The proof, however, lies

in the fact that the verse, 'no man shall take, etc.' is extended to all articles and quoted to show double flagellation, whilst no reference is made to threefold punishment. Tosaf. maintains that the proof does follow from the first Baraitha alone (so that the second teaching is introduced by 'Another Baraitha, etc.' not, 'And another Baraitha, etc.').

6. Bring proof that he is in your debt.
7. Even without witnesses or an I.O.U.; since he could have pleaded in the first place that he had bought the pledge, he is now believed, up to the value of the pledge.
8. Since he could have pleaded that he had bought them from their first owner.
9. Hence the Possession of the butcher's knife did not prove ownership; therefore Abaye held that the debt itself had to be proved.
10. From Palestine to Babylon.
11. V. B.B. 36a.
12. V. B.B. (Sonc. ed.) p. 215. n. 1,
13. Their first owners, who were known, pleaded that they had lent these objects to the deceased, and Raba accepted their plea. But if a counter-plea of 'I bought them' is valid in such cases, it should have been advanced on their behalf, it being a general rule that the court itself assumes what the deceased might legally have pleaded, when the orphans themselves are ignorant of the true facts.

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CHAPTER X

MISHNAH. IF A HOUSE [I.E.. THE GROUND FLOOR] AND AN UPPER STOREY, BELONGING TO TWO,[1] COLLAPSED, BOTH MUST SHARE [PROPORTIONATELY] IN THE TIMBER, STONES, AND EARTH.[2] WE ALSO SEE WHICH STONES [I.E., BRICKS] ARE MORE LIKELY TO HAVE BEEN BROKEN.[3] IF ONE [OF THEM] RECOGNISED SOME OF HIS STONES, HE CAN TAKE THEM, BUT THEY ARE COUNTED IN [HIS SHARE].

GEMARA. Since it is stated, WE SEE [etc.], it follows that it is possible to gauge whether it fell through pressure or a shock. If so, in the first clause, why do they divide? Let us see: if it fell through a shock, then [the timber, etc. of] the upper storey was broken; if through pressure, the lower portion was damaged![4] — It is meant that it collapsed at night. Then let us examine it in the morning![5] — It [the debris] had been cleared away. Then let us see who had cleared it away, and ask them! — Public [workers] had cleared it away, and departed. Then let us see in whose possession they are [now] situated, so that the other becomes the claimant, upon whom the onus of proof will lie! — They [the materials] are now in a courtyard belonging to both, or in the street. Alternatively, partners in such matters are not particular with each other.[6]

IF ONE RECOGNISED, etc. Now, what does the other plead. If he agrees, then it is obvious. If not, why should this one take them? Hence it must mean that he replied. 'I do not know.' Shall we say that this refutes R. Nahman? For it has been stated: [If A says to B.] 'You owe me a *maneh*,' and B pleads. 'I do not know': R. Huna and Rab Judah rule that he must pay; R. Nahman and R. Johanan say: He is not liable! — It is as R. Nahman answered [elsewhere]: E.g., there is a dispute between them involving an oath; so here too, there is a dispute between them involving an oath. What is meant by a dispute involving an oath? — As Raba's dictum. For Raba said: [If A says to B,] 'You owe me a *maneh*,' to which he replies. 'I [certainly] owe you fifty *zuz*, but as for the rest, I do not know,' since he cannot swear, he must pay [all].[7]

BUT THEY ARE COUNTED IN HIS SHARE. Raba thought this meant in his share of broken materials,[8] thus proving that since he says. 'I do not know,' his position is considerably worsened. Said Abaye to him: On the contrary, the position of the other should be much worse; for since he knows only of these, but of no more, he should be entitled to no more, and the other should receive all the rest! — But, said Abaye, it means in his share of whole materials. if so, what does it [his knowledge] profit him? — In respect of extra wide bricks, or well — kneaded clay.[9]

MISHNAH. [IN THE CASE OF] A HOUSE AND AN UPPER STOREY, IF THE UPPER STOREY WAS BROKEN THROUGH, AND THE

LANDLORD REFUSES TO MEND IT, THE INHABITANT OF THE UPPER STOREY CAN DESCEND AND DWELL BELOW, UNTIL HE REPAIRS THE TOP. R. JOSE SAID: THE LOWER ONE MUST PROVIDE THE TIKRAH[10] AND THE UPPER ONE THE PLASTERING.[11]

***GEMARA*. 'BROKEN THROUGH:' over what area?[12] — Rab said: The greater part; Samuel said: Four [handbreadths]. 'Rab said: The greater part.' but not only four [handbreadths],[13] because one can dwell partly below and partly above.[14] 'Samuel said: Four [handbreadths]:' one cannot dwell partly below and partly above. How is it meant? If he [the landlord] had said to him, '[I rent you] this storey, it is gone.[15] But if he simply stated, 'A storey,' then let him rent him another! — Raba said: It arises only if he stated, 'This garret, which I rent you, as long as it stands, go up thither; and when it comes down [through the weather], descend you too [to the ground floor].' If so, why state it? — But, said R. Ashi, it means that he said to him, 'This storey which is upon this house, I rent to you;' thus he pledged the house for the storey. And this is in accordance with what Rabin son of R. Adda related in R. Isaac's name: It once happened that a man said to his neighbor. 'I sell you a hanging vine which is over this peach tree,' and the peach tree was later uprooted.[16] When the matter came before R. Hiyya, he said to him: You are bound to put up a peach tree for him, as long as the vine is in existence.**

R. Abba b. Memel propounded:

1. **E.g., legatees who had thus divided their legacy.**
2. **I.e., proportionally to the respective heights of each, they must divide the whole beams, bricks, etc., and likewise the broken ones.**
3. **E.g., 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, on the other hand, the shock was evenly distributed, as that of a hurricane, it is most probable that the broken stones are of the upper storey, since they had a greater distance to fall.**
4. **V. n. 5.**
5. **For if it fell through pressure, it will be on its site, whereas if a shock overthrew it, the materials will be strewn at a distance.**
6. **Since the house belongs to both, even if they have separate courtyards, neither objects to the other making use of his. Possession in such a case does not prove ownership.**
7. **V. *supra* 97b and 98a for notes. So here too, A claims that he recognizes a certain quantity of materials, and B admits part of it and pleads ignorance with respect to the rest.**
8. **I.e., A taking a certain quantity of unbroken materials, B receives an equal (or proportionate) quantity of broken ones, and they share in the rest.**
9. **I.e., the whole materials which he recognizes as his own may be superior to the other whole ones.**
10. **Explained in the Gemara.**
11. **The cement or plaster above the ceiling.**
12. **Lit., 'how much?'**
13. **In that case he cannot take possession of the ground floor.**
14. **I.e., when only four handbreadths are broken through, he lacks the space required for one utensil, and so he can only claim that in the lower dwelling; this is referred to as living partly below and partly above.**
15. **It is the tenant's misfortune, and he has no claim.**
16. **The vine thus losing its support.**

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When he [the tenant] dwells there [downstairs], does he dwell there alone, as formerly, or do both dwell there, because he [the landlord] can say to him, 'I did not rent it to you that you should evict me.' Now, should you say, both dwell therein, does he, when he makes use thereof, use it by way of the [lower] doors, or through the roof?[1] Do we say, It must be as originally: just as it was then by way of the roof, so now likewise. Or perhaps, he can say to him, 'I undertook to ascend, but not to ascend and descend.' Now, should you rule that he can say to him, 'I did not undertake to ascend and descend,' what of two storeys, one on top of the other? Now, if the upper one was broken through, he can certainly descend and dwell in the lower one; but if the lower one was broken through, can he ascend and dwell[2] in the upper?[3] Do we say, that he [the landlord] can say to him,

'You undertook whatever is designated ascending [whether a greater or a lesser height]'? Or perhaps, he undertook one ascent, but not two? — These problems remain unsolved.

R. JOSE SAID: THE LOWER ONE MUST PROVIDE THE TIKRAH AND THE UPPER ONE THE PLASTERING. What is the TIKRAH? — R. Jose b. Hanina said: The reeds, thorns[4] and clay.[5] R. Simeon b. Lakish said: Boards. But there is no dispute; each [speaks] in accordance with local usage.

Two dwelt [in a house], one above and one below. Now, the plaster [on the ceiling between the two] became broke, so that when the one above washed with water, it dripped down, causing damage to the one below.[6] Now, who must repair? — R. Hiyya b. Abba said: The upper dweller; R. Elai said on the authority of R. Hiyya son of R. Jose: The lower one. Now, the sign thereof is, *And Joseph was brought down to Egypt*.[7] Shall we say that R. Hiyya b. Abba and R. Elai dispute on the same lines as R. Jose and the Rabbis [in the Mishnah]?[8] [Thus:] The ruling that the upper one must repair it is based on the view that he who inflicts the damage must remove himself from him who sustains it; whilst the opinion that the lower one must repair it agrees with the view that the injured party must remove himself from him who inflicts the injury![9] — Is it then reasonable [to maintain] that R. Jose and the Rabbis dispute with reference to damages? Surely we know them to hold the reverse! For we learnt: A tree must be removed [at least] twenty-five cubits from a pit.[10] and in the case of the carob and the sycamore trees, fifty cubits;[11] whether it be above[12] or level therewith. If the pit was there first, he must cut down [the tree], but [the pit owner] must compensate him. If the tree was there first, he need not cut it down. If it is doubtful which came first, he need not cut it down. R. Jose said: Even if the pit was there prior to the tree, he need not cut it down, for the one digs in his own, and the other plants in his own.[13] This proves that in R. Jose's opinion the injured party must remove himself; whilst the Rabbis hold that he who inflicts the injury must remove! — But if it can be said that they [R. Hiyya b. Abba and R. Elai] dispute on the same lines as R. Jose and the Rabbis, it is on their opinions as displayed there. Then wherein do R. Jose and the Rabbis, of the present Mishnah, differ? — In the strengthening of the ceiling. The Rabbis maintain: the plaster strengthens the ceiling, and that is the duty of the lower dweller. Whilst R. Jose maintains that the plaster is for the purpose of leveling the depressions,[14] and that must be done by the upper tenant.

But that is not so. For R. Ashi said: When I was at R. Kahana's college, we said, R. Jose agrees in the case of his arrows![15] — It means that the water was interrupted, and only subsequently fell down.[16]

MISHNAH. IF A HOUSE AND AN UPPER STOREY, BELONGING TO TWO,[17] COLLAPSED, AND THE OWNER OF THE UPPER STOREY PROPOSED TO THE HOUSE OWNER TO REBUILD, WHILST THE LATTER DECLINED, THE FORMER MAY BUILD THE HOUSE [i.e., THE LOWER STOREY] AND DWELL THEREIN, UNTIL HE [THE LATTER] REIMBURSES HIM FOR HIS EXPENDITURE. R. JUDAH SAID: THEN THIS MAN INDEED SHALL HAVE DWELT IN HIS NEIGHBOUR'S HOUSE, AND SO MUST PAY HIM RENT.[18] BUT THE OWNER OF THE UPPER STOREY MUST BUILD UP THE HOUSE AND THE UPPER STOREY AND ROOF IT OVER, AND THEN DWELL IN THE HOUSE UNTIL HE IS REIMBURSED.[19]

1. I.e., reaching as hitherto the upper storey by means of the specially provided ladder and thence descending into the house.
2. [Cf. Tosaf. Cur. edd. read instead 'entirely', which is rightly omitted in most texts.]
3. Where one of the two had been rented.
4. The thorns were presumably for binding the other materials by becoming entangled in them.
5. [So *Aruch*, reading [H]. According to Rashi, who preserves [H] of cur. edd., the word is a name of a Sage and is to be connected with

what follows: 'Justinian in the name of Resh Lakish said.']

6. The ceiling itself, i.e., the planks, was unaffected, and the water dripped down through the cracks in the plaster. This was not a case of renting, but of two owners.
7. Gen. XXXIX. 1. This is a sign given to aid to memory: thus: Joseph (Jose) was brought down — rules that the lower one must repair.
8. For it was assumed that when R. Jose ruled that the tenant above must provide the plastering, it is in order that his water should inflict no damage upon the tenant below, it being the duty of the person who inflicts damage to remove himself from him who sustains it; on the other hand, the tenant below must furnish (i.e., repair) the ceiling itself, which is the floor of the upper storey, since that is an essential part of the storey which he rented to him. Whilst the first Tanna holds that the injured party must remove himself: therefore he, i.e., the lower dweller, must repair the whole ceiling, including the plastering.
9. As the Rabbis.
10. Because its roots undermine the earth, and if nearer, ultimately cause it to collapse.
11. Their roots are longer.
12. I.e., whether the pit is on higher ground than the tree, so that the roots go below it.
13. V. B.B. 25b and *supra* p. 630.
14. I.e., the ceiling of wood beams forms an unequal surface for the man above to walk upon, and therefore it is overlaid by a dressing of concrete chippings, which forms a smooth and level pavement.
15. Though R. Jose holds that the injured person has to remove, that is only where the injury does not come immediately and directly, as in the case of the pit and the tree. When the tree is planted, no damage at all is done; only later, when it is grown and its roots have spread, is injury caused. But when one washes his hands and the water falls through the crevices in the flooring upon the dweller below, the injury proceeds directly from above, as when a man shoots arrows, in which case R. Jose admits that the man who causes the injury must remove himself. How then can R. Hiyya b. Jose rule that the dweller below must repair the ceiling?
16. The place for washing was not directly over the broken portion but in some other part of the room, whence it trickled to the cracks, and only then dropped down. That is not direct and immediate injury.
17. v. p. 660, n. 1.
18. When the house-owner reimburses him, the house becomes retrospectively his. Now, in R. Judah's opinion, if A benefits from an article belonging to B, though B does not lose thereby, he must pay him. So here too, the owner of the upper storey has dwelt in the other's house, and though the latter lost nothing thereby, since had not the former built it he would have had no house in any case, the owner of the upper storey must nevertheless pay rent.
19. In this case, the house-owner sustains no loss, as explained in the previous note, but the owner of the upper storey does not benefit either, since he could live in his own garret; here R. Judah admits that no rent is payable. So Rashi. Tosaf., however, points out that he benefits by not having to climb stairs. Therefore, on a slightly different reading, Tosaf. translates: and then dwell in his upper storey, not permitting the other to enter the house until he is reimbursed.

Baba Mezi'a 117b

***GEMARA*. R. Johanan said: In three places has R. Judah taught us that one may not benefit from his neighbor's property. One, what we learnt [in the Mishnah]. What is the second? — We learnt: If one gives a dyer wool to be dyed red, but he dyed it black, or to dye it black and he dyed it red; R. Meir said: He [the dyer] must pay him for the wool.[1] R. Judah said: If the increased value exceeds the cost [of dyeing], he [the wool owner] must pay him the cost; if the cost exceeds the increased value, he must pay him for the latter.[2] And what is the third? — That which we learnt: If a man repaid a portion of his debt, and then placed the bond in the hands of a third party, declaring. 'If I do not repay the balance within thirty days, return the note to the creditor:'[3] and the time arrived, and he did not repay. R. Jose maintained: The third party must surrender [the bond to the creditor]. R. Judah ruled: He must not return it.[4] But whence [does it follow]? Maybe R. Judah states his ruling here,[5] only because there is blackening [of the walls].[6] Or, [in the second case] 'to be dyed red, but he dyed it black,' the reason is that he did otherwise [than he was instructed], and we learnt: He who alters [the contract] is at a disadvantage. Again, in the case of one who repaid a portion of his debt,**

it [the order to the third party] is an *asmakta*,[7] and we thus learn that R. Judah holds that an *asmakta* gives no title.[8]

R. Aha b. Adda said on 'Ulla's authority: If the owner of the lower storey wishes to alter [the building materials from hewn] to unhewn stones, he is permitted; [from unhewn stones] to hewn stones, he is forbidden;[9] [from whole bricks] to half-bricks,[10] he is permitted; [from half-bricks] to whole bricks, he is forbidden; to ceil it with cedars,[11] he is permitted; with sycamores.[12] he is forbidden; to diminish the number of windows, he is permitted; to increase them, he is forbidden; to elevate [the storey], he is forbidden; to decrease its height, he is permitted.[13] Whereas if the owner of the upper storey wishes to alter to hewn stones, he is permitted; to unhewn stones, he is not permitted; to half-bricks, he is not permitted; to whole bricks, he is permitted; to ceil it with cedars, he is not permitted; with sycamores, he is permitted; to increase the number of windows, he is permitted; to diminish them, he is not permitted; to elevate the [upper storey], he is not permitted; to decrease its height, he is permitted.[14]]

What if neither possesses [the wherewithal for rebuilding]?[15] (It has been taught: When neither possesses [money for rebuilding]. the garret owner has no claim at all upon the land.)[16] It has been taught: R. Nathan said: The owner of the lower portion receives two-thirds [of the land], and the owner of the upper, one-third. Others say, The owner of the lower portion receives three-quarters, and that of the upper, one-quarter. Rabbah said: Hold fast to R. Nathan's ruling, because he is a judge, and has penetrated to the depths of civil law. By how much does the loft impair the value of the house [i.e., the lower storey]? — By a third.[17] Therefore he is entitled to a third.

MISHNAH. SIMILARLY, IF AN OLIVE PRESS[18] WAS BUILT IN A ROCK AND ABOVE IT WAS A GARDEN, AND THE ROOF OF THE PRESS WAS BROKEN THROUGH,[19] THE OWNER OF THE GARDEN CAN DESCEND AND SOW BELOW [ON THE FLOOR OF THE PRESS], UNTIL THE PRESS-OWNER REPAIRS THE VAULTING [TO PROVIDE A SUPPORT FOR THE GARDEN ABOVE]. IF A WALL OR A TREE FELL INTO A PUBLIC THOROUGHFARE AND CAUSED DAMAGE, HE [ITS OWNER] IS FREE FROM LIABILITY. BUT IF HE WAS GIVEN A [FIXED] TIME TO CUT DOWN THE TREE OR PULL DOWN THE WALL, AND THEY FELL: IF WITHIN THE PERIOD, HE IS NOT LIABLE; AFTER THAT PERIOD HE IS LIABLE. IF A MAN'S WALL WAS NEAR HIS NEIGHBOUR'S GARDEN AND IT COLLAPSED [INTO THE GARDEN], AND WHEN HE DEMANDED, 'REMOVE YOUR STONES', HE REPLIED,

1. I.e., the wool becomes the dyer's, and he must pay the original owner for it.
2. For if the dyer should retain the wool, as R. Meir rules, he profits in that the wool-owner has brought him wool, thus saving him the labor of procuring it himself; V.B.K. 100b.
3. Who will thus be enabled to demand the full amount.
4. And it is assumed that the reason is because the creditor thereby derives benefit from the debtor's money, which is forbidden (v. B.B. 168a).
5. That the upper tenant would have to pay rent.
6. I.e., it loses its newness through his dwelling therein, hence the house-owner actually sustains a loss, and therefore the other must pay him rent.
7. v. Glos.
8. But all three do not prove that normally one may derive no benefit from his neighbor's property where the latter suffers no loss thereby.
9. [Unhewn stones are wider by one handbreadth then hewn stones, v. B.B. Mishnah 2a.]
10. Between which there was a filling of rubble. This made the wall stronger than if built with whole bricks, which allowed for no filling. v. ibid.
11. In the place of the former sycamores.
12. In the place of the former cedars.
13. [H] and [H], here translated 'he is permitted' and 'he is forbidden' respectively, are literally, 'we hearken to him,' 'we do not hearken to him.' The general principle is: if he wishes to make an alteration which strengthens the lower storey and adds to its weight, so that it can the better bear the

burden of the upper portion, he is permitted. But he may not weaken it.
14. He may weaken the upper portion, thereby giving the lower a lesser burden, but not strengthen it through increasing the burden.
15. So that the owner of the lower portion wishes to turn it to agricultural purposes, whilst the owner of the upper storey demands a share in it (Tosaf.).
16. Rashal deletes the whole of the bracketed passage. on the authority of Asheri. Alfasi retains it.
17. The duration of the lower portion is lessened by one-third on account of the weight of the upper. Thus it may be held that the owner of the upper storey has a right to a third of the ground.
18. The Heb. [H], denotes the building in which the olive press, the tank, and all other objects required for pressing olives are housed.
19. Thus undermining the soil above and rendering it unfit for sowing.

Mezi'a 118a

THEY ARE BECOME YOURS,[1] HE IS NOT HEEDED. [ON THE OTHER HAND,] IF AFTER THE LATTER AGREED [TO THE PROPOSAL [AND REMOVED THEM] HE SAID, 'HERE ARE YOUR [REMOVAL] EXPENSES, AND I WILL TAKE BACK MINE [THE STONES].' HE IS [LIKEWISE] NOT HEEDED. IF A MAN ENGAGES A LABOURER TO WORK FOR HIM ON STRAW OR STRUBBLE,[2] AND WHEN HE DEMANDS HIS WAGES, SAYS TO HIM, 'TAKE THE RESULTS OF YOUR LABOUR FOR YOUR WAGE, HE IS NOT HEEDED. IF AFTER HE AGREED [TO THE PROPOSAL] HE SAID TO HIM, 'HERE IS YOUR PAYMENT, AND I WILL TAKE MY PROPERTY,' HE IS [LIKEWISE] NOT HEEDED.

GEMARA. BROKEN THROUGH: Rab said, The greater part thereof; Samuel ruled, Four [handbreadths]. 'Rab said, The greater part thereof;' but if only four [handbreadths,] one can sow partly above and partly below.[3] 'Samuel said, Four [handbreadths]:' one cannot [be expected to] sow partly above and partly below. Now, both [disputes] are necessary.[4] For if we taught [it] in connection with a dwelling, [it might be said that] only there does Samuel state his ruling, because it is unusual for a man to dwell partly in one place and partly in another; but with respect to sowing, where it is quite usual for a man to sow here a little and there a little, I might say that he agrees with Rab. Whilst if only the present dispute were stated, [I might argue that] only here does Rab hold this view; but in the other case, he agrees with Samuel. Hence both are necessary.

IF HE WAS GIVEN A [FIXED] TIME. And what time is given by the Court? — Said R. Johanan: Thirty days.

IF A MAN'S WALL, etc. But since the last clause teaches, 'HERE ARE YOUR [REMOVAL] EXPENSES,' it follows that he [the garden owner] has removed them. Thus, it is only because he removed them;[5] but why so? Let his field effect possession for him! For R. Jose son of R. Hanina said: A man's courtyard effects possession for him even without his knowledge! — That is only where he [the original owner] desires to grant him possession; but here he merely seeks to evade him.[6]

IF A MAN ENGAGES A LABOURER TO WORK WITH HIM ON STRAW, etc. Now, both are necessary. For if only the first were stated, that when he proposes, 'LET THEM BE YOURS', HE IS NOT HEEDED, [it might be said that] that is because he [the garden owner] has no wage claim upon him; here, however, that he [the laborer] has a wage claim, I might argue that he [the employer] is listened to, because it is proverbial, 'From your debtor accept [even] bran in payment.' Whilst if this clause [alone] were taught, [it might be that] only in this case, once he [the worker] accepts the proposal, is he [the employer] not heeded,[7] because he has a wage claim upon him;[8] but in the former case, where he has no wage claim upon him, I might think that he is heeded:[9] hence both are necessary.

HE IS NOT HEEDED.[10] But has it not been taught. He is heeded? — Said R. Nahman: There is no difficulty: here [in the Mishnah] the reference is to his own work, there [in the

Baraitha], to his neighbour's.[11] Raba said to R. Nahman: [When he is employed] on his own, what is the reason [that he is not heeded]? Because he [the laborer] can say to him, 'You are responsible for my wages'? [But when employed] by his neighbor he can also say to him, 'You are responsible for my hire'! For it has been taught: If one engaged an artisan to labor on his [work], but directed him to his neighbor's, he must pay him in full, and receive from the owner [of the work actually done] the value of the labor whereby he benefited! — But, said R. Nahman, there is no difficulty: here it refers to his own; there, to that of *hefker*.[12] Raba raised an objection against R. Nahman: That which is found by a laborer [whilst working for another] belongs to himself. When is that? If the employer had instructed him, 'Weed or dig for me to — day.' But if he said to him. 'Work for me to-day' [without specifying the nature of the work], his findings belong to the employer![13] — But, said R. Nahman, there is no difficulty: here [in the Mishnah] the reference is to lifting up; there, to watching.[14]

Rabbah said: [Whether] 'watching' [effects possession] in the case of *hefker* is disputed by Tannaim. For we learnt: Those who keep guard over the after-growth of the Sabbatical year are paid out of Temple funds.[15] R. Jose said: He who wishes can donate [his work] and be an unpaid watcher. Said they [the Sages] to him: You say so, [but then] they are not provided by the public.[16] Now, surely, the dispute is on this question: the first Tanna holds that 'watching' *hefker* effects possession;[17] hence, if he is paid, it is well,[18] but not otherwise. Whilst R. Jose maintains that 'watching' does not affect possession of *hefker*; hence, only when the community go and fetch it is possession effected. And what is meant by. 'You say [etc.]'?[19] They said thus to him: From your statement[20] [and] on the basis of our ruling,[21] [it transpires that] the omer[22] and the two loaves[23] are not provided by the public![24] — Said Raba: That is not so. *All* agree that 'watching' effects possession of *hefker*; but they differ here as to whether we fear that he will not deliver it whole-heartedly. Thus, the Rabbis hold that he must be paid, for otherwise there is the fear lest he does not deliver it wholeheartedly,[25] whilst R. Jose holds that this fear is not entertained. And what is meant by 'You say'? — They say thus to him: From your statement, [and] on the basis of our ruling that we fear that it will not be surrendered whole-heartedly, the *'omer* and the two loaves are not provided by the public.

Others say, Raba said: *All* agree that 'watching' does not affect possession in the case of *hefker*; but they dispute here whether we entertain a fear of violent men. The first Tanna holds that the Rabbis enacted that he shall be paid four *zuz*, so that violent men may hear thereof[26] and hold aloof;[27] whilst R. Jose holds that they did not enact [thus].[28]

1. 'Remove them yourself, and keep them for your trouble.'
2. E.g., to collect or tie it into bundles.
3. I.e., the garden-owner can only demand an equivalent space in the press, but not transplant his whole garden thither.
4. V. *supra* 116b, where Rab and Samuel dispute likewise with reference to a house.
5. That they belong to the garden owner.
6. He does not really wish the garden owner to have the bricks, but seeks to evade his responsibilities by telling him to clear them away and keep them for himself, thinking, however, to claim them subsequently. Therefore, unless the latter actually takes advantage of the offer, the bricks remain his.
7. When he desires to go back upon it.
8. And therefore has a strong title to the materials, since they were offered in lieu of wages.
9. When desiring to cancel his accepted proposal.
10. When he offers the workman the material in lieu of wages.
11. If the laborer was employed to work for a third party, he can be forced to accept the materials in lieu of wages.
12. V. Glos. R. Nahman maintains (*supra* 10a) that if a person lifts up an object of *hefker* on his neighbor's behalf, it belongs to himself. Hence, when a worker collects sheaves of *hefker* for an employer, they belong to himself, and therefore the offer must be accepted.
13. V. *supra* 10a.

14. Lit., 'looking'. In both instances the reference is to *hefker*. But if the laborer was engaged to tie sheaves, thus having to lift them up, his employer acquires title to them, and therefore must pay him. But if his work was to keep guard, the mere watching does not affect possession, and therefore his employer can force him to accept them as his wages.
15. Lit., 'the *terumah* of the Chamber', i.e., the funds contributed by *shekel* payers.
16. A sheaf of the earliest barley crop was brought as a heave offering in the Temple; likewise two loaves made of the first wheat to ripen (Lev. XXIII. 10f. 17). These had to be public property, and not that of any individual, and men were engaged and paid out of public funds to watch over a field of corn to see which sheaves ripened the earliest. As there was no sowing in the seventh year, there could only be a crop spontaneously grown from seed that had fallen the previous year. This crop was *hefker*, as *all* seventh year crops were, and the Tannaim dispute whether the watchman had to accept payment or not.
17. The after-growth thus belong to the watchman.
18. For then possession is effected on behalf of the public.
19. Seeing that according to R. Jose the sheaves are not the property of the watcher.
20. That he may forego payment.
21. That watching gives a title to *hefker*.
22. Sheaf of barley. Lev. XXIII. 9ff.
23. Made of the new wheat, ibid. 16ff.
24. We thus see that the question whether 'watching' effects possession in *hefker* is a point of issue between Tannaim.
25. And if it is not surrendered whole-heartedly, it belongs to the watchman, and is thus not provided by the public.
26. That it is being watched on behalf of *hekdesh*.
27. Otherwise, they may think that he is watching it on his own behalf and seize it themselves; for though they respect the rights of *hekdesh*, they will not respect those of a private individual.
28. The fear being groundless.

Baba Mezi'a 118b

And what is meant by 'You say'? They say thus to him: From your statement,[and] on the basis of our opinion, [it follows that] they are not provided by the public.[1] And when Rabin came,[2] he likewise said in R. Johanan's name: They differ as to whether we fear [the action of] men of violence.

MISHNAH. IF A MAN TAKES OUT MANURE INTO A PUBLIC THOROUGHFARE, IT MUST BE APPLIED [TO THE SOIL] IMMEDIATELY AFTER BEING TAKEN OUT.[3] MORTAR MUST NOT BE STEEPED IN THE STREET, NOR MAY BRICKS BE FORMED THERE.[4] CLAY MAY BE KNEADED IN THE STREET.[5] BUT BRICKS MAY NOT BE [MOULDED]. WHEN ONE IS BUILDING IN A PUBLIC ROAD,[6] THE BRICKS MUST BE LAID IMMEDIATELY THEY ARE BROUGHT.[7] IF HE CAUSES DAMAGE, HE MUST MAKE IT GOOD. RABBAN SIMEON B. GAMALIEL SAID: ONE MAY PREPARE HIS MATERIALS EVEN THIRTY DAYS BEFOREHAND.[8]

GEMARA. Shall we say that our Mishnah does not agree with R. Judah? For it has been taught: R. Judah said: When it is the time for manure to be taken out, a man may put his manure out into the street and leave it heaped up for full thirty days, that it should be trodden down by the foot of man and beast for on this condition did Joshua allot the Land to Israel![9] — It may even agree with R. Judah, for he admits that if he thereby causes damage, he must make it good.[10] But have we not learned: R. Judah said: In the case of a Chanukah[11] lamp he is not liable, because this was done under authority.[12] Surely that means, under authority of the Court?[13] — No. It means the authority of a precept.[14] But it has been taught: *All* those whom the Rabbis permitted to commit a nuisance on the public thoroughfare,[15] if they cause damage, they are bound to pay; whilst R. Judah exempts them! Hence it is clear that our Mishnah does not agree with R. Judah.

Abaye said: R. Judah, Rabban Simeon b. Gamaliel, and R. Simeon[16] *all* maintain that wherever the Sages gave permission [to do a certain thing] and damage was thereby caused, there is no liability. 'R. Judah', as stated. 'Rabban Simeon b. Gamaliel', — for we learnt: ONE MAY PREPARE HIS MATERIALS EVEN THIRTY DAYS BEFOREHAND.[17] 'R. Simeon', — for we learnt: If he placed it [a stove] in an upper

storey, there must be a flooring[18] of three handbreadths deep under it;[19] but for a small stove,[20] one handbreadth.[21] Nevertheless, if he causes damage, he must make it good. R. Simeon said: *All* these measurements were stated only so that if he causes damage he is free from liability.[22]

Our Rabbis taught: Once the quarryman has delivered [the stones for building] to the chiseller [for polishing and smoothing], the latter is responsible [for any damage caused by them]; the chiseller having delivered them to the haulier, the latter is responsible; the haulier having delivered them to the porter,[23] the latter is responsible; the porter having delivered them to the bricklayer, the latter is responsible; the bricklayer having handed them over to the foreman,[24] the foreman is liable. But if after he had [exactly][25] laid the stone upon the row, it caused damage, *all* are responsible. But has it not been taught: Only the last is responsible, whilst *all* the others are exempt? — There is no difficulty: the latter refers to time-work;[26] the former, to contracting.[27]

MISHNAH. IF TWO GARDENS ARE SITUATED ONE ABOVE THE OTHER, AND VEGETABLES GROW BETWEEN THEM,[28] R. MEIR SAID: THEY BELONG TO THE UPPER GARDEN; R. JUDAH MAINTAINED, TO THE LOWER GARDEN. SAID R. MEIR: SHOULD THE OWNER OF THE UPPER GARDEN WISH TO REMOVE HIS GARDEN [I.E., TAKE AWAY THE EARTH], THERE WOULD BE NO VEGETABLES. SAID R. JUDAH: SHOULD THE LOWER ONE WISH TO FILL UP HIS GARDEN [WITH SOIL],[29] THERE WOULD BE NO VEGETABLES. THEN, SAID R. MEIR, SINCE BOTH CAN PREVENT EACH OTHER [FROM HAVING VEGETABLES AT *ALL*], WE CONSIDER WHENCE THE VEGETABLES DRAW THEIR SUSTENANCE.[30] R. SIMEON SAID: AS FAR AS [THE OWNER OF] THE UPPER GARDEN CAN STRETCH OUT HIS HAND AND TAKE BELONGS TO HIM, WHILST THE REST BELONGS TO [THE OWNER OF] THE LOWER GARDEN.

GEMARA. Raba said: As for the roots, *all* agree that they belong to the upper owner. They disagree only with respect to the leaves:[31] R. Meir maintains: The leaves are counted with[32] the roots; whilst R. Judah holds that they are not. Now, they follow their views [expressed elsewhere]. For it has been taught: That which issues from the trunk and the roots belongs to the landowner: this is R. Meir's opinion. R. Judah said: [That which grows] out of the trunk belongs to the tree-owner; out of the roots, to the land-owner.[33]

1. On this version this phrase has not the same meaning as above. The *'omer* and the two loaves certainly come from the public, since it is now assumed that watching over *hefker* does not affect a title. But the Rabbis objected that since it was enacted that the watcher must receive four *zuz*, if he foregoes it and it goes into the public funds, these now include four *zuz* of private money, and when later on animals are bought therewith for communal sacrifices, such as the daily burnt offerings and the Sabbath and Festival Additional offerings, instead of being paid for by public funds, as they should be, they are partly paid for by private money (Rashi.)
2. From Palestine to Babylon.
3. Lit., 'the carrier carries it out, and he who applies it must apply it' — i.e., it may not be left in the street for any length of time, but must be taken straight to the fields.
4. Rashi: the clay was run into moulds and allowed to dry and harden into bricks. This may not be done in a public thoroughfare.
5. For immediate use.
6. I.e., a building coming up to the street, so that the materials, etc. must be in the street.
7. Lit., 'the brick hauler brings them and the builder builds them (into the wall)' — i.e., they must not lie in the street longer than is absolutely necessary.
8. I.e., deposit them on the site, in readiness for building; and during this time he is not responsible for any damage that may ensue.
9. V. B.K. 30a and 81b.
10. Notwithstanding that he was entitled to have it there.
11. V. Glos.
12. If one placed a light outside his house and a camel passed by laden with flax, which caught fire from the light, he is liable for the damage. But if it was a Chanukah lamp, he is exempt; V. B.K. 30a, and 62b.

13. Thus showing that one is not responsible for damage caused by his property in a public thoroughfare, if it is there by permission of the Court.
14. Which stands higher, but not that of the court or general authorities, which is insufficient to exempt him from his liabilities.
15. E.g., to put out the manure, as here, or discharge foul water in winter.
16. b. Yohai.
17. V. p. 673. n. 5.
18. [H], v. p. 662, n. 2.
19. Otherwise it can cause damage to the lower storey.
20. Just large enough for two pots.
21. Because it does not give out so much heat.
22. B.B. 20b.
23. Who handed them to the bricklayer.
24. For exact setting. After the stones were placed in a row, there was a foreman or supervisor who saw that they were correctly placed, and remedied faulty placing (Rashi).
25. [The text is uncertain (v. D.S.), but this seems to be the correct interpretation according to the reading in cur. edd.; on variants in the parallel passages. V. Krauss, TA. I, 302.]
26. Lit., 'hiring'. i.e., men engaged by the week, day or hour. In that case, each is quit of responsibility as soon as it leaves his hand, and so the final responsibility is left with the last.
27. If they jointly contracted for the building. In that case, each is severally responsible whilst the stone is in his hand; but when it is laid, the joint responsibility is reassumed.
28. I.e., they are contiguous, but one is on a higher level than the other, and vegetables grow on the connecting bank.
29. To make it level with the higher one.
30. And this determines their ownership.
31. Which are suspended in the air-space above the lower garden.
32. Lit., 'thrown after'.
33. The reference is to the offshoots of a tree which does not belong to the same owner as the field in which it is situated, v. B.B. 81a.

Baba Mezi'a 119a

And we learnt[1] similarly in the case of *'orlah*:[2] A tree which issues from the trunk or from the roots is subject to *'orlah*: this is the opinion of R. Meir.[3] R. Judah said: That which grows out of the trunk is not subject thereto;[4] but out of the roots, is subject. And both are necessary. For if the first were taught, [I would argue,] only there does R. Judah rule so, because it is [a question of] civil law.[5] But with respect to *'orlah*, which is a ritual prohibition[6] I might think that he agrees with R. Meir. And if the latter were taught, I might argue, only here does R. Meir rule so, but in the former case he agrees with R. Judah. Hence both are necessary.

R. SIMEON SAID: AS FAR AS THE OWNER OF THE UPPER GARDEN CAN STRETCH OUT HIS HAND, etc. The disciples of R. Jannai said: providing, however, that he does not strain himself. R. 'Anan — or according to others, R. Jeremiah — propounded: What if he can reach its leaves but not the roots, or he can reach the roots but not the leaves?[7] The problem remains unsolved.

Ephraim the Scribe, a disciple of Resh Lakish, said on the authority of the latter: The *halachah* agrees with R. Simeon. When this was told to King Shapur.[8] he observed, 'Let a palanquin be put up for R. Simeon.'[9]

1. [Var. lec.: 'It has been taught.' the citation that follows not being from a Mishnah but from Tosef. 'Orl.]
2. V. Glos.
3. In both cases he regards it as a new growth from the earth.
4. It being regarded as part of the old tree.
5. Lit., 'money'.
6. And where such is in doubt, the more stringent ruling is adopted.
7. [Omitted in some texts, there being no question that in this case it is considered to be within his reach; v. Wilna Gaon, Glosses.]
8. King Shapur I, a contemporary of Samuel and a close friend of his. Rashi argues that he is actually meant, as he was well versed in Jewish civil law, and dismisses the theory of other commentators that this is an allusion to Samuel, who was frequently so designated. [On the interest of King Shapur I in Jewish customs and practices, prompted probably by his desire to win Jewish support in his struggle with the Romans, cf. Suk. 53a and A.Z. 76b; v. Funk, *op. cit*., p. 72.]
9. He deserves a triumphal procession for his acuteness in civil law.

INTRODUCTORY ESSAY
by
THE EDITOR

SOCIAL LEGISLATION IN THE TALMUD

This essay, which appeared originally as a *Torah Va'Avodah* publication, first in 1946 and then in a revised and enlarged form in 1947, has now been again revised and enlarged and, by reason of the relevance of much of its subject matter to the tractate Baba Mezia, has been included in this volume. The Publishers wish to record their appreciation to the Bachad Fellowship for their kind co-operation.

[NB: This essay is contained in the prefatory pages of the 1962 printing of the Soncino Hebrew-English Edition of the Tractate Baba Mezi'a]

THE RELIGION OF ISRAEL

In the earliest accounts of Israel and Judah, when yet the twelve tribes were warring with each other, we find leaders who proclaimed that God is and must remain the sole ruler of the tribes and that through the government of the Lord, Who is One and Everlasting. the unity of the individual and the nation must be found.

This only God and Supreme King had spoken to them at Sinai through the Law and continued to speak to them through priest and prophet. What He said and commanded was gathered up in books, which became the Book—the Bible—by which their individual and corporate life was to be guided. Thus arose and developed the religion of Israel. Grounded on the Book and centered in God, it was not like the Roman religion, the creature of the State, nor was it ever to derive its inspiration from political feeling. For the Jews, religion itself was to be an independent and positive source of inspiration and its acceptance the chief foundation upon which the Jewish state was to rear itself.[1]

THE WRITTEN AND UNWRITTEN LAW

But surrounding nations surged against them. Conquering Empires rose and fell. Israel was taken captive and disappeared from history as a separate whole. Judah too fell a prey to Babylonia, but was restored after Babylon fell to the Medes and Persians. Thus began within Judah a centuries long struggle for the inviolability of the Book. Its laws, precepts and ordinances had to be interpreted both literally and spiritually. The change in their environment could not be neglected. Beside the Written Law, there had been from the first, from the divine commandments to Moses onward, an unwritten Law which law-giver and prophet sought to engrave on the hearts of the people. The Written and Unwritten both must co-operate in the guidance of Jewish people struggling against the in-rolling civilizations of Greece and Rome, the unwritten being the dynamic factor of change, the written the abiding fundamental factor.

THE TALMUD

Thus began the Talmud, mainly oral at first. Teacher succeeded teacher in synagogue and school. Their sayings and rulings based on the Book were treasured. The Sadducees, representing the extreme latitudinarians in life, opposed the continuous interpretation and reinterpretation of the Law to meet changing circumstances. They failed and disappeared. The Pharisees who provided the chief teachers of the Law succeeded and remained, and the Talmud is not the least of their achievements.

Then came to the Jewish people with the year 70 the most severe blow of all. Jerusalem was captured by the Romans, the Temple razed to the ground, and the Jews were dispersed throughout the world. Their surroundings had indeed changed—fundamentally changed—but their conception of God as sole ruler had not changed; and although the state had been annihilated and the people had often to flee from one place to another, they continued to cherish with increasing tenacity the Book and the traditions which past centuries had shaped, and which had as goal the realization of the divine will through the singleness and unity of all powers of the common life.

With the transformations in their surroundings and conditions, they were confronted with new dangers, new problems and new difficulties. Re-adaptation and re-interpretation of the Book to meet the kaleidoscopic changes in their situation, became more necessary than ever, and leaders arose to continue the work of past generations. Thus the Talmud, the written story of interpretation; of making of by-laws, and of adding to the store of Jewish legislation, grew rapidly during the early centuries of the Christian era. Babylonia was playing its part during this growth as well as Palestine where Jewish teachers were yet able to find temporary shelter. Thus arose the two versions of the Talmud—the Babylonian and the Jerusalem—in which are chronicled the national experiences of the Jewish people extending over a period of several centuries; and the presentation of some aspects of the social legislation enacted during that period is the attempt made within the restricted limit of these pages.

Social Righteousness as Aim of Communal Organization

As preliminary to the main subject, it is necessary to sketch briefly the constitution and organization of the Jewish communities in respect of whose needs the Talmudic social legislation was enacted. With the Torah as supreme guide in communal life, the primary end and aim of communal organization had moral and religious purposes. This does not mean that the economic and social functions of organized society were ignored. But it does mean that all was looked upon as subordinate to the moral functions. In other words, morality was made the dominating factor of communal life, and the underlying principle of all legislation regulating social and economic relations. This will be particularly seen in the personal responsibility which the community enforced on each of its members in matters of social righteousness. With the result that the Jewish communities were able to exhibit, even under the most untoward circumstances and environments, a moral enthusiasm and passion for social justice to which communities of enlightened European states but rarely testify.

The Community

A community has been defined as a collection of institutions rather than a collection of people occupying a more or less defined area. It is that which is final and decisive in distinguishing the community from other social constellations.

The same can be said to have been the distinctive feature of the Jewish town. Before a locality could enjoy the status of a town, it had to possess at least ten institutions of social, cultural and occupational character. A Court of Justice, a Charity Organization, a Synagogue, a Public Bath, a sanitary convenience, a physician, a surgeon, a notary, a ritual slaughterer, and a school teacher.[2] Round the town were grouped the various suburbs and villages which were in all matters dependent on the town.

Residing in the town were its own citizens, people domiciled or possessed of land within its boundaries, and strangers who took up temporary residence and possessed no property. The qualification for citizenship was 12 months' residence. This was an easy qualification considering the importance of the rights and privileges of citizenship.

Communal Administration

The administration of the Community was generally in the hands of a Council, consisting of a minimum of seven officers *(shibe'ah tube ha-'Ir)* duly elected by the citizens *('aneshe ha-'Ir).* Where non-Jews formed part of the community, they were called upon to administer the affairs together with the Jewish representatives.[3] This Council constituted the Executive, who had charge of all the affairs of the Community, and without whose direction nothing could be done. They had also in a sense legislative power, with the right to enact, regulate and fix local customs, which in turn became part of the life and being of the Community. Their powers, though considerable, were circumscribed by the Torah. No law, regulation, or enactment of theirs had any authority save as being in accordance with the law of the Torah, and had no validity except in so far as it bore this character. This was guaranteed by the presence of the Rabbi appointed in Palestine by the *Nasi,* and by the *Resh Galutha,* the Exilarch, in Babylonia, who stood at the head of the Community and in whom was vested the power to veto any measure which he considered contrary to the law. This essential prerequisite authorization and sanction by the representative of the Torah impressed on all communal legislation a divine stamp, and all enactments passed by the Jewish Communities were no longer regarded as man-made, but became identified with the law of God—and thus secured the voluntary allegiance of all God-fearing men and women.

Although the constitution of the Community was, as will have been seen, essentially democratic, the minority could in certain matters, by appealing to a higher authority, secular or spiritual, force the majority to yield to their demands. Thus we read that the minority could compel the rest of the Community to share in the building of a wall for the town, in the erection of a synagogue, and in the purchase of scrolls of the Law and the Prophets.[4]

Functions of the Executive and Council

The real Executive power, however, was vested in the hands generally of a triumvirate called 'parnasim', appointed for their learning and distinctive merits, rather than for their wealth. In order to avoid corruption, two brothers were not allowed to have seats on the Executive.[5] If by any chance, however, two brothers were elected they were allowed only one vote.[6]
Much honor and dignity was attached to the office of Parnas, and the Parnas was to avoid anything which might tend to lower his respect and prestige in the eyes of the members. Thus, no Parnas in office was permitted to do manual labor in public,[7] and in Palestine the Rabbi inducted the Parnasim into office by presenting them with a *Sefer Torah,* as a token of the Divine ideal that was to inspire and govern them in all their activities.[8]

The Council had multifarious duties, ranging over all kinds of communal service and endeavor. They administered the funds, apportioned taxation, supervised trade and commerce, disposed of communal property, fixed and controlled prices and weights and regulated wages of workers. They further enacted police regulations, provided for the administration of justice, enforced fines, applied the sanctions of the ban of excommunication, organized forces for the protection of the town, and attended to the

spiritual needs of the people by arranging the statutory and special divine services and supervising the teaching of adults as well as children.

The Communal Officers

The council operated through a body of officers. There were the officers of weights and measures *('agardemim[9], ba'al ha-shuk[10])*, whose function it was to test and seal weights when found accurate. They also supervised and controlled the price of commodities as fixed by the Council. For this office only men of the highest probity and strictest integrity were appointed. Cases of attempts at bribery by unscrupulous and wealthy merchants were not unknown, and only men whose character was proof against all taint of corruption and graft were entrusted with this task.[11] These inspectors also examined the quality of the food for sale. In case of wine they would taste the liquor through a straw or tube, or from a cup.[12]

There were also field surveyors who supervised transactions in landed property. They had to see that the measuring rod was according to standard, and also that the boundary lines between neighboring fields were kept intact.[13]

The Community also had house surveyors who were to advise householders to attend to repairs whenever considerations of public safety made this necessary,[14] as well as road surveyors who were required to attend to the roads and see whether they were in a fit condition, and to issue orders accordingly.[15]
For the protection of the town against assault there were provided special guards who had to keep vigilant watch and warn the residents against any impending dangers. Guards on horseback were continuously riding round the city to see that all was in order.'[16]

There was also a general police force which exercised rigid control over the moral, social and religious life of the people and maintained strict discipline within the community, and special elders were appointed to check frivolous behavior at banqueting places.[17]

Common Property and Undertakings

The sense of solidarity in the life of the townsmen was expressed and strengthened by a number of common undertakings, including undertakings of a commercial character carried out on a co-operative basis with a pooling of resources and profit;[18] and by the possession of no little town property from which the great body of citizens derived considerable benefit. There were public fruit trees from which all citizens were allowed to pluck. They could even take them home and eat them, provided there was no hoarding nor conserving.[19] There were also common pasture grounds and woods on which citizens could send their cattle to graze.[20]

The common property was equally at the disposal of all citizens. There was no claim to priority, nor discrimination. The right to the use of the common well was likewise shared by all townsmen. It was, however, restricted to drinking purposes, but did not extend to the requirements of industry, such as washing and scouring wool. As to the needs of washing clothes and personal washing, these were provided for in special containers.[21]

The larger sense of humanity transcended the confines of the town and even strangers shared the use of the common property. This was particularly the case with the pastoral grounds on which also outsiders were allowed to feed their cattle. All likewise were permitted to gather shrubs and grass in all places, by force of an ancient enactment ascribed to Joshua.[22]

All roads were, of course, included among the common property and open to the free common use of all; but the public had in addition the right to use paths leading through private fields before the seeds began to sprout;[23] and a private path in public use for some time could not be obstructed .[24]

The common property was the inalienable possession of the townsmen. To illustrate this principle, the Talmud relates the following incident. A certain *Hasid*[25]observed a man clearing stones from his own field and depositing them in the public road. 'Wherefore dost thou remove stones from a domain which is *not* thine to a domain which is *thine,'* the Rabbi asked. These words of reproof were greeted with scorn by the man, who failed to grasp their significance. After some time, this man, finding himself in financial difficulties, was obliged to sell his field, and, in search of a buyer, he happened to pass that same street and stumbled painfully over the very stones he had deposited. Then there dawned on him the meaning of the Rabbi's words with their full force and he exclaimed, 'How truthfully did the *Hasid* speak, when he said to me, "Wherefore dost thou remove stones from a domain that is not thine, to a domain that is thine."[26]

As inalienable public possession, the common property could be used by every individual, provided this did not involve any appropriation of, or interference with, public access. No one was therefore permitted to place or cause an obstruction in the street or act in a way that would cause inconvenience to those who use it. If anyone happened to place an object in the street and failed to remove at after due warning was given, he forfeited all claims to it.[27] If one had a tree on his private ground overhanging the street, he was required to cut the branches off at a height that would enable a camel and its rider to pass under it unmolested.[28] Threshing floors had likewise to be set up at a distance from the city so that the wind might not carry the stubble into the city to the annoyance of the residents.[29] Nor was any digging allowed even on private ground, where it extended under a public domain, without special permission from the authorities, who would, on granting, enforce the necessary regulations that would ensure the safety of the road to heavy traffic no less than to pedestrians.[30]

Private Property Rights

Though the rabbis recognized private property rights, these were governed essentially by social considerations, and only in so far as it provided a basis for social peace and welfare, and for a better ordering of human affairs, was the claim of the possession of property justified; and when it was to serve the public interest this claim might, by the properly constituted authority, be modified or suspended altogether.[31]For a man to refuse to others the use of what he possessed, simply on the ground that what he held was his own, was a conduct for which the Rabbis of the Talmud could find no sanction. They considered that provided there was no loss, nor damage involved to the proprietor, others too were entitled to avail themselves of the advantages and benefits which private property could offer. 'Behold,' said they, 'if, at the end of the harvest season, when the field is cleared of all crops, the owner does not permit the public to enter his field, what do people say of him? "Look at the man, what benefit does he derive?"[30] Such a dog-in-the-manger attitude was regarded by the Rabbis as indefensible. They declared it typical of the people of Sodom who stood strictly by the principle of each for himself, and whose motto was 'What is mine is mine and what is thine is thine'. Against such an attitude. the court would not hesitate to resort to coercion;[31] and as is evidenced by the

number of measures affecting the whole sphere of social and economic life, recorded in the Talmud, the Rabbis endeavored to ensure not only the rights of the public in regard to private possessions, but also the social duties attached thereto.

The Biblical Conception of Private Property

This rabbinic attitude to private property is based on the fundamental biblical principle that whatever man has, he holds from God: 'For all things come of Thee, and of thine own have we given Thee' (I Chron. XXIX, 14). Such property is conceived in terms of a Divine trust, in which no man can claim exclusive rights. While those appointed by God as trustees have their own specific rights of use and enjoyment, there still remain common rights to be shared by others in virtue of the Divine ownership.

It was this principle of Divine ownership on which rested the biblical laws designed to ensure the common rights of the poor to the land. In ancient Israel, those who could not earn enough were provided for by the precepts of the Torah regarding the reaping of the harvest. The landowner, while enjoying the reward of his diligence, had to recognize that others too had a right to live and that he had duties towards them to enable them to live.

The ethical principle underlying these precepts is quite clear. Its meaning is that the earth created by God as well as all the gifts of nature can never become altogether private property. It is handed out in trust to man, who by the sweat of his brow, brings out its produce. The right and the duty to apply his diligence to the land is the only relationship permitted him by the spirit of the Torah. Beyond this relationship stands the eternal truth that 'the earth is the Lord's and the fullness thereof' (Psalm XXIV, 1). It is from Him that man has received the land, and it is from Him that mankind derives common rights in the land; and in the olden days, the common property in the gathering of the harvest was an example of these common rights.

In the same spirit were the laws of the Sabbatical Year *(Shemittah)* ordained. Designed to confirm the landless poor in their right to live, 'the Sabbath for the land unto the Lord' (see Lev. XXV. 2) served to teach that the produce of the land must not be regarded as absolute private property of a select class, but was at least part of a common divine heritage in which the poor, the alien and the slave and even the criminal have a share.

This principle of the Divine ownership of the land was further enforced by the biblical law of the Jubilee. If a Jewish landowner sold his land, it came back to him or his heirs with the advent of the Jubilee Year. The object of this law was to prevent land from becoming concentrated in the hands of a few, to the impoverishment of the masses. But the underlying principle was that of the Divine ownership of the land. As the land did not actually belong to its human owner, it was not in his competence to sell it. This so-called owner of the land was given only the opportunity of putting it to good use. Having failed in his charge, he was obliged to surrender his function to another person, the original reservation ever remaining in force; and after the lapse of a certain number of years, with the advent of the Jubilee, his rights as first owner were automatically restored to him, and he was given a chance of cultivating his trust.

Control of Price

The Rabbis, actuated by the same ethical and religious motives governing private property rights, applied them to the whole range of social relations. This is particularly noticeable in the rigid control exercised over

the price-fixing of commodities and the penalties attached in cases of contraventions. In Roman Law, price was entirely a matter to be determined by free contract. It was left to the two contracting parties, the buyer and the seller, to agree upon the price at their own risk, subject only to the limitation that the seller was bound to reveal faults and defects, interfering with the proper enjoyment of the things sold. Paulus, a legist of the third century, stated that, in buying and selling, a man has really a natural right to purchase for a small price that which is really valuable and to sell at a higher price that which is less valuable, and each may seek to over-reach the other.[34] What appeared to Roman Law natural and right was in the eyes of the Talmudic Law unethical and wrong. Basing themselves on the biblical law in Leviticus, 'If thou sellest aught to thine neighbor, or buy of thy neighbor's hand, ye shall not wrong one another' (Lev. XXV, 14). Jewish magistrates regulated the relationship of buyer and seller on quite a different basis than that of contract. For them it was determined by social considerations and based on ethical principles; and thus they developed and enacted a number of legal provisions that safeguarded the interests of both parties. They not only limited all profits, but fixed the amount which constituted in each case, according to the nature and circumstances of the transaction, a charge of fraud and the penalties attached to it. In general cases the overcharge of more than one-sixth above the market price was considered sufficient to cancel the sale; where it was exactly one-sixth, the buyer could recover the excess; though an overcharge of less than a sixth was not actionable.[35] And not only was the buyer protected against fraud, the seller too could find a remedy where he had been through one cause or another cheated out of his wares at a lower price.[36]It becomes clear that in a system where such laws and regulations were in force, the ideas about rights, of property were quite different from those that predominate today.

Sale of Food

In many communities, the prices were fixed not at individual discretion, but were corporately determined with a view to safeguarding the standards of life of the consumers; and while in some cases the profit of more than one-sixth of the cost price was permissible, in the case of eatables it could not exceed one-sixth.[37] For the same reason provision was made cutting out the middleman's profit in the case of eggs which constituted one of the most important articles of food in Palestine.[38] The export trade was likewise regulated on the same principles, and no food on which the general livelihood of the community depended, such as wine, oil and fine flour, could be exported from Palestine; although it might be mentioned that one authority. Rabbi Jehudah ben Bathyra, would make an exception in favor of wine, because its export, he claimed, would diminish the resultant evils of intoxication.[39]

Measures Against Forestalling

Rules of the most far-reaching consequences were likewise enacted to prohibit forestalling or any action which prevented goods from being brought by the producer to the open market. The forestaller, buying them wholesale outside the town or in the market itself, would by creating a corner, secure a monopoly and command a higher price than would otherwise have been paid. Such practices, though forbidden by means of an enactment, were not easily enforced. The Talmud mentioned with execration a certain Shabbatai who practiced forestalling.[40]Such abuses must have been quite common; and public-spirited individuals would step in where the hand of the law could not reach. The father of Samuel, for instance, we are told, in order to

defeat the scheme of forestallers, used to buy grain at the harvest time, thus preventing anyone else from securing a monopoly, and then resell the grain at the same price. Samuel, the son, on the other hand, used to store up the grain he bought at harvest time and keep it until the price became higher, when he would release the grain at the price of the harvest time and thus force prices down. And from Palestine a message was sent: 'The action of the father is more meritorious than that of the son'. Whereas the action of the father prevented a rise in the prices altogether, those of the son did not have the same effect, as his act was not likely to bring the prices down after they had already attained their level in the market.[41]

Control of Weights and Measures

In addition to controlling prices, the authorities controlled also the measures and weights. Numberless regulations were laid down to ensure that the buyer was not defrauded by any inaccurate measure or weight. All measures had to be cleaned periodically according to the purpose for which they were intended. Wholesalers had to clean their weights and measures once a month, shopkeepers twice a week. Provision was likewise made for the height at which the scales were to be suspended from the ground, as well as for the length of the cross-bit. The nature of the weights was similarly provided for. Weights were not to be made from metal, because they wore out easily, only from granite, stone and glass.[42] These measures, it might be mentioned, were made in the interests of justice, rather than for the sole interest of the citizens. This is clearly illustrated by the regulation that no weight could be enlarged by more than a sixth; and the reason suggested for this enactment was to protect merchants, coming from outside to dispose of their goods, against any loss. If, for instance, an outside seller, unaware of the increase in the capacity of the weights and measures, sold his wares at the fixed profit of one-sixth, he would still suffer no loss on the cost price, provided the change did not exceed one-sixth.[43]

Quality of Wares

The authorities were not content with having to provide society with mere fitting instruments of trade. They felt bound to regulate every sort of economic transaction in which individual self-interest might lead to injustice, and they determined to see that only such articles were sold as were of good quality as well as of good measure. Store-keepers were not allowed to give their wares a delusive appearance by displaying the best quality on top and placing the inferior below. Nor was it permitted to renovate old furniture and sell it as new. Animals for sale were not to have their appearance improved by being brushed up or drugged so that they might appear young. [44] An in this connection an interesting story is told of a slave who dyed his hair and beard and offered himself to Raba for sale. Raba turned down his offer with the saying, 'Let the poor be the members of thy household', meaning I would rather have a poor person perform my household service. When he came to Raba Papa b. Samuel, he bought him. One day when ordered by his master to bring him a drink of water, the slave went and washed away all the dye of his hair and appearing before his master exclaimed: 'See I am older than your father.' Thereupon R. Papa applied to himself the verse in Proverbs (Xl, 8) 'The righteous (meaning Raba) is delivered out of distress and another (namely, himself) cometh in his stead."

A strong administrative system was created to assist the authorities in enforcing their regulations. There were special agents, *agoranomos,* market-commissioners, who supervised and tested the quality of the food, liquors and other articles offered for sale, and who controlled the measures and

weights. As to prices, custom varied. Whilst in Babylonia they were fixed and controlled by the community,[46] in Palestine they were under no such control.[47]. They were rather allowed to find their own level, stimulating thereby—thus maintained these early economists—healthy competition. Rab on his arrival in the year 219 C.E. in Babylonia from Palestine was appointed by the Exilarch as market commissioner.[48] Clinging, however, to the practice in vogue in his homeland, he refused to supervise the prices and rather preferred to serve a sentence in prison, than to depart from his cherished economic principle. Samuel, his contemporary, on the other hand, fought against high prices; and on one occasion when dealers in earthenware took advantage of the adopted law disallowing the use of all *hametz* earthenware vessels that remained over the Passover, and charged exorbitant prices for their goods, Samuel threatened them that unless they reduced their prices, he would modify the law in favor of the opinion that declared the use of such utensils permissible after Passover.[49] He dealt in a like manner with dealers in myrtle for the *lulab*,[50] and cautioned them to make their charges reasonable, failing which, he would declare himself in favor of Rabbi Tarfon's view that permitted, for the purpose of the ritual, myrtles which had their tips broken off, instead of the adopted practice that demanded the tips of the myrtles to be whole and unbroken.[51]

Respect for Private Property Rights

But apart from the social considerations which, in Talmudic legislation, govern the property rights of individuals, man's lawful possessions were safeguarded by a number of strict laws and regulations. This is particularly seen in the law which considers the unauthorized use of any property belonging to another to be the equivalent of robbery, rendering the offender liable as such for any loss or deterioration suffered by the property even through an unavoidable accident *(force majeure)*.[52] Even more stringent is the law in the case of a bailee, in that he becomes liable for any loss or deterioration or destruction of the subject-matter of the bailment from the moment he lifts it up with the intention of using it, even if he does not actually make use of it, because having undertaken a duty towards the owner of the property, he is guilty of a breach of trust which makes him more easily an offender than a non-bailee.[53] And not only is the bailee responsible for such an act, but even if he merely told another person to use it, he becomes responsible for any loss suffered by the bailment, notwithstanding the rule that no man can be made liable for an offence committed by another.[54]

Related to these regulations is the prohibition to deprive a man directly of a customer, or to buy what someone else is negotiating for. 'If a poor man (for example) is examining a cake (to buy it) and another man comes and buys it, he is called a wicked man.[55] Included in this prohibition is to interfere with another person's livelihood or encroach upon his trade;[56] and early Talmudic legislation forbade one who was not a resident of a street or alley to open up there a trade which was already exercised by a resident. Similar protection against competition was extended even to fishermen. Although they plied their trade in rivers, in which, as common property, all men had equal fishing rights, they were protected against the interference of each other with their respective catches. Fishermen were thus ordered to remove their nets for a certain distance from the spot where another fisherman had already spread his net, with a good chance of catching a fish which had been attracted by his bait. The only profession which was not thus protected was that of schoolmasters, competition in their case being considered

very healthy because 'the rivalry of scholars increaseth wisdom.[57]

Rights of Workers

How little Jewish ethics were influenced from the earliest days by the idea of absolute property is already reflected in the position of the non-Jewish slave in ancient Israel. Even a slave was not recognized as an absolute possession. He was never to become a thing. The smallest injury to his body gave him his freedom. If he ran away, nobody was entitled to deliver him back. In Job the full right of the slave to the support of the law is upheld, and the moral basis of his liberation is laid: 'If I did despise the cause of my manservant (slave) or maidservant, when they contended with me: what then shall I do when God riseth up? and when He visiteth me, what shall I answer Him? Did not He that made me in the womb make him? And did not one fashion us in the womb?' (Job XXXI, 13-15). In an epoch when social conscience was yet unknown, even in those restricted parts of the world which represented a certain degree of civilization, Jewish ethics proclaimed in no uncertain accents full equality of social standards even of slaves, embodying this principle in the various rules and regulations governing slaves and master. It was forbidden to let slaves perform any degrading work, or work which was not absolutely necessary.[58] How far ahead is such an attitude in comparison with that of employers of not long ago who opposed twelve- and ten-hour working days on the ground that less than fourteen or sixteen hours' work per day would mean too much liberty and unhealthy leisure. Social equality of the slave demanded that he should rest on the Sabbath day even as his master rests, and that if made captive he should be ransomed even as a freeman is.[59] And Jewish ethics as far back as eighteen centuries ago formulated a program of social security which cared for the disabled slave.[60]

The same social conception of property governed the relations between employers and employees. Property did not give owners the right to hire workers on their own terms. The wages were fixed with a view to safeguarding the workers' standard of life by the authorities, who drew up regulations as to the wages and hours of labor and other rights of the workers. In some communities, all this was regulated by guilds of artisans; and workers were permitted to call a strike *(Regi'a)* in defense of their rights.[61] In many Palestinian communities, the working hours were fixed from sunrise to sunset; that is, a maximum of twelve hours. But in any case it was a fixed regulation that the time taken up by the workman in going to the place of labor was included in the working hours belonging to the employer, whereas the time needed for the laborer to go back home from his work was part of his own time and could not be deducted from his working hours.[62] The employer had no right to make the employee work longer hours than was customary in that locality, unless specially agreed upon, even if he paid him more than the usual rate of wages, it being implied that he gave him such an increase for his skill in performing better work and not for the purpose of longer hours.[63]

In their solicitude for the welfare of the workman, the Jewish communities while protecting him against exploitation, sought at the same time to safeguard his dignity and honor. They held with the poet Schiller that 'Man is created free; and is free even though born in chains'. For freedom was a divine gift which no Jew was entitled to barter away. "For unto me the children of Israel are servants (Leviticus XXV, $_{55}$)—and not servants to servants" is an illuminating rabbinic comment reflecting its attitude to the question of human freedom;[64] and this attitude lies behind many of the regulations governing the relationship between

employer and employee. Thus, the workman by hiring himself out for the day could retract before the work was completed, provided he could be replaced, and his retraction would not involve the master in a financial loss.[65] In some places the employer had to furnish the workman with meals, the menu of which was regulated and which included in many cases dainty dishes.[66] This was apart from the biblical law which entitles the laborer, to eat *ad lib.* of the produce on which he happens to be engaged, even to an amount exceeding his wages; though the Rabbis advised the workman not to be greedy and thus find the door of employers closed against him.[67] The employer, however, could not discharge his liability to the worker by making him accept, in lieu of his wages in money, a payment of equal value in kind.[68] The wages, being his living, the workman was permitted in case of the employer's default, to enter his house and seize an article as a pledge for his wages—something which, as will be seen anon, a creditor was not allowed to do.[69]

Payment of Wages

The wages of the workmen had to be paid according to biblical law within a fixed time. 'There shall not abide with thee the wages of him that was hired, through the night until the morning.' thus runs the biblical command (Lev. XIX, 13). The purpose of this law, which is repeated with different wording in Deuteronomy XXIV, 14-15, is evidently to spare the workman, who waits for his earnings to buy food, the distress caused by any delay in the payment of his wages. This fact is recognized in modern business in which it has become the practice to pay employees every week, whilst casual labor is paid by the day; and the Talmud contains detailed provision as to what are the limits of time, according to circumstances and the nature of the work, at the end of which the owner, having failed to pay his workman, is guilty of violation of the command. If, for example, he is a day laborer, he must be paid during the night following the day of his employment; if he is a night worker, he must have his wages paid within the day following the night of his employment.[70] Within these limits of time, the laborer, in case of a dispute as to whether he has been paid, was entitled to collect his wages merely on oath, and had no need to produce any other evidence. But after the expiry of the time limit, he would have to bring definite evidence to prove his claim, because the presumption is raised that every employer is honest and would not defraud his workman, nor violate the command that enjoins payment within a fixed time.[71]

Rights of Employers

The Talmud knows of no class legislation favoring one section at the expense of the other: all are alike in the eyes of the law, master as servant, employer or employee; and the interests of the masters receive as much consideration at the hands of the Talmudic legislators as those of the laborers. Though, as has been seen, there was no law compelling a worker to remain on his job, the interests of the employer were safeguarded by the provision that the workman had to find a substitute before he could leave his master's employment, or that the employer suffered no loss through the workman's retraction. Furthermore, even were the workman to have engaged himself to work for the employer by mere parole, if he retracts the employer may engage other workmen even at a higher wage than the one agreed upon, and charge the difference to the employee.[72] They further sought to impress on the worker the duty of serving his master with fidelity and honesty and of cherishing, on the principle 'time is money', every moment of his employment, which to waste would amount to robbery. Workers

were thus declared exempt from the punctilious performance of certain religious exercises where this might tend to interfere with their work. They were for instance to curtail the Grace after meals,[73] and were not required on reciting the morning *Shema* to get down from a tree or scaffolding on which they happened to be working at the time, but could say it where they stood.[74] Stringent and minute regulations were likewise laid down as to the remnants of material the worker might retain for himself. Whilst he was allowed the shavings taken off with the plane, the appropriation of chips taken off with the hatchet was forbidden to him. Nor was the tailor permitted to retain a thread longer than the size of a needle's square, or a piece of cloth that exceeded the size of three handbreadths.[75]

Debtors and Creditors

The conception of inviolability of personal rights which, as we have seen, governed the relations of the workers and employers, is further illustrated by the legislation designed to protect debtors against grasping and oppressive measures on the part of their creditors; and a mere comparison with the Roman system in this connection leaves no doubt as to the highly ethical principle which determined the treatment of the debtor in the Talmudic system. In Roman law the borrower was bound hand and foot to the lender, if he failed to repay him the money lent; and where the debtor could not repay his debts, the creditor could, by applying the praetor, obtain full powers over the person of the debtor by forcing him into slavery either for his own use, or for sale in the market; and despite some later laws that mitigated the plight of the debtor, his enslavement to the creditor was in practice right down to the age of Justinian.[76] Now, such rights over the person of the debtor were never recognized in Jewish law. Not only could the creditor not force his debtor into slavery but even his right of taking a pledge was restricted. He could not deprive the debtor of any implements which he required for earning a livelihood, or of any household utensils needed for the preparation of food or his bedding, and in no case would he take in pledge anything belonging to his wife or children. Nor was the creditor, out of consideration for the feelings and sense of self-respect of the debtor, ever allowed to go himself into the house of the debtor and take a pledge; and what is more, even the Court officer was not permitted to enter the debtor's house to take a pledge, but had to wait for the debtor to bring out as pledge any article he chose.[77]

Business Loans

On the other hand, in order not to discourage through these restrictions people from advancing loans to those in need of money, a number of adjustments in the then existing law were made in favor of creditors. Thus it was enacted that creditors in collecting their debts from landed property, could insist on being paid out of the medium quality, despite the implied Biblical law that entitled the debtor to discharge his liability by referring the creditor to the poorest quality.[78] Again, whereas witnesses in all other monetary cases were subjected by the court to a thorough cross-examination and investigation' *(derisha wa-hakirah),* in cases of indebtedness they were spared this ordeal.[79] It was, moreover, ordained that even laymen were competent to try cases of indebtedness, as against other monetary cases which required for their adjudication the presence of a qualified judge.[80] All these innovations and departures from the old law were prompted by the desire to facilitate creditors in the recovery of their debts so that, in the words of the Talmud, "prospective borrowers should not find the doors of the lenders locked before them."[81] Indeed, so much importance was attached to

this consideration, that it was responsible for the institution of the *Prozbul* by Hillel which saved debts from the operation of the laws of the year of release, *Shemittah.*[82]

These enactments, though they served to safeguard to a certain extent the interests of creditors, were felt not to go far enough. In the absence of any measures to overcome the Biblical prohibition of interest which made money lending a non-lucrative proposition, lenders were not likely to advance money with all the risks attached thereto. But that is not all. The law of interest had from the earliest days been extended and made to apply to ordinary trading transactions. Thus all payment of money in return for the giving of credit, all bargains in which goods were sold at a higher price, higher than the real value, in consideration for the seller having to wait some time before he was paid, were considered usurious. For it was regarded the same as if the seller were to charge usury for lending the goods themselves, or the amount of money which was just the price of the goods, to the buyer for the period during which the seller waited for payment. This extension of the law tended to check trading enterprises and commercial operations, no less than money lending transactions. Alive to the commercial needs of the community, the Rabbis evolved an instrument designated *Iska,* in virtue of which, broadly speaking, every sum involved in a loan, particularly when advanced for trading purposes, was treated half as a loan and half as a trust, on which the lender was entitled to the larger share of the profits.[83]

Some Laws of 'Uprightness'

In case of a bankrupt whose property was sold by order of the court, the buyer of the property had to return the bankrupt his property whenever he was in a position to buy it back again. This enactment was based solely on the ethical principle, laid down in the Bible, in virtue of which the Jew is bid to do what is 'upright and good in the eyes of the Lord' (Deut. VI, 18).[84] Grounded on the same ethical principle of 'uprightness' is the rule which, in the case of the sale of landed property, gives the *Bar Misra,* the 'abutting neighbor' the option of the first refusal, as it is considered to the advantage of a person to have all his property adjacent to each other.[85] Akin to this and what is known as the rule of *Bar Misra* and determined by the same ethical principle is the rule of *god 'o agod* ('You cut or I cut'), which is applied to a partnership in a property, whether movable or immovable, which is too small to admit of partition. In such a case either partner can compel the other to sell his portion or to buy it from him, saying, 'Either you buy from me my share, or I will buy from you your share,' so that the whole will be in one ownership.[86] A number of regulations were also made to safeguard the interests of the trading community. Thus anyone who made purchase in the open market of an article which turned out to be stolen was entitled, on returning the property to its rightful owner, to recover from him the money he had paid for it, and the owner would then have to sue the thief for that amount. This might appear to have been hard on the aggrieved owner. Yet this ordinance, included among those known as *Takkanath ha-Shuk,* was most necessary, if the trading wheels were to run smoothly, as otherwise people would be loath to buy things for fear the objects offered for sale were stolen.[87]

Ways of Peace

There were also a number of rules laid down in the interests of peace. If several people had cisterns along a watercourse, the owner of the cistern nearest to the river which fed the watercourse had the right to dam the flow so that his cistern be filled first. The catch of beasts, birds and fish was to be treated as property held in the valid

ownership of those who set the traps even before they had actually come into their possession, and for anyone else to take the catch is accounted as robbery; and to take away anything found by a deaf mute, imbecile, or a minor, although these cannot legally acquire things, is accounted as robbery. All these and other similar rules were enjoined for the maintenance and promotion of public peace, in keeping with the spirit of the Torah, of which it is written 'Her ways are the ways of pleasantness and all her paths are peace.'[88]

Within the Line of Legal Justice

Akin to the ethical principle of 'uprightness' which, as we have seen, had in some respects the force of a written law, was the principle of *lifenim mi-shurath ha-Din,* which urged a man to act 'within the line of justice' and to forego his legal rights in favor of his fellow man on whom the application of legal justice would inflict undue hardship.

An early example of the operation of this ethical ideal is told in the Talmud: 'Rabbah, the son of Hunah, engaged certain carriers to transport barrels of wine from one place to another. In handling the barrels, the carriers broke one barrel, spilling the wine. Their employer, Rabbah, seized their coats in order to secure for himself the payment of the damage. The carriers thereupon summoned him before Abba Arika who ordered him to return them their coats. "Is this the law?" asked Rabbah. "Yes", answered Abba. "In order that you may walk in the ways of good men" (Proverbs II, 20). The carriers then said: "We are poor laborers, we have spent the whole day on this work and now we are hungry and have nothing to eat." Abba Arika then ordered Rabbah to pay them their full wages. "Is this the law? asked Rabbah again. "Yes", answered Abba, quoting the concluding part of the cited verse, "and keep the path of the righteous"[89] Thus, though the law gave the employer the right to make the laborers pay for the damage caused by their carelessness, Abba ordered Rabbah to follow the rule of acting 'within the line of justice', and thus forego his claim in favor of the poor workmen.

Another Talmudic example which shows us clearly the meaning of acting 'within the line of justice' concerns the rule of lost property. Where such property was not reclaimed for some time, it fell, according to the law, to the finder. We are told however of a righteous man who declined to take advantage of this rule, but, acting within the line of justice, returned the find to the person who claimed it;[90] for though it did not legally belong to him any longer, he was still obviously in need of it.

Protection of Tenants

Talmudic legislation also provided for the protection of tenants against the hardship of eviction. It insisted that no landlord could dispossess a tenant who rented a house for an unspecified length of tenure unless he gave him thirty days' notice in advance so as to enable him to find alternative accommodation. This applies only in the summer, but during the winter season—i.e., from the Feast of Tabernacles until the Feast of Passover—when it was extremely difficult to obtain vacant premises, the landlord could on no account dispossess the tenant, but had to allow him to continue to occupy the premises under the original terms of the tenancy. If, however, there had been an increase in house rents all over, the landlord might claim the higher rental; on the other hand, if there had been a decrease, the tenant could insist upon paying the lower rental. In large cities where it was difficult to obtain premises at all times, the minimum period of notice was twelve months. In the case of shops, whether in small towns or large cities, the period was likewise twelve months, in order to give ample time to the shop-keeper to collect his

debts from his customers. For shops occupied by bakers or barbers, the period of notice was three years, since such tradesmen were accustomed to grant credit for long terms. At the same time, anxious to protect the landlord against an inconsiderate tenant, it was ruled that the tenant must give notice of his intention to terminate the tenancy on the same terms as he himself would expect—thirty days in small towns and twelve months in the large cities—so as to enable the landlord to find another tenant, and that if he fails to give such notice he must pay the rent.[91]

Distinctive Features of Jewish Charity

Among no people in ancient history was there applied to the problem of poor relief, principles at once so humanizing and judicious as those that obtained in the Jewish communities of old. In charity work it is well to remember there is always a danger that, instead of alleviating distress, it might destroy the character of the recipient, and thus increase the misery which it was intended to alleviate. In order that charity should prove useful and beneficial, it is essential that benefit to the sufferer should be the real object of the donor. It is for this reason that the poor, in accordance with the Biblical law, had themselves to come and gather from the corners of the field or that which had been dropped in the course of the harvesting, and did not have the food doled out to them. They had, in other words, to work for what had been assigned to them as their share, and thus maintain their sense of independence and self respect. But this was studied neither by Rome, nor by the early Christian Church. In Rome there was, it is true, a good deal of gratuitous distribution by the state of corn and other necessities of life among the poor. But this charity was dictated by policy, rather than by benevolence. It lacked accordingly the fine discriminating sense between the really deserving and the greedy beggar. With the result that it became a direct encouragement to idleness and finally, as has been recognized, one of the chief demoralizing influences that led to the decay and the fall of the Empire. Nor was the blind and promiscuous alms-giving encouraged by the early Catholic church calculated to mitigate the worst effects of pauperization. By extolling the mere giving of charity into a source whence there flowed gifts of heavenly grace to the donor, irrespective of the needs and character of the recipient, it made charity a selfish acquisition of merit, with a more than common indifference to its results, withdrew multitudes from productive labor to a life of beggary and mendicancy, and produced poverty exceeding in a great measure the poverty it relieved.[92] Considering the system of poor relief that obtained in the Jewish communities, we find that in their administration and distribution of charity they sailed clear of the evils inherent in the Roman as well as in the early Catholic system. Though organized by the community, Jewish charity was inspired and dictated by humanitarian and social motives, regulated by the character of the recipient and determined by his needs. All relief was essentially looked upon as having for its object the alleviation of distress, without encouraging idleness and loafing. Applicants for relief, except in the case of food,[93] had their cases investigated, and due discrimination was exercised between the genuine poor and the professional beggar and impostor.[94] Judged by this aspect alone, the difference between Jewish poor relief and others is profound. But there is an additional aspect. The conception of charity as a contribution from every citizen towards the fulfillment of a common obligation, instead of a conception of alms given by one individual to another, is another distinguishing feature of the provision made by the Jewish community for the relief of the poor; and the compulsory assessment for their relief which was introduced in Europe

as late as the sixteenth century[95] was already in force in the Jewish communities as far back as the early centuries of the Christian era, if not earlier.

Charity Organization and Distribution

Every community had a well organized charity institution in charge of specially appointed officers, collecting, administering and dispensing relief of different kinds. There was (1) the *Kuppah* (basket), the communal money-box, the contents of which were distributed every Friday among the local poor; (2) the *Tamhui,*[96] containing victuals for general distribution daily among strangers no less than the local poor;[97] (3) the clothing fund; (4) the burial fund that furnished the burial expenses of the poor. The qualifying period for compulsory contribution varied in each case, apparently in accordance with the scope and extent of the calls made on each fund. With the general fund, the *Kuppah,* the period was three months, the soup kitchen fund, thirty days; the clothing fund six months; and the burial fund nine months.[98]By these means the degrading system of house-to-house visitation was considerably obviated.

The administration of all the various funds was in the hands of charity overseers, three in number, two of whom acted as collectors and treasurers. The distribution, however, had to be supervised by all the three.[99] Detailed regulations were made for the distribution of the contents of the various funds. Only those who did not have sufficient means of subsistence for a week were entitled to receive support from the *Kuppah;* and from the *Tamhui,* only those who lacked food for the day. A poor stranger passing through the town would receive from the *Tamhui* food for at least two meals, with an extra meal for Sabbath. Where he happened to stay overnight, he would be provided with sleeping accommodation.[100] Monies from one fund could be transferred to another fund when necessity arose, subject to the approval of the general council.[101]

Charity Overseers

A number of rules were laid down regulating the collection of monies for charitable purposes. The officers in charge of the collection were not to separate themselves from each other while engaged in the collection, to obviate suspicion. Where one of them happened to find money in the street whilst on his round, he was not allowed to place it in his private purse, so as not to arouse any doubt, but he had to deposit the money in the special charity box *(arneke shel zedakah),* which he carried about with him, and on getting home he would be allowed to take it out. For the same reason if a debtor of his happened to pay him in the street the money he owed him, he was not allowed to put it in his own purse; nor were the treasurers permitted to buy for themselves any surplus in the supply of victuals of the *Tamhui* that was for sale, in order to avoid any charge of unfair dealings against them. Nevertheless, they were much trusted, implicitly so, and they were not expected to furnish a detailed account of the funds they administered, for to them applied the words of the Biblical text, 'they deal truthfully' (II Kings XII, 16). [102]

Redemption of Captives

Closely related to the general charitable work of the community was its endeavors on behalf of captives. This was regarded as the greatest service a Jew could render to his fellow man and to God, as the agonies involved in captivity were, as the Talmud points out, the most distressing and protracted of all human sufferings.[103] And however impoverished a Jewish community might have been, it never shirked its duty towards captives, but always bestirred itself to secure their release and freedom. To meet such terrible exigencies, which were, alas!

but too frequent, there was a special fund allocated, and, whenever a situation arose for which the available funds were not adequate, a levy would be imposed on the members.[104] But the readiness of the Jewish Communities to pay any price for the ransom of their brethren only served to encourage the men-stealers in their sinister activities, and to further extortions. The Rabbis in their desire to protect the communities ruled accordingly that no captive should be redeemed at a price that was too high;[105] and similarly from the same motives an enactment was passed forbidding the purchase, at an excessive price, of sacred scrolls and other religious appurtenances from non-Jews who found the theft of such sacred articles quite a profitable occupation.[106]

Lost Property

Corresponding to the duty of redeeming captives is the duty of saving another's property. If one comes across what seems to be lost property, Talmudic legislation insists that it is not enough for him simply to take it into custody in fulfillment of the letter of the Biblical law (Exodus XXIII, 4; Deuteronomy XXII, 1-4) but that he is bound to look after it during the period it is in his keeping until it is eventually restored to its owner. Detailed rules are given in the Talmud in this connection, rules varying with the nature of the found property. In general, he who finds lost property must attend to it whilst it is in his custody in the same way as if it were his own, but he must not make use of it, except in so far as it will help to preserve the property in good condition.[107]

An extension of the obligation to restore lost property is the duty of saving another's property from destruction. If, therefore, one sees water flooding and threatening destruction to another's building or field, he must make every effort, such as erecting a barrier, to stop the flood. Similarly, if one sees an animal running among vineyards and damaging plants, he must take the animal out so as to prevent destruction of his fellow's property.[108]

Protection of the Weak and Helpless

The protective hand of Jewish legislation extended to all the weak, the helpless, and the fallen in society. The interests of the fatherless were looked after by the court and special enactments were made in their favor. One of the laws in this connection is that of exempting loans advanced by orphans from cancellation in the Sabbatical year, even if no Prozbul had been made out for them.[109] The Rabbinic law of interest was relaxed in favor of orphans, and if they had idle funds the court could hand these over for investment to a person of good substance and repute on the advantageous terms whereby the orphans were to share in the profits but not in the loss, although such arrangements were, as already previously mentioned, normally forbidden as coming under the Rabbinic prohibition of indirect interest.[110]

Another law is that no debt incurred by the father could be recovered from the children, whether minors or adults, except from the poorest quality of landed property.[111] Nor could the court distrain upon the estate of the debtor's heirs who were minors, unless the debt had been contracted of a non-Jew on interest which, if allowed to run on, must by reason of its mounting nature consume in the end the estate.[112] It was, however, considered expedient in the interests of the orphans not to impose an oath on the trustee as to the administration of their property entrusted to him, lest such a course would prevent people from agreeing to undertake the responsibility of the trust.[113]

The minors and mentally defectives were, also protected. In order to enable them to eke out a living, it was ruled that any

transaction in movable property made by minors or mentally defectives was valid.[114] On them was also conferred the power of acquisition; and no one had the right to deprive them of anything which they had acquired.'[115]

Special enactments were also made to protect the ignorant against abasement. It was, for instance, ordained that the special prayers on offering the first fruit should be recited by the priest instead of, as originally prescribed, by the farmer, so as not to put the ignorant to shame.[116]

Sympathy for Sinners

And even sinners were not excluded from the all-embracing sympathy and protective arm of the Jewish legislators. They sought to remove all obstacles from the penitent sinner and to make his path of reconciliation with his fellow-man and with God smooth and easy. It was enacted that thieves who converted timber into buildings were not required to pull down the buildings, as the Biblical law demanded, in order to restore the timber to the owner, but could make restitution in money, so as to assist them in their repentance.[117] And this remarkable concern for the erring and fallen reaches its culminating point in the Talmudic statement, which expresses disapproval of any owner who accepts from a repentant sinner money which he had taken from him by violence. The mere quotation of the relevant passage is eloquent enough: "Monies restored by robbers and usurers should not be accepted by the owners, and the owner who does accept it incurs the disfavor of the sages." This Mishnah, says Rabbi Johanan, originated in the days of Rabbi, as a result of the following incident. A robber once felt the urge to reform and make amends. Thereupon his wife said to him, "*Raka* (you fool)! if you will carry out your intention, then even your girdle will not remain yours." This argument of the wife had its effect and restrained him from repenting. There and then it was declared that monies restored by robbers and usurers should not be accepted by the owners, and the owner who does accept them incurs the disfavor of the sages.[118]

To Sum Up

To sum up this rapid sketch. What impresses most in this study is the governing force which the religion of Israel supplied, and the remarkable humanizing influence it exerted on the dispersed Jewish communities during the centuries when Roman civilization was being shattered. These communities were able to acquire in most countries a large measure of self-government and independent municipal rights. They were in fact little empires within an empire, theocratic empires, in which the One and Only ruled supreme. To interpret His will, there was the Torah—the Written Law, and the ever expanding and adapting oral tradition by which the Law was amplified and adjusted, so as to bring the details of social life into subjection to the Divine will and at the same time into harmony with the changing environment and conditions.

Living amidst a mixed and unfriendly population, subject to violent currents of hate and persecution, the Jewish communities had a severe struggle to maintain the ideals of justice and mercy, righteousness and equity, which they drew from the Bible. It was not always possible for them to regulate the social relations of rich and poor, employer and employed, debtor and creditor, rulers and ruled, buyer and seller, sinner and saint, on the lines they desired. But the Jewish leaders, undaunted by all obstacles and difficulties, struggled bravely on, and thus kept their people from being submerged; and in what they accomplished they not only anticipated much that is best in the social ethics of modern civilization, but what is more, have

provided the Jewish state of the future with valuable material for setting up on earth a Kingdom of God.

ISIDORE EPSTEIN

FOOTNOTES

1. See Heinemann I., *Die griekische Weltanschauungslehre bei Juden und Roemern* pp. 14-15.
2. 'A scholar may not reside in a city *where* the following ten things cannot be found: a court of justice that imposes penalties and fines; a charity fund that is collected by two and distributed by three; a Synagogue; a public bath; a convenience; a physician; a surgeon; a notary; a slaughterer (Shochet); and a schoolteacher.' Sanhedrin 17b.
3. In a city wherein there are gentiles *and* Israelites, they appoint gentile treasurers and Israelite treasurers (Yerushalmi, Gittin 5, 9). The reference is to charity-treasurers, but there is no reason to assume that the appointment of non-Jews was limited to the field of charitable endeavor.
4. Baba Bathra 7b, and Tosefta Baba Mezi'a XI, 23.
5. 'R. Jose (said) in the name of Rabbi Johanan: Two brothers are not appointed as *Parnasim.* R. Jose removed (from the *Parnas* office) one of two brothers. He thereupon entered (the academy) and declared: Nothing blameworthy was found in that man; but two brothers may not be appointed as *Parnasim*'. Yerushalmi, Pe'ah VII, 8.
6. See Rashi, Baba Bathra 8b. 'Two brothers in respect of reliability are both regarded as one."
7. 'Once a man is appointed as Parnas over the congregation, he is forbidden to perform work in the presence of three.' Kiddushin 70a.
8. 'R. Hagi when he appointed Parnasim would present them with a (Scroll of) the Law, as if to say that every office that is given, derives its authority from the Torah.' Yerushalmi, Pe'ah VIII, 7.
9. Greek *agoranomos,* market commissioner. See Tosefta Kelim, Baba Kamma, VI, 19, and Baba Mezi'a (Nezikin), VI, 14.
10. See next note.
11. See Midrash Bamidbar Rabbah XX, 15.
12. See Tosefta Kelim, Baba Kamma VI, 19 and Abodah Zarah VIII, 6.
13. See Baba Mezi'a 107b-108a.
14. See Ta'anith 10b.
15. See Shekalim I, 1 and Mo'ed Katan 2a.
16. See Baba Bathra 8a.
17. Yerushalmi Kethuboth I, i.
18. Tosefta Baba Mezi'a XI, 24: 'Wool dressers and dyers may declare, "Any wares that are brought into the city shall be shared by all of us as partners.''
19. See Tosefta Baba Mezi'a XI. 28.
20. See Baba Kamma 81a.
21. See Tosefta Baba Mezi'a XI, 30 ff.
22. See Baba Kamma 81a: Joshua (on his entry into Eretz Israel) laid down ten stipulations: That cattle be permitted to pasture in woods; that wood may be gathered (by all) in private fields; that herbs may similarly be gathered (by all) in all places, etc.
23. See Baba Kamma 81a: 'It is permitted to use the paths in private fields until the season of the second rain' (i.e., the seventeenth of Marcheshvan, when the seeds begin to sprout; see Rashi). This too is included among the ten stipulations made by Joshua.
24. Baba Bathra 12a.
25. The designation Hasid, unless defined, stands for either Rabbi Judah b. Baba or Rabbi Judah b. Ila'i. See Baba Kamma 103b.
26. See Baba Kamma 50b: 'A story (is told) of a certain man who was removing stones from his ground on to the public ground when a pious man found him (doing so) and said to him "*Raka* (Fool)! Why do you remove stones from ground which is not yours to ground which is yours?" The man laughed at him. Some days (later) he had to sell his field and when he was walking on that public ground he stumbled over those stones. He then said: How well did that pious man say to me, 'Why do you remove stones from ground which is not yours to ground which is yours?"'
27. See Tosefta Baba Kamma II, 4: 'If one places stones or luggage on public ground, and they tell him "Remove them," and he says. "I do not wish to," then anyone who is first (to take possession of them) acquires them.'
28. See Baba Bathra 27b: 'If a tree stretches into the public domain, the owner must cut away enough to allow a camel and its rider to pass by.'
29. See Baba Bathra 24b: 'A permanent threshing floor must be kept fifty cubits distant from the town.'

30. See Baba Bathra 60a: 'One may not make a cavity underneath a public domain (such as) cisterns, trenches and vaults. Rabbi Eliezer permits it if it is such that a wagon with stones can (safely) go over it.' See also *Maggid Mishneh* on Maimonides, *Yad, Nizke Mamon* XIII, 23.
31. See Yebamoth 89b and Gittin 36b. See also Maimonides, *Yad. Sanhedrin* XXIV, 6.
32. 'If a man's produce has already been removed entirely from the field, and nevertheless he does not allow persons to enter his field, what do people say of him? What (real) benefit has the owner (from his field)? In what way would people do him harm? It is regarding such a person that the verse says: 'While you can be good, do not call yourself bad'. (There is actually, such verse in Scripture, but as the Talmud points out, it is a paraphrase of Proverbs III, 27 — Baba Kamma 81b.
33. Baba Bathra 12b.
34. This view, which is based on the dictum of Pomponius, has been incorporated as authoritative in Justinian's Digest XIX, ii.ii (j): 'quaemadmodum in emendo et vendendo naturalitcr concessum eat quad pluris sit minoris emerc, quad minoris sit pluris vendere, et its invicem se circumscribere, it in locationibus quoque et conductionibus juris est.'
35. Baba Mezi'a 50b.
36. Baba Mezi'a 51a: 'The buyer and seller alike are subject to the law of defrauding.'
37. Baba Bathra 90a: The reference is apparently to eatables, see Rashbam *ad loc.* and Rashi on parallel passage in Baba Mezi'a 40b. and Maimonides, *Yad, Mekirah* XIV, 2 and *Maggid Mishnah, ad loc.*
38. 'Our Rabbis taught: In Palestine, it is not permitted to make a profit on eggs twice … (twice meaning) a dealer (selling to a dealer.' Baba Bathra 91a. The prohibition applies apparently to all foodstuffs as is evidenced from the following passage: 'Our Rabbis taught: in Palestine, it is not permitted to make a profit in things which are life's necessities, such as for instance, wines, oils and various kinds of flours.' Baba Bathra 91a. The reference is to middleman's profit, see Rashbam and Maimonides ad. Mekirah XIV,4, unless it implies a nationalization by the State of all foodstuffs in times of scarcity.
39. See Baba Bathra 90b: 'R. Judah ben Bathyra permits (the export of wine) because it diminishes levity.'
40. See Baba Bathra 90b and Yoma 83a.
41. See Baba Bathra 90b: 'They sent from there (Palestine): (The action) of the father is better than that of the son. What is the reason? (Because) a price that has been eased (and brought down to a low level) is eased (and remains so).'
42. See Baba Bathra 89a-b.
43. See Baba Bathra 90a.
44. See Baba Mezi'a 6oa: One must not bedizen either human beings, or cattle, or utensils (which are for sale).
45. See Baba Mezi'a 6ob: 'As was the case of a certain slave who went and had his head and beard dyed, and came before Raba saying to him: "Buy me." He replied: "Let the poor be the children of thy house." So he went to Rab Papa ben Samuel who bought him. One day, he said to him, "Give me some water to drink." Thereupon he went and washed his head and beard white again, and said to him, "See I am older than your father". At that he applied to himself to the verse, "The righteous is delivered out of trouble, and another cometh in his stead." (The actual verse reads, 'and the wicked, etc.' but Rab Papa probably substituted 'another', intentionally, as he did not wish to have himself described as 'wicked'.
46. See Baba Bathra 89a.
47. Tosefta Baba Mezi'a VI, 14. There were market-commissioners in Jerusalem, but they were not appointed over the prices, but only over the (weights and) measures. See S. Klein, *Ma'amarim Shinim la-Hakirath Eretz Yisrael.*
48. Yerushalmi Baba Bathra V, 11.
49. See Pesahim 30a. 'Samuel said to those who sell (hardware) pots: Charge an equitable price for your pots, if not I will publicly lecture (that the law is) in accordance with Rabbi Simeon (that leaven pots kept over Passover are not forbidden).'
50. The Palm branches used on the Festival of Tabernacles in accordance with Leviticus XXIII, 40.
51. See Sukkah 34b: 'Samuel said to those that sold myrtles: "Charge an equitable price, else I would publicly lecture (that the law is) in accordance with Rabbi Tarfon." '
52. Baba Mezi'a 41a.
53. Baba Mezi'a 44a.
54. Baba Mezi'a 44a.
55. Kiddushin 59a.
56. Sanhedrin 81a.
57. Baba Bathra 21b-22a.
58. See Niddah 47a: 'Scripture has only designed the (Canaanite slave) for work, but not for indignity.' See Maimonides, *Yad, Abadim* IX, 8.

59. See Gittin 37b: 'As it is a religious duty to redeem freemen, so it is a religious duty to redeem slaves.'
60. See Yerushalmi Baba Kamma VIII, 4: 'Israelites are commanded to maintain incapacitated (maimed) slaves more than able (sound) ones.'
61. See Tosefta Baba Mezi'a Xl, 25: 'Bakers are permitted to arrange among themselves for a (period of) rest (from work).' See also Babe Mezi'a 77a.
62. See Baba Mezi'a 83b: 'A laborer's entry (to town) is in his own time, but his going forth (to the field) is in his employer's.' See, however, Tosafoth in the name of Rabbenu Hananeel who reverses the explanation.
63. See Baba Mezi'a 83a.
64. Baba Mezi'a 10a.
65. See Baba Mei'a 77a-b.
66. See Baba Mezi'a 83a-b.
67. See Baba Mezi'a 92a: 'Yet a man should be taught not to be gluttonous and so close the door against himself.'
68. See Baba Mezi'a 118a.
69. See Baba Mezi'a 115a.
70. See Baba Mezi'a 110b.
71. See Baba Mezi'a 112a.
72. See Baba Mezi'a 75b.
73. See Berakoth 46a.
74. See Berakoth 16a.
75. Baba Kamma 119a-b.
76. See M. Neumann, *Geschichte des Wuchers,* pp. 132 ff.
77. See Baba Mezi'a 113a ff.
78. See Gittin 49b.
79. Sanhedrin 3a.
80. Sanhedrin 2b-3a.
81. See notes 74-76.
82. See Gittin 36a and *Kesef Mishneh* on Maimonides, *Yod, Hilchoth, Mamerim* II, 2. The principle underlying the *Prozbul* is founded on the passage 'that which is thine with thy brother, thine hand shall release.' (Deut. XV, 2). From this has been derived the law that the operation of the year of release does not affect debts of which the bonds had been delivered to the Court before the intervention of the year of release (See Sifre *ad loc.),* such debts being regarded as virtually 'exacted', and hence not coming under the prohibition 'he shall not exact.' By a slight extension of this precedent, Hillel instituted the *Prozbul,* which in effect amounted to entrusting the Court with the collection of the debt. Without actually handing over the bond to the Court, as required by the existing law, the creditor could secure his debt against forfeiture by appearing in person before the Beth Din and making the prescribed declaration, viz: 'I hand over to you so-and-so, the judges in such a place (my bonds), so that I may be able to recover any money owing to me from so and so at any time I shall desire.' The meaning of the term *Prozbul* is a matter of dispute. It is generally explained from the Greek [Greek text] (declaration) before the Council.
83. See Baba Mezi'a 104b. The *Iska* (lit. 'occupation'; 'business') was a business arrangement whereby one invests a sum of money with a trader, half of which is advanced to him as a pure loan, for which the trader bears full responsibility, and the other half deposited with him as a surety with all the risks of depreciation falling on the investor. To avoid the prohibition of usury, the investor takes a greater share of the risk than of the profit: he receives, for example, either half of the profit but bears two-thirds of the loss, or a third of the profit but bearing half the loss. This arrangement was designed by Rabbis to satisfy the needs both of the debtor and the creditor.
84. See Baba Mezi'a 16b.
85. See Baba Mezi'a 108b.
86. See Baba Bathra 13a. See Responsa Solomon Adreth I, 957.
87. See Baba Kamma 115a. A similar principle of *market overt* is recognized in English Law. See M. Jung, *The Jewish Law of Theft*, (Philadelphia, 1929), p. 94.
88. Gittin 59b.
89. See Baba Mezi'a 83a.
90. See Baba Mezi'a 24b.
91. See Baba Mezi'a 101b.
92. See W. E. H. Lecky, *History of European Morals,* pp. 75 ff.
93. See Baba Bathra 9a (according to the view of Rab Judah which is accepted in the codes): '(Applicants) for clothes are examined, but not (applicants) for food; see *Shulchan Aruch, Yoreh De'ah,* 151, 10.
94. See Baba Bathra 9a.
95. See W. J. Ashley, *English Economic History and Theory,* II, p. 360.
96. A tray or shallow dish with compartments for different kinds of food.
97. The *Tamhui* was the forerunner of the soup-kitchen with which civilized Europe first became acquainted in the middle of the nineteenth century. See M. Lazarus, *The Ethics of Judaism,* I, p. 47.
98. See Baba Bathra 8a. For variants see parallel passage, Yerushalmi Pe'ah VIII, 16 and Tosefta Pe'ah IV, 9.
99. See Baba Bathra 8b.

100. See Mishnah Pe'ah VIII, 7.
101. See Baba Bathra 8b and Tosafoth *ad loc.*
102. See Baba Bathra 8a-9a.
103. See Baba Bathra 8b: 'Captivity is harder than all, for all sufferings are included in it.'
104. See Baba Bathra 8a-b.
105. See Gittin 45a: 'Captives should not be ransomed for more than their value as a precaution for the general good (literally "for the well ordering of the world").'
106. 'And none should buy scrolls (of the Law), *Tefillin* and *Mezuzahs* from gentiles for more than their value, as a precaution for the general good.'
107. See Baba Mezia 28b-31b.
108. See Baba Mezia 31a.
109. See Gittin 37a and Baba Kamma 37a: 'Orphans do not require a *Prozbul.*' See note 82, p. 7.
110. See Gittin 52a; see above note 103, p.8.
111. See Gittin 48b.
112. See 'Arakin 22a.
113. See Gittin 52b.
114. See Gittin 59a. 'As to children (above six years of age), a purchase or sale affected by them in movable property is valid.'
115. See Gittin 59b.
116. Mishnah Bikkurim 111, 7.
117. Mishnah 'Eduyyoth VII, 9 and Baba Kamma 66b: If a man built a stolen beam into a structure, he need only repay its value, for the benefit of the penitent. See also A. Büchler, *Studies in Sin and Atonement,* p. 387. M. Jung, *op. cit.,* p. 78, points out that Roman law has the same provision, but gives another reason for it, namely, 'in order that buildings should not be torn dawn, under the pretence of recovering the stolen timber, nor the culture of vineyards be destroyed, *but against the one convicted of the "joining" the law grants an action for double the amount.*' The words here italicized show how far was the concern for penitents from the mind of the Roman legislators.
118. See Baba Kamma 94b, and Buechler, *op. cit.,* p. 394.