

BABA BASRA – 78a-113a

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Folios 78a-113a



BABA BASRA

TRANSLATED INTO ENGLISH WITH NOTES

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CHAPTERS V - X

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And should you reply that the Rabbis do not accept [the law of the return of overcharge or that of] the cancellation of the purchase,¹ surely,² have we not learnt: R. Judah says: 'In the case of the sale of a scroll of the Law, a beast or a pearl, [the law of] overcharging does not apply.³ But they⁴ said unto him: Only [about] those [mentioned above]⁵ has [this]⁶ been said.'⁷ — What is the meaning of [the statement that] the price is no proof? That the [entire] sale is to be cancelled.⁸ If you prefer, I would say: The Rabbis apply [the laws of] overcharging and cancellation of sale [only in cases] where one is likely⁹ to be deceived,¹⁰ but not when one is unlikely to be deceived,¹¹ [for in the latter case] it may be assumed that [the difference] was given as a gift.

MISHNAH. HE WHO SELLS AN ASS HAS NOT SOLD ITS EQUIPMENT.¹² NAHUM THE MEDE SAYS: HE HAS SOLD ITS EQUIPMENT.¹³ R. JUDAH SAYS: SOMETIMES IT IS SOLD, SOMETIMES IT IS NOT SOLD. HOW SO? IF THE ASS WITH ITS EQUIPMENT UPON IT STOOD BEFORE HIM AND HE [THE BUYER] SAID UNTO HIM: 'SELL ME THIS ASS¹³ OF YOURS, THEN ITS EQUIPMENT IS SOLD. [IF, HOWEVER, HE SAID]: 'IS THE ASS YOURS? [SELL IT TO ME].'¹⁴ ITS EQUIPMENT IS NOT SOLD.

GEMARA. 'Ulla said: The dispute [between the first Tanna and Nahum the Mede is only] about the sack, the saddle-bag,¹⁵ and pallet.¹⁶ For the first Tanna is of the opinion that an ass is, as a rule, used for riding,¹⁷ and Nahum the Mede is of the opinion that an' ass is, as a rule, used for carrying burdens;¹⁸ but [in the case of the] saddle, pack-saddle, cover¹⁹ and

saddle-belt both agree²⁰ that these are included in the sale.

An objection was raised: [It has been taught: If one says to another] 'I sell you the ass and its equipment', he has sold him the saddle, the pack-saddle, the cover and the saddle-belt, but he has not sold the sack, the saddle-bag and the pallet; if, however, he said unto him, '[I sell you] it [the ass] and all that is upon it', then all these are included in the sale. [From this follows that] the reason why [the buyer] acquires possession of the saddle and the pack, saddle is that [the seller] said '[I sell] it and its equipment', but if he had not said so, [the buyer would] not [have acquired these]?²¹ No! The law that the saddle and the pack-saddle are included in the sale is applicable even though [the seller] did not say unto him '[I sell you the] ass and its equipment'; but [by the inclusion of the statement]²² he teaches us that although [the seller] said unto him: '[I sell you] the ass and its equipment's he [the buyer] does not acquire the sack, the saddle-bag and the pallet.²³

What is kumni?²⁴ — R. Papa b. Samuel said: A [mattress] seat²⁵ for travelling women.

The students inquired: Is the dispute [between the first Tanna and Nahum the Mede] in the case when [the sack and saddle-bag] are upon it,²⁶ but when these are not upon it, Nahum the Mede agrees with the Rabbis,²⁷ or is the dispute in the case when these are not upon it, but when they are upon it, the Rabbis agree with Nahum?²⁸

Come and hear: [It is stated in the above Baraitha:] But when he said unto him, '[I sell you] it and all that is upon it', then all these are sold. Now, this would be correct if it were assumed that the dispute [related to the case] when they²⁹ are upon it;³⁰ [since] this [Baraitha] could be assigned to the Rabbis.³¹

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If, however, it is assumed that the dispute [relates to the case] when they³² are not upon it,³³ but that [in case] they are upon it both agree that they are [implicitly] included in the sale, to whom [could] this [Baraitha be assigned]?³⁴ — It may still be said that the dispute relates to the case when they are not upon it, and the Baraitha may be assigned to the Rabbis, but read: If, however, he said unto him, 'it and all that ought³⁵ to be on it'.

Come and hear: R. JUDAH SAYS: SOMETIMES IT IS SOLD, SOMETIMES IT IS NOT SOLD. Now, does not R. Judah presumably base his statement on what the first Tanna has said? [And since R. Judah specifically³⁶ deals with the case when the equipment is upon the ass, the first Tanna must also be speaking of a similar case!]³⁷ — No; R. Judah

1. I.e., if it is assumed that the Rabbis do not require the return of the overcharge when it is a sixth of the value, and the cancellation of the entire transaction when the overcharge is more.
2. Lit., 'and not? surely'.
3. I.e., the buyer can claim no redress for being overcharged.
4. The Rabbis.
5. Those mentioned in the first part of the Mishnah in B.M. 56a.
6. I.e., the law of exemption from overcharging.
7. B.M. 56b. But in all other cases, according to the Rabbis, either the overcharge must be returned or the entire transaction cancelled. Why then do the Rabbis say here that the price is no proof implying that the sale is valid and that no overcharge is to be returned?
8. Where the overcharging was higher than a sixth of the price; where it was less, only the overcharge would have to be returned.
9. When the overcharge is only small.
10. Lit., 'when the mind might err'.
11. As in our Mishnah, no one could be deceived into giving two hundred *zuz* for a yoke worth only a fraction of such a large sum.
12. The Gemara explains the reason.
13. As it is, i.e., with its equipment.
14. In this case he offered to buy the ass only.
15. [H] [G] doubled pouched bag.
16. [H] perhaps from [G] pallet-bed. V. the Talmudic explanation, *infra*.
17. I.e., by males; and since a sack, saddle-bag and pallet are not required by men-riders, these are not included in the sale of the ass.
18. The sack, etc., which are required for an ass carrying burdens, are, therefore, also included in the sale.
19. [H] coarse cloth made of Cilician goats' hair, worn on the animal's back.
20. Lit., 'the words of all', i.e., the first Tanna and Nahum the Mede.
21. How, then, can 'Ulla say that both the first Tanna and Nahum the Mede agree that these parts of the equipment are always implicitly included in the sale of the ass?
22. '(I sell you) it and its equipment'.
23. In accordance with the opinion of the first Tanna in our Mishnah.
24. V. p. 313. n. 5,
25. [H] usually chariot.
26. I.e., upon the ass at the time of the sale.
27. That these are not included in the sale.
28. That these are included in the sale.
29. I.e., the saddle and the saddle-bag.
30. The ass.
31. Who stated that unless 'it and all upon it' was expressly mentioned, the equipment is not included in the sale.
32. V. n. 8.
33. V. n. 9.
34. Neither to the Rabbis nor to Nahum the Mede, since both have been assumed to agree that in the case when the saddle, etc. were upon the ass they are implicitly included in the sale, while according to the Baraitha these are not included unless 'it and all upon it', had been explicitly stated at the time of the sale.
35. The Baraitha accordingly relates to the case when the saddle, etc. were not upon the ass.
36. V. the last clause of the Mishnah.
37. How then could it be said that the dispute in the Mishnah relates to the case when the equipment is not upon the ass?

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speaks of a different case.¹

Rabina said to R. Ashi: Come and hear! [We learnt:] He who sold a wagon has not sold the mules.² And R. Tahlifa the Palestinian recited in the presence of R. Abbahu: He who sold the wagon has sold the mules; and [the master] said unto him: Surely we have learned that he has not sold! And he replied. Shall I cancel it? And [the master] said to him: No; your teaching may be interpreted [as dealing with the case] where [the mules] were harnessed to it. From this it must be

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inferred that the Mishnah [speaks of the case] where [the mules] are not harnessed [to the wagon]; and since the first part² [is concerned with the case] when they are absent from it,³ the latter part⁴ also [must be dealing with the case] when they⁵ are absent from it!⁶ — On the contrary, consider the [very] first part [which reads]: But he does not sell the crew nor the Enteke;⁷ and it has been stated: What is the meaning of Enteke? R. Papa said: The merchandise which it contains.⁸ Now, since the first part [deals with the case] when it [the merchandise] is in it [the ship], the latter part⁹ also [must deal with a similar case, which is] when it [the equipment] is upon it [the ass]!¹⁰ But [the only way out of the difficulty is to conclude that] the Tanna dealt with different cases in the different parts of the Mishnah.¹¹

(Mnemonic *ZeGeM NeSeN*).¹²

Abaye said: R. Eliezer and R. Simeon b. Gamaliel and R. Meir and R. Nathan and Symmachus and Nahum the Mede are all of the opinion that when a man sells an object he sells it and all its accessories. [As to] R. Eliezer, we learnt: R. Eliezer says: He who sells the building of an olive-press has also sold the beam. [As to] R. Simeon b. Gamaliel, we learnt:¹³ R. Simeon b. Gamaliel says: He who sells a town has also sold the Santer.¹⁴ [As to] R. Meir, it has been taught: R. Meir says: He who sells a vineyard has sold the vineyard tools. [As to] R. Nathan and Symmachus, [the case of] the small boat and the fishing boat.¹⁵ Nahum the Mede, in the case just mentioned.¹⁶

R. JUDAH SAYS: SOMETIMES IT IS SOLD, etc. What is the difference between THIS ASS OF YOURS and IS THE ASS YOURS? — Raba said: [When the buyer used the expression,] THIS ASS OF YOURS, he was aware that the ass was his,¹⁷ and the reason, therefore, why he said unto him, 'THIS',¹⁸ [must have been] on account of its equipment. [But when he asked], 'IS THE ASS YOURS?' [he did so] because he was not aware that the ass was his, and this was [the

implication of] his inquiry: 'is the ass yours? Sell it to me.'¹⁹

MISHNAH. HE WHO SOLD AN ASS HAS [ALSO] SOLD²⁰ [ITS] FOAL. HE WHO SOLD A COW HAS NOT SOLD ITS CALF [ALSO]. HE WHO SOLD A DUNGHILL HAS [ALSO] SOLD THE MANURE IN IT. HE WHO SOLD A CISTERN HAS [ALSO] SOLD ITS WATER. HE WHO SOLD A BEE-HIVE HAS [ALSO] SOLD THE BEES. HE WHO SOLD A DOVE-COTE HAS [ALSO] SOLD THE DOVES.

GEMARA. Of what case [does the first part of the Mishnah speak]? If [it is] that the [seller] said unto him, '[I sell you] it and its young', then even [in the case of the] cow and its young the same [law should apply].²¹ If, [however], he did not specify, 'it and its young', [then] even [in the case of the] ass also [the foal should] not [be included in the sale]? — R. Papa answered: [The Mishnah speaks of a case] where [the seller] said unto him, 'I sell you a milch-ass or a milch-cow'. [Consequently in the case of the] cow, it may properly be assumed [that the seller²² thought the buyer] would require the cow for the sake of its milk, but [in the case of an] ass, what could he have meant [by mentioning 'milch']?²³ It must [therefore] be concluded that he [meant] to say, '[I sell you] it [the cow] and its calf'. Why is [the foal] called Sayyah?²⁴ Because it follows gentle talk.²⁵

R. Samuel b. Nahman said in the name of R. Johanan:²⁶ What is the meaning of the verse: *Wherefore hamoshelim [they that speak in parables] say, etc.*?²⁷ — *Hamoshelim*,²⁸ [means] those who rule their evil inclinations. *Come Heshbon*,²⁹ [means,] come, let us consider the account of the world; the loss incurred by the fulfillment of a precept against the reward secured by its observance, and the gain gotten by a transgression against the loss it involves.³⁰ *Thou shalt be built and thou shalt be established*³¹ — if thou dost so, thou shalt be built in this world and thou shalt be established in the world to come. *'Ayyar Sihon*:³² if a man makes himself like a young ass that follows the gentle talk [of sin];

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what comes next?³³ *For a fire goes out Meheshbon³⁴, etc.:* A fire will go out from those who calculate [the account of the world]³⁵ and consume those who do not calculate.³⁶ *And a flame from the city of Sihon.³⁷ From the city of the righteous who are called trees.³⁸ It has devoured 'Ar Mo'ab:³⁹* This refers to one who follows his evil inclination like a young ass⁴⁰ that follows gentle talk.⁴¹ *The high places of Arnon,⁴²* refers to the arrogant; for it has been said: *Whosoever is arrogant falls into Gehenna.⁴³ Wanniram⁴⁴ — the wicked says: There is no High One;⁴⁵ Heshbon is perished⁴⁵ — the account of the world is perished.⁴⁶ Unto Dibon — the Holy One, blessed be He, said: 'Wait until judgment cometh';⁴⁷ and we have laid waste*

1. While the dispute between the first Tanna and Nahum the Mede may still relate to the case when the ass does not wear its equipment and both of them may be in agreement in the case when the ass does wear it, R. Judah may yet differ from them and hold that the equipment, even if worn by the ass, is sometimes not included in the sale.
2. V. Mishnah, *supra* 77b.
3. I.e., the mules are not attached to the wagon.
4. The Mishnah, *supra* 78a, dealing with the case of an ass and its equipment.
5. The saddle and packsaddle.
6. The ass; which solves the query of the students.
7. The Mishnah, *supra* 731.
8. *Supra* 77b.
9. The Mishnah, *supra* 78a.
10. But this assumption is in direct contradiction to the previous assumption; which is impossible!
11. [H], 'words, words'.
12. This mnemonic is an aid to the memorization of the names of the Rabbis mentioned in the following passage: Z =Eliezer, G = b. Gamaliel, M =Meir, N=Nathan, S =Symmachus, N = Nahum.
13. *Supra* 67b.
14. *Supra* p. 270.
15. *Supra* 73a.
16. In the Mishnah, *supra* 78a.
17. The seller's.
18. Heb. [H], implies the ass as it stands, viz., with all its equipment.
19. Here, no emphasis was laid on 'this ass' (cf. previous note). The equipment therefore is excluded from the sale.

20. Throughout this Mishnah 'also sold' means, 'sold implicitly at the same time'.
21. I.e., that the calf should be sold *implicitly* together with the cow.
22. Who mentioned 'milch'.
23. Surely an ass is not required for milk.
24. [H] is the term used in the Mishnah for 'foal'.
25. From the root [H] = [H], talk; i.e., the gentle (lit. the beautiful), the persuasive words of its driver. An older ass must be driven by force.
26. [Some texts read, R. Samuel b. Nahmani in the name of R. Jonathan.]
27. Num. XXI, 27.
28. The Heb. root [H] means 'to speak in parables' and also 'to rule', 'to master'.
29. Ibid. [H] is rendered reckoning' from [H].
30. Cf. Aboth, II, 2.
31. Ibid. [H] may be taken as second person singular masc. (as interpreted here) as well as third pers. sing. fem. (as E.V.).
32. Ibid. [H] punctuated as in M.T. gives the meaning 'city of Sihon'. But it may also be punctuated [H] in accordance with the interpretation here given. [H] 'young ass'; [H] of the same root as [H] 'talk'.
33. Lit., 'what is written after it'.
34. Ibid. v. 28. Heb. [H] may mean 'from the city of Heshbon' (as E.V.) and may also be taken as coming from the root [H], 'to reckon', 'to consider', V. p. 317, n. 9.
35. Viz., The righteous, v. *supra*.
36. The wicked.
37. Ibid.
38. [H] is taken to mean trees, [H] The righteous are compared to trees. Cf. Ps. XCII, 13; Zech. I, 8, 10, 11. and Sanh. 93a.
39. Ibid.
40. [H] taken to have the same meaning as [H] 'young ass', 'foal'.
41. Allows himself to be enticed by the attractions of sin.
42. Ibid. Heb., [H] is rendered *men of haughtiness*.
43. *Supra* 10b. A.Z. 18b.
44. Ibid. v. 30. [H] E.V. 'we shot at them'. Here taken as an abbreviation of [H] 'no High One'.
45. Ibid.
46. There will be no day of judgment.
47. Heb. [H] (E.V. Dibon) is taken as an abbreviation of [H].

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even unto Nophah,¹ — until there comes a fire which requires no fanning;² unto Medebah³ — until it will melt their souls.⁴ Others interpret: Until He had accomplished what he desired⁵ [to do to the wicked].

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Rab Judah said in the name of Rab: Whosoever departs from the words of the Torah is consumed by fire; for it is said: *And I will set my face against them; out of the fire⁶ are they come forth⁷ and the fire shall devour them.*⁸ When R. Dimi came⁹ he said in the name of R. Jonathan: Whosoever departs from the words of the Torah falls into Gehenna, for it is said: *The man that strayeth out of the way of understanding shall rest in the congregation of the shades;*¹⁰ and the shades must be synonymous with Gehenna for it is said: *But he knoweth not that the shades are there, that her guests are in the depths of Sheol.*¹¹

HE WHO SOLD A DUNGHILL HAS [ALSO] SOLD THE MANURE IN IT, etc. We learnt elsewhere:¹² [In the case of] all [objects which are] suitable for the altar and not for the Temple repair,¹³ [or] for Temple repair and not for the altar¹⁴ [and also in the case of those which are suitable] neither for the altar nor for Temple repair.¹⁵ they and their contents are subject to the law of *Me'ilah*.¹⁶ How so? [If] one dedicated a cistern full of water, dunghills full of manure, a dove-cote full of doves, a field full of herbs [or] a tree bearing fruit, the law of *Me'ilah* is applicable both to them and to their contents. [If,] however, one dedicated a cistern which was subsequently¹⁷ filled with water, a dunghill which was subsequently filled with manure, a dove-cote, which was subsequently filled with doves, a tree which subsequently began to bear fruit [or] a field which was subsequently filled with herbs, [in all these cases] the law of *Me'ilah* is applicable to the objects but not to their contents. These are the words of R. Judah. R. Jose says: If fields or trees are dedicated,¹⁸ they and their products are subject to the law of *Me'ilah*, because [the latter] are the growths of consecrated property.

It has been taught: Rabbi said: The opinion of R. Judah is acceptable in [the case of] a cistern and a dove-cote,¹⁹ and the opinion of R. Jose in [the case of] a field and a tree. How

[do you understand] that?²⁰ It is quite correct [for Rabbi to say that] 'the opinion of R. Judah is acceptable in [the case of] a cistern and a dove-cote' and thus to imply that he disagrees with him in [the case of] a field and a tree;²¹ but [as regards the expression], 'the opinion of R. Jose is acceptable in [the case of] a field and a tree', which implies that he²² disagrees [with him in [the case of] a cistern and a dove-cote, surely R. Jose speaks [only] of a field and a tree!²³ And if you would reply that [R. Jose] argues in accordance with the views of R. Judah²⁴ [and that he himself is in entire disagreement with them],²⁵ surely it has been taught: R. Jose said: I do not accept R. Judah's views on a field and a tree, because these²⁶ are the products of consecrated objects. [This clearly proves that] only in the case of field and tree he²⁷ does not accept,²⁸ but in [the case of] cistern and dove-cote he does accept!²⁹ — This [is what Rabbi implied: The opinion of R. Judah is acceptable to R. Jose in [the case of] a cistern and a dove-cote, because even R. Jose disagreed with him only on field and tree, but on cistern and dove-cote he agrees with him.

Our Rabbis taught: If one dedicated them³⁰ empty, and subsequently they were filled, the law of *Me'ilah* is applicable to them but not to their contents. R. Eleazar b. Simeon says: The law of *Me'ilah* is applicable to their contents also.

Said Rabbah: The dispute³¹ has reference to field and tree, for the first Tanna holds the same opinion as R. Judah, and R. Eleazar b. Simeon is of the same opinion as R. Jose; but in [the case of] cistern and dove-cote, both³² agree that the law of *Me'ilah* applies to them and not to their contents. Abaye said unto him: But surely it has been taught:³³ If one dedicated them when full, *Me'ilah* is applicable to them and to their contents, and R. Eleazar b. Simeon reverses [his previous view].³⁴

1. Ibid.
2. *Nophah*. root [H] 'blowing'.
3. Ibid.

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4. I. e., the souls of the wicked. [H] is here derived from the root [H] 'to melt'.
5. [H], is regarded as a contraction of [H] 'until he had done what he wanted'. ['Aleph and 'Ayin are interchangeable].
6. *Fire* is symbolic of the Torah. Cf. Jer. XXIII. 29 and Deut. XXXIII, 2.
7. They have departed from the words of the Torah which is compared to fire.
8. Ezek. XV, 7.
9. From Palestine to Babylonia.
10. Prov. XXI, 16.
11. Ibid. IX, 18. She'ol = Gehenna, is a parallelism of Refaim = Shades.
12. Me'il. 13a.
13. E.g., unblemished cattle, flour or wine.
14. E.g., gold, silver or precious stones.
15. E.g., milk, cheese or herbs which can only be sold and their proceeds used for the Temple or altar purposes.
16. [H] (from root [H] 'to trespass' or 'to defraud'). The trespass offering prescribed for the inappropriate use of objects consecrated to the altar or Temple; v. Lev. v. 15ff,
17. After the dedication.
18. Lit., 'he who dedicates the field or the tree'.
19. Viz., the opinion that if these were filled subsequent to the dedication, their contents are not subject to the laws of *Me'ilah*.
20. Rabbi's statement.
21. Since R. Judah speaks not only of a cistern and a dove-cote but also of a field and a tree.
22. Rabbi.
23. But in the case of a cistern and a dove-cote R. Jose agrees with R. Judah! Rabbi's statement, therefore, should have read, either 'the opinion of R. Jose is acceptable' or 'the law is according to R. Jose'.
24. Demanding his agreement at least on field and tree.
25. I.e., as far as R. Jose himself is concerned he not only disputes R. Judah's opinion in the case of field and tree but also in that of cistern and dove-cote. And, consequently, Rabbi's expression regarding R. Jose would also be correct.
26. I.e., the herbs and the fruit that grew after the dedication.
27. R. Jose.
28. The views of R. Judah.
29. The views of R. Judah. How then, as previously asked, could Rabbi use the expression, 'the opinion of R. Jose is acceptable etc?'.
30. The Gemara will explain what objects the pronoun represents.
31. In this last quoted Baraitha.
32. Lit., 'The words of all'.
33. What follows is a continuation of the Baraitha just quoted and discussed.

34. Though, if dedicated when empty. he subjects the contents (that were added later) to the law of *Me'ilah*; if dedicated when full, he exempts the contents from this law.

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Now, if [the dispute has reference] to field and tree,¹ why does he reverse [his view]?² Consequently³ Rabbah said: The dispute⁴ [has reference] to cistern and dove-cote, but [in the case of] field and tree both agree that they and their contents are subject to the law of *Me'ilah*. On what principle do they⁵ differ when the cistern and dove-cote are empty, and on what principle do they differ when the cistern and dove-cote are full? — When [the cistern and dove-cote are] empty, the dispute is analogous to that of R. Meir and the Rabbis. For the first Tanna is of the same opinion as the Rabbis who said no one can hand over possession of a thing that does not exist,⁶ while R. Eleazar b. Simeon is of the same opinion as R. Meir who said⁷ that one can hand over possession of a thing that does not exist.⁸ [But] say! where has R. Meir been heard [to express his view? Only in the case], for example, as that of fruits of a palm-tree, because they generally come up, but [as to] these,⁹ who can assert that they will come?¹⁰ — Raba said: It is possible¹¹ when water runs through his [own] courtyard into the cistern and when doves come through his dove-cote into the [dedicated] dove-cote. And in what case do they differ when [the cistern and dove-cote are] full? — Raba said: For example. when he dedicated a cistern without mentioning its contents; and R. Eleazar b. Simeon holds the same opinion as his father who said: We may infer the law concerning sacred property from the ordinary law.¹² As [in the case of] ordinary¹³ law one can say: 'I sold you a cistern, I did not sell you water so [in the case of] the law concerning sacred things [one can say]: 'I dedicated the cistern, I did not dedicate the water'.¹⁴ But [can it be said that in] the ordinary law [the water is] not [implicitly sold]? Surely we learnt: He who sold a cistern has also sold its water!¹⁵

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Raba replied: This Mishnah represents an individual opinion;¹⁶ for it has been taught: He who sold a cistern has not sold its water. R. Nathan said: He who sold a cistern has sold its water.

1. Since the first part of the Baraitha speaks of field and tree, the second part obviously speaks of the same objects.
2. If he subjects to *Me'ilah* contents that were added after the dedication, how much more should he subject to *Me'ilah* the contents that were already there at the time of the dedication!
3. Lit., 'but'.
4. Between R. Eleazar b. Simeon and the first Tanna.
5. R. Eleazar and the first Tanna.
6. Lit., 'that has not come to the world'. Consequently the doves and the water, being non-existent at the time of the dedication, are not regarded as the property of the sanctuary, and the appropriation of them involves no trespass offering.
7. Cf. *infra* 127b, 131a, 157b; Yeb. 39a; Kid. 62b, 78b; Git. 23b, 42b; B.M., 16b, 33b.
8. V. *supra* n. 9.
9. Water and doves.
10. Unless he is himself to bring water to the cistern and doves to the cote. In such a case R. Meir will agree that one cannot hand over possession of a thing that does not exist and affords thus no support to R. Eleazar.
11. To make such an assertion.
12. V. *supra* 72a.
13. As opposed to sacred or divine.
14. And therefore he holds that where there was water in the cistern the water is not included in the dedication.
15. *Supra* 78b.
16. The opinion of R. Nathan who is in opposition to the accepted opinion expressed in the first clause of the following Baraitha.

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MISHNAH. ONE WHO BUYS OF ANOTHER THE [ANNUAL] ISSUE OF A DOVE-COTE MUST ALLOW THE FIRST BROOD¹ TO FLY [WITH THEIR DAM].² [IF HE BUYS THE ANNUAL] ISSUE OF A BEEHIVE, HE TAKES [THE FIRST] THREE SWARMS; AND [THE SELLER MAY THEN] EMASCULATE [THOSE REMAINING].³ [IF HE BUYS] HONEY-COMBS, HE MUST LEAVE TWO COMBS.⁴ [IF HE

BUYS] OLIVE-TREES FOR FELLING, HE MUST LEAVE TWO SHOOTS.⁵

GEMARA. Has it not been taught [that the buyer must leave the] first, and the second brood?⁶ — R. Kahana replied: One for itself [the first brood], one for the dam.⁷ But if [it is assumed that the] mother dove will be attached to the daughter dove and to the mate left with it, [let it equally be assumed that] the daughter dove also will be attached to its mother dove and to the mate left with it!⁸ — A mother is [always] attached to a daughter, but not so a daughter to a mother.

[IF HE BUYS] THE [ANNUAL] ISSUE OF A BEEHIVE, HE TAKES [THE FIRST] THREE SWARMS; AND [THE SELLER MAY THEN] EMASCULATE [THOSE REMAINING]. Wherewith does he emasculate them? — Rab Judah said in the name of Samuel: With mustard. In Palestine it has been stated, in the name of R. Jose b. Hanina: It is not the mustard that emasculates them but the excessive quantities of honey, which the bitterness in their mouths [caused by the mustard], makes them consume.⁹ R. Johanan said: [The buyer] takes the three swarms alternately.¹⁰ In a Baraitha it has been taught: [The buyer] takes three swarms consecutively and after that he takes them alternately.¹¹

[IF HE BUYS] HONEY-COMBS, HE MUST LEAVE TWO COMBS, etc. R. Kahana said: Honey in a beehive never loses the designation of 'food'.¹² This proves that he is of the opinion that no intention¹³ is required. An objection was raised: [It has been taught]: Honey in a beehive is neither [regarded¹⁴ as] 'food' nor [as] 'drink'! — Abaye replied: This¹⁵ referred only to those two combs.¹⁶ Raba said: This¹⁵ is [in accordance with] R. Eliezer.

1. The first pair of young doves born after the sale.
2. I.e., to remain in the cote; because sellers do not include in sales the first brood which is required to serve as an attraction for their dam which, in the absence of its young, might altogether quit the cote.

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3. To prevent them from any further breeding, and thus to enable them to give themselves up entirely to the production of honey.
4. To provide nourishment for the remaining bees during their hibernation.
5. To provide for the future propagation of the olives.
6. Why then is it stated in our Mishnah that the first brood only is to be left?
7. The first brood is left as company for the dam. The second brood, viz. the first pair of young doves bred by the first brood, must be left as company for the first brood. R. Kahana explains that the Baraitha speaks of the two broods, the Mishnah of the first only.
8. Why then is it required to leave a pair of the second issue as company for the first?
9. The surfeit deprives them of the power of propagation and consequently their entire energies are centered on the production of honey.
10. The first, third and fifth. The others belong to the seller. The yearly swarms deteriorate as the year advances and by this arrangement the respective shares of buyer and seller are equitably distributed.
11. Lit., 'he takes one and leaves one'.
12. As regards its subjection to the laws of Levitical defilement (v. Lev. XI, 34). The quantities equal to the contents of one and a half and one egg are Prescribed as minimums for 'food' and 'drink' respectively to transfer Levitical impurity [v. Maim. *Yad. Tum'ath Oklin*, IV, 1-3].
13. I.e., whether the owner intended the honey to be used as food or has not thought about it at all, it is always regarded as 'food'.
14. V. *supra* n. 2.
15. The Baraitha.
16. Which are left in the beehive to nourish the bees during the winter. They therefore are not considered human 'food'.

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For we learnt: As to beehive, R. Eliezer said: It is regarded as landed property,¹ a *proszbul*² may be written on the basis of it,³ and it is not subject to the laws of Levitical defilement, while in situ,⁴ and he who takes [honey] out of it on the Sabbath is under the obligation of [bringing] a sin-offering. But the Sages say: A *Proszbul* may not be written on the basis of it, it is not regarded as landed property, it is subject to the laws of Levitical defilement in situ, and he who takes [honey] out of it on the Sabbath is absolved.⁵ R. Eleazar said: What

is the reason of R. Eliezer? For it is written: *And he dipped it in the honeycomb [Ya'rath];⁶* what is therein common between a forest and honey? But [the verse] tells you that, as [in the case of a] forest he who plucks from it on the Sabbath incurs the obligation of a sin-offering so, [in the case of] honey, he who takes some of it [from the beehive] on the Sabbath incurs the obligation of a sin offering.

An objection was raised:⁷ [It has been taught:] Honey that flows from one's beehive is [as regards Levitical defilement] neither food nor drink. This is quite correct according to Abaye;⁸ but according to Raba there is a difficulty!⁹ — R. Zebid replied: [The Baraitha may speak of a case such as] for instance, when the [honey] flowed into an objectionable vessel.¹⁰ R. Aha b. Jacob said: [It may deal with such a case] as when [the honey] flowed upon chips.¹¹

An objection was raised:¹² [It has been taught]: Honey in one's beehive is neither food nor drink.¹³ [If, however, the owner] intended [to use] it as food, it is subject to [the laws of the Levitical] defilement of food; [if] as drink, it is subject to [the laws of Levitical] defilement of drink. This is quite correct according to Abaye.¹⁴ but according to Raba there is a difficulty!¹⁵ — Raba can tell you: Explain thus: [If] he intended [to use it] as food it does not become subject to [the laws of Levitical] defilement of food [and if] as drink, it does not become subject to [the laws of Levitical] defilement of drink.¹⁶ The following Baraitha is in agreement with R. Kahana's opinion: Honey in a beehive is subject to [the laws of Levitical] defilement [even if] there was no intention [to use it for human consumption].¹⁷

[IF HE BUYS] OLIVE TREES FOR FELLING, HE MUST LEAVE TWO SHOOT. Our Rabbis have taught: He who buys a tree from his friend for felling, shall leave the height of a handbreadth from the ground,¹⁸ and cut it. [If] a virgin¹⁹ sycamore [the cut must be made at no less a height

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than] three handbreadths. If a sycamore trunk,²⁰ two handbreadths. In [the case of] reeds and vines, [the cut is to be made] from the knot and above it. In [the case of] palm trees and cedars he may dig and take them out with the roots, because their stumps do not grow afresh.²¹

Does a virgin sycamore require [as high a stump as] three handbreadths? What about the contradiction [from the following]: A virgin sycamore must not be cut in the Sabbatical year, because [cutting] is work.²² R. Judah says: [To cut] in the usual manner is prohibited, but one may [either] leave a height of ten handbreadths and cut²³ or raze [the tree] at ground level.²⁴ [From this it follows that] only at ground level is [the cut] injurious, but at any other [point]²⁵ it is beneficial!²⁶ — Abaye replied: [At a height of] three handbreadths [the cut] is beneficial; at ground level it is certainly injurious; at any other point²⁷ it is neither [definitely] injurious nor [definitely] beneficial. [Consequently] in the case of the Sabbatical year. [the cut made] must be one that is unquestionably injurious;²⁸ in the case of commercial transactions [the cut made] must be one that is unquestionably beneficial.²⁹ [It has been said that] 'in the case of] palm trees and cedars he may dig and take them out with the roots, because their stumps do not grow afresh again.' Does not the stump of a cedar grow afresh? Surely R. Hiyya b. Lulyani gave the following exposition: It is written: The righteous shall flourish like a palm-tree; he shall grow like a cedar in Lebanon;³⁰ if palm-tree has been mentioned, why mention [also] the cedar, and if cedar has been mentioned, why mention [also] palm-tree? If cedar [only], had been mentioned and not palm-tree, it might have been implied that as the cedar produces no [edible] fruit, so will the righteous produce no fruit, therefore palm-tree has been mentioned. And if palm-tree had been mentioned but not cedar, it would have been implied that as the stump of the palm-tree does not grow afresh³¹ so the shoot³² of the righteous will not grow,

therefore cedar is also mentioned!³³ — The fact is that other kinds of cedar trees are spoken of; in accordance with [a statement made by] Rabah son of R. Huna who reported³⁴ that at the college of Rab it had been stated [as follows]: There are ten kinds of cedar trees; for it is said: I will plant in the wilderness the cedar, the acacia tree and the myrtle. and the oil tree, I will set, etc.³⁵ Erez³⁶ means cedar, Shittah³⁶ means pine, Hadas³⁶ means myrtle, 'Ez Shemen³⁶ means balsam tree, Berosh³⁶ means cypress, Tidhar³⁶ means teak, Uthe' ashur³⁶ means shurbina.³⁷ Are not these [only] seven [kinds of cedar]? — When R. Dimi came³⁸ he said: The following were added to them: Alonim, Almonim, Almogim. Alonim are pistachio trees, Almonim are oaks, Almogim

1. Since beehives were attached to the ground, they were regarded as the ground itself and were subject to the same laws. Hence the honey, being part of the beehive, is treated as real estate and cannot, therefore, be designated 'food' or 'drink'.
2. *Proszbul*, [H] or [H] perhaps from [G] or [G] or an abbreviation of [G]. It is a form of declaration introduced by Hillel in connection with the Sabbatical year. A creditor making the declaration in writing before the judges in a court at the proper time and in the proper manner, becomes thereby exempt from the laws of release (cf. Deut. XV, 2) and retains his rights to the collection of his debts.
3. A *Proszbul* is granted by the court only when the borrower possesses some landed estate. Ownership of a beehive is regarded as ownership of landed, or immovable property.
4. In accordance with the principle that whatever is attached to the ground [H] (in opposition to [H] detached) is not susceptible to the laws of Levitical uncleanness.
5. V. *supra* 656.
6. I Sam. XIV, 27, [H] is midrashically compared to [H] 'forest'.
7. To R. Kahana's statement.
8. For the present Baraita may also be said to speak of the two combs left for the bees in the winter. Cf. p. 324, n. 5.
9. Even if honey *in* the beehive is, according to R. Eliezer, regarded as earth (neither food nor drink), honey that flowed out of the hive cannot surely be so regarded.
10. Since the honey, through its contact with the loathsome vessel, becomes unsuitable for human

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consumption, it cannot, according to R. Eliezer, be designated food or drink, even though it flowed out of the hive.

11. From which the honey cannot be easily gathered, and if gathered would not be suitable for human consumption. Cf. previous note.
12. Cf. *supra* n. 2.
13. Cf. p. 324. n. 2.
14. Cf. *supra* n. 2.
15. This Baraitha states that the owner's intention brings the honey into the category of food or drink; but according to R. Eliezer, how could the mere thought of the owner make food or drink 'attached' to the ground (cf. p. 295, n. 7) to be regarded as if it were 'detached'?
16. By this explanation, Raba does not alter the text of the Baraitha, but interprets it thus: Honey in a beehive is regarded neither as food nor as drink (with reference to the question whether) if intended to be used as food, it (should) be subject to the defilement of food (and whether), if intended for drink, it (should) be subject to the defilement of drink. (Cf. Tosaf. s.v. [H]).
17. Ta'an. 25b.
18. So that there remains a stump from which a new tree can grow.
19. I.e., uncut, untrimmed.
20. I.e., if the sycamore has been cut before and grew up again.
21. Bek. 7b.
22. The cutting causes new growth which is forbidden. (Cf. Lev. XXV, 4.)
23. Above a height of ten handbreadths the cut is injurious.
24. Sheb. IV, 5.
25. Between the ground and a height of three handbreadths from the ground.
26. Why, then, must the buyer of a tree leave a stump of three handbreadths?
27. Between the ground and a height of three handbreadths, and between the latter point and a height of ten handbreadths.
28. Since the prohibitions of the Sabbatical year are Pentateuchal, the strictest restrictions must be adopted, so as to avoid doing any work tending to benefit the tree.
29. The seller must have the benefit of the doubt so that the life of his tree may not in any way be endangered.
30. Ps. XCII, 13.
31. After the main portion of the tree had been cut.
32. I.e., his seed, or if he falls he will not rise again (Rashb.).
33. Does not this then prove that the stump of a cedar does grow afresh?
34. Ta'an. 25b.
35. Isa. XLI, 19.
36. The Hebrew words in Isa. are translated here by the Gemara.

37. Shurbina, one of the species of cedar.
38. I.e., from Palestine.

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are corals. Some say Aronim, 'Armonim, Almogim. 'Arinim are ore,¹ 'Armonim are plane trees, Almogim are corals.

MISHNAH. ONE WHO BUYS TWO TREES IN ANOTHER MAN'S FIELD DOES NOT ACQUIRE OWNERSHIP OF THE GROUND.² R. MEIR SAYS: HE DOES ACQUIRE OWNERSHIP OF THE GROUND. [IF THE TREES] GREW LARGE [THE LANDOWNER] MUST NOT CUT DOWN THEIR BRANCHES.³ WHATEVER GROWS FROM THE STEM IS HIS [THE BUYER'S],⁴ AND [WHATEVER GROWS] FROM THE ROOTS [BELONGS] TO THE LANDOWNER.⁵ IF [THE TREES] DIED [THE BUYER] HAS NO [CLAIM TO THE] GROUND.⁶ ONE WHO BOUGHT THREE [TREES] HAS [IMPLICITLY] ACQUIRED [OWNERSHIP OF THE] GROUND.⁷ [IF] THEY GREW LARGE,⁸ [THE LANDOWNER] MAY CUT DOWN THEIR BRANCHES.⁹ WHATEVER GROWS FROM THE STEM AND FROM THE ROOTS [BELONGS] TO HIM [THE BUYER]. IF [THE TREES] DIED [THE BUYER] HAS [A RIGHT TO THE] POSSESSION OF THE GROUND.

GEMARA. We learnt elsewhere: He who buys two trees in another man's [field], has to bring [the *bikkurim*]¹⁰ but is not to recite [the declaration].¹¹ R. Meir Says: He has to bring and recite.¹²

Rab Judah said in the name of Samuel: R. Meir subjects to the obligation¹³ even him who bought fruit in the market. Whence is this to be inferred? From [the fact that] a superfluous Mishnah¹⁴ has been introduced. For, it should be observed that, [R. Meir] has already taught¹⁵ that he [who bought two trees] has [also] acquired the ground. [Is it not, then,] obvious that he has to bring and to recite?¹⁶ Hence it may be inferred from this [superfluous Mishnah] that R. Meir subjects to the obligation even him who buys fruit in

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the market.¹⁷ But is it not written: *Which thou shalt bring in from thy land?*¹⁸ — This is to exclude [the fruit grown] in Foreign Territory.¹⁹ But is it not written: [*The choicest first fruit of] thy land [thou shalt bring]*?²⁰ — [This is] to exclude the land of a heathen.²¹ But is it not written: *The first fruits of [the land] which thou ... hast given me?* — [This means: The fruits] for which thou hast given me money with which to buy [them].

Raba raised an objection: [It has been taught]: He who buys a tree in another man's [field] brings [the first ripe fruit] but does not recite [the declaration], because he has not acquired ownership of the ground,²² [these are] the words of R. Meir.²³ — This is, indeed, a refutation.

R. Simeon b. Eliakim said to R. Eleazar:

1. A species of cedar. Others, 'laurel trees'.
2. Not even the ground under the trees. The purchase of a tree entitles the buyer only to its fruit, and to the tree itself for felling.
3. Though their shadow may be injurious to the other plants in his field.
4. Because they grow from his tree.
5. Because the branches grew from under the ground which is his property.
6. I.e., to plant another tree in place of the dead one.
7. The Gemara explains to how much ground the buyer is entitled, and what, in this case, must be the disposition of the trees.
8. And the branches protrude into the landowner's property.
9. Having sold him the ground under and between the trees, he does not sell him any rights in the surrounding field. He has a right, therefore, to cut down any branches which may injuriously affect any of his other plants.
10. V. Deut. XXVI, 2ff and [glos.](#)
11. Given in Deut. XXVI, 5-10. The declaration contains the expression, the land which thou, O Lord, hast given me. Only those, therefore, who own land may recite it.
12. Bik, I, 6; *supra* 27a; Git. 48a.
13. To bring and recite.
14. Of Bik. just quoted.
15. In our Mishnah.
16. For whosoever has land, can justly say in the declaration, the land which thou ... hast given me.

17. R. Meir thus said to the Rabbis: Even according to your opinion that the purchase of two trees does not give title to the ground, one must nevertheless bring and recite, for the possession of land is not indispensable for the *bikkurim* recital.
18. Deut. XXVI, 2. Accordingly, if he has no land of his own, he is not subject to the law of bringing and reciting; how then can A. Meir subject such a case to this law?
19. Heb. [H] lit., 'outside the land', viz., all countries outside Palestine.
20. Ex. XXIII, 19; XXXIV, 26.
21. I.e., land in Palestine belonging to a non Jew farmed out to a Jew.
22. V. p. 238, n. 10.
23. This statement of R. Meir is in direct contradiction to that made in his name by Samuel as reported by Rab Judah.

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What reason is there for R. Meir's opinion in [the case of] one tree, and for that of the Rabbis in [the case of] two trees?¹ He replied: Do you interrogate me in the house of study on a matter about which the ancients gave no reason, in order to shame me? Rabbah said: What is the difficulty? It is possible that R. Meir was doubtful² about one tree, and the Rabbis about two trees!³ But was [R. Meir] in doubt? Surely it is stated [distinctly]: 'Because he has not acquired ownership of the ground. [these are] the words of R. Meir! — This should read: 'Perhaps he has not acquired ownership of the ground!' But ought we not to apprehend lest these are not *bikkurim*⁴ and [consequently] one would bring into the Temple court unconsecrated [fruit]?⁵ — He consecrates them.⁶ But must not [the priest] eat them [the *bikkurim*]?² — He redeems them.⁸ But perhaps they are not *bikkurim* and he thus excludes them from the heave-offering and tithe?⁹ — He does separate [the heave-offering and the tithes from] them. [In the case of] the *terumah gedolah*¹⁰ this is correct, [for] he gives it to the priest. The second tithe,¹¹ also, he gives to a priest.¹² The poor man's tithe,¹³ also, he gives to a poor priest,¹⁴ but to whom does he give the first tithe which belongs to the Levite? — He gives it to a priest in accordance with [the

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decision of] R. Eleazar b. Azariah. For it has been taught: *terumah gedolah*¹⁵ [belongs] to the priest; the first tithe [belongs] to the Levite; these are the words of R. Akiba. R. Eleazar b. Azariah says: The first tithe also [belongs] to the priest.¹⁶ But perhaps they are *bikkurim* and [consequently] require recital [of the declaration]?¹⁷ The recital is not indispensable. [Is it] not [indispensable]? Surely R. Zera said:¹⁸ Wherever [proper] mingling¹⁹ is possible the mingling is not indispensable;²⁰ but where [proper] mingling is not possible²¹ the mingling is indispensable!²² — He acts on the lines of [the teaching of] R. Jose b. Hanina who said:²³ He who cut [the first ripe fruit] and sent them [to Jerusalem] with a messenger; or [if the messenger] [cut them] and died on the way-[the owner] brings [the fruit] and does not recite [the declaration], for it is written: And thou shalt take²⁴ ... 'and thou shalt bring',²⁵

1. If on account of the Biblical expression, *which thou shalt bring in from thy land*, a person possessing no land cannot make the declaration, he should also be exempt from bringing at all.
2. Whether the ground also is acquired in the case of the purchase of one tree (A. Meir) or two trees (the Rabbis).
3. Hence, in the case of a sale, the seller, who is the legal possessor of the land, is given the benefit of the doubt, while in the case of the first fruit, the buyer of the tree must give the benefit of the doubt to the Temple, though he cannot recite.
4. [H] 'first ripe fruits', which are subject to the precept of bringing them to the Temple. If the ground is not acquired by the purchase of a tree or two trees, according to R. Meir and the Rabbis respectively, this fruit cannot be regarded as *bikkurim* in the ritual sense.
5. Unconsecrated fruit must not be offered in the Temple court. (v. Kid. 57b.) How then can it be suggested that the bringing of the first-fruits is to give the Temple the benefit of the doubt?
6. I.e., he stipulates that if they are not already *bikkurim* they shall be consecrated for the purpose of purchasing with their proceeds Temple sacrifices.
7. *Bikkurim* must be eaten by the Priest, but consecrated objects, which are usually devoted to Temple repair, must not be eaten!
8. After redemption anyone may eat them, the sanctity having passed from the fruit to the purchase money.

9. *Bikkurim* are exempt from heave-offerings of produce. the *Terumah* given to the priest, and tithes, but other land and garden produce is subject to them.
10. [H] lit., 'big or high heave offering'; the priestly portion of the produce.
11. Given in the first, second, fourth, and fifth year of the septennial cycle.
12. The owner must not eat the fruit lest they are *bikkurim*.
13. Poor man's tithe is given in place of the second tithe (v. *supra* n. 8.) in the third, and sixth year of the septennial period.
14. No other poor may eat them lest they are *bikkurim*. (Cf. *supra* n. 9).
15. V. *supra* n. 7,
16. Yeb. 86a; Keth. 26a; Hul. 131b.
17. How then may anyone eat these fruit without such recital?
18. Hul. 83b, Kid. 25a, Yeb. 104b, Nid. 66b. Men. 18b, Mak. 18b, Ned. 73a.
19. I.e., of the flour with the oil of a meal-offering. One *log* of oil for sixty '*esronim*' ('issaron = tenth) is considered sufficient for proper mingling.
20. And the offering is acceptable even before the mingling of the flour with oil.
21. If, e.g., the vessel for the meal offering contains more than sixty '*esronim*' for the *log* of oil.
22. And the offering is, therefore, not acceptable. Now, in the case of *bikkurim* also, on this analogy, since the doubt as to whether they are *bikkurim* makes the declaration impossible, the recital should be indispensable.
23. Git. 47b.
24. Deut. XXVI, 2.
25. This is implied in the text, *which thou shalt bring* (Ibid.). Cf. Ibid. v. 10.

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the taking and the bringing must be performed by the same man; and in the present case, this has not been done. R. Aha son of Awia said to R. Ashi: Behold, are not these really scriptural verses?¹ Let him recite them!² He replied unto him: [One must not recite the verses] because it would appear [as telling] a lie. R. Mesharsheya the son of R. Hiyya said: [Because the fruit] might [mistakenly] be excluded from the heave-offering and from the tithe.³

[IF THE TREES] GREW LARGE [THE LANDOWNER] MUST NOT CUT DOWN THEIR BRANCHES, etc. What is considered

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[to be] from the stem and what is considered [to be] from the roots? — R. Johanan said: Whatever is exposed⁴ to the sun is of the stem, and whatever is not exposed⁵ to the sun is of the roots. [How can it be said that all that grows from the stem belongs to the buyer?] Is there not cause to apprehend that the ground might produce alluvium [covering up the knots of the lowest shoots] and that [the buyer] would say [to the landowner]: 'You have sold me three [trees] and I have, [therefore, a share of the] ground'?⁶ — But R. Nahman replied: [The buyer] must cut [them] off.⁷ R. Johanan also said: He must cut [them] off.

R. Nahman said: We have it by tradition [that] a palm-tree has no stem.⁸ R. Zebid was of the opinion that this means [that] the owner of the palm-tree has no [rights to that which grows from the] stem, because since [the tree] is destined [when it dries up] to be dug and taken out with the roots,⁹ [the buyer] discards [the shoots] from his mind.¹⁰ R. Papa, [however], raised [the following] difficulty: Surely, [the case of him who] BUYS TWO TREES [includes also such trees] as are destined to be dug up and taken out with the roots¹¹ and [yet] the [Mishnah] teaches that [THE BUYER] HAS [A TITLE TO] THE STEM!¹² — But, said R. Papa, [the reason why] the owner of the palm-tree has no [title to the] stem [is]¹³ because the stem does not [usually] produce [any shoots].¹⁴

According to R. Zebid,¹⁵ however, [there remains] the difficulty of our Mishnah!¹⁶ — [Our Mishnah deals with the case] where [the trees] were sold for five years.¹⁷

ONE WHO BOUGHT THREE [TREES] HAS [IMPLICITLY] ACQUIRED [OWNERSHIP OF THE] GROUND. And how much [ground]? — R. Hiyya b. Abba said in the name of R. Johanan: He has acquired [the ownership of the ground] beneath [the trees] and between them, and round about¹⁸ them

1. The bikkurim declaration consists of vv 5-10 of Deut. XXVI (Cf. p. 328, n. 10).
2. One may at any time read Scriptural verses. Why then should one be restricted to R. Jose's decision of bringing the fruit without reciting the declaration?
3. Seeing that the declaration had been recited over the fruit, it would be assumed that they are genuine bikkurim which are exempt from the priestly and Levitical gifts.
4. I.e., all that part of the tree which is above the ground.
5. I.e., the part covered by the soil.
6. The shoots, having been covered by the alluvium at their knots, would appear as separated trees, growing from the ground independently; and the possession of three trees entitles one to a share of the field.
7. Our Mishnah gives the buyer the right over the shoots for the purpose of cutting them off. They must not, however, remain attached to the tree.
8. This is explained in the Gemara.
9. Unlike other trees, which can be made to grow afresh when their branches and upper sections dry up, by cutting them down to their stems, the palm tree, like the cedar (*supra* 80b), cannot be made to grow afresh out of its cut stems. They are, therefore, ultimately useful as wood only.
10. He does not expect to have any benefit from the shoots that may never grow from the tree, which is likely, at any moment, to dry up beyond all possibility of growing afresh.
11. Since no special trees are specified, all kinds of trees are obviously included.
12. How, then, could R. Zebid assume that the buyer of a palm-tree has no title to the stem?
13. Not that given by P. Zebid, but 'because, etc.'
14. And if, sometimes, it happens that shoots do grow, they must be regarded as the property of the owner of the land. Our Mishnah, which gives the buyer title to the stem, speaks of trees the stems of which do usually produce shoots.
15. Who stated that stems of palm trees produce shoots.
16. Which speaks of all kinds of trees, the stems of which produce shoots, and gives the buyer title to the shoots of the stems.
17. In the case of a sale for a specified number of years, during which a dried up tree is to be replaced by a sound one, the buyer does expect the benefit from any shoots that may grow out of the stem. Where, however, the sale is for no definite period, the buyer is aware that the tree will not be replaced though at any moment it might dry up beyond hope of recovery. He does not, therefore, expect to benefit from any shoots that may possibly grow before the tree terminated its growing existence.
18. Lit., 'outside'.

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Baba Bathra 82b

as much as is required for a gatherer and his basket.

R. Eleazar raised a difficulty: Since he has no [right of] passage,¹ would he have [a right to the ground required by a] gatherer and his basket? [If] he has no [right of] passage because [the trees grow in] another field,² should he, then, have [a right to the ground required for a] gatherer and his basket?³

R. Zera said: From the words of our Master⁴ we may infer that only [when the buyer has purchased] three [trees] does he have no [right of] passage,⁵ but [if he has purchased] two [trees] he does have [the right of passage]; for he can say [to the landowner]: They stand in your [own] field, [and since you have sold me trees therein, you must also allow me access to them]. R. Nahman b. Isaac said to Raba: Does this imply that R. Eleazar⁶ is in disagreement with Samuel his master? For Samuel said:⁷ The law is in accordance with R. Akiba's opinion⁸ that he who sells does so with a kindly feeling² [and one selling with a kindly feeling would surely include in the sale a right of passage]! He replied to him: [R. Eleazar may agree with Samuel,¹⁰ but] our Mishnah cannot be attributed to R. Akiba.¹¹ How is this proved? — Because it states: IF THEY GREW LARGE, [THE LANDOWNER] MAY CUT DOWN THEIR BRANCHES: Now, were you minded [to attribute the Mishnah to] R. Akiba, why may [the landowner] cut down their branches? Surely [R. Akiba] said that he who sells does so with kindly feelings! — He said unto him: It is possible that R. Akiba said [so] in the case [only] of a cistern and a cellar¹² because these do not cause deterioration of the ground, [but] did you hear him [say the same thing] in the case of a tree [which does cause deterioration to the field]?¹³ Does not R. Akiba [in fact] agree that in [the case of] a tree [whose boughs] hang over the field of one's neighbor, [the latter] may cut off [the overhanging branches to such a height as will

allow the] full [passage of the] handle that protrudes over the plow!¹⁴

It has been taught in agreement with R. Hiyya b. Abba: He [the buyer of three trees] has acquired ownership [of the ground] beneath them, and between them and round about¹⁵ them as much as is required for a gatherer and his basket.

Abaye said to R. Joseph: Who sows on that [land reserved for] the gatherer and his basket?¹⁶ He replied: You have learned it:¹⁷ The external [field owner¹⁸] sows the pathway.¹⁹ He said unto him: Are these two cases alike? There,²⁰ the buyer is not involved in any loss; but here,²¹ the owner of the tree²² is involved in a loss; for he can point out [to the seller] that the fruit [that would drop on the scattered seed] would be soiled. This case¹⁸ rather resembles the final clause [of the Mishnah,²³ in accordance with which] neither the one nor the other may sow [on the allotted space].

It has been taught in agreement with the opinion of Abaye: He has acquired [the ground] beneath them, and between them, and round about²⁴ them as much as is required for the gatherer and his basket, and neither of them is allowed to sow it.

[If the buyer of three trees is to acquire possession of the ground]. how much [space] must there be between [the trees]?²⁵ — R. Joseph said in the name of Rab Judah in the name of Samuel: [A distance] of four to eight cubits [between any two trees]. Raba said in the name of R. Nahman in the name of Samuel: From eight to sixteen [cubits]. Abaye said to R. Joseph: Do not dispute with R. Nahman, for we learnt a Mishnah that is in agreement with him. For we learnt:²⁶ He who plants his vineyard [and leaves distances of] sixteen cubits [between the rows] may insert seed there.²⁷ R. Judah said: It occurred in Zalmon²⁸ that one planted his vineyard, [leaving distances of] sixteen cubits [between the rows], and turned the branches of [every] two [adjacent] rows towards one side,²⁹ and

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sowed the clearing. In the following year he turned the branches towards the spot sown [in the previous year], and sowed the uncultivated [spaces].³⁰ When the matter was reported to the Sages they allowed it.³¹ He [R. Joseph] said unto him: I am not aware [of this]: but there was a case

1. Through the seller's field; unless he has made with him specific arrangements for the purpose, v. *supra* 64a.
2. The three trees, through which the buyer has acquired a share in the field, are regarded as growing in a field of their own, independent of the rest of the field which belongs to the landowner.
3. A pathway is more necessary than a space for the gatherer and his basket. If he has no title to the former, how much less to the latter!
4. R. Eleazar; who gave his reason because the trees are in 'another field'.
5. Because three trees are sold together with a certain portion of the ground (cf. *supra*), and this portion is regarded as a small field by itself, distinct from the larger field of which it forms a part.
6. Who denies right of passage to one who has bought three trees.
7. *Supra* 65a.
8. *Supra* 37a.
9. Lit., 'beautiful eye'.
10. That right of passage is included in the sale of the trees.
11. But to the Rabbis, who exclude right of passage from the sale of trees. R. Eleazar's objection, *supra*, will accordingly not be based on the opinion he himself holds, but on that of the Rabbis, and follow their line of reasoning.
12. *Supra* 71a.
13. As in the case of our Mishnah, v. *supra* p. 282.
14. *Ibid.* 27b.
15. V. p. 333, n. 4.
16. The landowner or the buyer of the trees?
17. Cf. *infra* 99b.
18. Who sold an interior field, and retained for himself the exterior one.
19. *Infra* 99b. Here, too, the landowner sows the space allotted to the gatherer and his basket.
20. In the case of the sowing of the pathway.
21. In the case of sowing on the space allotted to the gatherer and his basket.
22. Cf. BaH, a.l.
23. Mishnah, *infra* 99b, dealing with a pathway allowed by the court, to the owner of the inner field, with the consent of the two partners.
24. V. p. 333, n. 4.
25. If they are too close to each other they would be regarded as a forest whose trees are for uprooting; if too scattered, they could not be regarded as a combination of trees.
26. Kil. IV, 9.
27. Between the rows. Because the wide spaces between the rows are not regarded as part of the vineyard where, in accordance with Deut. XXII, 9, seed must not be sown.
28. A locality near Shechem.
29. Away from the space between them; thus leaving, between every alternate pair of rows, a clearing of sixteen cubits in width.
30. Which in the previous year could not be sown on account of the branches which were encroaching on the required space of sixteen cubits.
31. Because the branches were turned away from the sown spaces which were sixteen cubits in extent. A space of less than sixteen cubits would have been regarded as part of the vineyard. This proves the correctness of R. Nahman's report that a space of sixteen cubits is required for a piece of ground to be regarded as a separate unit.

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in Dura di-ra'awatha¹ [where three trees, planted at distances of less than eight cubits between them, were sold], and, when [the disputants] came before Rab Judah, he said unto [the buyer]: Go [and] give him [his share in the ground, even though the spaces between the trees are just] enough for a pair of oxen and their [plowing] outfit. I did not know [at the time] how large was the 'space of a pair of oxen and their outfit'. When, however, I heard the following [Mishnah in] which we learnt: A man must not plant a tree near his neighbor's field² unless he has kept at a distance of four cubits:³ and in connection with this it has been taught: 'The four cubits mentioned are the dimensions of the space required for attending to the vineyard': I concluded that the 'space of a pair of oxen and their outfit' is four cubits. But is there not also a Mishnah which agrees with [the report of] R. Joseph? Surely⁴ we learnt:⁵ R. Meir and R. Simeon say: He who plants his vineyard [leaving distances of] eight cubits [between the rows] may insert seed there!⁶ — A practical decision⁷ is, nevertheless, preferable.⁸

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[The statement] of R. Joseph who follows R. Simeon may be regarded as satisfactory. [since] we have heard [a definition of] scattered [trees] and we have [also] heard [a definition of] closely [planted trees]. [With regard to trees] scattered, [we have the Mishnah] just mentioned.⁹ [As regards trees planted] closely, it has been taught:¹⁰ A vineyard planted on [an area of] less than four cubits is not [regarded as] a vineyard — these are the words of R. Simeon. And the sages say: [It is regarded as a] vineyard, the intervening vines being treated as if they were not [in existence].¹¹ [The statement], however, of R. Nahman who follows the Rabbis [cannot very well be considered satisfactory; for] we have heard [a definition of] scattered [trees, but] have we heard [a definition of] closely [planted trees]? — This [latter definition is arrived at] logically: Since according to R. Simeon [the distances between closely planted trees are] half [of those of scattered trees], according to the Rabbis also, [the proportion of the distances is a] half.

Raba said: The law is [that a buyer of three trees acquires implicitly the ground also when the distances between the respective trees are] from four¹² to sixteen cubits.¹³ In agreement with Raba's opinion it has been taught: How near [to each other] may [the trees] be? — [No nearer than] four cubits. And how far removed may they be? — [No more than]¹⁴ sixteen cubits. [He who buys three trees of these] has [implicitly] acquired the [necessary] ground and the intervening [young] trees. Consequently, [if] a tree dries up or is cut down [the buyer of the trees] retains [his rights in] the ground. [If the distances between the trees are] less, or more than [the figures] given, or if [the trees] were purchased one after the other, [the buyer] does not acquire either the ground or the intervening [young] trees. Consequently, [if] a tree dries up or is cut down, [the buyer] retains no [title to the] ground.¹⁵

R. Jeremiah inquired: Does one measure [the required distances between the trees] from

the thin¹⁶ or thick¹⁷ parts [of the trees]? — R. Gebiha of Be-Kathil said to R. Ashi: Come and hear! We learnt:¹⁸ [In the case of] a layer¹⁹ of the vine, one is to measure from the second root,²⁰ only.

R. Jeremiah inquired: What is the law when one sold three branches of [one] tree, [four cubits distant from one another, and covered with alluvium at their knots so that they appear as three separate trees]?²¹ — R. Gebiha of Be-Kathil said to R. Ashi: Come and hear! We learnt:²² Where one bends three vines [covering the middle parts with earth so that the layers,²³ when detached from the original vines, may each form two vines] and their [new] roots are seen,²⁴ if there is a distance between them of four to eight cubits they combine, said R. Eleazar b. Zadok, to form a vineyard,²⁵ and if not, they do not combine.²⁶

R. Papa inquired: What is the law when he sold two [trees] in his field and one on [its] border, [do they combine²⁷ or not]? [If it is replied that in this case they combine], what is the law [when he sold] two [trees] in his [own field] and one [tree which he owned together with its ground] in [the field] of his neighbor? — The matter stands undecided.²⁸

1. V. p. 222, n. 8
2. In order that, when plowing round the tree, he should not have to draw the plow through his neighbor's field.
3. *Supra* 18a; 26a.
4. For this reading, cf. BaH, a.l.
5. Kil. IV, 9.
6. Between the rows, though the intervening spaces are only eight cubits in width. Why, then, did Abaye tell R. Joseph that he must not dispute the report of R. Nahman?
7. Cf. Shab. 21a, and further references there.
8. The Mishnah describing the occurrence in Zalmon, where the action of the planter received the definite approval of the Sages, is more to be relied upon than the other part of that Mishnah, which is a record of theoretical opinion only.
9. *Supra*, quoted from Kil. IV, 9. This Mishnah defines 'scattered trees' as those planted at distances of no less than eight cubits from each other.
10. Kil. V, 2; *supra* 37b; *infra* 102b.

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11. The Rabbis' opinion is based on the assumption that the intervening vines are not to remain in the vineyard, but to be transplanted. Trees that are destined to be removed are regarded as already removed.
12. In accordance with Rab Judah's decision (which has not been disputed by the Rabbis) in the case of the shepherds' settlement.
13. As the Sages ruled in the case of the Zalmon vineyard.
14. Cf. Tosaf. s.v. [H]. According to Rashi. s.v. [H] 'just under sixteen cubits'.
15. Is not entitled to replace the dead, or felled tree by another.
16. I.e., the stem.
17. I.e., near the roots.
18. Kil. VII. 1.
19. [H], an undetached shoot of the vine laid in the ground for propagation.
20. Which proves that the measurement is made from the thick part of the tree (Tosaf. s.v. [H] a.l.). Rashb. (s.v. [H] a.l.), giving [H] the interpretation of 'grafting'. concludes that the measurement is to be neither from the thick (first knot) nor from the thin (third knot) of the vine (or any other tree). R. Gersh. (a.l.) regards the second root as the thin part of the vine.
21. Are they regarded as three separate trees, the buyer consequently acquiring possession of the necessary ground, or as one tree, since they grow from the same stem?
22. Kil. VII, 2.
23. Cf. n. 5.
24. The layers have generated their own roots.
25. A vineyard consists of no less than five vines. Since each of the three layers. now that their roots are generated. form two vines, the original three vines have become six.
26. This Mishnah clearly proves that the junction of two vines at the same root does not prevent them from being regarded as separate vines. Likewise in the case of the purchase of three branches of one tree, so long as they are separated by the proper distances, they are regarded as three separate trees.
27. To entitle the buyer to acquire ownership of the necessary ground.
28. [H] = [H] 'let it stand'. An expression used when no definite answer could be given to any question or inquiry. Others regard [H] as formed from the initials of [H] (Elijah the Tishbite will solve all difficulties and enquiries).

Baba Bathra 83b

R. Ashi inquired: [In the case of the sale of three trees] does a [water] cistern [situated

between them] form a division?¹ [If not],² does a water canal³ form a division? [If this also is not regarded a division], what [is the law if] a *reshuth harabbim*⁴ [intercepts] or a nursery of young inoculated palm-trees? — The matter stands undecided.

Hillel inquired from Rabbi: What if a cedar sprang up between them?⁵ [Is it regarded as a division between the trees]?⁶ — [What a question! If it] sprang up [after the sale], it [obviously] grew in [the buyer's] own territory! But [no; this is the question: What if] there was a cedar between them [at the time of the sale]? — He replied unto him: He has certainly acquired⁷ [its ownership].

What must be the disposition [of the three trees]?⁸ — Rab said: As a straight line; and Samuel said: Like a tripod.⁹ He who said, 'as a straight line' [agrees]¹⁰ so much the more [in the case when they are arranged] as a tripod.¹¹ But he who said, 'like a tripod' [holds the opinion that if the trees are arranged] as [in] a straight line [the ground is] not acquired, because one can sow between them.¹² R. Hamnuna raised a difficulty: Is not the reason given by him, who insists on a triangular disposition. that one cannot sow between them? If so, let the ground be acquired also by him to whom three Roman thorns¹³ have been sold, since one cannot sow between them! — He replied to him: Those [thorns] are of no importance, [but] these [trees] are important.¹⁴

MISHNAH. HE WHO SELLS THE HEAD OF LARGE CATTLE HAS NOT SOLD THE FEET; HE WHO SOLD THE FEET HAS NOT SOLD THE HEAD. [IF] HE HAS SOLD THE LUNGS¹⁵ HE HAS NOT SOLD THE LIVER, [IF] HE HAS SOLD THE LIVER HE HAS NOT SOLD THE LUNGS. BUT, IN [THE CASE OF] SMALL CATTLE, [IF] HE HAS SOLD THE HEAD HE HAS SOLD THE FEET, [IF] HE HAS SOLD THE FEET HE HAS NOT SOLD THE HEAD. [IF] HE HAS SOLD THE LUNGS HE HAS SOLD THE LIVER, [IF] HE HAS SOLD THE LIVER HE HAS NOT SOLD THE LUNGS.

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FOUR¹⁶ [DIFFERENT] LAWS [ARE APPLICABLE] TO SALES.¹⁷ [IF] ONE HAS SOLD WHEAT AS GOOD, AND IT TURNS OUT TO BE BAD, THE BUYER MAY WITHDRAW [FROM THE SALE]. [IF SOLD AS] BAD, AND IT TURNS OUT TO BE GOOD, THE SELLER MAY WITHDRAW. [IF AS] BAD, AND IT WAS FOUND TO BE BAD; [OR AS] GOOD, AND IT WAS FOUND TO BE GOOD, NEITHER MAY WITHDRAW. [IF ONE HAS SOLD WHEAT AS] DARK¹⁸ — COLOURED, AND IT TURNS OUT TO BE WHITE, [OR AS] WHITE, AND IT TURNS OUT TO BE DARK;¹⁸ [OR IF ONE HAS SOLD] WOOD [AS] OLIVE, AND IT TURNS OUT TO BE SYCAMORE, [OR AS] SYCAMORE, AND IT TURNS OUT TO BE OLIVE; [OR IF A LIQUID HAS BEEN SOLD AS] WINE, AND IT TURNS OUT TO BE VINEGAR, [OR AS] VINEGAR, AND IT TURNS OUT TO BE WINE, BOTH MAY WITHDRAW.

GEMARA. R. Hisda said: If one has sold to another what was worth five for six¹⁹ and [subsequently]²⁰ the price has risen to eight,²¹ since the buyer has been imposed upon he may withdraw, but not so the seller,²² because

1. To deprive the buyer from any title to the ground.
2. Because the water is not exposed.
3. Where the water is exposed.
4. *Reshuth harabbim* (v. p. 307, n. 8), its normal width is sixteen cubits. Here, of course, (cf. Raba's statement, inter alia, *supra* 83a), it is assumed to be between four, and just under sixteen cubits in width.
5. Between the three trees sold.
6. V. n. 5.
7. Lit. 'he acquired and acquired'.
8. About which it has been taught that, if the distances between them are from four to sixteen cubits, the necessary ground also is acquired.
9. Planted in triangular shape.
10. That the ground also is acquired.
11. When the trees are arranged triangularly it is more difficult to plow the intervening ground. and the seller is, therefore, less likely to retain it for himself.
12. The plow can easily pass between the trees.
13. Prob. eryngo.
14. Two conditions are required: 1. Importance of the trees, and 2. Inability to draw the plow, i.e., to sow between them.
15. Lit., 'windpipe'.

16. 1. the buyer, 2. the seller, 3. neither, and 4. both may withdraw.
17. Lit., 'sellers'.
18. Dark red.
19. Thus overcharging the buyer a sixth of the selling price (fifth of the value of the object).
20. After the sale, and before the period allowed to the buyer to consult a dealer or a friend, has elapsed; v. B.M. 49b.
21. So that now the seller is losing much more than a sixth, and wishes, therefore, to withdraw.
22. Although the period allowed for consulting a dealer or friend has not elapsed, and though, consequently, the buyer may still withdraw.

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he [the buyer] can say unto him: If you had not imposed upon me, you would have had no right to withdraw; can you have the right to withdraw now that you have imposed upon me? And the Tanna [of our Mishnah, who taught that 'if wheat was sold as] GOOD AND IT TURNED OUT TO BE BAD, THE BUYER MAY WITHDRAW,' but not [inferentially] the seller,¹ confirms [what has just been said].

R. Hisda further stated: [If] one has sold to another what was worth six for five and the price fell² to three, the seller, since he has been imposed upon, may withdraw, but not [so] the buyer; because [the seller] can say unto him: If you had not imposed upon me you would have had no right to withdraw; can you have the right to withdraw now? And the Tanna [of our Mishnah, who taught that 'if wheat was sold as] BAD AND IT TURNED OUT TO BE GOOD, THE SELLER MAY WITHDRAW,' but not [inferentially] the buyer,³ confirms [this statement].

What does he⁴ come to teach us? [Surely] this [statement of his may be inferred from] our Mishnah! — If⁵ [it had to be inferred] from our Mishnah, it could have been said that [in the cases dealt with in the statement] of R. Hisda, both⁶ may perhaps withdraw; and [that the first clause of] our Mishnah comes to teach us that⁷ the buyer may withdraw;⁸ for [without this Mishnah] it might have been

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said that [he cannot], because it is written: '*It is bad, it is bad*', saith the buyer.⁹

[IF ONE HAS SOLD WHEAT AS] DARK-COLOURED AND IT TURNED OUT TO BE WHITE, etc. R. Papa said: Since white is given [as the contrast of the other color]¹⁰ it may be inferred that the sun is dark-red.¹¹ This can be proved [from the fact] that the sun is red at sunrise and at sunset. The reason why we do not see it [red] all day, is [because] our eyesight is not strong [enough].¹² An objection was raised: *And the appearance thereof be deeper than the skin*,¹³ [that means], like the appearance of sunlight [which is] deeper than the shadow.¹⁴ Surely there¹⁵ [the appearance] was white,¹⁶ [how, then, could the sun be said to be red]?¹⁷ — Like the appearance of the sun [in one respect], and not like the appearance of the sun [in another respect]. Like the appearance of the sun, [in] that it is deeper than the shadow; and not like the appearance of the sun [in another respect], for there,¹⁸ it is white and here¹⁹ it is red. But according to our previous assumption,²⁰ is not the sun red at sunrise and at sunset?²¹ — [It is red] at sunrise, because it passes by the roses of the Garden of Eden;²² at sunset, because it passes the gate of Gehenna.²³ Others reverse [the answer].²⁴

[IF LIQUID HAS BEEN SOLD AS] WINE, AND IT TURNED OUT TO BE VINEGAR ... BOTH MAY WITHDRAW. Must it be said that our Mishnah is [in agreement with] Rabbi and not [with] the Rabbis?²⁵ For it has been taught:

1. Though the price may have risen.
2. A long time after the sale; cf. B.M. 51a.
3. Though the price has fallen.
4. R. Hisda.
5. The following three lines in the original are rather difficult, and different, hardly satisfactory, interpretations have been offered. Cf. Rashb., Tosaf., and R. Gersh., a.l.
6. The buyer and the seller; since there was overreaching of one party at the time of the sale, and, subsequently, of the other, when the prices respectively rose or fell.
7. When there is no overreaching, but a sale at the proper price.

8. Because he can say that he bargained for good, not bad wheat.
9. Prov. XX, 14. Since the buyer always cries 'bad, bad', he should not be entitled to withdraw even when wheat sold as good be found to be bad. Hence the necessity for the first clause of the Mishnah. Similarly, the second clause is required for the case where the seller is entitled to withdraw though, on the analogy of the seller, he always cries 'good, good'.
10. Wheat has only one of two colors, white or dark-red (cf. note on Mishnah).
11. Its Heb. equivalent [H] is assumed to be derived from the same root as [H] 'sun', hence sun-color. Since [H] means 'white', and dark-red is the only other possible color of the wheat, [H] must signify 'dark-red'. V. previous note.
12. The powerful light of the sun dims our eyes during the day. At sunrise and at sunset, when the light of the sun diminishes, its redness becomes visible.
13. Lev. XIII, 25, 30.
14. Sheb. 6b; Bek. 41a; Hul. 63a.
15. In the verse quoted.
16. The verse speaks of a 'white spot'.
17. Since the appearance of the spot which is white is compared to the sun, the sun also must be white.
18. The white spot spoken of in the Biblical verse.
19. I.e., the sun.
20. Assumed (by the objection to R. Papa's statement), that the sun was white.
21. How, then, can it be assumed to be white?
22. Eden is in the East (cf. Gen. II, 8), where the sun is seen in the morning.
23. *Gehenna* is, opposite Eden, in the West.
24. At sunrise, when the sun is in the East, it is red because of the *reflection* of the fire of *Gehenna* on the opposite side (West). At sunset, when the sun is in the West, the redness is the result of the reflection of the roses of the Garden of Eden thrown from the East.
25. The representatives of the anonymous opinion in the Baraitha that follows.

Baba Bathra 84b

Wine and vinegar are the same¹ in kind. Rabbi says: [They are regarded as] two [different] kinds.² — It may be said [to be in agreement] even [with] the Rabbis. They dispute with Rabbi only in the case of tithes and heave-offering [for they are of the same opinion as] R. Elai. For R. Elai said: Whence [is it inferred] that, if one separates a heave-offering from an inferior quality for the

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[redemption of] a superior quality, his offering is valid, for it is said: And ye shall bear no sin by reason of it, seeing that ye have set apart from it the best thereof,³ [but, it is to be inferred, if you do not set apart from the best, but of the worst, you shall bear sin]; if, [however, the inferior quality] does not become consecrated, why [should there be any] bearing of sin?⁴ Hence [it may be inferred] that if one separates a heave-offering from an inferior quality for [the redemption of] a superior quality, his offering is valid.⁵ As regards commercial transactions, however, all [are of the opinion that wine and vinegar are not of the same kind] because some one may like wine and not vinegar while another may like vinegar and not wine.⁶

MISHNAH. IF ONE HAS SOLD FRUIT TO ANOTHER⁷ [AND THE BUYER] HAS PULLED⁸ [THEM]. THOUGH THEY HAVE NOT [YET] BEEN MEASURED,⁹ OWNERSHIP IS ACQUIRED. [IF HOWEVER] THEY HAVE BEEN MEASURED¹⁰ BUT [THE BUYER] HAS NOT PULLED [THEM], OWNERSHIP IS NOT ACQUIRED. IF [THE BUYER] IS PRUDENT, HE HIRES THE PLACE WHERE THEY ARE KEPT.¹¹ IF ONE BUYS FLAX FROM ANOTHER, HE DOES NOT ACQUIRE OWNERSHIP UNTIL HE MOVES IT FROM PLACE TO PLACE. AND IF IT WAS ATTACHED TO THE GROUND AND HE PLUCKED [OF IT] ANY QUANTITY, HE ACQUIRES OWNERSHIP.

GEMARA. R. Assi said in the name of R. Johanan: [If the buyer] has measured [with the seller's instruments] and has put [them] in an alley, he acquires possession.¹² R. Zera said to R. Assi: Is it not possible that my master¹³ has heard [this statement]¹⁴ only in [the case where the buyer] has measured into his [own] basket?¹⁵ He replied unto him: This young Rabbi seems to think that people do not correctly memorize what they hear. [If the buyer had] measured it into his [own] basket, would there have been any need to tell [that ownership is acquired]?¹⁶ Did he¹⁷ accept it from him¹⁸ or not? — Come and

hear what R. Jannai said in the name of Rabbi: [In the case of] a courtyard in partnership, [the partners] may acquire possession [of objects they buy] from one another. Does not this [refer to the case where the objects bought lie] on the [bare] ground?¹⁹ — No; [this refers to the case when they were put] into his basket. This can also be supported by argument. For R. Jacob said in the name of R. Johanan: [If the buyer] measures and puts [them] in an alley. he does not acquire possession. Are not these²⁰ contradictory? But surely it must be concluded [that] one²¹ [case refers to one] who measures into his basket, the other²² [case, to one] who measures upon the [bare] ground. This is conclusive.²³

Come and hear: [IF HOWEVER] THEY HAVE BEEN MEASURED BUT [THE BUYER] HAS NOT PULLED [THEM]. OWNERSHIP IS NOT ACQUIRED. Does not this refer to an alley!²⁴ — No; [this refers] to reshuth harabbim.²⁵ If so, explain the first clause, [IF HE] HAS PULLED [THEM] THOUGH THEY HAVE NOT [YET] BEEN MEASURED, OWNERSHIP IS ACQUIRED. Does 'pulling' acquire possession in a reshuth harabbim? — Surely both Abaye and Raba have stated:²⁶ *Mesirah*²⁷ confers legal ownership in reshuth harabbim²⁸ or in a yard which belongs to neither of them;²⁹ *Meshikah*³⁰ confers ownership in an alley³¹ or in a yard owned by both of them; and 'lifting'³² confers ownership everywhere.³³ 'Pulling' mentioned [in our Mishnah] also means from the reshuth harabbim to an alley. If so, explain the next clause of our Mishnah, IF [THE BUYER] IS PRUDENT, HE HIRES THE PLACE WHERE THEY ARE KEPT. [Now], if [the object is] in reshuth harabbim, from whom could he hire? — This is what [the Mishnah] means: And if [the object] is in the domain of the owner,³⁴ IF [THE BUYER] IS PRUDENT, HE HIRES THE PLACE WHERE THEY ARE KEPT.

Both Rab and Samuel have stated:

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1. With reference to *Terumah*, which must not be separated from one species to redeem another.
2. Our Mishnah, since it allows both buyer and seller to withdraw, must obviously regard wine and vinegar as two different kinds, as Rabbi.
3. Num. XVIII, 32.
4. Surely no wrong has been done, since his action is null and void, and he has to give another heave-offering.
5. *Infra* 143a; B. M. 56a.
6. Hence, though wine and vinegar may be regarded as belonging to the same kind, the sale of one in lieu of the other is not valid, and both buyer and seller may, therefore, withdraw according to the opinion of all, including that of the Rabbis.
7. And the price was agreed upon.
8. V. p. 304, n. 8. By *meshikah* one acquires possession in an alley or in a courtyard which is the common property of both buyer and seller.
9. Measuring is not an essential of the sale. It merely determines the quantity sold. The sale, therefore, becomes effective though no measuring has yet taken place.
10. How and where, is explained in the Gemara.
11. In the case when the fruit is kept in the domain of the seller, the buyer hires the place where they are kept, and thus acquires ownership of the fruit. A person's domain acquires possession for him.
12. V. n. 1.
13. R. Assi.
14. That possession is acquired in an alley.
15. So that the basket, his property, acquired for him possession of the fruit; but if the fruit were put on the bare ground of the alley. no possession would have been acquired.
16. The basket would have acquired possession for the buyer even if it had been in the seller's territory, how much more when it is in an alley.
17. R. Zera.
18. R. Assi.
19. And since objects are acquired in a partner's courtyard, they are also acquired in an alley which is regarded as the property of those who happen to be there. This being the report of R. Jannai, the master of R. Johanan, and being also in agreement with that which R. Assi stated in the name of R. Johanan, it must have been accepted by R. Zera.
20. The reports of R. Assi and R. Jannai, on the one hand, and that of R. Jacob on the other.
21. That of R. Assi and R. Jannai.
22. That of R. Jacob.
23. That R. Jannai's report refers to a case where they were put into his (the buyer's) basket, but otherwise he could not have acquired ownership; so that R. Zera could not have accepted R. Assi's report.
24. How, then, can R. Assi say that objects, if deposited in an alley, are acquired?
25. V. [Glos.](#)
26. *Supra* 76b.
27. V. [Glos.](#)
28. V. p. 307, n. 8.
29. V. p. 308, n. 1.
30. V. [Glos.](#)
31. V. p. 308, n. 3.
32. V. [Glos.](#)
33. Cf. Kid. 23b. How then, in view of the joint statement of Abaye and Raba, can it be said that by pulling in the reshuth harabbim one acquires ownership?
34. The seller.

Baba Bathra 85a

A man's vessel acquires for him ownership¹ everywhere² except in reshuth harabbim. But both R. Johanan and R. Simeon b. Lakish have stated: Even in reshuth harabbim. R. Papa said: There is no dispute [at all] between them. The former³ speak of reshuth harabbim; the latter,⁴ of an alley. Then why do they call it public territory?⁵ — Because it is not private territory.⁶ This² may also be proved by logical deduction; for R. Abbahu said in the name of R. Johanan: A man's vessel acquires ownership for him wherever he is permitted to set it down. From this it is to be deduced that [only where] he is permitted [to set it down],⁸ he does [acquire ownership]; [but where] he is not permitted,² [he does] not.

Come and hear: Four¹⁰ [different] laws [are applicable] to sales.¹¹ Before the measure¹² is filled, [the contents remain in the possession] of the seller.¹³ When the measure is filled, [the contents pass over into the possession] of the buyer.¹⁴ These laws apply to a measure which belonged to neither of them,¹⁵ but if the measure was [the property] of one of them, he [whose measure it is] acquires successive possession of every single unit of the quantity as soon as it is put in.¹⁶ These laws, [furthermore], apply to a reshuth harabbim and to a courtyard which belongs to neither of them,¹⁷ but [if the purchase was] on the premises of the seller, [the buyer] does not

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acquire possession¹⁸ until he has lifted¹⁹ it or has removed it from the seller's premises.²⁰ [If the purchase was] on the premises of the buyer, he acquires possession as soon as the seller has consented [to the terms of the sale].²¹ [If the purchase was] on the premises of one with whom it had been deposited [by the seller], possession cannot be acquired [by the buyer] until [the owner of the premises] has consented²² [to allow to the buyer a portion of his premises on which to effect acquisition of ownership], or until [the buyer] had hired the place it occupies. At any rate, it is taught here [that possession by means of one's vessel may be acquired] in reshuth harabbim and in a courtyard which belongs to neither of them.

1. Of an object bought, if the price had been previously agreed upon.
2. Even if the vessel is on the premises of the seller; provided the latter explicitly said; 'let your vessel acquire possession for you'.
3. Rab and Samuel.
4. R. Johanan and Resh Lakish.
5. Heb. reshuth harabbim. v. p. 307, n. 8.
6. Heb. reshuth ha-yahid.
7. R. Papa's reconciliation of the apparent differences.
8. E.g., in an alley, a courtyard belonging to buyer and seller, or the premises of the seller if he granted permission. V. n. 3.
9. E.g. in reshuth harabbim.
10. Four: (i) The case when the measure was borrowed; (ii) when it belonged to one of the parties to the sale. (Both these cases speak of reshuth harabbim, etc.) (iii) When the purchase was on the premises of the buyer and (iv) on the premises of the seller or, of him with whom it has been deposited.
11. Lit., 'sellers'.
12. Which has been borrowed.
13. The measure is assumed to have been lent to him (by the middleman. v. p. 355f.) for the purpose of measuring out his merchandise. It remains, therefore, in his possession until he completes the measuring.
14. Not only the contents, but also the measure remains in the buyer's possession until he has emptied the purchase into his own vessel or transferred it to his premises. A measure is assumed to be lent to the buyer for this purpose, and to the seller for measuring only. (Cf. previous note.)
15. V. n. 13.

16. Lit., 'he acquires first, first'.
17. And no permission for the purpose was obtained from the owner of the yard.
18. Even if the measure is his own.
19. V. *Glos.* s.v. *Hagbahah*.
20. Into his own, into an alley. or the like.
21. Though no measuring of the commodity has yet taken place.
22. At the request of the seller.

Baba Bathra 85b

Does not this mean an actual reshuth harabbim?¹ — No; [it means] an alley. But has it not been treated as being in a similar category to that of a courtyard which belongs to neither of them?² — The [phrase], 'courtyard which belongs to neither of them', also signifies that [the court] is neither in the entire ownership of the one nor in the entire ownership of the other; but in the joint ownership of the two.

R. Shesheth inquired of R. Huna: [If] the buyer's vessel stands on the premises of the seller, does the buyer, [thereby] acquire possession [of a purchase placed in it] or not?³ — He replied unto him: You have learned this [in the following]:⁴ [If the husband] has thrown it [a get]⁵ into [his wife's] lap or into her work-basket,⁶ she is divorced.⁷ R. Nahman said unto him: Why do you bring an answer from this which has been refuted by a hundred arguments to one?⁸ For Rab Judah said in the name of Samuel: This [law² applies only to the case] where the work-basket was hanging upon her.¹⁰ And Resh Lakish said:¹¹ Fastened [to], though not hanging upon her.¹² R. Adda b. Ahaba said:¹³ When the basket was standing between her thighs.¹⁴ R. Mesharsheya, the son of R. Ammi, said:¹⁵ When her husband was a seller of women's work-baskets.¹⁶ R. Johanan said:¹⁵ The place [occupied by] her lap, [as well as] the place [occupied by] her work-basket, is her property. Raba said:¹⁵ R. Johanan's reason is because a man does not mind [conceding to his wife] either the place [occupied by] her lap¹⁷ or the place [taken up by] her work-basket. But, [concluded R.

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Nahman], bring your answer from this: [It has been taught¹⁸ that if the purchase was] on the premises of the seller, [the buyer] does not acquire possession until he has lifted it or has removed it from the seller's premises. Does not this [apply to the case when the purchase was] in the buyer's vessel?¹⁹ — No; in the seller's vessel. But now, since the first clause [deals with a case where the purchase is] in the seller's vessel, the final clause also [must deal with a purchase] in the seller's vessel, [how then can you] explain [this] final clause? [It reads:] [If the purchase was] on the premises of the buyer, he acquires possession as soon as the seller has consented [to the terms of the sale].²⁰ Now, if [the purchase was, as you assert], in the seller's vessel, why does the buyer acquire possession? — The final clause deals with a case when the vessel belongs to the buyer. And how [do you arrive at such] a definite decision? — It is usual that at the seller's, the vessels of the seller are likely to be used; at the buyer's, the vessels of the buyer are likely to be used.

Raba said come and hear: [It has been taught:]²¹ [If] he has pulled his²² ass drivers [who pulled with them their asses], or his²² laborers and has [thus] brought them into his house [while the loads²⁴ remained on their backs], whether the price was fixed before the measuring, or the measuring took place before the price was fixed, both²⁵ may withdraw from the sale.²⁶

1. How, then, could R. Samuel, and R. Abbahu in the name of R. Johanan, state that one's vessel cannot acquire ownership in reshuth harabbim?
2. But to a third party; while an alley is regarded as the territory of any buyer and seller who happen to be there.
3. Cf. B.M. 67b; A.Z. 71b.
4. Git. 77a.
5. 'Bill of divorce'.
6. [H] or [H], women's work-basket.
7. As if it had been given into her own hand, though the basket may stand, (so it is assumed now), on the premises of the husband. Similarly, in the case of commercial transactions, when the buyer's vessel is on the premises of the seller, it acquires possession for him.

8. Lit., 'they beat it a hundred measures for one measure'. [H] 'ukla, is one of the smaller measures of capacity and standards of weight.
9. That the basket is the means whereby the woman acquires possession of the *get*.
10. Git. 78a.
11. Git. *loc. cit.*
12. Even though the basket stands on the ground.
13. Git. *loc. cit.*
14. On the ground. In this case, the spot on which the basket rests is regarded as her property, allotted to her by her husband up to the moment of the consummation of the divorce.
15. Git. *loc. cit.*
16. The husband, therefore, does not object to her possession of the ground on which her basket stands.
17. When her robe trails on the ground.
18. *Supra* 85a.
19. Which proves that the question, whether the buyer's vessel on the premises of the seller can serve as a means of acquiring possession, is to be answered in the negative.
20. *Supra loc. cit.*
21. A.Z. 72a.,
22. I.e., the seller's. Others change the pronominal suffix of [H] and of [H] into final *Nun*, 'ass drivers and laborers'. (V. Tosaf. s.v. [H] a.l.).
23. V. [n. 3](#).
24. Loads of, e.g., produce.
25. Buyer and seller.
26. Two conditions are required: Fixing the price and measuring out into the buyer's vessels. Fixing the price alone while the produce is still on the men's or asses' backs is of no avail, because this cannot take the place of *meshikah* nor that of the 'buyer's territory'. The 'pulling' of the men who carry the produce does not take the place of the 'pulling' of the produce itself. Measuring out into the buyer's vessel or territory, or even actual *meshikah*, is of no avail before the price has been agreed upon, because, before that has been done, neither seller nor buyer agree definitely to the sale or purchase. V. [n. 10](#).

Baba Bathra 86a

If he has unloaded them¹ and brought them into his² house [and] fixed [the price] before measuring, neither of them may withdraw.³ [If] measuring took place before the price has been fixed, both may withdraw.⁴ Now, since the vessel of the seller, [if it is] on the premises of the buyer, does not serve as a means of retaining possession for him,⁵ the vessel of the

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buyer also [if it is] on the premises of the seller does not serve as a means of acquiring possession for him!⁶ R. Nahman b. Isaac replied: [The law quoted² refers to the case] when [the goods] were emptied out [from the seller's sacks into the territory of the buyer]. Raba [remarked] indignantly: Does it state 'he emptied them'? The statement reads, 'he unloaded them'!⁸ But, said Mar son of R. Ashi: [The law here refers] to bundles of garlic.⁹

Huna the son of Mar Zutra said to Rabina: Observe that it has been said, 'he unloaded them';¹⁰ what matters it, then, [whether the price had been] fixed or not? — He [Rabina] replied: [When the price] has been fixed, each [of the parties] acquiesces [in the sale, but when a price] has not been fixed, none [of them] acquiesces.¹¹

Rabina said to R. Ashi: come and hear! [It has been stated:]¹² Both Rab and Samuel hold that a man's vessel acquires for him ownership everywhere. Does not this ['everywhere'] include the premises of the seller? — [In the case spoken of] there,¹³ [the other replied, the seller] said to him 'go and acquire ownership'.¹⁴

We have learnt elsewhere:¹⁵ Ownership of landed property¹⁶ is acquired by means of money, deed and possession;¹⁷ and movable property¹⁸ is acquired only by *meshikah*.¹⁹ The following reported statement has been attributed in Sura to R. Hisda; at Pumbeditha, to R. Kahana or — according to others — to Raba: [The law of *meshikah*] has been taught, with reference only to [heavy] objects which are not usually lifted, but objects which are usually lifted can be acquired by *hagbahahl*²⁰ only; not by *meshikah*. Abaye sat lecturing on this law, [when] R. Adda b. Mattenah raised the following objection. [It has been taught]:²¹ He who steals a purse on the Sabbath²² is liable [to make restitution], because the obligation [to pay restitution], for the theft 'has preceded²³ the offence against the prohibition of the Sabbath.²⁴ If he was dragging [it]²⁵ as

he was moving out, he is exempt [from the payment of restitution]²⁶ because here the offences relating to the desecration of the Sabbath and to theft have been committed simultaneously.²⁷ Now, surely, a purse is an object which is usually lifted, and yet it is acquired by *meshikah*!²⁸ He replied unto him: When [the purse has] a cord. 'I also', said R. Adda, 'speak of one with a cord' [and yet it is small enough to be lifted]! — [Abaye] replied: [I say that the law refers to] a thing²⁹ [so heavy] that it requires a cord.³⁰

Come and hear: [It has been taught]:³¹ If the purchase was] on the premises of the seller, [the buyer] does not acquire possession until he lifts it or removes it from the seller's premises. This proves clearly that an object which can be lifted may be acquired in accordance with one's desire, either by 'lifting' or by *meshikah*!³² R. Nahman b. Isaac replied: What has been taught is to be taken — disjunctively; that which can be lifted [is acquired] by lifting, and that which has to be pulled [is acquired] by *meshikah*.

1. The goods bought.
2. The buyer's.
3. Although the goods are presumably still in the seller's sacks; because the buyer's premises acquired possession for him.
4. Before the price is agreed upon, the sale cannot be regarded as completed; because neither buyer nor seller makes up his mind to sell or to buy before knowing whether the other party will accept his price or offer. Cf. n. 7.
5. For it has been said that, if the price had been fixed, none may withdraw, though the goods are presumably still in the buyer's sacks. This shows that the buyer's premises acquire possession for him despite the fact that the goods remain in the seller's vessels.
6. If premises (the buyer's) can serve as a means of depriving the seller from ownership of his goods though still in his vessels, how much more, in the case of goods in the buyer's vessels, should premises (the seller's) be capable of serving as a means of retaining ownership.
7. That goods unloaded on the premises of the buyer are acquired by him.
8. I.e., As delivered in their sacks.
9. These are not delivered in sacks. When unloaded they come in direct contact with the buyer's territory.

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10. Into the territory of the buyer, which legally acquires ownership for him.
11. V. p. 349, n. II.
12. *Supra* 84b f.
13. In the statement of Rab and Samuel.
14. The seller thereby implied that he lent the buyer the spot on which his vessel stood.
15. Kid. 26a *supra* 51a, *infra* 150b.
16. V. p. 310, n. 7.
17. V. l.c., n. 10.
18. V. l.c. n. 6.
19. V. [Glos.](#)
20. V. [Glos.](#)
21. Tosef. B.K. IX.
22. And carried it out into reshuth harabbim. It is forbidden to carry from private domain into public domain and vice versa on the Sabbath.
23. The thief becomes liable to pay restitution as soon as he lifted the object.
24. His liability to the penalty for desecrating the Sabbath does not commence simultaneously with his liability to make restitution. While the latter follows immediately upon his lifting of the stolen object (cf. previous note), the former is effected subsequently. when he takes the object out into reshuth harabbim. Since the two offences have not been committed simultaneously, the law that the lighter penalty (that for theft) is superseded by the heavier (that for desecration of the Sabbath) does not apply.
25. So that there was no 'lifting' whereby to acquire possession of the theft.
26. The heavier penalty for the desecration of the Sabbath supersedes the lighter penalty for theft.
27. Since the object has not been lifted while on the premises of the owner, the thief acquires possession by *meshikah*, only when the stolen object has been taken out, but at that moment he also commits the offence against the laws of Sabbath, which prohibit the removal of things from one domain into another. (V. n. 2.)
28. For it has been said that the offence relating to theft had been committed simultaneously with that of the desecration of the Sabbath, though at the time of the dragging out there was only *meshikah* and no lifting at all.
29. A big purse.
30. Whereby to drag it out; and since it is a heavy object it can justly be acquired by *meshikah*.
31. *Supra* 85a.
32. 'Removing from the seller's premises', without lifting is obviously *meshikah*.

Baba Bathra 86b

Come and hear: IF ONE HAS SOLD FRUIT TO ANOTHER [AND THE BUYER] HAS

PULLED [THEM]. THOUGH THEY HAVE NOT [YET] BEEN MEASURED, OWNERSHIP IS ACQUIRED. Surely fruit can be lifted up, and yet it is taught that ownership [of it] is acquired by *meshikah*?¹ Here² we are dealing with [fruit packed in] large bags.³ If so,⁴ [how can you] explain the last clause [which reads]. IF ONE BUYS FLAX FROM ANOTHER. HE DOES NOT ACQUIRE OWNERSHIP UNTIL HE MOVES IT FROM ONE PLACE TO ANOTHER. Is not flax [also] packed in large bags?⁵ — Flax is different — [It has to be packed in small bags] because, [otherwise]. it slips out.⁶

Rabina said to R. Ashi, Come and hear: Large cattle are acquired by *mesirah*,⁷ and small by lifting these are the words of R. Meir and R. Simeon b. Eleazar. But the Sages say: Small cattle [are acquired] by *meshikah*.⁸ Surely, [it may be asked], small cattle can be lifted and yet it is taught⁹ that ownership of them may be acquired by *meshikah*! — Cattle are different because they clutch the ground.¹⁰

Both Rab and Samuel said: [If the seller said], 'I sell you a *kor*¹¹ for thirty', he may withdraw even at the last¹² *se'ah*.¹¹ [If, however, he said]: 'I sell you a *kor* for thirty, [each] *se'ah* for a *sela*', [the buyer] acquires possession of every *se'ah*¹³ as it is measured out for him.¹⁴

Come and hear: If the measure was the property of one of them, he [whose measure it is] acquires successive possession of every single unit of the quantity as soon as it is put in.¹⁵ [Surely this law applies] even to [the case] where the measure had not been filled!¹⁶ — [This law refers only to such a case] as when [the seller] said to [the buyer], '[I sell you] a *hin*¹⁷ for twelve *sela'im*, [every] *log*¹⁸ for a *sela*'. And, as R. Kahana said,¹⁸ 'there were marks in the *hin* [of the Temple].¹⁹ so, in this case also, there were marks on the measures.²⁰

Come and hear! [It has been taught: In the case where a man] hired a laborer to work for

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him at the harvesting season for a denarius a day. [and paid him his wage in advance].

1. How then, can it be said that things that can be lifted cannot be acquired by *meshikah*?
2. In the Mishnah quoted.
3. Which cannot be lifted up.
4. That the Mishnah deals with fruit in large bags.
5. If the first clause, (fruit), deals with small bags, the final clause also (flax), would, consequently, deal with small bags. The reason for the difference between the modes of acquiring ownership, ('pulling' in the first, 'lifting' in the second case). could then be explained by the fact that flax is never dragged but always lifted. Thus, the purpose of our Mishnah would be the laying down of the following law: Things which are usually lifted may be acquired not only by 'lifting' but also by 'pulling' — (first clause); while things which are always lifted can be acquired by lifting only — (final clause). If, however, it be assumed that the reason why in the first clause 'pulling' is effective, is only that the fruit is packed in large bags it must consequently be assumed that the reason why the flax cannot be acquired thus, but only by 'lifting', is that it is packed in small bags. If so, it is asked, is not flax also packed in large bags? And if they are so packed, wherein lies the cause of the different modes of acquisition?
6. Small bags are usually lifted, hence only 'lifting', and not 'pulling', is the mode of acquisition.
7. V. [Glos.](#)
8. Kid. 25b, B.K. 11b.
9. By the Sages, who are in the majority in the dispute.
10. And it is difficult to lift them. Therefore, 'pulling' has been made the mode of their legal acquisition.
11. *Kor* and *se'ah* are measures of capacity, the former containing thirty of the latter.
12. Because he implied in his offer that it was his desire to sell the entire *kor*. As long as the buyer has not legally acquired every fraction of it, the purchase is not consummated.
13. The seller, by specifying the price per *kor* and *se'ah*, has intimated his desire to sell either the entire *kor* or any fraction of it.
14. Lit., 'he acquires first first'. (Cf. p. 347. n. 1).
15. *Supra* 85a.
16. How, then, could it be said that the seller 'may withdraw even at the last *se'ah*'?
17. *Hin* and *log* are liquid measures, the former containing twelve of the latter.
18. Shab. 80b, Men. 87b.
19. Marking off a quarter. a third, and a half of the *hin*, required respectively as a meal offering for the lamb, the ram, and the bullock.

20. Every *log* was marked off, so that when the commodity measured reached any of the marks it might be regarded as having 'filled the measure', because each mark represented a complete unit.

Baba Bathra 87a

but at that season [the laborer] was worth a *sela*¹ [a day] he must not derive any benefit from it.² If, however, [a man] hires [a laborer to commence work] at once [and to continue through the harvesting season] for a denarius a day, [although] at the harvesting season he was worth a *sela*', [he] is permitted [to pay in advance and to have the benefit of the difference].³ Now, if you are of the opinion that [if the seller said]. 'I sell you a *kor* for thirty, [each] *se'ah* for a *sela*', '[the buyer] acquires possession of every *se'ah* as it is measured out, here also, [since mention was made of a 'denarius a day'] every day that has passed⁴ [should have been regarded as] cut off⁵ [from the other days of the period that follow] and it should, [therefore], be forbidden to derive any benefit from it.⁶ Why then [has it been said that if a man hires a laborer to commence work at once and to continue through the harvesting season] for a denarius a day, [although] at the harvesting season he was worth a *sela*' [he] is permitted [to have the benefit]? Is not this [difference] a reward⁷ for advancing the money?⁸ Raba replied: What a logical argument! Has it ever been forbidden to reduce one's hire to the lowest level?⁹ Wherein [then, lies the reason for] the difference between the first, and the last clause?¹⁰ — [In] the first clause, since work does not begin¹¹ at once,¹² [the difference between the two rates of wage] appears as a reward for advancing the money;¹³ [in] the last clause, where work begins at once, [the difference] does not appear as a reward for advancing the money.

AND IT IF WAS ATTACHED TO THE GROUND AND HE PLUCKED [OF IT] ANY QUANTITY, HE HAS ACQUIRED OWNERSHIP. Does he acquire ownership [of all the flax] because he has plucked some of

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it?¹⁴ — R. Shesheth replied: The case dealt with here [refers to a seller] who said [to the buyer], 'Go improve¹⁵ for yourself any piece of land, [acquire¹⁶ possession of it, and thereby] acquire ownership of all that is upon it.'¹⁷

MISHNAH. [IF ONE SELLS WINE OR OIL TO ANOTHER AND IT HAS BECOME DEARER¹⁸ OR CHEAPER,¹⁸ — IF THE MEASURE HAS NOT YET BEEN FILLED, [THE BENEFIT OR LOSS IS] THE SELLER'S. AFTER THE MEASURE HAS BEEN FILLED, [THE BENEFIT OR LOSS IS] THE BUYER'S. IF THERE WAS A MIDDLEMAN BETWEEN THEM [AND] THE CASK WAS BROKEN [BEFORE DELIVERY TO THE BUYER], THE LOSS¹⁹ IS THE MIDDLEMAN'S. [A SELLER] MUST [IN FAVOUR OF THE BUYER] ALLOW THREE DROPS TO FALL [FROM THE SIDES OF HIS VESSEL INTO THAT OF THE BUYER AFTER THE LIQUID HAS BEEN POURED OUT]. IF HE INCLINED THE VESSEL [AFTER THE THREE DROPS HAVE BEEN ALLOWED TO FALL]. THE ACCUMULATION OF THE REMNANTS [FROM ITS SIDES] BELONGS TO THE SELLER.²⁰ A SHOPKEEPER²¹ IS NOT OBLIGED TO ALLOW THE THREE DROPS TO FALL. R. JUDAH SAID: ON SABBATH EVE TOWARDS DUSK ONE IS EXEMPT.²²

GEMARA. Whose measure was this?²³ If it is assumed to have been the measure of the buyer, [why should the benefit or loss be that] of the seller before the measure has been filled? [Surely] it is the buyer's measure!²⁴ If, however, [it is assumed that it was] the seller's measure, [why should the benefit or loss be that] of the buyer after the measure has been filled? [Surely] it is the seller's measure! — R. Elai replied: The measure was the middleman's.²⁵ But since it is taught in the latter clause, IF THERE WAS A MIDDLEMAN BETWEEN THEM AND THE CASK WAS BROKEN THE LOSS IS THE MIDDLEMAN'S, is it not to be inferred that the first clause does not deal with the case of a middleman? — The first clause [speaks of] a measure in the absence of the

middleman; the latter clause, of the middleman himself.²⁶

[IF THE VESSEL ...] HAS BEEN INCLINED, THE ACCUMULATION OF THE REMNANTS [FROM ITS SIDES] BELONGS TO THE SELLER. When R. Eleazar went up²⁷ he met Ze'iri to whom he said: Is there here a tanna²⁸ whom Rab has taught the Mishnah of measures? He showed him R. Isaac b. Abdimi. The latter said unto him: What is your difficulty? — For [the other replied,] we learnt: [IF THE VESSEL ...] HAS BEEN INCLINED, THE ACCUMULATION OF THE REMNANTS [FROM ITS SIDES] BELONGS TO THE SELLER;

1. *Sela'* = four *denarii*.
2. *Viz.*, the difference between the sum given and the price of labor at harvesting time; because this may be regarded as usury. since the laborer is paying a *sela'* (in labor) for every denarius he has received in advance.
3. Because the whole period of the hiring is considered as one long day; and, since on the first days of the period the labor was only worth a denarius per day. no higher price need be paid for the other days.
4. Lit. 'first first'.
5. Mentioning the entire period and the denarius per day is similar to mentioning the entire *kor* and the individual units of the *se'ah*.
6. *Viz.* the difference between the wages at the harvesting season and that at the earlier days.
7. *I.e.*, usury.
8. Lit., 'reward for waiting for me'.
9. A laborer may. so far as the Biblical prohibition of usury is concerned, agree to take any wage, however low, even if his work is not to begin until the harvesting season, and his wages may be paid in advance. Lowering one's wage is not the same as paying usury for advancing money as a loan or on a purchase.
10. Since one may lower his wage, why does the first clause state that one must have no benefit from the difference between the denarius and the *se'ah*?
11. Lit. 'does not do with him'.
12. As soon as the wage was agreed upon and paid.
13. And prohibited as a mere Rabbinical restrictive measure. V. n. 6.
14. How can the *meshikah* of a small part affect the entire purchase?

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15. Clearing any piece of land, by plucking the flax that grows upon it, prepares it for plowing, and thus improves it.
16. By improving the piece of land at the request of the owner, the buyer acquires possession of the entire field, though he did not buy it for the purpose of acquiring the flax.
17. By acquiring possession of the land one acquires all that grows upon it.
18. After the price had been agreed upon.
19. Lit., 'it was broken.
20. So Rashb. Jastrow, on the basis of a variant reading, renders, 'If he bent the vessel and drained it.'
21. Who has to attend to his customers and is pressed for time.
22. The Gemara explains this.
23. The measure spoken of in our Mishnah.
24. Whereby he should acquire ownership.
25. And he lent it to the buyer and the seller.
26. Since he buys from the seller to sell to the buyer, and the measure is his, and he himself is present, the purchase is his until delivery to the buyer.
27. From Babylon to Palestine.
28. I.e. one who memorizes Mishnayoth and Baraithoth for recital in the school; v. [Glos.](#)

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but have we not [also] learnt: '[If the vessel]¹ has been inclined, the accumulation from the remnants [on its sides] is *terumah*'?² — He replied unto him: Surely about this it has been said: R. Abbahu said [the accumulation belongs to the seller] because the law of the owner's resignation is applied to it.³

A SHOPKEEPER IS NOT OBLIGED TO ALLOW TO FALL, etc. The question was raised: Does R. Judah refer to the [law in the] earlier clause⁴ to relax it,⁵ or perhaps [he refers] to the [law in the] latter clause⁶ to restrict it?⁷ Come and hear: It has been taught: R. Judah says. A shopkeeper, on Sabbath eve at dusk, is exempt, because a shopkeeper is [at that time] much occupied.⁸

MISHNAH. IF A PERSON SENDS HIS [LITTLE] SON TO A SHOPKEEPER [TO WHOM HE HAD PREVIOUSLY GIVEN A DUPONDIIUM],⁹ AND [THE SHOPKEEPER] MEASURED OUT FOR HIM OIL FOR ONE ISAR⁵ AND GAVE HIM THE [OTHER] ISAR, [AND ON HIS WAY HOME THE CHILD] BROKE THE BOTTLE

[WHICH HIS FATHER HAD SENT WITH HIM] AND LOST THE ISAR [GIVEN HIM AS CHANGE], THE SHOPKEEPER IS [LIABLE FOR ALL THE LOSSES].¹⁰ R. JUDAH ABSOLVES [THE SHOPKEEPER], SINCE FOR THAT PURPOSE¹¹ [THE FATHER] HAD SENT HIM [THE CHILD]. BUT THE SAGES AGREE WITH R. JUDAH THAT IN THE CASE WHEN THE BOTTLE WAS IN THE HAND OF THE CHILD, AND THE SHOPKEEPER MEASURED OUT INTO IT, THE SHOPKEEPER IS ABSOLVED.

GEMARA. One can well understand that, in [the case of] the isar and the oil, the dispute [in our Mishnah between the Rabbis¹² and R. Judah] depends on the following [views]. The Rabbis maintain that [the father] has sent [the child merely] to inform [the shopkeeper of what he required],¹³ and R. Judah¹⁴ maintains that [the father] has sent [the child] in order that [the shopkeeper] should send him [back with the things]; but, [as regards the] breaking of the bottle, [why should the Rabbis lay the responsibility on the shopkeeper]? It is a loss, [surely], for which its owner¹⁵ was well prepared!¹⁶ — R. Hoshaiia replied: Here we deal with an owner [who is also] a seller of bottles, and in the case when the shopkeeper took [the bottle] for the purpose of examining it;¹⁷ [in such a case the shopkeeper¹⁸ assumes responsibility] in accordance with [a decision given by] Samuel. For Samuel said: He who takes a vessel from the artisan to examine it, and an accident happens [while it is] in his hand, is liable.¹⁹ Does this mean that [the decision] of Samuel is [not generally accepted, but is a matter of dispute between] Tannaim?²⁰ [Surely this is not very likely]! — But, said both Rabbah and R. Joseph, [the Mishnah] here [deals] with [the case of] a shopkeeper who sells bottles.²¹ And R. Judah follows his own reasoning,²² and the Rabbis follow their own reasoning.²³ If so,²⁴ explain the last clause: THE SAGES AGREE WITH R. JUDAH THAT IN THE CASE WHEN THE BOTTLE WAS IN THE HAND OF THE CHILD, AND THE SHOPKEEPER MEASURED OUT

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INTO IT, THE SHOPKEEPER IS ABSOLVED. But surely you said [that the Rabbis maintained the view that the father] had sent [the child merely] to inform him?²⁵
— But, said both Abaye b. Abin and R. Hanina b. Abin, here we deal with a case

1. In which the Israelite measured out oil for the priestly portion.
2. Ter. XI. 8. If in the former case the accumulation belongs to the seller not to the buyer, in this case it should belong to the owner, not to the priest.
3. The buyer of the liquid, who becomes its owner, does not expect any more of it after the three drops from the sides had been drained. In the case of *terumah*, however, the principle of 'resignation' does not apply, as the remnants, however insignificant, are forbidden to a non-priest.
4. Which requires the seller always to allow three drops to fall into the vessel of the buyer.
5. That on Sabbath eve towards dusk, it is not to be applied.
6. Which exempts a shopkeeper.
7. That even a shopkeeper is not exempt, except on Sabbath eve towards dusk.
8. R. Judah's is thus a restrictive measure.
9. Dupondium and isar, Roman coins. The former is worth two of the latter.
10. Of the bottle, the oil and the isar.
11. I.e., of bringing home, from the shopkeeper, the oil and the isar as well as the bottle.
12. I.e., the Sages who hold the shopkeeper responsible for the losses.
13. It was the shopkeeper's duty to find a reliable person with whom to send the oil and the change. He had no authority to entrust these to the child.
14. Who absolves the shopkeeper.
15. I.e., the father of the child.
16. By entrusting the bottle to the child, the father had shown that he was prepared to take the risk.
17. Not merely for the purpose of putting the oil into it, but with the intention of buying it if found suitable.
18. Who thus becomes a potential buyer.
19. The Rabbis of our Mishnah also hold the same view. The shopkeeper, by taking the bottle, has undertaken a responsibility for its safety, of which he cannot be absolved until the bottle has been returned to its owner, not merely to the child.
20. R. Judah, who absolves the shopkeeper, disagreeing with Samuel.
21. And the child was given money by his father to pay for the bottle in which the oil was to be carried.

22. He absolved the shopkeeper from responsibility for the oil and the isar, because he maintains that the child was sent to bring the things with him. For the same reason he absolves the shopkeeper from responsibility for the bottle.
23. They maintain that the child was sent to give the order only, and not to bring either the oil and the isar or the bottle. The responsibility for these things, therefore, rests upon the shopkeeper.
24. That the Rabbis lay the responsibility for the bottle upon the shopkeeper for the reason that the child was sent only to give the order for it.
25. Not to bring the bottle. Why, then, do they in this case, absolve the shopkeeper?

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such as where [the shopkeeper] took [the bottle]¹ to measure with it, [and by this action,² he becomes responsible] In accordance with [a decision of] Rabbah.³ For Rabbah said:⁴ [If] he⁵ struck [a lost animal], he assumed [thereby] the obligation of [returning] it [to its owner].⁶ Might it not be suggested that Rabbah said [so, only] in [the case of] living beings, because he [who strikes them] assists⁷ in their running away.⁸ Would he, [however], have said [so in] such a case as this?⁹ — But, said Raba, I and the lion of the college — who is R. Zera — have interpreted this [as follows]: We deal here with a case where [the shopkeeper] took [the bottle] to use it as a measure for others;¹⁰ and the dispute [between the Rabbis and R. Judah] is [dependent] on [their respective opinions as to the legal status of] one who borrows without the knowledge [of the owner].¹¹ One¹² is of the opinion [that such a person] is [legally considered] a borrower,¹³ and the others¹⁴ are of the opinion [that] he is a robber.¹⁵

Reverting to the above text. Samuel said: 'He who takes a vessel from the artisan to examine it, and an accident happened [while it was] in his hand, is liable'. This law¹⁶ [applies only to the case] where the price had been fixed.¹⁷

Once a person entered a butcher's shop [and] lifted up a thigh of the meat.¹⁸ A rider came while he was holding it up [and] snatched it away from him. He¹⁹ came before R. Yemar

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[who] ordered him to pay its price. But this law²⁰ is [applicable only to the case] where the price has been fixed.

A person once brought pumpkins to Pumbedra,²¹ [when] a crowd²² assembled [and] everyone took²³ a pumpkin.²⁴ He called out to them,²⁵ 'Behold these are dedicated to God'.²⁶ [When] they [the buyers] came before R. Kahana he said unto them: No one may dedicate a thing which is not his. But this [applies only to the case] where the price is fixed, but [when] the price is not fixed, they remain in the possession of their owner who may rightly dedicate them.

Our Rabbis taught: A person, [who comes] to buy herbs in the market, and picks out and puts down, even all day long, does not acquire possession [of the herb] nor does he become liable to give [its] tithe. [If] he has made up his mind to buy it, he acquires possession and becomes liable to give the tithe. [If he desires to withdraw,] he cannot return it [to the seller], for it has become liable to the tithe;²⁷ and he cannot tithe it [before returning] because he would thereby reduce their value.²⁸ How then [is he to proceed]? — He gives the tithe and [returning the remainder] pays [to the seller] the price of the tithe. Does one, then, acquire possession and become liable to give tithe because he has made up his mind to buy? — R. Hoshaia replied: We deal here with [the case of] a God-fearing man like R. Safra,²⁹ for instance, who applied to himself, And speaketh truth in his heart.³⁰

MISHNAH. A WHOLESALE DEALER³¹ MUST CLEAN³² HIS MEASURES ONCE IN THIRTY DAYS, AND A PRODUCER³³ ONCE IN TWELVE MONTHS.³⁴ R. SIMEON B. GAMALIEL SAYS: THE STATEMENT IS TO BE REVERSED.³⁵ A SHOPKEEPER MUST CLEAN HIS MEASURES TWICE A WEEK,³⁶ WIPE HIS WEIGHTS³⁷ ONCE A WEEK AND CLEANSE THE SCALES AFTER EVERY WEIGHING.³⁸ R. SIMEON B. GAMALIEL SAID: THESE LAWS APPLY ONLY TO MOIST³⁹ [COMMODITIES], BUT IN [THE

CASE OF] DRY [ONES]⁴⁰ THERE IS NO NEED [FOR THE CLEANING].⁴¹

1. Brought by the child. According to their explanation, neither of the parties sells bottles.
2. By taking the bottle from the child, he becomes responsible for its safety, until it has been returned to its owner. Cf. 358, n. 5.
3. But in the case where the shopkeeper did not take hold of the bottle, (as in the first clause of our Mishnah), the Rabbis rightly agree with R. Judah.
4. B.M. 30b.
5. Though an old, or eminent man, who is not obliged to take the trouble of returning a lost thing.
6. By striking the animal and thus causing it to move, responsibility for its safe return is assumed until it is delivered to its owner; so, in the case of the bottle, the act of grasping it throws responsibility for its safe return to its owner, on the shopkeeper.
7. Lit. 'makes them take the track of the fields' or 'the external step'. By striking the animal, he causes it to run away still farther.
8. Therefore he incurs the obligation of ensuring their safe return to their owners.
9. I.e., the grasping of the bottle, where no possible loss to its owner is involved.
10. I.e., other customers.
11. Cf. B.M. 41a, 43b.
12. R. Judah.
13. The shopkeeper, therefore, is absolved from all responsibility as soon as he returns the bottle to the child from whom he has borrowed it.
14. The Rabbis.
15. Who remains responsible until the object (in this case, the bottle), is returned to the owner himself (Cf. B.K. 118a).
16. Lit., 'these words'.
17. Since the price was known, it is assumed that the buyer had picked up the vessel with the intention of acquiring possession, if no defect should be detected.
18. To examine its quality.
19. The man.
20. V. n. 1.
21. Lit., 'river-mouth'. Name of a town on the Tigris.
22. Lit., 'all the world'.
23. With the intention of buying.
24. 'Everyone ... pumpkin'. lit., 'pumpkin, pumpkin'.
25. Fearing that some might get away without paying.
26. Lit., 'heaven'.
27. And no one who observes the law must allow any produce to leave him before duly separating the priestly and Levitical gifts.

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28. The separation of the tithe would reduce the quantity and, consequently, also the value.
29. Mak. 241.
30. Ps. XV, 2. Once he made up his mind to do something he did not withdraw from it though that involved him in a loss.
31. Heb. Siton, cf. [G] 'wheat', 'corn'; gen. 'food', 'victuals'. [G], 'a buyer of corn', corn merchant'. Gen. 'provision dealer'. From the Gemara, it will be seen that a dealer in sticky, and oily liquids, such as wine and oil, which cling to the sides of the measures, is here the subject of the discussion.
32. To remove any wine or oil that clings to the measures and reduces their capacity. The cleansing is in the interest of the customers to enable them to receive full measure.
33. Lit., 'owner of the house'. One who sells his own products.
34. The number of his customers being smaller than those of the wholesale dealer, he uses his measures less frequently, and, consequently, there is less stickiness, and less cleansing is required.
35. Thus: The producer must cleanse once in thirty days and the wholesale dealer only once in twelve months. The measures of the latter, being in frequent use, do not allow of the accumulation of so much stickiness as do those of the producer who uses his less frequently.
36. The measures of a shopkeeper who is not obliged to allow three drops to fall from his measures after every sale (*supra* 87a), accumulate much more of the oily and sticky substances than do those of a wholesaler or a producer.
37. Wherewith meat and similar moist foodstuffs are weighed.
38. The cavity of the scales is better ground for the accumulation of moist substances than the flat surfaces of the weights. Hence more frequent cleaning is required.
39. E.g., wine, meat.
40. Such as fruit.
41. Since these do not stick to the measures or weights.

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AND [A SHOPKEEPER] MUST ALLOW [THE PROVISION SCALE] TO SINK A HANDBREADTH [LOWER THAN THE SCALE OF THE WEIGHTS].¹ [IF] HE GAVE HIM THE EXACT WEIGHT² HE MUST ALLOW HIM THE [FOLLOWING] ADDITIONS,³ A TENTH⁴ IN [THE CASE OF] LIQUIDS AND A TWENTIETH IN [THE CASE OF] DRY

[PROVISIONS]. WHERE THE USAGE IS TO MEASURE WITH A SMALL [UNIT], ONE MUST NOT USE A BIG MEASURE; [IF THE USAGE IS TO MEASURE] WITH A BIG [UNIT], ONE MUST NOT USE A SMALL MEASURE. [IF THE USAGE IS] TO STRIKE [THE MEASURE],⁵ [ONE MUST] NOT HEAP [IT UP]. [IF THE USAGE IS] TO HEAP [IT UP], ONE MUST NOT STRIKE IT.

GEMARA. Whence [is] this law⁶ [to be inferred]? — Resh Lakish said: Scripture Says: A perfect and just measure [shalt thou have].⁷ [This means], make [your weight] just⁸ by giving of your own. If so,⁹ explain the next clause. [It reads]: [IF] HE GAVE HIM THE EXACT WEIGHT, HE MUST ALLOW HIM THE [FOLLOWING] ADDITIONS. Now, if giving overweight is a Pentateuchal injunction, how is [he allowed] to give him the exact weight [only]? — But, [came the reply], the earlier clause¹⁰ [is not based on a Pentateuchal injunction, but speaks] of a place where there was the practice [of giving overweight],¹¹ and the statement of Resh Lakish has been made with reference to [what has been said, not in the earlier, but in] the latter clause, which reads, [IF] HE GAVE HIM THE EXACT WEIGHT, HE MUST ALLOW HIM THE [FOLLOWING] ADDITIONS [and with reference to this it has been asked], 'Whence [is] this law'? — [And] Resh Lakish said: Scripture says: and just,¹² [which means], make [your weight] just, by giving him of your own. And how much must be added to the weight? — R. Abba b. Memel said in the name of Rab: In [the case of] liquids, a tenth of a pound¹³ for [every] ten pounds.¹⁴

A TENTH IN [THE CASE OF] LIQUIDS, AND A TWENTIETH IN [THE CASE OF] DRY, etc. The question was raised: Does this mean, a tenth of the [unit of the] liquids for [every] ten [units] of the liquid, and a twentieth of [the unit of] dry [provisions] for [every] twenty [units] of dry; or [does it], perhaps, [mean] a tenth [of the unit] for [every] ten [units] of liquid and [a tenth of the

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unit] for [every] twenty [units] of dry [provisions]? — The matter stands undecided.¹⁵

R. Levi said:¹⁶ The punishment for [false] measures is more rigorous than that for [marrying] forbidden relatives;¹⁷ for in the latter case¹⁸ it has been said: El,¹⁹ but in the former¹⁸ Eleh.²⁰ Whence can it be shown that El [implies] rigor[ous punishment]? — For it is written: And the mighty [Elei] of the land he took away.²¹ Is not Eleh written also in the case of forbidden relatives?²² — That [Eleh has been written] to exclude²³ [the sin of false] measures from the punishment of *kareth*.²⁴ [In] what [respect], then are [the punishments for giving false measures] greater²⁵ [than those for marrying forbidden relatives]? — There,²⁶ repentance is possible, but here,²⁷ repentance is impossible.²⁸

R. Levi further stated: Ordinary²⁹ robbery is worse than the robbery of holy things,³⁰ for [in] the former³¹ [case] 'sin' is placed before 'trespass'³² while in the latter, 'trespass' is mentioned before 'sin'.³³

R. Levi further stated: Come and see [how] divine³⁴ disposition differs from that of mortals.³⁵ The Holy One, blessed be He, blessed Israel with twenty-two [letters]³⁶ and cursed them [only] with eight.³⁷ He blessed them with twenty-two, from If [ye walk] in My statutes³⁸ to [made you go] upright;³⁹ and He cursed them with eight, from And if ye shall reject My statutes⁴⁰ to And their soul abhorred My statutes.⁴¹ But Moses our teacher blessed them with eight and cursed them with twenty-two. He blessed them with eight,

1. I.e., overweight must be allowed to the customer.
2. Where it is not the usage to allow overweight.
3. [H] (from [H], 'to drag along'), surplus weight or measure which in certain localities shopkeepers allow to their customers.
4. This is explained in the Gemara, *infra*.
5. By removing what is above the level of its top.
6. Lit., 'these words', the law that the scale must be allowed to sink a handbreadth.
7. Deut. XXV, 15.

8. There was no need for Scripture to say 'just', when 'perfect' had already been mentioned. But it teaches that 'perfection' alone is not enough. One must also be 'just' by adding to the 'perfect weight' and, similarly, to the measure.
9. That the law of adding to weights is not merely Rabbinical, but Pentateuchal.
10. Requiring the giving of a certain amount of overweight by allowing the provision scale to sink a handbreadth, etc.
11. Wherever there exists such a practice, that clause teaches, the scale must be allowed to sink a handbreadth.
12. Deut. *ibid*.
13. Heb. *litra*, [G], the Roman libra.
14. V. *infra*.
15. V. *Glos*, s.v. Teko.
16. Cf. Yeb. 21a.
17. Lev. XVIII, 6ff.
18. Lit. 'this'.
19. Lev. XVIII, 27. V. following note.
20. Deut. XXV, 16. *El* and *Eleh*, [H], [H] have the same meaning, viz. 'these', but the additional *eh* at the end of the word is taken to imply additional punishment.
21. Ezek. XVII, 13.
22. Lev. *Ibid*. 29.
23. Since the expression of 'abomination' has been applied by the Pentateuchal text to both false measures and forbidden relatives, it might have been thought that the sin of the former is subject to *kareth* as the latter. Hence the need for the excluding word.
24. *Kareth*, [H] (root [H], to cut off'); premature death, at fifty (*kareth* of years); or sudden death (*kareth* of days).
25. Since it has been said that the punishment of *kareth* is inflicted only for the sin of marrying forbidden relatives and not for that of false measures.
26. Forbidden relatives.
27. False measures.
28. One cannot remedy the sin of robbery, by mere repentance. The return of the things robbed must precede it. In the case of false measures, it is practically impossible to find out all the members of the public that have been defrauded.
29. Lit., 'private' or 'individual'. One of the meanings of *yuhsj*, 'a person in private station', 'layman.' Opposite to one of rank or profession.
30. Lit., '(Most) High'.
31. Lit., 'this'.
32. The Biblical text relating to ordinary robbery reads, *If any one sin, and commit a trespass* (Lev. V, 21), thus implying that the mere intention or commencement of the crime, even though the trespass had not yet been committed, is already called 'sin'.

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33. In speaking of the robbery of holy things the Bible reads, *If any one commit a trespass and sin through error* (Lev. V, 15). Thus implying that one is not guilty of 'sin' until after he has committed the 'trespass'.
34. Lit., 'the Holy One, blessed be He'.
35. Lit.. 'flesh and blood'.
36. The passage of the blessings begins with the first, and finishes with the last letter of the alphabet. (Aleph ([H]) — Tav ([H]).)
37. The section of the curses begins with *Waw* ([H]) and finishes with *Mem* ([H]) (Sixth, to thirteenth letter of the alphabet = eight).
38. Lev. XXVI, 3. It begins with [H]
39. Ibid, v. 13, ends with [H]
40. Ibid, v. 15. beginning with [H]
41. Ibid. v. 43. ends with [H]

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from And it shall come to pass, if thou shalt hearken diligently,¹ to serve them,² and cursed them with twenty-two, from But it shall come to pass, if thou wilt not hearken,³ to And no man shall buy you.⁴

WHERE THE USAGE IS TO MEASURE WITH A ... BIG MEASURE, etc.

(Mnemonic: *Neither exact weight nor heaped up with market officers and with a pound three and ten* <SMALLNEFESH< small>, weights, a thick strike, you shall not do, he shall not do.)⁵

Our Rabbis taught: Whence [may it be inferred] that [the measure] must not be levelled⁶ where the practice is to heap it up, and [that] it must not be heaped up⁷ where the practice is to level it? — For it has been definitely stated, A perfect ... measure.⁸ And whence [may it be inferred] that we are not to listen to one who Says, 'I will level where the practice is to heap up, and reduce the price' or 'I will heap up where they level, and raise the price'? — For it has been definitely stated, A perfect and just measure thou shalt have.⁸

Our Rabbis taught: Whence [is it to be inferred] that the exact weight must not be given where the practice is to allow

overweight, and that overweight must not be allowed where the practice is to give the exact weight? — For it has been definitely stated, *A perfect weight.*² And whence [may it be inferred] that we are not to listen to one who says, 'I will give the exact weight where the practice is to allow overweight, and reduce the price', or 'I will allow overweight where they give the exact weight, and raise the price'? — For it has been definitely stated, *A perfect and just weight.* Rab Judah of Sura said:¹⁰ *Thou shalt not have* [anything]¹¹ *in thy house;*¹² why? — Because of [thy] *diverse measures.*⁷ *Thou shalt not have*¹³ [anything] *in thy bag;*¹⁴ why? — Because of [thy] *diverse weights.*¹³ But [if thou keep] *a perfect and just weight, thou shalt have*¹⁵ [possessions]; [if] *a perfect and just measure, thou shalt have* [wealth].

Our Rabbis taught: *Thou shalt have,*¹⁵ teaches that market officers¹⁶ are appointed to [superintend] measures, but no such officers are appointed for [superintending] prices.¹⁷ Those of the Nasi's¹⁸ House appointed market officers to [superintend] both measures and prices. [Thereupon] said Samuel to Karna: Go forth and teach them [the law that] market officers are appointed to [superintend] measures, but no such officers are appointed to [superintend] prices. [But Karna] went forth [and] gave them the [following] exposition: Market officers are appointed to [superintend] both measures and prices. He said unto him: Is your name Karna? Let a horn¹⁹ grow out of your eye. A horn,²⁰ [consequently] grew out of his eye. But whose opinion did he follow? — That voiced by Rami b. Hama in the name of R. Isaac that market officers are appointed to [superintend] both measures and prices, on account of the impostors.

Our Rabbis taught: If one asked him for a pound,²¹ a pound must be weighed. [If] half a pound, half a pound must be weighed. A quarter of a pound, a quarter of a pound must be weighed. What does this teach us? —

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That weights must be provided in these [three] denominations.²²

Our Rabbis taught: If he ordered from him three quarters of a pound, he shall not tell him, 'Weigh out for me the three quarters of the pound one by one'.²³ But a pound weight is laid [on the scale] against a quarter of a pound weight with the meat [on the other scale].

Our Rabbis taught: If he ordered from him ten pounds, he shall not say, 'Weigh out for me each [pound] separately and allow overweight [for each].' But all are weighed together and one overweight is allowed for all of them.

Our Rabbis taught: The *nefesh*²⁴ of a balance²⁵ must be suspended in the air three handbreadths [removed from the roof from which the balance hangs].²⁶ And [the scales must be] three handbreadths above the ground.²⁷ The beam²⁸ and the ropes²⁹ [must contain a total length of] twelve³⁰ handbreadths.³¹ [The balances] of wool-dealers and glass-ware dealers [must] be suspended in the air two handbreadths [from the ceiling] and two handbreadths above the ground. Their beams and ropes [must contain a total of] nine handbreadths [in length]. [The balance] of a shopkeeper and of a producer³² [must] be suspended in the air one handbreadth [from above], and one handbreadth above the ground. The beam and ropes [must be of a total length of] six handbreadths. A gold balance [must] be suspended in the air three fingers from above, and three fingers above the ground. [The length of] its beam and cords I do not know. But what [kind of balance is] that [which has been mentioned] first?³³ —

1. Deut. XXVIII, 1, begins with *Waw*, ([H]) [H]
2. Ibid. v. 14, ends with *Mem*, ([H]) [H] (*Waw* — *Mem*, eight letters).
3. Ibid. v. 15, begins with *Waw*. [H] V. following note.
4. Ibid. v. 68. ends with *He*, [H] The section beginning with the sixth letter of the alphabet

(*Waw* [H]) and ending with the fifth (*He*, [H]) includes, therefore, *all* the alphabet.

5. The mnemonic consists of key words and phrases in the teachings of the Rabbis that follow.
6. Even with the consent of the buyer.
7. Even with the desire of the seller.
8. Deut. XXV, 25. By deviating from the usual practice the buyer, or the seller, may be the means of defrauding, or misleading others.
9. Ibid.
10. Expounded the following verse.
11. Anything of value; i.e., thou wilt be poor.
12. Ibid. v. 14.
13. Ibid. v. 13.
14. I.e., purse.
15. Ibid. v. 15.
16. Heb. [H] cf. [G], 'market commissioner.
17. In order to allow for free and unfettered competition.
18. [H] 'Prince'. Here R. Judah II.
19. [H]
20. I.e., a sty (Aruch).
21. V. [Glos.](#)
22. These denominations are essential. Any other weights have to be computed from these.
23. As it is impossible to give the exact weight, the seller would be losing the overweight three times, once with each quarter.
24. [H] the hollow handle in which the tongue of the balance rests.
25. Big scales, for the weighing of heavy things such as iron and copper, which are suspended from the roof of the house.
26. So that the beam may have sufficient space in which to move without knocking against the ceiling and impeding the free movement of the scales.
27. To allow for the free movement of the scales and to prevent their knocking against the ground and their consequent re-bounding, which would interfere with proper weighing.
28. To each end of which the ropes are fastened.
29. To which the scales are attached.
30. The beam's length must be four handbreadths and that of the two ropes four handbreadths each; total twelve.
31. If the length of these were less, the scales would not easily move, and small variations in weights could not be detected.
32. V. p. 361. n. 5.
33. Since the balances of wool and glass-ware dealers, shopkeepers, producers, and goldsmiths have been specifically mentioned, what kind of balance, then, is the one mentioned first?

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Baba Bathra 89b

R. Papa said: [A balance used] for heavy pieces of metal.¹

R. Mani b. Patish said: The same [restrictions] that have been said [to apply to balances] with reference to their disqualification [for commercial uses] have also been said [to apply to them] with reference to their [liability to] Levitical defilement.² What does he come to teach us? [Surely] this has [already] been taught [in the following]:³ The [length of the] cords⁴ of a shopkeeper's, and of producers' balances [which may be subjected to the laws of Levitical defilement, must be] one handbreadth! [And, since this restriction⁵ has specifically been applied to one kind of balance, are not the other kinds of balance to be implied?]⁶ — [The statement of R. Mani] is required [on account of the sizes of] the beam and the cords, which have not been mentioned [there].

Our Rabbis taught: Weights must not be made either of tin or of lead or of gasitron⁷ or of any other kinds of metal,⁸ but they must be made of stone or of glass.

Our Rabbis taught: The strike must not be made of a gourd because it is light,⁹ nor of metal because it is heavy,¹⁰ but it must be made of olive, nut, sycamore, or box wood.

Our Rabbis taught: The strike may not be made thick¹¹ on one side and thin on the other.¹² One may not strike with a single quick movement, for striking in this manner causes loss¹³ to the seller and benefits¹⁴ the buyer. Nor may one strike very slowly because [this] is disadvantageous¹³ to the buyer and beneficial¹⁴ for the seller. Concerning all these [sharp practices of traders], R. Johanan b. Zakkai said:¹⁵ Woe to me if I should speak [of them]; woe to me if I should not speak. Should I speak [of them], knaves might learn [them]; and should I not speak, the knaves might say, 'the scholars are unacquainted with our practices' [and will

deceive us still more]. The question was raised: Did he [R. Johanan] speak [of these sharp practices] or not? R. Samuel son of R. Isaac said: He did speak [of them]; and in so doing¹⁶ [he based his decision] on¹⁷ the following Scriptural text: *For the ways of the Lord are right, and the just do walk in them; but transgressors do stumble therein.*¹⁸

Our Rabbis taught:¹⁹ [It is written], *You shall do no unrighteousness in judgments in meteyard, in weight. or in measure.*²⁰ *In meteyard* relates to the measuring of ground; one should not measure out for one person in the hot²¹ season and for another in the rainy²² season. In weight, [means] that one shall not keep his weights in salt.²³ In measure, that one shall not cause [liquids] to froth.²⁴ And by inference from minor to major, [the following may be deduced]. If the Torah cared [for proper measure in] a *mesurah*²⁵ which is one thirty-sixth of a *log*. how much more [should one be careful to give proper measure in the case] of a *hin*.²⁶ half a *hin*, a third of a *hin*, a quarter of a *hin*, a *log*,²⁷ half a *log*, a quarter [of a *log*], a *toman*,²⁸ half a *toman* and an '*ukla*!²⁹

Rab Judah said in the name of Rab: A person is forbidden to keep³⁰ in his house a measure [which is either] smaller or larger [than the nominal capacity] even if [it is used as a] urine tub. R. Papa said: This applies only in [the case of] a place where [measures] are not [officially] marked,³¹ but where they are [officially] marked [they may be used; for] if [the buyer] sees no mark he does not accept [them] — And even where they are not marked, this has been said only in the case where they are not supervised,³² but if they are supervised³² it does not matter. But this is not [right]; for [the buyer] may sometimes happen [to call] at twilight³³ and accidentally accept [the faulty measure]. The same, indeed, has been taught [in the following]: A person must not keep in his house a measure [which is either] smaller or larger [than the nominal capacity], even if [it is used as a] urine tub. But a person may make a *se'ah*,³⁴ a

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tarkab,³⁵ half a tarkab, a kab,³⁶ half a kab, a quarter [of a kab], a toman,³⁷ half a toman

1. Broken pieces of iron, copper and the like, which sometimes weigh as much as a hundred pounds. The size of the beams, ropes, etc. are determined by the weight of the articles for which they are used.
2. I.e., scales which are prohibited for commercial use cannot be regarded as 'vessels' subject to the laws of Levitical defilement.
3. Kel. XXIX, 5.
4. The beam of a balance is suspended by a cord, corresponding to nefesh, supra.
5. Requiring a distance of a handbreadth from above in the case of shopkeepers' and producers' balances.
6. What, then, is the purpose of R. Mani's statement?
7. A fusion of different metals. Others compare the word with [G], tin; perhaps of a special kind.
8. Because the friction caused by constant use reduces their weight.
9. And does not strike well, causing loss to the seller.
10. And penetrates too deeply, causing loss to the buyer.
11. Because a thick one cannot penetrate so well as a thin one. Cf. the following note.
12. Because one might use the thin side when selling, and the thick side when buying.
13. Lit., 'bad'.
14. Lit., 'good'.
15. Kelim XVII, 16.
16. Lit., 'he said it'.
17. Lit., 'from'.
18. Hos. XIV, 10.
19. B.M. 61b.
20. Lev. XIX, 35.
21. When the measuring rope is dry and unyielding.
22. When the rope is moist and capable of extension.
23. Salt reduces the weight. According to others, salt increases weight and the warning is addressed to the buyer.
24. By pouring rapidly from a certain height, foam is generated and, consequently, less liquid enters the measure.
25. [H] the term used for 'measure' in the verse from Lev. XIX, 35 that is here discussed.
26. Hin = twelve log.
27. Log = volume of liquid that fills the space occupied by six eggs.
28. Toman = half a log, or one eighth of a kab. V. BaH, a.l.
29. Ukla is explained in the Gemara.
30. Even if not intended to be used for measuring purposes; since others may use it as a measure, by mistake.

31. By the seal of the recognized authority.
32. By duly appointed officers, [H] Others, 'marked by means of incisions'.
33. When everyone is in a hurry.
34. Se'ah = two Tarkab or six Kab.
35. Tarkab = three kab.
36. Kab = four log.
37. Toman, v. p. 369, n. 10.

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and an 'Ukla. — How much is an 'ukla? — A fifth of a quarter [of a kab]. In the case of liquid measures one may make a *hin*,¹ half a *hin*, a third of a *hin*, a quarter of a *hin*, a *log*,² half a *log*, a quarter [of a *log*], an eighth [of a *log*], and an eighth of an eighth [of a *log*] which is a kortob.³ [Why should] one [not be allowed] also to make a two-*kab* [measure]?⁴ — It might be mistaken⁵ for a *tarkab*.⁶ This proves that people may err by a third;² [but] if so, one *kab* [measure] also should not be made, since it might be mistaken⁵ for half a *tarkab*?⁸ — But this is the reason why a two-*kab* [measure] must not be made; it might be mistaken⁵ for half a *tarkab*. This proves that one may err by a quarter;² [but] if so, half a toman and an ukla [measures, also,] should not be made?¹⁰ — R. Papa replied: People are familiar with small measures [and are not likely to mistake them for one another]. Should not one be forbidden to make a third of a *hin* [and] a quarter of a *hin*?¹¹ — Since these [measures] were [used] in the Temple, the Rabbis have not enacted any precautionary prohibitions against their use. Let precautionary prohibitions be adopted in the case of the Temple [itself]? — Priests are careful.¹²

Samuel said:¹³ Measures must not be increased [even when all the townspeople have agreed to alter the standards of the measures] by more than a sixth, nor [even by general consent] may [the value of] a coin [be increased by] more than a sixth. And any profits on sales must not exceed one sixth. What is the reason why measures must not be increased by more than a sixth? If it is said, because market prices will rise [above due

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proportions],¹⁴ [then for the same reason one should] not [be allowed to increase] even [by] a sixth! But if [it be said], because of the overcharge,¹⁵ so that the entire purchase should not have to be cancelled;¹⁶ surely, Raba said: One may withdraw [from any transaction in which] anything [had been sold] by measure, weight or number, even [if the overcharge was] less than [the legal limit of] overcharge.¹⁷ But [if it be said that the reason why no more than a sixth may be added to weights is] that the dealer may not incur any loss;¹⁸ [has this law, then, been made, it may be retorted, on the assumption that a dealer] must incur no loss [but also] requires no profit? 'Buy and sell [at no profit] and be called a merchant!' — But, said R. Hisda: Samuel found a Scriptural text and expounded it. [It is written], *And the shekel shall be twenty gerahs; twenty shekels, five and twenty shekels, ten and five shekels, shall be your maneh.*¹⁹

1. *Hin*, (v. *loc. cit.*, n. 8) = a *tarkab*.
2. *Log*, v. *loc. cit.* n. 9.
3. Kortob = Sixty-fourth of a *log*.
4. A third of a *se'ah*, as one is allowed to make a third of a *hin*.
5. Lit., 'changed'.
6. Owing to the comparatively small difference between them. ($3 - 2 = 1 \text{ kab}$.)
7. The difference between a *tarkab* and a two *kab*, being one *kab* = a third of a *tarkab*.
8. Half a *tarkab*, equals one and a half *kab*. The difference between one and a half, and one *kab* = half a *kab* = a third of half a *tarkab*.
9. The difference between half a *tarkab* (= one and a half *kab*), and two *kab*, equals half a *kab* = a quarter of two *kab*.
10. The difference between half a toman (=one sixteenth *kab*) and an '*ukla*' (=one twentieth *kab*) is only one eightieth of a *kab* which is a fifth of the half toman, less than a quarter, so that these two measures could, accordingly, certainly be mistaken for one another.
11. Since the difference between these two (a third — a quarter) is a twelfth of a *hin*, which is a quarter of the larger measure ($1/3 \text{ hin}$).
12. No precautions, therefore, are necessary in their case.
13. Men. 77a.
14. Traders arriving from other places, finding that the standard of the weights has risen, will raise prices in a still higher proportion.

15. An overcharge of less than a sixth does not entitle any of the parties to cancel the sale. Only the overcharge is to be returned.
16. If the increase in the weights will be more than a sixth, the seller, who did not know of this, and accepted the old price, would be losing more than a sixth and would, therefore, be entitled to cancel the entire sale.
17. Since, in such cases, one may withdraw even when the overcharge was less than a sixth, nothing is gained by limiting the permitted increase in weights to a sixth.
18. A dealer may, in accordance with what has been said before, make a profit of one sixth. When weights are increased by a sixth and a dealer sells at the old price, he does not lose thereby any of his principal, since what he loses by taking the old price and giving the increased weight, he makes up by the profit he gains on selling at a price which is higher by a sixth than his cost price.
19. Ezek. XLV, 12.

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Was the *maneh* two hundred and forty [*denarii*].¹ But three things are to be inferred from this. It is to be inferred that the holy *maneh* was doubled;² it is to be inferred that the [standard of] measures³ may be increased,⁴ though that increase must not be more than a sixth;⁵ and it is to be inferred that the sixth is to be exclusive.⁶

R. Papa b. Samuel introduced a measure of three kefiza.⁷ They said unto him: Did not Samuel say that measures must not be increased by more than a sixth?⁸ — He said unto them: I have introduced a new measure.⁹ He sent it to Pumbeditha, but they did not adopt it. He sent it to Papunia and they adopted it and named it Roz-Papa.¹⁰

(Mnemonic Sign: *Hoarders of fruit must not hoard, carry out, profit, twice in eggs. Prayers are offered and not caused to go out.*)¹¹

Our Rabbis taught: Concerning those who hoard fruit,¹² lend money on usury, reduce the measures and raise prices, Scripture says, *Saying: 'When will the new moon be gone, that we may sell grain? And the Sabbath, that we may set forth corn? Making the ephah small,*

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and the shekel great, and falsifying the balances of deceit.¹³ And [concerning these] it is [further] written in Scripture, The Lord hath sworn by the pride of Jacob: Surely I will never forget any of their works.¹⁴ Who, for instance, may be classed among fruit hoarders?¹⁵ — R. Johanan said: [A person], for instance, like Shabbethai the fruit hoarder.¹⁶ Samuel's father used to sell fruit during the [prevalence of the] early [market] price[s]¹⁷ at the early price.¹⁸ Samuel his son retained the fruit and sold them, when the late [market] prices [were current], at the early [market] price.¹⁹ Word was sent from there:²⁰ 'The father's [action] is better than the son's.' What is the reason? — Prices that have been eased remain so.²¹

Rab said: A person may store his own *kab* [of produce].²² The same has also been taught [elsewhere]:²³ Fruit [and] things which are life's necessities as, for instance, wines, oils and the various kinds of flour, must not be hoarded; but spices, cumin and pepper may. The prohibitions mentioned apply [only] to one buying from the market, but [in the case of him] who brings in [for storage] of his own, [this is] permitted. In Palestine²⁴ one may store fruit for [the following] three years: The eve of the Sabbatical year,²⁵ the Sabbatical year, and the conclusion of the Sabbatical year.²⁶ In years of famine one must not hoard even a *kab* of carobs,²⁷ because thereby one brings a curse on the market prices. R. Jose b. Hanina said to his attendant Puga: Go, store away for me fruit for [the following] three years: The eve of the Sabbatical year,²⁸ and the Sabbatical year, and the conclusion of the Sabbatical year.²⁹

Our Rabbis taught:³⁰ One must not carry out of Palestine³¹ fruit [and] things which are life's necessities such as, for instance, wines, oils and the various kinds of flour. R. Judah b. Bathyra permits [it] in [the case of] wine, because [thereby] one diminishes levity. And as it is not permitted to carry away out of the land [of Palestine] into a foreign country, so it

is not permitted to carry away out of Palestine²⁹ to Syria.³² And Rabbi permits this

1. The *maneh*, according to Ezekiel, was twenty + twenty-five + ten + five *shekels* = sixty *shekels* = two hundred and forty *denarii* (one *shekel* = four *denarii*). But elsewhere it is stated that the *maneh* contains only twenty-five *shekels* or *sela'im* = only a hundred. (Cf. Keth. 10a).
2. The ordinary *maneh* contained twenty-five *shekels*. Having added a sixth *milbar*, [H] (from outside the quantity) = a fifth *milgaw* [H] (from inside), the value of the *maneh* rose to thirty *shekels*. The holy *shekel*, being doubled, is, therefore, worth sixty *shekels* or two hundred and forty *denarii*.
3. I.e. measures and coins.
4. As the *maneh* had been increased from twenty-five to thirty *shekels*, (in the case of the ordinary *shekel*) and from fifty to sixty *shekels* (in the case of the holy *shekel*).
5. As the increase of the *maneh* was by no more than a sixth.
6. Lit. 'from the outside'. The quantity is divided into five parts and a sixth is added 'from the outside'. A sixth *milbar* = a fifth *milgaw*. Cf. n. 1.
7. [H] [G], Persian *Kamij*, a measure containing three *log*. Measure of three *kefiza* nine *log*. Others hold that the *kefiza* contained one *log* only. and R. Papa's new measure contained, accordingly, three *log*.
8. A nine-*log* measure is bigger than half a *tarkab* (6 *log*) by a third *milbar* (a half *milgaw*). According to the second statement in the previous note, the comparison is between the half-*kab* (two *log*) and the *kefiza* (three 10a), the difference between which is also a third *milbar*.
9. Not an enlargement of an old one. No mistaken charges would consequently take place.
10. [[H] or [H] *Riz* (Obermeyer. *op. cit.* p. 242. n. 2), a Persian measure, accordingly, Papa's measure.]
11. The mnemonic consists of key-words or phrases in the teachings of the Rabbis that follow.
12. To sell it later when prices have risen. 'To corner'.
13. Amos VIII, 5.
14. Ibid, v. 7.
15. Lit., 'fruit hoarders like whom?'
16. Who accumulated fruit and sold them to the poor when prices rose.
17. The prices prevailing immediately after the harvest.
18. I.e., cheap, so that others also might be induced to sell, and thus keep prices down throughout the year.
19. Thus enabling the poor to purchase fruit cheaply when prices were high and beyond their means.

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20. I.e., Palestine.
21. If prices are kept down from the very beginning (as Samuel's father helped to do) they remain at a low level throughout the year. If, however, they have once been forced up, some cheaper selling later (as Samuel did) will not easily bring them down.
22. The prohibition is only against hoarding for trading purposes.
23. Tosef. A.Z. V.
24. Lit., 'the land of Israel'.
25. The sixth year of the Septennial period, when produce has to be stored away for the following (Sabbatical) year when no cultivation of the land is allowed, and for the year following it when there will be no yield of produce till its conclusion.
26. I.e., the year beginning with the conclusion of the Sabbatical year. viz. the first year of the next Septennial period. V. previous note.
27. I.e., even the cheapest fruit.
28. V. p. 373, n. 13.
29. V. *loc. cit.*, n. 14.
30. Tosef. A.Z. *ibid.*
31. V. p. 373, n. 12.
32. Though it had been included in the land of Israel in the time of David.

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from one province [on the border of Palestine and Syria] to [an adjacent] province [in Syria].¹

Our Rabbis taught:² In Palestine it is not permitted to make a profit [as middleman]³ in things which are life's necessities, such as, for instance, wines, oils and the various kinds of flour. It has been said about R. Eleazar b. Azariah that he used to make a profit in wine and oil. In [the case of] wine he held the same opinion as R. Judah;⁴ in [the case of] oil? — In the place of R. Eleazar b. Azariah oil was plentiful.⁵

Our Rabbis taught: It is not permitted to make a profit in eggs twice. [As to the meaning of 'twice',] Mari b. Mari said: Rab and Samuel are in dispute. One says: Two for one.⁶ And the other says: [Selling] by a dealer to a dealer.⁷

Our Rabbis taught: Public prayers⁸ are offered for goods [which have become

dangerously² cheap], even on the Sabbath. R. Johanan said: For instance linen garments in Babylon and wine and oil in Palestine. R. Joseph said: This [is only so] when [these have become so] cheap that ten are sold at [the price of] six.¹⁰

Our Rabbis taught:¹¹ It is not permitted to go forth from Palestine¹² to a foreign country unless two se'ahs¹³ are sold for one *se'la'*. R. Simeon said: [This is permitted only] when one cannot find [anything] to buy, but when one is able [to find something] to buy. even if a *se'ah*¹³ cost a *se'la'* one must not depart. And so said R. Simeon b. Yohai: Elimelech, Mahlon and Chilion were [of the] great men of their generation, and they were [also] leaders of their generation. Why, then, were they punished? Because they left Palestine for a foreign country; for it is written, *And all the city was astir concerning them, and the women said: 'Is this Naomi?'* What [is meant by] 'Is this Naomi?' — R. Isaac said: They said, 'Did you see what befell Naomi who left Palestine for a foreign country?'

R. Isaac further stated: On the very day, when Ruth the Moabitess came to Palestine, died the wife of Boaz. This is why people say, 'Before a person dies, the master of his house is appointed'.¹⁴

Rabbah, son of R. Huna, said in the name of Rab: Ibzan¹⁵ is Boaz. What does he come to teach us [by this statement]? — The same¹⁶ that Rabbah son of R. Huna [taught elsewhere]. For Rabbah, son of R. Huna, said in the name of Rab: Boaz made for his sons a hundred and twenty wedding feasts, for it is said, And he [Ibzan]¹⁷ had thirty sons, and thirty daughters he sent abroad, and thirty daughters he brought in from abroad for his sons; and he judged Israel seven years;¹⁸ and in the case of everyone [of these] he made two wedding feasts, one in the house of the father and one in the house of the father-in-law. To none of them did he invite Manoah,¹⁹ [for] he said, 'Whereby will the barren mule repay me?'²⁰ All these died in his lifetime. It is [in relation to such a case as] this that people say:

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'Of what use to you are sixty; the sixty that you beget for your lifetime?²¹ [Marry] again²² and beget [one] brighter²³ than sixty.'²⁴

(Mnemonic sign: *King Abraham, the ten years when he passed away he was exalted alone.*)²⁵

R. Hanan b. Raba said in the name of Rab: Elimelech and Salmon²⁶ and such a one²⁷ and the father of Naomi all were the sons of Nahshon, the son of Amminadab.²⁸ What does he come to teach us [by this statement]? — That even the merit of one's ancestors is of no avail²⁹ when one leaves the land [of Palestine] for a foreign country.³⁰

R. Hanan b. Raba further stated in the name of Rab: [The name of] the mother of Abraham [was] Amathlai the daughter of Karnebo;³¹ [the name of] the mother of Haman was Amathlai, the daughter of 'Orabti;³² and your mnemonic [may be], 'unclean [to] unclean, clean [to] clean'.³³ The mother of David was named Nizbeth the daughter of Adael. The mother of Samson [was named] Zleponith, and his sister, Nashyan. In what [respect] do [these names] matter?³⁴ — In respect of a reply to the heretics.³⁵

R. Hanan b. Raba further stated in the name of Rab: Abraham our father was imprisoned for ten years. 'Three in Kutha,³⁶ and seven in Kardu. But R. Dimi of Nehardea taught [in the reverse [order]. R. Hisda said: The small side of Kutha³⁷ is Ur of the Chaldees.³⁸

R. Hanan b. Raba further said in the name of Rab: On the day when Abraham our father passed away from the world all the great ones of the nations of the world, stood in a line³⁹ and said: Woe to the world that has lost

1. [H] [G], 'provincial government', 'province'.
2. Tosef. A.Z. *ibid.*
3. The producer must sell direct to the consumer.
4. R. Judah b. Bathyra who allowed profiting in wine because by raising its price, consumption and consequent levity are diminished.
5. And there was no fear that prices would rise in consequence.

6. Selling for two *shekels*, for instance, that which was bought for one.
7. 'Twice' means 'selling to two dealers'. This is forbidden because a double profit is thus made, and prices are raised.
8. Lit., 'to sound the alarm', by the institution of intercessory prayers with or without the blowing of the *shofar*.
9. The falling prices endanger the existence of the trading section of the community.
10. I.e., a drop of 40%.
11. Tosef. *ibid.*
12. Certain precepts can be performed in Palestine only. One should not, therefore, depart from it unless there is no other alternative.
13. *Se'ah* of produce.
14. Ruth married Boaz. V. Ruth IV, 13.
15. One of the judges of Israel. Cf. Judg. XII, 8.
16. V. p. 376, n. 5.
17. I.e., Boaz.
18. *Ibid.* 9.
19. Cf. *Ibid.* XIII, 2ff.
20. Manoah, before the birth of Samson, had no children to whose wedding feasts he could extend invitations. Cf. *Ibid.*
21. I.e., children that do not survive you.
22. As Boaz (Ibzan) married Ruth in his later life. Cf. p. 375, n. 6.
23. David, King of Israel, who descended from Boaz and Ruth. Cf. Ruth IV, 21-22.
24. This statement in the name of Rab, which can only be intelligible if it is assumed that Boaz and Ibzan are one and the same person, must be read in conjunction with the previous one, also made in the name of Rab.
25. The mnemonic consists of key words in the following paragraphs.
26. Cf. Ruth IV, 20.
27. [H] *Peloni Almoni* (Ruth IV, 1), the unnamed kinsman of Naomi.
28. Cf. Ex. VI, 23; Num. X, 14.
29. As evidenced by the tragic end of Elimelech and his sons.
30. [H] 'outside the land'. V. p. 375, n. 4.
31. From Kar, [H] 'lamb', [H] ('Mount of) Nebo'.
32. From Oreb [H] 'raven'.
33. Haman's grandmother was named after an unclean animal (raven, cf. Lev. XI, 15. Deut. XIV, 14); but Abraham's grandmother bore the name of a clean animal. (V. n. 12, *supra.*)
34. Lit. 'is the outcome'.
35. *Minim* (sing. [H]), applied especially to Jew-Christians. Should the *minim* ask why the names of the mothers of these important figures are not given in the Bible narrative, they can be answered that these had been handed down by oral tradition. [V. Herford, Christianity, p. 326.]
36. V. II Kings, XVII, 24.

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37. [There were two Kuthas situated on a Euphrates' Canal — The great and the little Kutha. V. Obermeyer *op. cit.* 279.]
38. Abraham's birthplace. Gen. XI, 31.
39. It was the custom for those who came to offer comfort to mourners to stand in a line.

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its leader and woe to the ship that has lost its pilot.¹

*And thou art exalted as head above all,*² R. Hanan b. Raba said in the name of Rab: Even a superintendent of a well³ is appointed in heaven.⁴

R. Hiyya b. Abin said in the name of R. Joshua b. Korhah: God forbid [that Elimelech and his family should be condemned for leaving Palestine]; for had they found even only bran they would not have left [the country]. Why then was punishment inflicted upon them? — Because they should have begged mercy⁵ for their generation, and they did not do so; for it is said, *When thou criest, let them that thou hast gathered deliver thee.*⁶

Rabbah b. Bar Hana said in the name of R. Johanan: [This]⁷ has only been taught [in the case when] money is cheap and fruit is dear, but [when] money is dear, even if four *se'ah* cost [only] a sela, it is permitted to leave [the country].

(Mnemonic Sign: *Sela, Workman, carob, the lads say.*)⁸

For⁹ R. Johanan said:¹⁰ I remember [the time] when four *se'ah* cost a sela and there were numerous deaths from starvation¹¹ in Tiberias, for want of an isar¹² [wherewith to buy bread].

R. Johanan further stated: I remember [the time] when workmen would not accept work on the east side of the town where workmen died from the odor of the bread.¹³

R. Johanan further stated: I remember [the time] when a child would break a carob pod

and a line of honey would run down over both his arms. And R. Eleazar said: I remember [a time] when a raven would take [a piece of] flesh, and a line of oil would rundown from the top of the wall to the ground.

R. Johanan further stated: I remember [the time] when lads and lasses of sixteen and seventeen years of age took walks [together] in the open air and did not sin.

R. Johanan further stated: I remember [the time] when it has been said in the house of study: 'He that agrees with them¹⁴ falls into their hands; [as to him] who trusts in them, [whatever is] his [becomes] theirs'.¹⁵

[Why] has it been written, *Mahlon and Chilion*¹⁶ [in one place], and *Joash and Saraph*¹⁷ in another?¹⁸ — Rab and Samuel [explained]. One said: Their names were Mahlon and Chilion, but they were called Joash and Saraph [for this reason]: Joash,¹⁹ because they lost hope in the [messianic] redemption [of Israel;] [and] Saraph,²⁰ because they were condemned by the Omnipresent to be burned. And the other says: Their names were Joash and Saraph, but they were called Mahlon and Chilion [for this reason]: Mahlon,²¹ because they profaned their bodies; and Chilion,²² because they were condemned by the Omnipresent to destruction.

There is [a Baraitha] taught in agreement with him who said that their names were Mahlon and Chilion. For it has been taught: What is [the interpretation] of the Biblical text, And Jokim, and the men of Cozeba, and Joash and Saraph, who had dominion in Moab, and Jashubilehem; and the things are ancient?²³ — And Jokim, is Joshua who kept²⁴ his oath to the men of Gibeon.²⁵ And the men of Cozeba, these are the men of Gibeon who lied to Joshua.²⁶ And Joash and Seraph, these are Mahlon and Chilion. And why were they called Joash and Saraph? — Joash, because they lost hope²⁷ in the [Messianic] redemption [of Israel;] Saraph, because they were condemned by the

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Omnipresent to be burned.²⁸ Who had dominion in Moab, [means], they who married wives of the women of Moab. And Jashubilehem, refers to Ruth the Moabitess who returned²⁹ and kept fast by Bethlehem³⁰ of Judah. And the things are ancient, [means] these things were said by the Ancient of days.³¹

*These were the potters and those that dwelt among plantations and hedges; there they dwelt occupied in the king's work.*³² These were the potters, refers to the sons of Jonadab the son of Rechab who kept³³ the oath of their father.³⁴ Those that dwelt among the plantations, has reference to Solomon who in his kingdom was like a [constantly flourishing] plant. And hedges, refers to the Sanhedrin³⁵ who fenced in the breaches in Israel. There they dwelt occupied in the king's work, refers to Ruth the Moabitess who saw the kingdom of Solomon, the grandson of her grandson; for it is said: And [Solomon] caused a throne to be set up for the king's mother,³⁶ and R. Eleazar said, 'to the mother of the dynasty'.³⁷

Our Rabbis taught: [It is written], *And ye shall eat of the produce, the old store;*³⁸ [that is] without [the necessity for] a preservative.³⁹ What [is the meaning of] 'without salminton'? — R. Nahman said: Without the grain worm. And R. Shesheth said: Without blast. A Baraitha has been taught in agreement with [the interpretation] of R. Shesheth, [and] a Baraitha has been taught in agreement with that of R. Nahman. In agreement with that of R. Nahman it has been taught: [It is written], *and ye shall eat ... the old store;* one might [think that] Israel will be looking out for the new [produce] because the old⁴⁰ had been destroyed [by the grain worm], therefore it is expressly said, *until her produce came in*, that is, until the produce will come [naturally] of itself.⁴¹ In agreement with that of R. Shesheth, it has been taught: [It is written], *And ye shall eat of the produce of the old store;* one might [think that] Israel will be looking out for the new [produce] because the old was spoilt⁴² [by

the blast], therefore it is expressly said, *until her produce come in*, [that is] until the produce will come in the natural course.

Our Rabbis taught: [It is written], *And ye shall eat old store long kept;*⁴³ [this] teaches that the older [the produce] the better [it would be].⁴⁴ [From this] one infers only [concerning] things which are commonly stored away,⁴⁵ whence [may one also infer] concerning things which are not commonly stored away?⁴⁵ — It is explicitly stated: *Old store long kept,*⁴⁶ [which implies] 'in all cases — [It is written]: *And ye shall bring forth the old from before the new;*⁴⁷ [this] teaches that the storehouses would be full of old [produce]. and the threshing-floors of new, and Israel would say: 'How shall we take out one before the other!'⁴⁸ R. Papa said: All things are better [when] old, except dates, beer and small fishes.⁴⁹

1. [G], 'steersman', pilot'.
2. I Chron. XXIX, 11.
3. I.e., a minor headship.
4. This is inferred from the text which in Heb. reads, [H] and which may be rendered as in E.V., *supra*, as well as, 'through thee is appointed he who is raised as chief over anything'.
5. That the famine (cf. Ruth I, 1) should cease.
6. Isa. LVII, 13. By praying for the delivery of others, one is himself delivered.
7. That one must not leave Palestine.
8. The mnemonic is an aid to the recollection of the statements of R. Johanan that follow.
9. Reason for statement in previous para.
10. Ta'an. 19b.
11. Lit., 'swollen from hunger'.
12. Small coin, v. [Glos.](#)
13. This probably means that people were so starved that the odor of the bread baked in the east, and presumably wealthier part of the town, had a fatal effect upon them.
14. The heathens.
15. At an unguarded moment they rob him of all he has.
16. Ruth I, 2.
17. I Chron. IV, 22.
18. The assumption here is that they are the same two persons.
19. [H] is taken to be derived from the root [H] 'to give up hope'.
20. [H] from [H] 'to burn'.
21. [H] is derived from the root [H] 'profane'.
22. [H] from [H] 'to destroy'; [H] 'destruction'.

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23. I Chron. IV, 22.
24. [H] same root as that of [H] 'and Jokim'.
25. Cf. Josh. IX. 15, 26.
26. Cf. *ibid.* vv. 4ff. Lied, [H] from the same root as [H] 'Cozeba'.
27. V. p. 378, n. 9.
28. V. p. 378, n. 10.
29. [H] from the same root as [H] and *Jashubi*'.
30. [H] the second word being the same as the second word in [H] 'and *Jashubilehem*'.
31. Cf. Dan. VII, 9, 22. The series of events and circumstances, which commenced with the departure of Naomi's family from Palestine and terminated with the birth of David, was pre-ordained by God.
32. I Chron. IV, 23.
33. [H] taken to be from a root similar to that of [H] 'the potters'.
34. Cf. Jer. XXXV, 6ff.
35. [G], the supreme council and highest court of justice in Jewry in Talmudic times.
36. I Kings II, 19.
37. I.e., Ruth the mother of the dynasty of David. Cf. Ruth, IV, 10, 21-22.
38. Lev. XXV, 22.
39. Heb. *Salminton*, cf. *salsamintum*.
40. Which had been promised to Israel in the previous section of the verse to last until, but not into, the new harvesting season.
41. There will be no need to have recourse to an early and forced harvesting.
42. 'spoil' not 'destroyed'. The grain worm destroys, the blast only spoils the crops.
43. Lev. XXVI, 10.
44. Lit., 'whatever is older than the other, is better'.
45. Lit., 'made old'.
46. [H] 'old, very old'. The repetition indicates that any old things, even though not usually stored away, are included.
47. *Ibid.*
48. 'Ye shall bring forth' implies 'under compulsion'. There will be so much new that no space for the old will remain.
49. Others, 'fish-hash'.

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CHAPTER VI

MISHNAH. [IF] ANYONE HAS SOLD FRUIT TO ANOTHER [NOT SPECIFYING WHETHER AS FOOD OR SEED], AND [THE BUYER] SOWED THEM AND THEY DID NOT GROW, EVEN [IF THEY WERE] LINSEED,¹ HE IS NOT RESPONSIBLE.² R. SIMEON B. GAMALIEL

SAID: FOR GARDEN SEEDS WHICH ARE NOT EATEN, HE³ IS RESPONSIBLE.⁴

GEMARA. It has been stated:⁵ [If] one has sold an ox to another, and it was found to have been wont to gore.⁶ Rab said, the [sale] is under false pretences.⁷ But Samuel said: [The seller] can say to him, 'I have sold it to you for [the purpose of] slaughtering'.⁸ But [cannot the object of the sale] be seen [from the following]? If [he is] a man that buys for slaughtering [then this sale also must have been] for [the purpose of] slaughtering; [and] if for plowing, [it must have been] for [the purpose of] plowing. [why then, should there be a dispute between Rab and Samuel]? — [This dispute relates to the case] of a man who buys for both.⁹ But why not see what price¹⁰ was paid?¹¹ — The dispute is applicable [to the case] when the price of meat has risen and stands at [the same level as] the price of [an animal for] plowing. If so, what difference is there [whether the animal was bought for plowing or slaughtering]?¹² — [There is] a difference [in respect] of the trouble.¹³ How is this¹⁴ to be understood?

1. Which are usually sold as seed.
2. The seller may claim to have sold them as food, not as seed.
3. The seller.
4. The entire transaction is invalid, since the purchase had been for seed, and it has proved to be useless for that purpose.
5. B.K. 46a.
6. Before the sale took place.
7. Lit., 'mistaken deal', 'a purchase based on error'. An ox is usually purchased to plow or to perform similar service. The sale, therefore, took place under false pretences, and is consequently invalid, and the seller must return the purchase money.
8. Samuel is of the opinion that, in money matters, general practice is no determining factor in the validity of the sale. The seller, therefore, can claim that, despite the general practice, he has sold him the ox, not for plowing, but for slaughter.
9. Lit., 'for this and for that'; for plowing or for slaughtering.
10. The cost of an animal for work is much higher than one for food only.
11. Lit., 'how the monies are'.

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12. In either case the animal is worth the price paid for it; why, then, should Rab differ from Samuel by declaring such a deal to be invalid?
13. Of killing the animal and selling it. For this reason, Rab declares the sale invalid and requires the seller to return the purchase price.
14. That the seller is required to return the money he received.

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If there is no [capital] from which [the buyer] may be reimbursed, let the ox be retained for the money;¹ as people say.² 'from your debtor accept [even] bran in payment!' — [The dispute between Rab and Samuel] is required only [in the case] where there is [capital] from which [the buyer] may be reimbursed. [In such a case] Rab said: The deal was made under false pretences [because] one must be guided by the general practice³ and most people buy [oxen] for plowing. But Samuel said [in reply]: One is guided by the general practice in ritual, but not in monetary matters.

(Mnemonic:⁴ *A woman and a slave, an ox, oxen and fruit.*)

An objection was raised: [If] a woman has become a widow or has been divorced, and she claims, 'I was married [as] a virgin',⁵ and he⁶ says [to her]. '[It was] not so, but I married you [as] a widow',⁷ if there are witnesses that she left [her father's house for the wedding ceremony] in a curtained litter,⁸ or with uncovered head,⁹ she [is entitled to] a *kethubah*¹⁰ of two hundred [zuz].¹¹ Now, the reason [why she receives two hundred zuz is] that there were witnesses but, [it may be inferred], had there been no witnesses, [she would] not [have been entitled to the higher settlement];¹² why should it not be said,¹³ 'Be guided by [what] most women [do]', and most women marry [as] virgins? Rabina said: Because It may be assumed [on the one hand], that the majority of women marry [as] virgins and a minority [as] widows, and, [on the other hand, that] whenever [a woman] marries [as] a virgin [the fact] is known; [consequently] since in her case [the fact] is not known,¹⁴ the

majority principle, as applied to her, is impaired.¹⁵ [But] if, [as you have said], all who marry [as] virgins are known [to have so married], what use are witnesses? [Surely], since [the fact that] she [married as a virgin] is not known, they [must] be [regarded as] false witnesses.¹⁶ But, [this is the answer], the majority of those who marry [as] virgins are known [to have so married] and since this one is not known, the majority principle in her case is impaired.

Come and hear! [It has been taught]:¹⁷ [If] one sold to another a slave who was found to have been a thief or a gambler,¹⁸ the sale is valid.¹⁹ [If the slave was found to have been] an armed robber or one prescribed by the government '²⁰ [the buyer may] say to him; 'This is yours; take him'.²¹ Now in the case of] the first clause,

1. Why, then, should the ox, according to Rab who considers the sale invalid, be returned to the seller?
2. Cf. B.K. 46b; B.M. 118a.
3. Lit., 'majority'.
4. The mnemonic aids in the recollection of the following quotations from which objections were raised to Rab's or Samuel's opinion.
5. V. n. 23. *infra*.
6. The husband.
7. V. n. 13.
8. Heb., *henuma*, [G]. Virgin brides were carried out of their father's home on the wedding day in a curtained litter.
9. A virgin bride walked to her wedding canopy with 'uncovered head', [H] which others render, 'loosened hair'.
10. The endowment or settlement which a wife is entitled to receive on being divorced or on the death of her husband. A woman who married as a virgin is entitled to two hundred *zuz*; if as a widow, to one hundred *zuz* only.
11. Keth. 15b.
12. V. p. 382. n. 13.
13. As Rab said in the case of the sale of the ox.
14. As evidenced by the fact that no witnesses are forthcoming.
15. And she is assumed to belong to the minority.
16. For if she had married as a virgin the marriage would have been known.
17. Tosef. Kid. IV, Kid., 11a.
18. [H] cf. [G] 'gambler', [G] 'crafty person'.
19. Lit., 'he reached him'.
20. I.e., 'sentenced to death'.

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21. Lit., 'Here is yours before you, and the seller must return the purchase money.'

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is not [the sale valid] because most [slaves] are [of] such [a character]? [And does not this prove that even in monetary matters,¹ one is to be guided by the majority rule?]² — No; all of them are such.³

Come and hear! [We learnt]:⁴ [If] an ox gored a cow, and its embryo was found [dead] at its side, and it is not known whether it gave birth before it was gored⁵ or after it was gored,⁶ [the owner of the ox] pays half [the cost of the] damage [in respect] of the cow,⁷ and a quarter [in respect] of the young.⁸ [Now. if, in monetary matters, one is guided, as Rab asserted, by the majority rule,] why [does the owner of the ox only pay a quarter of the loss]? Let it be said, 'Be guided [by what] most cows [do]', and most cows conceive and give birth [to live calves] and the miscarriage must, [consequently], have been due to the goring!⁹ — There, [the majority rule is inapplicable] because there is the uncertainty whether the [ox] approached from the front,¹⁰ and the miscarriage was due to shock;¹¹ or from behind, and the miscarriage was due to goring;¹² [the indemnity] is, [therefore like] money of doubtful ownership, and all money the ownership of which is in doubt must be divided [between the parties concerned].

Must it be said [that they¹³ differ on the same principles] as the [following] Tannaim? [It has been taught:] [If] an ox was grazing and a dead ox was found at its side, it must not be said, although the one is gored and the other is wont to gore, one bitten and the other wont to bite, 'It is obvious that the one gored or bit the other'. R. Aha said: [In the case of] a camel which 'covers'¹⁴ among [other] camels, and a dead camel was found at its side, it is obvious that the one killed the other. Now, assuming that [the principles] of majority¹⁵ and of confirmed legal status¹⁶ have the same force, must it be said that Rab¹⁷ is of the same

opinion as R. Aha¹⁸ and Samuel¹⁹ is of the same opinion as the first Tanna?²⁰ — Rab can tell you: What I have said [is valid] even according to the first Tanna. For the first Tanna made his statement, there, [that the killing is not to be attributed to the butting ox], only because one is not to be guided by the principle of legal status, but one is to be guided by that of majority.²¹ And Samuel can say: What I have said [is valid] even according to R. Aha. For R. Aha made his statement there, [that the 'covering' camel is assumed to be the killer], only because one must be guided by the principle of legal status, since it is the [camel] itself that has been confirmed in that status, [and is standing near by], but one is not to be guided by the majority principle.²²

Come and hear! [IF] ANYONE HAS SOLD FRUIT TO ANOTHER ... AND [THE BUYER] SOWED THEM AND THEY DID NOT GROW, EVEN [IF THEY WERE] LINSEED, HE IS NOT RESPONSIBLE. Does not 'EVEN' imply. 'even linseed most of which is bought for sowing purposes'? And [does not this show that] even in such a case one is not guided by the majority principle?²³ This²⁴ is [a subject of dispute between] Tannaim. For it has been taught: [In the case when] one has sold fruit to another and [the buyer] sowed them and they did not grow, [if they are] garden seeds which are not eaten, he is responsible;²⁵ [if they are] linseed, he is not responsible.²⁶ R. Jose said:

1. Such e.g.. as the purchase of slaves.
2. How, then, could Samuel say that the majority rule is applicable to ritual matters only?
3. Therefore the sale is valid as if the seller had explicitly stated that the slave was a thief or a gambler.
4. B.K. 46a.
5. In which case the owner of the ox is free from all liability.
6. And, consequently, death was caused by the goring, and the owner of the ox is responsible.
7. The owner of a butting ox, before due warning has been given him (cf. Ex. XXI, 28-36). makes good only half the damage.
8. In respect of half the cost of the damage to the embryo it is not certain that he is liable, since it

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is not known whether or not the goring was the cause of the death. Hence the loss is shared by the two parties, the owner of the ox refunding a half of the half, i.e., a quarter of the full loss.

9. And the owner of the ox should, therefore, have had to refund half the loss. But since the law is not so, how can Rab assert that in monetary matters the majority rule is followed?
10. Frightening the cow by its approach and causing miscarriage. For loss caused by fright no liability is incurred (cf. B.K. 56a).
11. Not to the goring.
12. And since one of these contingencies is as likely as the other, the majority rule, though applied to other monetary cases, cannot be applied here.
13. Rab and Samuel.
14. A euphemism. Lit., 'to be behind'. At the time of mating it is ferocious, and is likely to attack other males with fatal results.
15. Most animals do not gore. therefore every animal must be regarded as innocuous until the contrary has been proved.
16. The ox referred to was wont to gore', therefore, legally, a confirmed butter.
17. Who accepts the majority principle.
18. Who attributes the killing to the 'covering' camel because of its legal status (legally regarded as ferocious and likely to kill).
19. Who disregards the majority principle in monetary matters.
20. Who does not attribute the killing to the animal though its legal status is that of a goring ox. Would Rab's and Samuel's views accordingly be regarded as opposed respectively to those of the first Tanna and R. Aha?
21. And thus, in this case, it is to be assumed that the other oxen, who form the majority, have done the killing.
22. A principle which seeks to attach to the animal a status that may not belong to it. Thus it seeks to assume that this ox has been bought for slaughtering, because the majority of other oxen are bought for that purpose.
23. How, then, can Rab say that the majority principle is to be followed?
24. Whether the majority principle is to be relied upon in monetary questions.
25. Because everybody buys them as seed for sowing purposes only.
26. Since some persons buy them for purposes other than sowing, the seller can claim to have sold them for any of these purposes.

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he must refund to him the price of the seed.¹
They replied unto him: Many² buy it for

other purposes.³ Now who are the Tannaim [between whom the question of the majority principle, as has been said, is in dispute]? If it is assumed that they are R. Jose,⁴ and 'those who replied to him';⁵ [surely] both, [it may be retorted], follow the majority principle; one follows the majority of men,⁶ the others, the majority of the seed,⁷ [neither of these, then, can be said to agree with the opinion advanced by Samuel!] But [the dispute referred to is] either [that between] the first Tanna⁸ and R. Jose, or [between] the first Tanna⁸ and those 'who replied to him'.

Our Rabbis taught: What does he, [who has sold garden seeds which are not eaten], refund [the buyer who sowed them without success]? — The cost of the seeds, but not expenses.⁹ And others say: Expenses also [must be refunded]. Who are these others?¹⁰ — R. Hisda said: It is R. Simeon b. Gamaliel.

Which [of the teachings of] R. Simeon b. Gamaliel [reflects such a view]? If it is suggested [that the teaching is that of] R. Simeon b. Gamaliel of our Mishnah, where we learnt: [IF] ANYONE HAS SOLD FRUIT TO ANOTHER ... AND [THE BUYER] SOWED THEM AND THEY DID NOT GROW, EVEN [IF THEY WERE] LINSEED, HE IS NOT RESPONSIBLE; [now] consider in view of this, the last clause [of our Mishnah]: R. SIMEON B. GAMALIEL SAID: FOR GARDEN SEEDS WHICH ARE NOT EATEN, HE IS RESPONSIBLE: Does not the first Tanna say the same thing? [For he said]. 'for LINSEED only. HE IS NOT RESPONSIBLE', which [implies that] FOR GARDEN SEEDS WHICH ARE NOT EATEN, HE IS RESPONSIBLE,¹¹ [and this is the very law of R. Simeon]. Does not this [force the conclusion that] the difference between them is the [question of] expenses? One¹² holds the opinion [that only] the cost of the seeds [is to be refunded], and the other¹³ is of the opinion [that the] expenses also [must be refunded]! — How [can this be proved]? Is it not possible [that the opinions of the two Tannaim are to

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be] reversed?¹⁴ This is no difficulty. Any Tanna [who is mentioned] last, enters [the discussion for the purpose of] adding some [restriction];¹⁵ [the objection, however, is that] all [the Mishnah] may be [the teaching of] R. Simeon b. Gamaliel, and [that only a few words are] missing, and [that] this [is what the Mishnah really] teaches: [IF] ANYONE HAS SOLD FRUIT TO ANOTHER. AND [THE BUYER] SOWED THEM AND THEY DID NOT GROW. EVEN [IF THEY WERE] LINSEED, HE IS NOT RESPONSIBLE — these are the words of R. Simeon b. Gamaliel, for R. SIMEON B. GAMALIEL SAID: FOR GARDEN SEEDS WHICH ARE NOT EATEN, HE IS RESPONSIBLE!¹⁶

But [it is] this [teaching of] R. Simeon b. Gamaliel, [reflecting the view of those 'others'] for it has been taught:¹⁷ [If] one takes wheat to grind and [the miller] does not moisten it [prior to the grinding], and makes it into bran flour or coarse bran; [or, if one takes] flour to a baker who makes¹⁸ of it bread which falls into pieces, [or, if one takes] a beast to a slaughterer who makes it unfit,¹⁹ he²⁰ is liable [to pay compensation], since he is like one who takes payment [for his services].²¹ R. Simeon b. Gamaliel says: He indemnifies him for the insult to him and to his guests.²² [How much more, then, must he refund his expenses;] and so R. Simeon b. Gamaliel used to say:²³ There was a fine²⁴ custom in Jerusalem. If one entrusted [the preparations of] a banquet to another who spoiled it. [the latter] had to indemnify him for the insult to himself and to his guests. There was another fine custom in Jerusalem. [At the commencement of the meal] a cloth was spread over the door.²⁵ So long as the cloth was spread, guests entered. When the cloth was removed, no guests entered.

MISHNAH. [IF] ONE SELLS FRUIT TO ANOTHER, [THE LATTER] MUST ACCEPT A QUARTER [OF A KAB OF] REFUSE FOR EVERY SE' AH. [IF HE SOLD HIM] FIGS, [THE BUYER] MUST ACCEPT TEN WORMY ONES

FOR EVERY HUNDRED. [IF] A CELLAR OF WINE, HE MUST ACCEPT TEN [CASKS OF] PUNGENT [WINE] FOR EVERY HUNDRED. [IF] JUGS IN SHARON,²⁶ HE MUST ACCEPT TEN BAD JUGS FOR EVERY HUNDRED.

GEMARA. R. Kattina learned: A quarter [of a kab] of pulse for each *se'ah*.²⁷ And [need he] not [accept] sandy matter? Surely Rabbah b. Hiyya of Kteshifon²⁸ said²⁹ in the name of Rabbah: [If a man] picks out a pebble³⁰ from his neighbor's threshing-floor

1. Because most of the linseed is sold for sowing purposes.
2. For every man who buys a large quantity of linseed for sowing, there are ten times as many people who buy it in smaller quantities for food, medicinal, or other purposes.
3. And, therefore, no refund is necessary, despite the fact that a minority of big buyers use the linseed for sowing only.
4. Since he orders the refund of the price of the seed, he is presumably of the same opinion as that held by Rab, viz. that the majority principle must be followed even in monetary matters.
5. Since they maintain that no refund is necessary, they must uphold the opinion advanced by Samuel that in monetary matters the majority principle is no guide.
6. I.e., most people buy linseed for purposes other than sowing.
7. I.e., most linseed is sold for sowing, though to a minority of buyers.
8. Who does not accept the majority principle. (Cf. *supra* notes 1 and 2).
9. Of plowing and any other services incidental to sowing.
10. Lit., 'who are the others who say?'
11. What, then, is the difference between these two Tannaim of our Mishnah?
12. The first Tanna.
13. R. Simeon b. Gamaliel_
14. The first Tanna holding the seller responsible for the expenses whilst R. Simeon does not. Those 'others' will not therefore be R. Simeon but the first Tanna of our Mishnah.
15. In this case, R. Simeon, who is last, must therefore be the one who adds the expenses to the seller's responsibility.
16. Whence, then, is it proved that R. Simeon b. Gamaliel requires the refunding of the expenses? Our Mishnah, then, cannot be the teaching of R. Simeon b. Gamaliel referred to under the authority of those 'others'.
17. Tosef. B.K. X; B.K. 99b.

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18. Lit., 'baked'.
19. E.g., by the unskillful use of the knife.
20. He, the miller, baker, or slaughterer.
21. V. B.K. 99b.
22. If he invited guests and, in consequence of the neglect of the miller, baker, or slaughterer, he was unable to cater for them.
23. Tosef. Ber. IV.
24. Lit., 'great'.
25. The cloth was a signal that a meal was in progress within the house.
26. A place name, or 'in the plain'.
27. R. Kattina is explaining the 'quarter of refuse' mentioned in our Mishnah.
28. On the Eastern bank of Tigris.
29. Bezah 38b.
30. A pebble comes obviously under the category of sandy matter.

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he must pay him [for it] the price¹ of wheat!² — [Of] pulse, a quarter³ [of a *kab* must be accepted; of] sandy matter less⁴ than a quarter. And [need he] not [accept] a [full] quarter [of a *kab* of] sandy matter? Surely it has been taught: [If] one sells fruit to another, [the buyer] must accept, [in the case of] wheat, a quarter [of a *Lab* of] pulse⁵ for [each] *se'ah*; [in the case of] barley, he must accept a quarter [of a *kab* of] chaff⁶ for [each] *se'ah*; [in the case of] lentils, he must accept a quarter [of a *kab* of] sandy matter⁷ for [each] *se'ah*. Now, may it not be assumed that the same law⁸ [applies not only to lentils but also] to wheat and to barley?⁹ Lentils are different [from wheat and barley], because they are usually plucked.¹⁰ But [since] the reason why lentils [are allowed a full quarter of a *kab* of sandy matter is] because they are usually plucked while wheat and barley [are] not, infer [then] from this, [that in the case of] wheat and barley [the buyer need] not accept [a full quarter of a *kab*] of sandy matter!¹¹ — [It may be retorted that a buyer], in fact, must accept [a full quarter of a *kab* of] sandy matter [in the case also of] wheat and barley¹² lentils, [however,] had to be [specifically mentioned].¹³ Because it might have been thought that, since they are usually plucked, [the buyer] must accept even more than a

quarter [of a *kab*], [the quantity], therefore, had to be [specifically] stated.

R. Huna said: If [the buyer] wishes to sift¹⁴ [and, on sifting, the quantity of the refuse is found to be more than what is permitted], he may sift all of it [and the seller must compensate him for all the refuse, even for the permitted quantities]. Some say, [this is the] law; and others say, [this is a] penalty. Some say [this is the] law, [because] whoever pays money, pays it for good fruit,¹⁵ but a person does not take the trouble [to sift, if the refuse only amounts to] a quarter [of a *kab* for every *se'ah*;¹⁶ if] more than a quarter, a person does take the trouble; and, since he takes the trouble [to start sifting], he takes [a little more] trouble with all of it.¹⁷ And others say, [this is a] penalty,¹⁸ [because] it is usual [only for] a quarter [of a *kab* of refuse] to be found [in each *se'ah*];¹⁹ more is not usual; he himself [therefore must have] mixed it, and since he has mixed [at least some of] it, the Rabbis have imposed upon him the penalty [of paying] for all.²⁰

(Mnemonic: *Every two bills of Rabin son of R. Nahman [are] overcharge and undertaking.*)²¹

An objection was raised.²² [It has been taught:]²³ Every *se'ah* [of produce] which contains a quarter [of a *kab*] of another kind shall be reduced²⁴ [in order that it be permitted to be sown].²⁵ Now, it has been assumed that the quarter [in the case] of *kilayim*²⁶ is [in the same category] as [the quantity of] more than a quarter here,²⁷ and yet it has [only] been taught, 'it shall be reduced',²⁸ [while the rest may be sown. Why, then, in the case of a purchase,²⁹ must compensation be paid for all the refuse]? — No; a quarter [in the case] of *kilayim* is [in] the same [category] as a quarter here.³⁰ If so,³¹ why should it be reduced? — On account of the restrictions of the law of *kilayim*.³² If so,³³

1. Because the seller is entitled to include a pebble in the weight of his wheat and to receive for it

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- the price of the wheat; but is not permitted to put in a pebble.
2. This shows that sandy matter, such as a pebble is, must also be accepted by the buyer. How, then, can it be said that sandy matter need not be accepted?
 3. As R. Kattina said.
 4. But a full quarter need not be accepted.
 5. Pulse usually grows among the wheat.
 6. Chaff cannot be entirely separated from the barley.
 7. Sandy matter is usually mixed up with lentils.
 8. That a quarter of a *kab* of sandy matter must be accepted by the buyer.
 9. It is assumed that sandy matter was mentioned in the case of lentils because it is usual to find it there just as pulse. e.g.. was mentioned with wheat with which it is usually mixed up; but that in reality the buyer must accept a quarter of a *kab* of sandy matter, or any refuse, in whatever kind of produce it is found.
 10. And more sandy matter must, therefore, be expected.
 11. Which would confirm the answer given above, in justification of R. Kattina, that of sandy matter, 'less than a quarter'.
 12. The same quantity as that stated in the case of lentils.
 13. That only a quarter of a *kab* of sandy matter need be accepted.
 14. Suspecting that the refuse amounts to more than a quarter of a *kab* for each *se'ah*.
 15. He does not consent to take any refuse in the weight.
 16. Rather than have the trouble of sifting. he accepts the comparatively little refuse.
 17. Once the sifting commences, it is not much more trouble to complete the whole. Hence, the buyer exercises his right and demands compensation for all the refuse.
 18. The compensation is not based on the Biblical law, according to which a person is always assumed to consent to buy fruit together with a certain quantity of refuse.
 19. And the seller must not be penalized for this.
 20. Since he has mixed a portion he is suspected of having mixed the whole.
 21. The mnemonic aids in the recollection of the passages that follow in support of, or objection to R. Huna's law.
 22. To the statement that the buyer may sift the grain in accordance with the law which entitles him to compensation for all the refuse found.
 23. Kil. II. 1.
 24. To less than a quarter.
 25. Two different kinds must not be sown together, in accordance with the prohibition of 'mingled seeds'. (Cf. Lev. XIX. 29.)
 26. [H] 'mingled seed'. V. n. 12.

27. In the case of a purchase.
28. The entire *se'ah* is not disqualified by reason of the excess, and as soon as the excess is reduced (from a 'quarter' to 'less than a quarter') the grain may be sown.
29. In the case of a purchase also, it should suffice to reduce the 'more than a quarter' of the refuse to a 'quarter'. by the seller's paying of compensation for the excess.
30. In both cases such a small quantity as a quarter of a *kab* in a *se'ah* is disregarded. But if this quantity is exceeded, it might, indeed, have to be removed in its entirety even in the case of *kilayim*.
31. That a quarter is disregarded, even in the case of *kilayim*.
32. It is a restriction imposed by the Rabbis to prevent people from transgressing the laws of *kilayim*.
33. That the restriction is only Rabbinical, and that in accordance with the Biblical law there is no need to reduce.

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explain the last clause [of the Mishnah quoted, which reads]. R. Jose says: He shall pick out [all]. This would be correct if you assumed [that a quarter of a *kab* in *kilayim* is] like [a quantity of] more than a quarter [of a *kab*] of refuse. For their¹ dispute could [then be said to] depend on [the following principles]. The first Tanna might hold the opinion that a penalty is not imposed on a permitted thing for the sake of a prohibited one, and R. Jose might hold the opinion that a penalty may thus be imposed.² But if it is said that [a quarter of a *kab* of *kilayim* is] like a quarter [of refuse], why should he pick?³ This is the reason of R. Jose. there: Because⁴ it seems as if he was retaining⁵ *kilayim*.

Come and hear! [It has been taught]:⁶ If two [persons] deposited [money] with one [man], one of them² a *maneh*⁸ and the other² two hundred *zuz*, and the one² says. 'the two hundred *zuz* are mine', and the other² [also] says, 'the two hundred *zuz* are mine one *maneh* is given to the one,⁷ and one *maneh* to the other,⁷ and the remainder must lie until [the prophet] Elijah comes.⁹ [Does not this show that one is not penalized by being made to lose the whole¹⁰ for the sake of a part?]¹¹ —

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What a comparison!¹² In that case,¹³ one *maneh* certainly belongs to the one, and one *maneh* to the other,¹⁴ [but in] this [case],¹⁵ who can say that he has not [himself] put it all in?¹⁶ Come and hear [a confirmation]¹⁷ from the last [clause of the quoted Baraitha which reads]: R. Jose said, 'If so,¹⁸ what has the knave lost?¹⁹ But all²⁰ must be kept over until Elijah comes. What a comparison!²¹ In that case²² there is certainly [one] knave [at least].²³ but in this case,²⁴ who can say that he has put it in at all?²⁵

Come and hear! [It has been taught]: [If] a bill [of debt] contains [an undertaking to pay] usury, a penalty is imposed [on the lender], and he receives neither the principal nor the interest; these are the words of R. Meir.²⁶ [Does not this prove that a penalty may be imposed on the whole for the sake of its part?] — What a comparison!²⁷ In that case,²⁸ [the lender] had committed the transgression²⁹ from the moment of the writing,³⁰ but in this case,³¹ who can say that he has put it in at all?³²

Come and hear! [an objection] from the last [clause of the quoted Baraitha]: And the Sages say. '[the lender] receives the principal but not the interest'. [Does not this show that a penalty on the whole is not imposed on account of its part?]³³ — What a comparison!³⁴ In that case,³⁵ the principal [at least] is certainly a permitted sum; but here, who can say that all has not been put in by him³⁶

Come and hear what Rabin son of R. Nahman learned:³⁷ [In case of the sale of a piece of ground, under certain conditions, though it was found to be bigger than arranged. by an area equal to that of a quarter of a *kab* per *se'ah*, the sale is valid; if, however, the difference is greater. then] not only must the surplus³⁸ be returned but all the quarters³⁹ also must be returned. This shows clearly that whenever [a part] has to be returned, all must be returned!⁴⁰ — What a comparison!

1. That of R. Jose and the first Tanna.

2. Since the prohibition is Biblical.
3. And thus add one Rabbinical restriction to another: first restriction, reduction to less than a quarter; second restriction, picking out all foreign matter. Even the law requiring reduction is not Biblical, but Rabbinical. Is one Rabbinical restriction not enough that R. Jose must add to it another?
4. Though Biblically allowed.
5. Since he began to remove some, he must remove all; otherwise, the remainder might be regarded as if it had been intentionally put in.
6. B.M. 37a.
7. Lit., 'this'.
8. *Maneh* = 100 *zuz*.
9. Elijah the prophet, the herald of the Messianic era who is to make the truth known. The phrase is a technical term meaning 'indefinitely'.
10. Since only one *maneh* is retained while the other is returned.
11. Why, then, has it been said above that 'the Rabbis have imposed ... the penalty of paying for all'?
12. Lit., 'How now!'
13. Lit., 'there', in the dispute about the *maneh* and the two hundred *zuz*.
14. Hence, the certain *maneh* must be returned.
15. The refuse in the produce.
16. Since the refuse is in a bigger proportion than the usual quantity, the seller may be suspected of having put in at least some, and one suspected of some may be suspected of all.
17. Of the statement that a penalty may be imposed on the whole for the sake of the part.
18. I.e., if one *maneh* is returned.
19. Since the knave (lit.. 'cheat') who deposited only one *maneh* gets that *maneh* back, he loses nothing and, consequently, would never admit the truth.
20. So here, as a penalty for mixing, compensation must be paid for all the refuse.
21. V. *supra* n. 6.
22. V. *supra* n. 7.
23. One of them must be a knave, since only one had deposited the larger sum.
24. V. *supra* n. 9.
25. The existence of the refuse in the produce may be due entirely to natural causes.
26. B.K. 30b; B.M. 72a.
27. V. p. 392. n. 6.
28. Lit., 'there', in the case when usury was mentioned in the bill of debt.
29. Lit., 'the putting'. 'the laying'; Neither shall ye lay upon him usury. Ex. XXII. 24.
30. Hence, let him lose the interest as well as the principal.
31. V. p. 392. n. 9.
32. V. p. 392. n. 19. Hence he should not be required to pay. as a penalty, for all the refuse.

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33. V. p. 392. n. 5.
34. V. p. 392. n. 6.
35. V. n. 2 above.
36. V. p. 392. n. 10.
37. *Infra* 104b.
38. I.e., the portion of land by which the area is greater than a quarter of a *kab* per *se'ah*, viz., the difference between the actual area on the one hand, and the agreed area and a quarter of a *kab* per *se'ah* on the other.
39. I.e., the quarters of a *kab* per *se'ah* which, if not exceeded, were not to be returned.
40. This confirms R. Huna's statement, *supra*, according to the first explanation, that the return of all the refuse is law, because one does not forego more than a quarter of a *kab*.

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In that case¹ [the seller explicitly] said to him, 'I sell you an area of a *kor*'² more or less';³ but a quarter [of a *kab*] is of no importance;⁴ more than a quarter, is of importance, because, since [in the area of a *kor*, the quantity may be combined into nine *kab*,⁵ they form an important independent field which must be returned. [But in the case of the refuse in produce,⁶ even if it amounted to more than a quarter of a *kab* per *se'ah*, only the surplus might have to be returned but not the quarters⁷].

Come and hear! [We learned]: [If] the overcharge is less than a sixth, the purchase is valid;⁸ [if it is] more than a sixth, the purchase is cancelled; [if it is] a sixth, the sale is valid but the overcharge must be refunded.⁹ Now, should [not a part of the overcharge] be returned¹⁰ [so as to reduce¹¹ it] to less than a sixth?¹² [But since the law is not so] it may be inferred [that] wherever [a part] is to be returned, all must be returned. [Is not this, then, a confirmation of R. Huna's statement?¹³] What a comparison! There,¹⁴ one spoke to the other of equal values¹⁵ from the very beginning; only, [since] less than a sixth is not noticeable, a person does not mind to forego it; a sixth, [however], [since it] is noticeable, one does not forego; [while] more than a sixth is a purchase based on error and is to be entirely cancelled.¹⁶

Come and hear! [It has been taught:] [If] one undertakes to plant another's field,¹⁷ [the owner] must accept ten failures for every hundred trees.¹⁸ [If the failures are] more than this [number],¹⁹ [the re-planting of] all²⁰ is imposed upon him. [Is not this a confirmation of the statement of R. Huna?²¹ — R. Huna, the son of R. Joshua. said: [The two cases cannot be compared. for] wherever [there are] more than this [number of trees]²² it is the same as if one began to plant [a new field].²³

A CELLAR OF WINE, etc. How is this to be understood? If [it means that] the seller said to the buyer. 'I sell you] a cellar of wine', without specifying which cellar, there is a difficulty;²⁴ [and] if [it means that] he said to him, 'this cellar of wine', there is [also] a difficulty;²⁵ [and] if he said to him, 'this cellar', there is [again] a difficulty.²⁶ For it has been taught: [If one says]. 'I sell you a cellar of wine', he must give him wine all of which is good.²⁷ [If one said]. 'I sell you this cellar of wine', he may give him such wine as is sold In the shop.²⁸ [If one said]. 'I sell you this cellar', the sale is valid even if all of it is vinegar.²⁹ [How, then, is the Baraita to be reconciled with our Mishnah?] [Our Mishnah], in fact, deals with the case where [the seller] said to him ['I sell you] a cellar of wine', without specifying which cellar, but³⁰ read in the first clause of the Baraita [as follows]: ['He must give him wine all of which is good']. but [the buyer] must accept ten [casks of] pungent wine for [every] hundred. Must one, however, accept [ten casks of pungent wine] when the cellar was not specified? Surely R. Hiyya has taught: [If] a person has sold a jug of wine to another, he must give him wine all of which is good!³¹ A jug is different, because it contains [only] one [kind of] wine.³² Did not, however, R. Zebid of the school of R. Oshaia recite: [If the seller says]. 'I sell you a cellar of wine', he must give him a wine all of which is good; [if he says], 'I sell you this cellar of wine', he must give him wine all of which is good and [the buyer must]

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accept ten casks of pungent wine for [every] hundred.

1. The sale of the land.
2. *Kor* = thirty *se'ah*.
3. *V. infra* 103b. Had he not said so, even a fraction more than the area agreed upon would have had to be returned.
4. The seller, by his statement, has intimated that he does not mind conceding such a small area.
5. The thirty quarters of a *kab* for the thirty *se'ah* of the *kor* amount to seven and a half *kab*. But since the difference is more than a quarter per *se'ah* by, say, a twentieth of a *kab* per *se'ah*, the total amounts to thirty times one twentieth one and a half *kab*, which, added to the seven and a half, total nine *kab*.
6. Since a quarter of a *kab* per *se'ah* must always be accepted whether the expression 'more or less' had been used or not.
7. Because it is usual to find such quantities of refuse in all produce.
8. Lit., 'possession is acquired'. and nothing of the overcharge need be returned. Any buyer is assumed to be indifferent to the loss of such a small amount as a sixth.
9. B.M. 50b.
10. In the case when the overcharge was a sixth or more than a sixth.
11. Instead of returning the full overcharge, in once case, and cancelling the sale in the other.
12. To the loss of which a buyer. as it has been said, is indifferent.
13. That if the refuse is more than the allowed quantity, the seller must compensate not only for the surplus but for all the refuse.
14. In the case of the overcharge.
15. The price. according to the original arrangement, had to be equal to the value of the produce. The buyer. therefore, had a right to claim the return of an overcharge, even if it were less than a sixth.
16. In the case of refuse in produce, however, the buyer is always ready to accept a certain quantity of it, (a quarter of a *kab* of refuse per *se'ah* of produce). He may, therefore, also be assumed to accept this quantity even when more refuse has been found, provided the surplus has been refunded.
17. Lit., 'receives a field from another to plant'.
18. The owner must pay the workman for every hundred trees the full value of sound trees, though ten of them may turn out to be unproductive and useless.
19. More than ten per hundred.
20. All the unproductive trees must be replaced by sound ones.
21. *V. p.* 394. n. 8.
22. More than ten unproductive trees per hundred trees planted.
23. The area occupied by a number of trees bigger than ten, say eleven, is considered to form a smaller self-contained field. This smaller field is thus treated as a new field in which the workman undertakes to plant eleven trees, where evidently he could not claim to have discharged his task by planting only one productive and ten unproductive trees. He must therefore replace them all. In the case of the refuse, however, dealt with in R. Huna's statement, this argument cannot, obviously, be applied, and the owner may be assumed to accept the loss of a quarter of a *kab* per *se'ah*, if the surplus is refunded to him.
24. For according to our Mishnah, the buyer accepts ten casks of pungent wine for every hundred, while according to the following Baraita (first case), all the wine must be good.
25. According to the second case in the following Baraita, contrary to the law in our Mishnah, the seller may give a wine all of which is pungent. (Cf. n. 12 *infra*).
26. Since, according to the third case in the Baraita, and contrary to our Mishnah, even if all the wine has become vinegar the sale is valid.
27. The term 'wine' implies 'good wine'; and, therefore, no spoilt wine need be accepted by the buyer.
28. Where all the wine is pungent.
29. Because no wine was mentioned when the sale was proposed.
30. In reply to your difficulty, why does our Mishnah allow ten casks of pungent wine while the Baraita requires all the wine to be good?
31. If in the case of the sale of a cellar, ten casks of pungent wine may be included in every hundred, why must all the wine be good in the case of the jug?
32. No quantity of pungent wine can, therefore, be included in such a sale.

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and this is the cellar [about] which the Sages have taught in our Mishnah!¹ — Well, then, our Mishnah also [speaks of the case] where [the seller] said to him 'This'.² [But. if so] there is a contradiction between 'This'³ and 'This'?⁴ — There is no contradiction. The one [deals with the case] where [the buyer] said to him [that he required the wine] for a dish;⁵ the other, where he did not say to him [that it was required] for a dish:⁶ [The Baraita] of R. Zebid [deals with the case] where [the

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buyer] said to him [that the wine was required] for a dish. The [other] Baraitha [deals with the case] where he did not say, 'for a dish'. Consequently, [if⁷ the expression used by the seller was], 'a cellar of wine' and [the buyer] had said to him, 'for a dish', [the former] must give him a wine all of which is good.⁸ [If⁷ the seller said.] 'this cellar of wine', and the buyer had said, 'for a dish', he must give him a wine all of which is good. and [the buyer must] accept ten casks of pungent wine for [every] hundred. [If, however,² the seller said], 'this cellar of wine', but [the buyer] did not say, 'for a dish', he may give him such wine as is sold in the shop.¹⁰

The question was raised [as to] what [was the law when the seller said], 'a cellar of wine',¹¹ and [the buyer] did not say, 'for a dish'.¹² R. Aha and Rabina are in dispute [on the matter]. One says [the buyer must] accept [ten casks of pungent wine for every hundred], and the other says, he need not accept. He who said [that the buyer must] accept, deduces [the law] from the Baraitha of R. Zebid, which states, [that if the seller says], 'I sell you a cellar of wine', he must give him a wine all of which is good; and it has been settled [that this refers to the case] where [the buyer] said to him, 'for a dish'. The reason,¹³ [then, is] because he said to him 'for a dish', but had he not said, 'for a dish' [he would have had to] accept. And he who says that [the buyer] need not accept, deduces [the law] from the [other] Baraitha which states [that if the seller says. 'I sell you a cellar of wine', he must give him a wine all of which is good; and it has been settled [that this refers to the case] where [the buyer] did not say, 'for a dish'. According to him who deduces [the law] from that [Baraitha] of R. Zebid, is there no contradiction from the other Baraitha? — [No]; something is missing. and this is the [additional] reading: This¹⁴ only applies [to the case] when he said to him, 'for a dish', but if he did not say, 'for a dish', he [must] accept.¹⁵ And [if he said], 'this cellar of wine' but did not say, 'for a dish', he may give him a wine which is sold in the shop. And according

to him who deduces [the law] from the [other] Baraitha is there no contradiction from that of R. Zebid which has been explained [to refer to the case] where he said to him, 'for a dish', [from which it may be inferred that] if he did not say to him, 'for a dish', [he must] accept?¹⁵ — [No;] the same law, [that he need] not accept, [applies] even [to a case] where he did not say to him, 'for a dish', and this [is the reason] why it¹⁶ had to be explained [to refer to the case] where he said to him, 'for a dish', because there was a contradiction between 'this', [in the last clause of the Baraitha of R. Zebid,] and 'this', [in the second clause of the other Baraitha];¹⁷ [but in the case of the first clauses,¹⁸ there was no such contradiction].¹⁹

Rab Judah said: Over wine which is sold in a shop,²⁰ the benediction²¹ of 'the²² creator of the fruit of the vine'²³ is to be said.²⁴ And R. Hisda said: Of what use²⁵ is wine that is turning sour?²⁶

An objection was raised: Over bread that has become moldy. and over wine that has become sour, and over a dish that has lost its color. — the benediction of '... by whose word everything was made' must be said.²⁷ [How, then, can Rab Judah say that over sour wine the benediction for proper wine is to be said]? — R. Zebid replied: Rab Judah admits²⁸ in [the case of] wine made of kernels,²⁹ which is sold at [street] corners.

Abaye said to R. Joseph: Here [is the opinion of] Rab Judah; here [that of] R. Hisda; whose does [my] master adopt? — He replied unto him: I know a Baraitha:³⁰

1. How, then, has it been said before that our Mishnah deals with the case where the seller said. 'I sell you a cellar of wine'?
2. I.e., 'I sell you this cellar'.
3. In the Baraitha, quoted above, according to which the seller may offer wine all of which is pungent. (Cf. p. 395. n. 22.)
4. In the Baraitha recited by R. Zebid, which states that all the wine must be good with the exception of ten casks which may contain pungent wine.
5. For which good wine is required, because only a little at a time is used, and the wine has to last

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for a long period. Hence the expression, 'wine', in the offer, implied 'good wine which may keep for a long time'; and the expression, 'this', entitled the seller to include ten casks of pungent wine.

6. Hence the seller may give him even pungent wine, such as is sold in the shop.
7. In the Baraitha of R. Zebid.
8. Since 'wine' and 'for a dish' were mentioned.
9. In the other Baraitha.
10. V. p. 396. n. 22.
11. Which is in favor of the buyer, because 'this' was not used.
12. Which is in favor of the seller.
13. Why all the wine must be good.
14. That if he said, 'I sell you a cellar of wine', he must give him a wine all of which is good.
15. The ten casks of pungent wine for every hundred.
16. The last clause of R. Zebid's Baraitha, 'I sell you this cellar of wine'.
17. V. p. 396. n. 7-8.
18. Where the seller says, 'I sell you a cellar of wine'.
19. And both may, therefore, refer to either case, whether the buyer said, or did not say, 'for a dish'.
20. I.e., any sour, or bad wine.
21. Before partaking of any food, a certain benediction must be said beginning with, 'Blessed art thou, O Lord, our God, King of the Universe' and concluding in different forms corresponding to the particular kind and nature of the food consumed.
22. Beginning with the usual formula (v. previous note.)
23. This is the benediction enacted for wine in a sound condition.
24. Though the wine is bad it is still considered wine, and requires the wine benediction.
25. Lit., 'why to me.
26. Since the wine is spoilt, one must not say over it the benediction enacted for good wine, but that of 'Blessed ... by whose word everything was made'.
27. Ber. 40b.
28. That the wine benediction is not to be said.
29. Such a wine is very sour and cannot possibly be regarded as wine. The Baraitha quoted should be assumed to speak of such a wine.
30. From which may be inferred at what stage wine loses its name and assumes that of vinegar, and, consequently, requires a change in the form of the benediction.

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where it has been taught: If one tested¹ a [wine] jug for the purpose of taking from it,

periodically, heave-offering [for wine kept in other jugs];² and, subsequently,³ it was found [to contain] vinegar,⁴ all⁵ three days It is certain, [and] after that it is doubtful.⁶ What does this mean? — R. Johanan said, It means this: During the first three days [after the test, it is regarded as] certain wine;⁷ after that, [as] doubtful.⁸ What is the reason? — [Because] wine [begins to] deteriorate from above,⁹ and this [man] had tasted it [and ascertained that] it had not deteriorated; [and] if it be assumed that it had deteriorated [immediately] after it had been tasted, [even then during the first three days], it had the odor of vinegar and the taste of wine, and whenever the odor is of vinegar and the taste is of wine, it is regarded as wine. And R. Joshua b. Levi said: [The meaning of the Baraitha is that] during the last three days¹⁰ [it is regarded as] certainly vinegar;¹¹ prior to that, [as] doubtful.¹² What is the reason? — Wine [begins to] deteriorate from below, and it is possible [that it had already] deteriorated [during the test] but he did not know.¹³ [Moreover, even] if it is assumed that deterioration [begins] from the top, [and it will be argued that it must have been wine] since [this man] had tasted it and [ascertained that] it had not [then] deteriorated, [it may be retorted that] it is possible that it deteriorated [immediately] after he tasted it, [and it had] the odor of vinegar and the taste of wine, and [the law is that wherever] the odor is vinegar and the taste, wine, [it is regarded as] vinegar.

The scholars of the South [of Palestine] taught in the name of R. Joshua b. Levi: [During the] first [three days it is regarded as] certainly wine.¹⁴ [During the] last [three days, as] certainly vinegar. [During the] intervening [days as] doubtful. Is not this self-contradictory? [Since] you said that [during the] first [three days it is regarded as] certainly wine, it is obvious that [if the] odor is vinegar and the taste wine, [it is regarded as] wine;¹⁵ and then you say [that during the] last [three days it is regarded as] certainly vinegar, [which] proves clearly [that if the] odor is vinegar and the taste, wine, [it is

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regarded as] vinegar?¹⁶ — [The second clause deals with the case] when it was found [to be] very strong vinegar [in which case it is known] that had it not lost its taste three days [previously], it could not have been found [to be such] very strong vinegar.¹⁷

According to whom¹⁸ did [R. Joseph] answer him?¹⁹ — R. Mari and R. Zebid [are in dispute on this]. One says: According to R. Johanan. and the other says: According to R. Joshua b. Levi.

It has been stated: [In the case] when one sold a jug of wine to another and it became sour,²⁰ Rab said: During the first three days [of the sale] it is [regarded as still] in the possession of the seller;²¹ after that, [it is regarded as] in the possession of the buyer.²²

1. Either by tasting some of its contents, the heave-offering and tithe having been duly taken from it (Rashb.), or by smelling (Tosaf.)
2. In order that he might be allowed to use the wine in the other jugs he keeps this one jug for the purpose of taking from it daily, or whenever required, the appropriate quantity of wine as heave-offering., etc., for the wine in the other jugs.
3. E.g. after a month or two.
4. Vinegar. may not be used as a heave-offering for wine.
5. The explanation of this follows.
6. Tosef. Tem. IV.
7. For in less than three days, wine cannot turn into vinegar. Even if it be assumed that it began to turn sour immediately after the test, it would not be called 'vinegar' until full three days had elapsed. The heave-offerings given during these three days must, therefore, inevitably have been wine and, consequently, have exempted the wine in the other jugs. (V. n. 7 above).
8. Since it is possible that the wine began to deteriorate only three days before it was found to be vinegar, into which it may have turned just at that moment. Since the heave-offering is accordingly in doubt (V. n. 7 above). another must be given.
9. Deteriorations of the wine on the surface takes place first, and then it gradually spreads downwards till all turns sour. During this process, though the contents have the odor of vinegar, the flavor is still that of wine.
10. Prior to the discovery that it turned into vinegar.

11. R. Joshua regards the contents as vinegar as soon as they begin to deteriorate in odor though the taste may still be that of wine. Since it is now proper vinegar, the deterioration must have commenced at least three days previously.
12. Because it is possible that the deterioration, as regards odor, began immediately after the test, and this, according to R. Joshua who is guided by the odor, changes the character of the contents from wine into vinegar on the very first day.
13. And, consequently, despite the test, the contents were already, at that very moment, vinegar.
14. R. Joshua holds the same views as R. Johanan.
15. Cf. R. Johanan's reason.
16. For if it is regarded as wine, despite the odor of vinegar, the contents may still have been wine three days
17. The deterioration must consequently have commenced six days previously. In the first three, of these six days, it was still regarded as wine; for his opinion, like that of R. Johanan, is that the odor alone does not deprive the wine of its name, During the last three, of these six days, both odor and taste were that of vinegar, hence his decision is, in such a case, that 'during the last three days it is regarded as certainly vinegar.'
18. I.e., R. Johanan or R. Joshua? This inquiry is, of course, on the assumption that the first version of R. Joshua's statement, and not that of the scholars of the South, is the correct one.
19. Abaye, *supra* 95b.
20. In the house of the buyer while the wine was still in the seller's jug.
21. Since it takes three days from the time the wine changes its odor into that of vinegar until it changes its taste also, the deterioration must inevitably have commenced before the sale. The seller, therefore, must remain responsible.
22. And the seller need not compensate for his loss.

Baba Bathra 96b

and Samuel says: Wine leaps upon the shoulder of its owner.¹ R. Joseph decided a case In accordance [with the opinion] of Rab, in [respect of the sale of] beer;² and in accordance with that of Samuel in [respect of] wine. And the law is in agreement with [the opinion] of Samuel.

Our Rabbis taught: The benediction, '... by whose word everything was made', is to be said over beer of dates, beer of barley and lees of wine. Others say [that] over lees which

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have the flavor of wine the benediction, '... the creator of the fruit of the wine' is to be said. Both Rabbah and R. Joseph say: The law is not in accordance with [the view of] the others. Raba said: All agree [in the case where] three [jugs of water] had been poured [into the lees], and four came out, that [the liquid] is [regarded as] wine; [for] Raba [is guided] by his view that any wine which cannot stand [an admixture of] three [units of] water to one [of wine], is no wine.³ [In the case also where] three [jugs of water] had been put [into the lees] and three came out, [all agree that it is] no wine. Their dispute⁴ has reference only [to the case] where three were put in and three and a half came out. [For in such a case,] the Rabbis hold the opinion [that since for the] three [that] were put in three were taken out, [only] one half is over; and one half, in six halves of water is nothing. But the others hold the opinion [that for the] three put in, [only] two and a half⁵ were taken out, [a complete] jug, [therefore] remains over, and one jug [of wine] in two and a half [of water] [is regarded as] good wine.

But how can it be said that there is a dispute [at all] in the case when more than the quantity put in [has been taken out]? Surely it has been taught:

1. I.e., the purchaser bears the responsibility for the wine. It is his misfortune that the wine turned sour.
2. [H] a drink made of dates or barley.
3. Shab. 77a. 'Er. 29b.
4. I.e., that of the Rabbis and the 'others'.
5. A sixth of the water put in is usually lost in the lees.

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He who, in making Tamad,¹ poured water into lees by measure and obtained the same quantity [of Tamad] is exempt [from the tithe]. And R. Judah makes him liable.² [Does not this imply that] they are in disagreement only so far as [the case] where only the quantity put in [is extracted], but not where

more³ than that quantity [is obtained]? — [No]; they are in disagreement even where more than the quantity put in [has been obtained], and [the reason] why they are in dispute in [the case where only] the quantity put in [has been obtained] is to show you how far-reaching is the view⁴ of R. Judah.⁵

R. Nahman b. Isaac inquired of R. Hiyya b. Abin: What [is the law⁶ in regard to] lees which have the flavor of wine? — He replied unto him: Do you think this is wine? It is a mere acidiferous⁷ liquor.

Our Rabbis taught: [In the case of] lees of *Terumah*,⁸ the first and the second [infusion] are forbidden [to laymen],⁹ but the third is permitted.¹⁰ R. Meir says: Even the third [infusion is forbidden], when [there is in it enough of the wine] to impart a flavor [to the water]. And [in the case] of [second] tithe, the first [infusion] is forbidden,¹¹ [but] the second is permitted. R. Meir says: The second [infusion is] also [forbidden] when [it contains enough of the wine] to impart a flavor [to the water]. And [in the case] of consecrated [lees], the third [infusion] is forbidden, but the fourth is permitted. R. Meir says: The fourth [infusion is] also [forbidden] when [it contains enough of the wine] to impart a flavor [to it].

A contradiction was pointed out [from a Baraita which states that infusions] of consecrated [things] are forever¹² forbidden and [those] of [the second] tithe are always¹³ permitted. [Surely this shows] a contradiction between [the respective laws relating to] consecrated things and also between those relating to tithe! — There is no contradiction between [the respective laws relating to] consecrated things, [for] here [the law relates] to objects which were themselves¹⁴ consecrated, but there [it relates] to objects whose value¹⁵ only was consecrated. There is [also] no contradiction between [the respective laws relating to] tithes, [for] here, [the law relates] to that which is certainly tithe, [but] there [it relates] to tithe of *Demai*.¹⁶

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R. Johanan said in the name of R. Simeon b. Jehozadak: The same [laws] that have been said [to apply] in respect of their prohibitions¹⁷ have similarly been said [to apply] in respect of their making objects fit [for Levitical uncleanness].¹⁸ What [kind] of making fit [is meant]? If [the infusion is regarded as consisting] of water, it certainly makes [objects] fit [for the Levitical uncleanness]; [and] if [it is regarded as consisting] of wine it [equally] makes the objects fit. [For what purpose, then, is R. Simeon's statement required?] — It is required in the case where the Tamad¹⁹ was made of rain water.²⁰ But since he took up [the rain water] and poured it into the vessel [containing the lees], he [surely] intended them [for use, and consequently there is again no difference between an infusion of wine and one of water. Why, then, R. Simeon's statement]? — It is required [in the case] where the Tamad was made without the aid of human effort.²¹ But since he draws out [the infusions] one after the other,²² [does he not, thereby,] reveal his intention [of using them]? — R. papa replied: In [the case²³ of] a cow which drank the [infusions] one after the others [and, consequently, the owner's intention is not known].²⁴

R. Zutra b. Tobiah said in the name of Rab: The *Kiddush*²⁵ of the day must be proclaimed on such wine only as is fit to be brought as a drink offering upon the altar. What does this exclude? If it is suggested that it excludes wine [that comes] from his vat,²⁶ [it may be retorted]: Did not R. Hiyya teach, 'One must not bring wine from his vat [as a drink offering], but if already brought, it is permitted [to be used]'; and, since [in the case of offerings] it is permitted when brought, it [should be allowed for *Kiddush*] even at the start also.²⁷

1. [H] an inferior wine, or a vinegar, made by steeping stalks and skins of pressed grapes in water or by pouring water into lees.
2. Ma'as. V. 6; Pes. 24b; Hul. 25b.
3. In such a case, even the Rabbis (representing the first opinion quoted) would agree that the wine is

liable to tithe and, for the same reason, subject to the benediction of proper wine.

4. Lit., 'the power'.
5. I.e., In holding that even when only the quantity put in has been extracted, it is nevertheless subject to tithe.
6. Regarding its benediction.
7. Lit., 'blunts the teeth'.
8. V. [Glos.](#)
9. Only priests are allowed to eat *Terumah*. The first and the second infusion are still regarded as *Terumah* because they contain a considerable admixture of the original wine.
10. Even though it may still retain some flavor of wine.
11. To be eaten outside Jerusalem.
12. Even the fourth, etc.
13. Even the first.
14. E.g., wine as a drink offering for the altar.
15. If, e.g., one has consecrated wine for the purpose that the proceeds from its sale might be used for Temple repairs, the wine must be sold and the proceeds only used. The sanctity of such an object is not as high as that which itself is to be offered on the altar.
16. Heb. [H] (root [H] 'suspect'). Wine or any produce about which there is doubt whether the tithe or any of the priestly, or Levitical gifts has been duly separated. (Produce, e.g., purchased from an ignorant man, '*am ha-arez.*') The law relating to tithes that have been taken from such wine, etc., is not as stringent as that relating to tithe taken from produce, wine, etc. about which it is definitely known that no tithe has ever before been taken.
17. That in the case of *terumah*, e.g., the first and the second infusions but not the third, and in the case of the tithe, the first but not the second, are regarded as the original wine, and are subject to its restrictions.
18. Certain objects such as grain, fruit, etc. are not subject to Levitical uncleanness unless they have been first brought in contact with certain liquids. V. Lev. XI.
19. V. [Glos.](#)
20. Which, like other waters, does not fit objects for uncleanness unless used with the owner's desire or consent. Wine, however, always effects fitness for uncleanness whether with, or without the intention or knowledge of the owner.
21. The rainwater fell directly into the lees.
22. Lit., 'first, first'.
23. And for this R. Simeon's statement is required.
24. In such a case there is a difference whether the infusion is regarded as wine effecting fitness for uncleanness or as water and effecting no fitness. If the cow drank the first infusion only, the law will be applicable to the second infusion. If it

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drank the second, the law is required for the third.

25. ause 'sanctification', applied here to the proclamation of the sanctity of the Sabbath or Festival, which is made on Sabbaths and Festivals over a cup of wine, to which other appropriate benedictions are added.
26. I.e., too new.
27. *Kiddush* is not as high in importance as Temple offerings.

Baba Bathra 97b

[Moreover,] Raba said: A man may press out a cluster of grapes¹ and proclaim over it the *Kiddush* of the day!² Or, again, [if it is suggested that the object of Rab's statement is] to exclude³ [the wine] at the mouth⁴ [of the jug] and at the bottom,⁵ [it may be retorted]: Did not R. Hiyya teach, 'One must not bring [wine as a drink offering] from [the jug's] mouth or bottom, but if already brought it is permitted [to be used].! And [if it is suggested that the statement] excludes black, white,⁶ sweet,⁷ cellar,⁸ and raisin wine; surely it has been taught⁹ [that] all these must not be brought, but if brought already they are permitted! And [if it is suggested that the statement] excludes wine [which is] pungent, mixed,¹⁰ exposed,¹¹ made of lees, or having an offensive smell as it has been taught [that] in [the case of] all these, one must not bring [them] and even if brought [they remain] unfit, [it may still be retorted], 'to exclude which [of these was this statement made]?' If to exclude pungent wine, [this is surely a matter of] dispute¹² between R. Johanan and R. Joshua b. Levi. If to exclude mixed wine, surely [when wine is mixed with water] it is improved, for R. Jose b. Hanina said:¹³ The Sages agree with R. Eleazar that in [respect of] the cup of grace after meals no benediction may be said over it until water has been poured into it.¹⁴ If to exclude exposed [wine], surely it is dangerous.¹⁵ If to exclude [wine made] of lees, [it may be asked], how is this to be understood? If three [jugs of water] were poured in and four [jugs of wine] came out, this [surely] is good wine. If three were poured in, and three and a half

came out, this is a [matter of] dispute between the Rabbis and the others!¹⁶ But, [this is the object of the statement], viz., to exclude [wine] which has an offensive smell. If preferred, it may be said that [the statement] may even exclude exposed [wine] and, [as to the objection raised,¹⁷ it may be replied that it excludes such wine] even though it was passed through a strainer¹⁸ in accordance with [the teaching of] R. Nehemiah,¹⁹ [it] nevertheless [may not be used for *Kiddush*, because] Present it²⁰ now unto thy governor; will he be pleased with thee? Or will he accept thy person?²¹

R. Kahana the father-in-law of R. Mesharshya inquired of Raba: May white²² wine [be used as a drink-offering]? — He replied unto him: Look not thou upon the wine when it is red.²³

JUGS IN SHARON, etc.. It has been taught: [The bad jugs referred to in our Mishnah are those which are] thin²⁴ and lined with pitch.²⁵

MISHNAH. IF ONE SELLS WINE TO ANOTHER AND IT TURNS SOUR. HE IS NOT RESPONSIBLE,²⁶ BUT IF HIS WINE IS KNOWN TO TURN SOUR, THE PURCHASE IS ONE BASED ON ERROR.²⁷ IF HE SAID UNTO HIM. 'WINE

1. And this certainly is not better than wine from the vat.
2. This clearly shows that wine from the vat may be used for *Kiddush*, even at the start.
3. From eligibility for *Kiddush*.
4. On account of the mould that usually gathers near the top.
5. On account of the lees there, which gets mixed up with it.
6. [H] 'shining'. effervescent. Others read [H] 'searching' (in the body), causing diarrhea.
7. [G] a very weak wine.
8. Promiscuous wine, not tested.
9. Men. 86a.
10. With water.
11. Wine that remained uncovered during the night must not be used, for fear lest a poisonous snake may have drunk from it.
12. Whether it is considered wine or vinegar. V, *supra* 96a.
13. Ber. 50b.

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14. Their wines were so strong that they could not be drunk without water; three parts of water to one of wine.
15. And must not be used even for ordinary purposes.
16. *Supra* 96b.
17. *Supra*, that such wine is dangerous and must not be used even for ordinary drinking.
18. Or 'filter', in which case there is no more danger in drinking it.
19. Suk. 50b; B.K. 115b. The poison of the snake, he states, floats, and may be removed from the liquid with the aid of a strainer.
20. I.e., the blind, the lame and the sick, mentioned by the prophet in the earlier part of the verse.
21. Mal. 1, 8. As those objectionable offerings (v. previous note) were condemned by the prophet, so is the use of any objectionable thing in connection with divine service (such, e.g., as *Kiddush*) also to be condemned.
22. V. p. 405, n. 8.
23. Prov. XXIII, 31. This implies that proper wine must be red. Hence, only red wine may be used for drink-offerings.
24. [H] (from [H] 'slender', 'fine'). Others render [H] 'half-baked'. (Cf. [H] in Ex. XII, 9.)
25. If, however, they were in a worse condition the buyer need not accept them at all.
26. Since at the time of the sale the wine was in a good condition.
27. Because the seller ought to have informed the buyer that his wine could not stand, V. p. 408, n. 2.

Baba Bathra 98a

THAT IS SWEET¹ I AM SELLING YOU, HE IS RESPONSIBLE FOR ITS PRESERVATION UNTIL PENTECOST.² AND [IF HE SAID, 'I SELL YOU] OLD [WINE.' HE MUST SUPPLY WINE] OF THE PREVIOUS YEAR; [IF] VERY OLD [WINE.' HE MUST SUPPLY WINE] OF THREE YEARS STANDING³

GEMARA. R. Jose, son of R. Hanina, said: [The law⁴ in] our Mishnah is applicable only [to the case where the wine is] in the jugs of the buyer,⁵ but [where it is] in the jugs of the seller [the former] can say to him, 'Take your wine and take your jug'.⁶ But what matters it [even] if the jugs are the seller's? Let him say to [the buyer]. 'You should not have kept it so long!'⁷ — The law [mentioned] is applicable [to the case] where [the buyer] said to him

[that he required the wine] for [flavoring] dish[es].⁸ But what compels R. Jose, son of R. Hanina, to explain our Mishnah as treating of the case where the jugs belong to the buyer and that he [specially] says [to the seller that he requires the wine] for [flavoring] dish[es]? Let him rather explain⁹ that it treats [even] of [the case where the] jugs belong to the seller and where [the buyer] does not say to him [that he requires the wine] for [flavoring] dish[es]? — Raba replied: Our Mishnah presented to him a difficulty, for it teaches: IF HIS WINE IS KNOWN TO TURN SOUR, THE PURCHASE IS ONE BASED ON ERROR, why. [R. Jose asked,] should that be so? Let [the seller] tell him, 'You should not have kept it so long' — From this,¹⁰ then, it must be inferred that [the buyer specifically] said to him [that he required the wine] for [flavoring] dish[es].¹¹ This view¹² is in disagreement with that of R. Hiyya b. Joseph, for R. Hiyya b. Joseph said: The condition of wine depends on its owner's luck¹³ for it is said. *Yea, moreover, wine is treacherous¹⁴ if the man is haughty,¹⁵ etc.¹⁶*

R. Mari said: One who is proud is not acceptable even to his own household, for it is said. *A haughty man abideth not,¹⁷ this means. he abideth not¹⁸ in his own abode.*

Rab Judah said in the name of Rab: Any one who is not a scholar, and parades in the scholar's cloak, is not admitted within the circle of the Holy One, blessed be He; [for] here it is written. And he abideth not¹⁹ and there it is written. To thy holy abode.²⁰

Raba said: If a man sold a jug of wine to a shopkeeper with the intention to retail it²¹ and when [there still remained] a half or a third, it turned sour, the law is that he²² must take it back from him.²³ This,²⁴ however, applies only to the case where [the shopkeeper] has not changed the bung-hole, but not [to the case] where he has changed the bung-hole.²⁵ [Furthermore,] this²⁴ applies only to the case where the market day has not [yet] arrived,²⁶ but not [to the case where] the market day has [already] arrived.

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Raba further stated: If a man accepted wine²⁷ for the purpose of taking it to the markets of Wal-Shafat,²⁸ and, by the time he arrived there, the price fell, the law is that the owner must accept it.²⁹

The question was raised, what is the law if it turned into vinegar?³⁰ — R. Hillel said to R. Ashi: When we were at R. Kahana's he said unto us: [In the case when it has turned into] vinegar, [the owner is] not [to bear all the loss], for [the law] is not in accordance with [the opinion of] R. Jose, son of R. Hanina.³¹ Others Say: Even [when it has turned into] vinegar. [the seller] must also bear [all the loss] in accordance with [the opinion of] R. Jose, son of R. Hanina.

OLD [WINE, HE MUST SUPPLY WINE] OF THE PREVIOUS YEAR, etc.

1. Implying that it will keep as long as other good wines,
2. *ha-'Azereth* [H] 'the gathering', 'the festive gathering'. 'The Feast of Weeks', 'Pentecost'.
3. I.e., two years previous to the current year.
4. That the seller is not responsible if the wine becomes sour.
5. For, in this case, it may be assumed that the buyer's jugs have spoilt the wine.
6. Since it was spoilt in the seller's jugs, the buyer has no responsibility whatsoever for its deterioration, and may cancel the purchase.
7. Since most people buy wine for immediate consumption.
8. Only small quantities at a time are used, and the wine has to be kept for a long time.
9. And so there would be no need to restrict our Mishnah to the case where the jugs are the buyer's. Whether they belonged to the buyer or to the seller, the latter would be free from responsibility since the fact that it was to be used in small quantities for a long period was not mentioned at the time of the purchase.
10. From the fact that the buyer is held responsible.
11. And knowing that his wine turns sour, the seller had no right to sell him it for the purpose required. Now since the second clause of our Mishnah speaks of such a case, the first clause also must speak of such a case; and the reason for the seller's exemption from all responsibility must, therefore, be attributed to the fact that the wine was kept in the jugs of the buyer.
12. That our Mishnah speaks of wine in the buyer's jugs and that, if it had remained in the seller's jugs. the latter would have been responsible.
13. And not upon that of the jugs.
14. I.e., turns sour.
15. A haughty person, who boasts of that which he does not possess, is punished, 'measure for measure', by having that which looks like wine turned into that which in reality is vinegar.
16. Hab. II, 5.
17. Ibid.
18. I.e., 'is not tolerated',
19. Ibid.
20. Ex. XV, 13 [H] 'Habitation', 'abode', in Ex, is of the same root as [H] 'abideth', in Hab.
21. The shopkeeper is to pay for the wine after it has been sold out, deducting a certain percentage for his trouble.
22. The seller, since he has retained the ownership of the wine, the shopkeeper merely acting as his agent.
23. Must bear the entire loss.
24. That the loss must be borne by the seller.
25. Because it is possible that the change has caused the wine to ferment and to turn sour.
26. So that the shopkeeper cannot be blamed for slackness in selling out.
27. On a commission, undertaking to pay the owner, after it had been sold out, deducting a percentage for his trouble.
28. And not to sell it elsewhere, Walshafat or Belshafat, a town in Susiana famous for its wine market; v. B.M. 73b.
29. I.e., he must bear the loss in value as compared with the price prevailing at the time the wine was accepted; since all the time the wine remained in his ownership.
30. Before it arrived at its destination.
31. Who said, *supra*, that whenever it was understood at the time of the purchase that the wine had to last for a long period, the seller must bear the loss, if the wine remained in his jugs.

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A Tanna taught: [If wine was sold as 'very old'], it must be capable of standing until the Feast of Tabernacles.¹

MISHNAH. IF ONE SELLS A PLACE TO ANOTHER OR ACCEPTS ONE FROM ANOTHER FOR THE PURPOSE OF BUILDING ON IT A WEDDING HOUSE FOR HIS SON,² OR A WIDOW HOUSE FOR HIS DAUGHTER,³ IT IS TO BE BUILT [IN THE DIMENSIONS OF NO LESS THAN] FOUR CUBITS BY SIX;⁴ THESE

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ARE THE WORDS OF R. AKIBA. R. ISHMAEL SAID: THIS IS AN OX STALL!⁵ HE WHO DESIRES TO ERECT AN OX STALL,⁶ IS TO BUILD [IT IN THE DIMENSIONS OF NO LESS THAN] FOUR CUBITS BY SIX; A SMALL HOUSE, SIX BY EIGHT; A BIG [ONE]. EIGHT BY TEN; A HALL, TEN BY TEN. THE HEIGHT [OF ANY OF THESE, MUST BE] HALF ITS LENGTH AND HALF ITS WIDTH.⁷ PROOF OF THIS? — RABBAN SIMEON B. GAMALIEL SAID: LIKE THE TEMPLE STRUCTURE.⁸

GEMARA. Why has it been stated, A WEDDING HOUSE FOR HIS SON OR A WIDOW HOUSE FOR HIS DAUGHTER, and not 'a wedding house for his son or daughter, or a widow house for his son or daughter'? — [By this the Mishnah] has taught us incidentally that it is not the [proper] way for a son-in-law to live at the house of his father-in-law; as it is written in Bensira, 'I have weighed all things in the scale of the balance and found nothing lighter than bran; lighter than bran is a son-in-law who lives in the house of his father-in-law; lighter than [such] a son-in-law is a guest [who] brings in [with him another] guest; and lighter than such a guest [is he who] replies before he hears [the question],⁹ for it is written, He that giveth answer before he heareth, it is folly and confusion unto him.'¹⁰

R. ISHMAEL SAID: THIS IS AN OX STALL. HE WHO DESIRES TO ERECT, etc. Who is the author of [the statement on] the OX STALL? — Some say the author is R. Ishmael, and some say R. Akiba is the author. Those who say R. Akiba is the author explain it thus, 'Although [the size] is [that of] an ox stall, one sometimes makes his dwelling [as small] as an ox stall'. And those who say R. Ishmael is the author, explain it thus, 'Because he who desires to erect an ox stall makes [it] four cubits by six.'

A HALL, TEN BY TEN. What is the meaning of traklin?¹¹ — An arched hall adorned with roses. It was taught: A kinter [contains] twelve [cubits] by twelve. What is a kinter? — The fore-court¹² of mansions.

THE HEIGHT ... HALF ITS LENGTH AND HALF ITS WIDTH. PROOF OF THIS? — RABBAN SIMEON B. GAMALIEL SAID: LIKE THE TEMPLE STRUCTURE. Who taught, 'PROOF OF THIS...'? — Some say. R. Simeon b. Gamaliel taught it; and this is the purport of what has been said: Whence the PROOF OF THIS? — R. SIMEON B. GAMALIEL SAID: All [dimensions must be in proportion] LIKE [those of] THE TEMPLE STRUCTURE. And some say, the first Tanna has taught this, and R. Simeon b. Gamaliel is astonished [at it] and says to him [to the first Tanna] thus: Whence the proof? [Is it] from the Temple structure? Does everybody make [houses] LIKE THE TEMPLE STRUCTURE?¹³

It was taught: Others say [that] its height [must be] equal to [the length of] its beams.¹⁴ Let it [then] be said [simply]. 'The height [must be] equal to its width'¹⁵ — If you wish, it can be said [that] a house is wider at the top;¹⁶ and, if preferred, it can be said [the expression 'equal to the length of its beams' is necessary] because there are apertures [in the wall in which the beams are fixed].¹⁷

R. Hanina [once] went out to the country, [and] a contradiction between [the following] verses was pointed out to him. It is written, *And the house which King Solomon built for the Lord, the length thereof was threescore cubits, and the breadth thereof twenty cubits, and the height thereof thirty cubits,*¹⁸ but it is [also] written, *And before the Sanctuary which was twenty cubits in length, and twenty cubits in breadth, and twenty cubits in the height*¹⁹ thereof.²⁰ He replied unto them: [The last mentioned verse] reckons from the edge of the Cherubim²¹ upwards. What does [this kind of measurement]²² teach us?

1. From the Tabernacles (the vintage season) of the second year prior to the sale, until the Tabernacles of the year of the sale, making a total period of three complete years. If it did not keep, the seller must bear the loss.
2. In which to live after the wedding.
3. Whose husband dies, and who returns to her father's house.

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4. These are to be the dimensions (if none were specified) which one party can enforce upon the other.
5. Not a human dwelling which requires longer dimensions.
6. The Gemara explains, *infra*, who is the author of this statement.
7. If, e.g., the dimensions are four cubits by six, the height must be, $(4 + 6) / 2$, five cubits; if ten by ten: the height must be, $(10 + 10) / 2$, ten cubits.
8. Which was forty cubits long, twenty cubits wide and thirty cubits high, i.e., its height equaled half its length and breadth.
9. [Cf. Sirach, Eccles. XI, 8.]
10. Prov. XVIII, 13.
11. The Hebrew equivalent of 'hall' in our Mishnah. Cf. [G] *triclinium*, 'a dining room with three couches'.
12. Or front garden.
13. Other houses do not require heights in similar proportion.
14. Laid across the width of the house.
15. V. previous note.
16. Since it was usual to make stone walls thinner on top than below, so as to give them a broader basis. The beams which span the house at the top would consequently be longer than the width of the house below.
17. The ends of the beams, resting in the apertures, are included in the length of the beams. A beam, therefore, represents a greater length than the space between the inner side of the walls.
18. I Kings VI, 2.
19. This shows that the height was not thirty cubits, as stated in v. 2, but twenty.
20. Ibid. v. 20.
21. Whose height was ten cubits.
22. Why is the height measured from the Cherubim and not, as might be expected, from the ground?

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— It teaches us this: [The space] below¹ [was] as [that] above. As [the space] above² served no [material] purpose.³ so [the space] below served no [material] purpose.⁴ This supports R. Levi; for R. Levi — others say. R. Johanan — said:⁵ We have this as a tradition from our fathers [that] the place of the Ark and the Cherubim is not included in the measured [space]. So, indeed, it has been taught:⁶ The Ark which Moses made had a free space of ten cubits on every side.⁷

Rabina said in the name of Samuel: The Cherubim [made by Solomon] stood by a miracle; for it is said, *And five cubits was the one wing of the Cherub,' and five cubits the other wing of the Cherub,' from the uttermost part of the one wing unto the uttermost part of the other were ten cubits,*⁸ where, [then] were their bodies standing?⁹ Consequently it must be inferred that they stood by a miracle.

Abaye demurred: They might have been standing [with their bodies] protruding [under the wings] like [those of] hens!¹⁰ Raba demurred: perhaps they did not stand opposite one another!¹¹ R. Aha b. Jacob demurred: They might have been standing diagonally.¹² R. Huna the son of R. Joshua demurred: The house might have been wider from above!¹³ R. Papa demurred: Might not their wings have been bent?¹⁴ R. Ashi demurred: Their wings might have been overlapping each other!¹⁵

How did they¹⁶ stand? — R. Johanan and R. Eleazar [are in dispute on the matter]. One Says: They faced each other; and the other says: Their faces were inward. But according to him who says that they faced each other, [it may be asked]: Is it not written, *And their faces were inward?*¹⁷ — [This is] no difficulty: The former¹⁸ [was] at a time when Israel obeyed the will of the Omnipresent; the latter¹⁹ [was] at a time when Israel did not obey the will of the Omnipresent. According to him who says that their faces were inward [it may be asked]: Is it not written, *With their faces one to another?*²⁰ They were slightly turned sideways.²¹ For [so] it was taught: *Onkelos* the proselyte said, 'The Cherubim were of image²² work²³ and their faces were turned sideways as a student who takes leave of his master.'²⁴

MISHNAH. HE WHO OWNS A CISTERN WITHIN ANOTHER MAN'S HOUSE, GOES IN WHEN IT IS USUAL FOR PEOPLE TO GO IN, AND GOES OUT WHEN IT IS USUAL FOR PEOPLE TO GO OUT. HE MUST NOT BRING IN HIS BEAST [THROUGH THE OTHER'S HOUSE] TO GIVE IT DRINK FROM HIS

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CISTERN. BUT MUST FILL [HIS VESSEL] AND GIVE [THE BEAST] TO DRINK OUTSIDE. ONE OF THEM MAY MAKE FOR HIMSELF A LOCK, AND THE OTHER MAY [ALSO] MAKE FOR HIMSELF A LOCK.

GEMARA. Where [is] the lock [to be attached]? — R. Johanan said: Both²⁵ to the cistern. This is right [in the case of] the owner of the cistern, [for] he has to protect the water of his cistern; but for what purpose does the owner of the house [require a lock]? — R. Eleazar said:

1. The ten cubits from the ground where the Cherubim and the Ark were standing.
2. The space of twenty cubits from the Cherubim to the top.
3. They were empty.
4. The Ark and the Cherubim, as stated *infra*, miraculously occupied none of the space of the Sanctuary.
5. Cf. Yoma 21a; Meg. 10b.
6. Meg. l.c.
7. Though the entire area of the Holy of Holies was only twenty cubits by twenty.
8. I Kings VI, 24.
9. Since the two pairs of wings alone occupied twenty cubits, there was no room left for their bodies. (Cf. n. 12 *supra*.)
10. Whose wings touch each other on their backs, the entire bodies being covered by the wings.
11. Their wings overlapping sideways.
12. The distance between the diagonally opposite corners of the Holy of Holies was, of course, greater than that between any two of its sides; consequently longer than twenty cubits. This would allow room both for the wings and the bodies of the Cherubim.
13. And, therefore, there was a distance of more than twenty cubits between the walls, allowing room for the wings as well as for the bodies of the Cherubim.
14. So that together with the bodies, no more than a length of twenty cubits was required.
15. So that together with their bodies they did not occupy more than twenty cubits.
16. The Cherubim in the Holy of Holies.
17. II Chron. III, 13.
18. Facing each other, a sign of affection. Symbolic of the relationship between God and His people.
19. Turning inward, away from each other, symbolic of the unrequited love of God for Israel.
20. Ex. XXV, 20.
21. Partly facing one another and partly turning inward.

22. [H] Others render, 'image of children', comparing it with [H] 'children'. The latter leads on naturally to the simile, 'As a pupil who takes leave of his master'.
23. II Chron. Ibid. v. 10.
24. A student, on taking leave of his master, turns sideways for some distance, before turning his back completely on him.
25. The lock of the owner of the cistern and that of the owner of the house.

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In order [to avert] suspicion from his wife.¹

MISHNAH. HE WHO HAS A GARDEN WITHIN THE GARDEN OF AN OTHER MAN ENTERS WHEN IT IS USUAL FOR PEOPLE TO ENTER AND GOES OUT WHEN IT IS USUAL FOR PEOPLE TO GO OUT. HE MUST NOT BRING [ANY] DEALERS INTO IT.² HE MUST NOT ENTER [IT FOR THE MERE PURPOSE OF PASSING] FROM IT INTO ANOTHER FIELD. THE EXTERNAL [FIELD OWNER MAY] SOW THE PATHWAY.³ IF A SIDE PASSAGE WAS GIVEN⁴ HIM⁵ WITH THE CONSENT OF THE TWO, HE MAY ENTER WHENEVER HE DESIRES AND GO OUT WHENEVER HE DESIRES, AND MAY [ALSO] BRING DEALERS INTO IT.⁶ HE MUST NOT, [HOWEVER,] ENTER [IT FOR THE MERE PURPOSE OF PASSING] FROM IT INTO ANOTHER FIELD. NEITHER THE ONE NOR THE OTHER MAY SOW IT⁷

GEMARA. Rab Judah said in the name of Samuel: [If one says to another]. 'I sell you [land for] an irrigation [canal of the width of one] cubit', he must, [in addition to the width of the canal]. allow him two cubits [of land] in [the field] itself,⁸ one cubit on either side [of the canal] for its banks.⁹ [If he said.] 'I sell you [ground] for a pond¹⁰ [of the width of one] cubit', he must, [in addition to the pond], allow him one cubit [of ground] in [the courtyard] itself,¹¹ half a cubit on either side [of the pond] for its banks.¹¹ Who [has the right of] sowing these banks? — Rab Judah said in the name of Samuel: The owner of the field [is entitled] to sow them. R. Nahman said in the name of Samuel: The owner of the field

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[is entitled to] plant them. He who said, 'sow them', [agrees]. even more so, [that] he may plant them;¹² but he who said, 'plant them', [holds the opinion that] he must not, however, sow them, [because] they penetrate¹³ [into the canal].¹⁴

Rab Judah further stated in the name of Samuel: A water canal¹⁴ whose banks have been worn away, may be repaired [with the earth] of that field [through which it runs], for it is known that the banks could not have been washed away except into that very field.¹⁵ R. Papa demurred: Let the field owner say, [to the owner of the canal]. 'Your water has lowered your ground'!¹⁶ — But, said R. Papa. [the reason why earth may be taken from the adjacent field is] because the owner of the field has consented¹⁷ to this condition.¹⁸

MISHNAH. HE WHOSE FIELD IS TRAVERSED BY A PUBLIC PATH AND HE CLOSED IT, SUBSTITUTING [ANOTHER PATH] AT THE SIDE, FORFEITS THAT WHICH HE HAS GIVEN¹⁹ AND [THAT WHICH HE APPROPRIATED AS] HIS DOES NOT PASS INTO HIS POSSESSION.²⁰ A PRIVATE PATH [HAS A WIDTH OF] FOUR CUBITS.²¹ A PUBLIC ROAD [HAS A WIDTH OF] SIXTEEN CUBITS. THE KING'S HIGHWAY HAS NO LIMIT[S]. THE PATH OF A FUNERAL CORTEGE²² HAS NO LIMIT[S].²³ THE HALTING [PLACE]²⁴ HAD, SAID THE JUDGES OF SEPPHORIS, AN AREA OF FOUR KAB.²⁵

GEMARA. Why should not [THAT PATH, WHICH HE APPROPRIATED AS] HIS, PASS INTO HIS POSSESSION?²⁶ Let him²⁷ take a whip and sit down [to guard his path]! Does this, then, imply that a man may not take the law in his own hands even where a loss is involved?²⁸ — R. Zebid replied in the name of Raba: It is a decree [that he is not allowed to substitute another path for the one already used by the public] lest he assign to them a crooked path.²⁹ R. Mesharsheya said in the name of Raba: [Our Mishnah deals only with the case where] he gives them a crooked path.³⁰

1. By his affixing a lock to the cistern he prevents the other from using the water in his absence and, consequently, deprives him of the excuse of entering his house while his wife is alone.
2. The produce of the garden must be carried out to the dealers so that they cause no damage to the outer garden by passing through it.
3. Though he must allow the owner of the inner field the right of passage, the ground remains his own, and he may, therefore, use it for sowing.
4. By a court of law.
5. The owner of the inner field.
6. Since the path is not in the middle, but at the side of the field, it may be confidently assumed that the owner, who had consented to have the path there, has set it aside to be used solely as a path to the inner field. No restrictions, therefore, are imposed on any of its uses so long as their object is the gaining of admission to the inner field.
7. V. last clause of preceding note.
8. According to another reading, two cubits width of land must also be allowed for the canal itself, though its nominal capacity is one cubit.
9. So that the earth from the two strips of land might be used for repairing the sides of the canal whenever necessary.
10. In a courtyard, used for watering cattle and washing clothes and utensils. It is smaller than a canal which is used for irrigation purposes and requires a greater capacity.
11. V. *supra* n. 3.
12. Plants do not damage the sides of the canal, their roots going deep down into the ground.
13. And the consequent falling of earth causes damage to the structure or spoils the water.
14. Which belongs to one party while the field, through which it runs, belongs to another.
15. Hence, the earth for reconstruction also may be taken from that field.
16. The water may have carried away the earth of the banks else where. Why should the field owner be expected to supply earth for repair from his field?
17. When he sold the canal.
18. That earth for repair shall be supplied from his field.
19. I.e., the new path becomes public property.
20. And the public may henceforth claim two paths through the field.
21. If a 'private path' has been sold in one's field, a width of four cubits must be allowed for the path.
22. Lit., 'the grave'.
23. Those following the bier may tread even upon cornfields if their number is so large that the public highway does not suffice. Cf. also n. 5.
24. The place where, on returning from burial, the funeral escort halts to offer, with due

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ceremonial, consolation to the mourners. V, *infra* 100b.

25. I.e., 50 cubits by 33 1/3, an area sufficient for sowing four *kab* of seed.
26. Surely the path is in his own field and, since he has also substituted another for public use, the public loses nothing.
27. If he cannot prosecute all trespassers.
28. Surely it has been taught elsewhere that in such a case a man, in self protection, may take the law into his own hands.
29. Hence the law was enacted that even if one substituted a straight path, no possession could be gained of the old path.
30. If, however, he gives the public a straight path, he may take possession of the old one, and use force against any trespassers.

Baba Bathra 100a

R. Ashi said: Any¹ path [that runs] along the side [of a field] is crooked, [for] it is near to one and far from another.² But let him say to them, 'Take yours and give me back mine'³ — This [law of our Mishnah] is in accordance with [the view of] R. Eliezer; for it has been taught: R. Judah said in the name of R. Eliezer, [if] the public chose a path⁴ for themselves, that which they have chosen is theirs.⁵ [May, then], the public, according to R. Eliezer, act as robbers? — R. Giddal replied in the name of Rab: [R. Eliezer speaks of] a case where their path had been lost in that field.⁶ If so,⁷ why did Rabbah, son of R. Huna, state in the name of Rab [that] the *halachah* is not according to R. Eliezer?⁸ The reporter of the one statement is not the reporter of the other.⁹ What, then,¹⁰ is the reason [for the law of our Mishnah]?¹¹ — [The reason is derived] from that of Rab Judah; for Rab Judah said: A path of which the public has taken possession¹² must not be destroyed.¹³ Whereby does the public acquire possession [of the path, according to] R. Eliezer?¹⁴ By walking; for it has been taught: If he walked in it¹⁵ through the length of it and through the breadth of it, he has acquired the place where he walked — these are the words of R. Eliezer. And the Sages say: Walking is of no avail unless he has taken possession.¹⁶ R. Eleazar said: What is the reason of R. Eliezer? — For it is written,

Arise walk through the land in the length of it and in the breadth of it,' for I will give it unto thee.¹⁷ And the Rabbis?¹⁸ — There, He said to him thus¹⁹ only because of [His] love for Abraham, that his children may easily conquer [the land].²⁰

R. Jose, son of R. Hanina, said: The Sages agree with R. Eleazar in [the case of] a path of vineyards. Since it was made [only] for walking it is acquired by walking.

When they came before R. Isaac b. Ammi [with the case of one who sold to another a path in vineyards], he said unto them: Give him [a path so wide] that he may carry [through it] a load of twigs and [be able to] turn round.²¹ This, [however], has been said only [in the case] where [the path] is marked out by walls, but when it is not marked out by walls [the width of the path need be only] so much as [to allow him] to lift up one foot and put down the other.²²

A PRIVATE PATH ... FOUR CUBITS. A Tanna taught: Others say [that the path must be of such a width] as an ass with its load may be able to pass. R. Huna said: The *halachah* is according to the Others. The Judges of the Exile²³ say: [The width is to be] two cubits²⁴ and a half; and R. Huna said [that] the *halachah* is according to the Judges of the Exile. Did not R. Huna say [that] the *halachah* is according to the Others? — Both measurements are identical.²⁵

A PUBLIC ROAD ... SIXTEEN CUBITS. Our Rabbis taught: A private path²⁶ [is of the width of] four cubits; a path from one town to another²⁷ [is to have a width of] eight cubits;²⁸

1. Our Mishnah does not refer to a particular case where a crooked path had been substituted (as R. Mesharsheya suggested), nor is the provision in our Mishnah a case of preventive measures (as R. Zebid maintained), but any path, however good, cannot be placed along the side of a field as a substitute for one which runs through the midst of it.
2. Anyone living on the farther side of the field. And since a number of people, to whom the substituted path will cause hardship, will object

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to the change, the abolition of the old path would constitute a robbery of the public, and is therefore prohibited.

3. Why, then, does the Mishnah state that both the old path and the new become public property?
4. Even if it runs through private property, and even if the landowner's permission has not been obtained.
5. Lit., 'chosen' ('Er. 94a); and the owner of the land cannot raise any objection to their use of the path.
6. While an individual could not in a similar case make the choice without the consent of the landowner or without the authority of the court, the public have a right to choose the path they like.
7. That, according to Rab, the case dealt with by R. Eliezer is that of recovering a lost path.
8. Surely, the public are entitled to reclaim what they have lost. How, then, are the two statements made in the name of Rab to be reconciled?
9. R. Giddal, who taught in the name of Rab that R. Eliezer deals with the case where a public path had been lost in the field, has not accepted the statement made in the name of Rab by Rabbah that the law is not in accordance with R. Eliezer. In the opinion of the former the law is in agreement with the view of R. Eliezer. Rabbah, on the other hand, who stated in the name of Rab that the law is not in agreement with R. Eliezer's view, has not accepted R. Giddal's statement. In the opinion of Rabbah, R. Eliezer speaks of all cases, even of that where no path had been lost in the field and, for this reason, the law is against him.
10. Since our Mishnah is not according to R. Eliezer.
11. Why should not the owner of the field be entitled to say to the public, 'Take yours and give me back mine'?
12. By leveling, and making it fit for walking. (Rashb.)
13. B.K. 28a; *supra* 12a; 26b; 60b. If the owner of the land had raised no objection at the time possession was taken by the public. How much less may the path be abolished when, as in our Mishnah, the public had taken possession with the owner's full consent
14. Since R. Eliezer does not speak of taking possession', but of 'choosing'.
15. Lit., 'the field which he bought.'
16. Of the land, by performing some act such as leveling, breaking. etc, cf. *supra* 52b ff.
17. Gen. XIII, 17.
18. Why, in the face of the Biblical verse, do they maintain that by walking alone possession cannot be acquired?
19. I.e., to acquire possession by walking.
20. That they may enter it as heirs and not as robbers.

21. Without touching the fences of the path.
22. Since there are no walls, one can carry a load conveniently, however narrow the path may be.
23. Samuel and Karna.
24. *Gomed*; V, however p. 279, n. 6. Others consider the *gomed* to be shorter than the cubit by a hand's length and to represent the distance between the elbow and the fingers.
25. Lit., 'this and this are the same size.'
26. For one person into his own field.
27. Reserved for the sole use of the inhabitants of the two towns.
28. To allow two wagons to pass each other.

Baba Bathra 100b

a public road,¹ sixteen cubits; the road to the cities of refuge,² thirty two cubits. R. Huna said: From what Scriptural text [may this be inferred]? — From the text, Thou shalt prepare thee the way;³ [instead of], 'a way' [it is written], 'the way'.⁴

THE KING'S HIGHWAY HAS NO LIMIT[s], because a king may break a wall to make a way for himself and no one may prevent him.

THE PATH OF A FUNERAL CORTEGE HAS NO LIMIT[s], in deference to the dead.⁵

THE HALTING PLACE HAD, SAID THE JUDGES OF SEPPHORIS, AN AREA OF FOUR KAB, etc. Our Rabbis taught: If a person has sold his [family] grave, the path to [this] grave, his halting place⁶ or his house of mourning, the members of [his] family may come and bury him perforce,⁷ in order [to avert] a slight upon the family.⁸

Our Rabbis taught: No less than seven halts and sittings⁹ are to be arranged for the dead, corresponding to¹⁰ Vanity of vanities. saith Koheleth; vanity of vanities, all is vanity.¹¹ R. Aha the son of Raba said to R. Ashi: What was their procedure? He replied unto him: As it has been taught; R. Judah said, At first they provided in Judea no less than seven halts and sittings for the dead in the [following] manner: [The leader called out after the escort had sat down on the ground]. 'Stand, dear [friends], stand up'; [and after they had

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walked for some distance he again called out]. 'Sit down, dear [friends], sit down'.¹² They¹³ said unto him: If so,¹⁴ such [procedure] should be permitted on the Sabbath¹⁵ also!

The sister of Rami b. Papa was married to R. Iwya. [When] she died he arranged [in] her [honor]¹⁶ a 'halting and sitting'. R. Joseph said: He erred on two [points]. He erred [in] that [the ceremony of halting and sitting] is to be held with near [relatives]¹⁷ only, and he held it even with distant [ones]; and he [further] erred [in] that they were instituted only for the first day [of the burial], and he arranged [them] for the second day. Abaye said: He also erred on the following [point]. These¹⁸ [were instituted] to take place in the grave-yard only, and he arranged [them] within the town. Raba said: He also erred on the following [point]. These¹⁸ may be arranged only where they are the local practice, but there, these were not the practice.

An objection was raised: [It has been stated that] they said unto him, 'If so, such [procedure] should be permitted on the Sabbath also'. Now, if it is said [that the ceremonial is to take place] in the graveyard and on the first day [only], [for] what [purpose] is the graveyard required on the Sabbath?¹⁹ — In [the case of] a town which is near a graveyard [and the dead] was brought [to burial] at twilight.²⁰

MISHNAH. IF ONE SELLS A PLOT [OF GROUND] TO ANOTHER AS A [FAMILY] GRAVE AND, LIKEWISE, IF ONE ACCEPTS [AN ORDER] FROM ANOTHER TO CONSTRUCT FOR HIM A [FAMILY] GRAVE, THE CENTRAL SPACE²¹ OF THE GROTTO MUST HAVE [AN AREA OF] FOUR CUBITS BY SIX.²² AND EIGHT SEPULCHRAL CHAMBERS ARE TO OPEN OUT INTO IT; THREE FROM [THE WALL ON] ONE SIDE.²³ THREE FROM [THE WALL ON] THE OTHER,²³ AND TWO [FROM THE WALL] IN FRONT.²⁴ THE CHAMBERS MUST BE FOUR CUBITS IN LENGTH, SEVEN [HANDBREADTHS] IN HEIGHT,

1. Used by people of more than two towns.
2. V. Num. XXXV, 6ff; Deut. XIX, 2ff.
3. Deut. XIX, 3.
4. [H] *ha-derek*. The definite article implies a 'special' way, double the usual which is of sixteen cubits.
5. In order that as many as possible may join his funeral escort to pay him their last honors.
6. V. *supra* p. 416, n. 8, and n. 4 *infra*.
7. They may force the buyer to take back the purchase price and cancel the sale.
8. Keth. 84a. Bek. 52b.
9. The funeral escort, on returning from a burial, halted on the way at a certain station, where seven times they stood up and sat down on the ground to offer comfort and consolation to the mourners or to weep and lament for the departed.
10. The seven times 'vanity' mentioned in the following verse: Three times 'vanity' in the singular, and twice in the plural which equal four in the singular.
11. Eccl. I, 2.
12. This is the conclusion of the answer to R. Aha's enquiry.
13. The Sages.
14. That the entire ceremonial consisted only of the leader's directions and of sitting down and standing up.
15. I.e., the Sabbath eve, if the burial took place near dusk. In such a ceremonial no desecration of the Sabbath could be involved.
16. Lit., 'for her'.
17. Who are not so near as to be included among the mourners.
18. I.e., 'halting and sitting'.
19. Surely burial on the Sabbath is forbidden
20. Of the Sabbath eve. In such a case the ceremonial would be performed on the Sabbath (V. p. 420, n. 10). Though the night forms, for general purposes, the beginning of the following day, in respect of the mourning on the first day of the death an exception is made, and the night is held to follow the previous day. Sabbath eve can accordingly be regarded for the purpose as Friday. viz., the first day of the burial.
21. Family graves were constructed in the form of a central grotto from which sepulchral chambers opened into the surrounding walls.
22. The height of the grotto is to be, according to the Tosefta, four cubits.
23. Of the two longer walls.
24. The shorter wall that faces the entrance.

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AND SIX¹ HANDBREADTHS IN WIDTH.² R. SIMEON SAYS: THE CENTRAL SPACE OF

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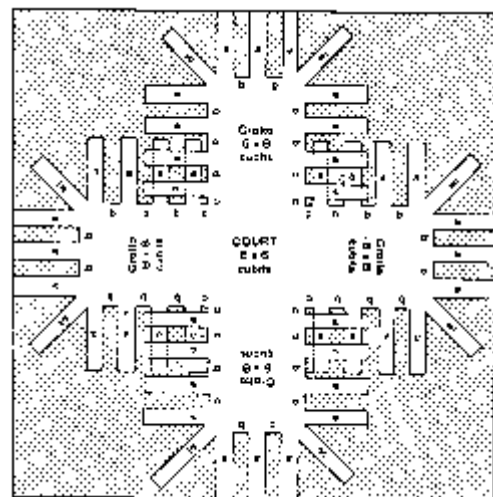
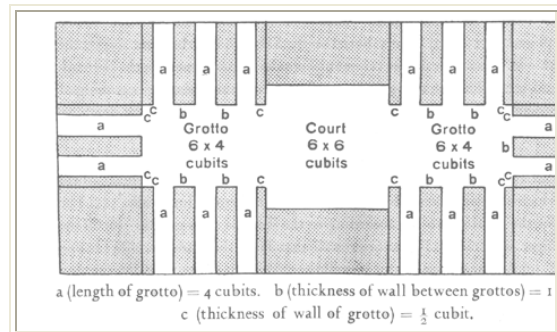
THE GROTTO MUST CONTAIN [AN AREA OF] SIX CUBITS BY EIGHT. AND THIRTEEN CHAMBERS ARE TO OPEN OUT INTO IT; FOUR ON ONE SIDE, FOUR ON THE OTHER. THREE IN FRONT [OF THE ENTRANCE]. ONE ON THE RIGHT OF THE ENTRANCE AND ONE ON THE LEFT.³ OUTSIDE THE ENTRANCE TO THE GROTTO IS TO BE MADE A COURT OF SIX [CUBITS] BY SIX, [WHICH IS] THE SPACE THE BIER AND THOSE WHO BURY IT OCCUPY. TWO GROTTOS⁴ ARE TO BE OPENED OUT INTO IT; ONE ON THE ONE SIDE AND ONE ON THE OTHER.⁵ R. SIMEON SAYS: FOUR; [ONE] FOR [EACH OF] ITS FOUR SIDES.⁶ R. SIMEON B. GAMALIEL SAYS: ALL DEPENDS ON [THE QUALITY OF] THE ROCK.⁷

GEMARA. Where are these two [chambers]⁸ to project? If outwards,² they would, surely, be trodden upon!¹⁰ Furthermore, we have learnt:¹¹ 'He who stands¹² in the court of a [family] grave is [Leviticall]y clean'.¹³ — R. Jose b. Hanina replied: They are made in the shape of a door-bolt.¹⁴ But, Surely. R. Johanan said:

1. Or one cubit.
2. A space of one cubit was allowed for each of the walls intervening between the sepulchral chambers, and half a cubit space was left at the end of each wall. The two longer walls of the grotto, being respectively six cubits in length, could, therefore, contain three chambers each: The chambers, each of one cubit in width, occupying three cubits; the two walls between them, two cubits; and the two half cubit spaces at the corners, another cubit. The shorter wall facing the entrance, being four cubits long, could contain two chambers only: the chambers occupying two cubits; the intervening wall, one cubit; and the two half cubit spaces at the corners, another cubit.
3. According to R. Simeon, the longer walls, being eight cubits in length, provide space for four one-cubit chambers each, allowing three cubits for the intervening one-cubit walls, and one cubit space for the two half cubit spaces at the corners. The wall opposite the entrance, being six cubits in length, can contain three one-cubit chambers, the space for the two one-cubit intervening walls and the two half-cubit spaces at the corners. This gives a total of, (4 + 4 + 3), eleven sepulchral

chambers. The location of the last two is dealt with in the Gemara *infra*.

4. The one mentioned, and another facing it.
5. The following diagram represents the plan and the area of the entire cave, court, grottos and sepulchral chambers, in accordance with the regulations laid down by the Rabbis, (the representatives of the anonymous opinion cited first in the Mishnah).



6. According to R. Simeon the plan and dimensions of the grave are as follows:
7. If the rock is hard, more sepulchral chambers may be cut, since less space is required for the intervening walls. If, on the other hand, the ground is soft, more space would be required for the walls and, consequently, the number of chambers would have to be reduced.
8. Which, according to R. Simeon, are to be cut on the right and on the left of the entrance.
9. Under the floor of the court.
10. By those who have to pass the court into the grottos; and treading upon a grave is an insult to the dead, which is forbidden.
11. Oh. XV, 8.
12. I.e., if he was carried into the court, not having trodden upon the surrounding graves.

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13. But if the graves were projecting into the court, as assumed, he would have become Levitically unclean on account of his treading on these graves.
14. The chambers are dug vertically and the bodies are placed in an upright Position.

Baba Bathra 101b

'This¹ is the burial of asses'? — According to R. Johanan they are made in the corner[s].² But, surely, the chambers would touch³ each other? — R. Ashi replied: One can make them deeper.⁴ For if you would not say so,⁵ how can four grottos be constructed according to R. Simeon? Surely [some of] the chambers [of adjacent grottos] would be touching⁶ each other! But [this, you would say, can be avoided] by digging [the overlapping chambers] deeper [than the others];⁷ in this case also, [the touching of chambers may be avoided] by digging [the corner chambers] into the wall deeper [than the adjacent ones]. R. Huna the son of R. Joshua stated: The [affected chambers in the] four grottos, according to R. Simeon, were made in the shape of palm-wigs.⁸ But this [statement of R. Huna b. R. Joshua is [to be] rejected.⁹ For, it is to be observed, every cubit square has a diagonal of a cubit and two fifths [approximately]. [The diagonal of the square formed by the adjacent walls of any two grottos] measures eleven cubits and a fifth,¹⁰ [approximately]. Is not the number of the chambers eight?¹¹ How, [then], is it possible [to make eight [chambers]¹² in [a width of] eleven [cubits] and a fifth? But that [statement] of R. Huna b. R. Joshua must be rejected. If you like, it may be said: As R. Shisha son of R. Idi [referred the case, *infra.*] to miscarriages, [so] here also [the chambers in question are for the burial] of miscarriages.¹³

We have learnt elsewhere [in a Mishnah]:¹⁴ If a corpse is found¹⁵ lying [in a grave] in the usual manner,¹⁶ both the corpse and the earth surrounding it are to be removed.¹⁷ [If] two [corpses, in similar conditions, are found],

they and the earth surrounding them are to be removed.

1. I.e., burial in an upright position.
2. The corners formed by the wall facing the entrance and the respective two walls adjacent to it, the chambers projecting into the corners in a

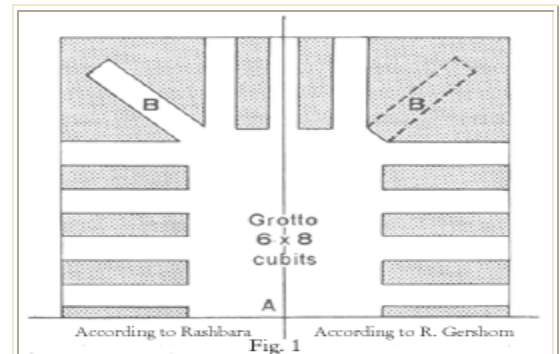


Fig. 1

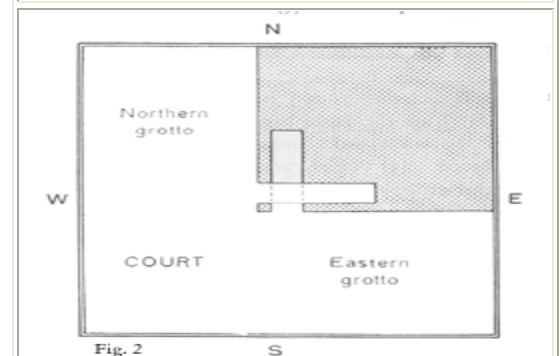


Fig. 2

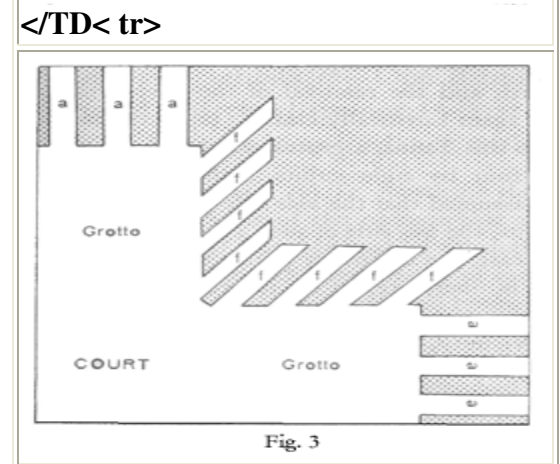


Fig. 3

slanting direction. V. fig. 1.

3. A width of one cubit is required for each chamber, while the entire space vacant in the corners is only half a cubit in either wall, thus leaving no intervening walls between the

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chambers in the corners and the adjacent chambers on either side.

4. The deeper one digs into the corners in a slanting direction, the further becomes the distance between the corner chambers and those adjacent to them (Rash.) R. Gershom explains that he digs the corner ones deeper in the ground, that is lower than the adjacent ones, cf. Jerushalmi, a.l.
5. That some of the chambers were dug deeper than the others.
6. The chamber in the northwestern corner of the eastern grotto, for example, would coalesce with the south-eastern chamber of the northern grotto. V. fig. 2.
7. Deeper in the ground and lower than the corresponding chambers in the other grotto.
8. Fan shape; and this would avoid overlapping or coalescing and the necessity for deeper digging.
9. [H] *var. lec.* [H] 'imaginary'. V. B.M. 9a. n. 00.
10. Each of the two walls being eight cubits in length, a square is formed whose diagonal is $8 + (8 \times 2) / 5 = 11 \frac{1}{5}$ cubits approximately.
11. Four in the wall of each grotto.
12. Each one of which is to be a cubit in width. Add to this the widths of the seven intervening walls, each also of one cubit, making a total of fifteen cubits.
13. Or, newly-born infants. The corner chambers as well as those which, according to R. Simeon's plan, would overlap, are to be used for burial of small bodies which occupy little space. Small burial chambers would not coalesce with, or touch the others.
14. Oh. XVI, 3.
15. In an area which is not known to be a graveyard and, therefore, Levitically clean.
16. Showing that Israelites had buried it and that death was due to natural causes; and the question, therefore, arises whether that area was not once used as a regular graveyard. In the case of a mutilated corpse or non-Jewish mode of burial, that question does not arise, since it is obvious that the corpse was buried in that spot by mere accident.
17. If the area is to remain Levitically clean. The discovery of one corpse does not establish the area as a graveyard, and the removal of the corpse in the manner prescribed, renders the area again Levitically clean.

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If three [corpses] were [similarly] found, [then], if [the distance] between them¹ is from four, to eight [cubits], the area] is [to be considered] a grave-yard;² and a search³

must [also] be made [over a distance of] twenty cubits,⁴ from that spot onwards. [If] at the end of twenty cubits a corpse is found, a search of [another] twenty cubits from that spot onwards must be made; for there is reasonable ground⁵ for the assumption⁶ [that even the single grave is an indication of the existence there of other graves]; although if [the single corpse] had been found first⁷ it should have been removed together with the earth surrounding it.⁸

The Master stated, 'from four to eight cubits'.⁹ According to whom [is this Mishnah]? If according to the Rabbis, surely they said [that the area of a grotto is to be] four cubits by six? If according to R. Simeon, surely he said [that the grotto must contain an area of] six [cubits] by eight? — [This Mishnah] is, in fact, [in agreement with] R. Simeon; but it is [in accordance with the version of R. Simeon's view as reported by] the following Tanna. For it has been taught: 'If they¹⁰ were found close to one another, and there was not a distance of four to eight cubits between them, the earth surrounding their bodies belongs to them but they do not constitute the ground as a graveyard. R. Simeon b. Judah said in the name of R. Simeon: The intervening ones are regarded as if they did not exist and the rest are combined,¹¹ [if the distance is] from four to eight cubits'.¹² Since this¹³ has been assumed to be in accordance with R. Simeon, explain the final clause [which reads]: A search must [also] be made [over a distance of] twenty cubits from that spot onwards. According to whom [is this]? If according to R. Simeon, [the distance] should be twenty-two;¹⁴ if according to the Rabbis,¹⁵ it should be eighteen?¹⁶ It may, in fact, be according to the Rabbis but there is a possibility that he made the search diagonally.¹⁷ But since the one [grotto is assumed to be searched] diagonally, the other also [should be assumed to be searched] diagonally [and, consequently, the distance] should be twenty-two [cubits]?¹⁸ — One diagonal [search] is expected; two diagonal [searches] are not.¹⁹

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1. Between the first and the third.
2. According to this Tanna, a grotto which forms part of a family grave contains an area of four by eight cubits. If the three corpses were found within four cubits, it is assumed that the wide side of such a grotto had been found. If within eight cubits, the long side of such a grotto is assumed to have been discovered. In either case, the discovery points to the existence of a family grave in that area which is, therefore, to be regarded as a grave yard, the extent of which must be ascertained.
3. To ascertain whether any other graves are to be found in the vicinity, and to determine the extent of the area that is henceforward to be regarded as Levitically unclean.
4. I.e., the approximate length of the court (six cubits) and of the two grottos that open out from its opposite sides (eight cubits each, according to the Tanna.) The actual length is, of course, twenty two cubits and the discrepancy is discussed in the Gemara.
5. Lit., 'feet' on which to stand.
6. Since one group of graves had already been discovered within twenty cubits.
7. Before the other three corpses, without any further search having had to be made.
8. V, *supra* n. 1.
9. That a spot to be regarded as a graveyard must contain three corpses within four to eight cubits.
10. I.e., the corpses.
11. To constitute the ground as a graveyard.
12. This author [it is who] is of the opinion that according to R. Simeon these are the dimensions.
13. Tho Mishnah of Ohaloth mentioned.
14. The length of the court is six cubits, and the length of each of the two grottos is eight cubits.
15. Though the first clause will still be according to R. Simeon.
16. The length of each grotto is six cubits and that of the court also six.
17. Though the length of the grotto is only six cubits, the diagonal of the area of the graves (the sepulchral chambers) thus searched would be longer. The diagonal of four, (respective lengths of chambers), by six, (length of grotto wall), is more than seven cubits in length $\sqrt{(4^2 + 6^2)} = \sqrt{52}$, say roughly eight cubits. Add length of court (six cubits) and length of corresponding grotto (six cubits) and the total obtained is roughly twenty.
18. Eight for the diagonal of each grotto and six for the court.
19. Since no corpses were found in the first.

Baba Bathra 102b

R. Shisha b. R. Idi said: It¹ may, in fact, be in accordance with the view of R. Simeon,² but

here it dealt with the case of miscarriages.³ But since the one [is] for miscarriages, the other also [should be] for miscarriages, [and the distance] should, [consequently], be eighteen [cubits]! — One [grotto] for miscarriages is assumed, two [grottos] for miscarriages are not.

Contradictions were pointed out between two statements of the Rabbis⁴ and [also] between two statements of R. Simeon. For we learnt:⁵ [If] a vineyard is planted on [an area of] less than four cubits, R. Simeon says it is not [regarded as] a vineyard, and the Sages say: [It is regarded as] a vineyard, the intervening vines being treated as if they were not in existence. [Is not the statement] of the Rabbis [there]⁶ contradictory to their statement [with reference to corpses];⁷ and [the statement there] of R. Simeon⁸ contradictory to his [statement here]?⁹ — There is no contradiction between the two statements of R. Simeon; [for] there, people do not plant [vines] with the object of pulling¹⁰ [them] out, [but] here, [a burial] may sometimes take place at twilight and [the corpse] is put down temporarily.¹¹ There is also no contradiction between the two statements of the Rabbis; [for] here, since [the body] is disgraced, [the spot] cannot be designated a grave,¹² [but] there, [the owner, when planting the vines] may think whichever tree will be sound will remain,¹³ and whichever is a failure will be [used] for firewood.¹⁴

CHAPTER VII

MISHNAH. IF ONE SAYS TO ANOTHER: 'I SELL YOU A BETH KOR¹⁵ OF ARABLE LAND',¹⁶ [AND] IT CONTAINED CLEFTS TEN HANDBREADTHS DEEP, OR ROCKS TEN HANDBREADTHS HIGH, THESE ARE NOT TO BE MEASURED WITH IT. [IF THEY ARE] LESS THAN THIS,¹⁷ THEY ARE TO BE MEASURED WITH IT. IF, HOWEVER, HE SAID TO HIM, 'ABOUT A BETH KOR OF ARABLE LAND, EVEN IF [THE LAND] CONTAINED CLEFTS DEEPER THAN TEN, OR ROCKS HIGHER THAN TEN

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HANDBREADTHS, THEY ARE TO MEASURED WITH IT.

GEMARA. We learnt elsewhere: He who consecrates his field¹⁸ in the time [when the laws] of the jubilee year¹⁹ [are in force], must pay for an area in which a *homer*²⁰ of barley may be sown, fifty *shekels* of silver.²⁰ If it contained clefts ten handbreadths deep, or rocks ten handbreadths high

1. The final clause of the Mishnah of Ohaloth requiring a search along a distance of twenty cubits.
2. Who requires the area of a grotto for adults to be six by eight.
3. Miscarriages occupy a grotto which is only six cubits in length. The total length, therefore, is six (grotto for miscarriages), plus eight (the grotto for adults, on the other side of the court), plus six (court), total twenty cubits.
4. Lit., 'that of the Rabbis upon the Rabbis'.
5. Kil. V, 2; *supra* 37b, 83a.
6. Where the intervening vines are disregarded.
7. All of which are counted.
8. Counting in all the vines.
9. Where the intervening corpses are regarded as if they did not exist.
10. Hence the vines are permanent and cannot be disregarded.
11. With the intention of removing it later. Hence, if by accident the corpse had not been removed, it may be disregarded, and does not prevent the remaining corpses from combining to form a graveyard.
12. No regular burial, however late the hour, would take place in such a manner. The spot, consequently, could not have been a graveyard.
13. Lit., 'sound'.
14. And since a number of the vines have been planted temporarily and will at any moment be pulled out, they may rightly be treated as if they were not in existence.
15. An area of 75,000 square cubits, in which a *kor* or *homer* (= 30 *se'ah*) of seed may be sown.
16. Lit., 'earth'.
17. I.e., lower than, or not as deep as ten handbreadths.
18. An 'inherited' field as distinct from a 'purchased' field. Cf. n. 7.
19. V. Lev. XXV, 8ff.
20. I.e., a *kor*. Cf. *ibid.* XXVII, 16.

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these are not measured with it.¹ [If they are] less than this, they are to be measured with it.² Now, why [should they³ not be measured with it]? Let them⁴ [at least], be [treated as if they had been] consecrated separately!⁵ And if you will suggest [that] since they do not contain a [full] *beth kor* they cannot become consecrated,⁶ surely it has been taught: Why is it expressly said, [the] field!⁷ — Because, since it was said, the sowing of a *homer* of barley shall be valued at fifty *shekels* of silver,⁸ one might infer only a similar consecration;⁹ whence [however, may it be inferred that] a *lethek*,¹⁰ half a *lethek*, a *se'ah*,¹¹ a *tarkab*¹² and half a *tarkab* are also included [in this law]? [For this reason] it has been expressly stated, [the] field, [which implies consecration in any manner.¹³ [Why, then, could not the clefts or the rocks be consecrated separately?]] R. Ukba b. Hama replied: Here is a case of clefts full of water in which no sowing is possible. This may also be proved by deduction, for [the clefts] were mentioned in an analogous position to that of rocks.¹⁴ This proves it. If so,¹⁵ even [if they are] less than [ten handbreadths they should] also [not be measured with the field]! These¹⁶ are called small clefts of the earth [and] the spines of the earth.¹⁷

What [is the law] here?¹⁸ — R. Papa said: Even though they are not full of water. What is the reason? — A person does not wish to invest his money in one plot which has the appearance of two or three plots.¹⁹

Rabina raised an objection: Surely, [the clefts] were mentioned in an analogous position to that of the rocks; as the rocks [are excluded] because they are unsuitable for sowing so these also [should be excluded only] when unsuitable for sowing? — The similarity to rocks refers to [the case where they are] less²⁰ than [ten handbreadths].

R. Isaac said: The rocks²¹ which have been spoken of²² [must not together cover more than an] area [requiring] four *kab* [of seed].²³

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R. 'Ukba b. Hama said: And this, only when they²⁴ are distributed over [an area which requires not less than] five *kab* [of seed].²⁵ R. Hiyya b. Abba said in the name of R. Johanan: This, only when they²⁴ are distributed over the greater part of the field.²⁶

R. Hiyya b. Abba inquired: [What is the law if] the greater part of them²⁷ is [scattered] over its²⁸ smaller part, and the smaller part of them²⁷ over its²⁸ greater part? — The matter is undecided?²⁹

R. Jeremiah inquired:

1. I.e., their redemption price is not the higher one given, according to Leviticus, for an 'inherited' field. Only their actual price has to be paid, as for a 'purchased' field. V. *ibid.* XXVII, 22.
2. 'Ar. 25a.
3. The clefts and rocks deeper and higher respectively than ten handbreadths.
4. If they are not regarded as part of the field.
5. And be redeemed at the higher rate of an 'inherited' field.
6. I.e., they cannot be treated like an 'inherited' field, with reference to which a *homer* is expressly mentioned.
7. Lev. XXVII, 19. Cf. however Rashi, 'Ar. 25a.
8. *Ibid.* 26.
9. I.e., a complete *homer* (beth *kor*).
10. Half a *kor*.
11. V. [Glos.](#)
12. V. [Glos.](#)
13. Even small areas.
14. And sowing in rocks is impossible.
15. That the reason why clefts and rocks are excluded is on account of their unsuitability for sowing.
16. Those which are of less than ten handbreadths.
17. Clefts and rocks which are respectively less than ten handbreadths in depth and height are treated as part of the field. A field cannot be expected to be absolutely level.
18. In the case of a sale, dealt with in our Mishnah, are the clefts excluded only when they are full of water?
19. The clefts and the rocks break up the unity of the field and this involves more labor in plowing, sowing and harvesting.
20. The Mishnah, in its second clause, teaches that in such a case they are included in the field even though they are full of water and are unsuitable for sowing as the rocks. The first clause, however, as R. Papa said, excludes clefts of ten

handbreadths deep even though they are not full of water.

21. Or clefts, of less than ten handbreadths.
22. In our Mishnah which authorizes their inclusion in the measuring of the field.
23. And in proportion, if the area sold is smaller or bigger.
24. The four *kab* of rocks or clefts.
25. But if their distribution is over a smaller area, they are regarded as one big ravine or rock, and are excluded from the measurements of the field.
26. Contrary to the opinion of R. 'Ukba, it is not enough for the clefts and rocks to be distributed over an area of five *kab*. If they are distributed over an area which does not represent the greater part of the field they are regarded as one big ravine or rock which is not to be included in the land sold.
27. Of the four *kab* of clefts and rocks.
28. The field's.
29. v. [Glos.](#) s.v. Teko.

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What is [the law if they¹ are arranged] like a ring,² like a straight line,³ in the shape of a stadium⁴ or in that of a crooked road?⁵ The matter is undecided.

A Tanna taught: If a rock is isolated,⁶ it is not measured⁷ with the field, however small⁸ [that rock might be]. And [even] if it was [in the field, but] near the boundary, it is not measured with the field, however small⁸ [that rock might be].

R. Papa inquired: What [is the law if some] earth intervenes between [the rock and the boundary]? — The matter is undecided.

R. Ashi inquired: What [is the law if] there was earth beneath⁹ and rock above, [or] earth¹⁰ above and rock beneath?¹¹ — The matter is undecided.

MISHNAH. [IF A MAN SAYS TO ANOTHER.] 'I SELL YOU A BETH *KOR* OF ARABLE LAND, MEASURED WITH THE ROPE',¹² [AND] HE GAVE [HIM] LESS, [EVEN IF ONLY BY] A FRACTION, [AN EQUAL SUM] IS TO BE DEDUCTED [FROM THE PRICE]. [IF] HE GAVE MORE, [EVEN IF ONLY BY] A FRACTION, IT IS TO BE RETURNED [TO

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HIM]. IF, HOWEVER. HE SAID,¹³ 'MORE OR LESS,¹⁴ THE SALE IS VALID EVEN IF HE GAVE [AT THE RATE OF] A QUARTER OF A KAB PER SE'AH¹⁵ LESS OR MORE. [IF THE DIFFERENCE IS] GREATER THAN THIS, CALCULATION IS TO BE MADE.¹⁶ WHAT IS [THE BUYER] TO RETURN TO HIM? — THE MONEY.¹⁷ IF, HOWEVER. [THE SELLER] PREFERS, [THE OTHER] RETURNS TO HIM THE LAND. WHEREFORE [THEN] DID THEY¹⁸ ENACT THAT [THE BUYER] IS TO RETURN TO HIM MONEY? — TO SAFEGUARD THE INTERESTS OF THE SELLER.¹⁹ IF, THEREFORE. THERE WAS A SURPLUS IN THE FIELD OF AN AREA OF NINE KAB;²⁰ AND IN A GARDEN, AN AREA OF HALF A KAB²¹ AND, ACCORDING TO R. AKIBA, A QUARTER OF A KAB;²¹ THE LAND [ITSELF] IS TO BE RETURNED. NOT ONLY THE QUARTER²² IS TO BE RETURNED BUT ALL THE SURPLUS.

GEMARA. The question was raised: What [if the seller] only [said, 'I sell you] a *beth kor*'?²³ — Come and hear! [IF A MAN SAYS TO ANOTHER.] 'I SELL YOU A BETH KOR OF ARABLE LAND, MEASURED BY THE ROPE',

1. V. n. 4.
2. Into which the plow cannot very well enter.
3. On both sides of which it is difficult to plow or to sow.
4. Curved line, and it is difficult to plow and to sow there.
5. In the bends of which the plow cannot easily enter.
6. Outside the field and adjoining it.
7. Only rocks within the field are included in the field if they are below the specified heights.
8. Even if less than ten handbreadths in height.
9. I.e., beneath the rock that lies near the border.
10. Less than three handbreadths in depth, and insufficient for the depth required by the plow.
11. Is the rock, in such cases as these, included in the measurements of the field or not?
12. I.e., exact measurements.
13. When the sale was being arranged.
14. Instead of 'measured by the rope', thus implying the measurements of the *beth kor* are not exact.
15. Or seven and a half *kab* in the *kor*, i.e. 1/24th A *kor* = thirty *se'ah*; a *se'ah* = six *kab*.

16. And the party that gained, pays for, or returns the difference.
17. The value of the surplus.
18. The Rabbis.
19. So that he should not be left with a fraction of land of which no use could be made.
20. Such an area is regarded as a field on its own.
21. Which is regarded as a self-contained garden. v. supran 21a.
22. Of a *kab* per *se'ah*.
23. Without specifying, either 'measured by the rope' or 'more or less'.

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AND HE GAVE [HIM] LESS, [EVEN IF ONLY BY] A FRACTION, [AN EQUAL SUM] IS TO BE DEDUCTED [FROM THE PRICE]. [IF] HE GAVE MORE, [EVEN IF ONLY BY] A FRACTION, IT IS TO BE RETURNED [TO HIM]. Thus [it is to be inferred that] had not [the expression 'measured by the rope'] been explicitly used [it would have been] just the same as if [the expression] 'more or less' [had been actually used]. Explain. [however], the concluding clause [which reads]: IF, HOWEVER, HE SAID, 'MORE OR LESS', THE SALE IS VALID EVEN IF HE GAVE [AT THE RATE OF] A QUARTER OF A KAB PER SE'AH LESS OR MORE. Thus [it is to be inferred that] had not [the expression, more or less'] been explicitly used [it would have been] just the same as if [the expression], 'measured by the rope' [had actually been used]! But, [one must conclude, that] nothing may be deduced from this [Mishnah].

Come and hear! [It has been taught: If a man says to another:] 'I sell you a *beth kor* of arable land', [or] 'I sell you about a *beth kor* of arable land' [or] 'I sell you [etc] more or less', the sale is valid even if he gave [at the rate of] a quarter [of a Rab] per *se'ah* less or more. This clearly proves that even when nothing¹ had been specified it is the same as [if the expression]. 'more or less' [had been used]! That [supplies no proof; for it] is an explanatory statement [implying] the following: In which case is [the expression] a *beth kor*' regarded as [the expression] 'about

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a beth kor'? When one said to the other, 'more or less'.

R. Ashi demurred to this: If so,² for what purpose is the expression. 'I sell you.' [thrice] repeated? Consequently, the deduction may be made that even when nothing¹ had been specified it is the same as [if the expression], 'more or less' [had been used]. This proves it.

WHAT IS [THE BUYER] TO RETURN TO HIM? — THE MONEY, etc. Does this [Mishnah] imply that we are to look after the interests of the seller and not after those of the buyer? Surely it has been taught: [If the land purchased was by] seven *kab* and a half per *kor*³ less, or by seven *kab* and a half per *kor*³ more [than the area agreed upon], the sale is valid. [If the surplus is] greater than this, the seller is compelled to sell and the buyer to buy!⁴ — There⁵ we deal with the case where land was first⁶ dear and is now⁷ cheap. [In such a case] the seller is told, 'If you [wish to] give him the land,⁸ give [it] to him at the present cheaper⁹ rate'. But has it not been taught: When he gives it¹⁰ to him, it must be at the rate at which he had bought of him? — That refers to the case where it was first cheap and is now dear.¹¹

IF, THEREFORE. THERE WAS A SURPLUS IN THE FIELD OF AN AREA OF NINE *KAB*, etc. R. Huna said: The [law of] nine *kab* spoken of¹² [applies] even in [the case of] a large valley.¹³ But R. Nahman said: Seven *kab* and a half must be allowed for every *Kor*,¹⁴

1. I.e., neither 'measured by the rope' nor 'more or less'.
2. That, in the statement quoted, one part is explanatory to the other.
3. I.e., 1/24, v. Mishnah, n. 4.
4. This shows that the seller has no advantage over the buyer.
5. Where the seller is compelled to sell.
6. When the sale was arranged.
7. When the argument about the surplus is taking place.
8. The surplus.
9. While the seller may re-claim, or compel the buyer to purchase the surplus land, the seller,

once he had decided to sell, may be compelled by the buyer to take the lower price prevailing at the time.

10. I.e., the deficiency of land.
11. In which case the buyer cannot be charged for the deficiency of land a higher price than the one prevailing at the time of the purchase.
12. In our Mishnah, according to which such an area must be returned to the seller.
13. Provided there was a surplus of nine *kab*, the area of the sold field does not matter. However large it may be, the surplus of nine *kab* or more must be returned, since such a surplus may be regarded as an independent field.
14. Whether the surplus is returnable or not depends on its proportion to the area of the field sold. If the surplus is no more than seven and a half *kab* per *kor* = 1/4 *kab* per *se'ah* = 1/24 of the area of the field, it need not be returned, however large that surplus may be. The larger the field the larger the surplus allowed.

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and if there is a surplus¹ amounting to nine *kab* it is to be returned. Raba raised [the following] objection against R. Nahman: IF, THEREFORE, THERE WAS A SURPLUS IN THE FIELD OF AN AREA OF NINE *KAB*. [Does] not [this refer even to the case] where two *kor* were² sold?³ No; [only] when one *kor*⁴ was sold. [But the Mishnah further stated:] AND IN A GARDEN, AN AREA OF HALF A *KAB*; [does] not [this refer even to the case] where two *se'ah*⁵ were sold? — No; [only] where one *se'ah* was sold. [But the Mishnah also states]: AND, ACCORDING TO R. AKIBA, A QUARTER OF A *KAB*; [does] not this [refer even to the case] where a *se'ah*⁶ was sold? — No; [only] when half a *se'ah* was sold.

R. Ashi inquired: What [is the proportion allowed in the case of] a field which was converted⁷ into a garden, or a garden which was converted into a field?⁸ — The matter is undecided.

It has been taught: If [the field sold] adjoined [another] field of his,⁹ even if [the surplus¹⁰ was] ever so little,¹¹ the land must be returned.¹² R. Ashi inquired:¹³ Does a [water] cistern form a division?¹⁴ [If not,]¹⁵ does a

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water canal¹⁶ form a division? [If not,] does a public road¹⁷ form a division? Does a nursery of young inoculated palm-trees form a division? — The matter is undecided.

NOT ONLY THE QUARTER IS TO BE RETURNED BUT ALL THE SURPLUS. Is not¹⁸ the order reversed?¹⁹ Rabin, son of R. Nahman, has taught:²⁰ [The Mishnah implies this]: Not only is the surplus²¹ to be returned but [also] all the quarters.²²

MISHNAH. [IF THE SELLER SAYS]. 'I SELL YOU ...²³ MEASURED BY THE ROPE MORE OR LESS', THE [CONDITION OF] 'MORE OR LESS' CANCELS²⁴ [THAT OF] 'MEASURED BY THE ROPE'. [IF HE SAYS]. 'MORE OR LESS, MEASURED BY THE ROPE',

1. Above a twenty-fourth of the area of the field.
2. Since the extent of the area is not indicated.
3. An area of nine kab in two kor is less than a twenty-fourth, and yet it is to be returned; how, then, can R. Nahman say that a twenty-fourth is allowed?
4. There was no need to specify this area, since earlier in the Mishnah it was mentioned that an area of one kor was being dealt with.
5. The proportion of a half a kab to two se'ah is a twenty-fourth, and yet it is to be returned, which is in contradiction to the law laid down by R. Nahman. Cf. supra note 2.
6. A quarter of a kab is a twenty-fourth of a se'ah. V. previous note and supra note 2.
7. By the buyer.
8. Is it to be regarded a field or a garden in respect of the laws of surplus?
9. I.e., the seller's.
10. In excess of the surplus of a twenty-fourth of the area sold.
11. I.e., although it does not amount to nine kab.
12. To the seller, because he can make use of it by joining the surplus strip to his other field. The buyer, therefore, cannot be compelled to purchase that strip.
13. Cf. supra 83b.
14. Between the surplus of the field sold and the adjoining field of the seller.
15. Because the water is not exposed.
16. Where the water is exposed.
17. Sixteen cubits in width.
18. [H] or [H]. The first word may be rendered 'towards' (... [H] and [H]); the second, read [H] is rendered 'whither', Rashi.; or [H] 'tail' (cf. [H]), Jast. The literal meaning of the phrase is

accordingly either 'towards where?' or 'towards the tail?'

19. The expression used in the Mishnah, 'Not only the quarter, etc.', implies that the law previously given was that the quarter had to be returned and not the surplus above it, while, in fact, the Mishnah had stated the law to be that the quarter was not to be returned.
20. Supra 94b.
21. Over and above the one twenty-fourth of the area, which is otherwise allowed.
22. Of a kab per se'ah, or one twenty-fourth of the area sold. Once the twenty-fourth which is allowed has been exceeded, all (the 1/24 and the surplus over and above it) must be returned.
23. V. Mishnah supra 203b.
24. The second condition is always regarded as the valid one. It cancels, therefore, the first.

Baba Bathra 105a

THE [CONDITION] 'MEASURED BY THE ROPE CANCELS [THAT OF] 'MORE OR LESS; THESE ARE THE WORDS OF BEN NANNUS.

GEMARA. R. Abba b. Memel said in the name of Rab: His colleagues are in disagreement¹ with Ben Nannus. What does this teach us? Surely we have learnt:² It happened at Sepphoris that a person hired a bath house from another for twelve gold [*denarii*] per annum, one *denar* per month,³ and the matter⁴ was brought before R. Simeon b. Gamaliel and before R. Jose who said that [the rent for] the intercalary month must be divided.⁵ [What, then, does Rab come to teach us?] — If [the inference⁶ had come] from there, it might have been said that there⁷ only [do the Rabbis hold the opinion that the rent for the month is to be divided], because it might be assumed that [the owner] had changed⁸ his mind, and it might [also] be assumed that [with the second expression] he was merely explaining⁹ [the first];¹⁰ but here,¹¹ where [the seller] has clearly changed his mind,¹² it might have been thought [that the Rabbis do] not [disagree with Ben Nannus]; hence [it was necessary for Rab] to teach us.¹³

Rab Judah said in the name of Samuel: This¹⁴ is the assertion of Ben Nannus, but the Sages

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say: The expression [which confers the] least¹⁵ [advantage upon the buyer] is to be followed. 'This'¹⁶ [would imply that] he [Samuel himself] is not of the same opinion. but, surely, both Rab and Samuel said:¹⁷ [If a seller said.] 'I sell you a *kor* for thirty [selai'm]'. he may withdraw even at the last *se'ah*.¹⁸ [If, however, he said]. 'I sell you a *kor* for thirty, [each] *se'ah* for a *sela'*, [the buyer] acquires¹⁹ possession of every *se'ah* as It is measured out for him.²⁰ [This, surely, shows that Samuel²¹ is of the same opinion as Ben Nannus!]²² — But, [it may be replied that] 'this', [may denote that Samuel] is of the same opinion.²³ Does [Samuel, however,] hold the same opinion? Surely Samuel said: [The Mishnah which states that the rent of the bath house for the intercalary month is to be divided] speaks [only of the case] where [the owner] comes²⁴ in the middle²⁵ of the month, but where he comes at the beginning of the month all [the rent of the month] belongs to the owner,²⁶ [and if he comes] at the end of the month, all [the rent of the month] belongs to the tenant.²⁷ [Does not this prove that Samuel disagrees²⁸ with Ben Nannus?]

1. In their opinion it is doubtful which expression is to be regarded as valid, and the property or sum in dispute is, therefore, to be divided between the buyer and the seller.
2. B.M. 102a.
3. Both expressions were used at the time of hire, and the year was a leap-year, containing thirteen months.
4. The dispute whether the intercalary month was to be included in the year, on account of the first expression, 'twelve gold [*denarii*] per annum', or whether it was not to be so included, on account of the second expression, 'one *denar* per month'.
5. Between the tenant and the owner of the house, i.e., the former pays only for half a month, since it is doubtful to whom the rent of the month belongs. Now, this clearly shows that the Rabbis do not agree with Ben Nannus, according to whom the second expression would have had to be considered as binding and a full month's hire would have had to be paid.
6. That the Rabbis are in disagreement with Ben Nannus.
7. The case of the bath house.

8. He first thought of letting the bath house for twelve *denarii* per annum, irrespective of whether the year was of twelve or thirteen months, and then changed his mind and demanded a *denar* for each month.
9. He had no intention of expecting thirteen *denarii* for the leap year. By the expression, 'a *denar* per month', he only meant that he wished to be paid monthly instead of yearly, and also that he might cancel the arrangements at the end of every month without having to wait till the end of the year.
10. And since the matter is in doubt, the Rabbis are of the opinion, and Ben Nannus himself might agree with them, that the sum disputed should be divided.
11. In our Mishnah.
12. Since the second expression is in direct contradiction to the first.
13. That even in this case the Rabbis disagree with Ben Nannus.
14. The law in our Mishnah.
15. If the land sold is more than the stipulated area, the expression, 'measured by the rope', is adopted and the buyer must return the surplus. If the sold land, however, is less than the stipulated area, the expression, 'more or less', is adopted and the seller need not make good the difference. The seller, being the original possessor of the land, has always the advantage.
16. Viz., 'this is the assertion of Ben Nannus'.
17. B.M. 102b, *supra* 86b; *infra* 106b.
18. Because the terms of the offer implied that his desire was to sell the entire *kor*. So long, therefore, as the buyer has not acquired every fraction of the *kor*, the purchase cannot be regarded as having been legally completed.
19. By specifying the price per *kor* and per *se'ah*, the seller has intimated his consent to sell either the entire *kor* or any smaller quantity.
20. Lit. 'he acquires first first'.
21. Who stated, in the second case, that the buyer acquired possession of every *se'ah* as it was measured out, on account of the expression, 'each *se'ah* for a *sela'*, which the seller used after he said, 'I sell you a *kor* for thirty'.
22. Who stated that the second expression cancels the first.
23. As Ben Nannus. 'This etc', only indicates that the Rabbis disagree.
24. To the court.
25. Since it is doubtful which expression cancels which, the money and the bath house are to remain in the possession of their respective owners. For the first half of the month, therefore, which has already passed, no rent can be claimed from the tenant who is in possession of his money. For the second half,

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however, the owner may claim the rent, since the property is his, and he has the power to prevent the other from using it.

26. Because the property is in his possession.
27. Because his money is to remain with him, who holds it in possession.
28. Since he is doubtful as to whether the first, or second expression is to be regarded as binding. Cf. *supra* n. 6.

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— But, [it may be replied.] 'this', in fact, [implies that Samuel] is not of the same opinion;¹ [as, however, his] reason there [for dividing² the monthly rent of the bath house is] because [each one of the parties] is in possession³ [of a part of that concerning which they are in dispute], so here⁴ also [the reason why the buyer acquires every *se'ah* as it is measured out to him is] because it is [then] in his possession.⁵

R. Huna said in the name of the school of Rab: [If one says that he would sell an object for] an *istira*,⁶ a hundred *ma'ah*, [he is entitled to] a hundred *ma'ah*. [If he says], 'a hundred *ma'ah*, an *istira*'. [he is entitled to] an *istira*. What does this teach us? That the second expression is to be preferred?⁷ Surely Rab has said it once! For Rab said: Had I been there⁸ I would have given all to the owner.⁹ [Why, then, need Rab say it again?]¹⁰ — [Since] it might have been said that [the reason Rab would have assigned all to the owner of the bath house] was because [he held that the second expression]¹¹ was merely explaining [the first],¹² therefore,¹³ [it was necessary for Rab] to teach us [the case of the *istira*].¹⁴

1. That the second expression cancels the first.
2. If the dispute is brought before the court in the middle of the month.
3. The owner is in the possession of the wash house; the tenant, of his money.
4. The sale of the *kor*.
5. And not, as has been suggested before, because the second expression cancels the first.
6. A silver coin equal in value to ninety-six copper *ma'ah*,

7. Lit., 'hold the last expression'. I.e., that the law is in agreement with the view of Ben Nannus.
8. When the dispute about the bath house was brought before R. Simeon b. Gamaliel and R. Jose.
9. Apparently because Rab is of the opinion that the second expression cancels the first.
10. In the case of the *istira*.
11. I.e., 'one *denar* per month'.
12. I.e., 'twelve gold *denarii* per annum; indicating that per annum' in the first expression referred to an ordinary year only, and not to a leap year of thirteen months, and not because Rab held that the second cancelled the first.
13. In order that it should not be assumed that, whenever the second expression cannot be regarded as an explanation of the first, Rab holds the view of the Rabbis against that of Ben Nannus.
14. In this case, the two expressions cannot be regarded as explanatory of one another, because the expression 'ninety-six *ma'ah*' can never be made to mean a hundred *ma'ah*, and vice versa. And since the two expressions must be contradictory, and Rab had said that the latter is to be followed, one may definitely conclude that Rab is of the same opinion as Ben Nannus who stated that the second expression cancels the first.

Baba Bathra 106a

MISHNAH. [IF ONE SAYS, I SELL YOU THIS¹ BETH KOR] WITHIN ITS MARKS AND BOUNDARIES', THE SALE IS VALID [IF THE DIFFERENCE² IS] LESS THAN A SIXTH;³ [IF IT AMOUNTS] TO A SIXTH, DEDUCTION⁴ MUST BE MADE.

GEMARA. It was stated: R. Huna said: [The law of] a sixth⁵ is⁶ like [that of] less than a sixth. Rab Judah said: [The law of] a sixth⁵ is⁶ like [that of] more than a sixth. According to R. Huna, [who] said [that the law of] a sixth is like [that of] less than a sixth, [the Tanna of our Mishnah] means to say thus: The sale is valid [in the case where the difference is] less than a sixth as well as [when it is exactly] a sixth.⁷ [If it is] more than a sixth deduction is to be made. According to Rab Judah, [who] said [that the law of] a sixth is like [that of] more than a sixth, the Tanna means to say thus: The sale is valid [when the difference is] less than a sixth. [If it

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is] more than a sixth as well as [when it is exactly] a sixth,⁴ deduction is to be made.⁸

An objection⁹ was raised: [It has been taught:] [If one states, 'I sell you a field] within its marks and boundaries', [and it was found to contain] a sixth less, or more, [the case] is like [that of] judicial appraisal [and] the sale is valid. Now, surely, [in the case of] judicial appraisal¹⁰ [the law of] a sixth [is the same] as [that of] more¹¹ than a sixth!¹² — R. Huna can reply to you.¹³ 'And according to your argument [is there here no difficulty]? Surely it is stated, [the sale is valid]!¹⁴ Hence, [this must be the explanation, the case is] like judicial appraisal [in one respect], and unlike judicial appraisal [in another]. [It is] like judicial appraisal [with respect] to the sixth,¹⁵ and [it is] unlike judicial appraisal, for there¹⁶ the purchase is cancelled, while here¹⁷ it is valid.

R. Papa bought a field from a certain person

1. Pointing to a particular field.
2. Between the actual area and that mentioned by the seller.
3. Though the mention of *beth kor* is the same as the mention of 'more or less' (cf. *supra* 104a), in which case the sale is valid only when the difference is less than one twenty-fourth, or a quarter *kab* per *se'ah*, the pointing out of the field and the addition of the stipulation, 'within its marks and boundaries', modify the implication of *beth kor*, and a greater difference is, consequently, allowed before any deduction can be claimed. While the expression, 'within its marks and boundaries', implies the offer of a specified field whatever be its area, the expression *beth kor*, used with it, implies an area *not too much different* in size from that of a *beth kor*. Hence the law of our Mishnah which limits the allowed difference to a sixth.
4. If less land was given, the difference in price is to be deducted. If more land was given, the surplus of land is to be returned.
5. If the difference between the actual, and the specified area was exactly a sixth.
6. The point of difference between R. Huna and Rab Judah lies in the interpretation of [H] in the phrase, [H] One considers [H] as *exclusive*, the other as *inclusive*.
7. Lit., 'a sixth being inclusive'.
8. [H] in our Mishnah, is taken by R. Huna to mean that 'the sale is valid (if the actual area is) less than (a *beth kor* by) a sixth', and from this it follows that the sale is certainly valid if the difference is less than a sixth; whereas Rab Judah interpreted our Mishnah as follows: 'The sale is valid (if the difference between the actual area and that of a *beth kor* is) less than a sixth'. Hence it follows that if the difference is a sixth, and certainly if it is more, deduction is to be made.
9. To the view of R. Huna.
10. When the court appraised orphans' property and an error of a sixth was made.
11. Since the entire transaction is cancelled even if the error was exactly one sixth.
12. Now ... sixth, how, then, can R. Huna maintain that the law of a sixth is the same as that of less than a sixth?
13. Rab Judah.
14. And if it is to be compared in all respects, as you suggest, to the case of judicial appraisal, the transaction should be invalidated.
15. Viz., that the standard of error is the sixth, and not the twenty-fourth (quarters of a *kab* per *se'ah*).
16. Where an error has been made by the court.
17. In the case of a sale of a field within marks and boundaries that have been pointed out.

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who stated¹ that it contained an area of twenty griva,² but it contained only fifteen. He³ came before Abaye who said unto him, '[Surely] you realized [its size] and accepted.' But did we not learn: THE SALE IS VALID [IF THE DIFFERENCE IS] LESS THAN A SIXTH; [IF IT AMOUNTS] TO A SIXTH, DEDUCTION⁴ MUST BE MADE? — This applies only where [the buyer] is not acquainted with the field, but where he is acquainted with it [it is assumed that] he understood [the conditions] and accepted. 'But,' [argued R. Papa.] 'he said to me, twenty!'⁵ — He replied: '[The seller might say that he meant] that the field was as good⁶ as [one of] twenty.

It was taught: R. Jose said: When brothers divide [an estate]⁷ all of them acquire⁸ possession [of their respective shares] as soon

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as the lot for one of them is drawn.² On what ground [is possession acquired]? — R. Eleazar said: [Possession is acquired in the same way] as [at] the beginning of [the settlement of] the land of Israel. As [at that] beginning, [the acquisition was] by lot, so here [also it is] by lot. Since there, however, [the division was made] through the ballot box¹⁰ and the Urim and Tummim,¹¹ [should not the division] here also [be made] through¹² the ballot box and the Urim and Tummim? — R. Ashi replied: [The lot alone suffices here] because [in return for] the benefit of mutual agreement¹³ they determine to allow each other to acquire possession [by the lot¹⁴ alone].

It has been stated: [In the case when] two brothers divided [an estate between them] and a [third] brother arrived from a country beyond the sea, Rab said the division is cancelled,¹⁵ and Samuel said they relinquish¹⁶ [thirds from their respective shares for the third brother].

Raba said to R. Nahman: According to Rab, who said that the division is cancelled, it is clear that [we act on the principle that even a definite] decision may be revised; but if so, the division should be cancelled¹⁷ also in the case where [a partnership] of three was in existence and two of these divided¹⁸ the property!¹⁹ — What a comparison! There,²⁰ they went [into the matter], from the very beginning, with the intention of [dividing the property between] three;²¹ but here,²² they did not enter '[into the matter]', at first, with the intention of [dividing the estate between] three.²³

R. Papa said to Abaye: According to Samuel, who said that they relinquish [thirds from their respective shares for the third brother], it appears that [where] a decision [has been arrived at, it] must be adhered to; but, surely, both Rab and Samuel have said:²⁴ [If the seller said.] 'I sell you a *kor* for thirty', he may withdraw even at the last *se'ah*;²⁵ [if, however, he said,] 'I sell you a *kor* for thirty. [each] *se'ah* for a *sela'* [the buyer] acquires²⁶

possession of every *se'ah* as it is measured out for him.²⁷ [This shows that even a decision arrived at,²⁸ may be upset!]²⁹

1. And also pointed out the marks and boundaries of the field.
2. A griva equals one *se'ah*.
3. R. Papa.
4. And here, the difference was more than a sixth, $5/20 = 1/4$; why, then, was not R. Papa allowed to deduct the difference?
5. Implying that if found to contain less, the difference would be made good from another field, or a deduction from the price would be allowed.
6. I.e., the fifteen *se'ah* of that field will produce as much as twenty in an ordinary field.
7. Into equal shares.
8. And none may withdraw.
9. If there are only two brothers, one acquires possession of one share as soon as the other brother has acquired by lot his share. If more than two brothers, they acquire possession collectively of the remaining shares when the lot has determined to whom the first share was to be allotted. The first brother then, stands out, and lots are cast between the others.
10. V. *infra* 222a.
11. Cf. Ex. XXVIII, 30, Lev. VIII, 8, Num. XXVII, 21. Cf. also I Sam. XXVIII, 6, Ezr. II, 63, Neh. VII, 65.
12. How, then, are the shares acquired here, in the absence of the Urim and Tummim, by mere lot?
13. Lit., 'because they listen to one another,' viz., to dissolve a partnership (Rashb.) [or to divide by lot (R. Gershom)].
14. They are all so anxious to dissolve their partnership at the earliest possible moment, that they readily agree that through the lot alone every one of them shall acquire possession of his share.
15. And a new division in three parts is to be made, lots being drawn again.
16. I.e., the division is valid, but each of the two brothers 'gives up a third of his share in favor of the new arrival. Thus, each of the three brothers retains or receives two thirds of half the estate, which form a third of the whole.
17. If the third party raises an objection.
18. In three parts, in the presence of a lay court of three, without consulting the third partner. (Cf. B.M. 32b.)
19. But, as a matter of fact, such a division cannot be cancelled, however much the third partner or brother may object. (Cf. B.M. 31b.)
20. The case just cited.

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21. Hence there was a proper and equitable division which the third party cannot upset.
22. In the case of the arrival of an absent brother from beyond the sea.
23. They divided the estate into two parts only, ignoring altogether the just claims of the absent brother. Such a division, therefore, may be justifiably cancelled.
24. V. *supra* 105a.
25. V. *supra* p. 437. n. 23.
26. *loc. cit.* n. 14.
27. V. p. 438, n. 1.
28. As in the first case of Rab's and Samuel's statement, where twenty-nine *se'ah* of the thirty in the *kor* had already been handed over to the buyer.
29. Since all must be returned to the seller. If decisions are to be adhered to, why should the buyer be obliged to return that portion of the purchase which by mutual agreement had passed over into his possession?

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— There,¹ the Rabbis have made a provision which is convenient for the seller² and [also] for the buyer.³

It was stated:⁴ [In the case where two] brothers divided [an inherited estate between them], and a creditor [of their father] came and distrained the share of one of them, Rab said: The division is cancelled;⁵ Samuel said: He⁶ has forfeited his claim;⁷ and R. Assi said: He⁸ takes a quarter⁹ either in land or in money. Rab said that the division was to be cancelled, because he holds the opinion that brothers, even after having divided [their father's estate between them, remain] co-heirs.¹⁰ Samuel said that he [whose share was seized] forfeited his claim, because he holds the opinion that brothers, after having divided [their father's estate between them], stand to each other in the relationship of vendees, each being in the position of a purchaser without a warranty [of indemnity].¹¹ R. Assi is in doubt whether they still remain co-heirs or stand in the relationship of vendees; he [whose share was seized] takes, therefore, a quarter¹² either in land or in money.¹³

R. Papa said: The law in all [the cases dealt with in] these traditions is that [a portion, or portions must be] relinquished.¹⁴ Amemar said: The [original] division is cancelled. And the law [is that the original] division is cancelled.¹⁵

Our Rabbis taught: [In the case where] three [experts] went¹⁶ down [to the estate of male orphans] to assess it,¹⁷ [and] one values [the estate] at a *maneh*¹⁸ and the two value [it] at two hundred *zuz*, [or if] one values it at two hundred *zuz* and the two value it at a *maneh*,¹⁸ the one, being in the minority, is overruled.¹⁹ [If] one values [the estate] at a *maneh*, one at twenty [*sela'*],²⁰ and one at thirty [*sela'*], it is to be adjudged at a *maneh*. R. Eliezer b. R. Zadok, said: It is to be adjudged at ninety [*zuz*]. Others said: [The difference]²¹ between them is calculated and divided by three.²² He who said, 'It is to be adjudged at a *maneh*', [adopts the] middle course.²³ R. Eliezer b. R. Zadok, [who] said, 'It is to be adjudged at ninety', is of the opinion [that] the land

1. The case spoken of by Rab and Samuel.
2. He prefers the transaction to be regarded as incomplete until the last *se'ah* is measured out, in order that he might withdraw from the sale at the last minute in case prices rise.
3. He also prefers to be in a position to withdraw at the last *se'ah*, in the expectation that prices may fall. Consequently there was no decision nor any mutual agreement. Hence either party may withdraw even at the last *se'ah*.
4. B.K. 9a.
5. And a new division of the remainder of the estate is to be made.
6. Whose share was seized.
7. And the division, therefore, is valid, the other brother retaining his full original share.
8. V. p. 443. n. 16.
9. Of his brother's share, i.e., an eighth of the original estate.
10. Hence they remain collectively responsible for the payment of their father's debts.
11. None of them having undertaken to make good the loss of any of the others.
12. Of his brother's share. Half the share certainly belongs to his brother, and the doubt is only in respect of the other half; hence it is divided between the two, each one receiving, or retaining a quarter of it.

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13. His brother cannot be compelled to give up a portion of his land. Since creditors must accept money, he has only himself to blame for having parted with his land, and can only expect to receive from his brother the kind of payment the latter would have made to the creditor.
14. The one in possession must give up a portion to him who has been deprived of his share, so that all their respective shares in the estate be equalized. The original division, however, is not entirely upset no new lot taking place and every one retaining a portion of what was originally allotted to him.
15. An entirely new division must be made, and lots cast again.
16. Under instructions from a judicial court.
17. With the object of selling it for the maintenance of the dead owner's widow or his orphan daughters.
18. *Maneh* hundred *zuz* or twenty-five *sela'*. A *sela'* four *zuz*.
19. The opinion of the two who are in the majority is to be followed. (Cf. Ex, XXIII, 2.)
20. I.e., five *sela* less than a *maneh*. (V. p. 444, n. 11).
21. Between the lowest valuation and the highest, i.e., between the thirty. and the twenty, *sela'*, amounting to ten *sela'*.
22. Ten *sela'* equal 40 *zuz*. $40/3 = 13 \frac{1}{3}$. This quotient is added to the lowest valuation which is 20 *sela'* or 80 *zuz*. Thus, $80 + 13 \frac{1}{3} = 933 \frac{1}{3}$ *zuz*.
23. The average of 80 *zuz* (or twenty *sela'* which is the lowest valuation) and 120 *zuz* (or 30 *sela'*, the highest valuation). $(80 + 120) / 2 = 100 \frac{1}{2}$ *zuz* or a *maneh*.

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is worth ninety [*zuz*], and the reason why one valued it at twenty [*sela'*]¹ is because he had underestimated² it by ten [*zuz*], and he who valued it at a *maneh* overestimated³ it by ten [*zuz*]. On the contrary! [Let it be assumed that] the land is worth a hundred and ten [*zuz*] and that he who valued it at a *maneh* underestimated⁴ it, by ten [*zuz*], and he who said thirty⁵ overestimated⁶ it by ten [*zuz*]?² At all events one should adopt the first two, since both do not exceed the sum of one *maneh*.⁸ The others [who] said: [The difference] between them is calculated and divided by three, hold the opinion [that] the land is worth ninety-three [*zuz*] and a third;

[and] that he who valued it at twenty [*sela'*] underestimated⁴ it by thirteen [*zuz*] and a third; he who valued it at a *maneh* overestimated⁶ by thirteen [*zuz*] and a third. Logically [the latter] should have given a higher² estimate¹⁰ but the reason why he did not do it¹¹ is because he thought. 'It is enough that I have exceeded my colleague's [estimate] by so much' — On the contrary! [Let it be said]: The land is worth a hundred and thirteen [*zuz*] and a third; he who valued it at a *maneh* underestimated¹² it by thirteen [*zuz*] and a third, and he who valued it at thirty [*sela'*] overestimated¹³ it by thirteen [*zuz*] and a third; and logically he should have submitted a higher estimate¹⁴ [but] he thinks, 'It is enough that I have exceeded my colleague's by so much'? — At all events one should adopt the first two, since both do not exceed the sum of a *maneh*.¹⁵

R. Huna said: The *halachah* is in accordance with [the opinion of the] others. R. Ashi said: We do not know the reason¹⁶ [for the opinion] of the others; shall we administer the law in accordance with their view?

The judges of the Exile¹⁷ taught: [The difference] between them is calculated and divided by three. R. Huna said: The law is in accordance with [the teaching of] the Judges of the Exile. R. Ashi said: We do not know the reason¹⁸ [for the opinion] of the judges of the Exile, shall we administer the law in accordance with their view?

MISHNAH. IF ONE SAYS TO ANOTHER, 'I SELL YOU HALF¹⁹ A FIELD', A COMPROMISE IS MADE BETWEEN THEM AND HE TAKES THE HALF OF HIS FIELD.²⁰ [IF ONE SAYS.] 'I SELL YOU HALF OF IT²¹ ON THE SOUTHERN SIDE', A COMPROMISE IS MADE BETWEEN THEM AND HE TAKES ITS SOUTHERN HALF.²⁰ HE²² MUST UNDERTAKE [TO SUPPLY]²³ SPACE FOR THE WALL²⁴ [AND] FOR THE BIGGER AND SMALLER TRENCH.²⁵ AND WHAT IS [THE WIDTH OF] THE BIGGER TRENCH? SIX HANDBREADTHS;²⁶ AND [THAT OF] THE SMALLER ONE, THREE.²⁶

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GEMARA. R. Hiyya b. Abba said in the name of R. Johanan: The buyer takes the poorer [side] of it.²⁷ Said R. Hiyya b. Abba to R. Johanan: Surely we have learned that a compromise²⁸ was to be made between them? — He replied unto him: While you were [engaged in] eating date-berries in Babylon,²⁹ I expounded [this] with the aid of the concluding clause. For in the concluding clause it is taught: [IF ONE SAYS]. 'I SELL YOU HALF OF IT ON THE SOUTHERN SIDE', A COMPROMISE IS MADE BETWEEN THEM AND HE TAKES ITS SOUTHERN HALF. But why, [according to your reasoning,] should a compromise be made between them? Surely he [explicitly] said to him, 'Half of it on the southern side'!³⁰ But [you must say that the expression there refers] to the price.³¹ here also [it must be assumed that the expression used refers] to the price.³²

HE MUST UNDERTAKE [TO SUPPLY] THE SPACE FOR THE WALL, etc. It was taught: The bigger trench is without and the smaller one is within,³³ and both [are made] behind the wall [on its outer side]

1. 'I.e., eighty *zuz*,
2. Lit., 'erred (by) ten backwards'.
3. Lit., 'erred (by) ten forwards'.
4. V. note 6.
5. I.e., 120 *zuz*.
6. V. note 7.
7. Why, then, should the two lower valuations be taken into account and not the two higher ones?
8. It is preferable to adopt the two valuations which have in common the point of not exceeding the sum of a *maneh*, and to ignore the third, rather than to adopt valuations which have nothing in common.
9. I.e., $93 \frac{1}{3} + 13 \frac{1}{3} = 106 \frac{2}{3}$, *zuz*.
10. Lit., 'should have said more'.
11. Lit., 'why he did not say'.
12. V. p. 445, n. 6.
13. V. p. 445, n. 7.
14. V. *loc. cit.* n. 14.
15. V. *loc. cit.* n. 12.
16. I.e., 'their reason does not appeal to us', 'we do not accept it'.
17. Samuel and Karna, v. p. 279. n. 6.
18. v. note 5.

19. Not specifying which half.
20. This is explained in the Gemara, *infra*, to refer to the value of, and not to the actual field.
21. The field.
22. The seller.
23. Out of his portion of the field.
24. Round half the field.
25. Which is dug round the wall. A smaller trench is made between the wall and the bigger trench.
26. Along the entire length of the field.
27. Of the field. The seller, being the previous possessor, is entitled to choose the fertile, and better side.
28. Which implies that the buyer is not to be at a disadvantage and is to have a share which is as good as that of the seller. How, then, could R. Johanan state that the buyer must take the worst part?
29. I.e., engaged in worldly pleasures and neglecting the study of the Torah. [Hiyya b. Abba was born at Kafri in Babylonia, whence he came to Palestine at a somewhat advanced age.]
30. How, then, does a compromise come in? Since the seller specified the southern side, that side should go to the buyer!
31. By saying, 'the southern side', not the actual spot was meant but the value of that spot in any part of the field.
32. The compromise consists in this, that the buyer gets land equal to the full value of half the field, while the seller has the choice of giving of the land on any side, even on the worst, provided the value of it is not less than half the price of the entire field.
33. Between the wall and the outer trench.

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in order that an animal may not jump [over the wall]. Let, then, the big trench be made¹ and not [also] the small one? — Since it is wide, [the animal] might stand in it and jump. Then let the smaller trench be made and not the bigger one? Since it is small, [the animal] might stand on the [outer] edge and jump. How much [space must there be] between the bigger, and the smaller trench? — One handbreadth.

CHAPTER VIII

MISHNAH. SOME [RELATIVES] INHERIT [FROM], AND TRANSMIT [TO EACH

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OTHER];² SOME INHERIT³ BUT DO NOT TRANSMIT;⁴ [SOME] TRANSMIT RUT DO NOT INHERIT, [AND SOME] NEITHER INHERIT NOR TRANSMIT. THE FOLLOWING INHERIT [FROM], AND TRANSMIT [TO EACH OTHER]: A FATHER [INHERITS FROM,⁵ AND TRANSMITS TO HIS] SONS, AND SONS [INHERIT FROM, AND TRANSMIT TO THEIR] FATHER; AND BROTHERS FROM THE [SAME] FATHER⁶ INHERIT [FROM], AND TRANSMIT [TO EACH OTHER].⁷ A MAN [INHERITS FROM] HIS MOTHER AND [FROM] HIS WIFE [BUT DOES NOT TRANSMIT HIS ESTATE TO THEM⁸ IF HE DIES FIRST]; AND SISTERS' SONS INHERIT [FROM THEIR UNCLES] BUT DO NOT TRANSMIT [THEIR ESTATES TO THEM].⁹ A WOMAN [TRANSMITS HER ESTATE TO] HER SONS AND A WIFE [TO] HER HUSBAND [BUT THEY DO NOT INHERIT FROM THEM]; AND MOTHER'S BROTHERS TRANSMIT [THEIR ESTATES TO THEIR NEPHEWS] BUT DO NOT INHERIT [FROM] THEM. AND BROTHERS FROM THE [SAME] MOTHER NEITHER INHERIT [FROM], NOR TRANSMIT [TO EACH OTHER].¹⁰

GEMARA. Why does the Mishnah teach first, THE FATHER [INHERITS FROM, AND TRANSMITS TO HIS] SONS, let it first teach, THE SONS [INHERIT FROM, AND TRANSMIT TO THEIR] FATHER, for, in the first place,¹¹ one should not commence with [something suggestive of] misfortune¹²

1. The big trench alone should suffice to prevent the animal from jumping over the wall.
2. Whoever of these dies first transmits his estate to the other, and whoever survives inherits it.
3. From certain relatives who predecease them.
4. Their estates to these relatives if they die first.
5. From his sons, if they die without leaving any issue.
6. Though not from the same mother.
7. If they die without issue.
8. Because the relatives on his father's side are entitled to the inheritance of his estate.
9. V. Previous note.
10. Their relatives on their respective fathers' sides inherit from them.
11. Lit., 'one'.
12. The death of a son in his father's lifetime.

and, secondly,¹ [one should follow the order of the Torah,] as it is written, If a man die and have no son?² — The Tanna prefers³ [to begin with the case of a father who is heir to his son] because this [law] has been arrived at through an exposition. What is the exposition? — It has been taught: His kinsman,⁴ refers to the [dead man's] father. This teaches that a father takes precedence⁵ over brothers. One might [assume] that he also takes precedence over a son, [therefore] it was expressly stated, that is next [to him],⁶ [which implies] he who is nearest⁷ takes precedence. What reason is there⁸ for including the son⁹ and excluding the brother? — The son is included because, as is known,¹⁰ he is [entitled] to take his father's place in designating [the Hebrew handmaid of his father to be his wife],¹¹ and [also in the redeeming] of a field of [his father's] possession.¹² On the contrary! [Rather say:] 'The brother is included because he also takes the place of his brother in the case of a levirate marriage.'¹³ Surely levirate marriage only takes place where there is no son, but where there is a son there is no levirate marriage.¹⁴

[From what has been said it appears] that the [only] reason [for the precedence of a son is] that there is this reply,¹⁵ but had it not [been] so, it would have been held [that] a brother takes precedence, [but cannot] this [law]¹⁶ be deduced

1. Lit., 'and furthermore'.
2. Num. XXVII, 8. This implies that if a father leaves a son, the latter inherits from him. Now, since the Scripture begins with the case of a son inheriting from his father the Tanna of our Mishnah should have done likewise!
3. Lit., 'beloved to him'.
4. Num. XXVII, 11. Ye shall give his inheritance unto his kinsman.
5. If the dead man is survived by a father and brothers, his estate is inherited by the former.
6. Ibid.
7. A son is a nearer relative than a father.
8. Lit., 'what have you seen?'

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9. I.e., regarding him as the nearest relative, taking precedence over father and brothers.
10. Lit., 'for so'.
11. The master of a Hebrew handmaid may designate her to be his wife, and there is no need for him to betroth her in the usual manner. His son also, 'if she please not her user', may designate her to be his wife, in the same way as his father. No brother or any other person has the same privileges. Cf. Ex. XXI, 7ff.
12. If a man sanctifies onto the Lord a field of his possession, he or his son may redeem it. If a brother, however, or any other person has redeemed the field, it returns to the priests in the jubilee year. Cf. Lev. XXVII, 16ff.
13. The law requiring a person to marry the widow of a brother who dies without issue. Cf. Deut. XXV, 5ff. A son, of course, cannot have this right or privilege.
14. Consequently, even as regards levirate marriages, a son stands nearer, and is in a more privileged position than a brother.
15. 'Surely levirate, etc.'
16. That a son takes precedence over a brother.

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[from the fact] that in one case¹ [there are] two [advantages]² and in the other³ [only] one?⁴ — The very [law of a son's precedence in the case of the redemption of a] field of [his father's] possession was deduced by the Tanna from this very argument, viz., 'Surely levirate marriages only take place where there is no son, but where there is a son there is no levirate marriage'.⁵

[But why not] say [thus]: '*His kinsman*,⁶ refers to the father. This teaches that a father takes precedence over a daughter.⁷ One might [assume] that he [also] takes precedence over [a] son, it was therefore expressly stated that is next [to him],⁶ [which implies,] he who is nearest takes the precedence'? — Since in respect of levirate marriages a son and a daughter have the same⁸ standing, a son and a daughter must have the same standing in the case also of inheritance.⁹ [Why again not] say [thus]: '*His kinsman*,⁶ refers to the father. This teaches that a father takes precedence over the [dead man's] father's brothers. One might [assume]

that he also takes precedence over brothers, it was therefore expressly stated, that is next,¹⁰ [which implies], he who is nearest takes the precedence'? — The father's brothers do not require any Scriptural text;¹¹ [for] from whom¹² do the father's brothers derive their right? From the father; should [then] the brothers of the father inherit when the father [himself] is alive! But, surely, the Scriptural verses are not written in this [order], for it is written, *And if his father have no brethren, etc.*!¹³ — The verses are not written in [the proper] order¹⁴ [of succession].

The following Tanna derives it¹⁵ from the following: For it was taught: R. Ishmael, son of R. Jose, gave the following exposition: [It is written,] *If a man die, and have no son, [then ye shall cause his inheritance to pass unto his daughter]*.¹⁶ [This implies that] where there is a daughter the inheritance is passed from the father,¹⁷ but no inheritance is passed from the father, where there are [only] brothers.¹⁸

But [why not] say [thus]? Where there is a daughter the inheritance is passed from the brothers,¹⁹

1. Lit., 'here', i.e., the case of a son.
2. The designation of a handmaid, and the redemption of a field of his (father's) possession.
3. Lit. 'here', i.e., the case of a brother.
4. That of the levirate marriage.
5. It was this argument that had confirmed the Tanna in his opinion that a son takes his father's place in the redemption of a field of his father's possession (v. 'Ar, 25b). Without this argument it could not have been proved that a son has any greater claim to the redemption of the field than a brother or any other person. Since this law, then, depends entirely on the argument mentioned, there remains only one independent point in favor of a son's precedence. Hence it was necessary to have recourse to the reply mentioned.

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6. Num. XXVII, 22.
7. Since she never takes the place of her father either as a son (for designation and redemption), or as brother (for Levirate marriage).
8. Whether the dead man has left a son or a daughter, his widow is in either case exempt from levirate marriage; but his being survived by a father does not make any difference.
9. A daughter, therefore, takes precedence over a father,
10. Num. XXVII, 11.
11. To prove that a father takes precedence over them.
12. Lit., 'on whose strength'.
13. Ibid. According to this verse, since his kinsman refers to the father, the father's brothers should take precedence over him, for the verse reads, And if his father have no brethren, then ye shall give his inheritance unto his kinsman, which implies (cf. the preceding verse), that if he has brothers it is they who inherit, and not he.
14. Though kinsman, i.e., 'a father', is mentioned after 'a father's brothers', he nevertheless takes precedence over them, by reason of the given argument.
15. The law that a father takes precedence over the dead man's brothers.
16. Num. XXVII, 8.
17. Of the dead man. The phrase [H] (*we-ha'abartem*) is taken to mean, 'ye shall cause (the inheritance) to pass (from his father) unto his daughter' that is, the father of the deceased is passed over in favor of the daughter.
18. Of the dead man.
19. Of the dead, unto his daughter; and accordingly. Num XXVII, 8 should be read and interpreted as follows: *If a man die, and have no son, then ye shall cause his inheritance to pass (from his brothers) unto his daughter; and if he has no daughter, his brothers inherit from him.*

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but no inheritance is passed from the father even where there is a daughter'?¹ — If so² the Torah should not have written³ [at all]. Then ye shall cause [his inheritance] to pass [unto his daughter].⁴

According to him who infers it⁵ from, then ye shall cause [his inheritance] to pass,⁶ what is [the phrase], his kinsman, to be applied to? — He applies⁷ it, to [the following], as it was taught: His kinsman,⁸ refers to his wife: [and this] teaches that the husband is heir to his wife.⁹ And according to him who infers it's from his kinsman, to what does he apply [the expression], then ye shall cause [his inheritance] to pass?¹⁰ — He applies it to [the following]; as it was taught: Rabbi said: In [the case of] all [the relatives],¹¹ [the expression of] 'giving' is used, but here,¹² [the expression] used is that of 'causing to pass',¹³ [in order to teach] you that no other but a daughter causes an inheritance to pass from one tribe to [another] tribe, since [in her case] her son or her husband are her heirs.¹⁴

What [reason] is there for deducing that she'ero¹⁵ refers to the father? — Because it is written, She is thy father's near kinsman:¹⁶ Why not [rather] say [that] she'ero refers to the mother since it is written, She is thy mother's near kinswoman?¹⁷ — Raba replied: The Scriptural text says. that is next to him of his family, and he shall possess it,¹⁸ the family of the father is regarded¹⁹ [as the proper] family [but] the family of the mother is not regarded¹⁹ [as the proper] family; for it is written, by their families, by their father's houses.²⁰ [But] is not the mother's family regarded¹⁹ [as the proper] family? Surely it is written, And there was a young man out of Bethlehem in Judah — of the family of Judah — who was a Levite, and he sojourned there;²¹ [now], this is self-contradictory, [for] it is said, 'who was a Levite', which clearly indicates that he descended from Levi, [and it is also said], 'of the family of Judah,' which clearly shows that he descended from Judah;

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must it not then be concluded that his father [was of the tribe] of Levi and his mother [of that] of Judah, and [yet the text] speaks [of him as] 'of the family of Judah'! — Raba, son of R. Hanan, replied: No;²² [he may have been] a man whose name was Levi.²³ If so, [is] this [the reason] why Micah said, 'Now know I that the Lord will do me good, seeing I have a Levite as my priest'?²⁴ — Yes; [he was glad] that he happened to obtain a man whose name was Levi. But was Levi his name? Surely his name was Jonathan, for it is said, And Jonathan the son of Gershom, the son of Manasseh, he and his sons were priests to the tribe of the Danites?²⁵ — He said unto him: But [even] according to your argument, [it may be objected], 'Was he the son of Manasseh? Surely he was the son of Moses, for it is written, the son of Moses: Gershom, and Eliezer';²⁶ but [you must say that] because he acted [wickedly] as Manasseh,²⁷ the Scriptural text ascribed his²⁸ descent to Manasseh, [so] also here²⁹ [it may be said that], because he acted [wickedly] as Manasseh who descended from Judah, the Scriptural text ascribed his²⁸ descent to Judah.³⁰ R. Johanan said in the name of R. Simeon b. Yohai: From here [one may infer] that corruption is ascribed²⁸ to the corrupt.³¹ R. Jose b. Hanina said: [This³² may be inferred] from the following: [It is written,] And he³³ was also a very goodly man, and he was born after Absalom;³⁴ was not Adonijah the son of Haggith, and Absalom the son of Maacah? But because he³³ acted in the same manner as Absalom who rebelled against the king, the Scriptural text associated³⁵ him with Absalom.

R. Eleazar said: One should always associate³⁶ with good [people]; for behold, from Moses who married the daughter of Jethro,³⁷ there descended Jonathan³⁸ [while] from Aaron, who married the daughter of Amminadab, there descended Phinehas.³⁹ But did not Phinehas descend from Jethro? Surely it is written, *And Eleazar⁴⁰ Aaron's son took him one of the daughters of Putiel to wife;*⁴¹ does not this mean that he descended

from Jethro who crammed⁴² calves for idol worship? — No; [it means] that he descended from Joseph who conquered⁴³ his passions.⁴⁴ Did not, however, the tribes sneer at him and say.⁴⁵ 'Have you seen this Puti-son?'⁴⁶ A youth whose mother's father crammed calves for idol-worship should kill the head⁴⁷ of a tribe in Israel!

1. Since the text speaks only of brothers and not of a father, why should it not be assumed that a father takes precedence over a daughter, though not over brothers?
2. That Num. XXVII, 8 is to be interpreted in the sense that only where there is a daughter does she take precedence over the brother but where there is no daughter the inheritance is to go to the brothers.
3. In Num. XXVII, 8.
4. Since this law is specifically stated in the following verse (ibid 9).
5. V. p. 451, n. 5.
6. Ibid.
7. Lit., 'requires'.
8. Num. XXVII, 11.
9. *Infra* 111b.
10. Ibid. 8.
11. Enumerated in Num. XXVII, 9-11.
12. In the case of a daughter.
13. Ibid. 8.
14. V. *Infra* 147a.
15. [H] 'Kinsman' or 'kinswoman'.
16. [H] Lev. XVIII, 12.
17. [H] Ibid. 13; and consequently, let it be inferred from this text that a mother, like a father, is entitled to inherit from a daughter
18. Num. XXVII, 11.
19. Lit., 'called'.
20. Ibid. I, 22.
21. Judg. XVII, 7.
22. His father was not of the tribe of Levi, but of that of Judah.
23. [H] may be rendered as both 'Levite' and 'Levi'.
24. If the young man were not of the tribe of Levi, would Micah have been so

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- glad in having secured a mere layman as his priest?
25. Judg. XVIII, 30. The Danites appropriated Micah's graven and molten images, his *ephod* and *teraphim*, and took also with them the young man who was his priest.
 26. I Chron. XXIII, 15.
 27. Manasseh the son of Hezekiah was one of the most wicked kings of Judah. Cf. II kings XXI, 1-17. [In the M.T the [H] of [H] is a *litera suspensa*: [H].]
 28. Lit., 'hanged him on'.
 29. To harmonize Judg. XVII, 7, with the statement that the family of the mother is not regarded as the proper family.
 30. But, in reality, he may have belonged to the tribe of Levi. Hence, in either case, Judg. XVII, 7, cannot be adduced as proof that the mother's family is regarded as the proper family.
 31. Micah's priest who ministered to idolatry is described as a descendant of the corrupt king Manasseh.
 32. That corruption is ascribed to the corrupt.
 33. Adonijah.
 34. I Kings I, 6.
 35. V. p. 453. n. 7.
 36. Lit., 'cling to'.
 37. The priest of Midian, an idolater.
 38. An idolatrous priest.
 39. Cf. Num. XXV, 11ff.
 40. The father of Phinehas.
 41. Ex. VI, 25.
 42. [H] regarded as of the same root as *Putiel*.
 43. [H] 'conquer in argument'.
 44. Cf. Gen. XXXIX, 7ff.
 45. Cf. Sanh. 82b, Sotah, 43a.
 46. Abbreviation of *Putiel*.
 47. Zimri. v. Num. XXV, 6ff

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But [this is really the explanation], if his mother's father [descended] from Joseph, his mother's mother¹ [descended] from Jethro; if

his mother's father [descended] from Jethro, his mother's mother [descended] from Joseph.² [This may] also [be confirmed by] deduction, for it is written, of the daughters of Putiel, from which two³ [lines of ancestry]⁴ are to be inferred.

Raba said: He who [wishes] to take a wife should inquire about [the character of] her brothers. For it is said, And Aaron took Elisheba, the daughter of Amminadab, the sister of Nahshon;⁵ since it is stated the daughter of Amminadab, would it not be obvious that she is the sister of Nahshon? Then why should it be expressly stated, the sister of Nahshon? From here, [then], it is to be inferred that he who takes a wife should inquire about [the character of] her brothers. It was taught:⁶ Most children resemble the brothers of the mother.

*And they turned aside thither, and said unto him: 'Who brought thee hither?'*⁷ *and what doest thou in this [place]?'⁸ and what hast thou here?'*⁹ They¹⁰ said unto him:¹¹ 'Are you not a descendant of Moses of whom it is written, *Draw not nigh hither?*¹² Are you not a descendant of Moses of whom it is written, *What is this¹³ in thy hand?*¹⁴ Are you not a descendant of Moses of whom it is written, *But as for thee, stand thou here¹⁵ by me?*¹⁶ Would you be made a priest for idol-worship?' — He said unto them: I have the following tradition from my grandfather's family: At all times shall one [rather] hire himself out to idol-worship than be in need [of the help] of [his fellow] creatures. He thought that 'Abodah Zarah¹⁷ [meant] actual [idol worship], but it is not so, [the meaning being,] 'work which is strange to him';¹⁸ as Rab said¹⁹ to R. Kahana: Flay²⁰ a carcass in the street and earn²¹ a wage, and say not, 'I am a great man and the work is degrading to me'. When David saw that he had an exceptional liking for money, he put him in charge over the treasuries, for it is said, Shebuel the son of Gershom, the son of Manasseh²² was ruler over the treasuries.²³ But was his name Shebuel? Surely his name was Jonathan! —

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R. Johanan said: [He was called Shebuel]²⁴ because he returned to God²⁴ with all his heart.

AND SONS [INHERIT FROM, AND TRANSMIT TO THEIR] FATHER. Whence is this²⁵ derived? — It is written, *If a man die, [and have no son, then ye shall cause his inheritance to pass unto his daughter]*.²⁶ [From this it is to be inferred that] the reason²⁷ is because he have no son but if he have a son the son takes precedence.²⁸

R. Papa said to Abaye: Might it not be inferred²⁹ that if there be a son, the son is to be the heir; [if] there be a daughter, the daughter is to be the heir; [and if] there be [both] a son and a daughter, neither the one is to be heir nor the other? — But

1. But not *his own* mother.
2. In either case, Phinehas was *several generations* removed from Jethro, while Jonathan, being the son of Gershon, was only two generations removed.
3. The Yod in Putiel is regarded as a sign of the plural.
4. Joseph and Jethro.
5. Ex. VI, 23.
6. Soph. XV, 20.
7. [H]
8. [H]
9. [H] Judg. XVIII, 3.
10. The Danites.
11. Micah's priest.
12. Ex. III, 5.
13. [H]
14. Ex. IV, 2.
15. [H]
16. Deut. V, 28.
17. [H] may mean both 'idolatry' and 'strange work'.
18. Uncongenial, below his dignity.
19. Cf. Pes. 113a.
20. Or 'dress'.
21. Lit., 'take'.
22. M.T. reads, *Moses*.
23. I Chron. XXVI, 24.
24. *kтуca* is composed of [H] (returned), and [H] (God).
25. That sons take precedence over daughters.
26. Num. XXVII, 8.
27. For causing the inheritance to pass to a daughter.

28. Over the daughter, who, however, according to a Rabbinical provision, is entitled, if unmarried to a tenth of the estate. Cf. Keth, 68a.
29. From Num. XXVII, 8.

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who then should he the heir? Should the town collector¹ be the heir! — It is this that I suggest: [If] there be a son and a daughter, neither the one nor the other should inherit all [the estate], but both together should inherit [it].² Abaye said to him: Is, then,³ a Scriptural verse required to tell us that where there is a one and only son he inherits all the property?⁴ — Is it not possible, however, that [Scripture] meant to teach this: That a daughter also has a right of inheritance?⁵ — This⁶ is deduced from, And every daughter, that possesseth an inheritance.⁷ R. Aha b. Jacob said: [The law of a son's precedence over a daughter may be inferred] from here: Why should the name of our father be done away from among his family, because he had no son?⁸ The reason,⁹ then, is because he had no son, but had he had a son, the son would have taken precedence. But it is not possible that the daughters of Zelophehad [only] said so,¹⁰ [and that] when the Torah was given¹¹ the law received a new interpretation?¹² — But the best [proof]¹³ is that given at first.¹⁴

Rabina said: [The law of a son's precedence may be inferred] from here: That is next to him,¹⁵ i.e., he who is nearest in relationship takes precedence. And [in] what [respect is] the relationship of a son [nearer] than [that of] a daughter? [Is it] in that he is [entitled] to take his father's place in designating [the Hebrew handmaid of his father to be his wife]¹⁶ and [in the redeeming] of a field of [his father's] possession?¹⁷ [Surely, as regards] designation, a daughter is not one to designate;¹⁸ [and as regards] the redemption of a 'field of possession', [a daughter] also [may be entitled to the same privilege as a son, by logical deduction] from the selfsame objection, from which the Tanna had deduced [the law that a son is entitled to this

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privilege]: 'Is there any levirate marriage except where there is no son?'¹⁹ — But the best proof is that given at first.²⁰

If you like, I can say, [the law of the son's precedence] may be inferred from here: *And ye may make them an inheritance for your sons²¹ after you,²²* meaning, your sons but not your daughters. But in that case²³ does, *That your days may be multiplied, and the days of your sons,²⁴* also mean 'your sons' and not 'your daughters'? — It is different [in the case of] a blessing.²⁵

AND BROTHERS FROM THE [SAME] FATHER INHERIT [FROM]. AND TRANSMIT, etc. Whence is this derived? — Rabbah said:²⁶ It may be deduced [from a comparison of this] 'brotherhood'²⁷ with the 'brotherhood' of the sons of Jacob;²⁸ as there [the brotherhood was derived] from the father and not from the mother, so here [the brotherhood spoken of is that] from the father and not from the mother. What need is there²⁹ [for this inference]? Surely it is written, Of his family. and he shall possess it,³⁰ [and it has been deduced³¹ that] the family of the father is regarded [as the] family [but] the family of the mother is not regarded [as the] family! — This is so indeed, but the statement of Rabbah was made with reference to [the law of] levirate marriage.³²

A MAN [INHERITS FROM] HIS MOTHER, etc. Whence are these laws³³ derived? — For our Rabbis taught:

1. Or 'the elder of the town', 'town governor'.
2. Both taking equal shares.
3. Since a daughter, according to your opinion, is entitled to the same rights of inheritance as a son.
4. The Scriptural text, then, which reads, *If... (he) have no son, then shall ye cause his inheritance to pass unto his daughter*, which is obvious (v. previous note), should have read, *If a man die and have no issue then ye shall give his inheritance unto his brethren*, etc. (v. Num. XXVII, 8-9) The rest of the text, *then shall ye cause ... have no daughter* (ibid), would thus become superfluous.

5. Without specific mention, the daughter might have been excluded from the term 'issue' which would have been taken to apply to males only, for, without such specific mention, the entire context dealing with the laws of inheritance (Num. XXVII, 8-11) would have been speaking of males only. Hence it was necessary to mention 'daughter' in vv. 8-9. Once however a daughter's right to succession is established, there is need of evidence to prove that a son call claim precedence over her.
6. That a daughter may be heir.
7. Num. XXXVI, 8.
8. Ibid. XXVII, 4.
9. For the request on the part of Zelophehad's daughters for a share in the land.
10. Believing that to be the law.
11. The laws of inheritance were given subsequent to the representations of Zelophehad's daughters. V. Num. XXVII, 5-7ff.
12. Giving sons and daughters equal rights of inheritance.
13. That a son takes precedence.
14. *Supra 110a*. 'It is written, *if a man die*, etc.'
15. Num. XXVII, 11.
16. V. *supra p. 449. n. 12*.
17. V. *loc. cit. n. 13*.
18. And the law could not possibly have been applied to her.
19. An argument that can likewise be applied in regard to a daughter. viz., 'Is there any levirate marriage except where there is no daughter?' In what respect, then, does a son stand nearer than a daughter in relationship to the father?
20. V. *n. 3*.
21. [H] is rendered here 'sons', though it may also bear the meaning of 'children'.
22. Lev. XXV, 46.
23. Lit., 'from now'.
24. Deut. XI. 21. Cf. n. 10 *supra*.
25. A blessing would include both sexes, though elsewhere the term *sons* applies to males only.
26. Cf. Yeb. 17b, 22a.
27. The expression 'brethren', used in Num. XXVII. 9.
28. *We thy servants are twelve brethren* (Gen. XLII, 13).
29. In the case of the laws of inheritance.
30. Num. XXVII, 11.
31. *Supra 109b*
32. Where also the expression, 'brethren', is used: *If brethren dwell together*, etc. (Deut. XXV, 5f). Only brothers of the same father are, accordingly, subject to the levirate law.
33. Lit., 'words'; the laws that a son is heir to his mother as he is to his father, and, moreover, that he takes precedence over a daughter in

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such an inheritance. The laws in Num. XXVII, 8-9. do not deal with an inheritance from a mother.

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[It is written.] And every daughter that possesseth an inheritance in the tribes¹ of the children of Israel;² how can a daughter inherit [from] two tribes?¹ — [Obviously] only when her father is from one tribe and her mother from another tribe, and both died, and she inherited [from] them. [From this] one may only [derive the law in respect of] a daughter. whence [may the law respecting] a son [he derived]?³ — One may derive it by an inference from minor to major: If a daughter, whose claims upon her father's property are impaired,⁴ has strong legal claims upon the property of her mother, should a son, whose claims upon the property of his father are strong, not justly have strong legal claims⁵ upon the property of his mother? And by the same argument:⁶ As there,⁷ a son takes precedence over a daughter, so here,⁸ a son takes precedence over a daughter. R. Jose son of R. Judah and R. Eleazar son of R. Jose said in the name of R. Zechariah h. Hakkazzab:⁹ Both a son and a daughter [have] equal [rights] in [the inheritance of] a mother's estate.¹⁰ What is the reason? — It is sufficient for [a law that is] derived by argument to be like [the law] from which it is derived.¹¹ And does not the first Tanna¹² expound. 'It is sufficient [etc.]'? Surely, [the exposition of] Dayyo¹³ is Pentateuchal! For it was taught:¹⁴ 'An example¹⁵ of an inference from minor to major [is]. And the Lord said to Moses: 'If her father had but spit in her face, should she not hide in shame seven days?'¹⁶ [Would not one expect, by] inference from minor to major, [that in the case] of the divine presence, [she should hide in shame for] fourteen days?¹⁷ — But [it is held that] it is sufficient for [a law that is] derived by argument. to be like [the law] from which it is derived!¹⁸ — Elsewhere he does expound Dayyo,¹⁹ hut here it is different, because Scripture says, in the tribes,¹⁹ thus comparing

the mother's tribe to the father's tribe: as [in the case of] the father's tribe a son takes precedence over a daughter, so [in the case of] the mother's tribe a son takes precedence over a daughter.

R. Nittai intended to decide a case in accordance with [the view of] R. Zechariah b. Hakkazzab, [but] Samuel said to him: 'In accordance with whom? In accordance with Zechariah? Zechariah faileth!'²⁰

R. Tabla decided a case in accordance with [the view of] R. Zechariah h. Hakkazzab. R. Nahman said to him: 'What is this?' — He replied unto him: '[I rely upon] that which R. Hinena b. Shelemia said in the name of Rab [that] the *halachah* is in accordance with [the view of] R. Zechariah h. Hakkazzab.' He said to him: 'Withdraw, or I shall pull R. Hinena b. Shelemia from your ears!'²¹

R. Huna b. Hiyya intended to decide a case in accordance with [the view of] R. Zechariah h. Hakkazzab. R. Nahman said to him: 'What is this?' He replied: '[I rely upon] that which R. Huna said in the name of Rab [that] the *halachah* is in accordance with [the view of] Zechariah h. Hakkazzab. He said to him: 'I will send to him!'²² He grew embarrassed.²³ He said to him: 'Now, had R. Huna been dead, you would have continued to oppose me.'²⁴ And whose opinion did he²⁵ adopt? — That of Rab and Samuel both of whom said: The *halachah* is not in agreement with [the view of] R. Zechariah h. Hakkazzab.

R. Jannai was [once] walking, leaning²⁶ upon the shoulder of R. Simlai his attendant,²⁷ and R. Judah the Prince²⁸ came to meet them. He²⁹ said to him: The man who comes towards us is distinguished³⁰ and his cloak is distinguished.³⁰ When he³¹ came nigh him [R. Jannai] touched it [and] said to him: This [cloak] — its [legal minimum] size [as regards Levitical uncleanness is but] that of³² sackcloth!³³ He³¹ inquired of him: Whence [is it derived] that a son takes precedence over a daughter in [the inheritance of] a mother's estate? — He replied to him: From³⁴ tribes;³⁵

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[where the plural indicates that] the mother's tribe is to be compared to the father's tribe: as [in the case of] the father's tribe,³⁶ a son takes precedence over a daughter so [in the case of] the mother's tribe,³⁷ a son takes precedence over a daughter. He³⁸ said to him: If [so, let it be said that] as [in the case of] the father's tribe a firstborn takes a double portion, so [in the case of] the mother's tribe a firstborn shall take a double portion'!

1. E.V.: *in any tribe*. The plural 'in tribes', [H] implies no less than two.
2. Num. XXXVI, 8.
3. That a son also inherits from his mother.
4. Since a son takes precedence over her.
5. To be heir.
6. Lit., 'and from whence you came'.
7. In the case of a father's inheritance.
8. In the case of the inheritance of a mother.
9. A proper noun, or *ha-Kazzab* 'the butcher'.
10. They take equal shares.
11. Since the law that a son may be heir to his mother is derived from the law of a daughter's right to such an inheritance, it cannot be held to confer upon him, in such a case, any right of precedence over a daughter.
12. Who maintains that a son takes precedence over a daughter even in the case of a mother's inheritance.
13. [H] 'it is sufficient'.
14. B.K. 25a, Zeb. 69b.
15. Lit., 'how'.
16. Num. XII, 14.
17. If seven days is the period for a father (who is only a mortal), fourteen days, at least, (double), should be the period in the case of the divine presence.
18. Hence the rule of *Dayyo* is proved to be Pentateuchal; how then, can the first Tanna uphold a law which is contrary to this rule of *Dayyo*?
19. Num. XXXVI, 8.
20. [H] (cf. Gen. XLVII, 16, 17). 'The law is contrary to the view of R. Zechariah.'
21. He would be placed under the ban so that he would think no more of R. Hinena; cf. Sanh. 8a.
22. To R. Huna, to ascertain whether he really held such an opinion.
23. Not being sure whether R. Huna still adhered to the same opinion.
24. Now, however, that R. Huna is alive, this resistance must cease. R. Nahman, apparently, suspected R. Huna b. Hiyya of quoting R. Huna without due authorization.
25. R. Nahman
26. R. Jannai suffered from defective eyesight due to old age.
27. [H] The [H] of many of the Rabbis was a disciple of the master and himself a scholar.
28. Judah II.
29. The attendant.
30. Lit., 'beautiful'.
31. R. Judah.
32. Lit., 'like'.
33. And therefore cannot be as distinguished as the attendant claimed it to be. Cheap, coarse material is not subject to the laws of Levitical uncleanness, unless its size is no less than four handbreadths by four, instead of three by three which is the legal minimum required in the case of finer materials.
34. Lit., 'for it is written'.
35. Num. XXXVI, 8.
36. I.e., inheritance from a father.
37. I.e., the inheritance of a mother's estate.
38. V. p. 460, n. 12.

Baba Bathra 111b

— He¹ called to his attendant: Lead on! This [man] does not desire to learn.² What, then, is the reason?³ — Abaye replied: Scripture says: *Of all that he hath,*⁴ implying he⁵ and not she.⁶ Might it not be suggested that these words⁷ [apply to the case where] a bachelor married a widow;⁸ but [where] a bachelor married a virgin⁹ he¹⁰ takes [a double portion] also [in the estate of his mother]? — R. Nahman h. Isaac replied: Scripture said: *For he¹¹ is the first-fruits of his strength.*¹² [from which it is to be inferred that the law applies to the first fruits of] his¹³ strength and not of her strength. [Surely] that [word]¹⁴ is required for [the law that though one was] born after a miscarriage¹⁵ he is, [nevertheless, regarded as the] firstborn son [in respect] of inheritance, [the text implying that only] he for whom [a father's] heart grieves¹⁶ [is included in the law, but that a miscarriage], for which it does not, is excluded!¹⁷ — If so,¹⁸ the text should have read, 'For he is the first-fruits of strength';¹⁹ why his strength?²⁰ Two [laws, therefore,] are to be deduced from it. But still, might it not be suggested that these words²¹ [apply only to the case of] a widower²² who married a virgin,²³ but

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[where] a bachelor married a virgin²⁴ the firstborn son takes [a double portion] also [in the estate of his mother]! — But, Raba said, [this is the proper reply]: Scripture states, The right of the firstborn is his,²⁵ [and this indicates that] the right of the firstborn [is applicable] to [the estate of] a man and not to [that of] a woman.

AND A MAN [INHERITS FROM] HIS WIFE, etc. Whence is this derived?²⁶ — Our Rabbis taught:²⁷ His kinsman,²⁸ refers to his wife; [and this] teaches that the husband is heir to his wife. One might [say that] she also is heir to him, it is therefore expressly stated, And he shall inherit her,²⁹ meaning he is heir to her³⁰ but she is not heir to him. But, surely, the Scriptural verses are not written like that!³¹ — Abaye said: interpret thus, 'Ye shall give his inheritance unto one that is next to him; [as to] his kinswoman, he shall inherit her'. Raba said: A sharp knife is dissecting the Biblical verses!³² But, said Raba, this is what the text implies: 'Ye shall give the inheritance of his kinswoman into him';³³ [Raba] holding the view [that prefixes and suffixes] may be detached from [words] and added to [others], and [a new] interpretation may [then] be given [to the Biblical text].³⁴

The following³⁵ Tanna derives it³⁶ from the following³⁷ [text]: For it was taught: And he shall inherit her,³⁸ teaches that the husband is heir to his wife; these are the words of R. Akiba. R. Ishmael, [however], said: This is not necessary,³⁹ for it is said, And every daughter that possesseth an inheritance in any tribe of the children of Israel, [shall be wife] unto one of the family, etc.⁴⁰ This text speaks of a transfer [from one tribe to another that may be occasioned] through the husband.⁴¹ Furthermore, it is said. So shall no inheritance of the children of Israel remove from tribe to tribe.⁴² Furthermore, it is said. So shall no inheritance remove from one tribe to another tribe.⁴³ Furthermore it is said, And Eleazar the son of Aaron died; and they buried him it, the Hill of Phinehas his son.⁴⁴ Whence could Phinehas possess [a hill] which

did not belong to Eleazar?⁴⁵ But this⁴⁶ teaches that Phinehas took a wife who died, and he was her heir. Furthermore it is said, And Segub begat Jair, who had three and twenty cities in the land of Gilead.⁴⁷

1. R. Jannai.
2. He only wishes to argue.
3. Why, indeed, does a firstborn son take a double share in his father's, and not in his mother's estate?
4. Deut. XXI, 27. viz., the firstborn takes a double portion of *all that he*, (his father) *hath*.
5. The father.
6. The mother.
7. That a firstborn son takes a double portion only in the estate of his father.
8. Who had children from her first marriage. In such a case, the father's firstborn son is not that of the mother.
9. In which case the firstborn son of the father is also the firstborn son of the mother.
10. The firstborn son.
11. The firstborn son.
12. Deut. XXI. 17.
13. The father's.
14. [H] *his strength*.
15. Though he did not '*open the womb*', and is not regarded as a firstborn son in respect of '*sanctification to the Lord*' and '*redemption from the priest*' (v. Ex. XIII, 2).
16. [H] may be rendered '*grief*' as well as '*strength*'.
17. How, then, could this deduction as well as the one previously mentioned, be made from the same text?
18. That only the latter deduction is to be made.
19. [H] without the suffix' would have been sufficient.
20. [H]
21. '*His strength*, and not her strength', excluding a firstborn from the right to a double portion in the mother's estate.
22. Who had children from his first wife.
23. Since the first son from the second marriage is only the wife's firstborn, not his.
24. And the son is firstborn on both sides.
25. Deut. XXI, 17. The whole clause being superfluous. [H] '*his*' is interpreted as referring to the father.
26. Lit., '*whence these words?*'
27. Suprann 109b.
28. Num. XXVII, 11.
29. Lit. rendering of the clause translated in the versions, '*and he shall possess it*' (ibid.). V. following note.

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30. The pronoun [H] is taken here to refer to 'his kinsman', denoting 'wife'.
31. The Pentateuchal text does not read, 'ye shall give her inheritance to her husband', but, *ye shall give his inheritance unto his kinsman*, and 'kinsman' has been interpreted as 'wife'. This, therefore, implies that the wife is heir to her husband
32. According to Abaye's exposition the text is broken up words are transposed. and a wholly, unnatural and arbitrary interpretation is the result.
33. Reading, [H] instead of [H]
34. A [H] is detached from [H] and a [H] from [H] to form a new word, [H], thus obtaining the required reading and interpretation. V. previous note.
35. Lit., 'this'.
36. The law that a husband is heir to his wife.
37. Lit., 'from here'.
38. Num. XXVII, 11.
39. There is no need to infer the law from Num. XXVII, 11, and thus to subject the Biblical text to forced interpretation.
40. Num. XXXVI, 8.
41. Scripture is warning a daughter, who has inherited an estate, that she must marry one of her own tribe, for, if she marry into another tribe, her estate, on her death, will be inherited by her husband and thus pass over from the estates of her own tribe to those of another. This clearly proves that a husband is heir to his wife; for, otherwise, a daughter inheriting an estate would be free to marry into any other tribe.
42. Ibid. 7.
43. Ibid. 9.
44. Josh. XXIV, 33.
45. Phinehas was the son of Eleazar from whom he would presumably inherit after his death. How, then, did Phinehas possess a hill at the very moment his father died?
46. The mention of a hill that belonged to Phinehas.
47. I Chron. II, 22.

Baba Bathra 112a

Whence could Jair possess [cities] which did not belong to Segub?¹ [But] this² teaches that Jair took a wife who died, and he was her heir.

[For] what [purpose is] 'furthermore it is said' [required]?³ — In case it be said⁴ that Scripture is only concerned for a transfer

[through] the son,⁵ but that a husband was not heir [to his wife]. proof was brought from,⁶ So shall no inheritance of the children of Israel remove front tribe to tribe.⁷ And in case it be said,⁸ its² purpose is [to teach that] one would transgress thereby [both] a negative¹⁰ and a positive¹¹ [precept],¹² proof was brought from,¹³ So shall no inheritance remove from one tribe to another tribe.¹⁴ And in case it is said¹⁵ that the purpose of this is [to teach that] one would transgress two negative [precepts] and [one] positive, proof was brought from,¹³ And Eleazar the son of Aaron died, etc.¹⁶ And in case it be said¹⁵ that it was Eleazar who took a wife who died, and [that it was] Phinehas [who] was her heir,¹⁷ proof was brought from,⁸ and Segub begat fair, etc.¹⁸ And in case it be said,¹⁵ 'There, also, the same thing may have happened'¹⁹ [it may be replied]: If so, why two Scriptural verses?²⁰ R. Papa said to Abaye: Wherefrom?²¹ Is it not indeed possible to maintain [that] a husband is not heir [to his wife]? As to the Scriptural verses, these may speak of a transfer through the son, as interpreted [above]; and that Jair may have bought [the cities]; and Phinehas, [also], may have bought [the hill]?²² — He replied unto him: It cannot be said that Phinehas had bought [the land], for, if so, it would follow that the field must return in the jubilee year,²³ and the righteous man²⁴ would thus be buried in a grave which was not his own.²⁵ — But say that it may have fallen to him as a field devoted?²⁶ — Abaye replied: After all,²⁷ the inheritance²⁸ would be removed²⁹ from the tribe of the mother to the tribe of the father!³⁰ But how!³¹ Is it not possible that that case³² is different³³ because [the estate] had already been transferred?³⁴ — He said to him: [The argument]. 'because it had already been transferred' is rather weak.³⁵

R. Yemar said to R. Ashi: If [the argument], 'because it had already been transferred' is to be used,³⁶ one can very well understand the verse³⁷ [as having reference] either to transfer through the son or to transfer through the husband,³⁸ if, however, it is said that [the

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argument] 'because it had already been transferred', is not to be used, [of] what benefit is [it] when she is married to a man of the family of her father's tribe? Surely the inheritance is removed from the tribe of her mother to that of her father! — She may be given in marriage to a person whose father is of the tribe of her father, and his mother of the tribe of her mother.

1. Cf. *supra* n. 11.
2. The statement that fair had cities which were his own property independent of that of his father.
3. *Supra* 111b. Why five Biblical quotations in addition to the first one from Num. XXXVI, 8?
4. Lit., 'and if you will say'.
5. I.e., that the prohibition against marrying into another tribe was solely due to the fact that the son who is heir to his mother would cause the transfer of the estate from his mother's tribe to that of his.
6. Lit., 'come and hear'.
7. Num. XXXVI. 7. Since this verse is superfluous, being practically a repetition of the verse following it, it must be taken to refer to another case of transfer. If XXXVI. 8 has reference to the son, XXXVI. 7 must have reference to the husband.
8. V. p. 463, n. 17.
9. Of Num. XXXVI. 7.
10. so shall no inheritance remove, etc.
11. Shall be wife etc (Num. XXXVI, 8).
12. But a husband cannot be heir to his wife.
13. V. n. 1.
14. Num. XXXVI, 9.
15. V. p. 463, n. 7.
16. Josh. XXIV, 33.
17. Heir to his mother in the lifetime of his father, Eleazar, who, though her husband, was not entitled to be her heir.
18. I Chron. II, 22.
19. I.e., fair may have been heir to his mother; not Segub to his wife.
20. One verse is quite sufficient to teach that a son is heir to his mother. The other, then, must serve the purpose of teaching that a husband also is heir to his wife.
21. I.e., what proof is there from the verses quoted that a husband is heir to his wife?'
22. And it was his not by inheritance from a wife but by right of purchase. [The question, 'Why two Scriptural verses?' does not apply here as it is usual for the Bible to record and register acquisitions by individuals. (Rashb.)]
23. To its original owner. V. Lev. XXV, 13. *In this year of the jubilee ye shall return every man unto his possession.*
24. Eleazar.
25. Hence it cannot be assumed that the field in which Phinehas had buried his father was a purchased one.
26. [H] a field devoted, always remains in the possession of the priest (Lev. XXVII, 21, and Num. XVIII, 14). Consequently, the land which Phinehas possessed in the lifetime of his father need not be assumed to have been an inheritance at all; what proof, then, is there for the assertion that a husband is heir to his wife?
27. If it he assumed that a husband is not heir to his wife.
28. Of a daughter to whom it was bequeathed by her mother.
29. On the marriage of the daughter unto one of the tribe of her father.
30. What safeguard, then, against the transfer of property from one tribe to another would have been provided by Num. XXXVI, 8 (cf. *supra* 111b), which requires *every daughter that possesseth an inheritance* to be married to *one of the family of the tribe of her father*? While this provision prevents the transfer from the tribe of a father to that of another, it does not prevent the transfer from a mother's tribe! Consequently, if it he assumed that the transfer is effected through the husband, i.e., that the husband is heir to his wife, provision against the transfer may be made on the lines mentioned below; if, however, it be assumed that the husband is not heir, and that the transfer is effected through the son, what provision against this can be made? This, therefore, urges Abaye, is proof that Num. XXXVI, 8, teaches the law that a husband is heir to his wife.
31. Lit., 'from what' i.e., the proof is not conclusive.
32. The transfer of a mother's inheritance to another tribe.
33. From that of the transfer to another tribe of a father's inheritance.
34. A mother's estate, as soon as the daughter inherits it, is removed from the mother's tribe to that of the daughter who belongs to her father's tribe. Consequently it does not matter whether the daughter subsequently marries one from her mother's tribe or not. What proof, then, is there from Num. XXXVI, 8, that a husband is heir to his wife?
35. Lit., 'we do not say'. Though a partial transfer takes place when a daughter inherits an estate from her mother, it does not follow that this must have the way for a complete transfer to

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another tribe. The daughter belongs, at least partly, to the tribe of her mother but her son is an entire stranger to that tribe. Consequently there remains the question. What safeguard was provided against the transfer from the mother's tribe?

36. With the result that we are not concerned with the transfer from the mother's tribe.
37. Num, XXXVI, 8, And every daughter that possesseth, etc.
38. I.e., owing to one or other of these possibilities of transfer from the father's inheritance to another tribe, a daughter inheriting an estate must marry one of her father's tribe.

Baba Bathra 112b

If so,¹ that [verse]² should have [read], 'To one of the family of the tribe of her father and her mother'! — If it had been written thus, even the reverse³ might have been assumed, hence⁴ the need for the present reading.⁵

It was taught [that a daughter inheriting an estate must marry one of her father's tribe in order to prevent] transfer [from tribe to tribe] through the son; and it was [also] taught [that the object is to prevent] transfer through the husband. 'It was taught [that the object is to prevent] transfer through the son': [For it is written]. So shall no inheritance of the children of Israel remove from tribe to tribe.⁶ Scripture speaks [here] of transfer through the son. Thou sayest [that it speaks] of a transfer through the son, perhaps [it speaks] only⁷ of a transfer through the husband? — Since it was said, so shall no inheritance remove from one tribe to another tribe,⁸ behold transfer through the husband has been spoken of, to what, then, shall one apply, so shall no inheritance of the children of Israel remove from tribe to tribe?⁹ [It must be assumed, therefore, that] Scripture speaks [here] of transfer through the son.

1. That the man she marries must belong both to her mother's, as well as to her father's tribe.
2. Num. XXXVI, 8.

3. When his father belongs to the tribe of her mother, and his mother to the tribe of her father, involving the complete transference from her father's tribe to that of her mother's, the tribe of her husband's father,
4. To teach that his father must be of the same tribe as her father.
5. Lit., 'he teaches us'.
6. Num. XXXVI, 7.
7. Lit., 'or it is not, but'.
8. Ibid. 9.
9. Ibid, 7.

Baba Bathra 113a

It was taught in another Baraitha: *So shall no inheritance remove from tribe to tribe.*¹ Scripture speaks [here] of a transfer through the husband. Thou sayest [that it speaks] of a transfer through the husband, perhaps [it speaks] only² of a transfer through the son? — Since it was said, *so shall no inheritance of the children of Israel remove from tribe to tribe,*³ behold, transfer through the son has been spoken of, to what, then, shall one apply, *so shall no inheritance remove from one tribe to another tribe?*⁴ [It must be assumed, therefore, that] Scripture speaks [here] of transfer through the husband.

Both,⁴ at all events, [agree that] in, from one tribe to another tribe,¹ Scripture speaks of transfer through the husband; how [is this] to be inferred?⁵ — Rabbah son of R. Shila said: Scripture states, *Ish.*⁶ Is not *Ish* written in both?⁷ — But, said R. Nahman b. Isaac, Scripture states, *shall cleave.*⁸ Is not [the phrase], *shall cleave*, written in both?⁹ But, said Raba; Scripture states. The tribes shall cleave.¹⁰ R. Ashi said: Scripture states. *from One tribe to another tribe,*¹¹ but a son is not [of] another.¹²

R. Abbahu said in the name of R. Johanan. in the name of R. Jannai, in the name of Rabbi (and some trace it to¹³ R. Joshua b. Korha): Whence [is it proved] that a husband does not receive [as heir] the prospective [estate of his wife]¹⁴ as [he does] that which was [already] in [her] possession? It is said, *And Segub begat Jair, who had three and twenty cities in*

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the land of Gilead;¹⁵ whence could Jair possess [cities] which did not belong to Segub?¹⁶ But this teaches that Segub took a wife and she died in the lifetime of those whose heiress she would have been;¹⁷ and when these died, Jair inherited her [estate].¹⁸ Furthermore it is said, And Eleazar the son of Aaron died; and they buried him, etc.¹⁹ Whence could Phinehas possess [a hill] which did not belong to Eleazar?²⁰ But this teaches that Eleazar took a wife, who died in the lifetime of those whose heiress she would have been,²¹ and when these died, Phinehas inherited her [estate].²² [For] what [purpose is] 'furthermore it is said' [required]?²³ — In case it be said that it was Jair who took a wife who died,²⁴ and that he inherited from her, it is, therefore, expressly stated, and Eleazar the son of Aaron died.¹⁹ And in case it he said that it may have fallen to him²⁵ as a field devoted.²⁶ Scripture states, his son²⁰ [which implies that] the inheritance was due to him²⁷ but his son inherited it.²⁸

AND THE SONS OF A SISTER. A Tanna taught:²⁹ The sons of a sister³⁰ but not the daughters of a sister.

1. Ibid. 9.
2. V. p. 446, n. 10.
3. Ibid. 7.
4. Lit., 'all the world': the Tannaim in the two Baraitoth quoted.
5. A mnemonic sign seems to have been omitted here from the text, the word Siman, 'sign', only remaining (v. Emden's note a.l.).
6. [H] may be rendered 'husband' as well as 'man'.
7. Ibid. 7 and 9.
8. The same expression, 'shall cleave', is used of a husband elsewhere, *and shall cleave unto his wife* (Gen. II, 24).
9. V. note 8.
10. Heb. [H] (Num. XXXVI. 9), while in v. 7. these words are separated. The members of the tribe are united through their fathers, hence the verse must be speaking of fathers, i.e., husbands.
11. Ibid. 9.
12. Hence, Num. XXXVI, 9, must have reference to the case where the husband is heir.
13. Lit., 'and they arrived in it (so far as to quote it) in the name of'.
14. An estate, e.g., bequeathed by her father whom she predeceased. Had her father died first, she would have inherited from him, and her husband would have inherited from her.
15. I Chron. II, 22.
16. Cf. p. 463, n. 11.
17. Lit., 'those who cause her to inherit'.
18. Which she would have inherited had she been alive. This proves that prospective estates are not inherited by the husband but by the son.
19. Josh. XXIV, 33.
20. v. p. 463, n. 11.
21. V. *supra* n. 3.
22. V. *supra* n. 4.
23. Why is not the evidence from Segub and fair sufficient?
24. V. *supra* 112a.
25. Phinehas.
26. V. p. 465, n. 4.
27. To Eleazar; his wife had survived the relative from whom the hill was inherited.
28. Because Eleazar's wife pre-deceased the relative to whom the hill belonged. This proves that a prospective estate is not inherited by the husband, but by the son.
29. *Infra* 115a.
30. Inherit from the brother of their mother.