

The Soncino Babylonian Talmud

Book II

Folios 28b-58a



BABA MEZI'A

TRANSLATED INTO ENGLISH WITH NOTES

FOLIOS 1 - 24b

BY SALIS DAICHES A.M., Ph.D.

FOLIOS 25a TO THE END

BY H. FREEDMAN B.A., Ph.D.

UNDER THE EDITORSHIP OF

RABBI DR I. EPSTEIN B.A., Ph.D., D. Lit.

Reformatted by Reuven Brauner, Raanana 5771

www.613etc.com

BABA METZIAH – 28b-58a

Baba Mezi'a 28b

one might mistake for the first! — In any case, the third is still to come.¹

Our Rabbis taught: In former times, whoever found a lost article used to proclaim it during the three Festivals and an additional seven days after the last Festival, three days for going home, another three for returning, and one for announcing.² After the destruction of the Temple — may it be speedily rebuilt in our own days!³ — it was enacted that the proclamation should be made in the synagogues and schoolhouses. But when the oppressors increased, it was enacted that one's neighbors and acquaintances should be informed, and that sufficed. What is meant by 'when the oppressors increased'? — They insisted that lost property belonged to the king.⁴

R. Ammi found a purse of *denarii*. Now, a certain man saw him displaying fear, whereupon he reassured him, 'Go, take it for thyself: we are not Persians who rule that lost property belongs to the king.'

Our Rabbis taught: There was a Stone of Claims⁵ in Jerusalem: whoever lost an article repaired thither, and whoever found an article did likewise. The latter stood and proclaimed, and the former submitted his identification marks and received it back. And in reference to this we learnt: Go forth and see whether the Stone of Claims is covered.⁶

MISHNAH. IF HE [THE CLAIMANT] STATES THE ARTICLE LOST, BUT NOT ITS IDENTIFICATION MARKS, IT MUST NOT BE SURRENDERED TO HIM. BUT IF HE IS A CHEAT,⁷ EVEN IF HE STATES ITS MARKS OF IDENTIFICATION, IT MUST NOT BE GIVEN UP TO HIM, BECAUSE IT IS WRITTEN [AND IT SHALL BE WITH THEE] UNTIL THE SEEKING OF THY BROTHER AFTER IT,⁸ MEANING, UNTIL THOU HAST EXAMINED THY

BROTHER WHETHER HE BE A CHEAT OR NOT.⁹

GEMARA. It has been stated: Rab Judah said: He proclaims. '[I have found] a lost article.' R. Nahman said: He proclaims, '[I have found] a garment'. 'Rab Judah said: He proclaims a lost article,' for should you say that he proclaims a garment, we are afraid of cheats. 'R. Nahman said: He proclaims. a garment'; for 'we do not fear cheats, as otherwise the matter is endless'.¹⁰

We learnt: IF HE STATES THE ARTICLE LOST, BUT NOT ITS IDENTIFICATION MARKS, IT MUST NOT BE SURRENDERED TO HIM. Now, if you say that he proclaims a loss, it is well; we are thus informed that though he states that it was a garment, yet since he does not submit its identification marks, it is not returned to him. But if you say that he proclaims a garment, then if one [the finder] states that it was a garment, and the other [the claimant] states likewise, a garment, is it necessary to teach that it is not returned to him unless he declares its marks of identification? — Said R. Safra: After all, he proclaims a garment. [The Mishnah means that] he [the finder] stated [that he had found] a garment, whilst the other [the claimant] submitted identification marks. What then is meant by 'HE DID NOT STATE ITS IDENTIFICATION MARKS'? — He did not state its perfect identification marks.¹¹

BUT IF HE IS A CHEAT, IF HE STATES ITS IDENTIFICATION MARKS, IT MUST NOT BE GIVEN UP TO HIM. Our Rabbis taught: At first, whoever lost an article used to state its marks of identification and take it. When deceivers increased in number, it was enacted that he should be told, 'Go forth and bring witnesses that thou art not a deceiver; then take it'. Even as it once happened that R. papa's father lost an ass, which others found. When he came before Rabbah son of R. Huna, he directed him, 'Go and bring witnesses that you are not a fraud, and take it.' So he went and brought witnesses. Said he to them, 'Do

BABA METZIAH – 28b-58a

you know him to be a deceiver?' — 'Yes', they replied. 'I, a deceiver!' he exclaimed to them. 'We meant that you are not a fraud,' they answered him. 'It stands to reason that one does not bring [witnesses] to his disadvantage.' said Rabbah son of R. Huna.¹²

MISHNAH. EVERYTHING [SC. AN ANIMAL] WHICH WORKS FOR ITS KEEP¹³ MUST [BE KEPT BY THE FINDER AND] EARN ITS KEEP. BUT AN ANIMAL WHICH DOES NOT WORK FOR ITS KEEP MUST BE SOLD, FOR IT IS SAID, AND THOU SHALT RETURN IT UNTO HIM,¹⁴ [WHICH MEANS], CONSIDER HOW TO RETURN IT UNTO HIM.¹⁵ WHAT HAPPENS WITH THE MONEY? R. TARFON SAID: HE MAY USE IT; THEREFORE IF IT IS LOST, HE BEARS RESPONSIBILITY FOR IT.¹⁶ R. AKIBA MAINTAINED: HE MUST NOT USE IT; THEREFORE IF IT IS LOST, HE BEARS NO RESPONSIBILITY.

GEMARA. For ever!¹⁷ — Said R. Nahman in Samuel's name: Until twelve months [have elapsed]. It has been taught likewise: As for all animals which earn their keep. e.g., a cow or an ass, he [the finder] must take care of them for twelve months; after that he turns them into money, which he lays by. He must take care of calves and foals three months, sell them and lay the money by. He must look after geese and cocks for thirty days, sell them and put the money by. R. Nahman b. Isaac observed: A fowl ranks as large cattle.¹⁸ It has been taught likewise: As for a fowl and large cattle,¹⁹ he must take care of them twelve months, then sell them and put the money by. For calves and foals the period is²⁰ thirty days, after which he sells them and lays the money by. Geese and cocks, and all which demand more attention than their profit is worth, he must take care of for three days, after which he sells them and lays the money by. Now this ruling on calves and foals contradicts the former one, and likewise the rulings on geese and cocks are contradictory? — The rulings on calves and foals are not contradictory: the former refers to grazing animals; the latter to those that require feeding stuffs.²¹ The rulings on geese

and cocks are likewise not contradictory: the former refers to large ones, the latter to small.²²

BUT AN ANIMAL WHICH DOES NOT WORK FOR ITS KEEP. Our Rabbis taught: And thou shalt return it unto him: deliberate how to return it unto him, so that a calf may not be given as food to other calves, a foal to other foals, a goose to other geese, or a cock to other cocks.²³

WHAT HAPPENS WITH THE MONEY? R. TARFON SAID: HE MAY USE IT, etc. Now, this dispute is

1. Even if a mistake is made, no harm is done.
2. V. Mishnah.
3. This phrase has become liturgical.
4. That was Persian law, which the Jews felt justified in secretly resisting.
5. [Var. lec., 'Stone of the erring (losses).'] On the attempt to localize the stone, v. J. N. Sepp. ZDPV, II, 49.]
6. So Rashi. Lit., 'is dissolving.' The story is related in Ta'an. 19a of a certain Honi who prayed for rain so successfully that he was asked to reverse his prayer, more than enough having fallen. To which he answered, 'Go forth and see whether the Claimants' Stone is already covered with water, in which case I will pray for the rain to cease.'
7. I.e., where the claimant is known to be one in general, but v. Gemara on this.
8. Deut. XXII, 2.
9. V. p. 169, n. 6.
10. Even if no particular article is announced, a fraud may claim a certain article at a venture.
11. I.e., he gave general marks which would cover many garments. [The term 'perfect' is used by R. Safra in a loose sense, cf. *supra* p. 171. n. 9.]
12. Therefore the witnesses can withdraw their testimony, though normally this is forbidden. But in this case it is evident that they thought that he had asked, 'Do ye know that he is not a deceiver?' which was the usual form of the question.
13. Lit., 'does and eats.'
14. Ibid.
15. But if the finder keeps it and then charges the loser with its keep, it may exceed its actual worth, and so the return will be a loss.
16. The advantage that he enjoys in that he may use it makes him a paid bailee.
17. Surely the finder need not keep the animal indefinitely, even if it does earn its keep!

BABA METZIAH – 28b-58a

18. And must be kept a twelvemonth.
19. I.e., cows and oxen.
20. Lit., 'he must take care of them.'
21. In spring and summer, when the animals graze on natural pasture, they are to be kept three months; but in winter, when feeding stuffs must be bought for them, thirty days are sufficient.
22. Small ones need more attention, and therefore they are kept only three days. — The translation follows Maim. and R. Han., and is also adopted by the Codes; v. H.M. 267, 24. Rashi reverses it.
23. I.e., if a number of these is found, it should not be necessary to sell one to provide food for the others, but as soon as they cease to earn their keep they must all be sold.

Baba Mezi'a 29a

[apparently] only if he [the finder] did use it. But if not, [all would agree] that if it is lost he is free [from responsibility]. Shall we say that this refutes R. Joseph? For it has been stated. A bailee of lost property: Rabbah ruled, he ranks as an unpaid bailee; R. Joseph maintained, as a paid bailee!¹ — R. Joseph can answer you. As for theft and loss, all agree that he is responsible. They differ only in respect to [unavoidable] accidents, for which a borrower [alone is responsible]. R. Tarfon holds: The Rabbis permitted him [the finder] to use it, therefore he is a borrower in respect thereto. Whilst R. Akiba holds that the Rabbis did not permit him to use it, therefore he is not a borrower in respect thereto. If so, why does R. Akiba say 'THEREFORE'? For if you agree that they differ concerning theft and loss, it is well; hence it is taught. **R. AKIBA MAINTAINED, HE MUST NOT USE IT; THEREFORE IF IT IS LOST HE BEARS NO RESPONSIBILITY.** For I might think he is a paid bailee, in accordance with R. Joseph's view, and responsible for theft and loss; hence we are informed, 'THEREFORE' [etc.] i.e., since you say that he may not use it, he is not a paid bailee, nor is he responsible for theft and loss. But if you say that all agree that he is responsible for theft and loss, whilst they differ only in respect of [unpreventable] accidents, for which a borrower [alone is responsible], what is the meaning of R. Akiba's

'THEREFORE'? Surely he [the Tanna] should have stated thus: **R. AKIBA MAINTAINED, HE MUST NOT USE IT [and no more];** then I would have known myself that since he may not use it, he is not a borrower, hence not responsible. What then is the need of R. Akiba's 'THEREFORE'?² — On account of R. Tarfon's 'THEREFORE'.³ And what is the purpose of R. Tarfon's 'THEREFORE'? — He means this: Since the Rabbis permitted him to use it, it is as though he had done so,⁴ and he is [therefore] held responsible for it. But it is taught, [IF] IT IS LOST!⁵

1. And since a paid bailee is liable for loss, our Mishnah appears to refute R. Joseph.
2. The question is a straightforward one, though put with a good deal of unnecessary circumlocution. [Rabbinovicz, D.S. a.l. suggests this to be an interpolation of Jehudai Gaon.]
3. I.e., for the sake of balancing the Mishnah.
4. Even if he does not use it.
5. How then can it refer to unpreventable accidents?

Baba Mezi'a 29b

— It is in accordance with Rabbah; for Rabbah said [elsewhere]: They were stolen by armed robbers: whilst 'lost' means that his ship foundered at sea.¹

Rab. Judah said in Samuel's name: The *halachah* is as R. Tarfon. Rehabah had in his charge an orphan's money. He went before R. Joseph and enquired. 'May I use it?' He replied, 'Thus did Rab Judah say in Samuel's name, The *halachah* is as R. Tarfon. Thereupon Abaye protested, But was it not stated thereon: R. Helbo said in R. Huna's name: This refers only to the purchase price of a lost article, since he took trouble therein,² but not to money which was itself lost property:³ and these⁴ are likewise as lost money? — Go then,' said he to him;⁵ 'they do not permit me to give you a favorable ruling.'

MISHNAH. IF ONE FINDS SCROLLS, HE MUST READ THEM EVERY THIRTY DAYS;⁶ IF HE CANNOT READ, HE MUST ROLL THEM.⁷ BUT

BABA METZIAH – 28b-58a

HE MUST NOT STUDY [A SUBJECT] THEREIN FOR THE FIRST TIME.⁸ NOR MAY ANOTHER PERSON READ WITH HIM.⁹ IF ONE FINDS A CLOTH, HE MUST GIVE IT A SHAKING EVERY THIRTY DAYS, AND SPREAD IT OUT FOR ITS OWN BENEFIT [TO BE AIRED], BUT NOT FOR HIS HONOUR.¹⁰ SILVER AND COPPER VESSELS MAY BE USED FOR THEIR OWN BENEFIT, BUT NOT [SO MUCH AS] TO WEAR THEM OUT. GOLD AND GLASSWARE MAY NOT BE TOUCHED UNTIL ELIJAH COMES.¹¹ IF ONE FINDS A SACK OR A BASKET, OR ANY OBJECT WHICH IT IS UNDIGNIFIED FOR HIM TO TAKE,¹² HE NEED NOT TAKE IT.

GEMARA. Samuel said: If one finds phylacteries in a sack, he must immediately turn them into money [i.e., sell them] and lay the money by. Rabina objected: IF ONE FINDS SCROLLS, HE MUST READ THEM EVERY THIRTY DAYS; IF HE CANNOT READ, HE MUST ROLL THEM. Thus, he may only roll, but not sell them and lay the money by! — Said Abaye: phylacteries are obtainable at Bar Habu;¹³ whereas scrolls are rare.¹⁴

Our Rabbis taught: If one borrows a Scroll of the Torah from his neighbor, he may not lend it to another. He may open and read it, providing, however, that he does not study [a subject] therein for the first time; nor may another person read it together with him. Likewise, if one deposits a Scroll of the Torah with his neighbor, he [the latter] must roll it once every twelve months, and may open and read it; but if he opens it in his own interest, it is forbidden. Symmachus said: In the case of a new one, every thirty days; in the case of an old one, every twelve months. R. Eliezer b. Jacob said: In both cases, every twelve months.

The Master said: 'If one borrows a Scroll of the Torah from his neighbor, he may not lend it to another.' Why particularly a Scroll of the Torah: surely the same applies to any article? For R. Simeon b. Lakish said: Here Rabbi has

taught that a borrower may not lend [the article he borrowed], nor may a hirer re-hire [to another person]!¹⁵ — It is necessary to state it in reference to a Scroll of the Torah. I might have said, One is pleased that a precept be fulfilled by means of his property: therefore we are informed [otherwise].¹⁶

'He may open and read it.' But that is obvious! Why else then did he borrow it from him? — He desires to state the second clause: providing, however, that he does not study [a subject] therein for the first time.'

'Likewise, if one deposits a Scroll of the Torah with his neighbor, he [the latter] must roll it once every twelve months, and may open and read it.' What business has he with it?¹⁷ Moreover, 'if he opens it in his own interests, It is forbidden; 'but have you not said, 'He may open and read it!' — It means this: If when rolling it he opens and reads it, that is permitted; but if he opens it in his own interests, it is forbidden.

'Symmachus said: In the case of a new one, every thirty days; in the case of an old one, every twelve months. R. Eliezer b. Jacob said: In both cases, every twelve months.' But R. Eliezer b. Jacob is identical with the first Tanna! — But say thus: R. Eliezer b. Jacob said: In both cases, every thirty days.

BUT HE MUST NOT STUDY [A SUBJECT] THEREIN FOR THE FIRST TIME, NOR MAY ANOTHER PERSON READ WITH HIM. But the following contradicts it. He may not read a section therein and revise it, nor read a section therein and translate it.¹⁸ He may also not have more than three columns open [simultaneously], nor may three read out of the same volume. Hence two may read! — Said Abaye: There is no difficulty: here the reference is to one subject; there, to two.¹⁹

IF ONE FINDS A CLOTH, HE MUST GIVE IT A SHAKING EVERY THIRTY DAYS: Are we to say that a shaking benefits it? But R. Johanan said, He who has a skilled weaver in

BABA METZIAH – 28b-58a

his house²⁰ has to shake his garment every day!²¹ — I will tell you: [shaking] every day is injurious, once in thirty days is beneficial thereto. Alternatively, there is no difficulty: this [our Mishnah] refers to [shaking] by one person; the other [R. Johanan's dictum], by two persons.²² Another alternative: this [the Mishnah] refers to [a shaking, i.e., beating] by hand; the other, with a stick.²³ Or again, one refers to wool, the other to flax.²⁴

R. Johanan said: A cupful of witchcraft, but not a cupful of tepid water.²⁵ Yet that applies only to a metal utensil, but there is no objection to an earthenware one. And even of a metal utensil, this holds good only if it [the water] is unboiled; but if it is boiled, it does not matter. Moreover, that is only if he throws no spice wood therein; but if he does, there is no objection.

R. Johanan said: If one is left a fortune²⁶ by his parents, and wishes to lose it, let him wear linen garments, use glassware, and engage workers and not be with them. 'Let him wear linen garments' — this refers to Roman linen;²⁷ 'use glassware' — Viz., white glass;²⁸ 'and engage workers and not be with them' — refer this

1. These are unpreventable. v. *infra* 43a.
2. Before selling it he had to look after it for a certain time; therefore he is now privileged to use the money.
3. If one finds money, so disposed that he is bound to announce it (v. *supra* 24b) he may not use it whilst waiting for the owner to claim it, since it needs neither care nor attention.
4. Sc. the orphan's coins.
5. R. Joseph to the disciple.
6. If left unused longer, they become moldy and moth eaten.
7. To give them an airing.
8. The long poring over the scroll and its consequent handling injured it.
9. Since each unconsciously pulls the scroll to himself, the scroll is injured.
10. To use as a tablecloth or bedspread.
11. I.e., the finder must not use them at all, since they do not deteriorate.
12. Lit., 'which it is not his way to take.'
13. Pr. n. a writer of phylacteries and mezuzoth, also mentioned in Ber. 53b. and Meg. 18b. —

I.e., they are easily bought, and so their owner loses nothing when the finder sells them.

14. Lit., 'not found.'
15. 'Here' refers to a Mishnah in Git. (29a) from which Resh Lakish deduced this.
16. But the same certainly applies even with greater force to other articles.
17. It was assumed that he may open and read it for his own purpose, since it was already taught once that he rolls it every twelve months for its own benefit; but how may one use a bailment in his own interests?
18. Into the vernacular, which, in the case of Palestinian Jewry, was probably Aramaic; v. J.E. VI, 308.
19. Rashi: two people may not read the same subject, because each pulls the Scroll to himself; but they may read two different subjects (in different columns), as each concentrates on his own; Maim. reverses it.
20. Regularly engaged in weaving.
21. Because of the fluff caused by the weaver. This shows that one shakes his garment only when he must.
22. In which case each pulls it and strains the material.
23. That is harmful.
24. Rashi: a beating harms woolen garments, as it stretches them, but not linen garments. — But the order of the Gemara would seem to reverse it, 'the one ... the other' referring to the Mishnah and R. Johanan respectively, and Maim. and others do in fact reverse it. Possibly linen garments or cloths were more delicately made in those days, or were otherwise weaker than woolens.
25. One had better drink the former than the latter.
26. Lit., 'much money.'
27. [I.e., manufactured, not grown, in Rome; v. Krauss, *op. cit.* I, 537.]
28. Which was rare and costly. [On the difficulty of the process for producing colorless glass among the ancients, v. Krauss, *op. cit.* II, 286.]

Baba Mezi'a 30a

to [workers with] oxen, who can cause much loss.¹

AND SPREAD IT OUT FOR ITS OWN BENEFIT, BUT NOT FOR HIS HONOUR. The scholars propounded: What if it is for their mutual benefit?² — Come and hear: HE

BABA METZIAH – 28b-58a

MAY SPREAD IT FOR ITS OWN BENEFIT; this proves, only for its own benefit, but not for their mutual benefit! — Then consider the second clause: **BUT NOT FOR HIS HONOUR;** thus, it is forbidden only for his own honor, but permitted for their mutual benefit! Hence no inference can be drawn from this.

Come and hear: He may not spread it [a lost article] upon a couch or a frame for his needs, but may do so in its own interests. If he was visited by guests, he may not spread it over a bed or a frame, whether in his interests or in its own!³ — There it is different, because he may thereby destroy it,⁴ either through an [evil] eye or through thieves.

Come and hear: If he took it [the heifer] into the team⁵ and it [accidentally] did some threshing, it is fit;⁶ [but if it was] in order that it should suck and thresh, it is unfit.⁷ But here it is for their mutual benefit, and yet it is taught that it is unfit! — There it is different, because Scripture wrote, which hath not beets wrought with — under any condition. If so, the same should apply to the first clause too?⁸ This [then] can only be compared to what we learnt: If a bird rested upon it [the red heifer] — it remains fit;⁹ but if it copulated with a male, it becomes unfit.¹⁰ Why so? — In accordance with R. Papa's dictum. For R. papa said: Had Scripture written 'ubad,¹¹ and we read it 'ubad, I would have said [that the law holds good] even if it were of itself;¹² whilst if it were written 'abad,¹³ and we read it 'abad, I would have said, [it becomes unfit] only if he himself wrought with it. Since, however, it is written 'abad [active], whilst read 'ubad [passive],¹⁴ we require that 'it was wrought with' shall be similar to 'he wrought with it';¹⁵ just as 'he wrought [with it]' must mean that he approved of it, so also 'it was wrought with' refers only to what he approved.¹⁶

SILVER AND COPPER VESSELS MAY BE USED, etc. Our Rabbis taught: If one finds wooden utensils he may use them — to prevent

them from rotting; copper vessels — he may use them with hot [matter], but not over the fire, because that wears them out; silver vessels, with cold [matter], but not with hot, because that tarnishes them; trowels and spades, on soft [matter], but not on hard, for that injures them; gold and glassware, [however], he may not touch until Elijah comes. Just as they [the Sages] ruled in respect of lost property, so also with reference to a bailment. What business has one with a bailment?¹⁷ — Said R. Adda b. Hama in R. Shesheth's name: This treats of a bailment the owner of which has gone overseas.

IF ONE FINDS A SACK OR A BASKET, OR ANY OBJECT WHICH IT IS NOT DIGNIFIED FOR HIM TO TAKE, HE NEED NOT TAKE IT. How do we know this? — For our Rabbis taught: And thou shalt hide thyself:¹⁸ sometimes thou mayest hide thyself, and sometimes not. E.g., if one was a priest, whilst it [the lost animal] was in a cemetery; or an old man, and it was inconsistent with his dignity [to lead the animal home]; or if his own [work] was more valuable than his neighbour's¹⁹ — therefore it is said, and thou shalt hide thyself.²⁰ In respect of which [of these instances] is the verse required? Shall we say, in respect of a priest when it [the lost animal] is in a cemetery? — but that is obvious: one is a positive, whereas the other is a negative and a positive injunction, and a positive injunction cannot set aside a negative together with a positive injunction?²¹ Moreover, a ritual prohibition cannot be abrogated on account of money!²² If, again, [it is required] where 'his own [work] was more valuable than his neighbor's' — that may be inferred from Rab Judah's dictum in Rab's name, for Rab Judah said in the name of Rab: Save that

1. Either by failing to plow up the land properly, so that the subsequent crop is a poor one (Tosaf.), or through carelessly driving the ox carts over the crops when engaged in reaping or vintaging, and so causing damage both to oxen and plants (Rashi).
2. Lit., 'for its purpose and for his purpose?'

BABA METZIAH – 28b-58a

3. Pes. 26b. Thus proving that he may not use it for their mutual benefit.
4. Lit., 'burn it.'
5. Of three or four cows used for threshing; his purpose was that it should suck.
6. To be used to make atonement for a murder by an unknown person. V. Deut. XXI, 1-9. The heifer had to be one '*which hath not been wrought with, and which hath not drawn in the yoke*' (v. 3). Though this heifer had done some threshing, it remains fit, because it had been taken into the team to feed, not to thresh.
7. Pes. 26b.
8. Though not intending that it should thresh, it nevertheless ought to become disqualified.
9. And is not disqualified on the score that it has been put to some use.
10. Parah II, 4.
11. [H] passive. 'was wrought with.'
12. I.e., even if it '*was wrought with*' entirely without its owners volition.
13. [H] active, 'with which he (the owner) had not wrought.'
14. [= M.T. [H] The form is thus taken as passive *Kal* not *Pu'al*, v. Ges. K. § 52e.]
15. I.e., though it may have been put to work without the knowledge of its master, it shall nevertheless be only such work as its master would have approved.
16. Now, if a bird rests on it, the master does not approve, since he derives no benefit; but he does derive benefit from its copulation. Similarly, if he takes it into the team and it accidentally does some threshing, he does not benefit thereby, as the team itself would have sufficed. Therefore it is not invalidated, unless that was his express purpose.
17. How can there be a question of using a bailment? Let its owner come and use it to prevent it from rotting or otherwise being injured through disuse!
18. Deut. XXII, 2. The beginning of the verse reads, Thou shalt not see thy brother's ox or his sheep go astray. In the exegesis that follows, it is assumed that the 'not' may or may not refer to 'and thou shalt hide thyself' according to circumstances.
19. I.e., the value of the time he would lose in returning it exceeded that of the lost animal.
20. Sanh. 18b.
21. It is a positive command to return lost property, viz., thou shalt restore them unto thy brother; whereas a priest is forbidden to defile himself through the dead both by a positive command — They shall be holy unto their God (Lev. XXI, 6) — and a negative one — Speak unto the priests the sons of Aaron and say unto them, There shall none be defiled for the dead among his people (ibid. 1).

22. The returning of lost property is after all only a monetary matter.

Baba Mezi'a 30b

there shall be no poor among you:¹ [this teaches,] thine takes precedence over all others!² — Hence [it is needed] in respect of an old man for whom it is undignified [to return the lost article].

Rabbah said: If he [the old man] smote it [the lost animal], he is [henceforth] under an obligation in respect thereof.³ Abaye was sitting before Rabbah when he saw some [lost] goats standing. whereupon he took a clod and threw it at them. Said he [Rabbah] to him, 'You have thereby become bound in respect of them. Arise and return them.'

The scholars propounded: What if it is dignified for one to return [a lost animal] in the field, but not in town? Do we say, a complete return is required, and since it is undignified for him to return it in town, he has no obligation at all; or perhaps, in the field at least he is bound to return it, and since he incurs the obligation in the field, he is likewise obligated in town?⁴ The question stands.

Raba said: Where one would lead back his own, he must lead back his neighbor's too. And where one would unload and load his own, he must do so for his neighbour's.⁵

R. Ishmael son of R. Jose was walking on a road when he met a man carrying a load of faggots. The latter put them down, rested, and then said to him, 'Help me to take them up.' 'What is it worth?' he enquired. 'Half a *zuz*,' was the answer. So he gave him the half *zuz* and declared it hefker.⁶ Thereupon he [the carrier] re-acquired it.⁷ He gave him another half *zuz* and again declared it hefker. Seeing that he was again about to re-acquire it, he said to him, 'I have declared it hefker for all but you.' But is it then hefker in that case? Have we not learnt: Beth Shammai maintain, hefker for the poor [only] is valid hefker;

BABA METZIAH – 28b-58a

whilst Beth Hillel rule, It is valid only if declared hefker for the poor and the rich, as the year of release.⁸ — But R. Ishmael son of R. Jose did in fact render it hefker for all; and he stopped the other [from taking possession again] by mere words. Yet was not R. Ishmael son of R. Jose an elder for whom it was undignified [to help one to take up a load]?² — He acted beyond the requirements of the law. For R. Joseph learnt: And thou shalt show them¹⁰ — this refers to their house of life;¹¹ the way — that means the practice of loving deeds;¹² they must walk — to sick visiting; therein — to burial;¹³ and the work — to strict law; that they shall do — to [acts] beyond the requirements of the law.¹⁴

The Master said: '*they must walk* — this refers to sick visiting.' But that is the practice of loving deeds! — That is necessary only in respect of one's affinity.¹⁵ For a Master said: A man's affinity takes away a sixtieth of his illness: yet even so, he must visit him 'Therein to burial.' But that [too] is identical with the practice of loving deeds? — That is necessary only in respect of an old man for whom it is undignified.¹⁶ 'That they shall do — this means [acts] beyond the requirements of the law.' For R. Johanan said: Jerusalem was destroyed only because they gave judgments therein in accordance with Biblical law. Were they then to have judged in accordance with untrained arbitrators?¹⁷ — But say thus: because they based their judgments [strictly] upon Biblical law, and did not go beyond the requirements of the law.

MISHNAH. WHAT IS LOST PROPERTY? IF ONE FINDS AN ASS OR A COW FEEDING BY THE WAY, THAT IS NOT CONSIDERED A LOST PROPERTY; [BUT IF HE FINDS] AN ASS WITH ITS TRAPPINGS OVERTURNED, OR A COW RUNNING AMONG THE VINEYARDS, THEY ARE CONSIDERED LOST. IF HE RETURNED IT AND IT RAN AWAY, RETURNED IT AND IT RAN AWAY, EVEN FOUR OR FIVE TIMES, HE IS STILL BOUND TO RESTORE IT, FOR IT IS WRITTEN, THOU SHALT SURELY RESTORE THEM.¹⁸ IF HIS

LOST TIME IS WORTH *S SELA'*, HE MUST NOT DEMAND, GIVE ME A *SELA'*, BUT IS PAID AS A LABOURER. IF A *BETH DIN* IS PRESENT, HE MAY STIPULATE IN THEIR PRESENCE;¹⁹ BUT IF THERE IS NO *BETH DIN* BEFORE WHOM TO STIPULATE, HIS OWN TAKES PRECEDENCE.²⁰

GEMARA. And all these that were mentioned already — are they then not lost property?²¹ — Said Rab Judah: It means this: What is the general principle of lost property for which one is responsible?²² IF ONE FINDS AN ASS OR A COW FEEDING BY THE WAY, THAT IS NOT CONSIDERED LOST PROPERTY, and he bears no responsibility toward it: [BUT IF HE FINDS] AN ASS WITH ITS TRAPPINGS OVERTURNED, OR A COW RUNNING AMONG THE VINEYARDS, THEY ARE CONSIDERED LOST, and he is bound [to return it]. And for ever?²³ — Said Rab Judah in Rab's name: Up to three days.²⁴ How so? If [he sees it] at night, even a single hour [shows that it is lost]; if by day, even if it is there longer, it is still [not proof it is lost]! — This arises only if it was seen either before daybreak or at twilight; now, for three days we assume that it is mere chance that it went forth [at these unusual hours]; but if more, it is certainly lost.

It has been taught likewise: If one finds a garment or a spade

1. Deut, XV, 4.
2. Regarding the verse as an exhortation against bringing oneself to poverty.
3. To return it. By smiting it to make it go in a certain direction he commences the work of returning it, and therefore must complete it.
4. On the principle of the preceding dictum.
5. V. Deut. XXII, 4, which is interpreted as meaning that one must help his neighbor to load or unload his animals. Here too he is exempt if it is inconsistent with his dignity, and Raba observes that the test is whether he would do this for his own.
6. 'Ownerless.'
7. And again asked R. Ishmael to help him.
8. *Pe'ah* VI, 1; 'Ed. IV. 3. Produce acquired from hefker was exempt from tithes. If, however, it was only partially declared hefker i.e., for the

BABA METZIAH – 28b-58a

poor alone, Beth Shammai and Beth Hillel dispute whether that is valid. Since in all cases of dispute between these two academies the *halachah* was according to Beth Hillel, we see that partial hefker is invalid; hence R. Ishmael's declaration was illegal. — The seventh year was called the year of release (*shemittah*), and its crops were free to all; v. Lev. XXV, 1-7.

9. Why then pay him off?
10. Ex. XVIII, 20.
11. Rashi: i.e., industry and trade, the means of a livelihood. In B.K. 100a Rashi refers it to study, the life of the Jew.
12. This is the literal translation of the phrase, *gemiluth hasadim*. It is sometimes translated, 'the practice of charity,' but that is inexact. Every act of kindness is regarded as done out of one's love for his fellow beings. [V. Abrahams, I, C.P.B. p. XIII. The inner meaning of the phrase is, 'making good.' 'requiting' — a making good to man for goodness of God, and it is connected with tenderness and mercy to all men and all classes; cf. J. *Pe'ah* IV.]
13. To give burial to the poor who cannot pay for it. Directly arising out of this teaching, the Burial Societies (*chevra kaddisha* — 'holy society') have always formed an important part of Jewish communal organization.
14. Lit., 'within the line of judgment;' v. B.K. (Sonc. ed.) p. 584, n. 2.
15. V. p. 171. n. 1.
16. Yet even he must take part in burial.
17. [[H] from [H], 'to cut,' 'to decide;' so Jast. Cf. however B.K. (Sonc. ed.) p. 671, n. 10.]
18. Deut. XXII, 1. [H]; the doubling of the verb — the usual idiom for emphasis — intimates that one is bound to return the same article many times, if necessary.
19. Any three people constitute a *Beth din*, and the finder may stipulate before them that if he returns the article he shall be paid for lost time according to what he himself could earn; then he can claim his loss in full.
20. And he is not bound to return the article at all and involve himself in loss.
21. The article mentioned in the previous Mishnahs were all examples of lost property; why then state here 'WHAT IS LOST PROPERTY?' as though the previous ones were not?
22. I.e., how may one recognize whether a particular article is lost or intentionally placed there by its owner?
23. Can one say that no matter how long an animal is seen grazing by the way it was intentionally placed there?
24. But if there longer, it must be assumed lost.

Baba Mezi'a 30b

there shall be no poor among you:¹ [this teaches,] thine takes precedence over all others!² — Hence [it is needed] in respect of an old man for whom it is undignified [to return the lost article].

Rabbah said: If he [the old man] smote it [the lost animal], he is [henceforth] under an obligation in respect thereof.³ Abaye was sitting before Rabbah when he saw some [lost] goats standing. whereupon he took a clod and threw it at them. Said he [Rabbah] to him, 'You have thereby become bound in respect of them. Arise and return them.'

The scholars propounded: What if it is dignified for one to return [a lost animal] in the field, but not in town? Do we say, a complete return is required, and since it is undignified for him to return it in town, he has no obligation at all; or perhaps, in the field at least he is bound to return it, and since he incurs the obligation in the field, he is likewise obligated in town?⁴ The question stands.

Raba said: Where one would lead back his own, he must lead back his neighbor's too. And where one would unload and load his own, he must do so for his neighbour's.⁵

R. Ishmael son of R. Jose was walking on a road when he met a man carrying a load of faggots. The latter put them down, rested, and then said to him, 'Help me to take them up.' 'What is it worth?' he enquired. 'Half a *zuz*,' was the answer. So he gave him the half *zuz* and declared it hefker.⁶ Thereupon he [the carrier] re-acquired it.⁷ He gave him another half *zuz* and again declared it hefker. Seeing that he was again about to re-acquire it, he said to him, 'I have declared it hefker for all but you.' But is it then hefker in that case? Have we not learnt: Beth Shammai maintain, hefker for the poor [only] is valid hefker; whilst Beth Hillel rule, It is valid only if declared hefker for the poor and the rich, as the year of release.⁸ — But R. Ishmael son of

BABA METZIAH – 28b-58a

R. Jose did in fact render it hefker for all; and he stopped the other [from taking possession again] by mere words. Yet was not R. Ishmael son of R. Jose an elder for whom it was undignified [to help one to take up a load]?² — He acted beyond the requirements of the law. For R. Joseph learnt: And thou shalt show them¹⁰ — this refers to their house of life;¹¹ the way — that means the practice of loving deeds;¹² they must walk — to sick visiting; therein — to burial;¹³ and the work — to strict law; that they shall do — to [acts] beyond the requirements of the law.¹⁴

The Master said: 'they must walk — this refers to sick visiting.' But that is the practice of loving deeds! — That is necessary only in respect of one's affinity.¹⁵ For a Master said: A man's affinity takes away a sixtieth of his illness: yet even so, he must visit him 'Therein to burial.' But that [too] is identical with the practice of loving deeds? — That is necessary only in respect of an old man for whom it is undignified.¹⁶ 'That they shall do — this means [acts] beyond the requirements of the law.' For R. Johanan said: Jerusalem was destroyed only because they gave judgments therein in accordance with Biblical law. Were they then to have judged in accordance with untrained arbitrators?¹⁷ — But say thus: because they based their judgments [strictly] upon Biblical law, and did not go beyond the requirements of the law.

MISHNAH. WHAT IS LOST PROPERTY? IF ONE FINDS AN ASS OR A COW FEEDING BY THE WAY, THAT IS NOT CONSIDERED A LOST PROPERTY; [BUT IF HE FINDS] AN ASS WITH ITS TRAPPINGS OVERTURNED, OR A COW RUNNING AMONG THE VINEYARDS, THEY ARE CONSIDERED LOST. IF HE RETURNED IT AND IT RAN AWAY, RETURNED IT AND IT RAN AWAY, EVEN FOUR OR FIVE TIMES, HE IS STILL BOUND TO RESTORE IT, FOR IT IS WRITTEN, THOU SHALT SURELY RESTORE THEM.¹⁸ IF HIS LOST TIME IS WORTH S SELA', HE MUST NOT DEMAND, GIVE ME A SELA', BUT IS PAID AS A LABOURER. IF A BETH DIN IS PRESENT, HE

MAY STIPULATE IN THEIR PRESENCE;¹⁹ BUT IF THERE IS NO BETH DIN BEFORE WHOM TO STIPULATE, HIS OWN TAKES PRECEDENCE.²⁰

GEMARA. And all these that were mentioned already — are they then not lost property?²¹ — Said Rab Judah: It means this: What is the general principle of lost property for which one is responsible?²² IF ONE FINDS AN ASS OR A COW FEEDING BY THE WAY, THAT IS NOT CONSIDERED LOST PROPERTY, and he bears no responsibility toward it: [BUT IF HE FINDS] AN ASS WITH ITS TRAPPINGS OVERTURNED, OR A COW RUNNING AMONG THE VINEYARDS, THEY ARE CONSIDERED LOST, and he is bound [to return it]. And for ever?²³ — Said Rab Judah in Rab's name: Up to three days.²⁴ How so? If [he sees it] at night, even a single hour [shows that it is lost]; if by day, even if it is there longer, it is still [not proof it is lost]! — This arises only if it was seen either before daybreak or at twilight; now, for three days we assume that it is mere chance that it went forth [at these unusual hours]; but if more, it is certainly lost.

It has been taught likewise: If one finds a garment or a spade

1. Deut, XV, 4.
2. Regarding the verse as an exhortation against bringing oneself to poverty.
3. To return it. By smiting it to make it go in a certain direction he commences the work of returning it, and therefore must complete it.
4. On the principle of the preceding dictum.
5. V. Deut. XXII, 4, which is interpreted as meaning that one must help his neighbor to load or unload his animals. Here too he is exempt if it is inconsistent with his dignity, and Raba observes that the test is whether he would do this for his own.
6. 'Ownerless.'
7. And again asked R. Ishmael to help him.
8. *Pe'ah* VI, 1; 'Ed. IV. 3. Produce acquired from hefker was exempt from tithes. If, however, it was only partially declared hefker i.e., for the poor alone, Beth Shammai and Beth Hillel dispute whether that is valid. Since in all cases of dispute between these two academies the *halachah* was according to Beth Hillel, we see

BABA METZIAH – 28b-58a

that partial hefker is invalid; hence R. Ishmael's declaration was illegal. — The seventh year was called the year of release (shemittah), and its crops were free to all; v. Lev. XXV, 1-7.

9. Why then pay him off?
10. Ex. XVIII, 20.
11. Rashi: i.e., industry and trade, the means of a livelihood. In B.K. 100a Rashi refers it to study, the life of the Jew.
12. This is the literal translation of the phrase, *gemiluth hasadim*. It is sometimes translated, 'the practice of charity,' but that is inexact. Every act of kindness is regarded as done out of one's love for his fellow beings. [V. Abrahams, I., C.P.B. p. XIII. The inner meaning of the phrase is, 'making good.' 'requiting' — a making good to man for goodness of God, and it is connected with tenderness and mercy to all men and all classes; cf. J. *Pe'ah* IV.]
13. To give burial to the poor who cannot pay for it. Directly arising out of this teaching, the Burial Societies (*chevra kaddisha* — 'holy society') have always formed an important part of Jewish communal organization.
14. Lit., 'within the line of judgment;' v. B.K. (Sonc. ed.) p. 584, n. 2.
15. V. p. 171. n. 1.
16. Yet even he must take part in burial.
17. [[H] from [H], 'to cut,' 'to decide;' so Jast. Cf. however B.K. (Sonc. ed.) p. 671, n. 10.]
18. Deut. XXII, 1. *ocha*, cav; the doubling of the verb — the usual idiom for emphasis — intimates that one is bound to return the same article many times, if necessary.
19. Any three people constitute a *Beth din*, and the finder may stipulate before them that if he returns the article he shall be paid for lost time according to what he himself could earn; then he can claim his loss in full.
20. And he is not bound to return the article at all and involve himself in loss.
21. The article mentioned in the previous Mishnahs were all examples of lost property; why then state here 'WHAT IS LOST PROPERTY?' as though the previous ones were not?
22. I.e., how may one recognize whether a particular article is lost or intentionally placed there by its owner?
23. Can one say that no matter how long an animal is seen grazing by the way it was intentionally placed there?
24. But if there longer, it must be assumed lost.

Baba Mezi'a 31a

on a road, or a cow running among the vineyards it is lost property. [But if he finds] a garment at the side of a wall, or a spade at the side of a wall, or a cow grazing among the vineyards, it is not considered lost; yet [if he sees it] three consecutive days, it is lost. If one sees water overflowing [its banks] and proceeding [onwards], he must put up a wall¹ before it.²

Raba³ said: [And so shalt thou do] with all lost things of thy brother's:⁴ this is to include the loss of real estate. R. Hananiah observed to Raba:⁵ It has been taught in support of you: If one sees water overflowing [its banks] and proceeding [onwards], he must put up a wall before it.⁶ As for that, he replied, it does not support [me]: What are the circumstances here? When there are sheaves [on the field].⁷ But if it contains sheaves, why state it?⁸ — It is necessary [to state it only] when it contains sheaves which [still] need the soil. I might think, since they need the soil, they are as the soil itself:⁹ therefore we are informed [otherwise].

IF ONE FINDS AN ASS OR A COW, etc. This is self-contradictory. You say. IF ONE FINDS AN ASS OR A COW FEEDING BY THE WAY, IT IS NOT CONSIDERED LOST PROPERTY: hence, only when feeding by the way are they not [regarded as] lost; but if running on a road, or feeding among the vineyards, they are considered lost! Then consider the second clause: [BUT IF HE FINDS] AN ASS WITH ITS TRAPPINGS OVERTURNED, OR A COW RUNNING AMONG THE VINEYARDS, THEY ARE CONSIDERED LOST; hence, only if running among the vineyards are they lost; but if running on the road, or feeding among the vineyards. they are not lost! — Said Abaye: His companion telleth it concerning him:¹⁰ he [the Tanna] mentions feeding by the way, that it is not a lost animal, and the same applies to [a cow] feeding among the vineyards. He states that if running among the vineyards, it is lost,

BABA METZIAH – 28b-58a

and the same holds good if it was running on the road. Raba said to him, if 'his companion telleth it of him,' let the lighter aspects be taught, from which the graver ones would follow *a fortiori*. [Thus:] Let him [the Tanna] teach that if it was running on the road it is considered lost; how much more so if running among the vineyards! And let him teach that when feeding among the vineyards it is not considered lost; how much more so when feeding by the way! — But. said Raba, the two statements on 'running'¹¹ are not contradictory: in the one case its face is towards the field; in the other, towards the town.¹² The two statements on 'feeding' are likewise not contradictory: the one treats of the loss of itself;¹³ the other of the loss of the soil. [Thus:] when he [the Tanna] teaches that if it is FEEDING BY THE WAY. THAT IS NOT CONSIDERED LOST PROPERTY, implying that if it is feeding among the vineyards there is a loss, the reference is to the loss of the soil.¹⁴ And when he teaches that if it is running among the vineyards there is a case of loss, implying that if it is feeding among the vineyard there is none, the reference is to the loss of itself;¹³ for when running among the vineyard it becomes lacerated, but not when feeding among the vineyards.¹⁵ Now, if it is feeding among the vineyards, granted that it does not become lacerated, yet it should be necessary [to expel it] on account of the loss of the soil! — This refers to a heathen's¹⁶ [vineyard]. Yet should it be necessary [to drive it out] on account of its own loss, lest they [the heathens] kill it? — This refers to a place where a warning is first given,¹⁷ and only then is it slain. But perhaps a warning has already been given on its account? — If they gave warning, and care was not taken thereof [to prevent it from trespassing], it certainly ranks as a self-inflicted loss.¹⁸

IF HE RETURNED IT AND IT RAN AWAY, RETURNED IT AND IT RAN AWAY, etc. One of the Rabbis said to Raba, Perhaps 'hasheb'¹⁹ indicates once; 'teshibem'²⁰ denotes twice? — He replied. 'hasheb' implies even a hundred times. As for 'teshibem', I know only

[that he must return them] to his [the owner's] house; how do I know [that he can return them to] his garden or his ruins? Therefore Scripture writes, 'teshibem', implying, in all circumstances. How so? If they [the garden or ruins] are guarded, is it not obvious? Whilst if not, why [can one return them thither]? — In truth, it means that they are guarded, but we are informed this, viz., that the owner's knowledge is not required.²¹ In accordance with R. Eleazar, who said: All require the owner's knowledge,²² excepting in the case of the return of lost property, since Scripture extended the law to many forms of return.²³

[If a bird's nest chance to be before thee in the way in any tree, on the ground, whether they be young ones, or eggs, and the dam sitting upon the young, or upon the eggs, thou shalt not take the dam with the young:] But shaleah teshalah [thou shalt surely let go] the dam, etc.:²⁴ let us say that shaleah means once, teshalah twice?²⁵ — He replied, shaleah implies even a hundred times. As for teshalah: I know [this law] only [when the bird is required] for a permissive purpose;²⁶ how do I know it when it is required for the fulfillment of a precept?²⁷ Therefore Scripture writes, 'teshalah', implying under all circumstances.

One of the Rabbis said to Raba: *[Thou shalt not hate thy brother in thine heart:]* hokeah tokiah [thou shalt surely rebuke] thy neighbour.²⁸ Perhaps hokeah means once, tokiah twice? — He replied, hokeah implies even a hundred times. As for tokiah: I know only that the master [must rebuke] the disciple: whence do we know that the disciple [must rebuke] his master? From the phrase. 'hokeah tokiah', implying under all circumstances.

[If thou see the ass of him that hateth thee lying under its burden and wouldst forbear to help him,] thou shalt surely²⁹ help with him.³⁰ [From this] I know it only if the owner is with it; whence do I know [the law] if its owner is not with it? From the verse, 'thou shalt surely help with him' — in all circumstances.

BABA METZIAH – 28b-58a

[Thou shalt not see thy brother's ass or his ox fall down by the way, and hide thyself from them:] thou shalt surely help him to lift them up again:³¹ [From this] I know it only if the owner is with it; whence do I know [this law] if the owner is not with it? From the verse, 'thou shalt surely help him to lift them up again'.

Now, why must both unloading and loading be stated? — Both are necessary. For had Scripture mentioned unloading [only], I would have thought, that is because it entails suffering of dumb animals and financial loss;³² but as for loading, where neither suffering of dumb animals nor financial loss is involved,³³ I might have thought that one need not [help], Whilst had we been informed in respect of loading, [I would have thought, that is] because it is remunerated;³⁴ but unloading, which is unremunerated,³⁵ I would have thought one need not [help]. Thus both are required. But on R. Simeon's view that loading too is without remuneration, what can you say? — In R. Simeon's view the verses are not explicit.³⁶

Why need these two be written and also [the return of] the lost [animal]? — They are all needed. For had Scripture written these two [only]. [I would think it was] because they entail the suffering of both the owner and itself [sc. the animal]; but as for a lost [animal], which causes grief to the owner but not to itself, [the law] would not apply.³⁷ And if we were informed this of a lost animal, [I would think it was] because the owner is not with it;³⁸

1. I.e., any obstacle to hinder its progress.
2. That too falls within the category of restoring lost property — i.e., one must take the necessary steps to prevent loss.
3. [MS.M. 'Rabbah.']
4. Ibid, 3,
5. [MS.M.: 'Rabbah,' cf. *supra* 6b.]
6. He assumed that its purpose was that the soil should not become waterlogged.
7. Hence they must be saved, but it is possible, as far as the Baraita is concerned, that one is not bound to save land.
8. For it is then obvious.

9. And therefore, on the hypothesis stated in n. 9, do not need saving.
10. Job XXXVI, 33; (E.V.: the noise thereof showeth concerning it), i.e., each clause illumines the other.
11. I.e., the explicit ruling in the second clause, and the implicit ruling in the first.
12. If running on the road town-wards, it must have been set in that direction, and is therefore not lost. If running forest-wards, it is lost.
13. I.e., of the animal.
14. I.e., an animal feeding in vineyards causes damage. and therefore must be expelled. — *Abedah* (H) means both a lost article and a loss.
15. Thus on Raba's interpretation the Mishnah does not give a definition of what animal is to be regarded as lost, but treats of losses which the onlooker must prevent.
16. V. *supra* p. 149. n. 6.
17. To the owners, that the animal is trespassing.
18. The owner is himself responsible for his loss.
19. Inf. of the verb, meaning 'to restore.'
20. 'Thou shalt restore then.'
21. When lost property is returned, it is unnecessary to inform the owner.
22. A thief, robber, or bailee, when returning the article stolen or left in his charge, must inform the owner; otherwise he remains responsible in the case of mishap.
23. I.e., providing it is returned, it does not matter how.
24. Deut. XXII, 6, 7: the Heb. lit., 'to let go thou shalt let go'; v. p. 192. n. 5.
25. But if the dam returns after being sent away twice, one may take both it and the young.
26. I.e., for food.
27. E.g., as a leper's sacrifice (v. Lev. XIV. 4): how do I know that even then the dam must not be taken?
28. Lev. XIX. 17; cf. n. 1.
29. This is expressed in Hebrew by the inf.
30. Ex. XXIII, 5; this is an exhortation to help to unload the animal.
31. Deut. XXII. 4. Cf. n. 1.
32. As a result of the depreciation of the animal if it is not unloaded.
33. V. *infra* p. 20.
34. Though the passer-by is bound to help in the loading, he must be paid for his services.
35. V. *infra* 32a.
36. It is not clear which refers to unloading and which to loading. Therefore, had there been only one verse, I would have taken it to refer to one or the other, but not to both.
37. I.e., there is no need to trouble to return it.
38. Hence, since it is quite helpless, the passer-by is called upon to render assistance by restoring it.

BABA METZIAH – 28b-58a

Baba Mezi'a 31b

but as for these two, seeing that their master is with them, [the law would] not [apply]: thus both are necessary.

*He that smote him shall surely be put to death:*¹ I know only [that he is to be executed] by the mode of death prescribed in his case: whence do I know that if you cannot execute him with the death prescribed for him, you may slay him with any death you are able? From the verse, 'He shall surely be put to death', meaning under all circumstances.

*Thou shalt surely smite [the inhabitants of that city with the edge of the sword]:*² I know only [that you may execute them] with the death³ that is prescribed in their case. Whence do I know that if you cannot slay them with the death that is prescribed in their case, you may smite them in any manner you are able? From the verse, 'Thou shalt surely smite', implying under all circumstances.

*Thou shalt surely return [the pledge unto him when the sun goeth down]:*⁴ from this I know it [sc. that the pledge must be returned] only if he [the creditor] distrained with the sanction of the court;⁵ whence do we know if of one who distrained without the sanction of the court? From the verse, 'Thou shalt surely return it' — implying in all cases.

*If thou at all⁶ take to pledge [thy neighbor's raiment, thou shall deliver it to him by that the sun goeth down]:*⁷ from that I know it [sc. that the pledge must be returned] only if he [the creditor] distrained with sanction [of the court]; whence do we know it of one who distrained without sanction [of the court]? Because it is stated, 'If thou at all take to pledge, implying in all cases. And for what purpose are both of these verses necessary?'⁸ — One refers to day raiment, the other to night clothes.⁹

*Thou shalt surely open [thy hand unto thy brother, to thy poor, etc.].*¹⁰ I know this only of

the poor of thine own city:¹¹ whence do I know it of the poor of another city? — From the expression, 'Thou shalt surely open', implying, in all cases.

*Thou shalt surely give [him]:*¹² I know only that a large sum must be given;¹³ whence do I know that a small sum too must be given?¹⁴ From the expression, 'Thou shalt surely give' — in all circumstances.

*Thou shalt furnish him liberally.*¹⁵ I know only that if the house [of the master] was blessed for his [the slave's] sake,¹⁶ a present must be made. Whence do we know it even if the house was not blessed for his sake? Scripture teaches, 'Thou shalt furnish him liberally'¹⁷ under all circumstances. But according to R. Eleazar b. 'Azariah, who maintained: If the house was blessed for his sake, a present is made to him, but not otherwise; what is the purpose of 'ta'anik'?¹⁸ — The Torah employs¹⁹ human phraseology.²⁰

*And thou shalt surely lend him [sufficient for his need].*²¹ I know this only of one [a poor man] who has naught and does not wish to maintain himself [at your expense];²² then Scripture saith. Give him by way of a loan. Whence do I know it if he possesses his own but does not desire to maintain himself [at his own cost]? From the verse, 'Thou shalt surely lend him'.²³ But according to R. Simeon, who maintained: If he has his own but refuses to maintain himself [therewith], we are under no obligation toward him, why state 'surely'?²⁴ — The Torah employs human phraseology.

IF HIS LOST TIME IS WORTH A SELA', HE MUST NOT DEMAND, GIVE ME A SELA', BUT IS PAID AS A LABOURER. A Tanna taught: He must pay him as an unemployed laborer. What is meant by 'an unemployed laborer?' — As a laborer unemployed in his particular occupation.²⁵

'IF A BETH DIN IS PRESENT, HE MAY STIPULATE IN THEIR PRESENCE. Issur and R. Safra entered into a business

BABA METZIAH – 28b-58a

partnership. Then R. Safra went and divided it [the stock] without Issur's knowledge in the presence of two people. When he came before Rabbah son of R. Huna,²⁶ he said to him, 'Go and produce the three people in whose presence you made the division; or else

1. Num. XXXV, 21.
2. With reference to an idolatrous city. Deut. XIII, 16.
3. Lit., 'smiting'.
4. Ibid. XXIV, 13.
5. V. *infra* 113a.
6. This also is expressed in the Hebrew by the inf.
7. Ex. XXII, 25.
8. Since they both state the same law.
9. Deut. XXIV, 13 to the former; Ex. XXII, 25 to the latter. Cf. *infra* 114b.
10. Deut. XV, 11.
11. As implied by thy poor.
12. Ibid. 10. The reference is to money lent before the year of release.
13. Maharsha: because 'give' connotes something of value
14. If one cannot lend much.
15. Ibid. 24; this refers to the parting gifts made to a slave on his attaining his freedom.
16. Because the verse ends: as the Lord thy God hath blessed thee thou shalt give unto him.
17. V. *supra* note 2.
18. 'Thou shalt furnish', i.e., the repetition of the verb.
19. Lit., 'speaks with'.
20. And that repetition is normal.
21. Ibid. 8: i.e., one must lend a poor man for his requirements.
22. I.e., he does not want charity; hence Scripture orders that a loan shall be made to him.
23. Even then one must lend, and claim the return of his money after the borrower's death. This is the explanation in Keth. 67b.
24. v. p. 195. n. 2.
25. Lit., 'as a laborer unemployed in that work from which he was disturbed' (by having to return the lost article) and willing to take less for the lighter task of restoring lost property than for his usual more arduous occupation; cf. p. 398. n. 2.
26. For confirmation of his division, which was in order to dissolve their partnership.

Baba Mezi'a 32a

two out of the three,¹ or else two witnesses that you did divide in the presence of three [others].² 'How do you know this?' he asked

him.³ — He replied. 'Because we learnt. IF A *BETH DIN* IS PRESENT, HE MAY STIPULATE IN THEIR PRESENCE; BUT IF THERE IS NO *BETH DIN* BEFORE WHOM TO STIPULATE, HIS OWN TAKES PRECEDENCE.'⁴ 'What comparison is there?' he retorted. 'In that case, Seeing that money is being taken from one and given to another, a *Beth din* is needed;⁵ but here I took my own, and mere proof [is required that I shared fairly]; hence two are sufficient. In proof thereof we learnt: A widow may sell [of her deceased husband's estate] without the presence of *Beth din*!⁶ — Said Abaye to him, 'But was it not stated thereon: R. Joseph b. Manyumi said in R. Nahman's name: A widow does not need a *Beth din* of ordained scholars, but a *Beth din* of laymen is necessary?'

MISHNAH. IF HE FINDS IT [AN ANIMAL] IN A STABLE, HE HAS NO RESPONSIBILITY TOWARD IT [TO RETURN IT];² IN THE STREET, HE IS OBLIGED [TO RETURN IT]. BUT IF IT IS IN A CEMETERY, HE MUST NOT DEFILE HIMSELF FOR IT.³ IF HIS FATHER ORDERS HIM TO DEFILE HIMSELF, OR SAYS TO HIM, 'DO NOT RETURN [IT].' HE MUST NOT OBEY HIM. IF ONE UNLOADS AND LOADS, UNLOADS AND LOADS, EVEN FOUR OR FIVE TIMES, HE IS [STILL] BOUND [TO DO IT AGAIN], BECAUSE IT IS WRITTEN, THOU SHALT SURELY HELP [WITH HIM].² IF HE [THE OWNER OF THE ANIMAL] WENT, SAT DOWN AND SAID [TO THE PASSER-BY], 'SINCE THE OBLIGATION RESTS UPON YOU, IF YOU DESIRE TO UNLOAD, UNLOAD:' HE [THE PASSER-BY] IS EXEMPT, BECAUSE IT IS SAID, 'WITH HIM'; YET IF HE [THE OWNER] WAS OLD OR INFIRM HE IS BOUND [TO DO IT HIMSELF]. THERE IS A BIBLICAL PRECEPT TO UNLOAD, BUT NOT TO LOAD. R. SIMEON SAID: TO LOAD UP TOO. R. JOSE THE GALILEAN SAID: IF IT [THE ANIMAL] BORE MORE THAN HIS PROPER BURDEN, HE [THE PASSER-BY] HAS NO OBLIGATION TOWARDS HIM [ITS OWNER], BECAUSE IT IS WRITTEN, [IF THOU SEE THE ASS OF HIM THAT HATETH THEE LYING] UNDER ITS BURDEN,

BABA METZIAH – 28b-58a

WHICH MEANS, A BURDEN UNDER WHICH IT CAN STAND.

GEMARA. Raba said: The STABLE referred to is one which neither causes [the animal] to stray nor is it guarded.¹⁰ It does not cause it to stray: since it is taught: HE HAS NO RESPONSIBILITY TOWARDS IT [TO RETURN IT]; nor is it guarded, since it is necessary to teach HE HAS NO RESPONSIBILITY TOWARD IT. For should you think that it is guarded: Seeing that if he finds it outside he takes it inside,¹¹ if he finds it inside, is it necessary to state [that he is not bound to return it]? But it must follow that it is unguarded. This proves it.

IF HE FINDS IT IN A STABLE, HE HAS NO RESPONSIBILITY TOWARD IT. R. Isaac said: Provided that it is standing within the tehum.¹² Hence it follows that [if he finds it] in the street, even within the tehum, he is still bound [to return it]. Others refer this to the second clause, **IN THE STREET, HE IS OBLIGED [TO RETURN IT].** R. Isaac observed: Providing that it is standing within the tehum: hence it follows that [if he finds it] in a stable, even without the tehum, he is still under no obligation.

IF IT IS IN A CEMETERY, HE MUST NOT DEFILE HIMSELF FOR IT. Our Rabbis taught: Whence do we know that if his father said to him, 'Defile yourself', or 'Do not return it', he must disobey him? Because it is written, Ye shall fear every man his mother, and his father, and keep my Sabbaths: I am the Lord your God¹³ — ye are all bound to honor Me.¹⁴

Thus, the reason is that Scripture wrote, ye shall keep my Sabbaths,¹⁵ otherwise, however, I would have said that he has to obey him.¹⁶ But why so? One is a positive command, and the other is both a positive and a negative command,¹⁷ and a positive command cannot supersede [combined] positive and negative commands! — It is necessary. I might think, Since the honor due to parents is equated to that due to the Omnipresent, for it is said,

Honor thy father and thy mother;¹⁸ whilst elsewhere it is said: Honor the Lord with thy substance;¹⁹ therefore he must obey him. Hence we are informed that he must not obey him.

THERE IS A BIBLICAL PRECEPT TO UNLOAD, BUT NOT TO LOAD. What is meant by — 'BUT NOT TO LOAD'? Shall we say, not to load at all: wherein does unloading differ, because it is written, *Thou shalt surely help him?*²⁰ Yet in respect to loading, too, it is said, *thou shalt surely help him to lift them up again!*²¹ But [it means this:] It is a Biblical obligation to unload without remuneration, but not to load without payment, save only for remuneration. R. Simeon said: To load too without payment.

We have [thus] learnt here what our Rabbis taught: Unloading [must be done] without pay; unloading, for pay. R. Simeon said: Both without payment. What is the reason of the Rabbis? — For should you think it is as R. Simeon: let Scripture state loading, and unloading becomes unnecessary; for I would reason: If one is bound to load, though no suffering of dumb animals nor financial loss is involved;²² how much more so unloading, seeing that both suffering of dumb animals and financial loss are involved!²³ Then for what purpose is it written? To teach you that unloading must be performed without payment, but loading only for payment. And what is R. Simeon's reason? — Because the verses are not explicit.²⁴ And the Rabbis?²⁵ — Why [say,] The verses are not explicit? Here it is written, [*If thou see the ass ...] lying under his burden;*²⁶ whilst there it is said, [Thou shalt not see thy brother's ass or his ox] fall down by the way, which implies, both they and their burdens are cast on the road.²⁷ And R. Simeon?²⁸ — 'Fall down by the way' implies they themselves [the animals], their load being still upon them.

Raba said:

BABA METZIAH – 28b-58a

1. Who shall testify that the division was made in the presence of three, including themselves.
2. In each case the three would constitute a *Beth din* to ensure that the stock was rightly assessed and a fair division made.
3. That three are necessary.
4. And a *Beth din* implies three.
5. It is so regarded because the Mishnah states that actually he is only entitled to the pay of an unemployed worker, hence, when he stipulates that he is to receive more, and the stipulation is allowed, it is the equivalent of taking money from one and giving it another. — The power of a *Beth din* to do this is based on the principle, hefker by *Beth din* is hefker, i.e., *Beth din* is empowered to abrogate a person's rights in his own property, and declare it ownerless; therefore the court can also take from one and give to another,
6. For her alimony, and only two witnesses are required to see that she does not sell unreasonably below value.
7. This is discussed in the Gemara.
8. If he is a priest.
9. Ex. XXIII, 5.
10. I.e., it is in such a position that there is nothing to cause the animal to run away; on the other hand, it is unlocked, and there is nothing to prevent it from going.
11. I.e., into a stable, and that is sufficient, as stated *supra* 31a, that he can simply take it into the owner's garden or ruins.
12. A Sabbath day's journey. i.e., 2000 cubits without the town boundary.
13. Lev, XIX, 3.
14. I.e., though every man must fear — i.e., reverence and obey his parents — his duty to God overrides his duty to them. The verse is therefore rendered thus: Ye shall fear every man his mother and his father; nevertheless (should they order you to desecrate the Sabbath), ye shall keep my Sabbaths, because I am the Lord your God.
15. V. preceding note.
16. His father, when he tells him not to return lost property.
17. To obey one's parents is a positive command, as has just been quoted. To return lost property is a positive command — thou shalt surely restore it — and a negative injunction — thou mayest not hide thyself (Deut. XXII, 1, 3).
18. Ex. XX, 12.
19. Prov. III, 9: the fact that the same language is used of both shows that they are likened to each other.
20. Ex. XXIII, 5.
21. Deut. XXII, 4.
22. V. *supra* p. 193.
23. When the animal falls under its burden and help is needed to unload it.
24. V. p. 194, n. 3.
25. How do they rebut this argument?
26. Ex. XXIII, 5: this certainly implies that the burden is still upon it, and help is required for unloading.
27. And help is required to reload them.
28. How can he maintain that the verses are not explicit?

Baba Mezi'a 32b

From the arguments of both we may infer that [relieving] the suffering of an animal is a Biblical law. For even R. Simeon said [this]¹ only because the verses are not clearly defined. But if they were, we would infer a *minori*.² On what grounds: Surely we infer it on the grounds of the suffering of dumb animals?³ — [No.] Perhaps it is because financial loss is involved, and the argument runs thus: If one is obliged to load, though no financial loss is involved; how much more so to unload, seeing that financial loss is involved. But is there no financial loss involved when loading [is required]: may not the circumstances be that in the meanwhile he loses the market, or that thieves can come and rob him of all he has!⁴ Now, the proof⁵ that [relieving] the suffering of an animal is Biblically enjoined is that the second clause states: R. JOSE THE GALILEAN SAID: IF IT [THE ANIMAL] BORE MORE THAN ITS PROPER BURDEN, HE [THE PASSER-BY] HAS NO OBLIGATION TOWARDS HIM [THE OWNER], BECAUSE IT IS WRITTEN, [IF THOU SEE THE ASS OF HIM THAT HATETH THEE LYING] UNDER ITS BURDEN, WHICH MEANS, A BURDEN UNDER WHICH IT CAN STAND: hence it follows that in the view of the first Tanna⁶ he is obligated towards him [to help him]. Why so? Surely because relieving the suffering of an animal is Biblically enjoined!⁷ — [No] Perhaps they differ as to [the connotation of] 'under its burden,' R. Jose maintaining that we interpret 'under its burden,' a burden under which it can stand; whilst the Rabbis hold that we do not interpret 'under its burden' [thus.]

BABA METZIAH – 28b-58a

[Moreover,] it may be proved that relieving the suffering of an animal is no Biblical [injunction], because the first clause states, IF HE [THE OWNER OF THE ANIMAL] WENT, SAT DOWN, AND SAID [TO THE PASSERBY], SINCE THE OBLIGATION RESTS UPON YOU TO UNLOAD, UNLOAD: HE [THE PASSER-BY] IS EXEMPT, BECAUSE IT IS SAID, 'WITH HIM'. Now, should you think that [relieving] the suffering of an animal is a Biblical injunction, what difference does it make⁸ whether the owner joins him [in relieving the animal] or not? — In truth, [relieving] the suffering of an animal is Biblically enjoined; for do you think that 'EXEMPT' means entirely exempt? Perhaps he is exempt [from doing it] without payment, yet he is bound [to unload] for payment, Scripture ordering thus: When the owner joins him, he must serve him for naught; when the owner abstains, he must serve him for payment;² yet after all [relieving] the suffering of an animal is Biblically enjoined.

(Mnemonic: *Animal, animal, Friend, enemy, habitually lying down.*) Shall we say that the following supports him?¹⁰ 'One must busy himself with an animal belonging to a heathen just as with one belonging to an Israelite'.¹¹ Now, if you say that [relieving] the suffering of an animal is a Biblical injunction, it is well; for that reason he must busy himself therewith as with one belonging to an Israelite. But if you say that [relieving] the suffering of an animal is not Biblically enjoined, why must he busy himself therewith as with an Israelite's animal? — There it is on account of enmity.¹² Logic too supports this. For it states: If it is laden with forbidden wine, he has no obligation towards it. Now if you say that [relieving the suffering of an animal is not Biblically enjoined, it is well: therefore he has no obligation toward it. But if you say it is Biblically enjoined, why has he no obligation toward it? — It means this: but he has no obligation to load it with forbidden wine.

Come and hear: In the case of an animal belonging to a heathen bearing a burden belonging to an Israelite, thou mayest forbear.¹³ But if you say that [relieving] the suffering of an animal is Biblically enjoined, why mayest thou forbear: surely 'thou shalt surely help with him' is applicable! — After all, [relieving] the suffering of an animal is Biblically [enjoined]: the reference there is to loading. If so, consider the second clause: In the case of an animal belonging to an Israelite and a load belonging to a heathen, 'thou shalt surely help.' But if this treats of loading, why [apply] 'thou shalt surely help him'? — On account of the inconvenience of the Israelite.¹⁴ If so, the same applies in the first clause? — The first clause treats of a heathen driver, the second of an Israelite driver. How can you make a general assumption?¹⁵ — As a rule, one goes after his ass.¹⁶ But both 'and thou mayest forbear' and 'thou shalt surely help' refer to unloading! — Well [answer thus:] Who is the authority of this? R. Jose the Galilean, who maintained that [relieving the suffering of an animal is not Biblically [enjoined]].¹⁷

Come and hear: If a friend requires unloading, and an enemy loading,¹⁸ one's [first] obligation is towards his enemy, in order to subdue his evil inclinations.¹⁹ Now if you should think that [relieving the suffering of an animal is Biblically [enjoined], [surely] the other is preferable! — Even so, [the motive] 'in order to subdue his evil inclination' is more compelling.²⁰

Come and hear: The enemy spoken of is an Israelite enemy, but not a heathen enemy.²¹ But if you say that [relieving] the suffering of an animal is Biblically [enjoined], what is the difference whether [the animal belongs to] an Israelite or a heathen enemy? — Do you think that this refers to 'enemy' mentioned in Scripture? It refers to 'enemy' spoken of in the Baraitha.²²

Come and hear:

BABA METZIAH – 28b-58a

1. That unloading needs be explicitly commanded, besides loading.
2. That one is bound to unload, as above, and the verse would be unnecessary.
3. If one is bound to load, though no suffering is entailed, etc., as on 32a.
4. Hence the argument must be based on the suffering of the animal, which proves that such suffering must be averted by Biblical law.
5. Lit., 'thou mayest know.'
6. R. Simeon included.
7. It is now assumed that the first Tanna admits the feasibility of R. Jose's interpretation of 'its burden,' consequently the only possible reason of the first Tanna is that relieving the suffering of an animal is a Biblical law,
8. Lit., 'what is it to me?'
9. I.e., he must relieve the animal, but is entitled to demand payment.
10. Raba.
11. To relieve it from its burden.
12. I.e., in order not to arouse the enmity of the heathen.
13. This refers to Ex. XXIII, 5: If thou seest the ass of him that hateth thee lying under his burden, and wouldst forbear to help him, thou shalt surely help with him, The Talmud disjoins the two phrases 'and wouldst forbear' (one word in Heb. *we-hadalta*) and 'thou shalt surely help him,' teaching that sometimes the first applies, i.e., one is permitted to withhold his aid, and sometimes the second, viz., 'thou shalt surely help him.'
14. Who is forced to stay with the animal until it is laden and able to proceed.
15. On what grounds can one assume that the first clause treats of a heathen driver, etc.?
16. Therefore, seeing that the first clause refers to an ass belonging to a heathen, the driver too is a heathen — probably the owner; and the same holds good of the second clause.
17. As may be seen from his view in the Mishnah; but Raba's dictum is based on the view of the Rabbis.
18. I.e., one meets two asses: one, belonging to a friend, is tottering under its burden, and help is needed to unload it; the other, belonging to an enemy, has fallen, and assistance is wanted to reload it.
19. Tosef. B.M. II.
20. Lit., 'better'.
21. Tosef. *ibid.* It is now assumed that this refers to Ex. XXIII, 5 ('him that hateth thee' = thine enemy).
22. Quoted above: If a friend requires unloading, and an enemy loading, etc.
- 23.

Baba Mezi'a 33a

[If thou seest the ass of him that hateth thee lying under its burden, etc.:] 'lying' [just now], but not an animal that habitually lies down [under his burden]; 'lying,' but not standing;¹ 'under its burden', but not if it is unloaded;² 'under its burden' — a burden under which it can stand. Now, if you say that [relieving the suffering of an animal] is Biblically [enjoined], what does it matter whether it was lying [this once only], habitually lay down, or was standing? — The authority of this is R. Jose the Galilean, who maintained that [relieving] the suffering of an animal is [enjoined merely] by Rabbinical law. Reason supports this too. For it is taught: 'under its burden' — a burden under which it can stand. Now, whom do you know to hold this view? R. Jose the Galilean:³ this proves it. But can you assign it to R. Jose the Galilean? Does not the second clause teach: 'under its burden' but not if it is unloaded. What is meant by 'not if it is unloaded?' Shall we say, if it is unloaded, there is no obligation at all?⁴ But it is written, Thou shalt surely help to lift them up again!⁵ Hence it is obvious [that it means]. If unloaded, there is no obligation [to help to load it] without payment, but for remuneration. Now, whom do you know to hold this view? The Rabbis!⁶ — In truth, it is R. Jose the Galilean, yet in the matter of loading he agrees with the Rabbis.⁷

Our Rabbis taught: If thou see [the ass of him, etc.]:⁸ I might think; even in the distance;⁹ therefore it is taught. If thou meet [thine enemy's ox or his ass going astray, thou shalt surely bring it back to him again].¹⁰ If, 'when thou meet', I might think that meet is literally meant; therefore it is written. 'If thou seest', Now, what 'seeing' is the equivalent of 'meeting?' The Sages estimated this as two fifteenths¹¹ of a *mil*,¹² which is a *ris*.¹³ A Tanna taught: And he must accompany it as far as a *parsang*.¹⁴ Rabbah b. Bar Hana observed: Yet he receives payment [for this].

MISHNAH. IF [A MAN'S] OWN LOST ARTICLE AND HIS FATHER'S LOST ARTICLE [NEED

BABA METZIAH – 28b-58a

ATTENTION], HIS OWN TAKES PRECEDENCE. HIS OWN AND HIS TEACHER'S — HIS OWN TAKES PRECEDENCE; HIS FATHER'S AND HIS TEACHER'S — HIS TEACHER'S TAKES PRECEDENCE, BECAUSE HIS FATHER BROUGHT HIM INTO THIS WORLD, WHEREAS HIS TEACHER. 'WHO INSTRUCTED HIM IN WISDOM, BRINGS HIM TO THE FUTURE WORLD. BUT IF HIS FATHER IS A SAGE,¹⁵ HIS FATHER'S TAKES PRECEDENCE. IF HIS FATHER AND HIS TEACHER WERE [EACH] CARRYING A BURDEN, HE MUST [FIRST] ASSIST HIS TEACHER TO LAY IT DOWN,¹⁶ AND THEN ASSIST HIS FATHER. IF HIS FATHER AND HIS TEACHER ARE IN CAPTIVITY, HE MUST [FIRST] REDEEM HIS TEACHER AND THEN HIS FATHER. BUT IF HIS FATHER IS A SAGE, HE MUST [FIRST] REDEEM HIS FATHER AND THEN HIS TEACHER.

GEMARA. Whence do we know this? — Rab Judah said in Rab's name: Scripture saith, Save that there shall be no poor among you¹⁷ yours takes precedence over all others.¹⁸ But Rab Judah also said in Rab's name: He who [strictly] observes this, will eventually be brought to it.¹⁹

IF HIS FATHER AND HIS TEACHER WERE [EACH] CARRYING A BURDEN, etc. Our Rabbis taught: The teacher referred to is he who instructed him in wisdom, not he who taught him Bible and Mishnah:²⁰ this is R. Meir's view. R. Judah said: He from whom one has derived the greater part of his knowledge.²¹ R. Jose said: Even if he enlightened his eyes in a single Mishnah only, he is his teacher. Said Raba: E.g., R. Sehora, who told me the meaning of zohama listron.²²

Samuel rent his garment for one of the Rabbis who taught him the meaning of 'One was thrust into the duct as far as the arm pit.'²³ and another [key] opened [the door] directly.²⁴

'Ulla said: The scholars in Babylon arise before and rend their garment for each other [in mourning]; but with respect to a

[colleague's] lost article, when one has his father's [also to attend to,] he returns [a scholar's first] only in the case of his teacher put excellence.²⁵ R. Hisda asked R. Huna: 'What of a disciple whom his teacher needs?'²⁶ 'Hisda, Hisda,' he exclaimed; 'I do not need you, but you need me.' Forty years²⁷ they bore resentment against and did not visit each other. R. Hisda kept forty fasts because R. Huna had felt himself humiliated, whilst R. Huna kept forty fasts for having [unjustly] suspected R. Hisda.

It has been stated: R. Isaac b. Joseph said in R. Johanan's name: The *halachah* is as R. Judah. R. Aha son of R. Huna said in R. Shesheth's name: The *halachah* is as R. Jose.²⁸ Now, did R. Johanan really say this? But R. Johanan said, The *halachah* rests with an anonymous Mishnah, and we have learnt, HIS TEACHER, WHO INSTRUCTED HIM IN WISDOM!²⁹ — What is meant by WISDOM? The greater part of one's knowledge.

Our Rabbis taught: They who occupy themselves with the Bible [alone] are but of indifferent merit;³⁰ with Mishnah, are indeed meritorious, and are rewarded for it; with Gemara³¹ — there can be nothing more meritorious; yet run always to the Mishnah more than to the Gemara. Now, this is self-contradictory. You say, 'with Gemara — there can be nothing more meritorious;' and then you say, 'Yet run always to the Mishnah more than to the Gemara!' — Said R. Johanan:

1. I.e., one is obliged to help to unload an animal that has fallen under its load, but not one that still stands under it.
2. One is not obliged to help in loading it up again. The Gemara objects further in that this is explicitly ordered in Deut. XXII, 4.
3. In the Mishnah *supra* 32a.
4. Lit., 'it is not unloaded at all'.
5. Deut. XXII, 4: this is interpreted as referring to reloading.
6. Mishnah *supra* 32a. as interpreted in the Gemara.
7. That it must be remunerated.
8. Ex. XXIII, 5.
9. And one is bound to go there to help.
10. Ibid. 4.

BABA METZIAH – 28b-58a

11. Lit., 'one in seven and a half.'
12. A *mil* = 1000 cubits.
13. A Persian measure.
14. The passer-by, having helped to raise up the animal and replace its burden, must accompany it for a *parasang*, in case it falls again.
15. [MS.M. adds: 'equal (in wisdom) to his teacher.']
16. Lit., 'put down his teacher's.'
17. Deut. XV. 4.
18. V. p. 187. n. 1.
19. He who always takes the greatest care to safeguard his own first, so as not to become impoverished, will eventually be brought to poverty.
20. 'Wisdom' means the intelligent understanding of the Mishnah, the grounds of its statements, which are frequently made without giving the reasons, and ability to reconcile opposing Mishnahs (Rashi).
21. Whether Bible, Mishnah or Gemara.
22. [G]. This is a utensil mentioned in Kel. XIII. 2, in reference to laws of ritual defilement, a soup-ladle with a spoon for removing the scum of soup on one side and a fork on the other.
23. Jast.: 'the duct of the arm-pit.' a sewer in the Temple, so called from its shape.
24. This is a Mishnah in *Tam.* 30b, treating of the clearing away of the ashes from the altar.
25. Though they give each other the respect due to a teacher, e.g., rising and rending the garments, nevertheless, in a question of lost property, only he who has really taught them is regarded as such.
26. Because he has traditions from other scholars of which his teacher is ignorant. — R. Hisha was R. Huna's disciple, and the latter regarded the question as having a personal sting.
27. [R. Han. renders: You need me till the age of forty; cf. A.Z. 5a: 'A man cannot probe the mind of his master up to the age of forty.']
28. V. Baraita quoted above.
29. This appears to agree with R. Meir, not R. Judah.
30. Lit., 'it is meritorious and it is not meritorious.'
31. V. p. 60, n. 7. [Read with all MSS. and older prints: 'Talmud' (the discussions based on the older traditions of the Mishnah), the term 'Gemara', occurring throughout this passage in cur. edd., and denoting the complete mastery of a subject (Bacher, HUCA., 1904, 26-36), or, a summary embodying conclusions arrived at in schools (Kaplan, Redaction of the Talmud, p. 195 ff), having been substituted by the censor.]

Baba Mezi'a 33b

This teaching¹ was taught in the days of Rabbi; thereupon everyone forsook the Mishnah and went to the Gemara; hence he subsequently taught them, 'Yet run always to the Mishnah more than to the Gemara.'² How was that inferred?³ — Even as R. Judah son of R. Ila'i expounded: What is the meaning of, *Show my people their transgression, and the house of Jacob their sins?*⁴ 'Show my people their transgression' refers to scholars, whose unwitting errors⁵ are accounted as intentional faults;⁶ 'and the house of Israel their sins' — to the ignorant, whose intentional sins are accounted to them as unwitting errors. And that is the meaning of what we learnt: R. Judah said: Be heedful of the [Talmud],⁷ for an error in Talmud is accounted as intentional.

R. Judah son of R. Ila'i taught: What is meant by the verse, *Hear the word of the Lord, ye that tremble at his word?*⁸ — This refers to scholars; *Your brethren said*, to students of Scripture; that hate you — to students of the Mishnah;⁹ that cast you out — to the ignorant.¹⁰ [Yet] lest you say, their hope [of future joy] is destroyed, and their prospects frustrated, Scripture states, *And we shall see your joy.*¹¹ Lest you think, Israel shall be ashamed, — therefore it is stated, *and they shall be ashamed*: the idolaters shall be ashamed, whilst Israel shall rejoice.

CHAPTER III

MISHNAH. IF A MAN ENTRUSTS AN ANIMAL OR UTENSILS TO HIS NEIGHBOUR, AND THEY ARE STOLEN OR LOST, AND HE [THE BAILEE] PAYS [FOR THEM], DECLINING TO SWEAR (SINCE IT WAS RULED THAT A GRATUITOUS BAILEE MAY SWEAR AND BE QUIT); THE THIEF, IF HE IS FOUND, MUST RENDER DOUBLE, AND IF HE HAS SLAUGHTERED OR SOLD [THE ANIMAL], HE MUST REPAY FOURFOLD OR FIVEFOLD.¹² TO WHOM MUST HE PAY IT? TO HIM WITH WHOM THE BAILMENT WAS DEPOSITED.¹³ IF HE SWEARS, NOT WISHING TO PAY, THE

BABA METZIAH – 28b-58a

THIEF, IF FOUND, MUST REPAY DOUBLE, AND IF HE HAS SLAUGHTERED OR SOLD [THE ANIMAL], MUST REPAY FOURFOLD OR FIVEFOLD. TO WHOM MUST HE PAY IT? TO THE BAILOR.

GEMARA. Why must he state both ANIMAL and UTENSILS? — They are necessary. For if ANIMAL [alone] were stated, I might have said that only in the case of an animal does he [the bailor] make over the double repayment to him,¹⁴ because it requires considerable attention, to be led in and out [of its stable]. But as for utensils, which do not require much attention, I might think that he does not make over the twofold repayment to him.¹⁵ And if UTENSILS [alone] were stated, I might have argued that only in the case of utensils does he [the bailor] make over the twofold repayment to him, because their multiplication is not great.¹⁶ But in the case of an animal, for which, if slaughtered or sold, he [the thief] must repay fourfold or fivefold, I might think that he [the bailor] does not make over the multiplied principal to him. Hence both are necessary.

Rami b. Hama objected: But one cannot transfer that which is non-existent!¹⁷ And even according to R. Meir, who maintained, One can transfer that which is non-existent, — that is only in the case of, e.g., the fruit of a palm tree, which will naturally come [into existence].¹⁸ But here,

1. That Gemara is higher than Mishnah.
2. The two are not really in opposition. The Mishnah itself needs full discussion (Gemara) before it can be intelligently understood; on the other hand, discussion cannot be profitable unless it takes the Mishnah as its basis. It would appear that when Gemara was praised, number of disciples eagerly applied themselves thereto, forgetting however that the Mishnah is the foundation; and therefore the new statement was made, which is not so much a new statement as a fuller explanation of the old. — It is noteworthy that Gemara, i.e., discussion on the Mishnah, was already rife in the days of Rabbi (i.e., R. Judah the Prince c. first half of third century C.E.); cf. Weiss, Dor II, p. 209.

3. [That the study of Talmud is the more meritorious.]
4. Isa. LVIII, I.
5. [Through inadequate application to the study of the Talmud.]
6. Sins through ignorance, in the case of scholars, are accounted as intentional, since had they studied more thoroughly they would not have erred. — 'Transgression' ([H]) really means rebellion, and refers to intentional sin, whilst 'sin' ([H]) often refers to sinning through ignorance, the root idea of [H] being 'to be defective, to miss'.
7. V. p. 206, n. 6.
8. Ibid. LXVI, 5.
9. There was a rivalry (perhaps amounting to enmity) between those who confined themselves exclusively to the Mishnah and those who developed a Gemara — i.e., discussion — upon it; cf. Sot. 22a.
10. Maharsha: who 'cast you out' in that they have no desire to become partners with scholars in learning.
11. 'We', plural. i.e., all classes of Israel.
12. In accordance with Ex. XXI, 37.
13. I.e., the bailee: since he paid for the bailment, all rights thereof vest in him; hence the thief must make restitution to him.
14. When he receives payment for his bailment.
15. It should be observed that the double payment is not regarded as becoming the bailee's automatically on account of the compensation he makes. That is because the liability is incurred on account of the theft, and the animal then belonged to the bailor.
16. The thief can never be required to pay more than twofold.
17. Lit., 'which has not come into the world.' — How then can the bailor make over the twofold repayment to the bailee?
18. Hence we can sell his future crop.

Baba Mezi'a 34a

who can say that it [the bailment] will be stolen? And should you assume that it will be stolen, who can say that the thief will be found? And even if the thief be found, who can say that he will repay [double]: perhaps he will confess [before his guilt is attested]. and thus be exempt?¹ — Said Raba: It becomes as though he [the bailor] had said to him, 'If it be stolen, and you are willing to pay me [for it], then my cow be yours from this moment [of delivery]'² If so, even its shearings and offspring too [should belong to the bailee].³

BABA METZIAH – 28b-58a

Why has it been taught: Excepting its shearings and offspring? — But. said R. Zera, it is as though he had said to him, 'Except its shearings and offspring.' And why make this an absolute assumption? It may be taken for granted that one gives over those improvements which come from elsewhere, but not those which come from the stock itself.

Others state, Raba said: It becomes as though he said to him, 'If it is stolen, and you are willing to reimburse me, then it is yours from just before the theft.' Wherein do they [sc. the two versions of Raba's reply] differ? — They differ in respect of the difficulty posited by R. Zera;⁴ or if it was standing in the meadow.⁵

AND HE [THE BAILEE] PAYS [FOR THEM], DECLINING TO SWEAR, etc. R. Hiyya b. Abba said in R. Johanan's name: HE PAYS is not literally meant, but once he said, 'I will pay,' even if he has not done so, [the law of the Mishnah holds good].⁶

We learnt: AND HE PAYS, DECLINING TO SWEAR; [this implies,] only if he actually pays, but not otherwise? But consider the second clause: IF HE SWEARS, NOT WISHING TO PAY; [which implies] only if he did not consent, but if he consented, even if he had not actually paid [the double repayment is his]! Hence no inference can be drawn from this.⁷

It has been taught in accordance with R. Johanan: If one hires a cow from his neighbor and it is stolen, and he declares, 'I will pay and not swear,'⁸ and then the thief is discovered, he must pay double to the hirer.⁹

R. Papa said: If a gratuitous bailee merely says, 'I was negligent,' he [the bailor] assigns the twofold repayment to him, since he could have freed himself by [the plea of] theft. If a paid bailee merely says, 'It was stolen', the twofold repayment is made over to him, since he could, if he wished, have freed himself by pleading that it was hurt or had died. But if a borrower says, 'I will pay,' he [the bailor] does

not assign him the twofold repayment; for how could he have freed himself? By [the plea], it died on account of its work? That is a rare occurrence.¹⁰

Others state, R. Papa said: A borrower too, once he says 'I will pay,' the double repayment becomes his, since he could, if he wished, free himself by [the plea], 'It died on account of its work.' Thereupon R. Zebid observed to him, Thus did Abaye say: As for a borrower, [the twofold repayment is not his] unless he has actually paid. Why? — Since all the benefit [of the loan] is his, he [the lender] does not make over the double repayment to him on the strength of mere words.

It has been taught in accordance with R. Zebid. If one borrows a cow from his neighbor and it is stolen, and the borrower hastens and pays for it, and then the thief is found, he must repay double to the borrower. Now, on the first version of R. Papa's dictum,¹¹ this is certainly not a refutation;¹² but must we say that it is a refutation of the second version?¹³ — R. Papa can answer you: Is this stronger than our Mishnah, which states, HE PAYS, yet we interpreted it as meaning, he declares [that he will pay]; so here too, it means that he says [that he will pay]. How compare? There [in our Mishnah] it is not stated that 'he hastens', whilst here it says, 'he hastens'! — What is the meaning of 'he hastens'? He hastens to promise. But since [the teaching] in respect of a hirer is stated, 'and he says' [that he will pay], whilst [that] in respect of a borrower is stated, 'and he hastens'; this proves that it is stated advisedly [so]! — Were they then taught together?¹⁴ The Tannaim of the schools of R. Hiyya and R. Oshaia¹⁵ were asked, and they affirmed that they were taught together.

Now it is obvious that if he [the bailee] declared, 'I will not pay,' and then said, 'I will pay' — then he has said, 'I will pay'.¹⁶ But what if he [first] declared, 'I will pay.'

BABA METZIAH – 28b-58a

1. One who confesses before his guilt is attested is exempt from the money fine attaching to his crime; v. B.K. 75a.
2. For it may be taken as axiomatic that one is willing to forego a possible twofold repayment in return for the safety of the principal.
3. Since the ownership of the bailee is assumed to be retrospective, the shearings and offspring from the time of its delivery as a bailment should be his.
4. It arises on the first version, but not the second.
5. just before the theft. Since this does not belong to the bailee, he cannot acquire it just then (for in order to acquire it, either he must perform *meshikah* (v. [Glos.](#)) or it must be standing within his domain); consequently the additional repayment made by the thief over and above the principal will belong to the bailor.
6. This refutes the ruling reported in the name of R. Johanan.
7. Only one clause is stated exactly, so that no particular inference can be drawn.
8. Though a hirer is liable for theft, he could swear that an unpreventable accident had occurred, in which case he is free from responsibility.
9. The Baraitha does not state that he actually paid, but merely declared his willingness to pay, yet the twofold repayment thereby becomes his.
10. Hence a palpable lie, which one does not care to state.
11. According to which the borrower does not acquire the double payment by his mere promise to pay.
12. Since the Baraitha expressly states that the borrower actually paid.
13. Which states that the borrower is entitled to the double payment on his mere promise to pay.
14. They are separate Baraithas, and therefore the phraseology of one does not illumine the other.
15. These were the principal authorities for the Baraitha.
16. Hence the double repayment of the thief belongs to him.

Baba Mezi'a 34b

and then declared, 'I will not pay': do we say, he has retracted; or perhaps, he intended keeping his word, and was merely repulsing him [the bailor]?¹ [Again,] if he declared, 'I will pay,' and died, whilst his sons declared, 'We will not pay,' what then? Do we say, they have retracted: or perhaps, they are keeping to their father's word, but merely repulsed him? [Again,] what if the sons did pay? Can he [the

bailor] say to them, 'I made over the [right of receiving] double repayment to your father only, because he did me a favour,² but not to you': or perhaps, there is no difference? What if he [the bailee] paid to the sons?³ Can they say to him, 'Our father made over the double repayment to you because you did him a favor; but as for ourselves, you have done nothing for us'; or perhaps, there is no difference? What if the heirs [of the bailee] paid to the heirs [of the bailor]? What if he paid a half?⁴ What if he borrowed two cows and paid for one of them?⁵ What if he borrowed from partners and paid one of them?⁶ What if partners borrowed and one of them paid?⁷ What if one borrowed from a woman and paid her husband?⁸ What if a woman borrowed and her husband paid? The questions stand.

R. Huna said: He [the bailee] is made to swear that it is not in his possession.⁹ Why? We fear that he may have cast his eyes upon it.¹⁰

An objection is raised: If one lends his neighbor on a pledge and the pledge is lost, and he [the lender] says to him [the debtor], 'I lent you a *sela*' on it, and it was [only] worth a shekel';¹¹ whilst the other maintains, 'Not so; you did lend me a *sela*' upon it and it was worth a *sela*': he is free [from an oath].¹² 'I lent you a *sela*' on it and it was worth a *shekel*, whilst the other maintains, 'Not so; you did lend me a *sela*' on it, and it was worth three *denarii*;¹³ he is liable [to an oath].¹⁴ [If the debtor pleads,] 'You did lend me a *sela*' on it, whilst it was worth two;' and the other replies, 'Not so: I lent you a *sela*' on it and it was worth a *sela*'; he is free [from an oath].¹⁵ 'You did lend me a *sela*' on it and it was worth two,' whilst the other replies, 'Not so: I lent you a *sela*' on it and it was worth five *denarii*,' he is liable [to an oath]. Now, who must swear? He who has the bailment [i.e., the creditor], lest the other swear and then this one produce the bailment.¹⁶ To what does this¹⁷ refer? Shall we say, to the second clause; but that [the oath rests upon the creditor] follows from the fact that it is he who makes partial admission!¹⁸ — But, said Samuel, it refers to the first clause.

BABA METZIAH – 28b-58a

How can it refer to the first clause?¹⁹ — He means the second subsection of the first clause, [viz.,] 'I lent you a *sela*' on it and it was worth a *shekel*,' whilst the other maintains, 'Not so: you did lend me a *sela*' on it, and it was worth three *denarii*:' he is liable [to an oath]. Now, the onus of the oath lies upon the debtor,²⁰ yet the Rabbis ordered that the creditor should swear, lest this one [sc. the debtor] swear and then the other produce the pledge. But if

1. Perhaps he was importuning him for the money, which he could not pay just then. Nevertheless, he might have intended to pay, and therefore the twofold repayment should belong to him.
2. By taking care of the bailment.
3. The bailor having died.
4. I.e., he consented to pay half: does he acquire half of the double repayment?
5. If it be assumed that when one consents to pay half only he does not acquire half of the double repayment, what if he consents to pay for one cow out of two: can this be regarded as a separate transaction altogether?
6. His share: is he entitled to his half of the twofold repayment? Do we regard it as though he had paid the whole of one particular person's bailment, or must he have paid for the whole bailment itself?
7. Has he a right to his half of the double repayment, since he paid for the whole of his share; or must the whole bailment be paid for?
8. The reference is to 'property of plucking', q.v. p. 234. n. 10. Do we say, since the principal does not belong to the husband, restitution to him does not entitle the bailee to the double repayment; or perhaps, since the husband enjoys the usufruct, it does?
9. This refers to the Mishnah. Though he offers to pay, he must nevertheless swear.
10. I.e., coveted it, and so trumped up a story that it was stolen.
11. Half a *sela*'.
12. Since he maintains that he owes him nothing at all, there is no partial admission of the claims.
13. One *sela*' = 4 *denarii*.
14. Since there is partial admission of indebtedness. The Gemara discusses below the meaning of 'he.'
15. V. n. 2 which applies here too, though the debtor is now the claimant.
16. Because it is derogatory to the institution of the oath to swear when a matter may be practically proved (Tosaf.); Mishnah, Shebu. 43a.
17. The last passage in the cited Mishnah.
18. Why then state a different reason?

19. Seeing that there no oath is taken.

20. Since he is the defendant who makes partial admission.

Baba Mezi'a 35a

R. Huna's dictum be correct, since the creditor must swear that it is not in his possession, how can he produce it? — Said Raba:¹ There are witnesses that it was burnt.² If so, whence can he produce it? — But, said, R. Joseph, there are witnesses that it was stolen. Yet after all, whence can he produce it? He may exert himself and bring it. If so, when the creditor swears, the debtor may take pains and bring it! — [No.] As for the creditor[*'s producing it*], it is well: he knows who enters and leaves his house, and so he can go, exert himself, and produce it. But does the debtor know who enters and leaves the creditor's house?

Abaye said: We fear lest he plead, saying to him, 'I found it after the oath.' R. Ashi said: Both must swear: one [sc. the creditor] that it is not in his possession; and the other, how much it was worth — And this is its meaning: Who swears first? The creditor must swear first [that the pledge is not in his possession], lest the other swear and then he produce the bailment.

R. Huna b. Tahlifa said in Raba's name: The first paragraph of the second clause refutes R. Huna. "'You did lend me a *sela*' on it, whilst it was worth two," and the other replies, "Not so: I lent you a *sela*' on it and it was [only] worth a *sela*,'" he is free [from an oath.]' But if R. Huna's dictum is correct, since the creditor must swear that it is not in his possession, let him also swear, in virtue of a superimposed oath, how much it was worth!³ — Said R. Ashi: I repeated this discussion before R. Kahana, whereupon he observed to me: Let this apply where he believes him.⁴ Then let the debtor believe the creditor in this too [viz.,] how much it was worth! — [The debtor reasons,] he [the creditor] did not fully ascertain it [sc. the value]. Then let the creditor believe the debtor, since he does fully

BABA METZIAH – 28b-58a

know it? — [Nevertheless,] he does not believe him. Wherein lies the difference, that the debtor believes the creditor, but not vice versa? — The debtor applies to the creditor, *The integrity of the upright shall guide them*:⁵ whereas the creditor applies to the debtor, *but the perverseness of transgressors shall destroy them*.⁶

A man once deposited jewels with his neighbor. When he demanded, 'Give me my jewels,' he replied, 'I do not know where I put them.' So he came before R. Nahman, Who said to him: Every [plea of] 'I do not know' is negligence; go and pay. Yet he did not pay, so R. Nahman went and had his house seized. Subsequently the jewels were found, [by which time] they had appreciated. Said R. Nahman: Let the jewels be returned to their [first] owner, and the house to its owner. Raba observed: I was sitting [then] before R. Nahman and it [the subject of our study] was the chapter, 'IF ONE ENTRUSTS [etc.];⁷ so I quoted to him, IF HE [THE BAILEE] PAYS, DECLINING TO SWEAR [etc.],⁸ but he did not answer me.⁹ And he did well not to answer me. Why? — There he did not trouble him to go to court,¹⁰ whereas here he troubled him.

Shall we say that in R. Nahman's opinion a valuation is returnable?¹¹ — [No.] There it is different, because it was a valuation made in error, since the jewels were in existence from the first.¹² The Nehardeans said: A valuation is returnable until twelve months. Amemar said: Though I am of Nehardea, I hold that a valuation is always returnable. None the less, the law is that a valuation is always returnable, because it is said, *And thou shalt do that which is right and good*.¹³

Now it is obvious, if a valuation was made on behalf of a creditor,¹⁴ and he went and valued it for his own creditor: we say to him [the second creditor], You are no better than the man in whose power you come.¹⁵ If he sold, bequeathed or gifted it, these [the recipients] certainly entered it [the distrained estate] originally with the intention of [possessing] the

land, not the money.¹⁶ If it was appraised in favor of a woman [creditor], and she married:¹⁷ or if a valuation was made of a woman's [estate] and she married, and then died: the husband ranks as a purchaser in respect to a wife's property: he neither returns [the estate to the debtor], nor is it returned to him.¹⁸ For R. Jose b. Hanina said: In Usha it was enacted:¹⁹ If a woman sells of her 'property of plucking' in her husband's lifetime and then dies, her husband [as heir] can claim it from the purchasers.²⁰

1. [MS.: R. Joseph.]
2. Consequently no oath is imposed.
3. For superimposed oaths, v. *supra* 3a
4. This clause means that the debtor believes the creditor that the pledge is lost and does not demand that he swear thereto. Hence there is no superimposed oath either.
5. Prov. XI, 3; i.e., he assumes that the creditor's prosperity proves his trustworthiness.
6. Ibid. This is a natural reasoning when the belief in material reward and punishment is strong.
7. I.e., we were then studying the present chapter.
8. The Mishnah proceeds to state that the double repayment belongs to the bailee, thus proving that once he pays he is entitled to all rights therein. So here too, since he had paid, albeit against his will, the increased value of the jewels should be his.
9. Disdaining to reply.
10. Hence he willingly gives over his rights to the bailee, in consideration of having received payment.
11. V. *supra*, p. 99.
12. But if an article is distrained because a debtor cannot repay, it may be that it is not returnable even if he subsequently acquires money.
13. Deut. VI, 18.
14. I.e., the debtor's goods were assessed, distrained, and given to the creditor.
15. Just as he would have had to return the goods if the debtor could repay the loan, so must you too.
16. Therefore it is not returnable to the debtor. The creditor himself would have had to return it on account of the verse quoted, for it is applicable to him, since in the first place he demanded money, not land. But it is inapplicable to these recipients, seeing that their thought was land, not money.
17. And this seized estate became either the husband's, as 'property of iron flock,' or remained the wife's, the husband enjoying its usufruct, as 'property of plucking.'

BABA METZIAH – 28b-58a

18. If he wishes to settle his wife's debts.
19. V. p. 558, n. 2.
20. For he ranks as a previous purchaser.

Baba Mezi'a 35b

Where, however, he [the debtor] himself gave it to him [the creditor] for his debt,¹ R. Aha and Rabina differ thereon: one maintains, It is returnable: the other, It is not. He who rules that it is not returnable holds that it is a true sale, since he voluntarily gave it in payment. But he who rules that it is returnable holds that it is not a true sale, and as for his giving it to him voluntarily and not going to court, — he gave it to him [merely] through shame.

And from what time can he [the creditor] enjoy the usufruct?² Rabbah said: As soon as he receives the adrakta.³ Abaye said: The witnesses [to the adrakta], by their signatures, acquire the right for him.⁴ Raba said: When the days of public announcement are ended.⁵

MISHNAH. IF A MAN HIRES A COW FROM HIS NEIGHBOUR, LENDS IT TO ANOTHER, AND IT DIES A NATURAL DEATH, THE HIRER MUST SWEAR THAT IT DIED NATURALLY, AND THE BORROWER MUST PAY THE HIRER.⁶ SAID R. JOSE: HOW SHALL ONE DO BUSINESS WITH HIS NEIGHBOUR'S COW?⁷ HENCE THE [VALUE OF THE] COW MUST BE RETURNED TO ITS OWNER.

GEMARA. R. Idi b. Abin said to Abaye: Let us see: how does the hirer acquire the cow?⁸ By his oath!⁹ Then let the owner say to the hirer, 'Take yourself off with your oath, whilst I bring an action¹⁰ against the borrower!' — Do you think, he replied to him, that the hirer acquires it through his oath! He acquires it from the time of its death, the oath being only to placate the owner.¹¹

R. Zera said: It may sometimes happen [on the basis of this Mishnah] that the owner must render many cows to the hirer. How so? — If A hired it [an animal] from him [B] for one hundred days, and then B re-borrowed it from

him for ninety days;¹² then A rehired it from B for eighty days [out of the ninety], and B. re-borrowed it from A for seventy days, and it died within the period of borrowing. Now on account of each separate borrowing he becomes liable for one cow.¹³ R. Aha of Difti said to Rabina: Let us see, only one animal is involved, which was brought into [a certain state] and taken out [thence]: it was taken out of hiring and brought into borrowing, taken out of borrowing and brought into hiring! — Is the cow then still in existence, he replied, that we should say thus to him?¹⁴ Mar son of R. Ashi said: He has a claim only in respect of two cows, one in respect of borrowing and one in respect of hiring, [for] there is one designation of borrowing and one designation of hiring.¹⁵ That in respect of borrowing belongs entirely to him [the hirer],¹⁶ whilst as for that of hiring, he must work therewith for the period of hiring and return it to its owner.¹⁷

R. Jeremiah said: Sometimes both [the hirer and the borrower] are liable to a sin-offering,

1. I.e., without waiting for a court order of distraint, to which all the previous rulings apply.
2. When the court makes an order for distraint.
3. V. [Glos.](#)
4. Even before he receives the document.
5. The estate to be distrained was announced for public sale, to go to the highest bidder; after the period of announcing is passed (the period is discussed in 'Ar. 21b seq.) without its being sold, the creditor has a right to the usufruct.
6. A hirer is free from liability in the case of natural death, but not a borrower.
7. Surely it is inequitable that the hirer shall be paid for an animal that never belonged to him!
8. I.e., the freedom from responsibility for it, and the right to be paid by the borrower.
9. By swearing that it died a natural death.
10. Lit., 'will talk in an action.'
11. That it had actually died a natural death.
12. Out of the hundred, so that at their expiration A would have another ten days.
13. For the Mishnah states that the hirer owes nothing to the owner, but the borrower is liable to the hirer. This is a general rule, and holds good even if the borrower is actually the owner, for the principle is the same. Furthermore, each borrowing is a separate transaction, notwithstanding that the borrowings run

BABA METZIAH – 28b-58a

concurrently, and each imposes a separate liability. Hence the owner may have to pay several animals to the hirer.

14. Since the cow is dead, that argument cannot be used, and each borrowing and hiring is a separate transaction.
15. He agrees with R. Aha of Difti. Notwithstanding that there were two borrowings, they are regarded as one in the final analysis.
16. Therefore the borrower, here the actual owner, must pay for it.
17. I.e., the owner must supply him with an animal for the remaining period of hiring — in this case, ten days.

Baba Mezi'a 36a

Sometimes both are liable to a guilt-offering, sometimes the hirer is liable to a sin-offering and the borrower to a guilt-offering, and sometimes the hirer is liable to a guilt-offering and the borrower to a sin-offering.¹ How so? For denying monetary liability [on oath] a guilt-offering is incurred; for a false statement,² a sin-offering.³ 'Sometimes both are liable to a sin-offering.' E.g., if it died a natural death, and they maintained that an accident had befallen it. Thus, the hirer, who is free [from responsibility] in both cases,⁴ is liable to a sin-offering, and the borrower, who is responsible in both cases, is [likewise] liable to a sin-offering. 'Sometimes both are liable to a guilt-offering.' E.g., if it was stolen, and they maintained that it had died of its work. Thus both deny monetary liability, since in fact they are responsible [for theft], whilst they free themselves. 'The hirer is liable to a sin-offering and the borrower to a guilt-offering.' E.g., if it died a natural death, and they maintained that it had died of its work. The hirer, who is free [from responsibility] in both cases, is liable to a sin-offering; the borrower, who is liable if it dies a natural death but frees himself with [the plea that] it died of its work, to a guilt-offering. 'The hirer is liable to a guilt-offering, and the borrower to a sin-offering.' E.g., if it was Stolen, and they maintained that it had died naturally. The hirer, who is liable for theft and loss but frees himself with [the plea,] it died naturally, incurs a guilt-offering; the

borrower, who is responsible in both cases, a sin-offering.

Now, what does he [R. Jeremiah] thereby inform us?⁵ — [His purpose is] to oppose R. Ammi's dictum, viz., For every oath which the judges impose no liability is incurred on account of an 'oath of utterance' because it is said, Or if a soul swear, uttering with his lips [etc.],⁶ which implies a voluntary oath.⁷ Therefore he informs us that it is not as R. Ammi.

It has been stated: If one bailee entrusted [his bailment] to another bailee — Rab said: He is not liable;⁸ R. Johanan maintained: He is liable.⁹ Abaye said: According to Rab's ruling, not only if a gratuitous bailee entrusted [the bailment] to a paid bailee, thereby enhancing its care; but even if a paid bailee entrusted [it] to an unpaid one, thus weakening its care, he is still not responsible. Why? Because he entrusted it to an understanding being.¹⁰ Whilst according to R. Johanan's view: not only if a paid bailee entrusted [it] to an unpaid one, thus weakening its care; but even if an unpaid bailee entrusted it to a paid one, thereby enhancing its care, he is still responsible. Why? Because he [the bailor] can say to him, 'It is not my desire that my bailment should be in charge of another person.'

R. Hisda said: This ruling of Rab was not stated explicitly, but by implication. For there were certain gardeners who used to deposit their spades every day with a particular old woman. But one day they deposited them with one of themselves. Hearing the sounds of a wedding, he went out and entrusted them to that old woman. Between his going and returning, their spades were stolen, and when he came before Rab, he declared him not liable. Now, those who saw this thought that it was because if a bailee entrusts [the bailment] to another bailee he is free [from liability]; but that is not so: there it was different, Seeing that every day they themselves used to deposit [their spades] with that old woman.

BABA METZIAH – 28b-58a

Now, R. Ammi was sitting and recounting this discussion, whereupon R. Abba b. Memel raised an objection before him: **IF A MAN HIRES A COW FROM HIS NEIGHBOUR, LENDS IT TO ANOTHER, AND IT DIES A NATURAL DEATH, THE HIRER MUST SWEAR THAT IT DIED NATURALLY, AND THE BORROWER MUST PAY THE HIRER.** But if this [sc. R. Johanan's ruling] be correct, let him [the owner] say to him, 'It is not my desire that my bailment should be in the hands of another person'! — He replied: The circumstances here are that the owner authorized him to lend it. If so, he ought to pay the owner!¹¹ — It means that he said to him, 'At your discretion'.¹²

Rami b. Hama objected [from the following Mishnah]: If one deposited money with his neighbor, who bound it up and slung it over his shoulder¹³ [or] entrusted it to his minor son or daughter and locked [the door] before them, but not properly,¹⁴ he is responsible, because he did not guard [it] in the manner of bailees.¹⁵ Hence, it is only because they were minors; but if they were adults, he would be free [from liability]. Yet why so? Let him say to him, 'It is not my desire that my bailment should be in the hands of another person'! — Said Raba: He who makes a deposit

1. The reference is to the Mishnah, where the hirer of an animal then lends it to another.
2. Lit., 'utterance of lips.' V. Shebu. 32b.
3. If one swears falsely, profiting thereby, he is liable to a guilt-offering; if he does not profit thereby, thus taking an 'oath of utterance', to a sin-offering] This is deduced from Lev. V, 4 f, 21, 25.
4. Whether it dies a natural death or is the victim of a mishap.
5. All these follow from well established principles in the last Mishnah, in Shebu. 49b, and R. Jeremiah adds nothing new.
6. Lev. V, 4.
7. I.e., in his opinion an 'oath of utterance' is only one taken quite voluntarily; but if imposed by a court, even if nothing is gained thereby, it is not an 'oath of utterance'.
8. For whatever he would not have been liable had he kept it himself.

9. Even for unpreventable accidents, for which he would not have been liable had he kept it himself.
10. I.e., who is capable of giving due care.
11. The assumption is that he permitted him to lend it to that particular person; but in that case, it is as though he himself had lent it, and therefore he ought to receive the compensation.
12. I.e., he gave him a general authorization; hence the hirer is regarded as the lender and payment is made to him.
13. Lit., 'behind him.'
14. I.e., he shut them in the house, so that they could not go out with the money, but did not close the door properly.
15. V. *infra* 42a.

Baba Mezi'a 36b

does so with the understanding that his [the bailee's] wife and children [may be put in charge thereof]. The Nehardeans said: This may be deduced too [from the Mishnah quoted], for it states, 'or entrusted it to his minor son or daughter ... he is responsible'; hence, [if] to his adult son or daughter, he is not responsible, whence it follows that if [he entrusts it] to strangers, whether adults or minors, he is liable. For if otherwise, he [the Tanna] should have simply taught 'minors': this proves it.

Raba said: The law is, If one bailee entrusts [the bailment] to another, he is responsible. Not only if a paid bailee entrusts [it] to an unpaid one, so weakening its care; but even if an unpaid bailee entrusts to a paid one, he is [still] responsible. Why? Because he [the bailor] can say to him, 'You I believe on oath: the other I do not.'¹

It has been stated: If he [the bailee] was negligent thereof,² and it went out into a meadow³ and died naturally:⁴ Abaye in Rabbah's name ruled that he is liable; Raba in Rabbah's name ruled that he is not liable. 'Abaye in Rabbah's name ruled that he is liable.' Any judge who does not give such a verdict is not a judge: not only is he liable on the view that, if the beginning is through negligence, and the end through an accident,

BABA METZIAH – 28b-58a

one is liable;⁵ but even on the view that one is not liable, in this case he is. Why? Because we say, The air⁶ of the meadow land killed it.⁷ 'Raba in Rabbah's name ruled that he is not liable.' Any judge who does not give such a verdict is not a judge: not only is he not liable on the view that, if the beginning is through negligence, and the end through an accident, one is not liable; but even on the view that he is liable, in this case he is not. Why? Because we say, What difference does one place or another⁸ make to the Angel of Death?⁹ Now, Abaye admits that if it returned to its owner [sc. the bailee] and then died, he is free. Why? Because it had returned, and it could not be said that the air of the meadow killed it. Whilst Raba admits that if it was stolen from the meadow and died naturally in the thief's house, he [the bailee] is responsible. Why? Had the Angel of Death left it alone, it still would have been in the thief's house.¹⁰

Abaye said to Raba: According to you, who maintain, what difference does this place or that make to the Angel of Death: when R. Abba b. Memel raised an objection before R. Ammi, and he answered him, It means that the owner authorized the hirer to lend it,¹¹ — he should rather have answered him, What difference does this place or another make to the Angel of Death?¹² — He replied, According to you, who teach [the reason of R. Johanan's ruling¹³ as being that the bailor can say,] 'I do not wish my bailment to be in the hands of another', that objection [of R. Abba b. Memel] can be raised.¹⁴ But according to myself, who [maintain that it is because he can say,] 'You I believe on oath, whilst the other I do not believe on oath,' the objection cannot be raised at all.¹⁵

Rami b. Hama objected: If he [the bailee] took it up to the top of steep rocks and it fell and died, it is no accident.¹⁶ Hence, if it died naturally, it is accounted an accident and he is not liable. Yet why so? Let him [the bailor] say to him, The [cold] mountain air killed it, or the exhaustion of [climbing] the mountain killed it! — The meaning there is that he took it up

to a fertile and goodly pasture ground.¹⁷ If so, it is the same even if it fell?¹⁸ — He should have supported it [to prevent it from falling], but did not. If so, consider the first clause: If it ascended to the top of steep rocks and then fell down, it is an accident. Yet there too he should have supported it! — That holds good only if he supported it in its ascent, and supported it when it fell.¹⁹

SAID R. JOSE: HOW SHALL ONE DO BUSINESS WITH HIS NEIGHBOUR'S COW, etc. Rab Judah said in Samuel's name: The *halachah* is as R. Jose. R. Samuel b. Judah asked Rab Judah: You have told us in Samuel's name that R. Jose disputed

1. And it is not within the bailee's power to put the bailor in such a position that he shall be forced to believe the other person on oath; hence he is responsible.
2. Sc. the animal entrusted to his care, placing it in a stable improperly closed.
3. Where it might have been stolen or killed by wild beasts.
4. Thus the bailee was negligent, but the actual death per se was one for which a bailee is not responsible.
5. V. *infra* 42a.
6. Lit., 'heat'.
7. Hence his death is directly the result of his negligence.
8. Lit., 'here or there.'
9. Therefore the initial negligence had absolutely nothing to do with the animal's death. But in the case discussed *supra* 42a (q.v.) it did have some slight bearing upon it.
10. And lost, as far as the owner was concerned. Since this is directly the result of the bailee's negligence, he is responsible
11. V. *supra* 36a.
12. This answer is preferable, for then the Mishnah on 35a is not limited to a particular instance.
13. *Supra* 36a.
14. And having raised it, R. Ammi replied as he thought fit.
15. Since in the Mishnah the hirer himself swears.
16. *Infra* 93b.
17. Which is a natural thing for shepherds: hence he is not liable on the score of cold air or exhaustion.
18. Since, on the present hypothesis, he merely did his duty in taking it up.
19. The animal's weight, however, being too much for him.

BABA METZIAH – 28b-58a

Baba Mezi'a 37a

in the first [Mishnah]¹ too: now, is the *halachah* as his view [there too] or not? — He replied: R. Jose did indeed dispute in the first too, and the *halachah* agrees with him in the first too. It has been stated likewise: R. Eleazar said: R. Jose differed in the first too, and the *halachah* agrees with him there also. But R. Johanan maintained: R. Jose agreed in the first [Mishnah], seeing that he [the bailee] had already paid for it.² [What!] only if he actually paid, but not otherwise? Yet did not R. Hiyya b. Abba say in R. Johanan's name: 'HE PAID' is not literally meant, but once he says, 'I will pay', even if he has not done so [the ruling of the Mishnah holds good]? — Say thus: R. Jose agreed in the first [Mishnah], seeing that he had already declared, 'I will pay for it'.

MISHNAH. IF A MAN SAYS TO TWO [OTHERS] I ROBBED ONE OF YOU OF A *MANEH*, BUT DO NOT KNOW WHICH OF YOU, OR THE FATHER OF ONE OF YOU DEPOSITED A *MANEH* WITH ME, AND I DO NOT KNOW WHOSE: HE MUST GIVE EACH A *MANEH*, SINCE HE HIMSELF CONFESSED.³ IF TWO MADE A DEPOSIT WITH ONE PERSON, ONE A *MANEH*⁴ AND THE OTHER TWO HUNDRED [ZUZ]: — THIS ONE SAID, THE TWO HUNDRED IS MINE, AND THE OTHER SAID LIKEWISE, THE TWO HUNDRED IS MINE: HE MUST GIVE A *MANEH* TO EACH, WHILST THE REST LIES UNTIL ELIJAH COMES.⁵ SAID R. JOSE: IF SO, WHAT WILL THE DECEIVER LOSE?⁶ BUT THE WHOLE MUST LIE UNTIL ELIJAH COMES. LIKEWISE, IF TWO UTENSILS [ARE DEPOSITED], ONE WORTH A *MANEH* AND THE OTHER ONE THOUSAND [ZUZ]: THIS ONE CLAIMS, THE BETTER ONE IS MINE, THE OTHER CLAIMS, THE BETTER ONE IS MINE: THE INFERIOR ONE MUST BE GIVEN TO ONE OF THEM, AND OUT OF THE SUPERIOR THE VALUE OF THE INFERIOR IS GIVEN TO THE SECOND, THE REST REMAINING UNTIL ELIJAH COMES. SAID R. JOSE: IF SO, WHAT WILL THE DECEIVER LOSE? BUT THE WHOLE MUST LIE UNTIL ELIJAH COMES.

GEMARA. This proves that money is collected as a result of doubt, and we do not say, Let the money stand in the presumptive ownership of its possessor. But this is contradicted by the following: IF TWO MADE A DEPOSIT WITH ONE PERSON, ONE A *MANEH* AND THE OTHER TWO HUNDRED [ZUZ], THIS ONE SAID, THE TWO HUNDRED IS MINE, AND THE OTHER SAID LIKEWISE, THE TWO HUNDRED IS MINE: HE MUST GIVE A *MANEH* TO EACH, WHILST THE REST LIES UNTIL ELIJAH COMES! — Said he to him:² Would you oppose a bailment to robbery! In the case of robbery, since he committed a transgression, the Rabbis penalized him;⁸ whereas in the case of a bailment, where no wrong was committed by him, the Rabbis did not penalize him. But bailment may be opposed to bailment, and robbery to robbery. 'Bailment may be opposed to bailment'. For the first clause teaches, OR, THE FATHER OF ONE OF YOU DEPOSITED A *MANEH* WITH ME, AND I DO NOT KNOW WHOSE; HE MUST GIVE EACH A *MANEH*. Now this is contradicted by [the Baraitha just quoted,] 'If two made a deposit, etc.' — Said Raba: In the first clause² it is regarded as though they had entrusted [their money] to him in two separate packages, so that he should have paid particular attention;¹⁰ but in the second clause it is regarded as though they had made their deposits with him in a single package, so that he was not bound to take particular attention.¹¹ [How so?] Both made their deposits with him simultaneously,¹² so that he [the bailee] can say to them, You yourselves were not particular with each other:¹³ should I then have been particular?

'And robbery may be opposed to robbery'. Here we learn IF A MAN SAYS TO TWO OTHERS, I ROBBED ONE OF YOU OF A *MANEH*, BUT I DO NOT KNOW WHICH OF YOU, OR, THE FATHER OF ONE OF YOU DEPOSITED A *MANEH* WITH ME, AND I DO NOT KNOW WHOSE: HE MUST GIVE EACH A *MANEH*. But the following is opposed thereto: If a man robbed one out of

BABA METZIAH – 28b-58a

five, and does not know which one he robbed, and each claims, 'It was me he robbed': he may place the stolen article among them and depart: this is R. Tarfon's view.¹⁴ This proves that money is not collected as a result of doubt, but we say, Let the money stand in the presumptive ownership of its possessor!¹⁵ And whence [does it follow] that our Mishnah here agrees with R. Tarfon?¹⁶ Because It was taught thereon:¹⁷ R. Tarfon admits that if one says to two people, 'I robbed one of you of a *maneh*, but do not know which of you,' he must give each a *maneh*!¹⁸ — There they were claiming from him; here it means that he came to fulfill his duty in the sight of Heaven.¹⁹ This may be proved too, for it is stated **SINCE HE HIMSELF CONFESSED.**²⁰ This proves It.

The Master said: 'There they were claiming from him.' And what does he plead? — Rab Judah said in Rab's name: He is silent. R. Mattana said in Rab's name: He

1. *Supra* 34b, R. Jose maintaining: How can the bailee pocket the double repayment due on account of the theft of the bailor's property?
2. And thereby acquired all rights in it.
3. This is discussed in the Gemara.
4. = 100 *Zuz*.
5. V. p. 6, n. 2.
6. There is nothing to induce him to confess.
7. The answerer to the questioner, though their names are unmentioned. [This is, however, omitted in several MSS, v. D.S. a.l.]
8. Therefore the first clause of the Mishnah rules that he must pay both.
9. Where only one person deposited money with him.
10. Who gave him the money; just as had two people made deposits at different times, hence in different packages, it would have been the bailee's duty to see which package belonged to each. Since he did not pay close attention, he must satisfy both claimants.
11. What part of the package belonged to each other.
12. Each in the other's presence.
13. To prevent the other from seeing how much he deposited, lest he claim it as his own.
14. B.K. 103b.
15. And the robber is not bound to repay each, as in our Mishnah.
16. Perhaps it reflects R. Akiba's views, who differs from R. Tarfon, v. B.K. *ibid*.

17. If a man robbed one out of five, etc.
18. In agreement with our Mishnah.
19. Legally he is not bound to pay all claimants, and the second Mishnah quoted treats of this aspect. But morally he can atone for his sin only by repaying all, so that none shall have suffered through his theft.
20. Which shows that he was not being dunned, but wished to clear himself.

Baba Mezi'a 37b

protests.¹ On the view that he protests — but silence is as admission.² But on the view that he is silent — this silence here³ is not an admission, because he can say, 'The reason that I was silent before each is that I thought, Perhaps it was this one.'

The Master said: 'He may place the stolen article among them and depart.' And can all of them take it and go! Did not R. Abba b. Zabda say in Rab's name: Whenever he is doubtful if an article was left [in a certain spot], he must not take it in the first instance; but if he took, must not return it?⁴ — Said R. Safra: It is laid by.⁵

Abaye said to Raba: Did then R. Akiba Say,⁶ 'That is not the way to clear him of his crime, but he must restore the theft to each one;' thus proving that money is collected as a result of doubt, and we do not say, Let the money stand in the presumptive ownership of its possessor? But the following is opposed thereto: If a house collapsed on a person and his mother:⁷ the son's heirs maintain, 'The mother died first';⁸ whilst the mother's heirs maintain, 'The son died first':⁹ both¹⁰ agree that they must divide. And R. Akiba said thereon: I agree in this case that the property remains in its presumptive ownership!¹¹ — There, he replied to him, both [heirs] plead 'perhaps';¹² but in the case of a person robbing one man of five, there is certainty against doubt.¹³ But our Mishnah here, **IF A MAN SAYS TO TWO [OTHERS], 'I ROBBED ONE OF YOU OF A MANEH,'** which is a case of 'perhaps' on both sides, nevertheless states **HE MUST GIVE EACH A MANEH!** (Whence do you know that it agrees

BABA METZIAH – 28b-58a

with R. Akiba? — Because it is taught thereon:¹⁴ R. Tarfon admits that if one says to two people, 'I robbed one of you of a *maneh*, but do not know which,' [he must give each a *maneh*]. Now, to whom does he admit? [Surely] to R. Akiba, his opponent? And whence do you know that both sides plead 'perhaps?' Firstly, because it is not stated, They demand of him; and secondly, R. Hiyya taught: Each replies, 'I do not know!')¹⁵ — But we have already interpreted it of one who wishes to fulfill his duty in the sight of heaven!

Rabina said to R. Ashi: Did then Raba say that whenever [deposits are made] in two separate packages, he [the bailee] should have paid particular attention?¹⁶ But Raba — others state, R. Papa — said: All admit in the case of two people who entrusted [their lambs] to a shepherd, that the shepherd places [them] between them and is quit!¹⁷ — He replied: The circumstances there are that they deposited [the lambs] in the shepherd's fold without his knowledge.

LIKEWISE, IF TWO UTENSILS [ARE DEPOSITED], ONE WORTH A *MANEH* AND THE OTHER ONE THOUSAND [*ZUZ*], etc. And both [instances] are necessary. For if the first alone were stated, I might argue, Only there [sc. in the case of money] do the Rabbis rule [thus], because no loss is caused; but in the latter case, where great loss is involved [in the breaking of the larger utensil], they agree with R. Jose. And if the latter case [alone] were stated, I might argue, Only here does R. Jose rule [thus], but in the former, he agrees with the Rabbis.¹⁸ Thus both are necessary.

1. To each claimant, 'I do not know you', thus denying the claim.
2. Therefore he would have to pay each.
3. [Despite the generally accepted principle that silence is treated as admission (Yeb. 87b).]
4. This refers to an object bearing no mark of identification, found in a place where it is somewhat guarded, so that it is doubtful whether it was lost or intentionally put there. (V. *Supra* 25b.) Now, 'he must not return it' means that it must not be given to a claimant who cannot prove his ownership, for the true

owner may come later and prove, by means of witnesses, that he deposited it there. Hence here too, if the money is left among the five, and all take it, the true victim suffers a permanent loss.

5. The phrase means, he places the stolen article before them at court, and departs, i.e., he is now clear in the eyes of the law. Nevertheless, the money is kept until ownership is proved.
6. In reference to R. Tarfon's ruling where one of five persons was robbed.
7. And it is not known who predeceased whom, whilst the mother possessed property in her own rights.
8. Hence her son inherited her property; and on his death, we inherit it.
9. Hence we are the mother's direct heirs in his absence.
10. Beth Shammai and Beth Hillel, who dispute in other cases.
11. B.B. 155b. It is disputed by Amoraim a.l. whose presumptive ownership is meant. But whosoever is meant, we see that R. Akiba admits that money cannot be collected when doubt arises.
12. Neither can really pretend to know with certainty which died first.
13. Whereas the thief himself is doubtful, each of the five declares positively that he was the victim.
14. Sc. the other Mishnah.
15. And R. Hiyya's Baraitas were authoritative expositions of the Mishnah. Hence the difficulty remains: the two rulings of R. Akiba are contradictory.
16. V. *supra* 37a.
17. This too refers to a controversy between R. Akiba and R. Tarfon. A and B: one deposited one lamb with a shepherd, and the other two, each subsequently maintaining that the two were his; then the shepherd merely puts the three lambs before them. Now, lambs are certainly as deposits in separate packages, yet the shepherd is not required to return two lambs to each. This contradicts Raba's former statement.
18. Inverting the reasoning.

Baba Mezi'a 38a

But R. Jose's reason is that the deceiver may suffer loss!¹ — Hence both are necessary on the view of the Rabbis, and he [the Tanna] teaches a case of 'not only this, but this too.'²

MISHNAH. IF A MAN DEPOSITS PRODUCE WITH HIS NEIGHBOUR, EVEN IF IT IS

BABA METZIAH – 28b-58a

SUFFERING LOSS,³ HE MUST NOT TOUCH IT. R. SIMEON B. GAMALIEL SAID: HE MUST SELL IT BY ORDER OF THE COURT, BECAUSE IT IS LIKE RETURNING LOST PROPERTY TO ITS OWNER.

GEMARA. What is the reason?⁴ — Said R. Kahana: A man prefers a *kab* of his own to nine of his neighbour's.⁵ But R. Nahman b. Isaac said: We fear lest the bailor had declared it *terumah* and tithe for other produce.⁶

An objection is raised: If one deposits produce with his neighbor, he must not touch it. Therefore its owner may declare it *terumah* and tithe for other produce. Now, on R. Kahana's explanation, it is well: hence he states, 'therefore'. But on the view of R. Nahman b. Isaac, how state 'therefore'?⁷ — It means this: now that the Rabbis have ruled that it may not be sold because we fear [that the owner may have declared, etc.], therefore the owner may declare it *terumah* and tithe for other produce.

Rabbah b. Bar Hanah said in R. Johanan's name: The dispute is only when there is the normal rate of decrease; but when [the loss] exceeds the normal rate of decrease, all agree that it must be sold by a court order. Now, he certainly disagrees with R. Nahman b. Isaac,⁸ but must we say that he differs from R. Kahana [too]? — [No.] R. Kahana referred only to the normal decrease. But did he not say, A man prefers a *kab* of his own to nine of his neighbour's?⁹ — That was a mere exaggeration.

An objection is raised: 'therefore its owner may declare it *terumah* and tithe for other produce;' but let him fear lest [the loss] exceeded the normal decrease, so that it was sold, hence he [the bailor] eats *tebel*!¹⁰ — [A loss] above the normal decrease is rare.¹¹ But what if it does happen — we sell it? But let us fear lest the owner might have declared it *terumah* and tithe for other produce!¹² — It is, in fact, sold to priests [only] at the price of *terumah*.¹³ Then according to R. Nahman b.

Isaac too, let it be sold to priests at the price of *terumah*! — They differ in this: viz., Rabbah b. Bar Hanah holds that [loss] above the normal decrease is altogether rare, and when it does happen, it exceeds the usual rate only after a considerable time.¹⁴ Hence, if the owner declared it *terumah* and tithe for other produce, he would have done so before its loss exceeded the normal;¹⁵ therefore, when it does exceed it we can sell it to priests at the price of *terumah*. R. Nahman b. Isaac, however, maintains that a greater decrease than normal is quite frequent, and when it happens, it may happen immediately.¹⁶ Therefore, should you say that it is sold, it may happen that it is sold early, and when the owner declares it *terumah* and tithe for other produce he is unaware that it is [already] sold, and so eats *tebel*.

An objection is raised: If one deposits fruit with his neighbor, and it rots; wine, and it sours; oil, and it putrefies, or honey, and it turns rancid, he [the bailee] may not touch it: this is R. Meir's ruling. But the Sages maintain: He effects a remedy for them by selling them on the instructions of the court; and when he sells, he must sell to strangers, not to himself. Similarly, when the charity overseers have no poor to whom to distribute [their funds], they must change [the copper coins] with others, not themselves.¹⁷ The overseers of the soup kitchen,¹⁸ when they have no poor to whom to make a distribution, must sell to others, not themselves. Now, incidentally he [the Tanna] states, 'fruit ... and it rots': surely that means, even more than the normal decrease?¹⁹ — No: [it means] within the normal deterioration. But 'wine, and it sours, oil and it putrefies, or honey, and it turns rancid' are more than normal deterioration! — These are different: having arrived at that stage, they remain so.²⁰ Now, when oil putrefies, or honey becomes rancid,

1. And that obviously applies to both cases equally: how then could it be argued that if the second clause alone were taught, I might think that he agrees with the Rabbis in the first?
2. I.e., having first taught the instance of money, he proceeds to state, Not only do the Rabbis

BABA METZIAH – 28b-58a

rule thus where it involves no loss, but even in a dispute about utensils, where definite loss is caused.

3. Through mildew or rodents.
4. Of the first view.
5. He would rather have a smaller quantity grown by himself than a larger quantity produced by another.
6. Lit., 'for another place.' Produce may be declared *Terumah* (v. [Glos.](#)) or tithe for other produce lying elsewhere. If the bailor had done this, it obviously may not be sold.
7. Seeing that the reason that he may not touch it is precisely because the bailor may have declared it *terumah* or tithe for other produce.
8. If we fear that it was declared *terumah* or tithe, it certainly may not be sold under any circumstances.
9. Which is certainly more than normal.
10. V. [Glos.](#); the plural is used here. — The produce might have been sold before it was declared tithe, in which case the bailor now eats untithed produce.
11. Lit., 'is not found.'
12. In which case the buyer, though possibly a zar, (q.v. [Glos.](#)) eats *terumah*, which is forbidden.
13. Which is less than that of ordinary produce: firstly, because only priests may eat it; and secondly, because it may not be eaten at all if it becomes defiled.
14. Lit., 'at a time ahead.'
15. So that the produce is properly tithed.
16. Before the lapse of a considerable time.
17. Copper coins were unsuitable for keeping a long time, being liable to tarnish and mould. Therefore they would be exchanged for silver ones.
18. [H]; actual food was collected for this purpose, not money, and it was distributed to those in immediate need of a meal. V. B.B. 8b.
19. Yet R. Meir rules that it must not be touched, which contradicts R. Johanan.
20. And do not deteriorate any further; therefore nothing is gained by selling them. But produce goes on rotting more and more.

Baba Mezi'a 38b

for what is it fit?¹ — Oil is of use to leather merchants;² honey, for the soreness of camels.³

'But the Sages maintain, he must effect a remedy for them by selling them on the instructions of the court.' But what remedy does he effect?⁴ — Said R. Ashi: In respect of the gourds.⁵ Wherein do they differ?⁶ — One

master holds, We care about a great loss, but not about a small one;⁷ whilst the other master [sc. the Rabbis] holds that we care even for a small loss.⁸

R. SIMEON B. GAMALIEL SAID: HE MUST SELL IT BY ORDER OF THE COURT, BECAUSE IT IS LIKE RETURNING LOST PROPERTY TO ITS OWNER. It has been stated: R. Abba son of R. Jacob said in R. Johanan's name: The *halachah* agrees with the Sages. But R. Johanan has already said that once. For Rabbah b. Bar Hana said in R. Johanan's name: Wherever R. Gamaliel taught in our Mishnah, the *halachah* agrees with him, excepting in respect to 'Surety', 'Zidon', 'And the second [ruling] on Proof'!⁹ — There is a dispute of Amoraim on R. Johanan's views.¹⁰

Now from R. Simeon b. Gamaliel we may deduce that a relative is authorized to enter upon a captive's estate; whilst from the Rabbis we may infer that a relative is not permitted to enter upon a captive's estate.¹¹ How so? Perhaps R. Simeon b. Gamaliel ruled thus only in this case, since the stock itself is consumed, but there he too may hold that we do not authorize possession.¹² Whilst [on the other hand] the Rabbis rule thus only here, in accordance with either R. Kahana[*'s* reason] or R. Nahman b. Isaac[*'s*]; but there, it may indeed be that entry is permitted. Are we to say that these are two opinions [independent of each other]? But Rab Judah said in Samuel's name: The *halachah* agrees with R. Simeon b. Gamaliel; whilst Samuel ruled; A relative is permitted to enter upon a captive's estate. Surely that is because it is one ruling?¹³ — No. They are two rulings.¹⁴ Reason too supports this. For Raba said in R. Nahman's name: The *halachah* agrees with the Sages; nevertheless R. Nahman ruled: A relative is authorized to enter a captive's estate. Hence this proves that they are two different rulings. This proves it.

It has been stated: If a man is taken captive, Rab said: His next of kin is not authorized to enter upon his estate; Samuel said: His next of

BABA METZIAH – 28b-58a

kin is authorized to enter into his estate. Now, if it was heard that he was dead, all agree that he is authorized to enter.¹⁵ They differ where it was not heard that he had died: Rab said: We do not authorize him to enter, lest he cause them [the estates] to deteriorate;¹⁶ but Samuel said: We authorize him to take possession, for since a Master said, 'We value it for them as for an aris',¹⁷ he will not permit deterioration.

An objection is raised: R. Eliezer said: From the implication of the verse, And my wrath shall wax hot, and I will kill you with the sword,¹⁸ I know that their wives shall be widows and their children fatherless; why then is it stated, and your wives shall be [widows, and your children fatherless]?¹⁹ This teaches that their wives will seek to remarry and not be permitted, and their children desire to enter upon their father's estate and not be allowed!²⁰ — Said Raba: What we learnt²¹ is [that they are not permitted] to take possession and sell.²² Now, this happened in Nehardea, and R. Shesheth decided the matter by reference to this Baraitha.²³ Said R. Amram to him: But perhaps what we learnt²⁴ was, to enter and sell? — Perhaps you are from Pumbeditha, he retorted, where they draw an elephant through the eye of a needle.²⁵ For these are²⁶ taught side by side with [the widowhood of] the wives: just as these are not permitted to [remarry] at all, so here too, they [sc. the heirs] are not [allowed to take possession] at all.

Now, whether the next of kin is permitted to enter upon a captive's estate is disputed by Tannaim. For it has been taught: If one enters upon a captive's estate, he is not ejected thence.²⁷ Moreover, even if he [the heir] heard that they [the owners] were making ready to come [to reclaim the land], and he anticipated it by reaping and consuming [the produce], he is a zealous man who profits thereby.²⁸ Now, the following are [included in the term], a 'captive's estates': If one's father, brother, or one of his legators went overseas, and it was reported that he had died.²⁹ If a man enters into abandoned estate, he is ejected therefrom. And the following are abandoned³⁰ estates: If

one's father, brother, or one of his legators went overseas, and it was not reported that he had died. R. Simeon b. Gamaliel observed: I have heard that abandoned are as captive[s estates].³¹ If a man enters into forsaken property³² he is ejected thence. And the following are forsaken estates: If one's father, brother, or one of his legators is here [sc. in the country], but it is not known whither he has gone. Now, wherein do the former differ [from the latter], that the former are designated 'abandoned,' and the latter 'forsaken'?

1. That R. Meir rules that it is sold.
2. To make the leather supple.
3. To rub the sore spots on the camel's back, caused by the chafing of the saddle.
4. Since deterioration, in the case of oil and honey, does not go further, whilst its value has already dropped, how is the matter remedied by the sale?
5. In which they are contained. These at least are saved, whereas if the honey or oil is kept therein they too are affected.
6. Sc. R. Meir and the Rabbis, since on the present hypothesis R. Meir agrees that produce must be sold if the deterioration exceeds normal.
7. Therefore when produce suffers its normal decrease, or oil and honey become rancid, and only their containers can be saved — in both cases a small loss — they must not be sold.
8. To prevent it if possible.
9. 'Surety', v. B.B. 173b; 'Zidon', v. Git. 74a; 'Second (ruling) on Proof', Sanh. 31a. Thus R. Johanan had already stated that in all cases, excepting these three, the *halachah* is as R. Simeon b. Gamaliel: why then state it again specifically in respect of our Mishnah?
10. Rabbah b. Bar Hana held that he had stated a general rule, whilst R. Abba son of R. Jacob disputed it.
11. If a man is taken captive, leaving his estate untended, it is disputed below whether a relative, sc. his next of kin, may take temporary possession of it, so as to save it from loss. Now, since R. Simeon b. Gamaliel holds that produce may be sold by the bailee to save it from loss, by the same reasoning the next of kin is permitted to enter a captive's estate, the Rabbis holding the reverse.
12. The produce may entirely rot away, but real estate, even if it suffers loss through neglect, can never be destroyed entirely.
13. I.e., the two cases are interdependent.
14. Samuel's two views being coincidental.

BABA METZIAH – 28b-58a

15. Tosaf.: 'heard' means that there was a rumor substantiated by one witness only. — Now, if the rumor is proved false, the owner returning before the usufruct of the estate has been enjoyed by the next of kin, the latter receives pay as a farmer-tenant, *aris* (v. [Glos.](#)); whilst if the rumor is true, he is the heir. Hence he may enter, and there is nothing to fear.
16. Thinking that the owner may return, he will only be anxious to get as much out of the land as possible, neglecting to fertilize it and so exhausting the soil.
17. Should the owner return, the relative is given a share in the produce as though he were an *aris*.
18. Ex. XXII, 23.
19. Ibid.
20. Thus they will remain permanently widows and fatherless (in the sense that they cannot set up their own estate). This condition can come about when the fathers are taken captive and their death is not proved, R. Eliezer's dictum shows that in such a case the children are not permitted to enter their father's estate.
21. [Render with MS.M.: '(What is meant is that ...) to take, etc.,' deleting 'What we learnt,' as this citation is not a Mishnah.]
22. But they are permitted to take possession.
23. That the heir should not enter the captive's estate.
24. [Or, 'What was meant was ...' cf. [p. 232, n. 9.](#)]
25. The scholars of the Pumbeditha academy were extremely subtle.
26. The children who are not permitted to enter upon their father's estate.
27. Lit., 'we do not withdraw it from his hand.'
28. I.e., his action is not blameworthy.
29. V. p. 232. n. 3.
30. [H].
31. Viz., that the heirs are not ejected.
32. [H]; the Gemara states below that this implies voluntary abandonment.

Baba Mezi'a 39a

'Abandoned' implies against their will, as it is written, *But the seventh year thou shalt let it rest and abandon it*,¹ [i.e.,] by royal dispensation;² whereas 'forsaken' implies voluntarily, as it is written, *The mother shall be forsaken*³ of her children.⁴

A Tanna taught: And for all these a valuation is made as for an *aris*.⁵ To what does this refer? Shall we say, To captives: if he is considered 'a zealous man who profits thereby,'⁶ can there be a question concerning

his own improvements?⁷ But if to forsaken property — surely it is taught that they are ejected therefrom! — Hence It must refer to abandoned [property]. [Then] according to whom? Shall we say, according to the Rabbis: but they rule that he is ejected therefrom. If R. Simeon b. Gamaliel, surely he observed, 'I have heard that abandoned are as captives' [estates]! — 'They are as those of captives', but not altogether so:⁸ 'as those of captives, 'in that they are not ejected therefrom; 'but not altogether so,' for there [sc. in the case of captives' estate] he is considered a zealous man who profits thereby, whereas here a valuation is made for him as for an *aris*.⁹

Now, wherein does it differ from what we learnt: If a man incurs expenditure on his wife's property, [whether] he expended much and enjoyed little [usufruct] or the reverse, what he expended he expended, and what he enjoyed he enjoyed!¹⁰ This is analogous only to what we learnt:¹¹ If a man incurs expenditure for the property of his wife, a minor, he is regarded as though he had incurred it for that of a stranger.¹² This shows that since he [her husband] could not place full reliance,¹³ the Rabbis enacted a measure on his behalf,¹⁴ in order that he might not cause them [the wife's estates] to deteriorate;¹⁵ so here too, the Rabbis enacted a measure on his behalf, so that he might not cause them [the abandoned estates] to deteriorate.

'And for all of these a valuation is made as for an *aris*.' What does 'all of these' include? — It includes R. Nahman's dictum in Samuel's name: If a man is taken captive, his next of kin is authorized to enter into his estates. If he leaves voluntarily, his next of kin is not permitted to enter upon his estates.¹⁶ Now R. Nahman, giving his own opinion, said: A fugitive is as a captive. Why does he flee? Shall we say, on account of poll-tax? But that is voluntary!¹⁷ — But [he means] one who flees on account of political offences.¹⁸

Rab Judah said in Samuel's name: If a man is taken captive, and leaves standing corn to be

BABA METZIAH – 28b-58a

reaped, grapes to be vintaged, dates to be harvested, or olives to be gathered, *Beth din* enter his estate and appoint a steward who reaps, vintages, harvests and gathers; after that the next of kin is permitted to take possession.¹⁹ Then let a permanent steward be appointed!²⁰ — A steward is not appointed for bearded men.²¹

R. Huna said: A minor is not permitted to enter upon a captive's estates, nor the next of kin upon a minor's estates, nor a next of kin of a next of kin upon a minor's estates.²² 'A minor is not permitted to enter upon a captive's estates,' lest he injure them. 'Nor a next of kin of a next of kin upon a minor's estates' — this refers to a brother on the mother's side.²³ 'Nor a next of kin upon a minor's estates:' since he [the minor] cannot protest, he may take presumptive possession thereof.²⁴ Said Raba: It follows from R. Huna's dictum that one cannot claim presumptive ownership of a minor's estate,²⁵

1. [H] Ex. XXIII, 11; the reference is to the seventh year, in which land and its produce must be 'abandoned' — i.e., left free for all.
2. By Scriptural command; hence against the owner's desire.
3. [H].
4. Hos. X, 14; Rashi explains that the reference is to voluntary flight, for fear of the ensuing war.
5. V. [Glos.](#)
6. And takes the whole of the produce (Rashi).
7. Surely they belong entirely to him, not merely a third or quarter, as in the case of an *aris*.
8. Lit., 'as captives and not as captives.'
9. For since it was not reported that the owner had died, the heir is assumed to have entered into his estates on the tacit understanding that he should be paid as an *aris*.
10. Keth. 79b. The reference is to 'property of plucking,' the usufruct of which belongs to the husband, whilst the principal remains the wife's, reverting to her on the husband's death or if he divorces her. — In this case then the husband or his heirs cannot strike a balance between expenditure and revenue, and the question is raised, Why not give the same ruling in the case of abandoned property, instead of regarding the next of kin as an *aris*.
11. In Keth. 80a the reading is: to what R. Jacob said in R. Hisda's name.

12. The wife referred to is a fatherless child, who had not attained her majority. By Biblical law, only a father could contract a marriage on behalf of his daughter, a minor, but the Rabbis extended the privilege to her mother or brothers, in the absence of a father. (She herself cannot contract a marriage, her actions, as a minor, having no legal validity.) This marriage having only Rabbinical force, she could annul it, on attaining her majority, by declaring that she did not want her husband (*mi'un*), whereon she became free without the formality of a divorce.
13. That the estate would remain in his possession, as she might annul the marriage.
14. Sc. that he should be paid as an *aris* if his wife annulled the marriage.
15. Through his neglect.
16. [Had he approved of his next of kin, he himself would have appointed him over his estate before he left.]
17. Surely he himself could have managed to appoint someone before he left, as there was no reason for the hasty flight.
18. Others: 'murder'. The penalty being a very heavy one, his flight is not voluntary. This case of R. Nahman is included in the term, 'all of these.'
19. And is paid as an *aris*. But he cannot take that which is completely grown without his toil.
20. Rashi: who will receive nothing for his stewardship.
21. No one is prepared to work for nothing on behalf of grown men. Stewards are indeed appointed on behalf of minors left fatherless, because stewardship then is regarded as a good deed.
22. E.g., A is the brother of B, a minor, by the same father, whilst C is A's half brother by his mother, hence no blood-relation of B at all.
23. As explained in n. 1.
24. If one enjoys three consecutive years' possession of an estate, without its owner formally protesting that it is not his, he is assumed to have bought or otherwise acquired it. Now, a minor cannot protest, and so the relative may claim it as his after three years, on the ground that he, and not the minor, had inherited them; the same applies to the relative's relative (as explained in n. 1), who may claim it as heir of the first next of kin.
25. A cannot claim that he bought the estate from B, the minor's father, on the strength of three years' undisturbed possession. This follows from the fact that R. Huna merely forbade a relative to enter upon a minor's estates, but not a stranger, which shows that a stranger's claim of presumptive ownership is ignored.

BABA METZIAH – 28b-58a

Baba Mezi'a 39b

even if he attained his majority.¹ Now, this applies only to a brother by his father,² but there is no objection to a brother by his mother. And even of a brother by his father, this applies only to land; but there is no objection in respect of houses.³ And even in respect of land, this holds good only if no deed of partition was drawn up.⁴ But if a deed of partition had been drawn up, it is generally known.⁵ This, however, is not so. It makes no difference whether a brother by his father or a brother by his mother,⁶ whether land or houses, whether a deed of partition had been drawn up or not — we do not authorize them to take possession.

A certain old woman had three daughters; she and one daughter were taken captive, and of the other two daughters, one died, leaving a child behind. Said Abaye: What shall we do? Shall we [temporarily] assign the estates to the [third] Sister: but perhaps the old woman is dead, and a relative is not permitted to enter upon a minor's estates?⁷ Shall we assign the estates to the child, but perhaps the woman is not dead, and a minor is not permitted to enter a captive's estate? — Said Abaye: Therefore half is given to the [last] sister, and a steward is appointed in respect of the other half on behalf of the child. Raba said: Since a steward is appointed for one half, a steward is appointed for the other half too. Subsequently it was heard that the old woman was dead.⁸ Thereupon Abaye ruled: A third is given to the sister, a third to the child, and as for the remaining third,⁹ a sixth is given to the sister, and a steward is appointed for the other sixth on behalf of the child. Raba said: Since a steward is appointed for one sixth, a steward is appointed for the other sixth.

There came a brother to Mari b. Isak from Be Hozai,¹⁰ saying to him, 'Divide [my father's estates] with me.' 'I do not know you,' he replied. So they went before R. Hisda. Said he to him, 'He [Mari] speaks truly to you, for it is written, And Joseph knew his brethren, but

they knew him not,¹¹ which teaches that he had gone forth without the stamp of a beard and came [before them] with one.¹² Go then,' he continued, 'and produce witnesses that you are his brother.' 'I have witnesses,' he replied, 'but they are afraid of him, because he is a powerful man.' Thereupon he said to the other [Mari], 'Go you, and bring witnesses that he is not your brother.' 'Is that justice!' he exclaimed, 'the onus of proof lies on the claimant!' 'Thus do I judge in your case,' he retorted, 'and for all who are powerful men of your like'. 'But after all,' he argued, 'witnesses will come and not testify [the truth]'.¹³ 'They will not commit two [wrongs],' he rejoined.¹⁴ Subsequently witnesses came [who testified] that he was his brother. 'Let him share with me the vineyards and gardens which he planted,' demanded he. 'He speaks rightly to you,' said he [R. Hisda], 'For we learnt: If one leaves sons, adults and minors, and the adults improve the property, they improve it for both equally.'¹⁵

1. After which the stranger had it in his possession three years. But this does not establish a claim, since he took possession whilst the orphan was a minor, who on attaining his majority may not have known that the estates were his father's, and hence did not protest.
2. Who may claim that he inherited the estates.
3. Since the neighbors can testify to their rightful ownership.
4. Distinctly setting forth the portion of each.
5. Lit. 'it has a voice'. Hence there is no fear of a false claim.
6. [As he can still claim it to be property belonging to his mother in her own right, to which he is entitled as heir.]
7. For if she had died, part of her estates belonged to the grandchild.
8. But nothing was known of the daughter.
9. The share of the captive daughters.
10. V. p. 508, n. 2.
11. Gen. XLII, 8.
12. So Mari may not recognize you too, even if you are his brother.
13. If they are afraid of me, they will certainly testify in my favor whether it be the truth or not.
14. Witnesses who can testify to your disadvantage may repress their evidence through fear of you, which is one wrong. But they will certainly not

BABA METZIAH – 28b-58a

commit another by testifying falsely in your favor.

15. Lit., 'in the middle'. (V. B.B. 143b.) I.e., the minors take an equal share of the improvements.

Baba Mezi'a 40a

and thus did Rabbah rule likewise, They improve it for both equally.¹ Said Abaye to him:² How compare? There the adults are aware of the [existence of the] minors, and forego [their labor on their behalf]; but here, was he [Mari] aware [of him], that he should forego! Now, the matter travelled about³ until it reached R. Ammi. Said he to them [his disciples]: Even a greater thing has been said, [viz.,] A valuation is made for them as for an *aris*:⁴ shall he then not be paid [likewise] in his own!⁵ This [observation] was brought back to R. Hisda. Said he to them: How compare? There [in the case of a captive's estates] he entered with authority [of the court]; here he entered without authority.⁶ Moreover, he [the claimant] was a minor [when Mari first took possession], and a relative is not permitted to enter into a minor's estates. When this [reply] was taken back to R. Ammi, he said to them: They did not complete it [sc. the narrative of this lawsuit] before me [by informing me] that he was a minor.

MISHNAH. IF A MAN ENTRUSTS PRODUCE TO HIS NEIGHBOUR, HE [THE BAILEE] MAY [WHEN RETURNING IT] MAKE A DEDUCTION FOR DECREASES [AS FOLLOWS]: FOR WHEAT AND RICE, NINE HALF KABS PER KOR;² FOR BARLEY AND MILLET, NINE KABS PER KOR; FOR SPELT AND LINSEED, THREE SE'AH'S PER KOR: ALL DEPENDS ON THE QUANTITY AND THE TIME.³ SAID R. JOHANAN B. NURI: WHAT DO THE MICE CARE; THEY EAT [THE SAME] WHETHER THE QUANTITY BE LARGE OR SMALL! HENCE HE MAY MAKE DEDUCTIONS ONLY FOR ONE KOR. R. JUDAH SAID: IF IT IS A LARGE QUANTITY HE CANNOT DEDUCT DECREASES AT ALL, BECAUSE IT INCREASES.⁹

GEMARA. But rice decreases by much more! — Said Rabbah b. Bar Hanah in R. Johanan's name: This refers to peeled rice.

FOR SPELT AND LINSEED, THREE SE'AH'S PER KOR, etc. R. Johanan said in R. Hiyya's name: This refers to linseed in its calyxes.¹⁰ It has been taught likewise: For spelt and linseed in its calyxes and unpeeled rice, three se'ahs per *kor*.

ALL DEPENDS ON THE QUANTITY, etc. A Tanna taught: It is thus per *kor* per annum.

SAID R. JOHANAN B. NURI, etc. It has been taught: They [the Sages] said to R. Johanan, Much of it deteriorates and much is scattered.¹¹

A Tanna taught: This holds good only if he [the bailee] mixed it with his own produce. But if he assigned him a special corner he can say to him, 'Behold, here is yours before you.'¹² But what if he did mix it with his crops: let him see how much his own was!¹³ — It refers to one who drew his supplies therefrom. Then let us see how much he drew? — He does not know.

R. JUDAH SAID: IF IT IS, etc. What constitutes a LARGE QUANTITY? — Said Rabbah b. Bar Hanah in R. Johanan's name: Ten *kors*. It has been taught likewise: What constitutes a large quantity? Ten *kors*.

A tanna recited before R. Nahman: When was this said? If he measured [the corn] for him out of the granary and returned [it] to him out of the granary. But if he measured [it] for him out of the granary and returned it to him out of the house, he may make no deduction for decreases, because it [the quantity] increases.¹⁴ Are we dealing with imbeciles, he retorted, who give with a large measure and take back with a small! Perhaps you mean the season of the granary.¹⁵ [Thus:] When is this said? If he measures it out to him at the harvest season and returns it to him in the harvest season. But if he measures it out to him at the harvest season and returns it to him in the rainy season [winter], he may make no deduction for decreases, because it increases.¹⁶ Said R. Papa

BABA METZIAH – 28b-58a

to Abaye: If so, the barrel [containing produce] ought to burst! — It did once happen that the barrel [did in fact] burst. Alternatively, it [the reason that the barrel does not generally burst] is on account of the tightness [of the crops].¹⁷

MISHNAH. HE MAY DEDUCT A SIXTH IN THE CASE OF WINE. R. JUDAH SAID: A FIFTH. HE MAY DEDUCT THREE LOGS OF OIL PER HUNDRED, WHICH IS A LOG AND A HALF FOR LEES, AND ONE AND A HALF FOR ABSORPTION.¹⁸ BUT IF IT WAS REFINED OIL, HE MAY MAKE NO DEDUCTION FOR LEES. IF THEY [THE CONTAINERS] WERE OLD BARRELS, HE MAY MAKE NO DEDUCTION FOR ABSORPTION.¹⁹ R. JUDAH SAID: EVEN IF HE SELLS REFINED OIL TO HIS NEIGHBOUR DURING THE WHOLE YEAR, THE LATTER MUST ACCEPT A LOG AND A HALF OF LEES PER CENT.²⁰

GEMARA. But there is no dispute; each master rules in accordance with his region. In the locality of the first master they covered [the inside of the wine barrels] with wax, so there was not much absorption;²¹ whilst in that of the other [sc. R. Judah] they covered [them] with pitch; hence they absorbed more.²² Alternatively, it is on account of the clay [used in making the barrels]; the one quality absorbed more, the other less.

In Rab Judah's locality forty-eight jug-fuls went to the [standard] barrel, a barrel being sold at six *zuz*, and Rab Judah retailed six [jug-fuls] per *zuz*.

1. Rashi, regarding this last phrase, 'and thus, etc.', as a continuation of R. Hisda's statement, substitutes Rab for Rabbah; firstly, because Rabbah was R. Hisda's pupil, and he would not quote his pupil's views in support of his own; and secondly, because an Amora is never adduced in support of a Mishnah. But Rab was his teacher, and he is cited not in support of the Mishnah, but in explanation thereof; as there is a view that this Mishnah refers only to a natural improvement, he quoted Rab as holding that it refers even to improvements directly affected by the brothers. Tosaf. retains our reading, explaining that this is not a

continuation of R. Hisda's speech, but an observation by the Talmudic redactor that Rab once gave a similar ruling.

2. [To Rabbah (according to Tosaf.).]
3. Lit., 'the matter rolled on'.
4. V. *supra* 39a, in reference to a next of kin who enters into a captive's estates; on the latter's return, the former is paid for his improvements as an *aris*, receiving a half, third or a quarter, in accordance with local usage, though, of course, the land was not his at all.
5. Even if the claimant is entitled to half of the improvement, surely Mari is entitled to a fraction of that half, as though he were an *aris*! R. Hisda, however, had not allowed for this.
6. On his father's death he took possession without a court order.
7. 1 *Kor* = 30 *se'ahs* = 180 *kabs*.
8. I.e., these pro rata decreases hold good whatever the quantity; also, they are dependent on the time the produce is stored — the Gemara states that these are per annum.
9. This is discussed below.
10. Since they dry up and are blown away by the wind, the decrease is so large. But pure linseed does not suffer so great a loss.
11. Besides the depredations of mice; therefore it does depend on quantity.
12. Whatever the decrease.
13. And knowing the combined quantity and by how much the whole has decreased, make a proportionate deduction.
14. The measures used in the granary were larger than house measures, hence the same quantity shows a larger figure when measured by the latter; this increase counterbalances the normal decrease.
15. I.e., summer, when the corn is harvested into the granary.
16. In winter the crops swell up, the resultant increase counterbalancing the normal loss.
17. Tightly pressed together in the barrel, they have no room to expand and cause it to burst.
18. The barrels absorb that quantity.
19. Old barrels have already absorbed as much as they can contain.
20. I.e., if the vendor sells a quantity of oil but keeps it in his own barrels, supplying it in smaller quantities to the vendee as and when desired. Having received 98 1/2 logs of pure oil without sediment, the vendee must now accept 1 1/2 of lees.
21. Not more than a sixth.
22. Sc. a fifth.

BABA METZIAH – 28b-58a

Now, deduct thirty-six [from the forty-eight] for six [*zuz*], leaves twelve; deduct eight, which is the sixth [allowed for absorption], leaves four.¹ But Samuel said: He who profits must not profit more than a sixth?² — There are the barrels and the lees.³ If so, it exceeds one sixth. — There is his trouble, and the cost of the crier.⁴

IF IT WAS REFINED OIL, HE MAY MAKE NO DEDUCTION FOR LEES, etc. But it is impossible that it [the barrel] shall not absorb!⁵ — Said R. Nahman: This refers to [barrels] lined with pitch.⁶ Abaye said: You may even say that they are not pitch lined: being laden, they are laden.⁷

R. JUDAH SAID: EVEN IF HE SELLS REFINED OIL TO HIS NEIGHBOUR DURING THE WHOLE YEAR, THE LATTER MUST ACCEPT A LOG AND A HALF OF LEES PER CENT. Abaye said: When you examine the matter, [you will conclude that] in R. Judah's opinion lees may be mixed [with the oil]; whilst on the Rabbis' view lees may not be mixed. 'In R. Judah's opinion lees may be mixed,' and that is the reason that he [the vendee] must accept [the lees],⁸ because he [the vendor] can say to him, 'Had I desired to mix it up for you, could I not have done so? therefore now too, accept it.'⁹ But let him answer, 'Had you mixed it up for me, it could have been sold [together with the rest]: but what am I to do with it now? I cannot sell it separately!' — This refers to a private individual, who prefers clear [oil].¹⁰ But let him say to him, 'Since you did not mix it up for me, you have renounced it in my favour?'¹¹ — R. Judah follows his general reasoning, not accepting [the theory of] renunciation. For we learnt: If one sells the yoke, he has not sold the oxen; if he sells the oxen, he has not sold the yoke. R. Judah said: The price decides [the matter]. E.g., if one says to another, Sell me your yoke for two hundred *zuz*, it is well known that a yoke is not priced at two hundred *zuz*.¹² But the Sages say: The price is no proof.¹³

'Whilst on the Rabbis' view lees may not be mixed,' and that is the reason that he [the vendee] need not accept [the lees], because he can say to him [the vendor], 'Had you desired to mix it up,¹⁴ would it then have been permitted to you? Now too, [therefore,] I will not accept it.'

R. Papa objected to Abaye: On the contrary, the logic is the reverse. On the view of the Sages lees may be mixed up, and that is the reason that he need not accept it, because he can say, 'Since you did not mix it up for me, you have renounced it in my favor. Whilst in the opinion of R. Judah lees may not be mixed up, and this is the reason that he must accept it, because he can say to him, 'Had I desired to mix it up, it would not have been permitted to me, whilst you also refuse to accept it [separately]: if one buys and sells [at the same price] — do you call him a merchant!'¹⁵

A Tanna taught: The vendee and the depositor are both alike in respect of the scum.¹⁶ What is meant by 'in respect of the scum?' Shall we say, Just as the vendee does not accept the scum, so does the depositor likewise not accept it?¹⁷ But let him [the bailee] say to him, 'What am I to do with your scum?' But [on the contrary], just as the depositor must accept the scum, so must the purchaser likewise. Yet must the vendee accept the scum: but it has been taught: R. Judah said: [The loss due to] the muddy oil was assigned to the vendor alone, since the vendee accepts a *log* and a half of sediment without the scum!¹⁸ — There is no difficulty: The former treats of one who pays his money in Tishri and received [the wine or oil] in Nisan at Tishri prices;¹⁹ the latter treats of one who pays his money in Nisan and receives [the oil] in Nisan at Nisan prices.²⁰

MISHNAH. IF A MAN DEPOSITS A BARREL WITH HIS NEIGHBOUR, ITS OWNER NOT DESIGNATING A PLACE FOR IT, AND HE [THE BAILEE] MOVES IT AND IT IS BROKEN, IF IT IS BROKEN WHILST IN HIS HAND,²¹ — [IF HE MOVED IT] FOR HIS PURPOSES, HE IS RESPONSIBLE; FOR ITS OWN NEED, HE IS NOT RESPONSIBLE. IF IT IS BROKEN AFTER

BABA METZIAH – 28b-58a

HE PUTS IT DOWN, WHETHER [HE MOVED IT] FOR HIS NEED OR FOR ITS OWN, HE IS NOT LIABLE. IF THE OWNER DESIGNATES A PLACE FOR IT, AND HE MOVES IT AND IT IS BROKEN, WHETHER WHILST IN HIS HAND OR AFTER HE PUTS IT DOWN, — [IF HE MOVED IT] FOR HIS PURPOSES, HE IS RESPONSIBLE; IF FOR ITS OWN NEED, HE IS NOT LIABLE.

GEMARA. Who is the authority of the Mishnah? — It is R. Ishmael, who ruled: The owner's knowledge is unnecessary.²² For it has been taught: If one steals a lamb from a fold or a *selah* from a purse, he must return it whence he stole it:²³ this is R. Ishmael's view. R. Akiba said:

1. This then was his profit — 4 in 48 = 1/12 th.
2. Yet 1/6 th is permissible: why then did Rab Judah content himself with 1/12 th?
3. Which augment his profits.
4. Who announced the wares. Others: the cost of piercing the bung.
5. Even if old.
6. These, if old, do not absorb.
7. And cannot absorb more.
8. As stated in the Mishnah.
9. I.e., having received the refined oil in small quantities without lees, you must now accept one and a half logs of sediment separately.
10. He bought it for his own use, not to resell, and therefore is glad that pure oil was delivered him; consequently he must accept the sediment separately.
11. I.e., your right to mingle the lees with the oil.
12. Hence he must have meant the yoke and the oxen.
13. B.B. 77b. The vendee may have chosen this method of renouncing his money, i.e., gifting it, to the vendor. Since R. Judah rules that the price does prove the meaning of the terms used, he evidently rejects this plea of renunciation.
14. After it had settled at the bottom.
15. I.e., unless I am permitted to make a deduction from the quantity on account of the lees, I cannot make a living.
16. Of the wine or oil. So translated by Rashi. In H.M. 228, 20 it is translated: 'the muddy oil which ascends to the top' ([H]). Jast. translates: 'the foam or froth of the wine or oil'; this, however, seems unsuited to the context.
17. The measure bought by the vendee is calculated without the scum; and when the wine or oil is returned to the depositor, he too may insist that

the measure due to him shall be calculated without it.

18. Since 1 1/2 per cent is sediment (v. *supra* 40a) he is entitled that the rest shall be quite clear, without scum.
19. In Tishri the oil is generally turbid with a scum on top, the price being correspondingly low. Hence in this case he must accept it.
20. Which are higher, because by then the oil is clear and free from scum; hence he can refuse it.
21. Lit., 'out of his hand'.
22. The first clause states that if he moves it for his own purpose, puts it down, and then it is broken, he is not responsible. Now, when he moves it for his own purpose, he is regarded as having stolen it, since a bailee must not make any use of a bailment, and there is a view, expressed immediately in the Gemara, that when a person steals an object he is responsible for it until he returns it and informs its owner that he has returned it. R. Ishmael holds that the owner's knowledge is unnecessary. Now, when the bailee puts the barrel down, he returns it to its owner, of course, without the owner's knowledge, and since the Mishnah rules that he is not responsible then, it must agree with R. Ishmael.
23. After which he ceases to bear responsibility for it.

Baba Mezi'a 41a

The owner's knowledge is required.¹ If R. Ishmael, why particularly if he designated [a place]: even if he did not, it is still the same! — This is a case of 'it goes without saying.' [Thus:] It goes without saying that if he designated [a place for it, the owner's knowledge of its return is not required,] since it is its place:² but even if no designation was made, so that it is not its place,³ yet the owner's knowledge is not required. Then consider the second clause: **IF THE OWNER DESIGNATES A PLACE FOR IT, AND HE MOVES IT AND IT IS BROKEN, WHETHER IN HIS HAND OR AFTER HE PUTS IT DOWN, — [IF HE MOVED IT] FOR HIS PURPOSE, HE IS RESPONSIBLE; IF FOR ITS OWN NEED, HE IS NOT LIABLE.** That agrees with R. Akiba, who ruled, The owner's knowledge is required. If R. Akiba, why particularly if designation is made: even if not, it is likewise so?⁴ — This is

BABA METZIAH – 28b-58a

a case of 'it goes without saying.' [Thus:] It goes without saying that if he did not designate [a place for it, the owner's knowledge of its return is required,] since it is not its place;⁵ but even if designation was made, so that it is its place,⁶ the owner's knowledge is still required. Then the first clause agrees with R. Ishmael, and the second with R. Akiba? — Even so, for R. Johanan said: He who will explain me [the Mishnah of] BARREL so as to agree with one Tanna, I will carry his attire after him to the baths.⁷ R. Jacob b. Abba interpreted it before Rab as meaning that he took it with the intention of stealing it; R. Nathan b. Abba interpreted it before Rab as meaning that he took it with the intention of using it.⁸ Wherein do they [sc. R. Jacob b. Abba and R. Nathan b. Abba] differ? — In whether [unlawful] use must be accompanied by damage.⁹ He who says, [He must have taken it] in order to steal it, holds that [unlawful] use must result in damage;¹⁰ whilst he who maintains that it was in order to use it, is of the opinion that [unlawful] use need not result in damage.¹¹ R. Shesheth raised an objection: Does he [the Tanna] State 'he took it?' he actually Says, HE MOVES IT!¹² But, said R. Shesheth, this treats of one who took it in order to reach down birds [whilst standing] upon it,¹³ and he [the Tanna of the Mishnah] holds that a borrower without permission is regarded as a robber. Thus the whole of it [sc. the Mishnah] agrees with R. Ishmael, the second clause meaning that he did not return it to its place.¹⁴ And R. Johanan?¹⁵ — 'HE PUTS IT DOWN' implies in its own place.¹⁶

It has been stated: Rab and Levi: One maintained, [Unlawful] use [by the bailee] must involve damage; and the other maintained, It need not.¹⁷ It may be proved that it was Rab who ruled that [unlawful] use need not involve damage. For it has been taught: If a shepherd who was guarding his flock left it and entered the town: then a wolf came and destroyed a sheep, or a lion, and tore it to pieces, he is free from liability. If he put his staff or wallet upon it, he is liable.¹⁸ Now we pondered thereon: because he put his staff

or wallet upon it, he is liable: but he [also] took them away!¹⁹ Whereupon R. Nahman said in the name of Rabbah b. Abbuha in Rab's name: It means that it is still upon it. Yet even if it was still upon it, what of that? but he had not taken possession of it!²⁰ R. Samuel son of R. Isaac answered in Rab's name: It means that he smote it with his staff and it ran before him.²¹ But he had inflicted no damage upon it! Hence this Surely proves that he [Rab] holds that [unlawful] use need not involve damage! — [No.] Say thus: He had weakened it with his staff.²² This follows too from the fact that he states, He smote it with his staff.²³ This proves it. Now, since Rab holds that [unlawful] use must involve damage, it follows that Levi maintains that it does not: what is Levi's reason?²⁴ — Said R. Johanan on the authority of R. Jose b. Nehorai: [Unlawful] use stated in connection with a paid bailee differs from that stated in connection with a gratuitous bailee;²⁵

1. V. n. 2.
2. To which he returns it.
3. Sc. that to which he returns it, since it has no fixed place which can be called its own.
4. Tosaf.: the assumption that R. Ishmael and R. Akiba maintain their views in both cases, whether a particular place was assigned for the misappropriated article or not, is based on the fact that the two instances given are a lamb and a coin: a lamb has no particular place, going from pasture to pasture, whilst a coin has one, viz., the purse, and the purse too generally has a particular place.
5. To which he returns it, so that it is not a perfect restoration.
6. V. n. 1.
7. I will act as his servant.
8. Lit., 'to put forth his hand' — the language is Biblical; v. Ex. XXII, 7. These two Amoraim explain the Mishnah so that the whole may agree with one Tanna. R. Jacob b. Abba: The first clause means that he returned it to its place, since no particular place having been assigned to it, wherever he puts it is its place. Therefore, if it is broken, he is free from responsibility, the author of the Mishnah being R. Ishmael, who maintains that the owner's knowledge of the article's return is unnecessary. But in the second clause the meaning is that it is not returned to its place: therefore he is liable. For though R. Ishmael holds that the owner's knowledge is

BABA METZIAH – 28b-58a

unnecessary, yet it must be put back into its place before the purloiner is freed of his responsibility. This, however, holds good only if he takes the barrel in the first place intending to steal it; if he merely desires to borrow it, we are not so strict, and wherever he put it back, even not in the place assigned to it, suffices to free him. R. Nathan b. Abba: He explains it likewise, but holds that even if the depositary takes it with the mere intention of using some of its contents, he forthwith becomes responsible (though he does not carry out his intention) for the whole of it (v. *infra* 44a), and remains so until he returns it to its own place. The assumption that the second clause means that he does not return it to its own place is implicit on both explanations, but these are interrupted whilst certain objections are raised.

9. V. Ex. XXII, 9f: If a man deliver unto his neighbor ... any beast to keep, and it die, or be hurt (i.e., suffer through an unpreventable accident) ... Then shall an oath of the Lord be between them both, that he hath not put his hand unto his neighbor's goods — i.e., made use of them, which, being a bailee, he had no right to do. Thus Scripture teaches that if the depositary misappropriates the bailment to his own use, he is responsible for subsequent accidents. These two Amoraim differ as to whether that holds good always, or only if his use thereof resulted in damage.
10. But otherwise it throws no responsibility upon the bailee. Hence, if he takes it merely to use it and did not use it, he is not liable, seeing that no damage was done.
11. Hence the mere taking to use it is sufficient.
12. Which certainly indicates that he took it for use, not to steal.
13. I.e., he borrowed it without intending to steal it. (V. *infra* p. 257.)
14. As explained on p. 245, n. 5; the last passage 'the second clause meaning, etc.' applies to the three answers.
15. Why does he find it so difficult to make the Mishnah reflect the view of one Tanna only?
16. Therefore he could not accept that explanation.
17. V. n. 1.
18. V. *infra* 93b.
19. Before the animal was attacked.
20. Lit., 'pulled'. And a bailee does not become responsible on account of (unlawful) use unless he takes possession of the bailment by means of 'pulling' *meshikah*, (v. [Glos.](#)) as appears from the Mishnah *infra* 43b, q.v.
21. Which is the equivalent of *meshikah*. Thus there had been (unlawful) use (by putting his staff or wallet upon it) and *meshikah*.
22. He had smitten it so hard as to weaken it; this is damage.
23. Which would inflict a heavy blow. Otherwise he should simply have stated, He smote it and it ran before him (Rashi), or perhaps 'smote' too is unnecessary, since he could have said, He made it go by shouting at it. (R. Han. and Tosaf.).
24. Rab's reason is not asked, for it stands to reason that no liability should be imposed unless his (unlawful) use causes loss, as otherwise it can hardly be called so.
25. For the former v. p. 246, n. 1, to whom the verses quoted refer. An unpaid bailee: *Ibid.* 6f: If a man shall deliver unto his neighbor money or stuff to keep, and it be stolen out of the man's house; if the thief be found, let him pay double. If the thief be not found, then the master of the house shall he brought unto the judges, to see whether he have put his hand unto his neighbor's goods (i.e., made use thereof).

Baba Mezi'a 41b

but I say,¹ It is not different. Wherein [and why] is it different? — For [unlawful] use should not have been stated in connection with a paid bailee, and it would have been inferred from a gratuitous bailee: if an unpaid bailee, who is not responsible for theft or loss, is nevertheless liable if he puts it [the bailment] to use; then a paid bailee, who is responsible for theft or loss, is surely [liable if he puts it to use]. Why then did Scripture state them [both]? To teach you that [unlawful] use need not involve damage.² 'But I Say, It is not different,' in accordance with R. Eleazar, who maintained: Both have the same purpose. How Say, 'both have the same purpose'?³ — Because one can refute [that argument]. As for a gratuitous bailee, [he may be liable if he used it] because he must repay double on a [false] plea of theft.⁴ And he who does not refute [it thus] is of the opinion that [liability to] the principal without [the option of] an oath⁵ is a greater responsibility than [having to pay] double after a [false] oath.⁶

Raba said: [Unlawful] use need not have been mentioned in connection with either an unpaid or a paid bailee, and it could have been inferred from a borrower.⁷ If a borrower, who in using it acts with its owner's permission, is

BABA METZIAH – 28b-58a

[nevertheless] responsible [for unpreventable accidents]; surely the same applies to unpaid and paid bailees! Then why is it stated [in connection with these two]? Once, to teach you that [unlawful] use need not involve damage.⁸ And the other: that you should not say: It is sufficient that that which is deduced a *minori* shall be as that from which it is deduced: just as a borrower is exempt if the owner [is in his service],⁹ so also are unpaid and paid bailees exempt, if the owner [is in their service].¹⁰

Now, on the view that [unlawful] use must involve damage, what is the purpose of these two [statements] on [unlawful] use?¹¹ — One, that you should not say, It is sufficient that that which is deduced a *minori* shall be as that from which it is deduced. And the other, for what was taught: [*If a man shall deliver unto his neighbor money or stuff to keep, and it be stolen ... If the thief be not found,*] then the master of the house shall be brought unto the judges¹² — for an oath.¹³ You say, 'for an oath'. But perhaps it is not so, the meaning being for judgment?¹⁴ [Unlawful] use is stated below;¹⁵ and [unlawful] use is stated above:¹⁶ just as there, [the reference is] to an oath, so here too, for an oath [is meant].

1. R. Johanan stating his own opinion.
2. That is the meaning of 'it differs' — i.e., not that its actual definition differs, but that its purpose in being stated is different. Thus: its mention in the section on a gratuitous bailee is to show the actual law, whilst it is stated in the section on a paid bailee for the purpose of definition.
3. In view of the above argument.
4. In this respect his responsibility exceeds that of a paid bailee (v. B.K. 63b); therefore it might also have been regarded as greater in respect of misappropriation. Consequently it must be mentioned in connection with a paid bailee too, for its own purpose, and not for mere definition; hence it must involve damage.
5. As in the case of a paid bailee.
6. As in the case of a gratuitous bailee.
7. A borrower is responsible for accidents, and when a bailee makes use of his bailment, he automatically becomes in a sense a borrower, but without permission.
8. [The bailee consequently becomes liable for the whole bailment as soon as he takes it with the

intention of putting to use a mere part thereof. This distinguishes him from a borrower authorized or unauthorized, whose liability is limited to the part actually borrowed. V. R. Nissim, Hiddushim, a.l.]

9. Ibid. 13f: And if a man borrow aught of his neighbor, and it be hurt or die, the owner thereof being not with it, he shall surely make it good. But if the owner thereof be with it, he shall not make it good. The Rabbis interpret this as meaning that if the owner is in the borrower's service when the article is borrowed and/or when the accident occurs (v. 94a and 95b) he is not liable.
10. Therefore (unlawful) use is mentioned in their case to show that even then they are responsible.
11. As Raba observed.
12. Ibid. 6, with reference to a gratuitous bailee.
13. I.e., to swear that it was stolen. The verse is accordingly translated thus: If it be not found (that he spoke the truth, but) he himself is the thief, and the mister of the house has already been brought unto the judges, i.e., has already sworn that it was stolen, then, whom (sc. the bailee) the judges shall condemn, he shall pay double unto his neighbor. Hence a bailee must pay double only if he actually swore that it was stolen, but not on his mere plea.
14. To plead that it was stolen, and the plea itself is sufficient to impose the penalty of twofold repayment.
15. In connection with a paid bailee: Then shall an oath of the Lord be between them both, that he hath not put his hand unto his neighbor's goods; *ibid.* 10.
16. In connection with an unpaid bailee: Then the mister of the house should be brought unto the judges, to see whether he have put his hands unto his neighbor's goods. (*Ibid.* 7.)

Baba Mezi'a 42a

MISHNAH. IF A MAN DEPOSITED MONEY WITH HIS NEIGHBOUR, WHO BOUND IT UP AND SLUNG IT OVER HIS SHOULDER¹ [OR] ENTRUSTED IT TO HIS MINOR SON OR DAUGHTER AND LOCKED [THE DOOR] BEFORE THEM, BUT NOT PROPERLY, HE IS LIABLE, BECAUSE HE DID NOT GUARD [IT] IN THE MANNER OF BAILEES. BUT IF HE GUARDED IT IN THE MANNER OF BAILEES, HE IS EXEMPT.

GEMARA. As for all, it is well, since indeed he did not guard it in the manner of bailees: but if

BABA METZIAH – 28b-58a

HE BOUND IT UP AND SLUNG IT OVER HIS SHOULDER — what else should he have done? — Said Raba in R. Isaac's name: Scripture saith, *and thou shalt bind up the money in thine hand*² — even if bound up, it should be in thy hand.³

R. Isaac also said: One's money should always be ready to hand,⁴ for it is written, *and thou shalt bind up the money in thy hand*.

R. Isaac also said: One should always divide his wealth into three parts: [investing] a third in land, a third in merchandise, and [keeping] a third ready to hand.

R. Isaac also said: A blessing is found only in what is hidden from the eye,⁵ for it is written, *The Lord shall command the blessing upon thee in thy hidden things*.⁶ The School of R. Ishmael taught: A blessing comes only to⁷ that over which the eye has no power,⁸ for it is said, *The Lord shall command the blessing upon thee in thy hidden things*.

Our Rabbis taught: When one goes to measure [the corn in] his granary, he should pray, 'May it be Thy will, O Lord our God, to send a blessing upon the work of our hands.' Having started to measure, he prays, 'Blessed is He who sendeth a blessing on this pile.' But if he measured and then prayed,⁹ it is a vain prayer, because a blessing is not found in that which is [already] weighed, measured, or counted, but only in that which is hidden from the eye, for it is said, *The Lord shall command the blessing upon thee in thy hidden things*.

Samuel said: Money can only be guarded [by placing it] in the earth.¹⁰ Said Raba: Yet Samuel admits that on Sabbath eve at twilight the Rabbis did not put one to that trouble.¹¹ Yet if he tarried after the conclusion of the Sabbath long enough to bury it [the money] but omitted to do so, he is responsible [if it is stolen]. But if he [the depositor] was a scholar, he [the bailee] might have thought, He may require the money for *habdalah*.¹² But nowadays¹³ that there are money-diviners,¹⁴ it can be properly guarded only [by placing it]

under the roof beams. But nowadays that there are house breakers,¹⁵ it can be guarded only [within the void spaces] between bricks. Raba said: Yet Samuel admits [that it may be] hidden] in the wall. But nowadays that there are rappers,¹⁶ It can be guarded only in the handbreadth nearest to the earth or to the uppermost beams.¹⁷

R. Aha, son of R. Joseph, said to R. Ashi: We learnt elsewhere: If ruins collapsed on leaven, it is regarded as removed.¹⁸ R. Simeon b. Gamaliel said: Provided that¹⁹ a dog cannot search it out.²⁰ And it was taught [thereon]: How far is the searching of a dog? Three handbreadths.²¹ How is it here?²² Do we require [that it shall be covered by] three handbreadths or not? — There, he replied, we require three handbreadths on account of the smell [of the leaven];²³ but here [it is put into the earth] in order to cover it from the eye; therefore three handbreadths are not required. And how much [is necessary]? — Said Rafram of Sikkara:²⁴ one handbreadth.

A certain man deposited money with his neighbor, who placed it in a cot of bulrushes.²⁵ Then it was stolen. Said R. Joseph: Though it was proper care in respect to thieves,²⁶ yet it was negligence in respect to fire: hence the beginning [of the trusteeship] was with negligence though its end was through an accident, [and therefore] he is liable. Others Say: Though it was negligence in respect to fire, it was due care in respect to thieves, and when its beginning is with negligence and its end through an accident, he [the bailee] is not liable.²⁷ And the law is that when the beginning thereof is with negligence and the end through an accident, he is responsible.

A certain man deposited money with his neighbor. On his demanding, 'Give me my money,' he replied, 'I do not know where I put it.' So he went before Raba, [who] said to him: Every [plea of] 'I do not know' constitutes negligence: go and pay him.

A certain man deposited money with his neighbor, who entrusted it to his mother; she

BABA METZIAH – 28b-58a

put it in her work basket and it was stolen. Said Raba: What ruling shall judges give in this case? Shall we say to him, 'Go and repay'?²⁸ Then he can reply,

1. Lit., 'behind him'.
2. Deut. XIV, 25.
3. Not over the shoulder, so that it can be properly guarded.
4. And not in another man's keeping, so that advantage can immediately be taken of a trading bargain that is available.
5. I.e., the exact quantity of which the owner does not know.
6. Ibid. XXVIII, 8. (E.V. 'storehouses'.)
7. Lit., 'is found only in'.
8. I.e., hidden, and so not subject to the evil eye.
9. Lit., 'uttered a benediction'.
10. Otherwise the bailee is guilty of negligence — In ancient days there was probably no other place as safe. [Cf. Josephus, Wars, V. 7, 2, '...which the owners had treasured up under ground against the uncertain fortunes of war.']
11. If one receives a bailment then, he cannot be expected to place it in the earth, and his not doing so does not constitute negligence. [Some texts rightly omit 'at twilight', all manner of work being then in any case prohibited.]
12. Lit., 'separation', a short blessing recited as a rule over wine, thanking God for the distinction between the Sabbath and week-days. — In that case, the bailee was justified in not burying the money, as the scholar might require same for wine. The practice of reciting *habdalah* at home was not widespread; v. Ber. 331.
13. [In the third century, when Babylonia entered upon its bitter struggles with the Romans for the possession of the rich lands of the Euphrates; v. Krauss, *op. cit.*, p. 415.]
14. Lit., 'sounders', who can sound the earth to discover cavities where money may be hidden.
15. Who break through the beams.
16. Who by rapping at the wall can discover its cavities and treasures.
17. Asheri a.l. observes that all this held good only in the days of Samuel and his successors, when rappers, diviners, etc. were to be feared. Nowadays, however, we do not fear all this, and it is sufficient if a bailee puts the money entrusted to his charge in the place where he keeps his own.
18. All leaven had to be removed from the house before Passover (Ex. XII, 15); if ruins fell on leaven, the leaven is regarded as removed, since it is inaccessible.
19. Lit., 'whatever'.
20. Pes. 31b.

21. I.e., the leaven must be covered by not less than three handbreadths of debris; otherwise a dog can search it out, and it would therefore be necessary to remove the debris and destroy the leaven.
22. In respect to placing money in the earth.
23. If the leaven is covered by less, a dog can smell it.
24. A town S. of Mahuza.
25. So Jast. Rashi: in a fowler's trap.
26. Who would normally not think of looking there for it.
27. V. *supra* 36b.
28. Because if a bailee entrusts the deposit to another he is responsible.

Baba Mezi'a 42b

'All who deposit do so with the understanding that the wife and children [of the depositary may be entrusted with the bailment].' Shall we say to his mother, 'Go and pay:' she can plead, 'He did not tell me that it [the money] was not his own, that I should bury it.' Shall we say to him, 'Why did you not tell her?'¹ he can argue, 'If I told her it was mine, she was the more likely to guard it well.' But, said Raba, he must swear that he had entrusted that money to his mother, and his mother must swear that she had placed that money in her work basket, and it was stolen. Then he [the bailee] is free.

A certain steward for orphans² bought an ox on their behalf and entrusted it to a herdsman. Having no molars or [front] teeth to eat with, it died.³ Said Rami b. Hama: What verdict shall judges give in this case? Shall we say to the steward, 'Go and pay:' he can reply, 'I entrusted it to the herdsman.'⁴ Shall we say to the herdsman, 'Go and pay:' he can plead, 'I put it together with the other oxen and placed food before it: I could not know that it was not eating! [But, why not] consider [the fact that] the herdsman was a paid keeper of the orphans, and as such should have made careful observation? — Had the orphans suffered loss, it would be even so. But we treat here of a case where the orphans suffered no loss, because the [first] owner of the ox was found and they received their money back from him.'⁵ Then who is the plaintiff? — The owner of the ox, who pleads that he [the

BABA METZIAH – 28b-58a

steward] should have informed him. But what was he to inform him? He knew full well that it was a sale under false pretences! — He [the owner of the ox] was a middleman, who buys here and sells there.⁶ Therefore [rules Rami] he [the middleman] must swear that he did not know [of the animal's toothless condition], and the herdsman must pay at the cheap price of meat.⁷

A certain man deposited hops with his neighbor, who himself also had a pile thereof. Now, he instructed his brewer, 'Take⁸ from this pile;' but he went and took from the other. Said R. Amram: What verdict shall the judges give in this case? Shall they say to him, 'Go and pay:' he can plead. 'I said to him, "Take from this [pile]."' Shall we say to the brewer, 'Go and pay'? He can argue, 'He did not say to me, "Take from this [pile] but not from that."' But if he [the brewer] tarried sufficient time to bring him [his own hops], yet did not do so,⁹ then he [the bailee] revealed his mind that he was pleased therewith!¹⁰ — There was no tarrying. Yet after all, what loss is there: did he [the depositary] not benefit thereby?¹¹ — Said R. Samma, son of Raba: The beer turned into vinegar.¹² R. Ashi said: The reference is to thorns,¹³

1. And therefore you are responsible.
2. Appointed by the court to administer their estate until they attained their majority.
3. This loss could have been avoided had it been slaughtered and rendered fit for food.
4. And thus fulfilled my obligations.
5. On the grounds that it was bargain under false pretences.
6. I.e., who does not keep the animal in his possession for any length of time, and need not have been aware of the animal's condition.
7. Which is two thirds of the usual price. Rashi explains that this was a compromise, since the cowherd had a semi-valid plea, viz., 'I put it together with other oxen, etc.' Tosaf., however, holds that the verdict was strictly in accordance with the law, for since the animal could not live long, it would have had to be slaughtered before market day, when flesh does not fetch its proper price.
8. Lit., 'cast (into the beer)'.
9. The deposited hops being further away.

10. For he must have known that the brewer was taking the deposited hops, and yet did not stop him.
11. When the hops were put in his beer. Then he must pay in any case.
12. And so the bailee did not benefit thereby.
13. I.e., not hops were deposited, but the thorns on which the hops hang, and this yielded an inferior brew (so Jast.). Rashi translates: inferior hops, mixed with thorns.

Baba Mezi'a 43a

and he must pay him the value of the thorns.¹

MISHNAH. IF A MAN DEPOSITS MONEY WITH A MONEY-CHANGER, IF BOUND UP, HE MUST NOT USE IT: THEREFORE IF IT IS LOST, HE DOES NOT BEAR THE RISKS THEREOF;² IF LOOSE, HE MAY USE IT; THEREFORE IF IT IS LOST, HE BEARS THE RISKS.³ [BUT IF HE DEPOSITS IT] WITH A PRIVATE INDIVIDUAL, WHETHER IT IS BOUND UP OR LOOSE, HE MAY NOT USE IT; THEREFORE IF IT IS LOST, HE DOES NOT BEAR THE RISKS THEREOF. A SHOPKEEPER IS AS A PRIVATE INDIVIDUAL: THIS IS R. MEIR'S VIEW. R. JUDAH SAID: A SHOPKEEPER IS AS A MONEY-CHANGER.

GEMARA. Because it is bound up he may not use it!⁴ — Said R. Assi in Rab Judah's name: This was taught of [money] bound up and sealed.⁵ R. Mari said: [It means that it was tied] with an unusual knot.⁶ Others say, R. Mari propounded: What if [it was tied with] an unusual knot? — The question stands.

IF LOOSE, HE MAY USE IT, etc. R. Huna said: Even if an [unpreventable] accident happened thereto [he is responsible]. But he [the Tanna] states, [IF] LOST!⁷ — It is as Rabbah [said]. For Rabbah said [elsewhere]: 'Stolen' means by armed robbers; 'lost,' that his ship foundered at sea.⁸ R. Nahman [however] said: If an [unpreventable] accident happened thereto, [he is] not [responsible].⁹ Raba objected to R. Nahman: According to you, who maintain that [he is] not [responsible] if an unpreventable accident happened to it, thus showing that he is not [accounted] a borrower in respect of it: but if

BABA METZIAH – 28b-58a

not a borrower, he is not a paid bailee either!¹⁰ — He replied to him: In this I agree with you, but since he may benefit therefrom, he must confer benefit;¹¹ in return for the benefit [he enjoys] that should he come across a purchase showing profit he can buy it therewith, he becomes a paid bailee in respect thereto,¹²

R. Nahman raised an objection to R. Huna's ruling: If he [the treasurer of the Sanctuary] deposits money¹³ with a money-changer, if bound up, he may not use it; therefore if he expends it, the treasurer is not liable to a trespass offering.¹⁴ If loose, he may use it; therefore if he expends it, the treasurer is liable to a trespass offering.¹⁵ But if you Say, even if an [unpreventable] accident befalls it [the money changer is responsible], why particularly if he expends it? Even if he does not expend it, he should likewise be [liable]!¹⁶ — He replied: The same law holds good even if he does not expend it; but since the first clause states [if he expends it],¹⁷ the second clause teaches likewise, [if] he expends it.

MISHNAH. IF A MAN MAKES [UNLAWFUL] USE OF A BAILMENT: BETH SHAMMAI MAINTAIN: HE IS PUNISHED IN RESPECT OF DECREASE AND INCREASE.¹⁸ BETH HILLEL RULE: [HE MUST PAY ITS VALUE] AS WHEN IT IS WITHDRAWN.¹⁹ R. AKIBA SAID: AS WHEN THE CLAIM IS MADE.

GEMARA. Rabbah²⁰ said: If one steals a barrel of wine from his neighbor, originally [i.e., at the time of theft] worth a *zuz*, but now [when he disposes thereof] worth four [*zuz*], if he breaks or drinks it, he must pay four; if it is broken of itself, he must pay a *zuz*. Why? Since if it were in existence, it would be returnable to its owner as it is, it is precisely when he drinks or breaks it that he robs him thereof, and we learnt: All robbers pay according to the time of robbery.²¹ 'If it is broken of itself, he must pay a *zuz*.' Why? He does nothing at all to it then: for what do you declare him liable? For the time of the robbery!²² But then it was worth [only] a *zuz*.

We learnt: BETH HILLEL RULE: [HE MUST PAY ITS VALUE] AS WHEN IT IS WITHDRAWN. What is the meaning of AS WHEN IT IS WITHDRAWN? Shall we Say, as when it is withdrawn from the world:²³ and in what [case do Beth Hillel differ]? If in the case of depreciation,²⁴ — but is there any such opinion? Did we not learn, All robbers pay as at the time of robbery? And if in the case of appreciation, then it is identical with Beth Shammai's ruling!

1. Whereby these had benefited the beer.
2. A gratuitous bailee not being responsible for loss.
3. The fact that he may use it makes him a paid trustee.
4. Surely the depositor may have bound it up for safety, not to show that the money-changer was not to use it!
5. Which was not necessary for mere safety, but to intimate that it was not to be used.
6. Which he must have made to prevent the money-changer from opening the package.
7. Which implies that he is not responsible for (unpreventable) accidents.
8. Which are unpreventable accidents. 'Lost' in our Mishnah has the same meaning.
9. Regarding him as a paid bailee, who is not responsible for unpreventable accidents, whereas R. Huna accounts him a borrower.
10. For his only payment is his right to use it, but that makes him a borrower, who uses his bailment, and if that right is disregarded, he receives nothing to turn him into a paid bailee.
11. By accepting the risks of a paid bailee.
12. I.e., when he actually uses it, he does indeed become a borrower. But until then his benefit is only potential, and it is sufficient that this potential benefit shall render him a paid bailee, and not a borrower.
13. Of the Sanctuary, in error thinking it his own.
14. In accordance with Lev. V, 15, for putting money dedicated to the Sanctuary to secular use. Since it was bound up, the treasurer had not authorized him to use it, and therefore the money-changer is liable.
15. Tosef. Me'il. II.
16. For since the money-changer is responsible for unpreventable accidents, he is evidently regarded as a borrower from the moment it reaches his hand, even before he actually uses it. But in that case the treasurer has already withdrawn it from the possession of the Sanctuary, and that alone involves a trespass offering.

BABA METZIAH – 28b-58a

17. And there it is necessary to show that even then the treasurer is not liable.
18. If the bailment itself cannot be returned for any reason, being destroyed or otherwise disposed of. The meaning of this is discussed in the Gemara.
19. V. Gemara.
20. Alfasi reads: Raba.
21. B.K. 93b, i.e., what its value was then.
22. I.e., for the act of taking it.
23. I.e., when destroyed or otherwise disposed of.
24. After he had taken it; Beth Hillel maintaining that he must pay its depreciated value.

Baba Mezi'a 43b

Hence it is obvious [that it means] as when it is withdrawn from its owner's possession.¹ Shall we [then] say that Rabbah rules in accordance with Beth Shammai?² — Rabbah can answer you: In the case of appreciation, none dispute.³ When do they dispute? In the case of depreciation:⁴ Beth Shammai maintain, [unlawful] use need involve no loss,⁵ and when it depreciates it is in his possession that it does so;⁶ whereas Beth Hillel maintain that [unlawful] use must involve loss,⁷ and when it depreciates, it does so in the possession of its owner.⁸ If so, when Raba said, [Unlawful] use need not involve damage,⁹ are we to say that Raba ruled as Beth Shammai? — But we treat here of, e.g., one who moves it in order to fetch down birds [whilst standing] upon it, and they differ in respect to an unauthorized borrower. Beth Shammai maintain: An unauthorized borrower is a robber, and therefore, when it depreciates, it does so in his possession. Whereas Beth Hillel hold that an unauthorized borrower is not a robber, and when it depreciates, it does so in the owner's possession. If so, when Raba said, An unauthorized borrower, in the view of the Rabbis, is accounted a robber,¹⁰ are we to say that Raba ruled as Beth Shammai? — But there they differ in respect of the increments of a stolen article.¹¹ Beth Shammai maintain: The increments in the stolen article belong to the robbed person;¹² whereas Beth Hillel hold that they belong to the robber.¹³ And [they differ] in the [same] controversy as the following Tannaim. For it has been taught: If one steals

a ewe and shears it, or it bears young, he must pay for that itself, its shearings, and its young: this is R. Meir's view. R. Judah said: The stolen article returns in its original state.¹⁴ This [interpretation] may also be inferred, because it is stated, BETH SHAMMAI MAINTAIN, HE IS PUNISHED IN RESPECT OF DECREASE AND INCREASE. BETH HILLEL RULE: [HE MUST PAY] AS WHEN IT IS WITHDRAWN.¹⁵ This proves it.

R. AKIBA SAID: AS WHEN THE CLAIM IS MADE. Rab Judah said in Samuel's name: The *halachah* agrees with R. Akiba. Yet R. Akiba admits in a case where there are witnesses.¹⁶ Why? Because Scripture saith, He shall give it unto him to whom it appertaineth, in the day of his trespass offering,¹⁷ and since there are witnesses, he incurs a trespass offering at that very moment. R. Oshaia said to Rab Judah: Rabbi, you say so. But R. Jose said in R. Johanan's name thus: R. Akiba differed even in a case where there are witnesses. Why? Because Scripture saith, He shall give it unto him to whom it appertaineth, in the day of his trespass offering,¹⁸ and it is the court that declares him liable to a trespass offering.¹⁹ R. Zera said to R. Abba b. Papa: When you go there [sc. to Palestine], take a circuitous route by the promontory of Tyre and make your way up to R. Jacob b. Idi and ask him if he had heard from R. Johanan whether the *halachah* is as R. Akiba or not. He answered him: Thus did R. Johanan say, The *halachah* is as R. Akiba in every case.²⁰ What is meant by 'in every case?' — Said R. Ashi: That you should not say, That is only if there are no witnesses, but not if there are. Alternatively, it may also refer to the case where he [the thief] returned it to its place and it was injured, [and 'in every case' was said] in opposition to R. Ishmael, who maintained: The owner's knowledge is unnecessary;²¹ therefore we are informed that the owner's knowledge is required.²² But Raba said: The *halachah* is as Beth Hillel.

MISHNAH. IF A MAN INTENDS TO MAKE USE OF A BAILMENT:²³ BETH SHAMMAI

BABA METZIAH – 28b-58a

MAINTAIN, HE IS [FORTHWITH] RESPONSIBLE [FOR ALL ACCIDENTS]; BUT BETH HILLEL RULE, HE IS NOT RESPONSIBLE UNTIL HE [ACTUALLY] MAKES USE THEREOF, FOR IT IS SAID, [THEN THE MASTER OF THE HOUSE SHALL BE BROUGHT UNTO THE JUDGES, TO SEE] WHETHER HE HAD PUT HIS HAND UNTO HIS NEIGHBOUR'S GOODS.²⁴ IF HE [THE BAILEE] INCLINES THE BARREL [GIVEN INTO HIS KEEPING] AND TAKES A REBI'ITH²⁵ [OF WINE] THEREFROM, AND [LATER ON] IT IS BROKEN, HE MUST PAY ONLY FOR THE REBI'ITH. BUT IF HE LIFTS IT AND TAKES A REBI'ITH FROM IT AND IT IS BROKEN [AFTER A TIME], HE MUST PAY ITS ENTIRE VALUE.²⁶

1. Lit., 'house'. And they dispute the case if it subsequently appreciated. Beth Shammai maintain that he must pay its value as when he disposes thereof, whilst Beth Hillel hold that he must pay its value at the time of the theft.
2. Whereas it is a fixed principle that the *halachah* always agrees with Beth Hillel.
3. That it must be paid for as at the time of disposal, 'AS WHEN IT IS WITHDRAWN,' meaning when it is withdrawn from the world.
4. And as for the general rule, all robbers pay as at the time of robbery — that is only in the case of real robbery; here, however, it did not come into his hands at the outset through robbery but as a bailment.
5. Therefore the bailee is accounted a robber from the time he takes it, when it immediately passes into his ownership, in the sense that he is henceforth responsible for it.
6. Therefore he must pay its worth at the time of taking.
7. But mere taking it for use does not make the trustee a thief.
8. And he therefore pays according to the value at the time he disposes of it.
9. *Supra* 41b.
10. B.B. 88a.
11. When the Mishnah speaks of increase and decrease, it does not refer to a rise or fall in the market price of the article, but to profit and loss attached thereto. E.g., a sheep is stolen, bearing a certain quantity of wool, and after it has grown more, the thief shears it; shorn, it shows a decrease on its state when stolen. Likewise, if the sheep conceives whilst in the thief's possession and lambs, thus showing an increase.
12. Therefore when repayment is made, the shearings and lamb must also be paid for.
13. Hence he must pay the animal's worth at the time of the theft.
14. I.e., he is only responsible for its value at the time of the robbery.
15. But it does not state, He is punished in respect of depreciation and appreciation, which would connote a fall or rise in market price.
16. Of the theft. Then he must pay its value at the time of the theft.
17. Lev. V, 24. This is interpreted: he shall give it (i.e., pay for it) ... as on the day he incurs a trespass offering.
18. Interpreting as before.
19. Hence he must pay its value at the time of the trial.
20. Lit., 'always'.
21. Having returned it whole, though not informing the owner, he ceases to be responsible for it.
22. Hence he remains responsible for its injury, since he did not inform the owner of its return, in accordance with the view of R. Akiba, *supra* 40b-41a.
23. I.e., expresses his intention in the presence of witnesses.
24. Ex. XXII, 7, 10; the first verse refers to a gratuitous bailee; the second to a paid trustee: Then shall an oath of the Lord be between them both, that he hath not put his hand unto his neighbor's goods.
25. A quarter *log*.
26. A depositary is not responsible for accidents after putting a bailment to use unless he takes possession of it by drawing it to himself or lifting it up. Hence, if he merely inclines the barrel, it does not pass into his possession to render him responsible, and he must pay only for the actual amount he took. But if he lifts it up, it becomes his, and he is responsible for the whole of it.

Baba Mezi'a 44a

GEMARA. How do we know it? — For our Rabbis taught: [Then the master of the house shall be brought unto the judges ...] For all manner of trespass:¹ Beth Shammai maintain: This teaches that he is liable on account of [unlawful] intention just as for an [unlawful] act. But Beth Hillel say: He is not liable until he actually puts it to use, for it is said, [to see] whether he have put his hand unto his neighbor's goods. Said Beth Shammai to Beth Hillel: But it is already stated, For any word² of trespass! Whereupon Beth Hillel retorted to

BABA METZIAH – 28b-58a

Beth Shammai: But it is already stated, [to see] whether he have put his hand unto his neighbor's goods! If so, what is the teaching of, for any word of trespass? For I might have thought: I know it only of himself;³ whence do I know [that he is liable if] he instructed his servant or his agent [to use it]? From the teaching, For any word of trespass.⁴

IF HE INCLINES THE BARREL, etc. Rabbah said: This was taught only if it is broken: if, however, it soured, he must pay for the whole of it. Why? It was his arrows that affected it.⁵

BUT IF HE LIFTS IT, AND TAKES [A REBI'ITH] FROM IT, etc. Samuel said: 'TAKES' is not meant literally, but once he lifts it up in order to take [he is henceforth responsible] even if he does not take it. Shall we say that in Samuel's opinion [unlawful] use need not involve loss?⁶ — I will tell you: That is not so, but here it is different, because he desires that the whole barrel shall be subservient to this rebi'ith.⁷

R. Ashi propounded: What then if he lifts up a purse in order to take a *denar* therefrom? Is it wine alone that can be guarded only by means of other wine,⁸ whereas a *zuz* can be guarded [by itself]; or perhaps, the care given to a purse is not the same as that of a [single] *denar*?⁹ The question stands.

CHAPTER IV

MISHNAH. GOLD ACQUIRES SILVER, BUT SILVER DOES NOT ACQUIRE GOLD; COPPER ACQUIRES SILVER, BUT SILVER DOES NOT ACQUIRE COPPER; CANCELLED COINS ACQUIRE CURRENT ONES, BUT CURRENT COINS DO NOT ACQUIRE CANCELLED COINS; UNCOINED METAL ACQUIRES COINED, BUT COINED METAL DOES NOT ACQUIRE UNCOINED METAL; MOVABLES ACQUIRE COINS, BUT COINS DO NOT ACQUIRE MOVABLES. THIS IS THE GENERAL PRINCIPLE:¹⁰ ALL MOVABLES ACQUIRE EACH OTHER. E.G., IF [A] DREW

INTO HIS POSSESSION [B'S] PRODUCE WITHOUT PAYING HIM THE MONEY, HE CANNOT RETRACT. IF HE PAID HIM THE MONEY BUT DID NOT DRAW INTO HIS POSSESSION HIS PRODUCE, HE CAN WITHDRAW. BUT THEY [SC. THE SAGES] SAID: HE WHO PUNISHED THE GENERATION OF THE FLOOD AND THE GENERATION OF THE DISPERSION,¹¹ HE WILL TAKE VENGEANCE OF HIM WHO DOES NOT STAND BY HIS WORD. R. SIMEON SAID: HE WHO HAS THE MONEY IN HIS HAND HAS THE ADVANTAGE.¹²

GEMARA. Rabbi¹³ taught his son R. Simeon: Gold acquires silver. Said he to him: Master, in your youth you did teach us, Silver acquires gold; now, advanced in age, you reverse it and teach, Gold acquires silver. Now, how did he reason in his youth, and how did he reason in his old age? — In his youth he reasoned: Since gold is more valuable, it ranks as money; whilst silver, which is of lesser value, is regarded as produce: hence [the delivery of] produce effects a title to the money. But at a later age he reasoned: Since silver [coin]

1. Ibid. 8.
2. E.V., 'all manner'.
3. I.e., if the trustee himself puts the deposit to use.
4. [He is liable for a mere verbal order (R. Han.)]
5. By taking a small quantity he helped it to sour, because a full barrel does not sour as quickly as one that is not full (R. Han.).
6. For there is no loss if he merely lifts it up.
7. When he lifts the barrel up to take a quantity, he is regarded as having already taken it and put it back, because being in a full barrel it is less likely to sour; thus he makes the whole of the rest subservient to the quantity he desired, and is using the rest in that capacity. This renders him responsible for the whole.
8. As explained on p. 260, n. 7.
9. He knows that he will give greater care to a whole purse than to one coin, and therefore here too he may be regarded as having actually taken the coin and replaced it, so that it should be better kept, in which case the whole purse is made subservient to the *denar*.
10. This is rightly omitted in Alfasi and Asheri, since the passage that follows does not

BABA METZIAH – 28b-58a

summarize the principle upon which the foregoing is based.

11. V. Gen. XI, 1-10.
12. Lit., 'his hand is uppermost'. The general principle of this Mishnah is this: When one makes a purchase, the delivery of the money does not complete the transaction, and either party can withdraw from the bargain; on the other hand, once the goods are taken, the transaction is absolute and irrevocable, and neither party can withdraw, the purchase price being regarded henceforth as an ordinary debt caused by a loan. Now, in ancient days, when the value of coins depended on their weight and general condition, coins of one metal or denomination might themselves be purchased with other coins. Consequently, in such a transaction, it becomes necessary to determine which is to be regarded as the money and which as the goods. The Mishnah proceeds on the principle that those coins which have greater currency than others rank as money vis a vis the others, which are then regarded merely as movables. Now, silver coin had greater currency than gold coin — probably because the latter represented an unusually large sum of money in an agricultural community where money is generally scarce. Consequently, if one purchase gold *denarii* for silver *denarii*, as soon as he takes possession of the gold, the bargain is irrevocable and he is bound to render the silver coins to the vendor, i.e., the gold of the vendor gives him a legal title to the silver. On the other hand, if he first takes possession of the silver, the bargain is not concluded; hence revocable. On the same lines, copper coin rank as money vis a vis silver, so that when the former is taken, the transaction is legally closed; but not the reverse. The same principle operates in the other clauses of the Mishnah dealing with the purchase of money. In the case of barter, however, as soon as one party takes possession of the article that is bartered, the transaction is consummated, and neither party may withdraw.
13. I.e., R. Judah the Prince, who compiled the Mishnah.

Baba Mezi'a 44b

is current, it ranks as money; whilst gold, which is not current, is accounted as produce, and so the produce effects a title to the money.

R. Ashi said: Reason supports the opinion held in his youth, since it [the Mishnah] teaches: COPPER ACQUIRES SILVER. Now, should

you agree that silver ranks as produce vis a vis gold, it is well: hence it states, COPPER ACQUIRES SILVER, to show that though it is accounted as produce in relation to gold, it ranks as money in respect of copper; but should you maintain that silver ranks as money in respect of gold, then [the question arises:] If in relation to gold, which is more valuable, you say that it ranks as money, is it necessary [to state so] in relation to copper, seeing that it is both more valuable and also current?¹ — It is necessary:² I might have thought that the [copper] coins,³ where they do circulate, have greater currency than silver:⁴ therefore we are taught that since there is a place where they have no circulation,⁵ they rank as produce.

Now, R. Hiyya too regards gold [coin] as money. For Rab once borrowed [gold] *denarii* from R. Hiyya's daughter. Subsequently, *denarii* having appreciated, he went before R. Hiyya.⁶ 'Go and repay her current and full-weight coin,' he ordered. Now, if you agree that gold ranks as money, it is well.⁷ But should you maintain that it is produce, it is the equivalent of [borrowing] a *se'ah* for a *se'ah* [to be repaid later], which is forbidden?⁸ — [That does not prove it, for] Rab himself possessed [gold] *denarii* [when he incurred the debt], and that being so, it is just as though he had said to her, 'Lend me until my son comes', or 'until I find the key.'⁹

Raba said: The following Tanna is of the opinion that gold is money. For it has been taught: The *perutah* which they [the Sages] spoke of is an eighth of an Italian *issar*.¹⁰ What is the practical bearing thereof? In respect of a woman's *kiddushin*.¹¹ The *issar* is a twenty-fourth of a silver *denar*. What is the practical bearing thereof? In respect to buying and selling.¹² A silver *denar* is a twenty-fifth of a gold *denar*. What is the practical bearing thereof? In respect to the redemption of the firstborn.¹³ Now, if you agree that it [gold] is accounted as money, it is well: the Tanna thus assesses [the coins] on something of fixed value.¹⁴ But should you say that it ranks as

BABA METZIAH – 28b-58a

produce; can the Tanna give an assessment on the basis of that which rises and falls in value? Sometimes the priest may have to give him change.¹⁵ whilst at others he [the father] will have to give an additional sum to the priest!¹⁶ Hence it is proved that it ranks as money. This proof is conclusive.

We learnt elsewhere: Beth Shammai say: One must not turn [silver] *sela's* into gold *denarii*; but Beth Hillel permit it.¹⁷ Now, R. Johanan and Resh Lakish [differ thereon]: One maintains that the dispute concerns exchanging *sela's* for *denarii*. Beth Shammai holds that silver [coin] ranks as money, whereas gold counts as produce, and money may not be redeemed by produce.¹⁸ Whilst in the opinion of Beth Hillel, silver [coin] ranks as produce and gold as money, and produce may be redeemed by money. But all agree that [actual] produce may be redeemed by [gold] *denarii*. Why so? By analogy with silver [coin] on the view of Beth Hillel. [Thus: consider] silver according to Beth Hillel, though ranking as produce vis a vis gold, it nevertheless counts as money in respect to [real] produce. So is gold too according to Beth Shammai; though accounted as produce vis a vis silver, it ranks as money in respect to [real] produce. But the other maintains: The dispute concerns the exchanging of [real] produce for [gold] *denarii* too,¹⁹

Now, on the view that the dispute concerns the exchanging of [real] produce for [gold] *denarii* too, [then] instead of stating their dispute in reference to the exchange of *sela's* for *denarii*, let them state it with reference to [actual] produce for *denarii*!-If the dispute were thus taught, I might have thought that it applies only to the exchange of produce for *denarii*; but as for exchanging *sela'im* for *denarii*, Beth Hillel concede to Beth Shammai that gold vis a vis silver ranks as produce and that [silver] may consequently not be redeemed [by gold]: therefore we are informed [that it is not so].

It may be proved that it is R. Johanan who holds that it may not be redeemed thus.²⁰ For R. Johanan said:

1. R. Ashi thus attempts to prove that the second clause of the Mishnah is more in consonance with the first clause on Rabbi's early view, since on his subsequent opinion the whole of the second clause would be superfluous. Rashi observes that the second clause will be in the form taught to Rabbi by R. Meir his teacher, it being a Talmudic principle that an anonymous Mishnah agrees with R. Meir. Cf. however, Weiss, Dor II, ch. 22.
2. I.e., even if silver coin be accounted as money in respect to gold, the second clause of the Mishnah must be stated.
3. [H], the plural of the more familiar [H].
4. Cf. p. 262, n. 3, on currency of coins of small value.
5. The actual place is not given.
6. To consult him what to do, so as not to infringe the prohibition of interest.
7. Notwithstanding its appreciation, he would be returning money of the same nominal value as that which he borrowed.
8. Lest it appreciates in the meantime; v. *infra* 75a.
9. V. *infra* 75a.
10. The Roman *assarius*.
11. V. [Glos.](#) This *kiddushin* must not be less than a *perutah* or its equivalent (Kid. 2a); hence it must be defined.
12. Rashi: If one sold a *denar* for more than twenty-four *issars*, the vendee was cheated, and if the overcharge amounted to a sixth (v. *infra* 49b), it is returnable. Tosaf. rejects this, because in Kid. 12a it is stated that the *issar* was variable sometimes rising in value and sometimes falling, and therefore explains: If one sold an article for 24 *issars*, when these were worth a *denar*, and subsequently, before payment was made, the *issar* depreciated to 32 to the *denar*, the buyer must pay the full *denar* or 32 *issars*.
13. Which, according to the Bible, is five *shekels* = 30 silver *denarii*. So that if the father gave the priest a gold *denar*, he must return him five silver *denarii*.
14. I.e., the gold *denar* is always theoretically reckoned at 25 silver *denarii*, and the redemption is assessed accordingly. So that even if the gold *denar* was actually worth 20 *denarii*, we do not regard the gold as having depreciated, but the silver as having appreciated; therefore, if the father gave a gold *denar*, he is still entitled to a proportionate return, which is now four *denarii*,

BABA METZIAH – 28b-58a

notwithstanding that the gold *denar* is now nominally valued at 20 silver *denarii*, the exact sum required for redemption.

15. Of a gold *denar*, sc. when it stands at more than twenty silver *denarii*.
16. How then can the Tanna state that in respect of redemption the gold *denar* is always valued at 25 silver *denarii*?
17. M. Sh. II, 7. A *sela'*= 4 *denarii*. The reference is to the second tithe, which had to be consumed in Jerusalem; if however, it was too burdensome to carry thither, it might be redeemed by money, which was to be expended there (Deut. XIV, 22-26). Now, if the produce had been thus exchanged for silver *sela's*, Beth Shammai rule that these silver coins may not be re-exchanged for gold *denarii* to lighten the burden still further. Beth Hillel, however, permit this, and the Talmud proceeds to discuss this difference of opinion.
18. Since the Bible only authorizes the reverse (ibid. 25).
19. I.e., Beth Shammai regard gold as produce absolutely, even without reference to any other commodity, and therefore one may not redeem other produce therewith.
20. I.e., that in the opinion of Beth Shammai not even real produce may be redeemed by gold *denarii*.

Baba Mezi'a 45a

A *denar* may not be lent for a *denar* [to be returned].¹ Now, which *denar* is meant? Shall we say, a silver *denar* for a silver *denar* [to be repaid]: but is there any view that it does not rank as money even in relation to itself?² Hence it must obviously mean a gold *denar* for a gold *denar*. Now, with whom [does this ruling agree]? If with Beth Hillel — but they maintain that it ranks as coin! Therefore it must surely be in accordance with Beth Shammai, thus proving that it was R. Johanan who held that such redemption is not permissible! — No. In truth, I may assert that R. Johanan ruled that such redemption may be made, but a loan is different. For since the Rabbis treated it as produce in reference to buying and selling,³ as we say that it is that [sc. gold] which appreciates or depreciates,⁴ it ranks as produce in reference to loans too. This is reasonable too. For when Rabin came,⁵ he said in R. Johanan's name: Though it was ruled that a *denar* may not be lent for a *denar*

[to be repaid], yet the second tithe may be redeemed therewith. This proves it.⁶

Come and hear: If one changes⁷ a *sela's* worth of second tithe [copper] coins, Beth Shammai rule: the full *sela's* worth of coins must be changed.⁸ But Beth Hillel rule: [He may change] only a shekel's worth into silver, and retain a shekel's worth of coins.⁹ Now, if in Beth Shammai's opinion redemption may be made with [copper] perutahs,¹⁰ can there be a doubt that it may be redeemed with gold? — Copper coins are different, for where they circulate, they have greater currency.¹¹

Another version puts it thus: R. Johanan and Resh Lakish [differ thereon]: One maintains that the dispute concerns changing *sela's* for [gold] *denarii*. Beth Shammai hold that 'the money' implies the first money, but not the second;¹² whereas Beth Hillel argue, 'the money ... money' implies extension,¹³ thus including even a second [redemption of] money. But all agree that [actual] produce may be redeemed by [gold] *denarii*, since it [sc. the gold *denarii*] is, after all still the first money. Whilst the other maintains: The dispute concerns the exchanging of [real] produce for [gold] *denarii* too.¹⁴ Now, on the view that the dispute refers only to the exchange of *sela's* for *denarii*, instead of stating the dispute in reference to the exchange of *sela's* for *denarii*, let it be stated in reference to the exchange of *sela's* for *sela's*!¹⁵ — If the dispute were stated thus, I might have thought that it applies only thereto, but as for exchanging *sela's* for [gold] *denarii*, Beth Hillel concede to Beth Shammai that gold ranks as produce in respect to silver, and therefore such redemption is not permissible. Hence we are taught otherwise.

Come and hear: If one exchanges a *sela'* of second tithe in Jerusalem,¹⁶ Beth Shammai say: He must exchange the whole *sela'* for [copper] coins.¹⁷ But Beth Hillel rule: He must change it into a silver *shekel*, and [retain] a shekel's worth of [copper] coins.¹⁸ Now, if silver may be redeemed with [copper] Perutahs, and we do not say. [It may be

BABA METZIAH – 28b-58a

exchanged into] money once, but not twice: are we to say it in respect of gold, which is more valuable?¹⁹ — Said Raba: Do you raise an objection from Jerusalem! Jerusalem is different, since it is written thereof, And thou shalt bestow that money [sc. in Jerusalem] for whatsoever thy soul lusteth after, for oxen, for sheep, [etc.].²⁰

Come and hear: 'If one changes a sela's worth of second tithe [copper] coins, Beth Shammai rule: the full sela's worth of coins must be changed.²¹ But Beth Hillel rule: He must change only a shekel's worth into silver, and retain a shekel's worth of coins?'²² — Hence [we must assume that] all agree, that 'the silver ... silver' is an extension, including even a second redemption of money.²³ But if a dispute between R. Johanan and Resh Lakish was stated, It was stated thus: One maintains: Their dispute concerns the changing of *sela's* into [gold] *denarii* only. Beth Shammai hold: We forbid this as a precautionary measure,

1. Lest it appreciates in the interval, and so the injunction of usury be violated.
2. Since the aforementioned injunction applies only to produce, not coin.
3. v. Mishnah: GOLD ACQUIRES SILVER.
4. I.e., when the rate of exchange between silver and gold varies, we regard the change as having taken place in the value of the gold, the value of the silver remaining unaltered. That follows from the Mishnaic ruling. GOLD ACQUIRES SILVER, and it is axiomatic that variation is to be attributed to the produce, not the money.
5. From Palestine to Babylon.
6. The distinction between redemption and loan.
7. Heb. [H] denotes to break up, hence primarily to change coins into others of smaller denomination. By extension, however, it came to mean any changing of coin, even for those of a larger denomination, and is thus used here.
8. I.e., if one has that amount of coins for changing, he must change it all for a single *sela'*. Beth Shammai insist that the whole of the exchange must be done at once, not in two or three times, because the banker takes his commission on every single transaction, and so there is less left for spending in Jerusalem (Tosaf.); v. next note. But from Rashi it would appear that Beth Shammai's ruling is merely permissive, and is in contradistinction to the view of Beth Hillel. In that case, the passage

should be translated: the full *sel'a's* worth of coins may be changed.

9. For as soon as he enters Jerusalem, he needs small change-perutahs-to buy food. This will cause a general rush on the banker, the rate of exchange will advance, and the purchasing power of the money will be diminished, with the consequent reduction in the quantity of comestibles to be purchased and consumed as second tithe; v. 'Ed. I, 9.
10. Since Beth Shammai discuss the changing of copper coins of the second tithe into silver, they must admit that in the first place the produce was redeemed by these copper coins.
11. So that though it may be redeemed for copper, it is nevertheless possible that it may not be redeemed with gold, in accordance with one of the views stated above.
12. The reference is to Deut. XIV. 25: Then thou shalt turn it into money and bind up the money in thine hand, and shalt go unto the place which the Lord thy God shall choose. 'The Money', in the opinion of Beth Shammai, implies that the first money for which the second tithe was redeemed must be carried to Jerusalem, but not the second: i.e., once it was redeemed, the redemption money may not be exchanged for other coins.
13. 'Money' is stated several times in the passage: *Thou shalt turn it into money and bind up the money ... And thou shalt bestow that money...* this repetition implies an extension of changing. I.e., that the money may be changed or redeemed more than once.
14. Beth Shammai regard gold as produce, for which the agricultural products cannot be redeemed.
15. Since here too it is a second redemption of money, which, according to Beth Shammai, is forbidden.
16. Having brought *sela's* to Jerusalem, he now proceeds to change them into smaller coins for current use.
17. v. p. 267. n. 4, which applies here too.
18. For he may not stay long enough in Jerusalem to expend it all, in which case he must leave the rest there until his next visit. But copper coins are liable to corrosion, and therefore unsuitable for preserving; whilst should he wish to change them back into silver at the end of his stay, he must pay commission again (Ed. 1, 10); v. p. 267, n. 4.
19. And consequently has a greater claim to be regarded as produce (v. p. 262, n. 3). Tosaf. observes: It is obvious even to the questioner that a distinction must be drawn between Jerusalem and elsewhere. Outside Jerusalem, the main form of exchange is that of produce for perutahs or *sela's*, to lighten the burden of

BABA METZIAH – 28b-58a

carrying, whereas in Jerusalem it is the reverse: the *sela's* being exchanged either for foodstuffs direct or into *perutahs*, for day-to-day purchases. Consequently, this cannot be urged as an objection against the first version of the difference between Resh Lakish and R. Johanan, or against the view expressed in the second version that Beth Shammai and Beth Hillel differ even in respect of the exchange of produce for gold *denarii*, the dispute centering on the question whether gold ranks as produce or coin. But it is raised as an objection against the view that Beth Shammai permit only one exchange into money, but not a further exchange; this difficulty is urged on the hypothesis that in that respect there is no difference between Jerusalem and elsewhere, to which Raba replies (v. text) that here too a distinction is drawn.

20. Deut. XIV, 26: i.e., every form of exchange is permitted, even into coins of smaller denominations, for greater convenience.
21. v. p. 267. n. 4.
22. Though this does not refer to Jerusalem, both Beth Shammai and Beth Hillel agree that a second money change is permissible.
23. v. p. 268, n. 2.

Baba Mezi'a 45b

lest one postpone his pilgrimages [to Jerusalem], for he may not have the full number of silver coins¹ required for a [gold] *denar*, and so will not take them up [thither];² whilst Beth Hillel are of the opinion that we do not fear that he may postpone his pilgrimages, for even if they are insufficient to change into a *denar*, he will still take them up.³ But all agree that produce may be redeemed with [gold] *denarii*, for since it rots [if kept long], he will certainly not keep it back. But the other maintains: The dispute refers even to the exchange of produce for *denarii*.⁴

Now, according to the version that by Biblical law it [the exchange] is indeed permitted, but that the Rabbis forbade it, it is well: hence he [the Tanna] teaches 'he may turn'...'he may not turn.'⁵ But according to the version that they differ in Scriptural law, he should have stated, 'One can redeem'...'one cannot redeem!'⁶ This difficulty remains.

It has been stated: Rab and Levi-one maintains: Coins can effect a barter; the other rules that they cannot — 7 Said R. Papa: What is his reason who maintains that a coin cannot effect a barter? Because his [the recipient's] mind is set on the legend thereof,⁸ and the legend is liable to cancellation.⁹

We learnt: GOLD ACQUIRES SILVER. Does that not mean, even in virtue of barter, thus proving that a coin may effect a barter? — No; only in virtue of payment.¹⁰ If so, instead of stating, GOLD ACQUIRES SILVER, he should have said, 'Gold sets up a liability for silver'!¹¹ — Learn: 'Gold sets up a liability for [etc.]'.¹² Reason supports this too;¹³ since the second clause states. SILVER DOES NOT ACQUIRE GOLD. Now, should you agree that it means, 'in virtue of payment.' it is well: thus we say, gold ranks as produce, silver as money, and money cannot effect a title in respect of produce. But should you maintain that the reference is to barter — let each acquire the other!¹⁴ Moreover, it has been taught: Silver does not acquire gold: E.g.. If one sells twenty-five silver *denarii* for a gold *denar*, even if the other party takes possession of the silver, he does not acquire it until he [the first] takes possession of the gold. Now, should you agree that the reference is to payment, it is well: therefore he gains no title thereto. But if you maintain that this treats of barter, let him acquire it! — What then: as payment? If so, consider the first clause: Gold acquires silver: e.g. If one sold a gold *denar* for twenty-five silver *denarii*, immediately the other party takes possession of the gold, the ownership of the silver vests [in the first] wherever it be. Now, should you agree that the reference is to barter, it is well: hence it is taught, the ownership of the silver vests [in the first] wherever it be.¹⁵ But should you maintain that it treats of payment, instead of saying thus, he [the Tanna] should have taught: The man [the recipient of the gold] becomes liable [for the silver]!¹⁶ — Said R. Ashi: After all, it refers to payment, and what is meant by 'wherever it be', is 'just as it is,' viz., as he stipulated. [Thus:] If he had stated. 'I will give you [coins]

BABA METZIAH – 28b-58a

out of a new purse',¹⁷ he cannot give him [coins] out of an old purse,¹⁸ even if they are superior.¹⁹ Why? Because he can say, 'I need them to store away.'²⁰

R. Papa said: Even on the view that a coin cannot effect a barter, — though indeed it cannot effect a barter, it can nevertheless be acquired through barter.²¹ For this may be compared to produce, according to R. Nahman's view. Thus, though in R. Nahman's view produce cannot effect a barter,²² yet it can surely be acquired through barter; so coin too is not [in any way] different.

An objection is raised: If one is standing in a granary and has no money with him, he may say to his friend, 'Behold, this produce is given to you as a gift;'

1. Lit., 'zuzim'.
2. A gold *denar* was a large sum of money, and might exceed the whole value of the second tithe. Hence, if one were permitted to change the silver *sela's* into gold, he might postpone the pilgrimage altogether until another harvest.
3. The weight of these silver coins will certainly not prevent anyone from going to Jerusalem.
4. Even there the fear of postponement is entertained.
5. *Supra* 44b.
6. One may turn, etc., (lit., 'do') implies that such redemption is possible, and the only question is whether it is permitted (by the Rabbis) or not. But if it is a question of Biblical law, then the dispute is whether such a redemption is effective or not, for if e.g. *sela's* cannot be redeemed by *denarii*, they still retain their sanctity even if so redeemed.
7. Halifin = barter, exchange. It is a technical term, connoting delivery of a small object representing a larger one which is being bartered. Upon this delivery, the recipient becomes liable for the object he is to give in exchange, though he has not yet received the real object of barter, the transaction having been consummated by this delivery. Now, as was stated in the Mishnah, in a purchase the delivery of the money does not affect the transaction. That, however, may be only if it is delivered in payment. But what if the transaction is made as barter instead of purchase, i.e. money is bartered for goods: can a coin received by one party in exchange for goods, or as a mere token of delivery,

consummate the transaction? This is disputed by Rab and Levi.

8. I.e., the figure which is stamped on the coin, and which gives it its value. Now, when an ordinary object is used as halifin, the recipient accepts its own intrinsic value as symbolical of the whole. But when a man receives a coin, he does not think of the intrinsic value of the metal, but merely of its worth on account of the legend it bears.
9. The State may cancel that particular coin. In that case, nothing of value has been given at all, since, as stated in the previous note, the value of the metal is disregarded. Symbolical delivery, however, can be effected only by an article that has some intrinsic value.
10. I.e., when it is delivered as actual payment for the silver coin, but not as a mere symbolical delivery of barter.
11. GOLD ACQUIRES SILVER implies that immediately after the gold coin is delivered, the recipient's silver coin vests in the other party, wherever it be; and that indeed is the effect of a transaction consummated as barter. If, however, the gold coin is legally regarded as payment for the article, its effect is merely to create an obligation upon the recipient of an agreed amount of silver, which then ranks as an ordinary debt. In that case, the Mishnah should have stated, GOLD SETS UP A LIABILITY FOR SILVER.
12. Though this type of answer frequently means that the text of the Mishnah actually needs emending (v. Weiss, Dor. 111, 6 n. 14) that is probably not so here. The answer simply states that the Mishnaic phrase GOLD ACQUIRES SILVER means, 'Gold sets up a liability for silver.'
13. Sc. that the Mishnah refers to the delivery of gold coin as payment, not as barter.
14. Since they are not regarded as coins at all, what is the difference between gold and silver?
15. V. p. 271, n. 2.
16. V. n. 2.
17. I.e., new coins.
18. I.e., old coins.
19. E.g. better cast or weightier.
20. Hence I require new coins, as old ones may become moldy. According to this interpretation, the Baraita does in fact refer to the recipient's liability.
21. I.e., once the owner of the coin takes possession of an object either delivered to him symbolically or in exchange against it, the ownership of the money vests in the other party.
22. I.e., one cannot make a symbolical delivery of fruit and thereby acquire the object that is being bartered. — For this view of R. Nahman,

BABA METZIAH – 28b-58a

and the opposing view of R. Shesheth v. *infra* 47a.

Baba Mezi'a 46a

then he may say. 'Let it [sc. the produce] be redeemed for the money I have at home.'¹ Hence it is because he has no money with him;² but if he had money in his hand he should rather give possession thereof to his friend through *meshikah*,³ who would then redeem [the tithe], which is a preferable [procedure], since he would then be a [real] stranger.⁴ But if you say that coin may be acquired through barter, let him [the tithe-owner] give possession of the money [he has at home] to his friend by means of a scarf, and then let the latter redeem it!⁵ — The latter has no scarf. Then let him give possession thereof through soil!⁶ — He has no soil. But it is stated, 'If one is standing in a granary!' — It means in a granary not belonging to him.⁷ And does the Tanna take the trouble of teaching us about a naked man, who possesses nought!⁸ Hence it must surely be that coin cannot be acquired by barter.⁹ This proves it.

And R. Papa himself — retracted, as we find that R. Papa had thirteen thousand *denarii* at Be-Huzae,¹⁰ which he transferred to R. Samuel b. Aha along with the threshold of his house.¹¹ When he [R. Samuel b. Aha] came [with the money], he [R. Papa] went forth to meet him up to Tauak.¹²

[To revert to the original discussion:] And 'Ulla said likewise: Coin cannot effect a barter; and R. Assi said likewise: Coin cannot effect a barter; and Rabbah b. Bar Hanah said likewise in R. Johanan's name: Coin cannot effect a barter. R. Abba raised an objection against 'Ulla: If his carters or laborers demanded [their wages] from a man in the market place, and he said to a money-changer, 'Give me copper coins for a *denar*, and I will pay them,¹³ whilst I will return you a denar's worth¹⁴ and a tressis¹⁵ Out of the coins which I have at home:' then if he has money at home, it is permitted; otherwise, it is forbidden.¹⁶ Now, should you think that coin cannot effect

a barter, it is a loan, and hence forbidden!¹⁷ Thereupon he was silent. Said he to him: Perhaps both¹⁸ refer to uncoined metal which bear no imprint.¹⁹ so that they rank as produce, and therefore may be acquired by barter? — Even so, he replied. This too follows from the fact that he [the Tanna] states, a denar's worth and a tressis, but does not state a current *denar*²⁰ and a tressis. This proves it. R. Ashi said: After all, [the return may be] in the character of repayment, though the reference indeed is to uncoined metal: since he has them [at home], it is as though he said, 'Lend me until my son comes, or until I find the key.'²¹

Come and hear: Whatever can be used as payment for another object, as soon as one party takes possession thereof, the other assumes liability, for what is given in exchange.²² 'Whatever can be used as payment for another object' — what is that? Coins: which proves that coins can effect a barter!²³ — Said Rab Judah: It means this:

1. M. Sh. IV. 5. The reference is to second tithe produce, which, as stated above, might be redeemed instead of being taken to Jerusalem. Now, when a man redeemed his own second tithe produce, he had to add a fifth of its value, but not if he redeemed produce belonging to another. Cf. Lev. XXVII, 31: And if a man will at all redeem ought of his tithes, he shall add thereto a fifth part thereof. But, in order to evade this addition, a legal fiction might be resorted to: one gave his Produce to another and then redeemed it, thus redeeming the produce of another-then received it back. The Mishnah quoted gives an instance of such an evasion, which, as may be seen from the phraseology, was recognized and sanctioned by law.
2. That is why the Tanna recommends that particular procedure, explicitly stating that it is to be followed when the tithe owner has no money with him.
3. V. [Glos.](#)
4. I.e., if he gave the money to his neighbor, whilst retaining the produce himself, his friend would actually be redeeming a tithe that is not his own! That is not such a glaring evasion as when a person gives the produce to his neighbor and then redeems it himself, and therefore is preferable; and the Tanna obviously permits

the other procedure only because the latter is impossible, since the tithe owner has not the money with him.

5. Instead of his gifting the produce to him, let his friend give him a scarf or handkerchief as halifin (v. *supra* p. 30. n. 3), for the money, and then redeem the tithe with this money (which need not actually be in his hand for the purpose of redemption), since the Tanna prefers this procedure. Hence it follows that money cannot be acquired through barter.
6. I.e., the tithe owner should have given him a piece of soil, in virtue of which his friend could acquire the money too, it being a general principle that movables may be acquired by dint of real estate (Kid. 26a). — This is not an objection against the view that money can be acquired through barter, but is a difficulty that arises in this Mishnah itself. Rashi recognizes it as such, and though Tosaf. attempts to show that it is indeed an objection against the opinion just mentioned, the reasoning is not very plausible. It is quite possible that this passage bearing on the acquisition of money by dint of real estate is a later editorial interpolation. V. Kaplan. Redaction of the Talmud. Ch. XIII.
7. But merely rented.
8. This reverts to the objection that his friend should have acquired the money through barter, to which the answer was given that he had no scarf wherewith to effect the barter. This of course must mean that he had nothing at all, since any object can be used for the purpose, and so the Talmud objects further: surely the Tanna did not take the pains of stating such an exceptional case!
9. Therefore the tithe owner has no other alternative but that stated in the Mishnah.
10. V. p. 508. n. 2. — R. Papa was a very wealthy man, Cf. *infra* 65a.
11. V. p. 273. n. 5. Since he had recourse to this mode, and did not employ the simple means of barter, he must have withdrawn from the view that coin can be acquired by means of barter. His purpose in transferring the money was that R Samuel b. Aba should bring it to him from Be-Huzae; without such transference, the bailee might have refused to let it out of his possession, as he would then have to bear the risks of the road.
12. V.B.B. (Sonc. ed.) p. 310 and nn.
13. Lit., 'supply them'.
14. The Heb. expression is very peculiar, [H]. At this stage, this was thought to be the equivalent of [H] a good, I.e., current *denar*.
15. A coin worth three *issars*. The text has [H], an incorrect form of [H] (Jast.).
16. It was assumed that the reason is this: If he has money at home, immediately he takes

possession of the coins the money-changer acquires the ownership of the money at home by the process of barter; hence there is no usury, since theoretically the banker does not wait for his money. But this cannot operate if he has no money, in which case it is a pure loan upon which the tressis is interest.

17. V. preceding note; the reasoning there is possible only on the assumption that coin can effect a barter.
18. Sc. that which is given by the banker, and that which is returned.
19. Uncoined pieces of metal were used as small change.
20. V. p. 274. n. 6.
21. V. *infra* 75a. The preceding discussion has assumed that the only basis upon which the transaction is permissible is barter. R. Ashi, however, points out that since it has been explained that the reference is to uncoined metal, the transaction may be viewed and carried out as a loan, the return being actually in the nature of repayment thereof; nevertheless it is permitted for the reason stated.
22. I.e., for the halifin, or barter thereof. When A takes possession of the first, B automatically accepts the risks of the barter; e.g., if an ox is being given in exchange, the full risks of anything happening to it are now borne by B, though it has not actually reached his hand.
23. For if the coins are given in the character of payment, they do not consummate the sale to render the purchaser responsible for all risks. Hence they are used as barter, as the passage stated.

Baba Mezi'a 46b

Whatever is assessed as the value of another object,¹ as soon as one party takes possession thereof, the other assumes liability for what is given in exchange. Reason too supports this — For the second clause teaches: How so? If one bartered an ox for a cow, or an ass for an ox. This proves it. Now, on the original hypothesis that coin [is referred to], what is meant by 'How so?'² — 'It means this: And produce³ too can effect a barter. How so? If one bartered an ox for a cow, or an ass for an ox. Now, that is well on the view of R. Shesheth, who maintained that produce can be employed for barter. But according to R. Nahman, who said: Only a utensil, but not produce, can effect a barter, what is meant by 'How so'?-It

BABA METZIAH – 28b-58a

means this: Money sometimes ranks as [an object of] barter. How so? If one bartered the money of an ox for a cow, or the money of an ass for an ox.⁴ What is R. Nahman's reason?⁵ He agrees with R. Johanan, who said: Biblically Speaking, [the delivery of] money effects a title. Why then was it said that only *meshikah* gives possession? As a precautionary measure, lest he say to him, 'Your wheat was burnt in the loft.'⁶ Now, the Rabbis enacted a preventive measure only for a usual occurrence, but not for an unusual occurrence.⁷ Now, according to Resh Lakish, who maintains that *meshikah* is explicitly required by Biblical law: it is well if he agrees with R. Shesheth: then he can explain⁸ it as R. Shesheth. But if he holds with R. Nahman, that produce cannot effect a barter, whilst money does not affect a title [at all], how can he explain it?⁹ — You are forced to assume that he explains it as R. Shesheth.

We learnt: ALL MOVABLES ACQUIRE EACH OTHER, whereon Resh Lakish said: Even a purse full of money [when bartered] for a purse full of money.¹⁰ — R. Aha interpreted it as referring to the Bithynian and Ancyrean¹¹ *denarii*, one of which was cancelled by the State, and one by local authorities.¹² And both are necessary. For if we were taught this of State cancellation,¹³ that is because such coins have no [official] currency at all; but in the case of local repeal, since these coins circulate in another province, I might regard them as money, which cannot be acquired through barter. Whilst if it were stated in connection with local repeal, that is because they have neither a secret nor an open circulation [within that province]; but when cancelled by the State, since they circulate clandestinely, I might still regard them as coin, which cannot be acquired through barter. Thus both are necessary.¹⁴

Rabbah said in R. Huna's name: [If A said to B,] 'Sell [it] me for these [coins],' he acquires title thereto,¹⁵

1. I.e., anything but money. which needs no assessment.

2. I.e., why is an instance given which does not illustrate the use of money as barter?
3. Heb. [H] whilst this term is generally applicable only to objects of the vegetable kingdom, it may also be used, as here, to denote the animal kingdom too, in contradistinction to [H], articles or utensils of use.
4. E.g. A sold an ox to B for a certain sum of money, and B took possession, thereby becoming indebted to A for the purchase price. Then B said, 'I have a cow which I can give you for the purchase price of the ox,' to which A agreed. Now, notwithstanding that this is theoretically a fresh transaction, viz., B sells a cow to A, the money owing by B for the ox being regarded as though delivered to him by A for the cow, and it is a principle that the delivery of money alone does not consummate a purchase, it does so in this case, and neither can retract; i.e., it is barter, not payment.
5. Why in fact should it be regarded as barter here, though normally money does not affect a title?
6. V. *infra* 47b.
7. I.e., such a transaction as the one under discussion is unusual; consequently, the Biblical law operates. Hence the delivery of the money effects a title, and neither can withdraw.
8. The Mishnah under discussion.
9. For, as we have seen, it involves either that produce can effect a barter, or that money should effect a title.
10. This proves that money can effect a barter.
11. Bithynia, a district in Asia Minor; Ancyra, a city of Galatia in Asia Minor (Jast.). [Zuckermann, *Munzen*, p. 33, on basis of variant [H] for [H] renders: victory ([G]) and Nigerian *denarii*, the former referring to coins of conquered countries recalled by the victorious state; the latter to the coins struck by Pescennius Niger, the rival of Septimius Severus, the currency of which was strictly limited to the province over which he ruled.]
12. The exchange consisted of these coins which, being cancelled, are just the same as any other produce. — Coins repealed by the State might still have a clandestine circulation within a particular province: on the other hand, those cancelled by a local authority would have no currency at all within that province, but a full currency without.
13. That these coins rank as produce.
14. It may be observed that this type of reasoning is generally applied to two Tannaitic statements, as found in a Mishnah or a Baraita. Here, however, it is applied to an Amoraic (R. Aha's) interpretation of what is itself an Amoraic (Resh Lakish's) comment on a Mishnah.

BABA METZIAH – 28b-58a

15. If A was holding an undetermined number of coins in his hand, and suggested that B should sell him an article for them, without stating their value, and B agreed, immediately B takes possession of the coins the transaction is consummated, and neither can retract, though normally the delivery of money does not affect a title. The Talmud proceeds to discuss the reason for this.

Baba Mezi'a 47a

but [the vendor] nevertheless has a claim of fraud against him.¹ 'He acquires a title thereto,' — even though he did not take possession thereof [sc. of the article]: since he [the other party] was not particular [as to the exact amount of money], he [the former] acquires it, for it partakes of the nature of barter. 'Nevertheless, he has a claim of fraud against him,' — because he had said to him, 'Sell it me for these coins.'² R. Abba said in R. Hunas name: [If A said to B.] 'Sell [it] me for these coins,' he acquires a title thereto, and he [the vendor] has no claim of fraud against him.³

Now, it is certain [if money or an article is delivered as] payment, but he [the recipient] is not particular [that the value shall correspond] — then we have just said that he [the giver] acquires title, for it partakes of the nature of barter. But what if it⁴ is delivered as barter, and he [the recipient] is particular?⁵ — Said R. Adda b. Ahaba: Come and hear: If one was standing with his cow [in a market], and his neighbor came and asked him, 'Why [have you brought] your cow [hither]?' — 'I need an ass,' [he replied]. 'I have an ass which I can give you [in return for your cow].' 'What is the value of your cow?' 'So much.' 'What is the value of your ass?' 'So much.'⁶ If the ass-owner drew the cow into his possession, but before the cow-owner had time to draw the ass into his possession it [the ass] died, he [the ass-owner] acquires no title thereto [the cow]. This proves that in the case of barter, where each is particular, no title is gained [unless both take possession]. Said Raba: Does then [the general law of] barter apply only to imbeciles, who are not particular? But indeed in all cases of

barter they are certainly particular; nevertheless, title is acquired [when only one party takes possession].⁷ Here however it means that one said, '[I give you] my ass in return for a cow and a lamb,' and he drew the cow into his possession but not the lamb,⁸ in which case the *meshikah* was not completed.⁹

The Master said: "'Sell it me for these [coins].'" He acquires title thereto, yet he [the vendor] has a claim of fraud against him.' Shall we say that in R. Huna's opinion coin may effect a barter? — No. R. Huna agrees with R. Johanan, who ruled: Biblically speaking, [the payment of] money effects a title. Why then was it said that only *meshikah* gives possession? As a precautionary measure, lest he say to him, 'Your wheat was burnt in the loft.' Now, the Rabbis enacted a preventive measure only for a usual occurrence, but not for an unusual occurrence.¹⁰

Mar Huna, the son of R. Nahman, said to R. Ashi: You have had it reported so.¹¹ But we had it reported thus: And R. Huna said likewise, Coin cannot effect a barter.¹²

Wherewith is a title effected?¹³ — Rab said: With the utensil of the receiver; for the receiver wishes the bestower to take possession,¹⁴ so that he [the latter] in his turn may determine to give him possession. Whilst Levi said: With the utensil of the bestower, as will be explained anon. R. Huna of Diskarta¹⁵ said to Raba: Now, according to Levi, who maintained that it is with the utensil of the bestower, one will be able to acquire land in virtue of a garment, which is tantamount to secured property being acquired along with unsecured, whereas we learnt the reverse: Unsecured chattels may be acquired along with secured chattels!¹⁶ — Said he to him: Were Levi here, he would have smitten you¹⁷ with fiery lashes! Do you really think that the garment gives him possession? [Surely not! but] in consideration of the pleasure he [the bestower] experiences in that the receiver accepts it from him, he wholeheartedly transfers it to him.¹⁸

BABA METZIAH – 28b-58a

This¹⁹ is disputed by Tannaim: Now this was the manner in former times in Israel concerning redeeming and concerning changing, For to confirm all things; a man drew off his shoe, and gave it to his neighbour;²⁰ 'redeeming' means selling, and thus it is written, It shall not be redeemed;²¹ 'changing' refers to barter, and thus it is written, He shall not alter it, nor change it;²² for to confirm all things; a man drew off his shoe, and gave it to his neighbor. Who gave whom? Boaz gave to the kinsman. R. Judah said: The kinsman gave to Boaz.²³

It has been taught: Acquisition may be made by means of a utensil, even if it is worth less than a *perutah*. Said R. Nahman: This applies only to a utensil, but not to produce.²⁴ R. Shesheth said: [It may be done] even with produce. What is R. Nahman's reason? — Scripture saith, 'his shoe': implying, only 'his shoe' [i.e., a utensil], but nothing else. What is R. Shesheth's reason? Scripture saith, for to confirm all things.²⁵ But according to R. Nahman too, is it not written, to confirm all things?—That means, to confirm all things the title to which is to be effected by means of a shoe.²⁶ And R. Shesheth too: is it not written, 'his shoe'?— R. Shesheth can answer you: [That is to teach,] just as his shoe is a clearly defined object, so must everything [used in this connection] be a clearly defined object, thus invalidating half a pomegranate or half a nut, which may not be [employed].²⁷

R. Shesheth, the son of R. Iddi, said: In accordance with whom do we write nowadays, 'with a utensil that is fit for acquiring possession therewith'?²⁸ 'With a utensil' — that rejects the view of R. Shesheth, who maintains: A title may be effected by means of produce. 'That is valid' — this excludes Samuel's dictum, viz.: Possession can be obtained

1. If the money is less than the value of the article by a sixth, the vendor can claim the cancellation of the transaction (v. *infra* 49b).
2. 'Sell' would imply to the vendor that the coins approximated to the value of the object.

3. R. Abba holds that no particular significance attaches to the word 'sell' in such circumstances.
4. Any other object except money.
5. That the object given in symbolical delivery shall have a certain value. Is it still regarded as barter, and therefore the transaction is consummated by this symbolical delivery: or perhaps, since he insists that it shall have a certain value, it is the equivalent of money, and therefore does not affect a title?
6. And the values tallied.
7. Although it may be regarded as the equivalent of money.
8. When the ass died.
9. Lit., 'proper'.
10. V. p. 276. n. 4. the transaction under discussion is likewise most unusual.
11. As above. I.e., you are in doubt whether R. Huna holds that coin may effect a barter, but merely answered that his dictum does not compel us to assume that in his opinion it is so.
12. As a definite statement.
13. When A wishes to gain possession of an article belonging to B by means of a symbolical delivery of an object, Does A have to provide the article for effecting the title, the article he delivers being a symbolical exchange for that which he is to acquire; or B, the object he delivers being symbolical of that which he really intends giving?
14. The object of symbolical recovery.
15. [Deskarah, sixteen parasangs N.E. of Bagdad, Obermeyer, *op. cit.* p. 246.]
16. Unsecured chattels = movables; secured chattels = real estate. The point of R. Huna's observation is this. Since Levi maintains that Possession is effected by means of the bestower's utensil, it follows that if the object transferred is land, the receiver gains Possession thereof in virtue of having taken the bestower's utensil, i.e., the former becomes an appendix to the latter, as it were. But the Mishnah has taught the reverse, viz., when one acquires real estate, he may likewise effect a title to movables that go with it, but not vice versa.
17. Lit., 'he would have brought before you fiery lashes.' He would have threatened you with the ban for having imputed to him a wrong opinion (Rashi).
18. So that when the bestower gives his garment, it is regarded as though he were actually receiving something.
19. The controversy between Rab and Levi.
20. Ruth IV, 7.
21. Lev. XXVII, 33. The reference is to the redemption of a consecrated animal. Evidently, such redemption, if permitted, would be by

BABA METZIAH – 28b-58a

means of money, i.e., buying the animal back (since substitution is separately dealt with, as the Talmud proceeds to show); thus here too, by 'redeeming' selling for money is meant.

22. Ibid. 10.
23. Thus we see the same dispute here as between Rab and Levi.
24. I.e., produce cannot be employed as a symbol of acquisition.
25. Which he translates, for to confirm with all things — i.e., any article can confirm a transaction.
26. I.e., both purchase and barter are consummated by the symbolical delivery of a shoe.
27. Half a pomegranate has no distinctive individuality, which is the idea connoted here by 'clearly defined'.
28. In a document recording a transaction by means of halifin. This phrase is also used in a woman's marriage settlement (*kethubah*).

Baba Mezi'a 47b

by means of maroka.¹ 'For gaining possession' — this rejects Levi's view, that the utensils of the bestower [are required];² therefore it teaches us: to obtain possession, but not to confer possession.³ 'Therewith' — R. Papa said: It is to exclude coins. R. Zebid — others state, R. Ashi — said: It is to exclude objects the benefit of which is forbidden.

Others state: 'Therewith' excludes coins.⁴ 'That is fit'; R. Zebid — others state, R. Ashi — said: That excludes objects whose use is forbidden.⁵ But as for maroka, It is unnecessary [to exclude that].⁶

UNCOINED METAL [ASIMON]⁷
ACQUIRES COINED. What IS ASIMON? — Said Rab: Coins that are presented as tokens⁸ at the baths.⁹ An objection is raised: The second tithe may not be redeemed by asimon, nor by coins that are presented as tokens at the baths; proving that ASIMON is not coins that are presented as tokens at the baths.¹⁰ And should you answer that it is a definition,¹¹ surely the Tanna does not teach thus; [for we learnt:] The second tithe may be redeemed by 'asimon', this is R. Dosa's view. The Sages maintain: It may not. Yet both agree that it may not be redeemed with coins that are

presented as tokens at the baths.¹² But, said R. Johanan. What is 'asimon'? A disk.¹³ Now, R. Johanan follows his views [expressed elsewhere]. For R. Johanan said: R. Dosa and R. Ishmael both taught the same thing. R. Dosa: the statement just quoted. And what is R. Ishmael's dictum? — That which has been taught: And thou shalt bind up the money in thine hand;¹⁴ this is to include everything that can be bound up in one's hand — that is R. Ishmael's view. R. Akiba said: It is to include everything which bears a figure.¹⁵

E. G., IF [A] DREW INTO HIS POSSESSION [B' s] PRODUCE, WITHOUT PAYING HIM THE MONEY, HE CANNOT RETRACT, etc. R. Johanan said: By Biblical law, [the delivery of] money effects possession. Why then was it said *meshikah* effects possession? Lest he [the vendor] say to him [the vendee]. 'Your wheat was burnt In the loft.'¹⁶ But after all, whoever causes¹⁷ the fire must make compensation! — But [for fear] lest a fire accidentally break out. Now, if the ownership is [still] vested in him [the vendor],¹⁸ he will wholeheartedly take pains¹⁹ to save it; if not, he will not do so.

Resh Lakish said: *Meshikah* is explicitly provided for by Biblical law. What is Resh Lakish's reason? — Scripture saith, *And if thou sell aught unto thy neighbor, or acquire aught of thy neighbor's hand*²⁰ — i.e., a thing 'acquired' [by passing it] from hand to hand.²¹ But R. Johanan maintains, 'of [thy neighbor's] hand' is to exclude real estate from the law of fraud.²² And Resh Lakish?²³ — If so,²⁴ Scripture should have written, '*And if thou sell aught unto thy neighbor's hand, ye shall not defraud:*' why state, '*or acquire aught*'? This proves that its purpose is to teach the need of *meshikah*. And R. Johanan: how does he utilize 'or buy'? — He employs it. even as was taught: '*And if thou sell aught ... ye shall not defraud:*' from this I know the law²⁵ only if the purchaser was defrauded. Whence do I know it if the vendor was cheated? From the phrase. '*or acquire aught...ye shall not defraud.*' And Resh Lakish?²⁶ — He learns both therefrom.²⁷

BABA METZIAH – 28b-58a

We learnt, R. SIMEON SAID: HE WHO HAS THE MONEY IN HIS HAND HAS THE ADVANTAGE. [This means,] only the vendor can retract, but not the purchaser.²⁸ Now, should you say that [by Biblical law the delivery of] money effects possession, it is well; therefore the vendor can retract, but not the vendee.²⁹ But if you say that [the delivery of] money does not affect a title [even by Biblical law], then the purchaser too should be able to retract!³⁰ — Resh Lakish can answer you: I [certainly] did not state [my view] on the basis of R. Simeon's opinion, but according to the Rabbis.

Now, as for Resh Lakish, it is well: for precisely therein do R. Simeon and the Rabbis differ.³¹ But according to R. Johanan, wherein do R. Simeon and the Rabbis differ? — In respect to R. Hisda's dictum, viz.: Just as they [sc. the Rabbis] enacted the law of *meshikah* in respect of the vendor, so did they institute it in respect to the vendee.³² Thus, R. Simeon rejects this dictum of R. Hisda, whilst the Rabbis agree therewith.

We learnt: BUT THEY [SC. THE SAGES] SAID: HE WHO PUNISHED THE GENERATION OF THE FLOOD AND THE GENERATION OF THE DISPERSION, HE WILL TAKE VENGEANCE OF HIM WHO DOES NOT STAND BY HIS WORD. Now, if you say that the delivery of money effects a title, it is well: hence he is subject to the 'BUT, etc.'. If, however, you maintain that money does not affect a title, why is he subject to 'BUT'?³³ — On account of his words.³⁴ But is one subject to 'BUT' on account of [mere] words? Has it not been taught:

1. This word is variously translated. Rashi and Asheri: a vessel made of baked ordure; Tosaf. and R. Han.: date-stones used for smoothing parchment, 'fit' implying a wider practicability than the strictly limited use of maroka.
2. In which case they would confer possession.
3. [[H] the Pe'al, and not [H] the Af'el, causative.]
4. 'Therewith' implies limitation.
5. 'Fit', Heb. [H], generally connotes fit for use, and is a term frequently employed in connection with dietary laws.

6. Because It is too unsubstantial even to be thought fit for this purpose.
7. [G].
8. Heb. [H] *Siman*: perhaps this interpretation suggested itself to Rab on account of the similarity of the words.
9. Rashi: The bath attendant received checks or tokens from intending patrons, so as to know how many would frequent them and what preparations to make. [According to Krauss, T.A., I, 225, these were received by visitors who in turn presented them to the bath-attendant, the *olearius*, as token payment.] For this purpose cancelled or defaced coins were used.
10. M. Sh. I, 2.
11. I.e., 'coins that are presented, etc.' is not a separate clause, but a definition of 'asimon'. Tosaf. observes that on this hypothesis 'or' (coins, etc.) would have to be deleted.
12. 'Ed. III, 2.
13. [H] Jast: circular plate or ring used as weight and as uncoined money.
14. Deut. XIV, 25.
15. I.e., a stamped image; [H] is connected with [H], 'to form a figure'. By contrast then, R. Ishmael must refer to metal not bearing this figure: and R. Johanan equates that with R. Dosa's dictum. This then agrees with his interpretation of 'asimon' as an (uncoined) disk.
16. If the delivery of coin should transfer ownership to the vendee even whilst the purchase is in the vendor's possession, the latter will be remiss in attempting to save it, should a fire break out on his premises; therefore actual *meshikah* was instituted. On the other hand, if it were ruled that both *meshikah* and payment were necessary, if the purchaser took it into his possession without paying and a fire broke out on his premises, he would be remiss in saving it. Therefore the Rabbis enacted that the entire transfer of ownership depends on *meshikah* alone (Tosaf.). On *meshikah*, v. [Glos.](#)
17. Lit., 'throws'.
18. Lit., 'if you place it in his ownership.'
19. Lit., 'he will trouble himself.'
20. Lit. rend. of Lev. XXV, 14.
21. I.e., Scripture shows that the mode of acquisition is by taking the purchase from the vendor's hand, which is *meshikah*.
22. The verse ends, *ye shall not defraud one another*. As stated *infra* 49b, a certain percentage of fraud or overcharging annuls the sale; but the word '*hand*' implies that the reference is to something that can pass from hand to hand, sc. movables, but not land.
23. Does he not admit this: and if he does, where is the reference to *meshikah*?
24. That the only purpose of the verse is that stated by R. Johanan.

BABA METZIAH – 28b-58a

25. That fraud annuls the purchase.
26. Seeing that the verse is required for this purpose, how can it teach *meshikah*?
27. 'Or acquirest' shows that the law of overreaching holds good when the vendor is the victim, and since '*hand*' is written in conjunction with '*acquirest*' rather than with '*sell*', we learn that the acquisition is made by passing the purchase from hand to hand.
28. I.e., when the purchaser has paid the money, the vendor, who holds it, has the advantage of being able to retract, but not the vendee.
29. For, when the vendee delivers the money, ownership rests in him according to Biblical law, and it is only to safeguard his interests in case of accidental fire that the vendor is made to bear the risks until the delivery of the goods. Consequently, since the vendor is put at a disadvantage by the Rabbinical measure, in that he must bear the risks of fire or damage, it is equitable that he shall be compensated by being given the power to retract too. The vendee, on the other hand, is the gainer by the Rabbinical enactment of *meshikah*; therefore there is no need to increase his advantage still farther by permitting him to retract even if no accident befalls the goods. — This explanation follows R. Hananel; Rashi and R. Tam differ somewhat.
30. Since the sale has been consummated neither by Biblical nor by Rabbinic law.
31. R. Simeon maintaining that the delivery of money consummates the sale by Biblical law, and therefore the vendee cannot retract, whilst in the view of the Rabbis *meshikah* is a Scriptural requisite, and therefore both the vendor and the vendee can retract.
32. Probably on the score of equitableness. For, notwithstanding the reasoning stated on p. 283. n. II (q.v.), there would be a distinct feeling of unfairness if only one could retract and not the other, e.g. if the price rose or fell.
33. How is this action in retracting in any way reprehensible, seeing that the sale is not complete at all?
34. I.e., it is morally wrong to withdraw from an agreement even if it lacks legal force.

Baba Mezi'a 48a

R. Simeon said: Though they [sc. the Sages] ruled, [The delivery of] a garment acquires the gold *denar*,¹ but not vice versa: that however, is only the *halachah*² but they [also] said, He who punished the generations of the Flood, and of the Dispersion, the inhabitants of Sodom and Gomorrah, and the Egyptians at

the [Red] Sea, He will exact vengeance of him who does not stand by his word; and he who enters into a verbal transaction effects no title, yet he who retracts therefrom, the spirit of the Sages is displeased with him. Whereon Raba observed: We have no other [condemnation] than that the spirit of the Sages is displeased with him!³ For words accompanied by [the passage of] money one is subject to 'BUT'; for words unaccompanied thereby one is not subject to 'BUT'.

Raba said: Both Scripture and a Baraitha⁴ support Resh Lakish, 'Scripture', — for it is written, [*If a soul sin ... and lie unto his neighbor in that which was delivered him to keep or in the putting forth of the hand*⁵ or in a thing taken away by violence, or hath oppressed his neighbour:⁶ 'the putting forth of the hand' — said R. Hisda: E.g., if he [the debtor] assigned a utensil to him for [the payment of] his debt⁷ 'Or hath oppressed' — said R. Hisda: E.g., if he assigned him a utensil for that in respect of which he oppressed him.⁸ Yet when Scripture repeated it,⁹ it is written, *Then it shall be, because he hath sinned, and is guilty, that he shall restore that which he took away, or the thing that he withheld by oppression, or that which was delivered him to keep; but 'the putting forth of the hand'*¹⁰ is not repeated. Why so? surely because it lacked *meshikah*!¹¹ Said R. Papa to Raba: But perhaps that follows from 'oppression', which Scripture did repeat?¹² — The circumstances here¹³ are, e.g. that he [the employee] took it [the utensil] from him and then entrusted it to his keeping.¹⁴ [But] this is identical with '*bailment*'! — There are two kinds of bailments — 15 If so, '*the putting forth of the hand*' [i.e.. loan] should also be repeated, and it could [likewise] be applied to the case where, e.g., he [the creditor] had taken it [the utensil assigned for repayment] from him [the debtor], and then re-deposited it with him?¹⁶ — Had Scripture repeated it, it would have been neither a refutation nor a support:¹⁷ since, however, Scripture did not repeat it, it supports him [Resh Lakish].¹⁸

BABA METZIAH – 28b-58a

Yet did not Scripture repeat, '*the putting forth of the hand*'? But it was taught: R. Simeon said: Whence do we know that what was stated above¹⁹ is to be applied to what is stated below?²⁰ Because it is written, *Or all that about which he hath sworn falsely*.²¹ And R. Nahman said in the name of Rabbah b. Abbuha in Rab's name: That is to extend the law of restoration to '*the putting forth of the hand*'! — Even so, Scripture did not explicitly repeat it — 22

Where have we a Baraitha?²³ — For it has been taught:²⁴ If he gave it to a bath-attendant, he is liable to a trespass offering.²⁵ And Raba said thereon: This holds good only of a bath-attendant, since no *meshikah* is lacking.²⁶ But [if he gave it for] any other object, which requires *meshikah*,²⁷ he is not liable to a trespass offering until he does draw it into his possession.²⁸ But has it not been taught: If he gave it to a hairdresser, he is liable to a trespass offering. Now in the case of the hairdresser, must he [the treasurer] not draw the shears into his possession?²⁹ — The reference here is to a heathen barber, to whom the law of *meshikah* does not apply.³⁰ It has been taught likewise: If he [the treasurer] gave it [the *perutah* of *hekdesch*] to a hairdresser, a ship's captain,³¹ or to any artisan, he is not liable to a trespass offering until he takes Possession.³² Now these are self-contradictory!³³ But this must surely prove that one refers to a heathen and the other to an Israelite hairdresser. This proves it.

R. Nahman ruled likewise: By Biblical law, [the delivery of] money effects a title, and Levi sought [the source of this ruling] in his Baraitha [collection] and found it; [Viz.,] If he [the treasurer] gave it to a wholesale provision merchant,³⁴ he is liable to a trespass offering.³⁵

1. When one is bought for the other.
2. The strict application of the law.
3. I.e., the Baraitha does not mean that he is subjected to the curse, 'He who punished, etc.,' but quite literally, that he who would retract is told that his action displeases the Rabbis, but nothing more. This proves that no curse is

pronounced on account of mere words, and so contradicts the previous statement.

4. [Or, 'a Mishnah' v. p. 287. n. 6.]
5. E.V.: 'in fellowship'.
6. Lev. V, 21.
7. The putting forth of the hand was understood to refer to a monetary loan. Now, if a debtor swears falsely in denying his debt, he is not liable to a sacrifice. Since, however, that passage states that he is liable to one (vv. 24-25: Or all that about which he hath sworn falsely ... then he shall bring his trespass offering unto the Lord), R. Hisda explains that this refers to a false denial of a debt for the payment of which a utensil had been assigned by the debtor, for then the loan is equivalent to a bailment ('in that which was delivered to him to keep' — i.e., a bailment).
8. Sc. his wages, the reference being to one who withholds his employee's wages (cf. Deut. XXIV, 14-15: Thou shalt not oppress an hired servant ... At his day thou shalt give him his hire). Here too, a sacrifice for false denial of liability is incurred only if the employer had assigned an article for payment.
9. In the passage dealing with restoration to be made by the repentant sinner.
10. I.e., when he repents, he is not bound to restore the particular utensil assigned by him for the repayment of the loan.
11. And therefore never really belonged to the creditor. This proves that by Biblical law *meshikah* is necessary for effecting ownership.
12. For in the case of 'oppression' too, as interpreted in the text, there was a *meshikah*, and yet Scripture orders that the utensil shall be returned. So the same holds good of a loan. In fact, since 'oppression' is mentioned, viz., that the utensil assigned for the employee's wages must be returned in spite of the lack of *meshikah*, it follows that on the contrary *meahikah* is unnecessary, and thus the verse refutes Resh Lakish. This difficulty, though not explicitly raised by R. Papa, is implied, and the Talmud proceeds to answer it.
13. Where the Torah provides for the return of the utensil assigned to the employee.
14. Therefore it must be returned, since the employee had originally acquired the ownership thereof through *meshikah*.
15. One, where the bailment belonged entirely to the bailor; and two, where it originally belonged to the bailee, as in the case under discussion.
16. So that *meshikah* is not lacking.
17. Of R. Johanan or Resh Lakish. For the former would explain it as meaning even if no *meshikah* had taken place, i.e., a utensil was assigned for the debt, but the creditor had

BABA METZIAH – 28b-58a

never performed *meshikah* thereon; and still the debtor is liable to a sacrifice, because *meshikah* is unnecessary by Biblical law; whilst Resh Lakish would maintain that *meshikah* must have taken place for the law to operate.

18. [For the only reason that can be given for the repetition by the Torah of 'oppression' and not of 'the putting forth of the hand', is that in the former it provides only for the case where *meshikah* had been performed, whilst in the case where it was absent, such as is indicated by the omission of the latter, there is no liability to a sacrifice.]
19. Sc. Lev. V, 21.
20. Ibid. 23: I.e., every detail enumerated in v. 21 must be understood in v. 23 *et seq.* too, even if Scripture does not repeat it.
21. Ibid. 24: 'all' is a general term embracing every antecedent.
22. Therefore the inference drawn on [p. 286, n. 1](#) holds good, whilst the extension of the law will apply to a loan which is exactly similar to 'oppression'. viz., where *meshikah* was performed.
23. Resuming Raba's statement that both Scripture and a Baraita support Resh Lakish.
24. Me'il. 20a. There, however, it is a Mishnah. [Several MSS texts in fact read [H] 'we have learnt'. This will involve the further emendation of 'a Baraita' into 'a Mishnah'. V. Strashun, a.l.]
25. V. 99b. So here too (this is a continuation of the passage quoted there), if the Temple treasurer unwittingly gave a *perutah* of *hekdesch* to a bath-attendant for admission, he (the treasurer) is liable to a trespass offering.
26. I.e., immediately the treasurer pays the *perutah*, he receives his return, the baths being open for him to enter, so that he need not perform *meshikah* with any object to receive his quid pro quo. Consequently, the bath-attendant in his turn becomes the legal owner of the *perutah* immediately it is given him, and for that the treasurer is liable to a sacrifice.
27. I.e., with which the treasurer must perform *meshikah* in order to acquire it.
28. For only then does the recipient of the *perutah* obtain a legal title thereto. This proves that *meshikah* is required by Biblical law. For if it were only a Rabbinic measure, whilst by Scriptural law the recipient of the *perutah* immediately acquires a title thereto, the treasurer would always be liable to a trespass offering, no matter for what he gave the *perutah*, since a Rabbinical enactment cannot free a person from an obligation that lies upon him pursuant to Scriptural law.
29. It would appear that when one paid a hairdresser in advance, he signified his liability

to trim the customer's hair by handing him the shears. But in any case, some form of *meshikah* is necessary, and yet the treasurer incurs a liability immediately he gives the money, which shows that *meshikah* is only a Rabbinical requirement.

30. In a transaction with a heathen the delivery of money is certainly sufficient.
31. For freight charges.
32. Symbolically performing *meshikah* with an object connected with his payment.
33. Sc. the two views on his liability in connection with a hairdresser, the first Baraita stating that he is liable immediately he gives the money, whilst the Baraita teaches that *meshikah* must first be performed.
34. As a deposit for an order of provisions.
35. Though he did not take possession of the goods, thus proving that *meshikah* is unnecessary by Biblical law.

But this refutes Resh Lakish!-Resh Lakish can answer you: That is on the basis of R. Simeon's ruling.¹

BUT THEY [SC. THE SAGES] SAID, HE WHO PUNISHED, etc. It has been stated: Abaye said: He is [merely] told this.² Raba said: He is anathematized.³ 'Abaye said: He is [merely] told this,' because it is written, And thou shalt not curse the ruler of thy people.⁴ 'Raba said: He is anathematized.' because it is written, of thy people, implying [only] when he acts as is fitting for 'thy people'.⁵

Raba said: Whence do I know⁶ it? For [it once happened that] money was given to R. Hiyya b. Joseph [in advance payment] For salt. Subsequently⁷ salt rose in price. On his appearing before R. Johanan,⁸ he ordered him, 'Go and deliver [it] to him⁹ [the purchaser], and if not, you must submit to [the curse]: He who punished.' Now if you say that one is merely informed — did R. Hiyya b. Joseph require to be told?¹⁰ — What then: he is anathematized? Did R. Hiyya b. Joseph come to submit to a curse of the Rabbis?¹¹ But [what happened was that] only a deposit had been paid to R. Hiyya b. Joseph. He thought that he [the purchaser] was [morally] entitled only to the value thereof, whereupon R. Johanan told him that he was entitled to the whole [of the purchase].

BABA METZIAH – 28b-58a

It has been stated: A deposit — Rab said: It effects a title [only] to the extent of the value thereof.¹² R. Johanan ruled: It effects a title to the whole purchase. An objection is raised: If one gives a pledge¹³ to his neighbor and says to him, 'If I retract; my pledge be forfeit to you;' and the other stipulates, 'If I retract, I will double your pledge';¹⁴ the conditions are binding.¹⁵ this is R. Jose's view, R. Jose following in this his general ruling that *asmakta*¹⁶ acquires title. R. Judah [however] maintained: It is sufficient that it effects a title to the value thereof.¹⁷ Said R. Simeon b. Gamaliel: When is that? If he [the depositor] said to him, 'Let my pledge effect the purchase'.¹⁸ But if one sold a house or field for a thousand *zuz*, of which he [the vendee] paid him five hundred, he acquires title [to the whole], and must repay the balance even after many years.¹⁹ Now surely. the same ruling applies to movables, viz., [if a deposit is given] without specifying [its purpose],²⁰ possession is gained of the whole!²¹ — No. As for movables, an unspecified deposit does not affect possession [of the whole]. And wherein do they differ?²² — Real estate, which is actually acquired by [the delivery of] money,²³ is entirely acquired;²⁴ movables, which are acquired [by the delivery of money] only in respect of submission to [the curse] 'He who punished,' are not acquired entirely.²⁵

Shall we say that this is disputed by Tannaim? [For it has been taught:] If one makes a loan to his neighbor against a pledge. and the year of release arrived, even if it [the pledge] is worth only half [the loan], it [the year of release] does not cancel [the loan]: this is the ruling of R. Simeon b. Gamaliel. R. Judah ha-Nasi said: If the pledge corresponds to [the value of] the loan, it does not cancel it; otherwise, it does.²⁶ What is meant by R. Gamaliel's statement, 'It does not cancel [the loan]'? Shall we say, To the value thereof? Hence it follows that in the opinion of R. Judah ha-Nasi even that half too is cancelled!²⁷

1. V. *supra* 47b and p. 284, n. 2.
2. I.e., he is warned that God punishes those who do not keep their word.

3. A formal curse is pronounced against him.
4. Ex. XXII, 27. In Sanh. 85a it is shown that this applies to all, not particularly a ruler.
5. I.e., only then does the injunction hold good. But it is not fitting for an Israelite to break his word; cf. Zeph. III. 13.
6. Lit., 'say'.
7. When the sale was to be delivered.
8. To ask whether he could withdraw from the transaction.
9. The original is in the plural. but the context shows that the singular is required, the plural to be understood indefinitely.
10. That retraction would involve him in a curse.
11. Surely he knew that he could not retract!
12. In the case of movables only in respect of provoking the curse.
13. [H] Though this is the same word as used to indicate 'deposit', it means here a pledge, to be forfeited in certain conditions.
14. I.e., 'I will return double Its value.'
15. Lit., 'are fulfilled'.
16. V. [Glos.](#)
17. In case of retraction, the one does not forfeit his pledge, nor is the other bound to double it. But the transaction is absolute in respect of goods to the value of the deposit, and to that extent neither can withdraw.
18. Of the whole, i.e., it was not merely given as a deposit payment, but with the intention of consummating the whole purchase. That, however, is impossible, and therefore R. Judah ruled that the transaction is completed only to the extent of the value of the pledge.
19. The balance ranks as a loan, and the vendor cannot cancel the sale on its account. V. *infra* 77b.
20. That it should act as a pledge or forfeit, but given without any purpose being stated.
21. In respect of the curse. This refutes Rab's ruling.
22. What is the essential difference between real estate and movables, to permit this distinction to be drawn?
23. Though the delivery of money alone does not affect a title to movables, it does in respect to land.
24. By the deposit.
25. By the deposit, but only to the extent of the value of that deposit, and even that, only in respect of submitting to the curse.
26. V. Deut. XV. 1-2: At the end of every seven years thou shalt make a release. And this is the manner of the release: Every creditor that lendeth aught unto his neighbor shall release it; he shall not exact it of his neighbor, or of his brother; because it is called the Lord's release. The Rabbis deduced from the phrase 'he shall not exact it' that the law of release does not

BABA METZIAH – 28b-58a

apply to a loan for which the creditor holds a pledge, for he is then regarded as having already exacted it beforehand (Shebu. 44b).

27. But surely that is impossible, since it is generally agreed that the law of release does not apply to what the creditor already has in hand!

Baba Mezi'a 49a

For what purpose then does he hold the pledge? Surely then this proves that by 'it does not cancel it' R. Simeon b. Gamaliel means that it does not cancel it at all, whilst by 'It does cancel it' R. Judah refers to the half against which he holds no pledge. and they differ in this: R. Simeon b. Gamaliel holds that it [the pledge] effects a title to the whole [of the loan].¹ whilst R. Judah ha-Nasi holds that it effects a title only to the value thereof!² — No. By 'It does not cancel [the loan]' R. Simeon b. Gamaliel means that half against which he holds a pledge. Then it follows that in R. Judah's opinion even the half against which he holds a pledge is also cancelled! But [if so,] what is the purpose of the pledge? — As a mere record of fact.³

R. Kahana was given money [in advance payment] for flax. subsequently flax appreciated, so he came before Rab. 'Deliver [the goods] to the value of the money you received,' said he to him; 'but as for the rest, it is a mere verbal transaction, and a verbal transaction does not involve a breach of faith.'⁴ For it has been stated: A verbal transaction: Rab said: It involves no breach of faith; R. Johanan ruled: It does involve a breach of faith.

An objection is raised: R. Jose son of R. Judah said: What is taught by the verse, *A just hin [shall ye have]*:⁵ surely 'hin' is included in 'ephah'?⁶ But it is to teach you that your 'yes' [hen] should be just and your 'no' should be just!⁷ — Abaye said: That means that one must not speak one thing with the mouth and another with the heart.⁸

An objection is raised: R. Simeon said: Though they [sc. the Sages] ruled: [The delivery of] a garment acquires the gold *denar*,

but not vice versa: that, however is only the *halachah*, but they [also] said: He who punished the generations of the Flood and of Dispersion, the inhabitants of Sodom and Gomorrah, and the Egyptians at the [Red] Sea, He will exact vengeance of him who does not stand by his word; [and he who makes a verbal transaction effects no title, yet he who retracts therefrom, the spirit of the Sages is displeased with him!]⁹ — It is a dispute of the Tannaim, for we learnt: It once happened that R. Johanan b. Mathia said to his son, 'Go out and engage laborers.' He went, and agreed to supply them with food. But on his returning to his father, the latter said, 'My son, should you even prepare for them a banquet like Solomon's when in his glory. you cannot fulfill your Undertaking, for they are children of Abraham, Isaac and Jacob. But, before they commence work, go out and tell them, "[I engage you] on condition that you have no claim upon me other than bread and beans."¹⁰ Now, if you should think that words involve a breach of faith, how could he say to him, 'Go and withdraw'? — There it is different, for the laborers themselves did not rely [upon him]. Why? Because they knew full well that he himself was dependent upon his father.¹¹ If so, even if they had [already] commenced work, it is also thus!¹² — Once they have commenced work, they certainly rely [upon him], for they reason: He must have reported to his father, who agreed thereto.

Now, did R. Johanan say thus?¹³ But Rabbah b. Bar Hanah said in R. Johanan's name: If one says to his neighbor. 'I will make you a gift'. he can retract therefrom. 'He *can* [retract]' — but that is obvious!¹⁴ Hence [he must have meant], He is *permitted* to withdraw!¹⁵ — R. Papa replied: R. Johanan admits¹⁶ in the case of a small gift,¹⁷ because he [the recipient] relies thereon.¹⁸ That is logical too. For R. Abbahu said in R. Johanan's name: If an Israelite says to a Levite, 'You have a *kor* of tithe in my Possession',¹⁹ he [the Levite] may declare²⁰ it the *terumah* of the tithe for other produce.²¹ Now, if you agree that he [the Israelite] cannot

BABA METZIAH – 28b-58a

[morally] withdraw, it is well: therefore he [the Levite] is permitted [to declare this as the *terumah* of the tithe]. But if you say that he [the Israelite] can retract, why is he [the Levite] permitted [to declare, etc.], seeing that it may thereby transpire that he eats *tebel*?²² — The reference here is to a case where, e.g., he [the Levite] had already received it and then re-entrusted it to him [the Israelite] — 23 If so, consider the second clause: If he gave it to another Levite, he [the Levite] has nothing but resentment against him.²⁴ But if you should think that it means, e.g., that he took it from him and then re-entrusted it to him: why has he nothing but resentment against him? Since he took possession thereof, he has a monetary claim upon him! Hence it must certainly mean that he did not [first] take it from him. Which proves it.²⁵

A certain man gave money for poppy seed. Subsequently poppy seed advanced in price, so he [the vendor] retracted and said, 'I have no poppy seed: take back your money.' But he would not take his money, and it was stolen. When they came before Raba, he said he him: Since he said to you, 'Take back your money,' and you would not, not only is he not accounted a paid bailee.²⁶ but he is not even a gratuitous bailee. Thereupon the Rabbis protested before Raba: But he [the vendor] would have had to submit to [the curse] 'He who punished'!²⁷ — He replied: That is even so.²⁸

R. Papi said: Rabina told me, 'One of the Rabbis, named R. Tabuth — others state, R. Samuel b. Zutra — who, if he were given all the underground treasures of the world²⁹ would not break his word, told me: That incident happened with me.³⁰ That day was Sabbath eve, and I was sitting when a certain man came, stood at the threshold, and asked me, "Have you poppy seed for sale?"

1. I.e., when the creditor receives a pledge for a portion of the loan, it is as though he were already actually in possession of goods to the value of the whole loan. Therefore it is unaffected by the law of release.

2. And in the same way, when a deposit is given on goods in a sale, it effects possession of the whole or of its own value, according to these two Tannaim respectively.
3. I.e., to prove the fact of the debt — presumably this refers to a verbal loan.
4. Though the Mishnah states that he who does not stand by his word will be punished, that is only when his word is substantiated by the payment of money, which, though not legally, is morally binding. But where no money has been paid, a transaction can be cancelled without any scruples.
5. Lev. XIX. 36.
6. The preceding phrase is, a just *ephah* ... (shall ye have).
7. This is a play on words, '*hin*', a measure being connected with hen, Aramaic for 'yes'. This shows that even a mere verbal transaction must not be violated, and so contradicts Rab.
8. I.e., it is a general exhortation against deceitful speech, but does not refer to an actual transaction. Rashi: Whilst arranging a transaction, one must not there and then have the intention of withdrawing. But if a verbal bargain is made in good faith, there is nothing wrong in withdrawing from it subsequently if the market price changes.
9. The refutation is contained in the bracketed passage, though it is not cited in the text. Thus we see that the breaking even of a mere verbal transaction is reprehensible.
10. *Infra* 83a.
11. I.e., that the terms he offered were subject to his father's ratification.
12. He could still withdraw: why then was he particular that this stipulation should be made before they began?
13. That a verbal transaction involves a breach of faith.
14. Since there had been no *meshikah*, Why state it then?
15. I.e., even morally, which contradicts R. Johanan's previous ruling.
16. This is Rashi's reading. Our text reads: And R. Johanan admits.
17. That the mere promise involves a breach of faith.
18. That he will certainly fulfill his promise; hence he cannot retract without a breach of faith. But if one promises a large gift, the beneficiary himself does not have full confidence in the promise, and therefore withdrawal is permitted. In the case of a business transaction, each party naturally looks to the other to fulfill his undertaking, and therefore a breach of faith is involved (R. Han.).
19. I have separated a *kor* of my produce as tithe, and will give it to you.

BABA METZIAH – 28b-58a

20. Lit., 'make'.
21. Lit., 'for another place'. The Levite himself had to give a tithe of the tithe he received to the priests; this was known as the *terumah* (separation) of the tithe [H]. Now, R. Johanan states that when an Israelite promises a *kor* of tithe to a Levite, who himself possesses tithes for which he is bound to separate *terumah*, he may declare this *kor* to be the *terumah* thereof, even before it reaches his hand.
22. Untithed produce. v. [Glos.](#) Immediately the Levite makes his declaration, he proceeds to eat of the tithes he possesses; but should the Israelite withdraw, the Levite's declaration is retrospectively invalid, and thus he has eaten *tebel*. This proves that the Israelite cannot retract without breach of faith, and therefore the Levite may make his declaration on the assumption that he will certainly not do so. — Though a *kor* is a large quantity, it is considered a small gift from the point of view of the Israelite, who must give it away in any case (Rashi).
23. Hence it certainly belongs to the Levite, who acquired it by *meshikah*.
24. But no legal claim.
25. That in the case of a small gift one cannot retract.
26. Who is responsible for theft.
27. And possibly he would not have submitted, in which case it was his money that was lost.
28. He must either submit thereto, in which case he is free from further responsibility, or deliver the goods.
29. [H] = cavern.
30. This is told by R. Tabuth. He was the vendor referred to in the story of the poppy seed.

Baba Mezi'a 49b

"No," I answered. "Then let me entrust this money to you," he replied, "as it is growing dark,"¹ "The house lies before you." I replied; so he deposited it in the house, and it was stolen. When he came before Raba, he ruled: In every case of "The house lies before you," not only is one not a paid bailee,² he is not even a gratuitous trustee.' Thereupon I observed to him,³ 'But the Rabbis protested to Raba: He would have to submit to [the curse] "He who punished";⁴ and he answered, "That is a pure fiction".'⁵

R. SIMEON SAID: HE WHO HAS THE MONEY IN HIS HAND HAS THE

ADVANTAGE. It has been taught: R. Simeon said: When is that?⁶ If the vendor has both the money and the produce. But if the money is in the vendor's hand, and the goods in the vendee's, he [the vendee] cannot retract, since the money is in his hand. [You say,] 'in his hand'!⁷ but it is in the vendor's! — Say then, because his money's worth is in his hand.⁸ But that is obvious!⁹ — Said Raba: The circumstances here are, e.g., where the vendee's loft was rented to the vendor.¹⁰ Now, why did the Rabbis institute *meshikah*? For fear lest he say to him, 'Your wheat was burnt in the loft'.¹¹ But here it is [already] in the vendee's ownership; should fire accidentally break out, he will take the trouble to save it — 12

A certain man gave money [in advance payment] for wine. Subsequently he learnt that one of the men of the Field-marshal¹³ Parzak intended to seize it — Thereupon he said to him, 'Return me my money: I do not want the wine' — So he went before R. Hisda, who said to him, Just as *meshikah* was instituted in favor of the vendor,¹⁴ so was it instituted in favor of the vendee too.

MISHNAH. FRAUD IS CONSTITUTED BY [AN OVERCHARGE OF] FOUR SILVER [MA'AH'S] IN TWENTY FOUR. WHICH IS A SELA', [HENCE] A SIXTH OF THE PURCHASE.¹⁵ UNTIL WHAT TIME IS ONE PERMITTED TO REVOKE [THE SALE]?¹⁶ UNTIL HE CAN SHEW [THE ARTICLE] TO A MERCHANT OR A RELATIVE.¹⁷ R. TARFON RULED IN LYDDA THAT FRAUD IS CONSTITUTED BY EIGHT SILVER [MA'AH'S] IN TWENTY-FOUR, WHICH IS A SELA', [HENCE] A THIRD OF THE PURCHASE, WHEREAT THE LYDDAN MERCHANTS REJOICED. BUT, SAID HE TO THEM, ONE MAY RETRACT THE WHOLE DAY. THEN LET R. TARFON LEAVE US IN STATUS QUO, THEY REQUESTED; AND SO THEY REVERTED TO THE RULING OF THE SAGES.

GEMARA. It has been stated: Rab said: We learnt, A sixth of the [true] purchase price. Samuel said: A sixth of the money [actually]

BABA METZIAH – 28b-58a

paid was also taught. Now, if that which is worth six [*ma'ahs*] was sold for five or seven, all agree that we follow the purchase price.¹⁸ Wherein do they differ? If something worth five or seven [*ma'ahs*] was sold for six. According to Samuel, who maintained that we follow the money paid [too], both cases constitute fraud. But according to Rab, viz., that we follow only the purchase price, if something worth five is sold for six, the sale is null;¹⁹ but if what is worth seven is sold for six, it is renunciation.²⁰ But Samuel maintained: When do we say that there is renunciation or annulment of the sale? Only if there is not a sixth on either side;²¹ but if there is a sixth on one side, it is fraud.²²

We learnt: FRAUD IS CONSTITUTED BY [AN OVERCHARGE OF] FOUR SILVER [MA'AHs] IN TWENTY FOUR, WHICH IS A SELA', [HENCE] A SIXTH OF THE PURCHASE. Surely that means that one sold something worth twenty [*ma'ahs*] for twenty-four. which proves that a sixth of the money paid was also taught? No; It means that twenty-four [*ma'ahs*] worth was sold for twenty. Then who was overreached? The vendor! But consider the second clause: UNTIL WHAT TIME IS ONE PERMITTED TO REVOKE [THE SALE]? UNTIL HE CAN SHEW [THE ARTICLE] TO A MERCHANT OR A RELATIVE. Now, R. Nahman observed [thereon]: This was taught only of the purchaser; the vendor, however, can always withdraw!²³ — But it means that one sold something worth twenty-four [*ma'ahs*] for twenty-eight.

We learnt: R. TARFON RULED IN LYDDA THAT FRAUD IS CONSTITUTED BY EIGHT SILVER [MA'AHs] IN TWENTY-FOUR, WHICH IS A SELA', [HENCE] A THIRD OF THE PURCHASE. Surely that means that one sold something worth sixteen [*ma'ahs*] for twenty four, which proves that a third of the money paid was also taught?²⁴ — No: it means that what was worth twenty-four was sold for sixteen. Then who was overreached? the vendor! But consider the

next clause; BUT, SAID HE TO THEM, ONE MAY RETRACT THE WHOLE DAY, whereon R. Nahman observed: This was taught only of the purchaser; the vendor, however, can always withdraw! But it means that one sold the value of twenty-four [*ma'ahs*] for thirty-two.²⁵

It has been taught in accordance with Samuel: He who was deceived has the upper hand. E.g., if one sold an article worth five [*ma'ahs*] for six — who was defrauded? The vendee. Therefore the vendee has the upper hand, [and] he can demand of him [the vendor] either, 'Return me my money', or, 'Return me the overcharge'.²⁶ If he sold him

1. The Sabbath was about to commence.
2. To be responsible for theft.
3. Rabina to the Rabbi who related this story.
4. Which shows that a sale was in question.
5. Lit., 'the thing never happened'.
6. That one can withdraw.
7. Which grammatically refers to the vendee.
8. I.e., he has already received the goods.
9. That the sale cannot be revoked once the purchaser has taken possession, and even the Rabbis admit it.
10. And the goods were stored therein.
11. V. p. 282, n. 7. This assumes that by Biblical law the delivery of money alone consummates the sale.
12. This is the reading of Alfasi. Our text: he will take the trouble to remove it. — The Rabbis who oppose R. Simeon presumably hold that even in these circumstances, seeing that the purchaser performed no *meshikah*, the sale is revocable.
13. [*Rufulus*, a Persian high official; v. A.Z. (Sonc. ed.) pp. 163 n. 7 and 301, n. 3.]
14. That he can withdraw before *meshikah* is performed.
15. If the vendor overcharged by one sixth, he is considered to have defrauded the vendee, and the overcharge is recoverable; or the sale may be revoked.
16. In the case of overcharge. Since he was imposed upon, the vendee is not only legally, but also *morally* entitled to cancel the bargain; hence the Mishnah states 'permitted'. Opposing views are expressed in the Talmud (*infra* 50b) whether the vendee can retract from the bargain even if the vendor is prepared to make a refund.
17. But after that the sale is absolute, notwithstanding the overcharge.

BABA METZIAH – 28b-58a

18. Hence there was overreaching by one-sixth, and the law of the Mishnah operates.
19. For the overreaching is more than one-sixth; in this case, the bargain is altogether null, and even if the vendor is prepared to make amends, the vendee is morally entitled to retract: even the defrauding party too can declare the sale null in these circumstances (*infra* 50b).
20. Since it is only a seventh of the true purchase price, the vendor is regarded as having foregone part of his due.
21. I.e., whether we regard the true purchase price or the money paid.
22. Which is returnable, whilst the sale is valid.
23. Since the article is no longer in his hand, he can retract whenever he finds that he was defrauded. This proves that the Mishnah treats of the vendee's being overreached.
24. And therefore the same applies to the definition of 'one-sixth', and thus refutes Rab.
25. I.e., a sixth in the purchase price.
26. Lit., 'what you deceived me.'

Baba Mezi'a 50a

six [*ma'ahs*] worth for five — who was overreached? The vendor. Therefore the vendor has the upper hand! He can either say, 'Return me the purchase', Or, 'Return me the sum underpaid'.¹

The scholars propounded; On the view of the Rabbis, does [an overcharge of] less than a sixth immediately constitute renunciation, or only when he has had time to show [the purchase] to a merchant or relative?² And should you object, [If it is] only when he has had time to show [the purchase] to a merchant or a relative, wherein do a sixth and less than a sixth differ? [Yet] there is a difference, for in the case of a sixth, he has the upper hand, and can either withdraw or retain the ownership but have the overcharge returned; whereas in the case of less than a sixth, he must retain ownership and have the overcharge refunded. What then is our ruling? — Come and hear: [AND SO] THEY REVERTED TO THE RULING OF THE SAGES. Now, it was thought that less than a third on R. Tarfon's view is identical [in law] with less than a sixth on the view of the Rabbis. Now, should you say that [an overcharge of] less than a sixth, in the view of the Rabbis, [constitutes renunciation

only] when he has had time to show [the purchase] to a merchant or a relative, whereas according to R. Tarfon, the whole day [must pass before he loses the rights of redress], it is well: on that account they [the merchants] reverted [to the ruling of the Sages]. But if you say that less than a sixth, in the view of the Rabbis, immediately constitutes renunciation,

1. The figures given agree with Samuel.
2. E.g., if eleven *ma'ahs* was paid for an article worth ten, is the vendee regarded as having there and then renounced the eleventh *ma'ah*, and so, even if he immediately demands its return, he has no redress; or perhaps it is accounted renunciation only if sufficient time elapsed to show it to a merchant, but before that he can claim a refund?

Baba Mezi'a 50b

whilst in R. Tarfon's view too [less than a third] immediately constitutes renunciation, why did they revert [etc.]? R. Tarfon's ruling was [surely] more advantageous to them, for what the Rabbis declared overreaching, R. Tarfon regarded as renunciation! — Do you really think that less than a third, according to R. Tarfon, is identical with less than a sixth on the view of the Rabbis? That is not so: from a sixth to a third, according to R. Tarfon, is as a sixth itself on the view of the Rabbis.¹ If so, whereat did they rejoice [in the first place]? Hence you may deduce that in the view of the Rabbis, in a case of annulment of the sale, one can always withdraw; they thus rejoiced when R. Tarfon told them that it [an overcharge up to a third] constitutes overreaching.² whilst they reverted [to the ruling of the Rabbis] when he told them [that the time for withdrawing is] all day. For if you should think that in the view of the Rabbis the annulment of the sale³ is only within the time that he can show it to a merchant or to a relative, whereat did they rejoice?⁴ — They rejoiced in respect of a sixth itself.⁵

The scholars propounded: In the case of annulment of Sale, on the view of the Rabbis,⁶ can one always retract, or perhaps only within the time necessary to show [the purchase] to a

BABA METZIAH – 28b-58a

dealer or a relative? And should you answer, [if only] within the time necessary to show it to a dealer or a relative, wherein do a sixth and more than a sixth differ? There is a difference: for in the case of a sixth, [only] the defrauded party can retract, whereas in the case of more than a sixth both can retract.⁷ What is the ruling? — Come and hear: **THEY REVERTED TO THE RULING OF THE SAGES.** Now, if you say that annulment of the sale, on the view of the Rabbis, is only within the time necessary to show [the purchase] to a dealer or a relative, whereas on R. Tarfon's view it is all day, it is well: on that account they reverted [etc.]⁸ But if you say that in the case of annulment of sale, on the view of the Rabbis, one can always retract, why did they revert [etc.]? Surely R. Tarfon's ruling was more advantageous to them, since he declared overreaching [returnable] the whole day, but no more! — Annulment of sale is rare.⁹

Raba said: The law is: In the case of less than a sixth, the sale is valid;¹⁰ more than a sixth, it is null; [exactly] a sixth, it is valid, but the overcharge is returnable;¹¹ and in both cases it is within the time necessary to show [the purchase] to a merchant or a relative.

It has been taught in support of Raba: In the case of overreaching of less than a sixth, the sale is valid; more than a sixth, the sale is null; [exactly] a sixth, he [the defrauded party] retains ownership whilst the overcharge must be refunded: this is R. Nathan's view. R. Judah ha-Nasi said: The vendor has the upper hand;¹² if he wishes he can say, 'Return me the Purchase,' or, 'Pay up the sum wherein you defrauded me.' And in both cases, it is within the time necessary to show [the purchase] to a merchant or a relative.¹³

UNTIL WHAT TIME IS ONE PERMITTED TO REVOKE [THE SALE], etc. R. Nahman said: This was taught only of the purchaser; but the vendor can always retract.¹⁴ Shall we say that he is supported [by the Mishnah]? **THEY REVERTED TO THE RULING OF THE SAGES.** Now, if you agree that the vendor can always retract, it is well:

1. And in both cases the overcharge is returnable. But whereas the Rabbis maintain that an overcharge of more than a sixth entirely annuls the sale, R. Tarfon held that up to a third the defrauded party has the upper hand, and the sale may stand.
2. Whereas on the ruling of the Rabbis, if it is more than one-sixth, the transaction is altogether cancelled.
3. For an overcharge of more than a sixth.
4. The problem of the time within which the sale may be annulled is raised immediately after this passage. Here the Talmud anticipates it by pointing out that since the dealers originally rejoiced at R. Tarfon's ruling, which, *ex hypothesi*, means that from a sixth up to a third constitutes overreaching, it must be assumed that annulment in the view of the Rabbis is not limited by time. For otherwise, there was no reason to rejoice in the first place. The argument is this: There is very little practical difference between a whole day and always, because a day is quite ample for finding out that one was overreached; but there is a great difference between a day and the short time necessary for showing one's purchase to a merchant, which may easily pass before the defrauded party discovers his loss. Furthermore, it is rare to overreach by more than a sixth (presumably buyers were very keen in those days!). Consequently, when R. Tarfon told them that a returnable overcharge is up to a third, which, as they thought, meant within the shorter period only, after which there was no redress, whilst in the view of the Rabbis the purchase could be annulled at any time if the overcharge was more than a sixth, R. Tarfon's ruling was naturally to their advantage. But if the annulment of the sale according to the Rabbis is only within the shorter period, why did they rejoice? On the contrary. R. Tarfon's ruling that up to a third constitutes overreaching as against the Rabbis' view that over a sixth annuls the sale was manifestly to their disadvantage: since according to the Rabbis both parties could withdraw, whilst on the view of R. Tarfon only the defrauded party had that right.
5. For when we say that according to R. Tarfon from a sixth up to a third constitutes overreaching, a sixth itself is excluded, and not recoverable. Hence they might well rejoice, quite irrespective of the time within which the sale is revocable in the opinion of the Rabbis.
6. *Viz.*, for an overcharge of more than one-sixth.
7. That is only if the defrauded party demands a refund. Otherwise, it is altogether illogical to give the defrauder a greater power of withdrawal than he would have enjoyed had the

BABA METZIAH – 28b-58a

fraud amounted only to a sixth. (Tosaf. a.l. and B.B. 84a s.v. [H])

8. For their disadvantage in that the defrauded party had a longer time within which to retract outweighed their advantage that fraud of exactly one-sixth was not recoverable, as stated above.
9. Therefore they did not regard the shorter period of R. Tarfon as particularly advantageous to them, the more so since a whole day is ample time for the defrauded party to discover that he was overreached. On the other hand, in respect of overreaching as distinct from annullment the longer period given by R. Tarfon (a whole day, as against the Rabbis', 'within the time necessary to show the purchase to a merchant') was definitely to their disadvantage, and therefore they reverted to the ruling of the Rabbis.
10. Immediately, and the defrauded party has no redress.
11. Thus Raba disagrees with the view formerly stated that in the case of a sixth the defrauded party can either demand a refund or cancel the sale.
12. If he was defrauded; of course, if the vendee was defrauded, he has the upper hand.
13. Notwithstanding that the vendor no longer has the article. This is discussed below.
14. If he was defrauded, since he is no longer in possession of the article to be able to show it to an expert, and he discovers the fraud only when he sees a similar article sold at a higher price; hence no limit can be set in his case, v. *infra*.

Baba Mezi'a 51a

therefore they reverted. But if you say that the vendor is as the vendee, what difference did it make to them?¹ Just as the Rabbis² ameliorated [the position of] the vendee, so did they likewise that of the vendor! — The merchants of Lydda very seldom erred.³

Rami b. Hama's host⁴ sold some wine,⁵ and erred. Finding him depressed, he [Rami] asked him, 'Why are you sad?' 'I sold wine,' he replied, 'and erred.' 'Then go and retract,' he counseled. 'But I have tarried more time than is necessary to show it to a dealer or a relative,' said he. Thereupon he sent him to R. Nahman, who said to him: This was taught only of the vendee; but the vendor can always retract. Why? The vendee has the purchase in his hand; wherever he goes he shows it and is told

whether he erred or not. But the vendor, who has not the purchase in his hand, [must wait] until he comes across an article like his, and only then can he know whether he erred or not.

A man had silk skeins⁶ for sale. He demanded⁷ Six [zuz], whilst they were worth five, yet if five and a half were offered, he would have accepted. Then a man came and said [to himself]. 'If I pay him five and a half, it is [immediate] renunciation;⁸ therefore I will pay him six and then sue him at law.' When he went before Raba, he said to him: This was taught only of one who buys from a merchant; but when one buys from a private person,⁹ he has no claim of fraud upon him.¹⁰

A man had jewelry for sale. He demanded sixty [zuz], whilst it was worth fifty; yet had he been offered fifty-five, he would have accepted. Then a man came and argued. 'If I give him fifty-five, it will constitute renunciation: therefore I will give him sixty and then sue him at law.' When he came before R. Hisda, he said to him: This was taught only of one who buys from a merchant; but when one buys from a Private individual, he has no claim of fraud against him. Said R. Dimi to him: 'Well spoken!'¹¹ and R. Eleazar said likewise, 'Well spoken!' But did we not learn, Just as the law of overreaching holds good in the case of a layman, so it holds good in the case of a merchant. Now, who is meant by 'a layman?' Surely a Private individual! — Said R. Hisda:¹² That applies to rough cloth garments.¹³ But garments of personal use, which are dear to him, he would not sell but at an enhanced price.

MISHNAH. BOTH THE VENDEE AND THE VENDOR CAN CLAIM FOR OVERREACHING. JUST AS THE LAW OF OVERREACHING HOLDS GOOD IN THE CASE OF A LAYMAN, SO IT HOLDS GOOD IN THE CASE OF A MERCHANT. R. JUDAH SAID: THERE IS NO OVERREACHING FOR A MERCHANT.¹⁴ HE WHO WAS DECEIVED HAS THE UPPER HAND; IF HE WISHES, HE CAN EITHER SAY,

BABA METZIAH – 28b-58a

GIVE ME BACK MY MONEY,' OR, 'RETURN WHAT YOU OVERCHARGED ME.

GEMARA. Whence do we know this? — For our Rabbis taught: And if thou sell aught unto thy neighbor ... ye shall not deceive.¹⁵ From this I know it¹⁶ only if the purchaser was defrauded; how do I know it if the vendor was overreached? Because Scripture states, '...acquirest...ye shall not deceive' — Now, both vendee and vendor must be written, for had the Divine Law stated [the law only of] the vendor — that is because he knows his purchase;¹⁷ but as for the purchaser, who is not experienced in the purchase,¹⁸ I might think that the Divine Law did not apply the injunction of 'ye shall not defraud' to him. And had Scripture mentioned the vendee [only], that might be because he acquires [an article], for it is proverbial, 'When you buy, you gain'. But as for the vendor, who indeed loses thereby, as it is said, 'He who sells, loses,'¹⁹ I might think that the Divine Law did not exhort him, 'ye shall not defraud;' hence both are necessary.

R. JUDAH SAID, THERE IS NO OVERREACHING FOR A MERCHANT. Because he is a merchant, has he no claim for overreaching? — Said R. Nahman in Rab's name: This was taught of a speculator.²⁰ Why? Because he well knows the value of what he sells, but foregoes [part thereof] to him [the vendee], the reason that he sells thus [cheaply] being that he has chanced upon another purchase;²¹ nevertheless now he wishes to retract.²² R. Ashi said: What is meant by 'THERE IS NO OVERREACHING FOR A MERCHANT? He is not subject to the law of overreaching. i.e., he can withdraw even for less than the [recoverable] standard of overreaching.²³

It has been taught in accordance with R. Nahman: R. Judah said: There is no overreaching for a merchant, because he is an expert.²⁴

HE WHO WAS DECEIVED HAS THE UPPER HAND. Who is the authority of our

Mishnah, [seeing that] it is neither R. Nathan nor R. Judah ha-Nasi? For if R. Nathan — our Mishnah teaches, IF HE WISHES,²⁵ whereas the Baraitha²⁶ does not state, If he wishes;²⁷ whilst if it is R. Judah — our Mishnah refers to the Vendee [only],²⁸ whereas the Baraitha refers to the Vendor.²⁹ (Mnemonic: *ZaB RaSH*.)³⁰ Said R. Eleazar: I do not know who taught this [Mishnah of] overreaching. Rabbah said: In truth, its authority is R. Nathan, but read in the Baraitha too, [If] he wishes [etc.]. Raba said: In truth, it is R. Judah ha-Nasi, but what the Mishnah omits is explained in the Baraitha.³¹ Said R. Ashi: This too follows from the fact that it states. **BOTH THE VENDEE AND THE VENDOR**, yet proceeds to explain [the law of] the vendee [only]; this proves that the case of the vendor is merely left over. This proves it.

It has been stated: If one says to his neighbor, 'I agree to this sale on condition that you have no claim of overreaching against me — Rab said: He [nevertheless] has a claim of overreaching against him. Whereas Samuel said: He has no claim of overreaching against him. Shall we say that Rab ruled in accordance with R. Meir, and Samuel in accordance with R. Judah? For it has been taught: If one says to a woman, 'Behold thou art betrothed³² unto me on condition that thou hast no claims upon me of sustenance, raiment and conjugal rights' — she is betrothed, but the condition is null: this is R. Meir's view. But R. Judah said: In respect of civil matters, his condition is binding! — Rab can answer you: My ruling agrees even with R. Judah. R. Judah states his view there only in that case, because she knew [of her rights], and renounced them;

1. The longer period given by R. Tarfon.
2. Here referring to R. Tarfon's ruling.
3. Therefore the longer period within which they might recover the fraud was of little benefit to them, whilst on the other hand the longer period given to the vendee was definitely to their disadvantage.
4. The word means 'innkeeper'.
5. [H], the word may also mean 'ass'.

BABA METZIAH – 28b-58a

6. Others: 'beads', 'frontlets'. [Krauss T.A. I, 174. 'girdles'.]
7. Lit., 'called'.
8. The overcharge being less than a sixth.
9. Lit., 'householder'.
10. A private person may attach a sentimental value to an object, which is naturally greater than the market price, and the vendee must be aware of this.
11. Lit., (with [H], 'thy strength', understood) 'thy strength be firm'.
12. Other versions: R. Papa.
13. Which a private individual does not mind selling.
14. This is explained below.
15. Lev. XXV, 14.
16. That an overcharge is returnable.
17. Hence, if he overreaches, he does it wantonly, and therefore the overcharge is returnable.
18. And if he underpays, it is unwittingly.
19. Money goes, and he who sells loses the article and probably the money too later on; but he who buys has a permanent gain — sentiments natural to a private individual as well as to a noncommercial, agricultural community.
20. So Jast. Rashi: a merchant who is a middleman, buying and selling from hand to hand.
21. For which he needs immediate ready money.
22. Possibly because his intended bargain did not mature.
23. If he was deceived even by less than a sixth he can withdraw from the bargain, since that is his livelihood.
24. This proves that he has no redress, not, as R. Ashi said, that he is put in an advantageous position.
25. I.e., he has the choice of confirming the sale and recovering the fraud or cancelling the sale entirely.
26. *Supra* 50b.
27. But only enables him to recover the Fraud but not cancel the transaction.
28. As being able to cancel the sale, since it states, GIVE ME BACK MY MONEY.
29. V. *supra* 50b.
30. V. p. 398, n. 5. Z for EleaZar; B for RaBBah; R for Raba; R for ASHi.
31. V. p. 492. n. 2, and cf. p. 227. n 2.
32. Lit., 'sanctified'.

Baba Mezi'a 51b

but here, did he know [that he was defrauded], that he should make renunciation! Whilst Samuel can say: My ruling agrees even with R. Meir. Only there does R. Meir state that view, in so far as he certainly rejects¹ [a Biblical

law];² but here, who can say that he disregards³ anything at all?⁴

R. 'Anan said: I was told on Samuel's authority: If one says to his neighbor. '[I agree to this sale] on condition that you have no claim of overreaching against me,' then he can prefer no claim of overreaching against him. [But if he stipulates,] 'on condition that there is no overreaching therein', then [in case of deceit] a charge of imposition can be preferred.⁵

An objection is raised: If one trades on trust,⁶ or if one says to his neighbor. '[This sale is] on condition that you have no claim of overreaching against me,' then he has no claim of overreaching against him.⁷ Now, according to Rab, who maintained, 'My ruling agrees even with R. Judah.'⁸ who is the authority for this? — Said Abaye: It is clear [therefore] that Rab's ruling agrees with R. Meir [only], and Samuel's with R. Judah.⁹ Raba said: There is no difficulty; one refers to a general [condition]; the other to a particular [stipulation]. As it has been taught: When is this said?¹⁰ Of a general [condition].¹¹ But if one explicitly states [that he is overcharging], [e.g.,] if the vendor said to the vendee, 'I know that this article, which I sell you for two hundred *zuz*, is only worth one hundred, but I sell it to you on condition that you have no claim of overreaching against me,' then he has no claim of overreaching. And likewise, if the Purchaser said to the seller, 'I know that this article which I buy from you for one hundred [*zuz*] is worth two hundred, [yet I do so] on condition that you have no claim of overreaching against me,' then he has no claim of overreaching against him.

Our Rabbis taught: If one buys and sells on trust, he must not compute the inferior goods on trust and the superior at par, but either both on trust or both at par.¹² And he must pay him the cost of portage, transport,¹³ and storing;¹⁴ but he does not receive payment for his own trouble, since he has already been paid in full. Whence was his payment in full given him? — Said R. Papa: This refers to cloth

BABA METZIAH – 28b-58a

manufacturers, who give [a discount of] four per cent.¹⁵

MISHNAH. BY HOW MUCH MAY THE *SELA'* BE DEFICIENT AND YET INVOLVE NO OVERREACHING?¹⁶ R. MEIR SAID: FOUR ISSARS, WHICH IS AN ISSAR PER DENAR¹⁷ R. JUDAH SAID: FOUR PUNDIONS, WHICH IS A PUNDION PER DENAR.¹⁸ R. SIMEON SAID:

1. Lit., 'eradicates'.
2. I.e., if his condition is kept, he is certainly flouting the provisions of Scripture, therefore the condition is null.
3. V. n. 1.
4. Notwithstanding his stipulation, he may not actually overreach; therefore it is valid.
5. Lit., 'there is overreaching therein.' I.e., the condition was not fulfilled, and therefore the sale is invalid.
6. [H] Rashi: A gives goods to B to sell at whatever price he can, to render him the money at a fixed date, whilst he pays him for his labor, i.e., he appoints him his salaried agent. [Tosaf.: The buyer (B) trusts the seller (A) as to the price he paid for the goods, and is willing to allow him a certain percentage for profit. This interpretation of the term [H] is followed in the rendering of the next paragraph.]
7. The first clause means, A cannot say to B, 'You sold below the market value and must therefore make it up. [According to Tosaf. (v. n. 6), B cannot prefer a charge of overreaching against A since he agreed to accept the goods at the price A originally paid for them (plus a percentage) irrespective of the market value.]
8. V. *supra* 51a.
9. Even as the first hypothesis.
10. That notwithstanding a condition, each can prefer a claim of fraud against the other.
11. I.e., if it was simply stipulated that there should be no claim for overreaching, without an explicit statement that a known overcharge was to be permitted in a certain transaction. In that case, Rab maintains that a claim can be preferred.
12. Tosaf.: E.g.. A buys 10 articles for 10 *zuz*, 5 of which are worth 1 1/2 *zuz* each, whilst the other 5 are only worth 1/2 *zuz* each, and then sells them to B, who states that he is prepared to trust A as to what he paid for them and is willing to give him a certain percentage of profit: then A must not reckon the inferior goods at the average price of one *zuz* apiece, whilst quoting the better at 1 1/2 each, but must either strike an average for all, if he sells all

together, or estimate each at its own value, if he sells them separately.

13. Lit., 'the hire of a camel.'
14. I.e., the seller is entitled to add his expenses to the cost.
15. The cost price (10 *zuz*, as stated in the example in n. 3) is subject to a further manufacturer's discount; but the seller, in estimating his profits, bases it on the cost price before the discount is subtracted. That discount is regarded as full payment for his personal trouble (v. S. Strashun a.l.).
16. Coins being valued by weight they depreciate in value after being in use for some time. The Mishnah discusses how far they may thus be underweight or defaced and yet, if tendered at their nominal value, involve no overreaching.
17. A *selah* = 4 denarii = 12 pundions; 1 pundion = 2 *issars* (assarius); i.e., 1/24 of Its value.
18. I.e., 1/12.

Baba Mezi'a 52a

EIGHT PUNDIONS, WHICH IS TWO PUNDIONS PER DENAR.¹ UNTIL WHAT TIME IS HE [THE DEFRAUDED PARTY] PERMITTED² TO RETRACT? IN TOWNS, UNTIL HE CAN SHEW [THE COINS] TO A MONEY-CHANGER; IN VILLAGES,³ UNTIL [THE FOLLOWING] SABBATH EVE.⁴ IF HE RECOGNISED IT, HE MUST ACCEPT IT BACK FROM HIM EVEN AFTER A TWELVE MONTH; AND HE HAS NOTHING BUT RESENTMENT AGAINST HIM.⁵ AND ONE MAY REDEEM⁶ THE SECOND TITHE THEREWITH AND HAVE NO FEAR,⁷ BECAUSE IT IS MERE CHURLISHNESS.⁸

GEMARA. Now, the following is opposed [to the Mishnah]: To what extent is the *selah* to be deficient to involve overreaching?⁹ — Said R. Papa. There is no difficulty: Our Tanna reckons in an ascending fashion,¹⁰ whilst the Tanna of the Baraita reckons in a descending fashion.¹¹ Wherein do a *selah* and a garment differ, that there is a dispute on the former but not the latter?¹² — Said Raba: Which Tanna is the authority for [one-sixth in the case of] a garment? R. Simeon.¹³ Abaye said: In the case of a garment, one forgives [overreaching] up to a sixth, because people say, 'overpay for your back, but [give] only the exact worth for your stomach.'¹⁴ But as for a *selah*, since it does not

BABA METZIAH – 28b-58a

[readily] circulate,¹⁵ one does not forgive [a deficiency].

[To turn] to the main text: To what extent is the *sela'* to be deficient to involve overreaching? R. Meir said, Four *issars*, which is one *issur* per *denar*; R. Judah said: Four *pundions*, which is one *pundion* per *denar*; R. Simeon said: Eight *pundions*, which is two *pundions* per *denar*. Above that, it may be sold at its [intrinsic] worth — By how much may it depreciate that it shall still be permissible to keep it? In the case of a *sela'*, [it can depreciate] as far as a *shekel*;¹⁶ in the case of a *denar*, as far as a quarter.¹⁷ If it is an *issar* less, it is forbidden.¹⁸ One may not sell it to a merchant, highwayman, or murderer,¹⁹ because they cheat others with it, but should pierce and suspend it around the neck of his son or daughter.²⁰

The Master said: 'In the case of a *sela'*, as far as a *shekel*; in the case of a *denar*, as far as a quarter.' Wherein does a *sela'* differ from a *denar*, that [the permitted deficiency of] a *sela'* is [only] as far as a *shekel* [i.e., half its value], whereas [that of] a *denar* is 'as far as a quarter? — Said Abaye: What is meant by 'a quarter?' A quarter *shekel*.²¹ Said Raba: This may be proved too, since he [the Tanna] teaches. 'as far as a quarter',²² and not a fourth part;²³ this proves it. But why should the *denar* be correlated to the *shekel*?²⁴ — He [the Tanna] thereby incidentally informs us that there is a kind of *denar* which is derived from a *shekel*.²⁵ This supports R. Ammi. For R. Ammi said: A *denar* which is derived from a *shekel* may be kept; from a *sela'*, it may not be kept.²⁶

'If it is an *issar* less, it is forbidden.' What does this mean? — Abaye said, It means this: if the *sela'* depreciated by an *issar* more than the standard for overreaching,²⁷ it may not be [expended].²⁸ Raba demurred: If so, even [if the depreciation exceeds it but] slightly, it is likewise so!²⁹ But, said Raba, if the *sela'* depreciated an *issar* to the *denar*, it is forbidden [to offer it as a *sela'*], this anonymous ruling agreeing with R. Meir.

We learnt elsewhere: If a *sela'* became unfit,³⁰ and it was prepared³¹ for use as a weight, it is [liable to become] unclean.³² How much may it depreciate that it shall still be permissible to keep it? In the case of a *sela'*, up to two *denarii*.³³ [When it is worth] less than this, it must be cut up.³⁴ What if [it is worth] more than this? R. Huna said: if worth less, it must be cut up, and if worth more than this, it must [also] be cut up.³⁵ R. Ammi said: If worth less, it must be cut up; but if worth more than this, it may be kept [as it is].

An objection is raised:

1. I.e., 1/6; thus R. Simeon assimilates this to overreaching in general.
2. V. P. 295, n. 11.
3. Which contain no money-changers.
4. When he goes shopping for the Sabbath, and so learns their value.
5. This is discussed in the Gemara.
6. Lit., 'give it for'.
7. Of invalid redemption.
8. To refuse a coin as unfit on account of a slight depreciation.
9. And the Baraitha then gives the same figures as in the Mishnah, which shows that these cases do constitute overreaching.
10. Thus the Mishnah states, How far can it go on increasing its deficiency without involving overreaching? Until four *issars*, etc., but when that point is reached, overreaching is involved. Whilst the Baraitha means, How far can the deficiency of a *sela'* go on decreasing and still involve overreaching? Until four *issars*, etc. Hence, in the Mishnah 'until' is exclusive, whereas in the Baraitha it is inclusive.
11. Lit., 'from bottom to top.'
12. In the case of goods, here expressed by 'a garment', all agree (with the exception of R. Tarfon) that one-sixth constitutes overreaching, whereas the percentage for money is disputed.
13. Who gives one-sixth for money too. Though the Mishnah on 49b states one-sixth as a general opinion, it is actually only R. Simeon's view.
14. If one needs a garment, he should even overpay for it, clothing being virtually necessary to uphold one's dignity. For food, however, one should not pay more than its worth.
15. When it becomes very deficient — the exact percentage of deficiency needed to impede circulation is disputed in the Mishnah.
16. A *shekel* is half a *sela'*. Now, as the *sela'* depreciates, there is no fear that it may be passed off as a full *sela'*, because its decreased

BABA METZIAH – 28b-58a

thickness is obvious. But when it is reduced to less than a *shekel*, there is the danger that it may be passed off as a *shekel*, the extent of the depreciation not being so noticeable in view of the larger size in width which it would still retain as a depreciated *sela'*, and which would appear to compensate for its reduction in thickness. (The size of the *sela'* was larger than that of the *shekel*, both in width and thickness.) Therefore it may not be kept at all. The Baraitha states further on what is to be done with it.

17. A quarter *denar* was a separate coin, and the depreciated *denar* might likewise be passed off as a quarter.
18. This is discussed *infra*.
19. A robber who is prepared to commit murder.
20. Tosef. B. M. III.
21. Which is half a *denar*.
22. [H], the specific name of a coin, value a quarter *shekel*.
23. [H]
24. In speaking of a *denar*, why not say half a *denar* instead of a quarter of a *shekel*?
25. I.e., if the *shekel* becomes deficient to half its value, it is legal tender for a *denar*.
26. Because owing to its large size it may be passed off as a *shekel*.
27. According to the respective opinions stated in the Mishnah.
28. As a *sela'*.
29. Since the limit of overreaching is passed, no matter by how little, it may surely not be offered as a full weight *sela'*.
30. To be used as such, owing to its depreciation.
31. By mutilation, so that it could not pass as an ordinary coin.
32. As a coin, it is not subject to uncleanness; but when employed as a weight, it is regarded as any other article of use, which is liable to become unclean.
33. =a *shekel*, as stated above.
34. As it might be passed off as a *shekel*, Kel. XII, 7.
35. I.e., once it depreciates so much that overreaching is involved, even if its value exceeds a *shekel*, it must be mutilated, so that it shall not be offered as a *sela'*.

Baba Mezi'a 52b

Above that, it may be sold at its [intrinsic] worth.¹ Surely that means that it depreciated by more than the limit for overreaching?² — No; 'above that' [means it is worth more] not yet having depreciated to an extent involving overreaching: then it may be sold at its intrinsic value.

An objection is raised: By how much may it depreciate that it shall still be permissible to keep it? In the case of a *sela'*, [it can depreciate] as far as a *shekel*. Surely that means that it depreciated little by little?³ — No; it means that it fell into a fire and so lost in value all at once.

The Master said: 'He should pierce and suspend it around the neck of his son or daughter.' But the following contradicts it: One must not employ it⁴ as a weight,⁵ cast it amongst his scrap-metal nor pierce and suspend it around the neck of his son or daughter; but must either pound it [to dust], melt it down, mutilate or cast it into the salt sea! — Said R. Eleazar — others state, R. Huna in R. Eleazar's name: There is no difficulty; the former refers to the middle [of the coins], the latter to its edge.⁶

UNTIL WHAT TIME IS HE [THE DEFRAUDED PARTY] PERMITTED TO RETRACT? IN TOWNS, UNTIL HE CAN SHEW [THE COINS] TO A MONEY-CHANGER; IN VILLAGES, UNTIL [THE FOLLOWING] SABBATH EVE. Why is a distinction [between towns and villages] made in respect to a *sela'* but not to a garment? — Abaye answered: Our Mishnah too, when it treats of a garment, refers to towns — Raba said: As for a garment, everyone has expert knowledge therein;⁷ whereas in regard to a *sela'*, since not every man can value it save a money-changer alone, it follows that in towns, where a money-changer is available, [he can retract] only until he shows it to a money-changer; whereas in villages, where none is available, [the period is] until Sabbath eve, when they [the villagers] go up to market.⁸

IF HE RECOGNISED IT, HE MUST ACCEPT IT BACK FROM HIM EVEN AFTER A TWELVEMONTH, etc. Where [is this]? If in towns? But you have said, UNTIL HE CAN SHEW [THE COINS] TO A MONEY-CHANGER! Again, if in villages? But you have said, UNTIL [THE FOLLOWING] SABBATH EVE! — Said R. Hisda: Here a measure of piety was taught.⁹ If

BABA METZIAH – 28b-58a

so, consider the second clause: **AND HE HAS NOTHING BUT RESENTMENT AGAINST HIM.** To whom does this refer? If to the pious man,¹⁰ let him neither accept it nor bear resentment against him!¹¹ But if to the one from whom he accepted it, then after having had it accepted from him, should he bear resentment? — It means thus: but as for another person,¹² even if he does not re-accept it from him, he [to whom it was given as a full coin] **HAS NOTHING BUT RESENTMENT AGAINST HIM.**

AND ONE MAY REDEEM THE SECOND TITHE THEREWITH AND HAVE NO FEAR, BECAUSE IT IS MERE CHURLISHNESS. R. Papa said: This proves that he who is exacting in respect to coins¹³ is dubbed a churl,¹⁴ providing, however, that they [still] circulate.

This [the Mishnah] supports Hezekiah, for Hezekiah said: When he comes to exchange it, he must exchange it as its intrinsic value; if he comes to redeem therewith, he estimates it at a proper [coin].¹⁵ What does he mean?¹⁶ — He means this: Though when he comes to exchange it, he exchanges it at its present value,¹⁷ yet when he redeems [second tithe] therewith, he may estimate it as a good [coin].¹⁸ Shall we say that Hezekiah holds that the second tithe may be treated disparagingly?¹⁹ But did not Hezekiah say: With respect to second tithe [produce] worth less than a *perutah*, one may declare, 'It, together with its fifth,²⁰ is redeemed with the first money [of redemption];'²¹ because it is impossible for a person to calculate his money exactly!²² — What is meant by 'a proper [coin]'? On the basis of the proper value [of the coin], because it [the second tithe] may not be lightly treated in two respects.²³

The [above] text stated: 'Hezekiah said: With respect to second tithe [produce] worth less than a *perutah*, one may declare, "It, together with its fifth, is redeemed by the first money [of redemption];" because it is impossible for a person to calculate his money exactly.' An objection is raised: For *terumah* and the first

fruits²⁴ one is liable to death and [the addition of] a fifth;²⁵

1. Quoted from the Baraitha cited *supra*.
2. Which proves that it may be kept.
3. In which case it passes the standard of overreaching long before it drops to a *shekel*, thus refuting R. Huna.
4. Sc. the worn coin which may no longer be kept owing to its deficient value.
5. Lit., 'must not make it a weight amongst his (other) weights.'
6. When the coin is pierced in the middle, it cannot be circulated; hence this is permissible. But if it is pierced at the edge, one may file it round until the hole is gone and then use it as a coin: hence it is forbidden.
7. Therefore even in a village one can readily find a person to value it.
8. In the town.
9. I.e., though he is not legally bound to take it back, yet as a measure of piety he should do so.
10. I.e., who does not insist upon the letter of the law, but is guided by piety.
11. v.p. 437, n. 1.
12. One who insists upon his legal right not to take it back.
13. Refusing to accept them even if slightly worn.
14. Lit., 'a malevolent soul.'
15. If one exchanges a worn *sela'* for perutahs, he must estimate it at its metallic, intrinsic value. If, however, he redeems second tithe produce with such coins, he gives the coins their nominal value, as though unworn.
16. 'When he comes...intrinsic value:' but surely that is already stated in the Mishnah, that, when a coin depreciates to the extent that overreaching is involved, it may not be passed off at full value!
17. When coming to change a *sela'*, which has depreciated, though not to the extent involving overreaching with which the second tithe was redeemed, into perutahs in Jerusalem, he naturally receives from money-changers perutahs only for its depreciated value (cf. Tosaf.).
18. Thus Hezekiah informs us that when the Mishnah states that the second tithe may be redeemed therewith, it means that the coin is reckoned at its full nominal value, because to be exacting in regard to coins that are slightly worn is a mark of churlishness.
19. As above, estimating the deficient *sela'* at its full value, thus minimizing that of the second tithe.
20. V. p. 272, n. 9.
21. I.e., money which has already been used in redeeming other second tithe produce.

BABA METZIAH – 28b-58a

22. When one redeems the second tithe, he does not calculate its exact value, lest he underestimate it, and so redeems it at slightly more than its true worth. This slight excess may now be regarded as the redemption money of second tithe produce worth less than a *Perutah*, the smallest possible coin. This proves that in the first place it is liberally calculated, which contradicts his former statement that even deficient coins may be reckoned at their full value for this purpose.
23. The defective coin is computed only at the proper value it possesses now, i.e., not only its full allowance made for its deficiency, but its valuation is slightly lowered even beyond that, so as to make quite certain that it does possess the value attributed to it. On this interpretation, Hezekiah asserts that we are stricter in respect to the redemption of the second tithe than in ordinary secular transactions. And the reason is, 'because it may not be lightly treated in two respects' — for the mere fact that it may be redeemed with a defective coin, which some might refuse as a coin at all, is considered a light treatment of the second tithe; we may certainly not subject it to the further indignity, as it were, of computing the value of this coin in a liberal spirit (Rashi). The statement in the Mishnah that the second tithe can be redeemed with it means, accordingly, 'at its present intrinsic value,' for to refuse to accept it thus is a mark of churlishness.
24. V. Num. XXVIII. 26; Deut. XXVI, 1-4.
25. If a zar (q.v. [Glos.](#)) or an unclean priest wantonly eats them, he is liable to 'death at the hands of Heaven'; whilst if a zar eats them in ignorance of their true character, he must make restoration, adding a fifth to their value (Lev. XXII, 14). These laws were stated primarily with respect to *terumah*, but by Biblical exegesis they were extended to the first fruits too.

Baba Mezi'a 53a

they are forbidden to zarim,¹ accounted as the priest's [personal] property,² are neutralized by one hundred and one [times their quantity].³ and require washing of the hands⁴ and the setting of the sun.⁵ These provisions hold good of *terumah* and first fruits, which is not so in the case of [second] tithes.⁶ Now, what is meant by 'which is not so in the case of [second] tithes?' Surely one may deduce that a tithe is neutralized by a greater quantity [than itself]:⁷ but if Hezekiah's ruling is correct, it

[the tithe] is an article which can become [otherwise] permitted, and whatever can become [otherwise] permitted is not neutralized even in a thousand [times its quantity].⁸ — But how do you know that 'which is not so in the case of the [second] tithe' means that it is neutralized by a greater quantity [than itself]; perhaps it means that it cannot be neutralized at all?⁹ — You cannot say thus, because in respect of *terumah* only the stringencies of *terumah* are taught, not its leniencies.¹⁰ But he teaches '[they] are accounted the priest's property!¹¹ — You cannot think so,¹² because it was distinctly taught: The second tithe is neutralized by a greater quantity [than itself]. And of which second tithe was this said? Of a tithe which is not worth a *perutah*¹³ or which has once entered Jerusalem and gone forth again.¹⁴ But if Hezekiah's ruling is correct, let Hezekiah's [remedy] be employed by redeeming it with the earlier money!¹⁵ — It means that he has not [yet] redeemed [any other].¹⁶ Then let him bring the other tithe [produce] which he has and combine them?¹⁷ — That [which is tithe] by Biblical law and that which is [so] only by Rabbinic law cannot be combined.¹⁸ Then let him bring *demai*!¹⁹ — [We fear] lest he thereby bring certain [tithe].²⁰ Then let him bring two *Perutahs*, redeeming the tithe [that he brings] with a *perutah* and a half, and this [the intermixed tithe] with the rest?²¹ — Do you think that one and a half *perutah's* worth of tithe consecrates²² two *perutahs*? That is not so; one *perutah*['s worth] consecrates one *Perutah*, whilst the half *perutah*['s worth] does not consecrate [anything]; so again there is [tithe by] Biblical law²³ and [tithe by] Rabbinic law,²⁴ and these two cannot be combined. Then let an *issar* be brought?²⁵ — [That is forbidden,] lest he bring *perutahs* [for that purpose].

'Or which has once entered Jerusalem and gone forth again.' But why so?²⁶ Let it be taken back again! — It refers to defiled [tithe]. Then let it be redeemed.²⁷ For R. Eleazar said: Whence do we know if second tithe [produce] became defiled, that it is to be redeemed

BABA METZIAH – 28b-58a

1. Zar (q.v.) pl. zarim. — This would appear obvious after the previous statement. Rashi observes that it is in fact unnecessary per se, but that its purpose is to mark the contrast with tithes, which, as the Mishnah proceeds to teach, is permitted to zarim. Tosaf., following J. Bik. II, explains: even half the minimum quantity, which involves no penalty of death or the addition of a fifth, is forbidden to zarim.
2. In that he can employ them as *kiddushin* (q.v. [Glos.](#)) for betrothing a woman; v. *infra* n. 8.
3. If a quantity of *terumah* or first fruits fell into hundred times as much *hullin* (common food) and cannot be distinguished therefrom, it is neutralized or annulled, and the whole is permitted to a zar.
4. That is in respect of fruit. One's hands are normally said to be unclean with what is known as the second degree of uncleanness — a low degree. This is insufficient to render the fruit of *hullin* or tithes unclean, and therefore these may be eaten with unwashed hands. But a stricter purity was demanded of *terumah* and first fruits; consequently it was enacted that the touch of ritually unclean hands imposes upon them third degree uncleanness; therefore the hands must be washed before partaking of them. — This impurity is only Rabbinical, and therefore the washing of the hands alone was sufficient: for Biblical uncleanness the immersion of the whole body in a ritual bath (*mikweh*) was necessary.
5. If a priest became Biblically unclean, he required Immersion (v. n. 6) and then had to wait until sunset before he might eat of *terumah* or the first fruits (Lev. XXII, 7).
6. (i) The (second) tithe may be eaten by a zar — consequently, of course, no penalty is involved therein; (ii) it is not the priest's property, as explained in n. 4., but sacred property given to the priests; hence it cannot be employed as *kiddushin*. — This is R. Meir's view (Kid. 52b); (iii) it does not require a hundred times its own quantity for neutralization; (iv) the fruit may be eaten with unwashed hands; (v) when one becomes Biblically unclean, he may eat thereof immediately after immersion, without waiting for sunset (v. Hal. I, 9).
7. If a quantity of the second tithe fell into a greater quantity of *hullin* it is neutralized and the whole ranks as *hullin*, 100 times the amount being unnecessary.
8. This is a Talmudic principle with respect to the neutralization of an object when intermixed with permitted commodities. Though normally a certain proportion of the latter is sufficient to neutralize the former, that does not operate if the former is destined to become permitted without recourse to neutralization. E.g., if an egg is laid on a Festival, it is forbidden on that day, but not after. Now, if this egg was mixed up with no matter how many others on the day that it was laid, it is not neutralized, and all are forbidden on that day. For since it will be permitted on the morrow in any case, the principle of neutralization is abandoned. Now, with respect to the second tithe, which is under discussion, since, as deduced, it can be annulled by a lesser quantity than is necessary for *terumah*, or indeed, since it can be annulled at all, it must refer to produce that cannot be otherwise made fit. Now, the remedy for ordinary second tithe that is mixed up with *hullin* is either to take the whole to Jerusalem, which can be easily done, as one has to eat the rest of the second tithe there in any case, and consume it there, or redeem the quantity that was intermixed. The only case in which these remedies cannot be employed is when the second tithe was unclean, so that the whole mixture may not be eaten, and is worth less than a *perutah*, and so not subject to redemption. But if Hezekiah's ruling that second tithe worth less than a *Perutah* can be redeemed by retrospectively including it in other redeemed produce is correct, the law of neutralization cannot operate!
9. In contradistinction to *terumah*, which is neutralized by 100 times its quantity.
10. v. p. 313, n. 8. An examination of the various points shows that the object of the Tanna is to teach wherein *terumah* is more stringent than the tithe, not wherein it is lighter.
11. Which is a leniency compared with the second tithe,
12. That the second tithe cannot be neutralized at all,
13. V, n. 2.
14. This is explained below.
15. This is a repetition, with a little more explanatory detail, of the difficulty already raised.
16. So that he has no money with which it may be retrospectively redeemed.
17. I.e., the tithe which is intermixed and that which he brings, and then redeem both.
18. By Biblical law the tithe is certainly neutralized by a greater quantity than itself. Consequently, when it is thus intermixed, it is tithe only by Rabbinic law, whereas what is brought now is tithe according to Biblical law, and the two cannot be combined for the purpose of joint redemption, with the result that the tithe which he brings will remain unredeemed. But the retrospective combination permitted by Hezekiah is with produce that is already redeemed: hence it does not matter that the

BABA METZIAH – 28b-58a

first was tithe by Biblical law and the second, sc. the mixed produce, only by Rabbinic law.

19. V. [Glos.](#) This too is tithe only by Rabbinic law, and could be combined with the mixed produce.
20. If he is permitted the remedy of *demai*, he may think that it is just the same if he brings certain tithe.
21. I.e., let him first bring the other produce which he has to the value of a *perutah* and a half and redeem it all with the two *perutahs*; then declare that the half *perutah's* worth mixed up with *hullin* is redeemed by the two *perutahs* already used, in accordance with Hezekiah's teaching. — In the whole of this discussion, every suggestion that the mixed tithe should be capable of redemption on the basis of Hezekiah's ruling is a refutation of his views.
22. Lit., 'seizes hold of.'
23. Sc. this half.
24. The mixed produce.
25. And tithe produce to a lesser value be redeemed therewith, the excess being used for the redemption of the mixed tithe. For though one and a half *perutahs'* worth cannot consecrate two *perutahs*, that is because they are two separate coins, hence divisible, and so one can become consecrated whilst the other remains *hullin*. If a single larger coin, however, is employed, the whole becomes consecrated, whilst the excess can retrospectively redeem the mixed tithe.
26. Why may the intermixed tithe be neutralized?
27. It being assumed that this refers even to produce worth a *perutah*.

Baba Mezi'a 53b

even in Jerusalem?¹ From the verse, *When thou art not able se'etho* ['to bear it'].² Now, 'se'eth'³ can only refer to eating, as it is written, *And he took and sent mase'oth* ['messes'] *unto them from before him!*⁴ — But this refers to [commodities] purchased with the [redemption] money of the second tithe.⁵ But let that also, which is bought with the [redemption] money of the second tithe, be redeemed, for we learnt: If what was redeemed with the [redemption-] money of the second tithe became defiled, it is [itself] to be redeemed!⁶ — This agrees with R. Judah, who ruled: It must be buried. If so, why particularly if it has gone forth [again]: the same applies even if it has not gone forth? — But after all, this refers to undefiled [tithe]:

and what is meant by 'gone forth'? That the walls [of Jerusalem] had fallen.⁷ But did not Raba say: The law of the walls [of Jerusalem], in that it [the second tithe] must be eaten within them, is Biblical; but that they have retaining power⁸ is merely Rabbinical: and [consequently] when would the Rabbis enact thus: only as long as the walls were standing, but not when they no longer existed [having fallen]!⁹ — The Rabbis drew no distinction whether the barriers were standing or not.¹⁰

R. Huna b. Judah said in R. Shesheth's name: A single clause is taught, [viz.,] Second tithe [produce] worth less than a *perutah* which has entered Jerusalem and gone forth [again].¹¹ But why so? Let it be taken back and eaten! — It means that the walls had fallen. Then let it be redeemed, for Raba said: The law of the walls [of Jerusalem], in that it [the second tithe] must be eaten within them, is Biblical; but that they have retaining power is merely Rabbinical; and [consequently, ought we not to say] when would the Rabbis enact thus: only as long as the walls were standing, but not when they no longer existed [having fallen]! — The Rabbis drew no distinction. If so,¹² why particularly if worth less than a *perutah*; even if worth a *perutah*, it is the same? — He [the Tanna] [implicitly] proceeds to a climax.¹³ [Thus:] If it contains [a *perutah's* worth], it is unnecessary to state that the walls retain it.¹⁴ But where it does not contain [a *Perutah's* worth], I might think that the walls do not retain it:¹⁵ therefore we are taught [otherwise].

Our Rabbis taught: *And if a man will at all redeem aught of his tithes [he shall add thereto the fifth part thereof]:*¹⁶ 'of his tithes,' but not all his tithes,¹⁷ thus excluding second tithe [produce] worth less than a *perutah*.¹⁸

It has been stated: R. Ammi said, [This means] that [the tithe] itself is not [worth a *perutah*]; R. Assi maintained, Its *fifth* [is less than a *perutah*];¹⁹ R. Johanan said, That [the tithe] *itself* is not [etc.]; R. Simeon b. Lakish said, Its *fifth* is less [etc.]. An objection is raised. For second tithe worth less than a *perutah* it is sufficient to declare, 'That itself and its fifth

BABA METZIAH – 28b-58a

are redeemed with the first money.²⁰ Now, on the view that [it does not require redemption even if] its fifth is worth less [than a *perutah*], it is correct; hence he [the Tanna] states 'it is sufficient,' viz., though that itself contains [the value of a *perutah*], yet since its fifth does not, it is well. But on the view that [the tithe] *itself* is worth less, what is [the appropriateness of] 'it is sufficient?'²¹ This is indeed a difficulty.

The scholars propounded: Is the fifth calculated on the inner sum [sc. the principal] or on the outer [sc. the principal plus the addition]?²² — Said Rabina: Come and hear: If the owners value it at twenty [*sela's*], the owners have priority, since they add a fifth. If a stranger declared, 'I accept it for twenty-one,'

1. Where undefiled tithe cannot be redeemed.
2. Deut. XIV, 24; The next verse says: Then thou shalt turn it into money..
3. [H], 'to bear'.
4. Gen. XLIII, 34. Thus he translates the first verse: If thou art not able to eat it — being defiled — then thou shalt turn it into money — i.e., redeem it.
5. The original second tithe having been redeemed, the money was expended in Jerusalem upon commodities, which in turn became defiled. At this stage it is assumed that only the original tithe can be redeemed if defiled, but not that purchased with the redemption money.
6. M. Sh. III. 10.
7. After the second tithe was taken into Jerusalem. Now, the second tithe cannot be eaten there when the walls have fallen; on the other hand, having been brought there whilst the walls were standing, it is 'retained', i.e., it cannot be redeemed.
8. V. previous note.
9. Hence the barriers having fallen, let the tithe be redeemed.
10. But enacted a general measure that the walls have retaining power.
11. This answers the objection against Hezekiah from the cited Baraitha (q.v. *supra*), the reason no resort can be had to Hezekiah's device being that the tithe has been 'retained' by the barriers, when redemption is no longer possible. — The Talmud proceeds to raise the same objections against this answer as against the previous explanation.

12. That the reason of non-redemption is the 'retaining' power of the walls of Jerusalem.
13. Lit., 'he teaches a case of it is unnecessary to state it.'
14. And it cannot be redeemed. For since it is of sufficient value to require redemption, the barriers sanctify it.
15. Since it is not subject to the law of redemption.
16. Lev. XXVII, 31.
17. I.e., of is a limitation, implying that in certain cases there can be no redemption.
18. Such a small quantity cannot be redeemed, and if one does declare it redeemed with a *perutah*, that *perutah* does not receive the sanctity of the second tithe to have to be expended in Jerusalem.
19. Even if the produce is worth more than a *perutah*, no redemption is possible if the fifth to be added is less than a *perutah*.
20. In accordance with Hezekiah's ruling, q.v. *supra* 52b and notes. It need not be taken to Jerusalem, nor is it necessary to combine it with other produce and redeem the whole.
21. Since I could not think that redemption is necessary in such a case. But 'it is sufficient' implies that a concession is made when the law might have been stricter.
22. E.g., if the principal is worth 20 *zuz*, must one add 4 *zuz*, a fifth of the principal, or 5, a fifth of the total?

Baba Mezi'a 54a

the owners must give twenty-six; 'for twenty-two,' the owners must give twenty-seven; 'for twenty-three,' the owners must pay twenty-eight; 'for twenty-four,' the owners must pay twenty-nine; 'for twenty-five,' the owners must pay thirty; because a fifth is not added on this man's higher valuation.¹ This proves that the fifth is calculated on the outer sum.² This proves it.

This is disputed by Tannaim: Then he shall add a fifth part of it thereto³ — i.e., it [sc. the principal] plus its fifth shall amount to five:⁴ this is the view of R. Josia. R. Jonathan said: 'A fifth part of it' means a fifth of the principal.

The scholars propounded: Does the fifth restrain or not?⁵ [Thus:] do four [*zuz*] redeem four [*zuz's* worth of second tithes], whilst a fifth is independently added,⁶ so that the fifth

BABA METZIAH – 28b-58a

is no bar [to the validity of the redemption]: or perhaps, four [*zuz*'s worth] must be redeemed by five,⁷ the fifth being [thus] a bar? — Said Rabina: Come and hear: *demai*⁸ is not subject to the law of a 'fifth' or to the law of removal.⁹ [This implies,] but the law of the principal does apply to it.¹⁰ Why so?¹¹ [Surely because] the principal, which is indispensable for [tithe by] Biblical law, is required in the case of [tithe by] Rabbinic law; whereas the fifth, which is not a bar in [tithe by] Biblical law, is not required in the case of Rabbinic [tithe].¹²

Shall we say that this is disputed by Tannaim? [It has been taught:] If one gave the principal but not the fifth: R. Eliezer ruled: It [the redeemed tithe] may be eaten [outside Jerusalem]; R. Joshua said: It may not be eaten. Said Rabbi: I approve of R. Eliezer's view for the Sabbath, and R. Joshua's view for week-days.¹³ Now, since he said 'I approve of R. Eliezer's view for the Sabbath,' it follows that their dispute applies even to week-days; and since he said, 'I approve of R. Joshua's view for week-days,' it follows that their dispute applies even to the Sabbath. Surely then, they differ in this reasoning, viz., R. Eliezer holds that the fifth is no bar, whilst R. Joshua holds that it is! — Said R. papa: That is not so. All agree that the fifth is no bar, but here they differ as to whether we fear culpable omission. One Master holds that we fear culpable omission,¹⁴ whilst the other Master maintains that we do not fear this.

R. Johanan said: All agree in the case of *hekdes*¹⁵ that it is redeemed,¹⁶ since the treasurers demand it in the market place.¹⁷ Now, do they really not differ in respect to *hekdes*? Surely it has been taught: If one gave the principal but did not give him [sc. the treasurer] the fifth: R. Eliezer said: He has redeemed it; whilst the Sages say: He has not redeemed it. Said Rabbi: I approve of R. Eliezer's view in respect to *hekdes*,¹⁸ and that of the Sages in respect to tithes. Now, since he said 'I approve of R. Eliezer's view In respect to *hekdes*,' it follows that he himself [R. Eliezer] differs even in reference to the tithe;

and since he said, 'I approve of the view of the Sages in respect to tithes,' it follows that they differ even on *hekdes*! — But if it [R. Johanan's dictum] was stated, it was stated thus: R. Johanan said: All agree in respect to the Sabbath and *hekdes*, that it is redeemed. Firstly, because it is written, And thou shalt call the Sabbath a delight;¹⁹ and furthermore, since the treasurers demand it in the market place.

Rami b. Hama said: Now, it has been said that *hekdes* cannot be redeemed by land, for the Divine Law ordered, Then he shall give the money, and it shall be assured to him;²⁰ but can its fifth be 'redeemed by' [i.e., rendered in] land? [Again,] *terumah* can be repaid only by *hullin*,²¹ for the Divine Law saith, Then he shall give unto the priest the holy thing,²² implying, that which is eligible to be holy:²³ can its fifth²⁴ be rendered out of what is not *hullin*? [Further, the second] tithe cannot be redeemed by *asimon*,²⁵ because the Divine Law said, And thou shalt bind up the money in thy hand,²⁶ thus including everything which has a figure:²⁷ can its [additional] fifth be exchanged for uncoined metal? Now, it eventually transpired²⁸ that it [these questions] reached Raba. Thereupon he said to them: Scripture saith, [Then he shall add the fifth part of the money of thine estimation] unto it,²⁹ [which is] to include its fifth as equal to itself [sc. the principal].³⁰

Rabina said: We have learnt likewise: If one stole *terumah* but did not eat it, he must repay double the value of the *terumah*.³¹ If he ate it,³² he must repay two principals and a fifth, one principal and a fifth out of *hullin*,³³ and the other principal as the value of *terumah*.³⁴

1. If a man consecrated an inherited field when the Jubilee laws were in force, the redemption was according to a fixed scale, as stated in Lev. XXVII, 16-19. If, however, he consecrated it when the Jubilee laws had fallen into desuetude, he had to value it for the purpose of redemption, whilst at the same time others too might redeem it and keep the field for themselves. Now, the owner had to add a fifth to his valuation, but not strangers.

BABA METZIAH – 28b-58a

Consequently, if both he and strangers valued it equally, it was for him to redeem it, since he would add thereto. But if strangers made a higher offer, the owner had to redeem it at their assessment, adding a fifth on the basis of his own, as stated in the Mishnah quoted. In order that the price might not be unduly forced up, the Mishnah concludes that if the owner valued it at 20, whilst another valued it at 26, i.e., more than the owner's offer plus a fifth, the latter offer was accepted. Thus both the Temple treasury and the owner were safeguarded.

2. Five on twenty.
3. Lev. XXVII, 27.
4. If the principal is four the total shall be five, the addition thus being a fifth of the total — an 'outer' fifth.
5. If one redeems the second tithe without adding a fifth, does this omission restrain him from eating that produce outside Jerusalem, it being regarded as unredeemed, or not?
6. But not as part of the actual redemption.
7. It being a scriptural decree that the addition forms an integral part of the redemption.
8. V. [Glos.](#)
9. If one redeems second tithe of *demai*, he need not add a fifth. Again, ordinary (Biblical) tithes had (in accordance with Deut. XIV, 28ff.) to be removed from the house in the third year after the year of Release, but not *demai* (Dem. I, 2).
10. I.e., unless redeemed at par it may not be eaten outside Jerusalem.
11. Why this distinction?
12. This proves therefore that the omission of the fifth does not invalidate redemption.
13. On the Sabbath the redeemed tithe may be eaten, for otherwise the cheerfulness of the Sabbath might be destroyed, as one might not have anything else to eat. But on week-days it may not be eaten unless the necessary fifth has been added.
14. If we permit eating the tithe even before the fifth has been added, one may intentionally omit his addition.
15. V. [Glos.](#)
16. Even before the necessary fifth is added, and it may then be eaten.
17. There is no fear that the additional fifth will be intentionally omitted, since the treasurers enforce payment. [The treasurers are apparently not allowed to enter the premises of the donor to take a pledge; cf. Deut. XXIV, 11 (v. Strashun a. l.).]
18. For the reason stated, cf. n. 5.
19. Isa. LVIII, 13; v. n. 1.
20. Actually there is no such verse. Rashi and Tosaf. here and in Pes. 35b s.v. [H], without pointing to the non-existence of this verse, quotes, *Then he shall add the fifth part of the*

money of thy estimation unto it, and it shall be assured to him (Lev. XXVII, 19) as the source of this law, implying money, but not land. But in that case the obvious difficulty arises, to which Tosaf. draws attention in Pes. *loc. cit.*, since the verse primarily refers to the fifth, how can one question whether the implication of 'money' as excluding land refers to the fifth too, besides the principal? In Bek. 51a s.v. [H], however, Tosaf. states on the authority of the Sifra that the deduction is really based upon, *and all thy estimations shall be according to the shekel of the sanctuary* (v. 25), '*shekel*' excluding land.

21. If a zar (v. [Glos.](#)) eats it unwittingly, he must make restoration to the priest, and the repayment must be with money of *hullin*.
22. Lev. XXII, 14.
23. I.e., it becomes holy only when he gives it to the priest; hence he cannot repay him with what is already holy.
24. Which had to be added to the principal: then he shall put the fifth part thereof unto it, *ibid.*
25. Uncoined metal; v. *supra* 47b.
26. Deut. XIV, 25.
27. V. p. 282, n. 6. I.e., only a stamped coin can redeem, but not bullion or uncoined metal.
28. Lit., 'The thing was rolled on.'
29. Lev. XXVII, 19, also in every place where the addition of a fifth is mentioned; v. XXII, 14; XXVII. 31 (E.V. 'thereto').
30. I.e., the fifth must be redeemed in the same way as the principal; hence the answer to all the questions is in the negative.
31. The usual punishment of a thief. V. Ex. XXII, 3. As *terumah*, its value is less than *hullin*, since it can be sold only to priests, and may not be eaten if defiled.
32. Not knowing that it was *terumah*.
33. I.e., in actual produce, notwithstanding that the value of *terumah* is less, for since he ate it, he derived the same benefit from it as though it were *hullin*.
34. I.e., money to that value. For the second principal is a fine for theft; therefore it is rendered in money, and based on the actual market value of the article stolen (Ter. VI, 4).

Baba Mezi'a 54b

This proves that the fifth is as the principal.¹

Raba said: With respect to robbery it is written, [*he shall even restore it in the principal,*] *and shall add the fifth part more thereto;*² and we learnt: If he restored the principal and then swore [falsely] concerning the fifth,³ he must then add⁴ a fifth upon the

BABA METZIAH – 28b-58a

fifth,⁵ [and so on,] until the principal is less than a perutah's worth.⁶ With respect to *terumah*, it is written, *And if a man eat of the holy thing unwittingly, then he shall add the fifth part thereof unto it.*⁷ And we learnt: If one eats *terumah* unwittingly, he must restore the principal and a fifth; whether he eats, drinks or anoints [therewith]; whether it was undefiled or defiled *terumah*, he must pay a fifth and a fifth of the fifth.⁸ With respect to [the second] tithes it is neither written⁹ nor taught,¹⁰ nor do we regard it at all as a problem.¹¹ With respect to *hekdesh* it is written, *And if he that sanctified it will redeem his house, then he shall add the fifth part of the money of thy estimation unto it.*¹² And we learnt: He who redeems his *hekdesh* adds a fifth.¹³ Now, only a fifth was thus taught, but not a fifth of the fifth.¹⁴ What then [is the law]? [The problem arises for this reason:] With respect to *terumah* it is written, *and he shall add [we-yasaf];*¹⁵ then with respect to *hekdesh* too it is likewise written, *and he shall add [weyasaf];*¹⁶ or perhaps, with respect to *terumah* it is written *he shall add [we-yasaf]*, and if you remove the *waw* from *we-yasaf* and add it to *hamishito* [the fifth part thereof] it becomes *hamishithaw* [the fifth parts thereof];¹⁷ whereas in respect to *hekdesh* it is written, *and he shall add the fifth part [we-yasaf hamishith]*, and even if you remove the *waw* from *we-yasaf* and add it to *hamishith*, after all it only becomes *hamishitho*.¹⁸ But cannot this [sc. the answer to the problem] be deduced from the fact that it [the fifth] is a second *hekdesh*, and R. Joshua b. Levi said: A fifth is added to first [i.e., original] *hekdesh* [in redemption], but not to second *hekdesh*.¹⁹ — Said R. Papa to Rabina: Thus did Raba say: The fifth ranks as original *hekdesh*.²⁰

What is our decision in the matter? — R. Tabyomi said in Abaye's name: Scripture saith, *Then he shall add the fifth part of the money of thy estimation [unto it]:* thus its fifth is assimilated to its assessed value:²¹ just as a fifth is added to the assessed value, so is a fifth added to the fifth of its value.²²

The [above] text states: 'R. Joshua b. Levi said: A fifth is added to first [i.e., original] *hekdesh* [in redemption], but not to second *hekdesh*' Said Raba: What is R. Joshua b. Levi's reason? — Scripture says, *And if he that sanctified it will redeem his house, [then he shall add the fifth part]:* implying, only he who sanctified, but not he who transferred [its sanctity].²³

A tanna recited before R. Eleazar: *And if it be of the unclean beast,²⁴ then he shall redeem it according to thine estimation [, and shall add a fifth part of it thereto]:*²⁵ just as an unclean beast is distinguished in that it is the original dedication,²⁶ belongs entirely to Heaven,²⁷ and it involves trespass;²⁸ so everything which is original *hekdesh* and belongs entirely to Heaven involves one in trespass. Thereupon R. Eleazar observed to the tanna: As for [the stipulation] that it must belong entirely to Heaven, it is well: that excludes sacrifices of secondary sanctity;²⁹ since its owners enjoy part thereof,³⁰ they involve no trespass offering. But what is 'original dedication' intended to exclude? [Do you mean that] only original *hekdesh* involves a trespass offering, but not final *hekdesh*?³¹ perhaps you said it in reference to the fifth, and in agreement with R. Joshua b. Levi?³² — Even so, he replied, that is what I meant.

R. Ashi said to Rabina: Is an unclean animal capable only of original *hekdesh*,

1. Lit., 'as itself.' — It follows from the fact that the fifth has to be paid in produce, just as the principal.
2. Lev. V, 24. This fifth is payable if the culprit first denied the robbery and swore falsely, and then repented. The Heb. for 'the fifth part' is [H], which is plural in form, lit., 'and its fifth parts'. This justifies the ruling that the fifth itself becomes the principal and a fifth is payable upon that — i.e., there may be many fifth parts.
3. Regretting his repentance before giving the fifth, he falsely swore that he had already paid it.
4. If he repents again.

BABA METZIAH – 28b-58a

5. I.e., the fifth is regarded as a new principal, and he is liable to a fifth of that on account of his false oath.
6. 'The principal' refers to the fifth in respect of which he took a false oath (v. B.K. 103a).
7. Ibid. XXII, 14. Here the Heb. reads [H], sing.; nevertheless it is shown further on that there is a Biblical allusion that there may be many fifths, as in the case of robbery.
8. This fifth becomes the same as the original *terumah*, and if he ate it, he must restore that fifth and a fifth thereof, just as in the case of robbery (Ter. VI, 4).
9. There is no allusion to the payment of many fifths.
10. To that effect, e.g., if one redeems the second tith, duly adding a fifth, and then wishes to redeem that fifth with other coins, it was not taught that he must add a fifth thereof.
11. I.e., another fifth need certainly not be added, since there is not the slightest indication in the Bible to that effect.
12. Lev. XXVII, 15.
13. *Infra* 55b.
14. I.e., it is not stated that if he wishes to redeem that fifth, which is now consecrated, that he must add a fifth thereof unto it.
15. The and (we-) is interpreted as an extending particle, and therefore teaches that this fifth may be added more than once, i.e., on repeated redemption a fifth of the added fifth is required.
16. Hence *hekdes* too may require many fifths.
17. On the plural form v. 322, nn. 5' 10. It is one of the principles of exegesis that a letter may be taken from one word and added to another, and interpreted in the transposed form. Such removal and addition is permissible only at the beginning or end of a word, hut not in the middle; so here [H] > [H]
18. I.e., sing., [H] > [H] thus giving no hint that a second fifth may be required. Though the insertion of the *waw* in the *middle* of the word would turn it into plural viz., [H] 'fifths', such insertion is not permissible, as stated on previous note.
19. This fifth is not the object originally dedicated, but a substitute for it through redemption, the second *hekdes*. According to R. Joshua b. Levi's dictum, which is deduced from Scripture further on, hence authentic, no addition is necessary when redeeming the substitute; so that even if he redeemed the principal with which the original *hekdes* had been redeemed, no fifth thereof would be necessary: surely then no fifth of the fifth is required!
20. And not as a substitute at all. Thus: the original is redeemed at par, and that principal ranks as a substitute. The added fifth, however, is not a substitute, but in the nature of money now consecrated for the first time in obedience to the Scriptural law that when one redeems *hekdes* he must consecrate something (viz., a fifth) in addition. Hence, though no fifth is added when the principal is redeemed, it may be necessary for the fifth.
21. Lit., 'the money of his estimation'.
22. In point of fact the analogy appears defective, since a fifth is not added when the assessed value is itself redeemed, as has just been stated. But the argument is somewhat like this: the fifth is regarded in exactly the same light as the principal assessment: just as when the principal assessment is made, a fifth is to be added, so is a fifth of the fifth to be added likewise, and that is possible only in another redemption (Strashun, a. l.)
23. Lit., 'who caused to seize,' i.e., who by means of redemption transferred sanctity from one object to another. The deduction is that a fifth is to be added only in the case of that which was sanctified itself, but not for that which received its sanctity through redemption.
24. I.e., if an unclean animal was consecrated. The E.V. is 'and if it be of an unclean beast,' the def. art. being understood generically. But as the Talmud bases a particular conclusion upon it (55a), the literal translation has been given here.
25. Ibid. 27.
26. Its sanctity was not received through transference from another animal. The Talmud objects further on that it is possible for an unclean beast to possess transferred sanctity.
27. I.e., its value goes entirely to the Temple, and nothing to the owner. But a clean animal is sacrificed, and the owner enjoys a portion thereof.
28. It is now assumed that this means that if one makes use of it he must bring a trespass offering, just as for benefiting from any other form of *hekdes*.
29. [H] Sacrifices are divided into two grades of sanctity, the higher, which includes the burnt offering and sin offering, and the secondary or lower, e.g., the peace offering and thanks offering.
30. The fat of these lower grade sacrifices was burnt on the altar, the breast and shoulder were the priests portions, and the rest was consumed by the owner.
31. For the term 'final *hekdes*' v. n. 5. Surely 'final *hekdes*' too involves trespass!
32. By 'trespass', not the trespass offering for making use of *hekdes* is meant, but the fifth which must be added on redemption, the fifth being called 'trespass' because there too (sc. when *hekdes* is secularly used) a fifth must be

BABA METZIAH – 28b-58a

added, as stated above, Lev. XXII, 14; thus he asked the Tanna whether he meant that no fifth was to be added in redeeming substitute *hekdes*h.

Baba Mezi'a 55a

but not of intermediary *hekdes*h!¹ — He replied, Because it is incapable of final *hekdes*h.² But R. Aha of Difti objected to Rabina: Yet it is capable of 'intermediary *hekdes*h:' then let a fifth be added too!³ — He replied: It is as final *hekdes*h: just as a fifth is not added for final *hekdes*h,⁴ so for intermediary *hekdes*h no fifth is added. R. Zutra, son of R. Mari, said to Rabina: On what grounds⁵ do you liken it to final *hekdes*h? Liken it [rather] to original *hekdes*h! — He replied: It is logical to liken it to final *hekdes*h, since thereby transferred [sanctity is deduced] from transferred [sanctity]. On the contrary, it should rather be compared with original *hekdes*h, [deducing] that which may be followed by sanctity from that which may be followed by sanctity!⁶ — It is as Raba said, [viz.,] [*And the fire upon the altar shall be burning in it; it shall not be put out: and the priest shall burn wood on it every morning, and lay the burnt offering [in order upon it; and he shall burn thereon the fat of the peace offering]*⁷ implies 'the first burnt offering;⁸ so here too, [*and if it be of*] the unclean [beast] denotes the first uncleanliness [to which it may be subject].⁹

It has been taught in accordance with R. Joshua b. Levi: [If one declared,] 'This cow is a substitute for this cow of *hekdes*h';¹⁰ 'this garment be instead of this other garment of *hekdes*h', his consecrated object is redeemed, whilst *hekdes*h has the upper hand.¹¹ [Even if he declares,] 'This cow, which is worth five *sela*'s be a substitute for this other cow of *hekdes*h', or 'this garment, worth five *sela*'s, be instead of this other garment of *hekdes*h', his consecrated object is redeemed.¹² For the first *hekdes*h he must add a fifth, but not for the second.¹³

MISHNAH. OVERREACHING IS CONSTITUTED BY FOUR SILVER [MA'AH'S].¹⁴ THE [MINIMUM] CLAIM IS TWO SILVER [MA'AH'S],¹⁵ AND ADMISSION IS [AT LEAST] THE VALUE OF A PERUTAH.¹⁶ A PERUTAH WAS SPECIFIED IN FIVE INSTANCES: [i] ADMISSION MUST BE [AT LEAST] THE EQUIVALENT OF A PERUTAH; [ii] A WOMAN IS BETROTHED BY THE VALUE OF A PERUTAH;¹⁷ [iii] HE WHO BENEFITS FROM HEKDESH TO THE VALUE OF A PERUTAH IS LIABLE TO A TRESPASS OFFERING; [iv] HE WHO FINDS [AN ARTICLE] WORTH A PERUTAH IS BOUND TO PROCLAIM IT, AND [v] HE WHO ROBS HIS NEIGHBOUR OF THE VALUE OF A PERUTAH AND SWEARS [FALSELY] TO HIM [CONCERNING IT],¹⁸ MUST FOLLOW HIM TO RETURN IT¹⁹ EVEN AS FAR AS MEDIA.²⁰

GEMARA. But we have already learnt it once: fraud is constituted by [an overcharge of] four silver [*ma'ahs*] in twenty four, which is a *sela*', [hence] a sixth of the purchase!²¹ — He [the Tanna] desires [to state], THE [MINIMUM] CLAIM IS TWO SILVER [MA'AH'S], AND ADMISSION IS [AT LEAST] THE VALUE OF A PERUTAH.²² But that too we have [already] learnt: The judicial oath is [imposed] for a claim of two silver [*ma'ahs*] and an admission of a *perutah*! — The last clause is necessary, viz., A PERUTAH IS SPECIFIED IN FIVE INSTANCES.

A PERUTAH IS SPECIFIED IN FIVE INSTANCES, etc. But let him [the Tanna] teach also, [The minimum] overreaching is a *perutah*!²³ — Said R. Kahana: This proves that the law of overreaching does not apply to *perutahs*.²⁴ But Levi maintained: The law of overreaching does apply to *perutahs*. And thus did Levi read in his Baraitha [collection]:²⁵ A *perutah* was specified in five instances: [i] [Minimum] overreaching is a *perutah*; [ii] Admission is a *perutah*; [iii] The *kiddushin* of a woman is with a *perutah*; [iv] Robbery [imposes its obligations] on account of a *perutah*; and [v] The court session is on account of a *perutah*.²⁶ Now, why does our

BABA METZIAH – 28b-58a

Tanna not include the court session? — He includes it under robbery.²⁷ Yet does he not teach both robbery and loss?²⁸ — Those are [both] necessary. 'Robbery', [to teach that] HE WHO ROBS HIS NEIGHBOUR OF THE VALUE OF A PERUTAH AND SWEARS [FALSELY] TO HIM [CONCERNING IT], MUST FOLLOW HIM TO RETURN IT EVEN AS FAR AS MEDIA.²⁹ 'A loss:' [thus] HE WHO FINDS [AN ARTICLE] WORTH A PERUTAH IS BOUND TO PROCLAIM IT, even if it depreciated [after being found].³⁰ Now, why does Levi not teach that a loss [in the sense of the Mishnah] is [at least] a *perutah*? — He teaches robbery. But does he not teach both robbery and the court session?³¹ — He needs [to teach that] in order to reject the view of R. Kattina, who said, The court sits³² even for less than a *perutah*'s worth. Now, why does Levi omit *hekdes*? — He deals with *hullin*, not sacred objects. Then since our Tanna does treat of sacred objects, let him teach, The [minimum of second] tithe [to be eligible for redemption] is a *perutah*.³³ — [The omission is] in accordance with the view that if its fifth is less than a *perutah* [it cannot be redeemed]. Then let him state, The [added] fifth of the [second] tithe must be [not less than] a *perutah*. — He treats of principals, not fifths.³⁴

The [above text] states: 'R. Kattina said: The court sits even for less than a *perutah*'s worth.' Raba objected: *And he shall make amends for the harm that he hath done in the holy thing*.³⁵

1. Three categories are distinguished: (i) original *hekdes*, i.e., that which is itself consecrated in the first place, though it cannot be directly employed in the temple; (ii) intermediary *hekdes*, viz., that which is consecrated instead of another, which required redemption — referred to above as 'transferred *hekdes*;' (iii) 'final *hekdes*,' that which is itself finally used as *hekdes*, e.g., a clean beast, which is sacrificed, or a wood beam, which, if dedicated to Temple use, may be directly built into

the Temple or similarly employed. — Now, R. Ashi observes that an unclean animal is capable of this intermediary or transferred sanctity, viz., if it is substituted for another. Another two expressions are used in this discussion, viz., 'first *hekdes*' and 'second *hekdes*.' 'First *hekdes*' would appear to be synonymous with 'original *hekdes*;' 'second *hekdes*,' like 'intermediary *hekdes*,' refers to transferred sanctity, but whereas the latter term is used in contrast to 'final *hekdes*' to denote that which cannot itself be finally employed as *hekdes*, 'second *hekdes*' refers to that which can be finally used so.

2. It cannot be used itself as *hekdes*, not being eligible for the altar, nor can it be built into the Temple. If this unclean animal is redeemed as intermediary *hekdes*.
3. Since there is no fifth for final *hekdes*, in accordance with the teaching reported by the tanna, apart from the fact that there can be no room for the addition of a fifth, since it is finally disposed of as *hekdes* and not redeemed.
4. Lit., 'what do you see?'
5. 'Original' and 'intermediary' *hekdes*, (v. p, 325, n. 5), can be redeemed and thus 'followed' by the sanctity of the article wherewith it is redeemed. But this of course cannot apply to 'final' *hekdes*.
6. Lev. VI, 5.
7. The definite article points to some particular sacrifice, and Raba observes that it denotes that the first, i.e., the burnt offering, must be the first thing to ascend the altar every day, and nothing else may take precedence over it. Tosaf. offers some other explanations.
8. I.e., that it applies to original *hekdes* only.
9. [E.g., where the originally consecrated cow was dedicated for temple repairs,

BABA METZIAH – 28b-58a

- no redemption being possible in the case of a clean animal dedicated as an offering; cf. Lev. XXVI, 10; v. Tosaf.]
10. If *hekdesh* is redeemed by an object of far less value than itself, the redemption is valid and the consecrated article loses its sanctity; nevertheless, the treasurers collect its full value. On the other hand, if the object substituted is worth more, there is no refund. So here too, if the second cow or garment is worth less than the original, the deficiency must be made good, whilst if it exceeds it, *hekdesh* gains. This is the meaning of 'hekdesh has the upper hand.' — In this clause, no actual value is ascribed to the substitute.
 11. Though he ascribes a certain value to the substitute, which it lacks. I might have thought that his declaration is therefore invalid, since it contains a misstatement. We are therefore taught otherwise.
 12. Should he desire to redeem the substitute, which is now sanctified in its turn, no addition is required. This agrees with R. Joshua b. Levi.
 13. In a purchase worth a *sela'*, i.e., a sixth, v. p. 295, n. 10.
 14. This is the smallest claim which can involve the imposition of an oath.
 15. As stated *supra* 3a, no oath is required by Biblical law unless part of one's claim is admitted. This admission must be for at least a *perutah* or its equivalent.
 16. The smallest sum of money or its equivalent whereby a woman can be betrothed is a *perutah*.
 17. Denying the theft.
 18. Lit., 'must carry it after him.'
 19. If he repents, he does not obtain forgiveness unless he returns it to him personally, and he must go even so far.
 20. *Supra* 49b.
 21. V. p. 327, n. 5.
 22. That if the overreaching is less there is neither compensation nor cancellation of the sale.
 23. Which are copper coins. I.e., the minimum sum to which it applies is an *issar*, which is a silver coin.
 24. [Levi had a compilation of Baraithas similar to that of R. Hiyya and R. Hoshai, v. B.B. (Sonc. ed.) p. 216, n. 5.]
 25. If liability is admitted or proved by witnesses, yet payment is refused, a court session orders measures of compulsion against the recalcitrant debtor. The smallest sum to be involved for this step to be taken is a *perutah*.
 26. For the same principle operates in both.
 27. HE WHO FINDS AN ARTICLE WORTH A *PERUTAH* IS BOUND TO PROCLAIM IT. The principles here too are identical, viz., that *perutah* is 'money', to the return of which the owner has a right, even if it involves considerable trouble.
 28. Thus apart from the fact that the minimum which constitutes robbery is *perutah*, we are further informed that even such a small sum must be returned to the robbed man personally, though the expenses of such return far exceed the actual sum involved.
 29. So that by the time it is announced it is not worth a *perutah*; yet the announcement must be made.
 30. And in both these cases too the same principle is at stake.
 31. Lit., 'meets'.
 32. But a lesser quantity must be consumed in Jerusalem.
 33. In all cases stated in the Mishnah the principal itself must be not less than a *perutah*.
 34. Lev. V, 16.

Baba Mezi'a 55b

this ['and'] extends the law of restoration even to less than a *perutah*'s worth. Thus, it applies to *hekdesh*, but not to *hullin*!¹ — But if stated, it was stated thus: R. Kattina said, if the court met for [a claim of] the equivalent of a *perutah*, they conclude [the hearing] even for less,² [because] at the beginning of a trial a *perutah*

BABA METZIAH – 28b-58a

must be involved, but at the end a [claim of a] *perutah* is unnecessary.

MISHNAH. [THE ADDITION OF] A FIFTH [TO THE PRINCIPAL] IS PRESCRIBED IN FIVE CASES: [i] ONE WHO EATS *TERUMAH*, THE *TERUMAH* OF THE TITHE,³ THE *TERUMAH* OF THE TITHE OF *DEMAI*, *HALLAH*,⁴ AND THE FIRST FRUITS,⁵ MUST ADD A FIFTH;⁶ [ii] HE WHO REDEEMS THE FOURTH YEAR PLANTING⁷ AND HIS OWN SECOND TITHE⁸ ADDS A FIFTH; [iii] HE WHO REDEEMS HIS SACRED OBJECTS⁹ ADDS A FIFTH; [iv] HE WHO BENEFITS FROM *HEKDESH* TO THE VALUE OF A *PERUTAH* ADDS A FIFTH;¹⁰ AND [v] HE WHO ROBS HIS NEIGHBOUR OF A *PERUTAH*'S WORTH AND SWEARS [FALSELY] TO HIM [CONCERNING IT] MUST ADD A FIFTH.

GEMARA. Raba said: The *terumah* of the tithe of *demai* presented a difficulty to R. Eleazar: Did then the Sages set up protective measures for their enactments as for those of the Torah?¹¹ — Said R. Nahman in Samuel's name: The author of this [Mishnah] is R. Meir, who maintained: The Sages did set up protective measures for their enactments as for those of the Torah. For it has been taught: If one brought a divorce from countries overseas and delivered it to her [the wife] without declaring, 'It was written in my presence and signed in my presence,' he [her next husband] must divorce her [too], and their offspring is a bastard: this is R. Meir's view. But the Sages Say: Their offspring is not a bastard. What then shall he [the messenger] do? He must take it [the divorce] back from her, give it to her again in the presence of two witnesses and declare, 'It was written in my presence and signed in presence.'¹² But according to R. Meir, [merely] because he did not declare to her, 'It was written in my presence and signed in my presence,' he must divorce her, and the child is a bastard! — Even so: R. Meir is consistent with his view. For R. Hamnuna said on 'Ulla's authority: R. Meir used to say, Whenever one departs from the fixed procedure ordained by the Sages¹³ in

case of divorce, he [her next husband] must give a divorce, whilst the offspring is a bastard.

R. Shesheth objected: It [sc. the second tithe *demai*] is redeemed [by exchanging] silver for silver, copper for copper, silver for copper and copper for produce;¹⁴ then he may redeem the produce: this is R. Meir's opinion. But the Sages say: He must carry the produce to Jerusalem and eat it there.¹⁵ Now, is it permissible to redeem silver with copper?¹⁶ Surely we learnt: If a *sela'* of the second tithe was intermixed with one of *hullin*,¹⁷ he brings a *sela'*'s worth of copper coins and declares: 'Wherever the *sela'* of the second tithe may be, it is redeemed with these coins.' Then he selects the best of them¹⁸ and redeems them [the copper coins] therewith;¹⁹

1. I.e., no legal compulsion can be exerted to effect the restoration of something worth less than a *perutah* in the case of *hullin*; this follows from the fact that the Baraita deduces the necessity of such restoration only in the case of sacred objects.
2. If the claim of the plaintiff was reduced in the course of the trial.
3. V. p. 293, n. 8.
4. V. [Glos.](#)
5. Which was to be given to the priest.
6. If he eats any of these in ignorance of their true nature. These count as one, '*terumah*' being a generic designation for all.
7. When trees were planted, their fruit was forbidden during the first three years. The produce of the fourth was permitted, but on the same terms as the second tithe, viz., it either had to be taken to Jerusalem for consumption or redeemed without Jerusalem and the money expended there; v. Lev. XIX, 24ff.
8. On 'his own' v. *supra*, p. 272 n. 9.
9. Here too 'his' is emphatic.
10. Lev. V, 16.

BABA METZIAH – 28b-58a

11. By ruling that one who eats the *terumah* of the tithe of *demai* must make restitution and add a fifth, though the law of *demai* is altogether only Rabbinical.
12. It was a Rabbinic law that when a divorce was brought from overseas the messenger had to make this declaration, though by Biblical law this is unnecessary. We see from the above that in R. Meir's opinion the Sages enacted their laws with such stringency that if this formality was omitted the divorcee's subsequent marriage is null, even to the extent that the offspring is a bastard, as the child of a married woman who conceived in adultery.
13. Lit., 'from the coin struck by the Sages.'
14. In each case the former of the pair is redeemed by the latter. Hence the last clause means that in the case of *demai* copper coins may be redeemed outside Jerusalem by substituting produce (not of the second tithe) for them, which produce in turn becomes sanctified.
15. Dem. II, 6. The translation follows Tosaf. R. Meir permits the produce to be redeemed, though that itself was formerly employed for redeeming the money; whilst the Sages maintain that in these circumstances the produce itself must be taken to Jerusalem. Hence R. Meir is more lenient here in respect to *demai* than the Sages, which contradicts Samuel's assertion above that in this R. Meir is particularly stringent (more so than the Rabbis).
16. According to Tosaf., this is adduced to show further that R. Meir is more lenient than the Sages. In Rashi's view, however, this is part of the reasoning leading up to R. Shesheth's objection.
17. And the owner wishes to spend the *hullin* money outside of Jerusalem.
18. I.e., the best *sela'* of the two; these are now both *hullin*.
19. With the finer *sela'* which now becomes second tithe.

Baba Mezi'a 56a

because It was said, It [sc. the second tithe] may be redeemed [by substituting] copper for silver in case of emergency; not, however, that it should remain so, but that it should itself be redeemed in turn with silver.¹ Thus it is nevertheless stated that it [silver] may be exchanged in case of emergency, proving that only in an emergency is it done, but not otherwise!² — R. Joseph replied: Though R. Meir is more lenient in regard to its redemption, he is stricter in regard to the eating thereof.³ For it has been taught: Only the wholesaler was permitted to sell *demai*,⁴ but a private individual must tithe it in all cases:⁵ this is R. Meir's view. But the Sages say: Both a wholesaler and a private individual may sell or send [produce] to his neighbor or give it to him as a gift without fear.⁶

Rabina raised an objection: If one buys [loaves] from a baker,⁷ he may tithe from the freshly baked for the stale, and vice versa, and even if they are of many moulds:⁸ this is R. Meir's view.⁹ Now, as for [giving tithe] from the stale [loaves] for the freshly baked, that is well, being in accordance with R. Elai. For R. Elai said: Whence do we know that if one separates [*terumah*] from inferior for better [produce] the *terumah* is *terumah*?¹⁰ — Because it is written. *And ye shall bear no sin by reason of it, when ye have heaved from it the best of it.*¹¹ Now, if it is not sanctified,¹² why should one bear sin? Hence it follows that if one separates [*terumah*] from inferior [produce] for better, the *terumah* is *terumah*. But [when you say,] even if they are of many moulds, let us fear lest he come to separate from what is liable for what is [now] exempt,¹³ and vice versa!¹⁴ — Said Abaye: R. Eleazar was right in his objection,¹⁵ but Samuel did not answer it correctly. For R. Eleazar's difficulty referred to [a law involving] death at the hands of Heaven; whilst Samuel answered him [from a case involving] death by the Court: the latter may be different, since it is severer.¹⁶ Again, R. Shesheth's refutation was not well

BABA METZIAH – 28b-58a

grounded, for he [Samuel] referred to a law involving death, whilst R. Shesheth raised an objection from what is merely a negative injunction, for it is written, *Thou mayest not eat within thy gates [the tithe of thy corn, etc.]*.¹⁷ Yet the objection R. Shesheth does raise is well answered by R. Joseph. But as for Rabina, instead of raising an objection from a baker, let him support him from the case of a wholesale bread merchant. For we learnt: If one buys [bread] from a breadseller,¹⁸ he must give tithes on [the loaves of] each mould separately: this is R. Meir's view.¹⁹ What then must you answer?²⁰ A bread-seller buys from two or three. Hence in the case of a baker too, [you must say that] he buys from one man [only].²¹ Raba said: Samuel answered well: The designation of death exists.²²

MISHNAH. THE FOLLOWING ARE NOT SUBJECT TO [THE LAW OF] OVERREACHING: [THE PURCHASE OF] SLAVES, BILLS,²³ REAL ESTATE AND SACRED OBJECTS.²⁴ THERE IS NEITHER DOUBLE REPAYMENT NOR FOURFOLD AND FIVEFOLD REPAYMENT IN THEIR CASE.²⁵ A GRATUITOUS BAILEE DOES NOT SWEAR [ON THEIR ACCOUNT], NOR DOES A PAID BAILEE²⁶ MAKE IT GOOD.²⁷ R. SIMEON SAID:

1. M.Sh. II, 6. This states the reason of this cumbersome procedure. For one might have thought a much simpler procedure possible, viz., one of the *sela's* could be taken and the following declaration made: 'If this is the second tithe *sela'*, it is well; but if not, let this redeem the other.' — Therefore the Mishnah states that even the substitution of copper coin for silver was permitted only in an emergency, but silver can in no circumstance be used for redeeming other silver, since it cannot be regarded as substitution when both are of the same metal. Nevertheless, it was not desirable that the second tithe should remain in the form of copper, because it was liable to corrosion, and moreover, silver was a more dignified and worthier form of exchange than copper. Therefore the copper coins had to be redeemed in turn with the best of the two *sela's*.
2. Whereas in the case of *demai* it was stated on R. Meir's authority that even silver may be freely employed in redeeming silver and copper may redeem silver even without any emergency, thus

proving that *demai* is treated more leniently than certain tithe. This contradicts R. Meir's previous statement that *demai* was enacted with the same stringency as certain tithe. Though, of course, a Mishnah cannot be employed to prove R. Meir wrong, since R. Meir, as a Tanna, could disagree, the point here is that this Mishnah is anonymous, and it is a Talmudic principle (Sanh. 86a) that an anonymous Mishnah agrees with R. Meir. — Rashi. For Tosaf.'s interpretation, which differs considerably from this, v. p. 331, nn. 2, 3.

3. Either he is stricter than the Rabbis (Tosaf.); or he is as strict in regard to *demai* as in respect of certain tithe. — Our Mishnah treats of the eating thereof.
4. Without first tithing it, for since it is known that a wholesaler buys from many people, including those who are lax in tithing, no person who is particular will eat of what the wholesaler sells without first tithing it. But a retailer must tithe *demai* before he sells it.
5. If a private individual buys produce from an ignorant person, who is suspected of neglecting to tithe, and then resells, he must first tithe it, whether he sells large quantities, like a wholesaler, or small, like a retailer, because it will be assumed that he has in fact tithed it.
6. I.e., in large measure, because it is a general presumption that whenever corn is sold or given in large quantities it has not been tithed; therefore we have no fear that the recipient will omit to tithe it. This dispute shows that in respect to the actual tithing, i.e., the eating of *demai*, R. Meir is more stringent than the Rabbis.
7. The baker referred to is an 'am-ha-aretz (q.v. [Glos.](#)) suspected of omitting the necessary tithes.
8. It is a principle that one may separate tithe from one lot of commodities for another, but only when both are liable. Now, as the bread is of different moulds, it might be suggested that the baker bought the wheat from which he made his bread from different merchants, some of whom may have tithed their wheat whilst others had not, and it is forbidden to separate tithe from bread (or corn) already tithed for untithed produce. Nevertheless, since the tithe of *demai* is Rabbinical only, we assume that the baker had purchased all his wheat from the same merchant, and therefore they had been either all tithed or all untithed.
9. Dem. v, 3.
10. I.e., that the separation is valid.
11. Num. XVIII, 32. This implies that one bears sin if he does not heave — i.e., separate — *terumah* from the best.

BABA METZIAH – 28b-58a

12. When one separates *terumah* from inferior grain.
13. Having been tithed already.
14. V. note 2. Since this fear is not entertained, it follows that even R. Meir did not hold that the law of *demai* was enacted with the same stringency as Biblical tithes.
15. v. *supra* 53b, the beginning of the Gemara immediately after the Mishnah.
16. R. Eleazar objected to the law of the Mishnah that a fifth must be added in making restoration for the *terumah* of the tithe of *demai*, just as though it were Biblical. Now, even Biblical *terumah* is forbidden to a zar only on pain of death at the hand of Heaven, yet Samuel in his answer draws an analogy with divorce; but adultery, which ensues if an invalid divorce is pronounced valid, is punishable by death imposed by court; hence it is natural that every Rabbinical enactment in reference to divorce should have been given the same strictness as a Biblical requirement. But the same does not necessarily follow in the case of *terumah*.
17. Deut. XII, 17. This is interpreted as referring to improperly redeemed tithes, such as with coins that may not be employed for the purpose, as appears in the discussion above. Now, whereas Samuel's assertion that the Rabbis enacted protective measures for their own enactments referred to a zar's eating the *terumah* of the tithe of *demai*, which, as already stated, involves death at the hands of Heaven, R. Shesheth objected to it on the grounds that in the case of redemption this is not so. But improper redemption is forbidden only by a negative injunction; therefore it is natural that a Rabbinical enactment in reference thereto should not be as strict as one in reference to the former law.
18. Dem. v, 4. An am-ha-aretz (v. p. 333, n. 1), who buys bread from various bakers, which he in turn retails.
19. Thus proving that R. Meir does fear lest one tithe from what is exempt for what is liable, though the law of *demai* is only Rabbinical, in agreement with Samuel's answer that Rabbinical measures, in R. Meir's opinion, were enacted with the same strictness as Biblical.
20. Why does R. Meir draw a distinction between a baker and a bread-seller?
21. The use of 'too' is thus meant; just as one is bound to find a reason for his ruling on a bread-seller, so can one also reconcile his ruling on a baker.
22. Lit., 'is in the world.' I.e., in both cases there is a death penalty, and the fact that one is at the hand of Heaven only whilst the other is imposed by court does not vitiate the argument.
23. Bills of debt which are purchased at a reduced price, the purchaser then collecting the debts for himself.
24. Which the Temple treasurer sells on behalf of the Treasury; or when a private individual sells an animal dedicated as a sacrifice but rendered unfit by a blemish.
25. The penalties in case of theft, cf. Ex. XXII, 3; XXI, 37. These penalties did not apply if the stolen property was *hekdesh*.
26. Lit., 'one who receives payment.'
27. In ordinary cases, if a bailment is stolen, the bailee, if gratuitous, swears that it was stolen through no negligence of his own, and is free from further responsibility; whilst a paid bailee is liable for theft. This however, is not so in the case of *hekdesh*.

Baba Mezi'a 56b

SACRIFICES¹ FOR WHICH ONE [THE OWNER] BEARS RESPONSIBILITY ARE SUBJECT TO [THE LAW OF] OVERREACHING; THOSE FOR WHICH ONE BEARS NO RESPONSIBILITY ARE NOT SUBJECT THERETO.² R. JUDAH SAID: ALSO WHEN ONE SELLS A SCROLL OF THE TORAH, AN ANIMAL, OR A PEARL, THERE IS NO LAW OF OVERREACHING. THEREUPON THEY [SC. THE SAGES] SAID TO HIM: IT [THE LAW OF OVERREACHING] WAS ENACTED ONLY IN REFERENCE TO THESE.³

GEMARA. How do we know this? — For our Rabbis taught: *And if thou sell a sale unto thy neighbor, or acquirest ought of thy neighbor's hand*⁴ — this applies to that which is 'acquired' [by being passed] from hand to hand, thus excluding land, which is not movable;⁵ slaves, which are assimilated to landed estates;⁶ and bills, for it is written, '*And if thou sell a sale,*' implying, that which is intrinsically sold and intrinsically bought, excluding bills which are not intrinsically sold or bought, and exist only as evidence.⁷ Hence it was said: If one sells his bills to a perfume dealer⁸ they are subject to the law of overreaching. But surely that is obvious! — It is to reject R. Kahana's view, that overreaching does not apply to [a purchase

BABA METZIAH – 28b-58a

involving only] perutahs; therefore we are taught that overreaching does apply to perutahs.⁹

SACRED OBJECTS-Scripture saith, *One man shall not defraud his brother:*¹⁰ his brother, but not *hekdes*h.

Rabbah b. Mammel objected: Wherever 'his hand' is written, is it then literal! If so, when it is stated, And he took all his land out of his hand,¹¹ does that too mean that he held all his land in his hand! But it must mean, out of his possession, so here too, it means out of his possession! — Then wherever 'his hand' is written, is it not literal? But it has been taught: If the theft be certainly found in his hand [...he shall restore double].¹² From this I know [the law] only [if it is found] in his hand: whence do I know it of his roof, courtyard, or enclosure? From the phrase, If it certainly be found, implying in all circumstances. Hence this is only because the Divine Law wrote, 'If it certainly be found;' but otherwise I would have said that wherever 'his hand' is written, 'hand' is meant literally. Again, it has been taught: [Then let him write her a bill of divorcement] and he shall give it in her hand.¹³ Thus I know only [that he can place it in] her hand; whence do I know it of her roof, court, or enclosure? Because it is written, and he shall give it, implying, in any manner.¹⁴ Hence this is only because Scripture wrote 'and he shall give it'; but otherwise I would have said that wherever Scripture writes 'hand' it is meant literally! — But [in truth] 'his hand' is always meant literally; there, however,¹⁵ it is different, because it cannot possibly be translated thus, but [must mean] 'his possession.'¹⁶

R. Zera propounded: Does the law of overreaching apply to hiring or not? The Divine Law said, '[and if thou sell] a sale', implying but not hire; or perhaps there is no difference? — Said Abaye: is it then written, a permanent sale? An undefined 'sale' is stated, and this too¹⁷ for its day is a sale.¹⁸

Raba propounded: [What of] wheat which was sown in the soil:¹⁹ does the law of overreaching apply thereto or not? Is it just as though he had placed it in a pitcher, hence subject to the law of overreaching: or perhaps he has assimilated it²⁰ to the soil?²¹ [But] what are the circumstances? Shall we say that he declared, 'I cast six [measures] therein'; and then witnesses came and testified that he sowed five only? But Raba²² said: [On account of] any fraud²³ in measure, weight or number, even if less than the standard of overreaching, one can withdraw!²⁴ — But [the question arises] where he declared, 'I cast as much into it as was necessary; whilst it was subsequently revealed that he had not sown with it as much as was required: is it subject to the law of overreaching or not? Is it as though he had placed it in a pitcher, and hence subject to overreaching; or perhaps he assimilated it to the soil? Further, is an oath taken concerning it or not?²⁵ Is it as though he had placed it [the seed] in a pitcher, and therefore an oath must be taken; or perhaps, he assimilated it to the soil, and so no oath is taken?²⁶ [Again,] does the 'omer'²⁷ permit it [for food] or not?²⁸ But how is this meant? If it took root, then we have learnt it; and if not, we have also learnt it. For we learnt: If they [the seeds] took root before the [bringing of the] 'omer, the 'omer permits them;²⁹ if not, they are forbidden until the bringing of the next 'omer!³⁰ — This arises only if he reaped and resowed it before the 'omer,³¹ then the 'omer came and went,³² whilst it did not take root before the [bringing of the] 'omer.

1. Lit., 'sacred objects.'
2. If one declares, 'Behold, I vow to offer a sacrifice', and then dedicates an animal in fulfillment of his vow, he is responsible for it, and should it receive a blemish or be stolen he must replace it by another, since his vow did not specify that particular animal. R. Simeon therefore regards it as his, i.e., secular property, hence subject to the law of overreaching. But if he declares, 'I vow to sacrifice this animal,' and it is subsequently lost or stolen, he has no further responsibility in the matter. Consequently it is already sacred property, and as such not subject to the law of overreaching.

BABA METZIAH – 28b-58a

3. This is explained in the Gemara.
4. Lev. XXV, 14.
5. And therefore incapable of being passed from hand to hand.
6. V. p. 342, n. 4.
7. Of a loan.
8. For use as wrappers, stoppers, etc., I.e., for the value of the paper.
9. For normally the value of the paper of a person's bills could only be a matter of *perutahs*, and would not amount to an *issar*.
10. Ibid. 14: this is the literal translation.
11. Num. XXI, 26.
12. Ex. XXII, 3.
13. Deut. XXIV, 1.
14. V. *supra* p. 56 and notes.
15. Sc. the verse quoted by Rabbah b. Mammel.
16. I.e., 'hand' is always to be interpreted literally, save where the context forbids it.
17. Sc. hiring.
18. I.e., hiring an article is the equivalent of a temporary sale, and therefore subject to the law of fraud.
19. A man was engaged to sow a field with wheat, the wheat being his (the employee's).
20. Lit., 'made it as naught.'
21. And as the law of fraud does not apply to the soil, it neither applies to the wheat.
22. In Kid. 42b the reading is 'Rabbah.'
23. Lit., 'thing'.
24. If the goods are not as specified, being short in measure, weight, or number, one can withdraw. It is unnecessary that the fraud shall be a sixth, for a sixth is required only when the goods are as specified. Otherwise it is altogether an erroneous bargain, and hence revocable. This being so, it will obviously apply to real estate too, so that even if the wheat be accounted part of the soil, the vendee can insist upon compensation or revoke the sale.
25. E.g., if A maintained that B had undertaken to sow his soil with six measures of grain, with which he had supplied him, but had only used five, whilst B pleaded that he had used five and a half.
26. No oath is imposed for a claim of land.
27. V. [Glos.](#)
28. The produce of each year was not permitted for food until the '*omer*' (sheaf of corn) was brought to the Temple and waved before the Lord. (Lev. XXIII, 10-14); until then it was called *hadash*, 'new.'
29. The resultant crop, though maturing after the '*omer*', is nevertheless permitted for use.
30. Men. 70a.
31. I.e., he resowed that year's grain, the 'new' crop, before the '*omer*'. Had he not resown it, the '*omer*' of course would have permitted it.

32. The '*omer*' was brought, and its time — the sixteenth of Nissan passed by.

Baba Mezi'a 57a

Now, may one remove and eat it? Is it as though lying in a pitcher, and therefore made permissible by the '*omer*'; or perhaps, he assimilated it to the soil?¹ The question stands.

Raba said in R. Hasa's name: R. Ammi propounded: Now these² are not subject to the law of overreaching. But are they subject to cancellation of sale or not?³ — Said R. Nahman: R. Hasa subsequently said that R. Ammi solved it [thus:] They are not subject to the law overreaching, but are subject to cancellation of sale.

Now, R. Jonah said [the following] in respect to sacred objects, whilst R. Jeremiah said [it] in respect to real estate, both in R. Johanan's name, viz.: The law of overreaching does not apply thereto, but cancellation of sale does. He who said this in reference to sacred objects, would certainly [say it] in reference to real estate [too].⁴ But he who referred this to land, would not [admit] sacred objects too, in accordance with Samuel. For Samuel said: If *hekdesh* worth a *maneh* was redeemed with the equivalent of a *perutah*, it is redeemed.⁵

We learnt elsewhere: If the consecrated [animal] was blemished, it becomes *hullin*, but its value must be assessed.⁶ R. Johanan said: It becomes *hullin* by Biblical law, but its value must be assessed by Rabbinic law. But Resh Lakish maintained: That its value, must be assessed is also Biblical. What are the circumstances? Shall we say, that it is within the limit of overreaching?⁷ In such a case, could Resh Lakish maintain that its value is assessed by Biblical law? Did we not learn, **THE FOLLOWING ARE NOT SUBJECT TO [THE LAW OF] OVERREACHING: [THE PURCHASE OF] SLAVES, BILLS, REAL ESTATE AND SACRED OBJECTS?** But if it refers to [a difference involving] cancellation of sale — could R. Johanan in that case say that its value must be made up by Rabbinical

BABA METZIAH – 28b-58a

law [only]? Did not R. Jonah say in respect to sacred objects, and R. Jeremiah say in reference to real estate, yet both in R. Johanan's name: The law of overreaching does not apply thereto, but cancellation of sale does!³ — In truth, it refers to [a difference involving] cancellation of sale, but reverse it, [ascribing] R. Johanan's views to Resh Lakish and Resh Lakish's to R. Johanan.

Wherein do they² differ? — In respect to Samuel's dictum, viz., If *hekdes* worth a *maneh* was redeemed with the equivalent of a *perutah*, it is redeemed. One Master¹⁰ accepts Samuel's ruling, the other rejects it. Alternatively, all agree with Samuel; but here they differ in this: one Master maintains, [Only] if it was redeemed, but not in the first place;¹¹ whilst the other holds that it is permissible even at the very outset.¹² An alternative answer is this: In truth it refers to [a difference] within the limit of overreaching, and you must not reverse it. But they differ on R. Hisda's dictum, who said: What is meant by, they ARE NOT SUBJECT TO [THE LAW OF] OVERREACHING, is that they are not subject to the provisions of overreaching,

1. And therefore it is forbidden until the next *'omer*.
2. That are enumerated in the Mishnah.
3. If the fraud was more than a sixth. Though the law of overreaching in the case of a sixth, viz., that refund must be made, does not operate, yet the law of complete cancellation for more than a sixth may do.
4. For since cancellation of sale applies to sacred objects, it proves that this does not come within the category of overreaching but of erroneous bargains. Now, if this applies to sacred objects which belong to Heaven, though technically speaking Heaven cannot err (cf. the principle of the British Constitution: The King can do no wrong), it surely holds good in respect to real estate. For since it is agreed that cancellation of sale is not the same as overreaching, we have no verse to exclude land therefrom.
5. Thus in his opinion there can be no question of cancellation in respect of *hekdes*: but v. *infra*.
6. The first clause states that if a substitute is offered for an unblemished animal the latter retains its sanctity, because an unblemished animal cannot be redeemed. But if it was blemished, it becomes *hullin*, i.e., loses its

sanctity, which the substitute assumes. Nevertheless, if the latter is not worth as much as the original it must be made up in money, which becomes *hekdes* too. Tem. 27b.

7. The substitute is worth less than the original only by an amount that constitutes overreaching, not cancellation.
8. And this implies by Biblical law. Hence according to R. Jonah, R. Johanan is self-contradictory.
9. R. Johanan and Resh Lakish.
10. The one who holds that *hekdes* is not subject even to cancellation of sale.
11. And this is Biblical law, for when Scripture writes, then he shall redeem it according to thine estimation (Lev. XXVII, 27), it implies at its full value. Therefore, if redeemed with less, the deficiency must be made good.
12. 'According to thine estimation' in his opinion means any value arbitrarily set upon it. Nevertheless, in order to safeguard the Temple treasury from loss, the Rabbis ordered the deficiency to be made good.

Baba Mezi'a 57b

viz., that even less than the standard of overreaching [a sixth] is returnable.¹

An objection is raised: [The prohibitions of] usury and overreaching apply to a layman, but not to *hekdes*? — Is this then stronger than our Mishnah, which we interpreted as referring to the provisions of overreaching! So here too, [the prohibition of] usury and the provisions of overreaching apply to a layman, but not *hekdes*.² If so, how can the second clause state, In this respect the case of a layman is more stringent than that of *hekdes*?³ — That refers to usury. Then it should also teach: In this respect the case of *hekdes* is more stringent than that of a layman, viz., overreaching? — How compare? As for saying, 'In this respect the case of a layman is more stringent than that of *hekdes*,' it is well, for there are no other [instances].⁴ But [with respect to] *hekdes*: is this [the only] stringency, and are there not others?⁵

How is usury by *hekdes* possible? Shall we say that the treasurer [of *hekdes*] lent one hundred *zuz* for one hundred and twenty? But he thereby committed a trespass,⁶ and that

BABA METZIAH – 28b-58a

being so, the money passes out into *hullin* and is a layman's!⁷ — Said R. Hoshaia: What is meant here is, e.g., if one [a layman] contracted to supply flour⁸ at four se'ahs per *sela'*, whilst it subsequently stood at three se'ahs per *sela'*. As we learnt: If one contracts to supply flour at four [se'ahs per *sela'*], and it [subsequently] stood at three, he must supply it at four; at three, and it [subsequently] stood at four, he must supply it at four, because *hekdesh* [always] has the upper hand.⁹ R. papa said: This refers to bricks for building entrusted to the treasurer, in accordance with Samuel's dictum. For Samuel said: We build with unconsecrated material, and then consecrate it.¹⁰

NEITHER THERE IS DOUBLE REPAYMENT, etc. Whence do we know this? — For our Rabbis taught: *For all manners of trespass*¹¹ — this is a general proposition: *for ox, for ass, for sheep, for raiment*¹² — this is a specialization; *for every manner of lost thing which another challengeth* [etc.]¹³ — this is another general proposition. Now, in a general proposition followed by a specialization followed again by a general proposition, you must be guided by the specialization alone: just as the specialization is clearly defined as a movable article which is intrinsically valuable, so everything movable which is intrinsically valuable [is included]; thus real estate is excluded, not being movable; slaves are excluded, being assimilated to real estate;¹⁴ bills [too] are excluded, for though movables, they are not Intrinsically valuable. As for sacred objects, Scripture saith, [*he shall pay double to*] his neighbor: his neighbor, but not [to] *hekdesh*.

NOR FOURFOLD OR FIVEFOLD REPAYMENT, etc. Why so? — The Divine Law decreed fourfold and fivefold, not threefold and fourfold repayment.¹⁵

[FURTHERMORE] A GRATUITOUS BAILEE DOES NOT SWEAR, etc. How do we know this? — For our Rabbis taught: *If a man shall deliver unto his neighbor* — this is a general proposition;¹⁶ *money or stuff* — that is

a specialization; *and it be stolen out of the man's house*¹⁷ is again a general statement: now in a general proposition followed by a specialization and again by a general proposition you must be guided by the peculiarities of the specialization. Just as the specialization is clearly defined as something movable and of value in itself, so everything movable and intrinsically valuable [is included]. Thus real estate is excluded, not being movable; slaves are excluded, being assimilated to real estate; bills [too] are excluded, for though movables, they are not intrinsically valuable. As for sacred objects, Scripture writes, [*and if a man shall deliver unto*] his neighbour,¹⁸ but not *hekdesh*.¹⁹

NOR DOES A PAID BAILEE MAKE IT GOOD [etc.]. How do we know this? — For our Rabbis taught: *If a man deliver unto his neighbour*²⁰ — that is a general proposition; *an ass, or an ox, or a sheep* — that is a specialization; *or any beast to keep* — that is again a general proposition. Now, in a general proposition followed by a specialization followed again by a general proposition you must be guided solely by the specialization. Just as the specialization is clearly defined as a movable article which is intrinsically valuable, so everything movable which is intrinsically valuable [is included]. Thus real estate is excluded, not being movable; slaves are excluded, being assimilated to real estate; bills [too] are excluded, for though movables, they are not intrinsically valuable. As for sacred objects, Scripture saith, [*If a man deliver unto*] his neighbor; '*his neighbor*', but not *hekdesh*.

[FURTHERMORE,] A GRATUITOUS BAILEE DOES NOT SWEAR, etc. But the following contradicts this: If townspeople sent their *shekels*²¹ and they were stolen or lost,²² — if [this happened] after the separation of the funds,²³

1. Thus R. Johanan disagrees with this, and therefore maintains that it must be made good only by Rabbinical law; whereas Resh Lakish accepts this view.
2. As previously explained by R. Hisda.

BABA METZIAH – 28b-58a

3. On the contrary, *hekdesh* is more stringent, since even less than a sixth constitutes overreaching.
4. [Tosaf. and MS.M. omit 'for there are no other,' since the Mishnah in fact mentions several other instances where greater stringency applies to ordinary property than to that of *hekdesh*; the reading and argument run accordingly as follows: 'As for saying, "In this respect the case of a layman is more stringent than that of *hekdesh*", it is well! But (with respect to) *hekdesh*, (what means) this is a stringency?' Whilst, that is to say, there is a point in informing us of any additional instance where ordinary property is treated with greater stringency than *hekdesh*, there is none in teaching the reverse, as it is obvious that there is greater stringency in regard to *hekdesh* than to ordinary property.]
5. Hence the proposed clause is inadmissible.
6. By giving money of *hekdesh* and receiving nothing in immediate return, which is forbidden. The treasurer, of course, acted in ignorance, thinking it permissible on account of the benefit to be reaped by *hekdesh*.
7. V. p. 566, n. 5, hence the prohibition of usury applies to it after all.
8. For the Temple use in meal offerings.
9. Shek. IV, 9. The contractor received payment in advance, and fixed the price before the market price was out. Now, if the purchaser were a layman, this would be forbidden as usury, (*infra* 62b); as, however, the bargain is with *hekdesh*, it is permitted. According to this, the passage does not refer to a loan at all.
10. When building was necessary in the Temple, the materials were not bought with sacred funds, for this would immediately consecrate them, and the workmen by sitting on them would be trespassing. Therefore the materials were bought on credit, and paid for out of the Temple funds only when built up, whereby they became sanctified. Similarly, if one donated these building materials, he did not formally consecrate them until built in. Now, in reference to our discussion, the meaning is that the treasurer lent some of these unconsecrated materials for a higher return. No trespass is involved, since they were unconsecrated; on the other hand, since they were lent on behalf of *hekdesh*, the prohibition of usury does not apply.
11. Ex. XXII, 8.
12. Ibid.
13. Ibid. The verse continues ... to be his, the cause of both parties shall come before the judges; and whom the judges shall condemn, he shall pay double unto his neighbor.
14. As it is written, And ye shall take them (sc. non-Jewish slaves) as an inheritance for your children after you, to inherit them for a possession. (Lev. XXV, 46) 'Inheritance' and 'inherit' are terms applicable to landed estate, and by employing them for slaves Scripture assimilates slaves to real estate.
15. For the larger includes the double repayment on account of theft. But since that double repayment does not operate here, as shown above, one is left with a threefold and fourfold repayment, for which there is no Scriptural warrant.
16. Implying, whatever he delivers.
17. In Shebu. 43a 'to keep' is quoted instead of this phrase.
18. Ex. XXII, 6.
19. V. *infra* 94b, where it is stated that this passage, viz., Ex. XXII, 6-8, refers to a gratuitous bailee.
20. Ibid. 9. V. *infra* 94b, where this is said to refer to a paid bailee.
21. A capitation tax of one *shekel* was levied for the expenses of the communal sacrifices. Shek. 2a.
22. From the hands of the messengers.
23. The *shekels* were arranged in three baskets at different periods of the year. The translation follows Tosaf. Rashi: If the court proceedings took place after, etc.

Baba Mezi'a 58a

they [the messengers] swear to the treasurers.¹ But if not,² they must swear to the townspeople, who substitute other *shekels* in their stead. If they [the *shekels*] were [subsequently] found or returned by the thieves, both³ are [sacred] *shekels*,⁴ yet they are not credited to them for the following year!⁵ — Said Samuel: This refers to paid bailees; and they swear in order to receive their fees.⁶ If so, 'they swear to the treasurers'? Surely they should swear to the townspeople!⁷ — Said Rabbah: [It means this:] They swear to the townspeople in the presence of the treasurers, so that they should not be suspected⁸ or stigmatized as culpable negligents. But it is taught, 'and they were stolen or lost,' whereas a paid bailee is responsible for loss or theft! And here too, granted that they do not make it good,⁹ yet they must surely lose their wages!¹⁰ — Rabbah replied: 'Stolen' means by armed robbers; 'lost', that their ship foundered at sea.¹¹

BABA METZIAH – 28b-58a

R. Johanan said:¹² Who is the author of this? R. Simeon, who maintained: Sacred objects for which one [the owner] bears responsibility are subject to overreaching, and oaths are taken on their account.¹³ Now, that is well before the dividing of the funds; but after that they [the lost *shekels*] are sacred objects for which no responsibility is borne [by their owners]. For it has been taught: The division is made in respect of what is lost, collected, and yet to be collected!¹⁴ — But, said R. Eleazar, this oath was [in pursuance of] a rabbinical enactment, that people might not treat sacred objects lightly.¹⁵

NOR DOES A PAID BAILEE MAKE IT GOOD. R. Joseph b. Hama pointed out a contradiction to Rabbah. We learnt, **NOR DOES A PAID BAILEE MAKE IT GOOD.** But the following contradicts it: If one [sc: the Temple treasurer] engages a [day] worker to look after the heifer,¹⁶ or a child,¹⁷ or to watch over the crops,¹⁸ he is not paid for the Sabbath;¹⁹ therefore he is not responsible for the Sabbath.²⁰ But if he was engaged by the week, year, or septennate, he is paid for the Sabbath;²¹ consequently, he bears the risks of the Sabbath.²² Surely that means in respect to payment?²³ No; [it means] that he loses his wage.²⁴ If so, when the first clause states, 'he is not responsible for the Sabbath,' does that too refer to loss of wages? Is he then paid for the Sabbath? But it is stated, 'he is not paid for the Sabbath!' Thereupon he was silent. Said he to him, 'Have you heard aught in this matter?' — He replied: 'Thus did R. Shesheth say: [We deal with the case] where he [the treasurer] acquired it from his hand.²⁵ And thus did R. Johanan say too: It means that he acquired it from his hand.'

R. SIMEON SAID: SACRIFICES FOR WHICH ONE [THE OWNER] BEARS RESPONSIBILITY ARE SUBJECT TO OVERREACHING, THOSE FOR WHICH HE BEARS NO RESPONSIBILITY ARE NOT SUBJECT THERETO. A tanna recited before R. Isaac b. Abba: For sacrifices for which he [the owner] bears responsibility he [a

bailee] is liable,²⁶ because I can apply to them the verse, [If a soul sin, and commit a trespass] against the Lord and lie;²⁷ but for those [sacrifices] for which no responsibility is borne, he [a bailee] is not liable, because I read in respect to them, [If a soul sin...] against his neighbor, and lie.²⁸ — Said he to him, 'Whither do you turn?'²⁹

1. That the loss was not due to their own culpable negligence. Once the funds were divided, the Temple treasury bore the risks of the monies not yet received, the dividing being held to cover money lost in transit. Therefore the oath had to be taken before the treasurers.
2. I.e., that the theft or loss occurred before the dividing, in which case the senders are responsible and have to replace the monies.
3. Sc. the first and the second *shekels*.
4. Having been consecrated, they remain so.
5. It is assumed that the messengers were unpaid, i.e., gratuitous bailees. Though the money was sacred, they had to swear, which contradicts our Mishnah.
6. The oath was not imposed in order to free them from further responsibility, there being no responsibility in the case of *hekdesch* on the part of a paid bailee for theft. They had to swear that the money was not in their possession, and so receive their wages.
7. The treasurers were not liable for their wages — why swear to them?
8. The treasurers should not entertain suspicions that the whole matter had been arranged between the messengers and the townspeople acting in collusion to defraud the Temple funds.
9. In accordance with our Mishnah that paid bailees are not responsible for *hekdesch*.
10. Seeing that they had failed in their trust. Then what is the purpose of swearing?
11. These are unpreventable accidents for which even paid bailees are not responsible, and hence they are entitled to their wages.
12. In reconciling the two Mishnahs.
13. Shebu. 42b.
14. I.e., for him who sent his *shekel* but it was lost en route, or had entrusted it to a messenger who was still on the road, or was unavoidably prevented from remitting his *shekel* at the proper time — Adar; v. *supra* p. 343, n. 7. If one's *shekel* was not received until after the third division, it was assigned to the fund for repairing the Temple walls, etc. Thus we see that after the division the owners bear no further responsibility. Hence the objection to R. Johanan's answer: why an oath even then?

BABA METZIAH – 28b-58a

15. Which would be the case if the mere statement that the *shekels* had been lost or stolen sufficed. But our Mishnah which teaches that there is no oath refers to the Biblical law.
16. The red heifer (Num. XIX). The guardian was to take care that no yoke came upon it (ibid. 2).
17. To prevent him from ritually defiling himself. The water for mixing with the ashes of the red heifer was drawn by a child, who had to be ritually clean.
18. This refers to the barley specially sown seventy days before Passover (Men. 85a) for the ceremony of 'sheaf waving' (Lev. XXIII, 11) and to the wheat of which the two 'wave loaves' were made on Pentecost (ibid. 17). These crops were specially guarded.
19. Since he is a day worker, each day is separately paid for, and payment for the Sabbath per se is forbidden.
20. If harm came to his charges on that day.
21. Because it is included in the rest, and not explicitly given for that day.
22. Tosef. Shab. XVIII.
23. Thus proving that a paid bailee of *hekdesh* must make good any loss.
24. For having failed in their trust.
25. I.e., the worker accepted responsibility, though by Biblical law he is exempt, and performed one of the acts whereby possession is affected.
26. If one entrusts a consecrated animal to another, who denies having received it, and then repents and confesses, he is liable to a guilt offering, as prescribed in Lev. V, 21-25.
27. Ibid. 21. By punctuating it thus, it appears that a sacrifice is due when one lies in respect of what is the Lord's, and it was now assumed that the Tanna meant that he is liable because this sacrifice, in respect of which he lied, is regarded as the Lord's property.
28. Transposing the order of the text. I.e., those for which the owner bears no responsibility are secular property ('his neighbor's'), whereas it has been shown that this sacrifice is incurred only on account of God's.
29. I.e., your ruling is not in the right direction. Jast.: towards the tail (connecting [H] with [H]) i.e., reverse it!