

The Soncino Babylonian Talmud

Book I

Folios 2a-35b



BABA BASRA

TRANSLATED INTO ENGLISH WITH NOTES

CHAPTERS I - IV

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CHAPTERS V - X

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INTRODUCTION

[Baba Bathra—‘the Last Gate’—the third part of a Tractate which originally contained along with it the two previous ‘Gates’, Baba Kamma and Baba Mezi’a, deals with claims of right to do or possess something, or to prevent another from doing or possessing something.

The claims of right dealt with in Baba Bathra are arranged under various heads, such as claims of right by partners, by neighbors, by occupiers, by purchasers or vendors, and by heirs. Broadly speaking, each of the ten chapters into which the Tractate is divided deals with a separate class of claim (though the claims of purchasers occupy three sections), as will be seen in the analysis which follows, but the actual arrangement of the sections is somewhat arbitrary, and is not quite the same in all our MSS.

Like the other two Gates, Baba Bathra shows us the Palestinian and Babylonian Rabbis in the role not of religious guides but of secular judges and administrators, regulating the purely worldly affairs of the Jewish people, and deciding their business disputes. Reference to the Written Law is far less frequent in Baba Bathra than in Baba Kamma or even Baba Mezi’a, and decisions are based to a much larger extent on custom, tradition, and common sense.

[CHAPTER I](#) deals chiefly with the conditions under which property held in joint ownership is to be divided between the joint owners, if one or both of them so desire. It also lays down some of the obligations of joint owners of various kinds of property to one another, and incidentally defines the rights of the community to levy imposts on its individual members.

[CHAPTER II](#) deals with the restrictions laid upon owners of various kinds of property in the use of their property so as to prevent

them from causing loss, injury or inconvenience to their immediate neighbors or to the general public. The distances which actual or potential nuisances have to be kept away from the border line are specified, and incidentally the limits of free competition between persons following the same occupation are discussed.

[CHAPTER III](#) is concerned chiefly with the subject of *hazakah* or usucaption—the conditions under which right of ownership is acquired by the mere fact of occupation, without title-deed or other proof. The regulations for *hazakah* are discussed with great dialectical acumen and some wealth of illustration, in regard to various forms of landed property, to other fixed property, and to animate and inanimate objects. Incidentally various points connected with the validity of evidence, with the methods of acquiring property, and with the disposal of married women’s property are also discussed.

[CHAPTER IV](#) deals with the proper methods of interpreting contracts of sale relating to land and other fixed property, to determine what objects can be regarded as being included without being expressly specified. The same question is also discussed in connection with deeds of gift and consecration.

[CHAPTER V](#). Legal forms of acquisition of property, valuables, debts and commodities are dealt with, and the parts and appurtenances that are included in the sale of objects such as a ship and a wagon, property such as a water cistern, a dove-cote, a beehive or a tree, and animals such as a yoke of oxen or an ass are legally determined. Conditions under which a sale may be cancelled, as determined by price, quality and quantity, and regulations on weights and measures are laid down.

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CHAPTER VI defines the extent of a seller's liability for the value, quality and quantity of his produce or wares; delimits the dimensions of a house, hall, stall, path and street, and lays down the conditions governing the purchase of a family grave, right of passage to a house, garden or a cistern situated within another man's territory, and public rights of way.

CHAPTER VII determines the nature and extent of rocks and clefts that may be included by a seller in the measurements of a field, and the conditions which entitle a buyer to insist on exact measurements. Laws are laid down in cases of disagreement between assessors, and the law of the overcharge of a sixth of the value is formulated.

CHAPTER VIII. The laws of hereditary succession and the degrees of consanguinity as between descendants, ancestors and other blood relations as well as mutual rights of husband and wife are dealt with. Other subjects included are the following: The division of Canaan in the days of Joshua and its bearing upon later generations; the relative privileges in an inheritance between sons and daughters and between older and younger children; the rights of the firstborn son to a double portion, and the conditions which limit or deprive him of his rights; restrictions on a man's authority to disinherit his own children and on his power to dispose of his bequests; under what circumstances a declaration as to who is one's firstborn son is, or is not accepted; and verbal and written wills.

CHAPTER IX is concerned with the management of an inherited estate and the relative claims of the male and female heirs, and the personal expenses incurred by the manager of such an estate or of one which is in joint ownership; the laws governing betrothal and marriage gifts, *shoshbinuth* or the gifts of the [Greek]; the privileges of a dying man and the legality of his utterances;

the disposal of one's landed and movable property, and the three modes of legal acquisition of real estate: money payment, deed and undisturbed possession. It also deals with conflicting claims of relatives in cases of uncertainty as to whether father or son, husband or wife, mother or son died first.

CHAPTER X describes the folded and plain deed, and defines the laws relating to the forms, dates and witnesses in connection with legal documents, such as letters of divorce. *Kethuboth*, deeds of sale, and attestations of a court. Antedated and postdated deeds, ambiguous entries of amounts, effaced writing, exchange of bonds to a higher or lower denomination, writing a deed in the absence of one of the parties, verbal and written loans, are among the other subjects discussed and determined. The circumstances in which one of the heirs may deny to another the right to put an inherited estate to a use not intended by the testator, the precautions to be taken when more than one man of the same name live in one town, and the extent and limitations of a guarantor's liability, form the concluding discussions and decisions of the treatise.

AGGADIC MATERIAL

Apart from some Midrashic interpretations of Scriptural texts, the *aggadic* branch of the Tractate contains a number of rules of conduct and moral principles on the relationship between man and man, members of the same family and the members of a state (which cannot come under the head of jurisprudence), as well as stories, anecdotes, fables and other matter usually associated with the *aggadah*. It tells how Herod's temple came to be built, gives regulations for the collection and distribution of charity, and extols the merits of *zedakah* (charity). It treats of the formation of the Biblical canon and the authorship and date of its component parts, describes the contents of the Holy Ark, and discusses the character of Job and the

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Patriarchs ([Ch. I](#)). It records the establishment of an elementary school system in Israel, and makes various recommendations for teachers. It relates the tragic end of R. Adda b. Abba and discusses the location of the *Shechinah* ([Ch. II](#)). Sayings are recorded and anecdotes are told of the shrewd and pious R. Bana'ah; and the steps taken by the Rabbis to moderate the overwhelming grief of the Jews at the fall of Jerusalem are described ([Ch. III](#)). The famous Bar Bar Hana stories and hyperboles are recorded, and Leviathan, *behemoth*, new Jerusalem and a number of characters in the Book of Ruth are discussed ([Ch. V](#)). The readmission of the tribe of Benjamin into the community, the slain of Bether, the method adopted for the division of Canaan, remarkable cases of longevity, Jacob's marriages and his bestowal of the birthright, the entry into Egypt and sonic stories bearing on the Temple funds are among the topics included ([Ch. VIII](#)). The other five Chapters, with the exception of [Chapter IX](#) which contains some information on the weather and its influence on the crops, are practically devoid of all *aggadic* matter.

AIDS

In making his way through the intricacies of style and the concise, almost *précis*-like language of the Talmudic literature, the English student of such a Tractate as *Baba Bathra* had hitherto no English translation to guide him. For, beyond a paraphrase of some of its simpler portions, he had to fall back upon his own knowledge of Hebrew and other languages in navigating the uncharted sea. The present translators, like all students of the Tractate, have had to depend mainly on the work of the great medieval commentators, Rashbam (R. Samuel b. Meir. obit. 1174), the commentary of whose

illustrious grandfather Rash (R. Solomon Yizhaki, obit. 1105) comes to an abrupt end with the first few lines of fol. 29a, and R. Gershom (the 'Light of the Exile', obit. 1040); and, occasionally, also on the notes of R. Hananel b. Hushiel (obit. 1050), BaH. (Joel b. Samuel Sirkes) and the Rashal (Solomon Luria, obit. 1593). Of modern works grateful mention must be made of the erudite German translation of Lazarus Goldschmidt, of Levy's monumental *Wuerterbuch*, and also of Marcus Jastrow's *English Dictionary of the Targumim*.

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CHAPTER I

MISHNAH. IF JOINT OWNERS AGREE TO MAKE A MEHIZAH¹ IN A COURTYARD,² THEY SHOULD³ BUILD THE WALL IN THE MIDDLE. IN DISTRICTS WHERE IT IS USUAL TO BUILD OF GEBIL, GAZITH, KEFISIN OR LEBENIM,⁴ THEY MUST USE SUCH MATERIALS, ALL ACCORDING TO THE CUSTOM OF THE DISTRICT. IF GEBIL IS USED, EACH GIVES THREE HANDBREADTHS.⁵ IF GAZITH IS USED, EACH GIVES TWO HANDBREADTHS AND A HALF.⁶ IF KEFISIN ARE USED, EACH GIVES TWO HANDBREADTHS.⁷ IF LEBENIM ARE USED, EACH GIVES A HANDBREADTH AND A HALF.⁸ THEREFORE IF THE WALL FALLS,⁹ [IT IS ASSUMED THAT] THE PLACE [IT OCCUPIED] AND THE STONES BELONG TO BOTH. SIMILARLY WITH AN ORCHARD,¹⁰ IN A PLACE WHERE IT IS CUSTOMARY TO FENCE OFF, EITHER CAN BE COMPELLED TO DO SO. BUT IN A STRETCH OF CORNFIELDS, IN A PLACE WHERE IT IS USUAL NOT TO FENCE OFF [THE FIELDS]. NEITHER CAN BE COMPELLED. IF, HOWEVER, ONE DESIRES TO MAKE A FENCE, HE MUST WITHDRAW A LITTLE AND BUILD ON HIS OWN GROUND, MAKING A FACING ON THE OUTER SIDE.¹¹ CONSEQUENTLY,¹² IF THE WALL FALLS, THE PLACE AND THE STONES [ARE ASSUMED TO] BELONG TO HIM. IF, HOWEVER, THEY BOTH CONCUR, THEY BUILD THE WALL IN THE MIDDLE AND MAKE A FACING ON BOTH SIDES. CONSEQUENTLY IF THE WALL FALLS, [IT IS ASSUMED THAT] THE PLACE AND THE STONES BELONG TO BOTH.

GEMARA. It was presumed [in the *Beth Hamidrash*] that MEHIZAH means a wall, as it has been taught: If the mehiza of a vineyard has been broken down, the owner [of an adjoining cornfield] can require the owner of

the vineyard to restore it.¹³ If it is broken down again, he can again require him to restore it.

1. This word may mean either 'partition' or 'division'. The Gemara discusses which sense is intended here.
2. A yard on to which two or more houses open.
3. I.e., unless they agree otherwise.
4. These are names of various kinds of bricks, and their precise sense is explained in the Gemara *infra*.
5. Because a wall of gebil usually was six handbreadths thick.
6. The usual breadth of such a wall being five handbreadths.
7. The usual breadth being four handbreadths.
8. The usual breadth being three handbreadths.
9. At some subsequent time, when the circumstances under which it was put up have been forgotten.
10. Or 'a vegetable garden'.
11. The point of this remark is discussed in the Gemara.
12. In consequence of the rule just given.
13. If there is a fence between a cornfield and a vineyard, the owner of the cornfield may sow right up to the fence, but if there is no fence he must not bring his seeds nearer than four cubits to the vineyard. V. *infra* 26a.

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If [the owner of the vineyard] neglects the matter and does not restore it, he causes his neighbor's produce to become forfeit¹ and is responsible for his loss. [This being so,] the reason [why either can be compelled to join in putting up the wall] is because they both agreed;² but if either did not agree, he cannot be compelled. From this we infer that 'overlooking' is not regarded as a substantial damage.³

But may I not say that MEHIZAH means 'division', as in the verse, And the congregation's half⁴ [mehezath. lit., 'division']. That being so, since they agreed to make a division, either can compel the other to build a wall,⁵ from which we infer that overlooking is recognized as a substantial damage! — If that is the case,⁶ why does the Mishnah say. WHO AGREED TO MAKE A

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DIVISION [MEHIZAH]? It should say, 'who agreed lahazoth [to divide]?' — You² say then that MEHIZAH means a wall. Why then does the Mishnah say. **THEY MUST BUILD THE WALL?** It should say simply. 'They must build it'? — If the Mishnah had said 'it', I should have understood that a mere fence of sticks is sufficient. It tells us [therefore that the partition must be a wall].

THEY MUST BUILD THE WALL IN THE MIDDLE. Surely this is self-evident? — It had to be stated in view of the case where one of the partners had to persuade the other to agree. You might think that in that case the second can say to the first: When I consented to your request. I was willing to lose part of my air space.⁸ but not part of my ground space.² Now we know [that he cannot say so].

But is then overlooking no substantial damage? Come and hear: **SIMILARLY WITH AN ORCHARD?**¹⁰ — There is a special reason in the case of an orchard, as we find in a saying of R. Abba; for R. Abba said in the name of R. Huna, who said it in the name of Rab: It is forbidden to a man to stand about in his neighbor's field when the corn is in the ear.¹¹ But the Mishnah says **AND SIMILARLY?**¹² — This refers to the gebil and the gazith.¹³

Come and hear:¹⁴ 'If the wall of a courtyard falls in, he [the joint owner] can be compelled to help in rebuilding to a height of four cubits'¹⁵ — If it falls, the case is different.¹⁶ But what then was the point of the objection?¹⁷ — Because it could be said that this statement was required only as an introduction to the next, which runs, 'Above four cubits he is not compelled to help in rebuilding.'¹⁸ Come and hear: [Every resident in a courtyard] can be compelled to assist in building a gateway and a door to the courtyard.¹⁹ This shows, does it not, that overlooking is a substantial damage? Injury inflicted by the public is in a different category. Is then overlooking by a private individual not an injury? Come and hear

[this]: 'A courtyard need not be divided [on the demand of one party] unless it is large enough to allow four cubits to each',²⁰ which shows that if enough space will be left to each, a division can be demanded. Must not that division be made by a wall? — No; a mere fence of sticks is sufficient.²¹

Come and hear: '[A wall built facing] windows, whether above, below, or opposite. [must be kept] four cubits away';²² and in explanation of this it was taught that [if higher] it must be four cubits higher so that one should not be able to peep over and look in, and [if lower] four cubits lower so that one should not be able to stand on it and look in,²³ and four cubits away so as not to darken the windows? — Damage [caused by looking into] a house is different.²⁴

Come and hear: 'R. Nahman said in the name of Samuel: If a man's roof adjoins his neighbor's courtyard, he must make a parapet four cubits high'²⁵ — There is a special reason there, because the owner of the courtyard can say to the owner of the roof, I have fixed times for using my courtyard, but you have no fixed times for using your roof, and I do not know when you may be going up there

1. Because that part which is sown near the vineyard is regarded as being sown in the vineyard itself, and therefore when the produce reaches a certain height it becomes forfeit, according to the law in Deut. XXII, 9. Thou shalt not sow thy vineyard with mingled seeds.
2. To divide the courtyard by means of a wall and not merely by a fence of sticks.
3. Lit., 'the damage of overlooking is not called damage'. The 'overlooking' is the power of either owner to see what the other is doing in his half of the courtyard.
4. Num. XXXI, 43.
5. And not merely a fence of sticks.
6. That mehizah means 'division'.
7. I.e., you who object to mehizah being taken to mean 'division'.
8. By allowing, say, a thin partition of boards which would prevent my looking over into your part.
9. Lit., 'service': the space in his own half which would be taken up by a thick wall.

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10. What reason can there be here save to prevent overlooking?
11. So as not to injure it by casting on it the 'evil eye'; hence this is no proof that overlooking is an injury.
12. Which implies that the reason is the same in the case of an orchard as in the case of a courtyard.
13. That is to say. that the wall in an orchard, if there is to be one, must also be made of these materials.
14. A further objection to the thesis that overlooking is no injury.
15. *Infra* 5a. This would show that overlooking is an injury.
16. Because the joint owners had already agreed to have a wall.
17. Lit., 'He who asks this, how can he ask it.' the answer being so obvious.
18. And if this is so, then the case of the wall falling is not different from the case of there being no wall, and overlooking is an injury. Consequently the objection from the statement 'If the wall falls in, etc,' is a sensible one.
19. So as to prevent the passersby looking in, *Infra* 7a.
20. *Infra* 11a.
21. And overlooking is not a substantial damage.
22. *Infra* 22a. The reference is to a wall built by the joint owner of a courtyard opposite his neighbor's windows.
23. Which shows that overlooking even by a private individual is a substantial damage.
24. Because greater privacy is required in a house,
25. So that he should not be able to look over into the courtyard when using the roof. *Infra* 6b.

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so that I may keep out of your sight.¹

Another version [of the above discussion is as follows]. It was presumed [in the *Beth Hamidrash*] that mehizah means 'division', as in the verse, and the congregation's mehezath was, etc. Since then the partners agree to make a division, they are compelled [according to the Mishnah] to build a wall. This would show that overlooking is a substantial damage. May I not say, however, that mehizah means a wall, as we have learnt: 'If the mehizah of a vineyard has been broken down, the owner [of an adjoining cornfield] can require the owner of the vineyard to restore it. If it is broken down again, he can again require him to restore it. If [the owner

of the vineyard] neglects the matter and does not restore it, he causes his neighbor's produce to become forfeit, and is responsible for his loss.' [This being so],² the reason why either can be compelled [to assist in putting up the wall] is because they both agreed; but if either did not agree, he cannot be compelled. From which we infer that overlooking is not a substantial damage. If that is so,³ instead of **THEY SHOULD BUILD THE WALL**, the Mishnah should say, 'they should build it'? — You say then that mehizah means 'division'. If so, instead of 'who agreed to make a division', the Mishnah should say, 'who agreed to divide'? — It is usual for men to say, 'Come, let us make a division.'⁴

But if overlooking is a substantial damage, why does it speak of the partners agreeing? Even if they do not agree, [either should be able to demand a division]? — To this R. Assi answered in the name of R. Johanan: Our Mishnah is speaking of a courtyard where there is no right of division,⁵ and where therefore [a division is made only] if both agree.

The Mishnah then tells us [according to this] that where there is no right of division, they may still divide, if they so agree. We have learnt this already, [in the following passage]: 'When does this rule apply?⁶ When both of them do not consent to divide; but if both consent, even when it is smaller than this they divide'?⁷ — If I had only that to go by, I should say that where it is smaller than this they may divide with a mere fence of sticks. Therefore it tells us here that it must be a wall.⁸

But could not the Mishnah then state this case and omit the other?⁹ — The other case was stated to introduce the succeeding clause: Scrolls of the Scriptures must not be divided even if both [joint owners] agree.

How then have you explained the Mishnah? As applying to a courtyard in which there is

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no right of division. If it is speaking of one in which there is no right of division, even if both owners consent, what does it matter? Either of them can retract? — R. Assi answered in the name of R. Johanan: We assume that each made a formal contract with the other, by means of a *kinyan*.¹⁰ But even if they made such a contract what does it matter, seeing that it relates only to a verbal agreement?¹¹ — [We assume that] they contracted by a *kinyan* to take different sides.¹² R. Ashi said: [And this becomes effective if¹³] for instance one traverses his own part and takes formal possession¹⁴ and the other does likewise.

IN DISTRICTS WHERE IT IS USUAL TO BUILD, etc. GEBIL denotes untrimmed stones; GAZITH, squared stones, as it is written, All these were of costly stones according to the measure of hewn stones [gazith].¹⁵ KEFISIN are half bricks and LEBENIM whole bricks.¹⁶

Rabbah the son of Raba said to R. Ashi: How do we know that gebil means untrimmed stones, and that the extra handbreadth¹⁷ is to allow for the projection of the rough edges? May it not be that gebil is half the thickness of gazith, and this extra handbreadth is to allow for the mortar between the rows, in the same way as we defined kefisin to be half-bricks and lebenim whole bricks, the extra handbreadth being for the mortar between the rows? — He replied: Granting your analogy [between gebil and kefisin], how do we know that kefisin means half-bricks? From tradition. Similarly we know from tradition [that gebil means untrimmed stones]. According to another version, R. Aha the son of R. Awia said to R. Ashi: How do we know that kefisin means half bricks and the extra handbreadth is for the mortar between the rows? May it not be that kefisin means untrimmed stones and the extra handbreadth is for the projection of the rough edges, in the same way as we define gebil to be untrimmed stones and gazith to be polished stone, the extra handbreadth being for the mortar between the rows? — He replied: Granting

your analogy [between kefisin and gebil], how do we know that gebil means untrimmed stones? From tradition. So we know this also from tradition.

Abaye said: We learn from this¹⁸ that the space between the layers [in a wall] should be a handbreadth.¹⁹ This, however, is the case only if it is filled with mortar,²⁰ but if with rubble,²¹ more space is required. Some say: This is the case only if it is filled with rubble, but if mortar is used, not so much is required.

[The Mishnah seems] to assume that where squared stones are used, if for every four cubits of height there is a breadth of five handbreadths, the wall will stand, but otherwise not. What then of the Ammah Traksin²² which was thirty cubits high but only six handbreadths broad, and yet it stood? — The one extra handbreadth enabled it to stand.²³ Why was there no Ammah Traksin in the Second Temple?²⁴ — A thickness of six handbreadths will sustain a wall of thirty cubits but not more.²⁵ How do we know that the Second Temple Was higher [than the first]? — Because it is written, Greater shall be the glory of the latter' house than the former.²⁶ [The word 'greater' was interpreted differently by] Rab and Samuel [or, according to another report, by R. Johanan and R. Eleazar], one referring it to the size and the other

1. Joint owners of a courtyard, however, if they do not divide it, do not use it for private purposes.
2. That mehizah means wall.
3. That mehizah means wall.
4. And the Mishnah reproduces this expression.
5. That is to say, one not large enough to allow of four cubits being assigned to each.
6. That a courtyard is not to be divided if each part will not be large enough to be still called a courtyard.
7. *Infra* 22a.
8. Because overlooking is a substantial damage.
9. The later Mishnah just quoted, seeing that we can learn this rule from the Mishnah here.
10. Lit., 'acquisition': the handing of a small article, usually a piece of cloth, by one of the contracting parties to the other, as a symbol that the object

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transferred has passed from the ownership of the one to that of the other. v. B.M. 47a.

11. That is to say, that of which ownership is acquired by the *kinyan* is only a verbal promise (viz. to divide), not any concrete article.
12. E.g., one the north side and one the south, so that something concrete was involved in the transaction.
13. V. Tosaf. s.v. cr
14. By digging a little or so forth.
15. I Kings VII, 9.
16. A whole brick was three handbreadths thick, but if two half-bricks were used, an extra half-handbreadth would be required for each for the mortar.
17. Required for a wall of gebil as against a wall of gazith.
18. From the fact that kefishin require a handbreadth more than lebenim.
19. Unless otherwise specified in a contract for a wall.
20. Made only of clay or mud.
21. In which small stones are mixed with the clay.
22. Lit., 'the cubit of the partition' (perhaps =[G]): a wall separating the Holy from the Holy of Holies in the Temple of Solomon.
23. I.e., although five handbreadths are required for a height of four cubits, six handbreadths will sustain a wall much higher.
24. Where only a curtain separated the Holy from the Holy of Holies.
25. The Second Temple was 100 cubits high. v. Mid. IV, 6.
26. Hag. II, 9.

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to the duration; and both are correct.¹

Why did they not [in the Second Temple] build a wall thirty cubits high and use a curtain for the remaining [seventy cubits]? — Even the thirty cubit wall [of the First Temple] was only sustained by the ceiling and plaster [of the room above it], but without such a ceiling and plaster it could not stand [with a breadth of only six handbreadths]. But why did they not build a wall as high as possible [with a breadth of six handbreadths] and use a curtain for the rest? — Abaye replied: It was known to them by tradition that the partition should be wholly a wall or wholly a curtain, either wholly a wall as in the

First Temple, or wholly a curtain as in the Tabernacle.

The question was raised: [Do the measurements given in the Mishnah] apply to the material with the [outside] plaster, or to the materials without the plaster?² — R. Nahman b. Isaac replied: It is reasonable to assume that the plaster is included, since if the plaster is not included, its measurement should [also] have been specified. We may conclude therefore that the plaster is included. No! I may still say that the measurements given refer to the material without the plaster, and the reason why that of the plaster is not specified is because it is less than a handbreadth. But in the case of bricks, does it not say that one gives a handbreadth and a half and the other likewise?³ — There [half-handbreadths are mentioned] because the two halves can be combined [to form a whole one].

Come and hear [an objection to this]: 'The beam⁴ of which they speak should be wide enough to hold an ariah, which is the half of a lebenah of three handbreadths'.⁵ — There it is speaking of large bricks. This is indicated also by the expression 'half a brick of three handbreadths' which implies that there is a smaller variety. Hence it is proven.⁶

R. Hisda said: A synagogue should not be demolished before another has been built to take its place. Some say the reason is lest the matter should be neglected,⁷ others to prevent any interruption of religious worship.⁸ What practical difference does it make which reason we adopt? — There is a difference if there is another synagogue.⁹ Meremar and Mar Zutra pulled down and rebuilt a summer synagogue in winter and a winter synagogue in summer.¹⁰

Rabina asked R. Ashi: Suppose money for a synagogue has been collected and is ready for use, is there still a risk?¹¹ — He replied: They may be called upon to redeem captives and use it for that purpose.¹² [Rabina asked

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further]: Suppose the bricks are already piled up and the lathes trimmed¹³ and the beams ready, what are we to say? — He replied: It can happen that money is suddenly required for the redemption of captives, and they may sell the material for that purpose. If they could do that, [he said], they could do the same even if they had already built the synagogue?¹⁴ — He answered: People do not sell their dwelling-places.¹⁵

This rule [about pulling down a synagogue] only applies if no cracks have appeared in it, but if cracks have appeared, they may pull down first and build afterwards. A case in point is that of R. Ashi, who, observing cracks in the synagogue of Matha Mehasia,¹⁶ had it pulled down. He then took his bed there and did not remove it until the very gutters [of the new building] had been completed.

But how could Baba b. Buta have advised Herod to pull down the Temple,¹⁷ seeing that R. Hisda has laid down that a synagogue should not be demolished until a new one has been built to take its place? — If you like I can say that cracks had appeared in it, or if you like I can say that the rule does not apply to Royalty, since a king does not go back on his word. For so said Samuel: If Royalty says, I will uproot mountains, it will uproot them and not go back on its word.

Herod was the slave of the Hasmonean house, and had set his eyes on a certain maiden [of that house].¹⁸ One day he heard a *Bath Kol*¹⁹ say, 'Every slave that rebels now will succeed.' So he rose and killed all the members of his master's²⁰ household, but spared that maiden. When she saw that he wanted to marry her, she went up on to a roof and cried out, 'Whoever comes and says, I am from the Hasmonean house, is a slave, since I²¹ alone am left of it, and I am throwing myself down from this roof.' He preserved her body in honey for seven years. Some say that he had intercourse with her, others that he did not. According to those who say that he had intercourse with her, his reason for

embalming her was to gratify his desires. According to those who say that he did not have intercourse with her, his reason was that people might say that he had married a king's daughter.

Who are they, he said, who teach, *From the midst of thy brethren thou shalt set up a king over thee*,²² [stressing the word 'brethren']? The Rabbis! He therefore arose and killed all the Rabbis, sparing, however, Baba b. Buta, that he might take counsel of him.

1. The First Temple is supposed to have stood 410 years, the Second 420.
2. For which an extra allowance has to be made.
3. Which shows that measurements less than a handbreadth are specified by the Mishnah.
4. The beam placed across the entrance to an alleyway to enable articles to be carried in it on Sabbath.
5. 'Er. 13 b. This shows that a lebenah is three handbreadths without the plaster.
6. That the three handbreadths of the Mishnah includes the plaster.
7. So that the congregation will be left without a synagogue. Lit., 'on account of transgression'.
8. During the time when the second synagogue is being built. Lit., 'on account of prayer'.
9. In which case the second reason does not apply.
10. In the summer a more airy building was used to escape the heat.
11. That the building of the new one may be neglected.
12. The redemption of captives was regarded as a mizwah of very great importance, and would take precedence of the building of a synagogue. Hence even in this case the old should not be demolished till the new is ready.
13. For the roof.
14. And therefore they should never pull down the old one.
15. And much less a synagogue.
16. [A suburb of Sura which attained fame as a centre of learning in the days of R. Ashi. v. Obermeyer, *Die Landschaft Babylonien*, 289.]
17. *V. infra*.
18. Mariamne, the daughter of Alexander, a son of Aristobulus II. According to Josephus, she was put to death by Herod after being married to him several years.
19. A voice from heaven. *V. Gloss*.
20. [V. D.S. a.l.]
21. Lit., 'this maiden'.
22. Deut. XVII, 15.

BABA BASRA - 2a-35b

Baba Bathra 4a

He placed on his head a garland of hedgehog bristles and put out his eyes. One day he came and sat before him and said: See, Sir, what this wicked slave [Herod] does. What do you want me to do to him, replied Baba b. Buta. He said: I want you to curse him. He replied with the verse, *Even in thy thoughts thou shouldst not curse a king.*¹ Said Herod to him: But this is no king. He replied: Even though he be only a rich man, it is written, *And in thy bedchamber do not curse the rich;*² and be he no more than a prince, it is written, *A prince among thy people thou shalt not curse.*³ Said Herod to him: This applies only to one who acts as one of 'thy people', but this man does not act as one of thy people. He said: I am afraid of him. But, said Herod, there is no-one who can go and tell him, since we two are quite alone.⁴ He replied: *For a bird of the heaven shall carry the voice and that which hath wings shall tell the matter.*⁵ Herod then said: I am Herod. Had I known that the Rabbis were so circumspect, I should not have killed them. Now tell me what amends I can make. He replied: As you have extinguished the light of the world, [for so the Rabbis are called] as it is written, *For the commandment is a light and the Torah a lamp,*⁶ go now and attend to the light of the world [which is the Temple, of which] it is written, *And all the nations become enlightened by it.*⁷ Some report that Baba b. Buta answered him thus: As you have blinded the eye of the world, [for so the Rabbis are called] as it is written, *if it be done unwittingly by the eyes of the congregation,*⁸ go now and attend to the eye of the world, [which is the Temple] as it is written, *I will profane my sanctuary, the pride of your power, the delight of your eyes.*⁹ Herod replied: I am afraid of the Government [of Rome]. He said: Send an envoy, and let him take a year on the way and stay in Rome a year and take a year coming back, and in the meantime you can pull down the Temple and rebuild it. He did so, and received the following message [from Rome]: If you have not yet pulled it down, do not do so; if you have pulled it down, do not

rebuild it; if you have pulled it down and already rebuilt it, you are one of those bad servants who do first and ask permission afterwards. Though you strut with your sword, your genealogy¹⁰ is here; [we know] you are neither a *reka*¹¹ nor the son of a reka, but Herod the slave who has made himself a freedman. What is the meaning of reka? — It means royalty, as it is written, *I am this day rak*¹² and *anointed king.*¹³ Or if you like, I can derive the meaning from this verse, *And they cried before him,* Abrek.¹⁴

It used to be said: He who has not seen the Temple of Herod has never seen a beautiful building. Of what did he build it? Rabbah said: Of yellow and white marble. Some say, of blue, yellow and white marble. Alternate rows [of the stones] projected,¹⁵ so as to leave a place for cement. He originally intended to cover it with gold, but the Rabbis advised him not to, since it was more beautiful as it was, looking like the waves of the sea.

How came Baba b. Buta to do this [to give advice to Herod], seeing that Rab Judah has said in the name of Rab (or it may be R. Joshua b. Levi) that Daniel was punished only because he gave advice to Nebuchadnezzar, as it is written, *Wherefore, O king, let my counsel be acceptable unto thee, and atone thy sins by righteousness and thine iniquities by showing mercy to the poor, if there may be a lengthening of thy tranquility, etc.,*¹⁶ and again, *All this came upon the king Nebuchadnezzar,*¹⁷ and again, *At the end of twelve months, etc.?*¹⁸ — If you like I can say that this does not apply to a slave [of an Israelite, such as Herod was.] who is under obligation to keep the commandments [of the Torah], or if you like I can say that an exception had to be made in the case of the Temple which could not have been built without the assistance of Royalty.

From whence do we learn that Daniel was punished? Shall I say from the verse, *And Esther called to Hatach,*¹⁹ who, as Rab has told us, was the same as Daniel? This is a

BABA BASRA - 2a-35b

sufficient answer if we accept the view of those who say that he was called Hatach because he was cut down [hatach] from his greatness.²⁰ But on the view of those who say that he was called Hatach because all matters of state were decided²¹ [hatach] according to his counsel, what answer can we give? — That he was thrown Into the den of lions.

ALL ACCORDING TO THE CUSTOM OF THE DISTRICT. What further implication is conveyed by the word 'ALL'?²² — That we include places where fences are made of palm branches and branches of bay trees.

THEREFORE IF THE WALL FALLS, THE PLACE AND THE STONES BELONG TO BOTH. Surely this is self-evident? — It required to be stated in view of the case where the wall has fallen entirely into the property of one of them, or where one of them has cleared all the stones Into his own part. You might think that in that case the onus probandi falls on the other as claimant. Now we know [that this is not so].

SIMILARLY IN AN ORCHARD, IN A PLACE WHERE IT IS CUSTOMARY TO FENCE OFF. The text itself seems here to contain a contradiction. You first say, **SIMILARLY IN AN ORCHARD, IN A PLACE WHERE IT IS CUSTOMARY TO FENCE OFF, EITHER CAN BE COMPELLED,** from which I infer that in an ordinary²³ [orchard] he cannot be compelled to fence off. Now see the next clause: **BUT IN A STRETCH OF FIELDS, IN A PLACE WHERE IT IS USUAL NOT TO FENCE OFF, NEITHER CAN BE COMPELLED,** from which I infer that in an ordinary²³ [stretch] he can be compelled. Now if you say that he cannot be compelled in an ordinary orchard, do we require to be told that he cannot be compelled in an ordinary stretch of fields?²⁴ — Abaye replied: We must read the Mishnah thus: 'Similarly with an ordinary orchard:²³ and also where it is customary to put fences in a stretch of fields, he can be compelled.'²⁵ Said Raba to him: If that is the

meaning, what are we to make of the word **BUT?**²⁶ No, said Raba; we must read the Mishnah thus: 'Similarly with an ordinary orchard, which is regarded as a place where it is customary to make a fence, and he can be compelled: but an ordinary stretch of cornfields is regarded as a place where it is not customary to make a fence, and he is not compelled.'

IF, HOWEVER, ONE DESIRES TO MAKE A FENCE, HE MUST WITHDRAW A LITTLE AND BUILD ON HIS OWN GROUND, MAKING A FACING. How does he make a facing? — R. Huna says: He bends the edge over towards the outer side. Why should he not make it on the inner side?²⁷ — Because then his neighbor may make another one on the outer side²⁸ and say that the wall belongs to both of them.²⁹ If he can do that, then even if the ledge is on the outer side he can cut it off and say that the wall belongs to both? — Breaking off would be noticeable.

According to another version, R. Huna said: He bends the edge over on the inner side. Why should he not bend it over on the outer side? — His neighbor may break it off and say that the wall belongs to both of them.²⁹ If he can do that, he can join one on and claim that the wall belongs to both? — Such a joining on would be noticeable. But the Mishnah says, **ON THE OUTER SIDE?**³⁰ — This is certainly a difficulty.

R. Johanan said:

1. Eccl. X, 20.
2. Ibid.
3. Ex. XXII, 27.
4. Lit., 'Since you and I sit (here).'
5. Eccl. X, 20.
6. Prov. VI, 23.
7. Isa. II, 2. The Hebrew word is [H] (lit. 'and shall flow'), which here is connected with the Aramaic vruvb 'light'.
8. Literal rendering of Num. XV, 24.
9. Ezek. XXIV, 21.
10. Lit., 'book'.
11. [[H] prob. a transliteration of the Latin *rex*.]
12. In the E.V. 'tender'

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13. II Sam. III, 39
14. [H] prob. an Egyptian word meaning 'ruler', interpreted by the Rabbis to mean 'father of the king'. Gen. XLI, 43.
15. Lit., 'it sent forth an edge and drew in an edge'.
16. Dan. IV, 24.
17. Ibid. 25.
18. Ibid. 26. The twelve months' reprieve is regarded as a result of Daniel's advice.
19. Esther, IV, 5.
20. [H] to cut, this being his punishment.
21. [H] denotes 'to determine', 'to decide', as well as 'to cut'.
22. Which appears to be superfluous.
23. I.e., where no definite custom exists.
24. Where there is no damage from 'overlooking', as in an orchard.
25. Thus Abaye takes the words IN A PLACE WHERE IT IS CUSTOMARY TO FENCE with IN A STRETCH OF FIELDS.
26. On Abaye's theory, this should come after IN A STRETCH OF FIELDS, not before it.
27. Which would equally be a sign that the wall is his.
28. I.e., on his side.
29. Lit., 'say it is mine and his', as having jointly made it originally.
30. How then could R. Huna say that he should make the facing on the inner side?

Baba Bathra 4b

[The man who makes the wall] should smear it [with lime] on the outer side to the extent of a cubit. Why not on the inner side? — His neighbor will do the same on the outer side and claim that the wall is joint property. If he can do that, he can also scrape off the mark [on the outer side] and claim a share in the wall?¹ — Scraping is noticeable.

[Suppose the partition is made of] palm branches, [how is he to make a mark]? — R. Nahman said: He should direct the points of the branches² outwards. Why not inwards? — Because then his neighbor may also turn points outwards and say that the fence is joint property.³ If he can do that, he can also cut off the points [if they are outside] and throw them away? — [The other should therefore] smear clay over them. But even so the neighbor can come and scrape it away? — Scraping would be noticed. Abaye said [that

for a partition made of] palm branches there is no security save by a written deed.⁴

IF, HOWEVER, THEY BOTH CONCUR. Raba of Parazika⁵ said to R. Ashi: Let neither of them make a mark? — The rule is required for the case where one made a mark first, so that if the other does not do likewise, the first may claim [the whole wall] as his own. Is the Tanna then teaching us how to guard against rogues? — And is not the previous regulation also⁶ a precaution against rogues? Raba replied: This is right and proper in the former clause:⁷ the Tanna first states the law and then teaches how it should be safeguarded. But in the latter clause what law has he laid down that he should teach us how to safeguard it?⁸ Rabina said: We are here dealing with a partition made of palm branches, and the object of the Mishnah is to exclude the view of Abaye, that for a fence made of palm branches there is no security save through a written deed. It therefore tells us that the making of a facing is sufficient.

MISHNAH. IF A MAN HAS FIELDS SURROUNDING THOSE OF ANOTHER ON THREE SIDES AND FENCES THE FIRST, SECOND, AND THIRD, THE OTHER IS NOT BOUND [TO SHARE IN THE COST].⁹ R. JOSE SAID: IF HE¹⁰ TAKES IT UPON HIMSELF TO FENCE¹¹ THE FOURTH, THE WHOLE¹² COST DEVOLVES UPON HIM.

GEMARA. Rab Judah said in the name of Samuel: The *halachah* follows R. Jose who said: IF HE TAKES IT UPON HIMSELF TO FENCE THE FOURTH, THE WHOLE COST DEVOLVES UPON HIM; and it makes no difference whether it is the encloser or the enclosed who does so.

It has been stated: R. Huna said, [The contribution to the cost of] the whole must be proportionate to the actual cost of erecting the fence;¹³ Hiyya b. Rab said, It must be proportionate to the cost of a cheap fence of sticks.¹⁴

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We have learnt: IF A MAN HAS FIELDS SURROUNDING THOSE OF ANOTHER ON THREE SIDES AND FENCES THE FIRST, SECOND, AND THIRD SIDES, THE OTHER IS NOT COMPELLED [TO CONTRIBUTE TO THE COST]; which would imply that if the other fences the fourth side also, he must contribute [to the cost of the whole]. Now see the next clause: R. JOSE SAYS, IF HE TAKES IT UPON HIMSELF TO FENCE THE FOURTH, THE COST OF THE WHOLE DEVOLVES UPON HIM. This accords very well with the opinion of R. Huna who said [that he contributes to the cost of] the whole in proportion to the outlay on the fence; there is a genuine difference of opinion between the first Tanna and R. Jose, the former holding that the contribution has to be proportionate to the cost of a cheap fence of sticks, but not to the actual outlay, and R. Jose that it has [in all cases] to be proportional to the actual outlay. But if we accept the view of Hiyya b. Rab who said that it need only be proportionate to the cost of a cheap fence of sticks, what difference is there between the first Tanna and R. Jose? If he is not to give him even the cost of a cheap fence, what else can he give?¹⁵ — If you like I can say that they differ as regards the hire of a watchman,¹⁶ the first Tanna holding that he must pay the cost of a watchman¹⁷ but not of a cheap fence, and R. Jose holding that he must pay the cost of a cheap fence. If you like, again, I can say that they differ as to the first, second and third sides, the first Tanna holding that he has to contribute only to the cost of fencing the fourth side, but not the first, second and third,¹⁸ and R. Jose holding that he has to contribute to the cost of the first, second and third sides also.¹⁹ If you like, again, I can say that they differ as to whether the fence in question must be built by the owner of the surrounding fields or of the enclosed field, [if the latter is to contribute to the cost of the whole]. The first Tanna holds that the reason [why the owner of the enclosed field has to contribute] is because he took the initiative [in building the fourth fence] and that is why the cost of the whole devolves on

him, but if the owner of the surrounding fields took the initiative, the other has only to pay him his contribution to the fourth fence.²⁰ R. Jose on the other hand holds that it makes no difference whether the owner of the enclosed or of the surrounding fields took the initiative In building the fourth fence, in either case the former has to pay the latter his share of the whole. According to another version [of this last clause], they differ as to [whether the fourth fence has to be built by] the owner of the enclosed or the surrounding fields [in order to make the former liable for contributing to its cost]. The first Tanna holds that even if the owner of the surrounding fields makes the fourth fence, the other has to contribute to the cost,²¹ whereas R. Jose holds that if the owner of the enclosed field takes it upon himself to build the fourth fence, then he has to contribute to the cost [of the whole] because he makes it clear that he approves of it, but if the owner of the surrounding fields builds it, the other does not pay him anything.²²

1. V. n. 4.
2. [Another rendering, 'The staves supporting the hedge' (R. Han).]
3. V. p. 14, n. 4.
4. That is to say, there is always the possibility of fraud unless there is evidence in writing duly witnessed as to how the partition was made.
5. [Identified with Farausag, a district near Bagdad. V. Obermeyer, *op. cit.*, 269.
6. That if one builds the fence on his own ground he should make a mark.
7. That the one who wants to build should withdraw into his own ground.
8. There is no law that a fence should be built in a stretch of cornfields.
9. Whether because there is no custom that fields should be fenced or because the fencing is of little advantage so long as the fourth side is open.
10. The question which of the two is meant is discussed in the Gemara.
11. Lit., 'rose up and fenced'.
12. I.e., his share in the cost of the whole.
13. Which will vary according to the materials used by the encloser.
14. Because the other can say that this is all that he requires.
15. That is to say, can even the Rabbis fix his contribution at anything less than this?
16. During the time that the corn is ripe.

BABA BASRA - 2a-35b

17. This would be less than the cost of a cheap fence, and the Rabbis might say that since this is all he requires, this is all that the fence is worth to him, and he need not contribute more than this.
18. That is to lay, we infer only this from the language of the Mishnah, and not, as above, that he has to contribute to the cost of the whole.
19. Proportionately to the actual cost, according to one authority, and to the cost of a cheap fence according to the other.
20. It is not clear on what grounds this opinion is ascribed to the first Tanna, as there is no hint of it in the Mishnah. Rashi does not seem to have had the whole of this clause in his text; v. D. S. a.l.
21. Apparently the cost of the whole is meant.
22. Because he can say that he does not want any fencing.

Baba Bathra 5a

[One] Ronya had a field which was enclosed on all four sides by fields of Rabina. The latter [fenced them and] said to him: pay me [towards] what I have spent for fencing.¹ He refused to do so. Then pay [towards] the cost of a cheap fence of sticks.² He again refused. Then pay me the hire of a watchman.³ He still refused. One day Rabina saw Ronya gathering dates, and he said to his metayer: Go and snatch a cluster of dates from him. He went to take them, but Ronya shouted at him, whereupon Rabina said: You show by this⁴ that you are glad of the fence. If it is only goats [you are afraid of], does not your field need guarding? He replied: A goat can be driven off with a shout.⁵ But, he said, don't you require a man to shout at it? He appealed to Raba, who said to him: Go and accept his last offer,⁶ and if not, I will give judgment against you according to R. Huna's interpretation of the ruling of R. Jose.⁷

Ronya bought a field adjoining a field of Rabina. The latter thought he was entitled to eject him in virtue of his right of preemption.⁸ Said R. Safra the son of R. Yeba to Rabina: You know the saying, The hide costs four zuzim, and four are for the tanner.⁹

MISHNAH. IF THE PARTY WALL OF A COURTYARD FALLS IN, EACH OF THE NEIGHBOURS CAN BE COMPELLED BY THE

OTHER TO [CONTRIBUTE TO THE COST OF] REBUILDING IT TO A HEIGHT OF FOUR CUBITS.¹⁰ [EACH OF THEM] IS ALWAYS PRESUMED TO HAVE GIVEN HIS SHARE¹¹ UNTIL THE OTHER BRINGS A PROOF THAT HE HAS NOT GIVEN.¹² FOR REBUILDING HIGHER THAN FOUR CUBITS NEITHER CAN BE COMPELLED [TO CONTRIBUTE]. IF, HOWEVER, [THE ONE WHO HAS NOT CONTRIBUTED]¹³ BUILDS ANOTHER WALL CLOSE TO IT,¹⁴ EVEN THOUGH HE HAS NOT YET PUT A ROOFING OVER THE SPACE BETWEEN, THE [PRO RATA] COST OF THE WHOLE DEVOLVES UPON HIM,¹⁵ AND HE IS PRESUMED NOT TO HAVE GIVEN UNTIL HE ADDUCES PROOF THAT HE HAS GIVEN.¹⁶

GEMARA. Resh Lakish has laid down: If a lender stipulates a date for the repayment of a loan, and the borrower pleads [when the date of payment arrives] that he paid the debt before it fell due, his word is not accepted. Let him only pay when it does fall due! Abaye and Raba, however, both concur in saying that it is not unusual for a man to pay a debt before it falls due; sometimes he happens to have money, and he says to himself, I will go and pay him,

1. According to the ruling of R. Jose as interpreted by R. Huna.
2. According to the same ruling as interpreted by Hiyya b. Rab.
3. According to one version of the opinion of the Rabbis.
4. By the fact that you do not want people to enter your field.
5. [Adopting the reading of the BaH, v. D.S.]
6. Lit., 'appease him with what he is willing to be appeased with,' i.e., the hire of a watchman.
7. Viz., to contribute half of his actual outlay, this being the *halachah*.
8. As owner of the adjoining field.
9. Apparently R. Safra meant that by having two fields instead of one, Ronya, who was a poor man, would save expense, and therefore Rabina ought to let him keep it. But the exact application of the saying here is obscure. v. Rashi and Tosaf.
10. This being the minimum to prevent overlooking.
11. In case he is sued by the other after the wall is built.
12. Because, as most people know the rule about contributing, we presume that if the other had not

BABA BASRA - 2a-35b

paid as soon as the wall was finished, he would have sued him at once.

13. To the rebuilding higher than four cubits.
14. With the intention of roofing over the intervening space.
15. Because he makes it clear retrospectively that he is well satisfied to have the wall at its present height.
16. Because this rule is not so well known, and the builder of the first wall may have learnt only some time after that he was able to recover his outlay.

Baba Bathra 5b

so as to be quit of him.¹

We have learnt: **EACH IS PRESUMED TO HAVE GIVEN HIS SHARE UNTIL THE OTHER BRINGS PROOF THAT HE HAS NOT GIVEN.** How are we to understand this? Are we to suppose that he says to the claimant: **I paid when the payment was due?**² Then it is self-evident that he is presumed to have given.³ We must suppose then that he pleads: **I paid you before the payment was due.** This would show, [would it not], that it is not unusual for a man to pay a debt before it is due? — Here the case is different, because with every layer [of the wall that is finished some] payment becomes due.⁴

Come and hear [this]: **HE IS PRESUMED NOT TO HAVE GIVEN UNTIL HE ADDUCES PRO OF THAT HE HAS GIVEN.** How are we to understand this? Are we to assume that he says to him: **I paid you when payment became due?**⁵ If so, why should we not take his word? We must suppose therefore that he says, **I paid you before payment became due;** which would show, [would it not], that it is not unusual for a man to pay before the time? — The case here is different, since he may say to himself, **How do I know that the Rabbis will make me pay?**⁶

R. Papa and R. Huna the son of R. Joshua followed in practice the ruling of Abaye and Raba, whereas Mar son of R. Ashi followed Resh Lakish — The law is as stated by Resh Lakish, and [the ruling applies] even to orphans,⁷ in spite of what has been laid down

by a Master, that one who seeks to recover a debt from the property of orphans need not be paid unless he first takes an oath, because the presumption is that a man does not pay a debt before it falls due. The question was raised: **If the creditor claims payment some time after the debt falls due, and the debtor pleads, I paid it before it fell due, how do we decide? Do we say that even where there is a presumption [against him]⁸ we plead [on his behalf], 'what motive has he to tell a lie',⁹**

1. Lit., 'so that he may not trouble me'.
2. Viz., when the wall reached a height of four cubits.
3. According to the rule that in money claims the word of the defendant is taken against that of the claimant.
4. Because each is equally under obligation to build the wall.
5. I.e., as soon as the wall was finished.
6. As explained above, p. 19, n. 7. And therefore we do not believe him even if he says that he paid when payment fell due.
7. That is to say, if the debtor dies, the payment may be recovered from his orphans in the same way as from himself, i.e., without taking an oath.
8. E.g., the presumption that a man does not pay before the time.
9. And we therefore accept his word.

Baba Bathra 6a

or is the rule that where there is such a presumption we do not advance this plea? — Come and hear: **EACH IS PRESUMED TO HAVE GIVEN HIS SHARE UNTIL THE OTHER BRINGS PROOF THAT HE HAS NOT GIVEN.** How are we to understand this? Are we to suppose that the claim was made some time after the payment fell due, and the defendant pleads, **I paid you when it fell due?**¹ Then this is self-evident. We must suppose then that he pleads, **I paid you before the time of payment;** from which we would infer that even where there is a presumption against the defendant, we plead [on his behalf], **What motive has he to tell a lie?** The case here is different, because with every layer [that is finished some] payment becomes due.²

BABA BASRA - 2a-35b

Come and hear: FOR REBUILDING HIGHER THAN FOUR CUBITS NEITHER CAN BE COMPELLED [TO CONTRIBUTE]. IF, HOWEVER, HE BUILDS ANOTHER WALL CLOSE TO IT ... UNTIL HE ADDUCES PROOF THAT HE HAS GIVEN. How are we to understand this? Are we to suppose that the claim is made some time after and the defendant pleads, I paid you when the money fell due? If so, why [should we] not [believe him]? We must suppose therefore that he pleads, I paid you before the time of payment, [and yet he has to contribute]; which would show [would it not] that where there is a presumption [against him], we do not plead [on his behalf], What motive has he to tell a lie? — Here the case is different, because he can say to himself, How do I know that the Rabbis will compel me to pay?³

Said R. Aha the son of Raba to R. Ashi: Come and hear [this]: [If a man says to another], You owe me a *maneh*, and the other says, That is so, and if on the next day when the lender says, Give it to me, the borrower pleads, I have given it to you, he is quit, but if he says, I do not owe you anything,⁴ he is liable to pay. Now the expression, 'I have given it to you' is equivalent, is it not, to 'I paid when it fell due', and the expression, 'I do not owe you anything'⁴ to 'I paid you before it fell due'; and we are told that in the latter case he is liable; which would show that where there is a presumption [against him]⁵ we do not plead [on his behalf], what motive has he to tell a lie? — Not so: the expression 'I do not owe you anything' means 'I never borrowed from you,'⁶ [and therefore he is liable] because a Master has laid down that to say 'I have not borrowed' is equivalent to saying 'I have not paid'.

IF HE PUTS UP ANOTHER WALL CLOSE TO IT, THE COST OF THE WHOLE DEVOLVES ON HIM. R. Huna said: If the second wall matches half [the first wall],⁷ it is the same as if it matched the whole.⁸ R. Nahman, however, said that where it matches

it matches, and where it does not it does not.⁹ R. Huna, however, admits [that R. Nahman's ruling applies] to a projection joined on to a house;¹⁰ and R. Nahman admits [that R. Huna's ruling applies] to a sustaining beam¹¹ or fittings for fixing planks.¹²

R. Huna said: [If in the part of the wall above four cubits] there are cavities,¹³ this does not create a presumption that [the one who built it was assisted by the other], even if he made the wooden lining in the cavities; for he can plead [when claiming part payment for it from the other]: The reason why I put them in was to prevent my wall becoming damaged, should you persuade me [to let you put cross beams in].¹⁴

R. Nahman said: If a man has acquired a prescriptive right¹⁵ to rest small beams [upon his neighbor's wall], that does not give him the right to [rest] large beams upon it, but if he has acquired the right to [rest] large beams, that does give him the right to [rest] small beams. R. Joseph, however, said that if he has acquired the right to [rest] small beams, he also has the right to [rest] large beams. According to another version, R. Nahman said that if he has acquired the right for small beams he has the right for large beams, and if he has acquired the right for large beams he has the right for small beams.

R. Nahman said: If a man has a prescriptive right¹⁶ to let water drip [from his roof into his neighbor's courtyard], he also has the right to [carry it off there by means of] a gutter-pipe;¹⁷ but if he has acquired the prescriptive right to [carry it off by means of] a gutter-pipe, he has not also the right to let it drip [from the roof]. R. Joseph, however, said that if he has acquired the right to [carry it off by means of] a gutter-pipe, he has also the right to let it drip [from the roof]. According to another version, R. Nahman said that if he has acquired the prescriptive right to carry it off by a gutter-pipe, he has the right to let it drip [from the roof], but he has not the right to [let it drip from] a cone-shaped roof of

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reeds;¹⁸ whereas R. Joseph says that he has that right also. In a case which came before him, R. Joseph decided according to his own view.

R. Nahman said in the name of Rabbah b. Abbuha: If a man lets an apartment to another

1. When the wall was finished.
2. And therefore he does not really plead that he paid before the time.
3. V. p. 19 n. 7.
4. Lit., 'Nothing of yours is in my hand'.
5. The presumption that a debtor does not pay before the time.
6. Lit., 'The thing never happened'.
7. I.e., if it is built up to half the same length or height.
8. And he has to contribute to the cost of the whole, the reason being that in all probability he will subsequently finish it and make a roofing.
9. And he only pays proportionately to the amount he has built.
10. Apparently what is referred to is a wall which the other neighbor (the one who did not raise the party wall) builds out from his own house parallel to the party wall. As it is evident that he has no intention of extending this, he contributes to the increased height of the party wall only in proportion to its height or length. Another explanation is he joins two walls already existing. V. *Aruch* and *Levy S.v.* [H]
11. A thick beam laid on top of the wall to sustain further building.
12. Cavities made of lathes alongside of the wall in which upright beams may afterwards be placed. In both these cases he shows his intention of building higher, and therefore must contribute to the cost of the whole.
13. Which would be suitable for resting cross beams in, if another wall is built opposite.
14. If Reuben raises the party wall higher than four cubits, at the same time putting cavities in it, and Simeon subsequently builds a wall parallel to it, Simeon cannot point to the cavities as proof that he has paid his share for the party wall, because Reuben can say that he put them in of his own accord as a precaution.
15. That is to say, if the other has allowed him to do so without protesting, and he can also plead (but without adducing proof) that he acquired the right by gift or purchase.
16. V. preceding note.
17. Because if the water flows down in this way it is more useful to the owner of the courtyard.

18. From which the water would drip so continuously as to become a nuisance.

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in a large residence,¹ the latter is at liberty to use the projecting beams² and the cavities in the walls³ up to a distance of four cubits [from his room], and also the thickness of the wall,⁴ if this is the local custom, but not [the part of the wall facing] the front garden.⁵ R. Nahman, however, speaking for himself said that he may use even the side facing the front garden, but not the yard at the back of the house. Raba, however, said that he may use the yard at the back also.

Rabina said: [If a man is allowed by his neighbor to support] the beam of his hut [on his wall] for thirty days, this does not constitute prescriptive right,⁶ but after thirty days it does constitute prescriptive right. If the hut, however, is for religious purposes,⁷ [should no objection be raised] within seven days, this does not constitute prescriptive right, but [if objection is raised only] after seven days, it does.⁸ If, however, he attaches it with clay [and still the neighbor does not object], he acquires prescriptive right immediately.

Abaye said: If there are two houses on opposite sides of a public thoroughfare, the owner of the one should make a parapet for half his roof, and the other a parapet for half his roof, in such a way that the parapets do not face one another,⁹ though each should extend [his parapet a little beyond the middle].¹⁰ Why [does Abaye] state [this rule in connection with] a public thoroughfare, [seeing that] it could apply equally to private ground? It was more necessary to state it in connection with a public thoroughfare. For you might think that in this case one might [refuse to build], Saying to the other: When all is said and done you have to guard your privacy against the public,¹¹ therefore we are told here that this is not so, since the other can retort: The public can only see me by day but

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not by night, whereas you can see me both by day and night; or again, the public can see me when I am standing but not when I am sitting, but you can see me whether I am standing or sitting; the public can see me when they look directly at me, but not otherwise, but you see me even without looking.

The Master has just said: 'The one should make a parapet for half his roof and the other should make a parapet for half his roof, In such a way that the parapets do not face one another, though each should extend [his parapet a little beyond the middle].' Surely this rule is obvious? — We require it for the case where one of the owners builds a parapet first [without consulting the other]. You might think that in that case the other is' entitled to say to him: Complete the parapet and I will reimburse you.¹² We, are therefore told [that he cannot insist upon this], since the other can say to him: Why don't you want to build? Because it might weaken your wall. I too [don't want] my wall to be weakened.

R. Nahman said in the name of Samuel: If a man's roof adjoins another man's courtyard,¹³ he must make a parapet four cubits high, but between one roof and another this is not necessary. To this R. Nahman added in his own name that a wall of four cubits is not required, but a partition of ten handbreadths is required. For what purpose [is such a partition required]? If to prevent 'overlooking' we require four cubits? If for the purpose of convicting his neighbor of felonious entry,¹⁴ a mere fence of sticks would suffice? If to prevent kids and lambs from jumping over, a partition too high for them to jump over at a headlong run would suffice? — The actual reason is that he may be able to convict his neighbor of felonious entry. If there is only a fence of sticks, the latter can find an excuse,¹⁵ but if there is a partition of ten handbreadths he can find no excuse.

An objection was brought [against this ruling of R. Nahman] from the following: If the other's courtyard is higher than his roof,

there is no need for it. Does not this mean that there is no need for a partition at all? — No; it means that there is no need for a wall of four cubits, but a partition of ten handbreadths is required.

It has been stated: If two courtyards adjoin and one is higher than the other, R. Huna says that the owner of the lower one has to build [the party wall] up from his level, and the owner of the higher one starts building from his level.¹⁶ 'Ulla and R. Hisda, however, say that the owner of the higher one has to assist¹⁷ the owner of the lower in building from his level. It has been taught in agreement with R. Hisda: If there are two adjoining courtyards of which one is higher than the other, the owner of the higher one must not say to the other, I will start building [the party wall] from my level, but he must assist the other to build from his level.¹⁷ If, however, his courtyard is higher than his neighbor's roof, he has no liability.

Two men were living [in the same house], one in the upper room and one in the lower. The lower, room began to sink into the ground, so the owner of the lower room said to the one above: 'Let us rebuild the house.' The other replied: 'I am quite comfortable.'

1. With a single long wall bordering a number of rooms which are let off separately.
2. Used for resting articles on or hanging them out.
3. Used for placing articles in,
4. If the room is on the top storey.
5. An ornamental garden at the main entrance of the residence.
6. V. p. 22 n. 9.
7. I.e., for the Feast of Tabernacles.
8. Because he does not require it again for the same purpose till the next Feast of Tabernacles, and therefore if the owner of the house allows him to keep it there beyond the seven days, he in a way recognizes his right to keep it there permanently.
9. E.g., if one builds on the north side, the other should build on the south.
10. To avoid the possibility of 'overlooking'.
11. And the steps which you take to protect yourself against them will suffice to protect you against me.
12. Lit., 'take the expense.' [Heb. uzinka, a Persian word meaning 'cost', v. Krauss, TA. I, 20.]

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13. On the side of a hill.
14. Lit., 'for his being caught there like a thief.'
15. E.g., that something of his fell on to the other's roof and he stepped over to get it.
16. And he has not to contribute to the cost of the wall until it reaches the level of his courtyard.
17. I.e., by contributing to the cost.

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'Then let me take it down and rebuild it,' said the first. He replied: 'Meanwhile I have nowhere to live.' Said the first: 'I will hire you a place.' 'I do not want the bother,' he replied. ['But,' said the first,] 'I cannot live in my place.' [To which he replied,] 'You can crawl on your belly¹ to get in, and crawl on your belly to get out. Said R. Hama: He had a full right to stop him [rebuilding]. This, however, is the case only if the beams [of the upper room] did not sink lower than ten handbreadths [from the ground], but if they came as low as this, the owner of the lower room can say: Below ten handbreadths is my property and is not subject to you.² Further, [the one above was within his rights] only if they had not made an agreement with one another,³ but if they had made an agreement with one another, then they must take down the house and rebuild it. And if they did make an agreement with one another, how low [must the upper chamber sink before the one below can demand rebuilding]? — The Rabbis stated in the presence of Rabbah in the name of Mar Zutra the son of R. Nahman, who said it in the name of R. Nahman: Till [the lower room fails to answer the requirement laid down for] that of which we have learnt,⁴ its height must be equal to half its length and half its breadth [combined]. Said Rabbah to them: Have I not told you not to hang empty bottles⁵ on R. Nahman? What R. Nahman said was, 'It must be fit for human habitation'. And how much is this? — R. Huna the son of R. Joshua said: Big enough for one to bring in a bundle [of reeds] of Mahuza⁶ and turn round with them.

A certain man began to build a wall facing his neighbor's windows. The latter said to him,

'You are shutting out my light.' Said the first, 'Let me close up your windows here and I will make you others above the level of my wall.' He replied, 'You will damage my wall by so doing.' 'Let me then,' he said, 'take down your wall as far as the place of the windows and then rebuild it, fixing windows in the part above my wall.' He replied, 'A wall of which the lower part is old and the upper part new will not be firm.'⁷ 'Then,' he said, 'let me take it all down and build it up from the ground and put windows in it.' He replied, 'A single new wall in a house, the rest of which is old, would not be firm.' He then said, 'Let me take down the whole house and put windows in the new building.' He replied, 'Meanwhile I have no place wherein to live.' 'I will rent a place for you,' said the other. 'I don't want to bother,' said the first. Said R. Hama [on hearing of the case]: He had a perfect right to stop him. Is not this case the same as the other? Why, then, this repetition? — To tell us [that the owner of the house may exercise his veto] even though he only uses it for storing straw and wood.⁸

Two brothers divided [a house which they inherited], the one taking as part of his share a verandah open at one end⁹ and the other the front garden. The one who obtained the garden went and built a wall in front of the opening of the verandah. Said the other, 'You are taking away my light.' 'I am building on my own ground,' he replied. Said R. Hama: He was quite within his rights in saying so. Rabina asked R. Ashi: How does this case differ from what was taught: 'If two brothers divide an inheritance, one taking a vineyard and the other a cornfield [adjacent], the owner of the vineyard can claim four cubits in the cornfield,¹⁰ since it was understood that on that condition they divided'? — He replied: There [the reason is] that they struck a balance with one another.¹¹ What then [said Rabin] do we suppose here? That they did not compensate one another? Are we dealing with idiots, of whom one takes a verandah and the other a garden, and yet no question of compensation is raised? He replied: Granted

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that compensation was allowed for the bricks, beams, and planks, no allowance was made for the air space.¹² But cannot he say, 'At first you let me have a verandah as my share, now you are only letting me have a dark room'? — R. Shimi b. Ashi said: He let him have something which happened to be called so. Has it not been taught: 'If a man says, I sell you a beth *kor* of ground,¹³ even if it subsequently prove to be only a lethek¹⁴ the sale is valid, since he sold him only something designated a beth *kor*, provided always that the land in question is commonly called a beth *kor*. [If a man says], I sell you an orchard, even though there are no pomegranates in it, the sale is valid, since he only sold him something designated so, provided the place is commonly called an orchard. [If a man says], I sell you a vineyard, even if there are no vines in it the sale is valid, since he only sold him something designated so, provided always that the place is commonly called a vineyard'?¹⁵ — Are the cases parallel? There the vendor can say to the purchaser, I sold you [something called by] a certain name; here the one who obtains the verandah can say, I only took this as my share on condition that I should be able to live in it as our father lived.¹⁶

1. According to another rendering, 'You can bend yourself double'.
2. And therefore I can demand to have the house pulled down and rebuilt.
3. To rebuild the house if it sank.
4. If one undertakes to build a (one-roomed) house without specifying the size. *Infra* 98b.
5. I.e., not to attribute absurd opinions to him.
6. Which were exceptionally long.
7. Because the new cement does not stick well to the old.
8. And therefore he cannot say that he will have nowhere to live if it is pulled down.
9. [H] [G] a cave, a recess; hence, a sitting room in the shape of a hall; v. Tosaf. s.v. [H]
10. To allow room for his oxen to turn when working the vineyard.
11. The one who received the more valuable portion giving compensation to the other.
12. By the owner of the verandah, so that he should have the right of keeping it empty.
13. I.e., a piece of ground large enough for the sowing of a *kor* of seed. A *kor* = 30 *se'ah*, and a *beth kor* (lit.. 'house of a *kor*') = 75,000 sq. cubits.

14. Half a *kor*.

15. B.M. 104a.

16. And therefore it must not be interfered with, even at the cost of restricting the other's building rights.

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Mar Yanuka and Mar Kashisha the sons of R. Hisda said to R. Ashi: The Nehardeans¹ in this are applying their own principle; for R. Nahman said in the name of Samuel:² If brothers divide [property which they have inherited], neither has the right of way against the other,³ nor the right of 'windows'⁴ against the other, nor the right of 'ladders'⁵ against the other, nor the right of a watercourse⁶ against the other; and take good heed of these rulings, because they are firmly established. Raba, however, said that each has these rights against the other.

There was a bond [inherited] by orphans [from their father] against which a receipt was produced [by the borrower]. R. Hama said: We neither enforce payment on the strength of the bond, nor do we tear it up. 'We neither enforce payment', because a receipt is produced against it, 'nor do we tear it up', because it is possible that when the orphans grow up they will bring evidence invalidating the receipt. Said R. Aha the son of Raba to Rabina: What is the accepted ruling in such a case? — He replied: In all [the above-mentioned cases] the law follows R. Hama, save only in the matter of the receipt, the reason being that we do not presume the witnesses [who have signed the receipt] to have been guilty of a falsehood. Mar Zutra the son of R. Mari, however, said that in this also the law follows R. Hama, since if the receipt were genuine the defendant ought to have produced it in the lifetime of the father, and since he did not do so, the inference is that it was forged.

MISHNAH. HE [A RESIDENT OF A COURTYARD] MAY BE COMPELLED [BY THE REST] TO [CONTRIBUTE TO] THE BUILDING OF A PORTER'S LODGE⁷ AND A

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DOOR⁸ FOR THE COURTYARD. RABBAN SIMEON B. GAMALIEL, HOWEVER, SAYS THAT NOT ALL COURTYARDS REQUIRE A PORTER'S LODGE.⁹ HE [A RESIDENT OF A CITY] MAY BE COMPELLED TO CONTRIBUTE TO THE BUILDING OF A WALL, FOLDING DOORS AND A CROSS BAR. RABBAN SIMEON B. GAMALIEL SAYS THAT NOT ALL TOWNS REQUIRE A WALL. HOW LONG MUST A MAN RESIDE IN A TOWN TO BE COUNTED AS ONE OF THE TOWNSMEN?¹⁰ TWELVE MONTHS. IF, HOWEVER, HE BUYS A HOUSE THERE, HE IS AT ONCE RECKONED AS ONE OF THE TOWNSMEN.

GEMARA. [TO THE BUILDING OF A PORTER'S LODGE.] This would seem to show that a porter's lodge is an improvement: yet how can this be, seeing that there was a certain pious man¹¹ with whom Elijah used to converse until he made a porter's lodge, after which he did not converse with him any more?¹² — There is no contradiction; in the one case we suppose the lodge to be inside [the courtyard], in the other outside.¹³ Or if you like I can say that in both cases we suppose the lodge to be outside, and still there is no difficulty, because in the one case there is a door and in the other there is no door.¹⁴ Or again we may suppose that in both cases there is a door, and still there is no difficulty, because in the one case there is a latch¹⁵ and the other there is no latch. Or again I may say that in both cases there is a latch and still there is no difficulty, because in the one case the latch is inside and in the other outside.¹⁶ HE MAY BE COMPELLED TO CONTRIBUTE TO THE COST OF A PORTER'S LODGE AND A DOOR. It has been taught: Rabban Simeon b. Gamaliel Says: Not all courtyards require a porter's lodge; a courtyard which abuts on the public thoroughfare requires a lodge, but one which does not abut on the public thoroughfare¹⁷ does not require such a lodge. The Rabbis, however, hold that [it does, because] sometimes in a crowd people force their way in.

HE MAY BE COMPELLED TO CONTRIBUTE TO THE BUILDING OF A WALL, etc. It was taught:¹⁸ Rabban Simeon b. Gamaliel says that not all cities require a wall; a town adjoining the frontier requires a wall, but a town which does not adjoin the frontier does not require a wall. And the Rabbis?¹⁹ — [They hold that it does, because] it may happen to be attacked by a roving band.

R. Eleazar inquired of R. Johanan: Is the impost [for the wall] levied as a poll tax or according to means? He replied: It is levied according to means; and do you, Eleazar my son, fix this ruling firmly in your mind.²⁰ According to another version, R. Eleazar asked R. Johanan whether the impost was levied in proportion to the proximity of the resident's house to the wall or to his means. He replied: In proportion to the proximity of his house to the wall.²¹ and do you, Eleazar my son, fix this ruling firmly in your mind.

R. Judah the Prince²² levied the impost for the wall on the Rabbis. Said Resh Lakish: The Rabbis do not require the protection [of a wall], as it is written, If I should count them, they are more in number than the sand.²³ Who are these that are counted? Shall I say the righteous,²⁴ and that they are more in number than the sand? Seeing that of the whole of Israel it is written that they shall be like the sand on the sea shore,²⁵ how can the righteous alone be more than the sand? — What the verse means, however, is I shall count the deeds of the righteous and they will be more in number than the sand. If then the sand which is the lesser quantity protects [the land] against the sea, how much more must the deeds of the righteous, which are a larger quantity, protect them? When Resh Lakish came before R. Johanan, the latter said to him: Why did you not derive the lesson from this verse, I am a wall and my breasts are like towers,²⁶ where 'I am a wall' refers to the Torah, and 'my breasts are like towers'

1. R. Hama was from Nehardea, v. Sanh. 17b.

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2. Who was also from Nehardea.
3. I.e., across the other's field to his own field.
4. The right to stop the other from taking away his light.
5. The right to rest a ladder in the other's courtyard in order to climb to his own room, or even to place the ladder in his own courtyard and let it rest against the other's room (v. Tosaf.).
6. The right to carry water from the river to his own field through the other's; all this notwithstanding the fact that the father was accustomed to do these things.
7. Lit., 'a gate house'.
8. In the main gate.
9. The Gemara discusses which are meant.
10. And become liable to these imposts.
11. [Wherever an incident is related of a 'pious man', either Judah b. Baba or Judah b. Ila'i is meant. (Tem. 16b).]
12. Because the lodge prevented the cries of poor men from being heard within the courtyard.
13. If the lodge is outside, the poor man can get behind it and it does not prevent his voice from being heard.
14. If there is a door to the lodge, the poor man cannot go through it, and it prevents him from being heard.
15. By means of which the poor man can open it and enter.
16. If the latch is inside the poor man cannot open the door with it, and so cannot make his voice heard.
17. Being somewhat drawn back into private ground.
18. (V. Rashal a.l. and D.S.)
19. The representatives of the anonymous opinion cited in the Mishnah. Why do they make no such distinction?
20. Lit., 'Fix nails in it'.
21. According to Tosaf., this means that the poor man at a distance from the wall paid less than the poor man near the wall, and so with the rich, but the rich man at a distance from the wall still paid more than the poor man near.
22. [Judah III, v. Halevy, *Doroth*, II, 336.]
23. Ps. CXXXIX, 18.
24. Referred to in the word [H] in the previous verse, which Resh Lakish translates 'friends' (E.V. 'thoughts').
25. Gen. XXII, 17.
26. Cant. VIII, 10.

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to the students of the Torah?¹ — Resh Lakish, however, adopts the exposition [of this verse] given [also] by Raba, viz. that 'I am a wall' refers to the community of Israel,² and

'my breasts are like towers', to synagogues and houses of study.

R. Nahman b. R. Hisda³ levied a poll tax on the Rabbis. Said R. Nahman b. Isaac to him: You have transgressed against the Law, the prophets, and the Holy Writings. Against the Law, where it says, Although⁴ he loveth the peoples, all his saints are in thy hand.⁵ Said Moses to the Holy One, blessed be He: Sovereign of the Universe, even at the time when Thou fondlest [other] peoples,⁶ let all [Israel's] saints be in Thy hand. [The verse proceeds,] And they are cut⁷ at thy feet.⁸ R. Joseph learned: These are the students of the Torah who cut their feet in going from town to town and country to country to learn the Torah. He shall receive of thy words:⁹ alluding to their discussing the utterances of God.¹⁰ You have transgressed against the Prophets, where it says, Yea, though they study¹¹ among the nations, now I shall gather them, and a few of them shall be free¹² from the burden of king and princes.¹³ This verse, 'Ulla has told us, is written [partly] in Aramaic,¹⁴ [and is to be expounded thus:] If they all study, I will gather them even now, and if only a few of them study, they [those few] shall be free from the burden of king and princes.¹⁵ You have transgressed against the Holy Writings, as it is written, It shall not be lawful to impose upon them [the priests and Levites, etc.] *minda*, *belo*, and *halak*¹⁶ and Rab Judah has explained that *minda* means the king's tax, *belo* the poll tax, and *halach* denotes *annona*.¹⁷

R. Papa levied an impost for the digging of a new well on orphans [also]. Said R. Shesheth the son of R. Idi to R. Papa: perhaps no water will be found there?¹⁸ — He replied: I will collect the money from them in any case. If water is found, well and good, and if not, I will refund them the money. Rab Judah said: All must contribute to the building of doors in the town gates, even orphans; not, however, the Rabbis, [since] they do not require protection. All must contribute to the digging of a well¹⁹ [for a public fountain], including

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the Rabbis. This, however, is only when there is no corvee,²⁰ but when the digging is done by corvee, we do not expect the Rabbis to participate.

Rabbi once opened his storehouse [of victuals] in a year of scarcity, proclaiming: Let those enter who have studied the Scripture, or the Mishnah, or the Gemara, or the *Halachah*, or the Aggadah; there is no admission, however, for the ignorant.²¹ R. Jonathan b. Amram pushed his way in and said, 'Master, give me food.' He said to him, 'My son, have you learnt the Scripture?' He replied, 'No.' 'Have you learnt the Mishnah?' 'No.' 'If so,' he said, 'then how can I give you food?' He said to him, 'Feed me as the dog and the raven are fed.'²² So he gave him some food. After he went away, Rabbi's conscience smote him and he said: Woe is me that I have given my bread to a man without learning! R. Simeon son of Rabbi ventured to say to him: Perhaps it is Jonathan b. Amram your pupil, who all his life has made it a principle not to derive material benefit from the honor paid to the Torah. Inquiries were made and it was found that it was so; whereupon Rabbi said: All may now enter. Rabbi [in first refusing admission to the unlearned] was acting in accordance with his own dictum. For Rabbi said: It is the unlearned who bring misfortune on the world. A typical instance was that of the crown²³ for which the inhabitants of Tiberias were called upon to find the money. They came to Rabbi and said to him, 'Let the Rabbis give their share with us.' He refused. 'Then we will run away,' they said. 'You may,' he replied. So half of them [the 'am ha-ares] ran away. Half of the sum demanded was then remitted. The other half then came to Rabbi and asked him that the Rabbis might share with them. He again refused. 'We will run away,' they said. 'You may,' he replied. So they all ran away, leaving only a certain fuller. The money was then demanded of him, and he ran away, and the demand for the crown was then dropped. Thereupon Rabbi said: I see that trouble comes on the world only on account of the unlearned.²⁴

HOW LONG MUST HE BE IN THE TOWN TO BE COUNTED AS ONE OF THE TOWNSMEN, etc. Does not this conflict with the following: 'If a caravan of asses or camels on its way from one place to another stays there²⁵ overnight and goes astray with the population, the members of the caravan are condemned to be stoned²⁶ but their property is left untouched; if, however, they have stayed there thirty days, they are condemned to death by the sword and their property is also destroyed?'²⁷ — Raba replied: There is no contradiction. The one period [twelve months is required], in order to make a man a full member²⁸ of the town, the other [makes him] only an inhabitant²⁹ of the town, as it was taught: If a man vows that he will derive no benefit from the men of a certain town, he must derive no benefit from anyone who has resided there twelve months, but he may derive benefit from one who has resided there less than twelve months. If he vows to derive no benefit from the inhabitants of the town, he may derive none from anyone who has resided there thirty days, but he may from one who has resided there less than thirty days.

But is twelve months' residence required for all imposts? Has it not been taught: '[A man must reside in a town] thirty days to become liable for contributing to the soup kitchen,³⁰ three months for the charity box,³¹ six months for the clothing fund, nine months for the burial fund, and twelve months for contributing to the repair of the town walls'? — R. Assi replied in the name of R. Johanan: Our Mishnah also in specifying the period of twelve months was thinking of the repair of the town walls.

R. Assi further said in the name of R. Johanan: All are required to contribute to the repair of the town walls, including orphans, but not the Rabbis, because the Rabbis do not require protection. R. Papa said: For the repair of the walls, for the horse-guard³² and for the keeper of the armoury³³ even orphans have to contribute, but the Rabbis [do not,

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since they] do not require protection. The general principle is that even orphans have to contribute for any public service from which they derive benefit. Rabbah levied a contribution for charity on the orphans of the house of Bar Merion; whereupon Abaye said to him: Has not R. Samuel b. Judah laid down that money for charity is not to be levied on orphans even for the redemption of captives? — He replied: I collect from them in order to give them a better standing.

Ifra Hormizd the mother of King Shapur²⁴ sent a chest of gold coins to R. Joseph, with the request that it should be used for carrying out some really important religious precept. R. Joseph was trying hard to think what such a precept could be, when Abaye said to him: Since R. Samuel b. Judah has laid down that money for charity is not to be levied from orphans even for the redemption of captives, we may conclude

1. Who therefore require no protection.
2. Which as it were walls itself round against heathen influence.
3. [As head of Daraukart where R. Nahman b. Isaac also lived. V. Hyman. *Toledoth*, II, 471.]
4. Heb. [H] E.V. 'Yea'.
5. Deut. XXXIII, 3.
6. Allowing them to have dominion over Israel.
7. E.V. 'nestle'.
8. *Ibid.*
9. *Ibid.*
10. I.e., the Torah.
11. E.V. 'hire'.
12. E.V. 'begin' or 'sorrow'. [H] is taken as from [H], 'to break', 'to be exempt', hence 'to be free'.
13. Hos. VIII, 10.
14. That is to say, the word [H] is to be understood as if it were an Aramaic and not a Hebrew word.
15. Hence you transgress against the Prophets in levying a tax on the students of the Torah.
16. E.V. 'tribute, custom, or toll'. Ezra VII, 24.
17. 'Produce tax'. The rabbis are the upholders of the Law, like the priests and Levites; hence to levy imposts on them is to transgress against the Holy Writings.
18. And though other persons may excuse the waste of their money, the trustees of orphans are not allowed to do so.
19. [H] lit. 'a drinking vessel', hence by metonymy 'well'.]

20. I.e., when the inhabitants are not called on to go out en masse to perform the work, but can make a money contribution.
21. Heb. 'am ha-ares, lit., 'people of the land', generally denoting 'the ignorant', 'the boor'.
22. Apparently he was referring to the verse, *He giveth to the beast his food, to the young ravens which cry* (Ps. CXLVII, 9), and what he meant was: 'As God can feed these, so you can feed me.'
23. For the Emperor of Rome (Rashi). [Others: *Aurum coronarium*, a special tax which the Jews had to pay to the Roman Emperor. v. Kohut, *Aruch*, s.v. [H] On the nature of this tax, v. Juster, *Les Juifs dans l'Empire Romain*, I, 385.]
24. I.e., that it was only through them that the crown was demanded in the first instance.
25. In a city which is seduced into idolatry. V. Deut. XIV, 12 seq.
26. Like any other individuals who are guilty of idolatry.
27. Like the inhabitants of the doomed city (v. Sanh. 111b). This would show that thirty days' residence is sufficient to enroll a man among the inhabitants of a town.
28. Lit., 'a son of the town'.
29. And the verse in Deut. speaks of inhabitants.
30. Tamhui, a kind of dish wherein food was collected.
31. Kuppah, basket, bag.
32. A horseman whose function it was to ride round the walls to see that they were in proper condition.
33. The superintendent of the town armory, which was kept near the gate (Rashi). [Krauss, TA. 1,525, renders 'the treasury'.]
34. [Shapur II, king of Persia, son of King Hormizd; lived (and reigned) 310-379 C.E.]

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that the redemption of captives is a religious duty of great importance.

Raba asked Rabbah b. Mari: Whence is derived the maxim of the Rabbis that the redemption of captives is a religious duty of great importance? — He replied: From the verse, And it shall come to pass when they say unto thee, Whither shall we go forth, then thou shalt tell them, Thus saith the Lord, Such as are for death, to death, and such as are for the sword, to the sword, and such as are for famine, to the famine, and such as are for captivity, to captivity:¹ and [commenting on this] R. Johanan said: Each punishment

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mentioned in this verse is more severe than the one before. The sword is worse than death; this I can demonstrate either from Scripture, or, if you prefer, from observation. The proof from observation is that the sword deforms but death does not deform; the proof from Scripture is in the verse, Precious in the eyes of the Lord is the death of his saints.² Famine again is harder than the sword; this again can be demonstrated either by observation, the proof being that the one causes [prolonged] suffering but the other not, or, if you prefer, from the Scripture, from the verse, They that be slain with the sword are better than they that be slain with hunger.³ Captivity is harder than all, because it includes the sufferings of all.⁴

Our Rabbis taught: The charity fund is collected by two persons [jointly] and distributed by three. It is collected by two, because any office conferring authority over the community⁵ must be filled by at least two persons. It must be distributed by three, on the analogy of money cases⁶ [which are tried by a *Beth din* of three]. Food for the soup kitchen is collected by three and distributed by three, since it is distributed as soon as it is collected.⁷ Food is distributed every day, the charity fund every Friday. The soup kitchen is for all comers, the charity fund for the poor of the town only. The townspeople, however, are at liberty to use the soup kitchen like the charity fund and vice versa, and to apply them to whatever purposes they choose.⁸ The townspeople are also at liberty to fix weights and measures, prices, and wages, and to inflict penalties for the infringement of their rules.⁹

The Master said above: 'Any office conferring authority over the community must be filled by at least two persons.' Whence is this rule derived? — R. Nahman said: Scripture says, And they shall take the gold¹⁰, etc. This shows that they were not to exercise authority over the community, but that they were to be trusted.¹¹ This supports R. Hanina, for R. Hanina reported [with approval] the fact that

Rabbi once appointed two brothers to supervise the charity fund.¹²

What authority is involved [in collecting for charity]? — As was stated by R. Nahman in the name of Rabbah b. Abbuha, because the collectors can take a pledge for a charity contribution even on the eve of Sabbath.¹³ Is that so? Is it not written, I will punish all that oppress them,¹⁴ even, said R. Isaac b. Samuel b. Martha in the name of Rab, the collectors for charity? — There is no contradiction. The one [Rab] speaks of a well-to-do man, the other of a man who is not well-to-do; as, for instance, Raba compelled R. Nathan b. Ammi to contribute four hundred *zuz* for charity.

[It is written], And they that be wise shall shine as the brightness of the firmament:¹⁵ this applies to a judge who gives a true verdict on true evidence.¹⁶ And they that turn many to righteousness [*zedakah*] as the stars for ever and ever:¹⁷ these are the collectors for charity [*zedakah*]. In a Baraitha it was taught: They that are wise shall shine as the brightness of the firmament: this applies to a judge who gives a true verdict on true evidence and to the collectors for charity: and they that turn many to righteousness like the stars for ever and ever: this applies to the teachers of young children.¹⁸ Such as who, for instance? — Said Rab: To such as R. Samuel b. Shilath. For Rab once found R. Samuel b. Shilath in a garden, whereupon he said to him, 'Have you deserted your post?'¹⁹ He replied, 'I have not seen this garden for thirteen years, and even now my thoughts are with the children.' And what does Scripture say of the Rabbis? — Rabina answered: They that love him shall be as the sun when he goeth forth in his night.²⁰

Our Rabbis taught: The collectors of charity [when collecting] are not permitted to separate from one another, though one may collect at the gate while the other collects at a shop [in the same courtyard].²¹ If one of them finds money in the street, he should not put it into his purse but into the charity box,²² and

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when he comes home he should take it out. In the same way, if one of them has lent a man a mina and he pays him in the street, he should not put the money into his own purse but into the charity box, and take it out again when he comes home.

Our Rabbis taught: If the collectors [still have money but] no poor to whom to distribute it, they should change the small coins into larger ones²³ with other persons, but not from their own money.²⁴ If the stewards of the soup kitchen [have food over and] no poor to whom to distribute it, they may sell it to others but not to themselves. In counting out money collected for charity, they should not count the coins two at a time,²⁵ but only one at a time.

Abaye said: At first the Master²⁶ would not sit on the mats in the synagogue;²⁷ but when he heard that it had been taught that 'the townspeople can apply it to any purpose they choose,'²⁸ he did sit on them. Abaye also said: At first the Master used to keep two purses, one for the poor from outside and one for the poor of the town. When, however, he heard of what Samuel had said to R. Tahalifa b. Abdimi, 'Keep one purse only

1. Jer. XV, 2.
2. Ps. CXVI, is.
3. Lam. IV, 9.
4. Since the captors can inflict on the captives what suffering they wish.
5. V. *infra*.
6. The collectors having to adjudge the merits of various claimants.
7. Hence if a third had to be found to assist in the distribution, delay might be caused.
8. Tosaf. mentions that in virtue of this rule Rabbenu *Tam* diverted money collected for charity to the payment of the town guard, since it had been collected on this condition.
9. Lit., 'to remove (those who infringe) their regulations.'
10. Ex. XXVIII, 5. The emphasis is on 'they', denoting a minimum of two.
11. The gold was brought as a free-will offering, but each of the 'wise men' took what he required without rendering account.
12. As treasurers, although two brothers count only as one person.

13. When the householder may plead that he is busy preparing for Sabbath.
14. Jer. XXX, 20.
15. Dan. XII, 3.
16. Lit., 'true to its own truth', v. Tosaf. s.v. *ihs*
17. *Ibid*.
18. Because they also turn their pupils to righteousness.
19. Lit., 'your faith' or 'trustworthiness'.
20. Judges V, 31.
21. As they are still in sight of one another.
22. So that people should not be able to say that he was appropriating charity funds.
23. For fear the small coins should rust.
24. Lest people should say that they do not give full value.
25. Lest people should say that they take two and only count one.
26. Rabbah.
27. Because they were bought out of the charity funds.
28. *Supra* p. 37

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and stipulate [with the townspeople] that it may be used for both,' he also kept only one purse and made this stipulation. R. Ashi said: I do not even need to stipulate, since whoever comes [to give me money for charity] relies on my judgment, and leaves it to me to give to whom I will.

There were two butchers who made an agreement with one another that if either killed on the other's day, the skin of his beast should be torn up. One of them actually did kill on the other's day, and the other went and tore up the skin. Those who did so were summoned before Raba, and he condemned them to make restitution. R. Yemar b. Shelemiah thereupon called Raba's attention to [the Baraita which says] that the townspeople may inflict penalties for breach of their regulations. Raba did not deign to answer him. Said R. Papa: Raba was quite right not to answer him; this regulation holds good only where there is no distinguished man in the town, but where there is a distinguished man, they certainly have not the power to make such stipulations.

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Our Rabbis taught: The collectors for charity are not required to give an account of the moneys entrusted to them for charity, nor the treasurers of the Sanctuary of the moneys given for holy purposes. There is no actual proof of this [in the Scriptures], but there is a hint of it in the words, They reckoned not with the men into whose hand they delivered the money, to give to them that did the work, for they dealt faithfully.¹

R. Eleazar said: Even if a man has in his house a steward on whom he can rely, he should tie up and count out [any money that he hands to him], as it says, They put in bags and told the money.² R. Huna said: Applicants for food are examined³ but not applicants for clothes. This rule can be based, if you like on Scripture, or if you prefer, on common sense. 'It can be based if you like on common sense', because the one [who has no clothing] is exposed to contempt, but not the other. 'Or if you prefer on Scripture' — on the verse, Is it not to examine [paros]⁴ the hungry before giving him thy bread [for so we may translate since] the word paros is written with a sin,⁵ as much as to say, 'Examine and then give to him:' whereas later it is written, When thou seest the naked, that thou cover him,⁶ that is to say, immediately. Rab Judah, however, said that applicants for clothes are to be examined but not applicants for food. This rule can be based if you like on common sense or if you prefer on Scripture. 'If you like on common sense' — because the one [without food] is actually suffering but not the other. 'Or if you prefer on Scripture' — because it says, Is it not to deal thy bread to the hungry, that is, at once⁷ whereas later it is written, When thou seest the naked, that is to say, 'When you shall have seen [that he is deserving]'. It has been taught in agreement with Rab Judah: If a man says, 'Clothe me,' he is examined, but if he says, 'Feed me,' he is not examined.

We have learnt in another place: The minimum to be given to a poor man who is on his way from one place to another is a loaf

which costs a pundion when four se'ahs of wheat are sold for a *selah*.⁸ If he stays overnight, he is given his requirements for the night. What is meant by 'requirements for the night'? — R. Papa said: A bed and a pillow. If he stays over Sabbath, he is given food for three meals.⁹

A Tanna taught: If he is a beggar who goes from door to door, we pay no attention to him.¹⁰ A certain man who used to beg from door to door came to R. Papa [for money], but he refused him. Said R. Samma the son of R. Yeba to R. Papa: If you do not pay attention to him, no one else will pay attention to him; is he then to die of hunger? But, [replied R. Papa,] has it not been taught, If he is a beggar who goes from door to door, we pay no attention to him? — He replied: We do not listen to his request for a large gift, but we do listen to his request for a small gift.¹¹ R. Assi said: A man should never neglect to give the third of a *shekel* [for charity] in a year, as it says, Also we made ordinances for us, to charge ourselves yearly with the third part of a *shekel* for the service of the house of our Lord.¹² R. Assi further said: Charity is equivalent to all the other religious precepts combined; as it says, 'Also we made ordinances': it is not written, 'an ordinance', but 'ordinances'.

R. Eleazar said: He who causes others to do good is greater than the doer, as it says, And the work¹³ of righteousness [*zedakah*] shall be peace,¹⁴ and the effect of righteousness quiet and confidence for ever.¹⁵ If a man is deserving, then shalt thou not deal thy bread to the hungry,¹⁶ but if he is not deserving, then thou shalt bring the poor that are cast out to thy house.¹⁷ Raba said to the townfolk of Mahuza: I beg of you, hasten [to the assistance of] one another, so that you may be on good terms with the Government. R. Eleazar further said: When the Temple stood, a man used to bring his *shekel* and so make atonement. Now that the Temple no longer stands, if they give for charity, well and good, and if not, the heathens will come and take

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from them forcibly. And even so it will be reckoned to them as if they had given charity, as it is written, [I will make] thine exactors righteousness¹⁸ [*zedakah*].

Raba said: The following was told me by the suckling

1. II Kings XII, 16. According to Tosaf., this is not a proof, because the men of that generation were exceptionally righteous.
2. Ibid. Although they had perfect confidence in the workers, the priests before giving them the money first put it in bags and counted it.
3. To see that they are not impostors.
4. Isa. LVIII, 7. E.V. 'deal'.
5. [H] = [H] = 'make plain', 'examine'. In our texts the word is written [H]. V. Tosaf. Shab. 55b, s.v. [H].
6. Ibid.
7. The word [H] being interpreted as it is read.
8. Such a loaf would contain half a *kab* of wheat.
9. Three meals being obligatory on the Sabbath.
10. To give him money from the charity fund, v. Tosaf. *Pe'ah*, IV.
11. I.e., something less than a complete meal.
12. Neh. x, 33. If for the repair of the Temple, *a fortiori* for charity.
13. [H] taken in the sense of 'causing others to do righteousness'.
14. And not righteousness (i.e., charity, or those who give charity) itself.
15. Isa. XXXII, 17.
16. Isa. LVIII, 7.
17. Ibid. The reference is to tax-collectors, [H] (E.V. 'cast out') being connected with root [H] 'to rule', v. *infra*.
18. Ibid. LX, 17.

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who perverted the way of his mother,¹ in the name of R. Eleazar. What is the meaning of the verse, *And he put on righteousness as a coat of mail?*² It tells us that just as in a coat of mail every small scale joins With the others to form one piece of armor, so every little sum given to charity combines with the rest to form a large sum. R. Hanina said: The same lesson may be learnt from here: And all our righteousness is as a polluted garment.³ Just as in a garment every thread unites with the rest to form a whole garment, so every

farthing given to charity unites with the rest to form a large sum.

Why was he [R. Shesheth] called 'the suckling who perverted the way of his mother'? The reason is this. R. Ahadboi b. Ammi asked R. Shesheth: Whence do we infer that a leper while he is counting his days [for purification]⁴ renders unclean a man [who touches him]? He replied: Since he renders garments unclean,⁵ he renders a man unclean. But, he said, perhaps this only applies to clothes which he actually wears; for similarly we have the case of the lifting of a carcass which makes the garments unclean but not the man?⁶ — He replied: And whence do we know that a creeping thing makes a man unclean? Is it not from the fact that it makes garments unclean?⁷ — He replied: Of the creeping thing it is distinctly written, Or whosoever toucheth any creeping thing whereby he may be made unclean.⁸ — How then, he [R. Shesheth] said, do we know that [human] semen makes a man unclean? Do we not say that because it makes garments unclean, therefore it makes a man unclean? — He replied: The rule of semen is also distinctly stated, since it is written in connection with it, Or a man [whose seed goeth from him],⁹ where [the superfluous phrase 'or a man'] brings under the rule one who touches the seed.¹⁰ He [R. Ahadboi] made his objections in a mocking manner which deeply wounded R. Shesheth, and soon after R. Ahadboi b. Abba lost his speech and forgot his learning. His¹¹ mother came and wept before him,¹² but in spite of all her cries he paid no attention to her. At length she said: Behold these breasts from which you have sucked. Then at last he prayed for him and he was healed.

But what is the answer to the question that has been raised?¹³ — As it has been taught: R. Simeon b. Yohai says: 'Washing of garments' is mentioned in connection with the period of the leper's counting,¹⁴ and 'washing of garments' is also mentioned in connection with the period of his definite uncleanness.¹⁵

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Just as in the latter case he renders any man he touches unclean, so also in the former case.

R. Eleazar said: A man who gives charity in secret is greater than Moses our Teacher, for of Moses it is written, For I was afraid because of the anger and the wrath,¹⁶ and of one who gives charity [secretly] it is written, A gift in secret subdues anger.¹⁷ In this he [R. Eleazar] differs from R. Isaac, for R. Isaac said that it subdues 'anger' but not 'wrath', since the verse continues, And a present in the bosom fierce wrath, [which we can interpret to mean], 'Though a present is placed in the bosom, yet wrath is still fierce.' According to others, R. Isaac said: A judge who takes a bribe brings fierce wrath upon the world; as it says, And a present, etc. R. Isaac also said: He who gives a small coin to a poor man obtains six blessings, and he who addresses to him words of comfort obtains eleven blessings. 'He who gives a small coin to a poor man obtains six blessings' — as it is written, Is it not to deal thy bread to the hungry and bring the poor to thy house, etc., when thou seest the naked, etc.¹⁸ 'He who addresses to him comforting words obtains eleven blessings', as it is written, If thou draw out thy soul to the hungry and satisfy the afflicted soul, they shall thy light rise in the darkness and thine obscurity be as the noonday, and the Lord shall guide thee continually and satisfy thy soul in drought ... and they shall build from thee the old waste places and thou shalt raise up the foundations of many generations, etc.¹⁹

R. Isaac further said: What is the meaning of the verse, *He that followeth after righteousness²⁰ and mercy findeth life, righteousness and honour?*²¹ Because a man has followed after righteousness, shall he find righteousness?²² — The purpose of the verse, however, is to teach us that if a man is anxious to give charity, the Holy One, blessed be He, furnishes him money with which to give it. R. Nahman b. Isaac says: The Holy One, blessed be He, sends him men who are fitting recipients of charity, so that he may be rewarded for assisting them. Who then are

unfit?²³ — Such as those mentioned in the exposition of Rabbah, when he said: What is the meaning of the verse, Let them be made to stumble before thee; in the time of thine anger deal thou with them?²⁴ Jeremiah said to the Holy One, blessed be He: Sovereign of the Universe, even at the time when they conquer their evil inclination and seek to do charity before Thee, cause them to stumble through men who are not fitting recipients, so that they should receive no reward for assisting them.

R. Joshua b. Levi said: He who does charity habitually will have sons wise, wealthy, and versed in the *Aggadah*.²⁵ 'Wise' as it is written,²⁶

1. R. Shesheth. V. *infra*.
2. Isa. LIX, 17.
3. Ibid. LXIV, 5.
4. In the seven days after he brings the birds, and before he brings his offering. V. Lev. XIV, 8.
5. As we know because it is written, *On the seventh day he shall wash his clothes.* (Ibid. 9.)
6. As it is written, *Whosoever shall bear aught of the carcass of them shall wash his clothes* (Lev. XI, 25), but it is not said that he renders other persons or garments unclean by his touch.
7. Ibid. 31, 38.
8. Ibid. XXII, 5.
9. Ibid. 4.
10. As the text might have run, 'Whoso toucheth anything unclean, and whose seed goeth, etc.' V. Malbim, a.l.
11. This is usually taken to refer to R. Shesheth. R. Hana, however, refers it to R. Ahadboi, whose mother he presumes to have nursed R. Shesheth. V. Tosaf. s.v. [H].
12. To induce him to pray that R. Ahadboi should be healed.
13. In regard to the leper. Lit., 'now that the subject has been discussed, whence do we know it?'
14. I.e., at the end of the seven days. Lev. XIV, 9.
15. I.e., when he first emerges from this into the seven day period. Lev. XIV, 8. The analogy is based on a similarity of expression, *Gezerah Shawah*, v. [Glos.](#)
16. Deut. IX, 19.
17. Prov. XXI, 14.
18. Isa. LVIII, 7. The six blessings are to be found in the next two verses, Then shall thy light break forth, etc.
19. Ib. 10-12.

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20. The Hebrew is *zedakah*, which is taken in the Rabbinical sense of 'charity'.
21. Prov. XXI, 21.
22. I.e., because he gives charity, shall his reward be that he shall obtain charity when he requires it?
23. Lit., 'to exclude what?'
24. Jer. XVIII, 23.
25. Possibly '*aggadah*' has here its original meaning of 'telling', i.e., 'eloquence'.
26. In the verse from Prov. XXI, quoted above.

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He shall find life;¹ 'wealthy' as it is written, [He shall find] righteousness;² 'versed in the Aggadah' as it is written, And [he shall find] honor: and it is written elsewhere, The wise shall inherit honour.³

It has been taught: R. Meir used to say: The critic [of Judaism] may bring against you the argument, 'If your God loves the poor, why does he not support them?' If so, answer him, 'So that through them we may be saved from the punishment of Gehinnom.' This question was actually put by Turnus Rufus⁴ to R. Akiba: 'If your God loves the poor, why does He not support them?' He replied, 'So that we may be saved through them from the punishment of Gehinnom.' 'On the contrary,' said the other, 'it is this which condemns you to Gehinnom. I will illustrate by a parable. Suppose an earthly king was angry with his servant and put him in prison and ordered that he should be given no food or drink, and a man went and gave him food and drink. If the king heard, would he not be angry with him? And you are called "servants", as it is written, 'For unto me the children of Israel are servants.'⁵ R. Akiba answered him: 'I will illustrate by another parable. Suppose an earthly king was angry with his son, and put him in prison and ordered that no food or drink should be given to him, and someone went and gave him food and drink. If the king heard of it, would he not send him a present? And we are called "sons", as it is written, 'Sons are ye to the Lord your God.'⁶ He said to him: 'You are called both sons and servants. When you carry out the desires of

the Omnipresent you are called "sons", and when you do not carry out the desires of the Omnipresent, you are called "servants". At the present time you are not carrying out the desires of the Omnipresent. R. Akiba replied: 'The Scripture says, Is it not to deal thy bread to the hungry and bring the poor that are cast out to thy house. When "dost thou bring the poor who are cast out⁷ to thy house"? Now; and it says [at the same time], Is it not to deal thy bread to the hungry?'

R. Judah son of R. Shalom preached as follows: In the same way as a man's earnings⁸ are determined for him from New Year,⁹ so his losses are determined for him from New Year. If he finds merit [in the sight of Heaven], then, 'deal out thy bread to the poor';¹⁰ but if not, then, he will 'bring the poor that are outcast to his house.'¹¹ A case in point is that of the nephews of Rabban Johanan b. Zakkai. He saw in a dream that they were to lose seven hundred dinars in that year. He accordingly forced them to give him money for charity until only seventeen dinars were left [of the seven hundred]. On the eve of the Day of Atonement the Government sent and seized them. R. Johanan b. Zakkai said to them, 'Do not fear [that you will lose any more]; you had seventeen dinars and these they have taken.' They said to him, 'How did you know that this was going to happen?' He replied, 'I saw it in a dream.' 'Then why did you not tell us?'¹² they asked. 'Because,' he said, 'I wanted you to perform the religious precept [of giving charity] quite disinterestedly.'

As R. Papa was climbing a ladder, his foot slipped and he narrowly escaped falling. Had that happened, he said, mine enemy¹³ had been punished like Sabbath breakers and idolaters.¹⁴ Hiyya b. Rab from Difti¹⁵ said to him: Perhaps a beggar appealed to you and you did not assist him; for so it has been taught: R. Joshua b. Korhah says, Whoever turns away his eyes from [one who appeals for] charity is considered as if he were serving idols. It is written In one place, *Beware that*

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*there be not a base thought in thine heart,*¹⁶ and in another place, *Certain base fellows are gone out.*¹⁷ Just as in the second case the sin is that of idolatry, so in the first case the sin is equivalent to that of idolatry.

It has been taught: R. Eliezer son of R. Jose said: All the charity and deeds of kindness which Israel perform in this world [help to promote] peace and good understanding between them and their Father in heaven, as it says, *Thus saith the Lord, Enter not into the house of mourning, neither go to lament, neither bemoan them, for I have taken away my peace from this people ... even loving-kindness and tender mercies,* [where] 'loving-kindness' refers to acts of kindness, and 'tender mercies' to charity.¹⁸

It has been taught: R. Judah says: Great is charity, in that it brings the redemption nearer, as it says, *Thus saith the Lord, Keep ye judgment and do righteousness [zedakah], for my salvation is near to come and my righteousness to be revealed.*¹⁹ He also used to say: Ten strong things have been created in the world. The rock is hard, but the iron cleaves it. The iron is hard, but the fire softens it. The fire is hard, but the water quenches it. The water is strong, but the clouds bear it. The clouds are strong, but the wind²⁰ scatters them. The wind is strong, but the body bears it. The body is strong, but fright crushes it. Fright is strong, but wine banishes it. Wine is strong, but sleep works it off. Death is stronger than all, and charity saves from death, as it is written, *Righteousness [zedakah] delivereth from death.*²¹

R. Dosthai son of R. Jannai preached [as follows]: Observe that the ways of God are not like the ways of flesh and blood. How does flesh and blood act? If a man brings a present to a king, it may be accepted or it may not be accepted; and even if it is accepted, it is still doubtful whether he will be admitted to the presence of the king or not. Not so God. If a man gives but a farthing to a beggar, he is deemed worthy to receive the Divine

Presence, as It is written, I shall behold thy face in righteousness [zedakah], I shall be satisfied when I awake with thy likeness.²² R. Eleazar used to give a coin to a poor man and straightway say a prayer, because, he said, it is written, I in righteousness shall behold thy face.²³ What is the meaning of the words, I shall be satisfied when I awake with thy likeness? R. Nahman b. Isaac said: This refers to the students of the Torah²⁴ who banish sleep from their eyes in this world, and whom the Holy One, blessed be He, feasts with the splendence of the Divine presence in the future world.

R. Johanan said: What is the meaning of the verse, He that hath pity on the poor lendeth unto the Lord.²⁵ Were it not written in the Scripture, one would not dare to say it: as it were, the borrower is a servant to the lender.²⁶

R. Hiyya b. Abin said: R. Johanan pointed out that it is written, *Riches profit not in the day of wrath, but righteousness [zedakah] delivereth from death,*²⁷ and it is also written, *Treasures of wickedness profit nothing, but righteousness [zedakah] delivereth from death.*²⁸ Why this double mention of righteousness? — One that delivers him from an unnatural death and one that delivers him from the punishment of Gehinnom. Which is the one that delivers him from the punishment of Gehinnom? The one in connection with which the word 'wrath' is used, as it is written, *A day of wrath is that day.*²⁹ What kind of charity is that which delivers a man from an unnatural death?

1. Life also occurs in connection with wisdom, Prov. VIII, 35.
2. I.e., money wherewith to do charity.
3. Prov. III, 3 5. The wise are honored for their eloquent discourses.
4. Tineius Rufus, Roman Governor of Judea.
5. Lev. XXV, 55.
6. Deut. XIV, 1.
7. Apparently this is a reference to the tax-collectors, v. *supra*, p. 41, n. 9.
8. Lit., 'food'.
9. As the day of Judgment, when the fate of all creatures is decided for the following year.

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10. I.e., his losses will take the form of charity.
11. The expression 'poor that are outcast' seems here also to be applied to the tax-gatherers.
12. So that we could have given the whole in charity.
13. I.e., he himself.
14. These were executed by stoning, to which death by a fall was akin; v. Sanh. 45a.
15. [A town near Apamea on the Tigris; v. Obermeyer, *op. cit.* 197.]
16. Deut. XV, 9' The 'base thought' is not to lend to the poor before the Sabbatical year of release.
17. Ibid. XIII, 14. The lesson is based on the occurrence of the word 'base' (Heb. *belial*) in both contexts.
18. Jer. XVI, 5. The 'peace' consists in the charity and loving-kindness which they used to do. [On the difference between charity '*zedakah*' and loving-kindness, '*gemiluth hasadim*,' v. Tosef. *Pe'ah* IV.]
19. Isa. LVI, 1.
20. Heb. *ruah*, which also means 'breath'.
21. Prov. X, 2.
22. Ps. XVII, 15.
23. I.e., 'When I am in righteousness through giving charity I shall behold thy face in prayer.'
24. Lit., 'the disciples of the wise.'
25. Prov. XIX, 17.
26. Ibid. XXII, 7.
27. Ibid. XI, 4.
28. Ibid. X, 2.
29. Zeph. I, 15.

Baba Bathra 10b

When a man gives without knowing to whom he gives. and the beggar receives without knowing from whom he receives. 'He gives without knowing to whom he gives': this excludes the practice of Mar 'Ukba.¹ 'The beggar receives without knowing from whom he receives': this excludes the practice of R. Abba.² How is a man then to do? — He should put his money into the charity box.

The following was adduced in objection to this: 'What is a man to do in order that he may have male offspring? R. Eliezer says that he should give generously to the poor; R. Joshua says that he should make his wife glad to perform the marital office. R. Eliezer b. Jacob says: A man should not put a farthing into the charity box unless it is under the supervision of a man like R. Hanina b. Teradion?'³ — In saying [that a man should put his money into the charity box] we mean,

when it is under the supervision of a man like R. Hanina b. Teradion.

R. Abbahu said: Moses addressed himself to the Holy One, blessed be He, saying: 'Sovereign of the Universe, wherewith shall the horn of Israel be exalted?' He replied, 'Through taking their ransom.'⁴ R. Abbahu also said: Solomon the son of David was asked: How far does the power of charity extend? He replied: Go and see what my father David has stated on the matter: He hath dispersed, he hath given to the needy, his righteousness endureth for ever.⁵ R. Abba said: [The answer might be given] from here: He shall dwell on high; his place of defense shall be the munitions of the rocks; his bread is given him, his waters are sure.⁶ Why shall he dwell on high and his place be with the munitions of the rocks? Because his bread is given [to the poor], and his waters are sure.

R. Abbahu also said: Solomon was asked: Who has a place in the future world? He answered: He to whom are applied the words, and before his elders shall be glory.⁷ A similar remark was made by Joseph the son of R. Joshua. He had been ill and fell in a trance. [After he recovered], his father said to him: 'What vision did you have?' He replied, 'I saw a world upside down, the upper below and the lower above.'⁸ He said to him: 'You saw a well regulated world.' [He asked further]: 'In what condition did you see us [students]?' He replied: 'As our esteem is here, so it is there. I also [he continued] heard them saying, Happy he who comes here in full possession of his learning. I also heard them saying, No creature can attain to the place [in heaven] assigned to the martyrs of the [Roman] Government.' Who are these? Shall I say R. Akiba and his comrades?⁹ Had they no other merit but this? Obviously even without this [they would have attained this rank]. What is meant therefore must be the martyrs of Lud.¹⁰

Rabban Johanan b. Zakkai said to his disciples: My sons, what is the meaning of the verse, *Righteousness exalteth a nation, but the*

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*kindness of the peoples is sin?*¹¹ R. Eliezer answered and said: '*Righteousness exalteth a nation:*' this refers to Israel of whom it is written, *Who is like thy people Israel one nation in the earth?*¹² But '*the kindness of the peoples is sin:*' all the charity and kindness done by the heathen is counted to them as sin, because they only do it to magnify themselves, as it says, *That they may offer sacrifices of sweet savor unto the God of heaven, and pray for the life of the king and of his sons.*¹³ But is not an act of this kind charity in the full sense of the word, seeing that it has been taught: 'If a man says, — I give this sela for charity in order that my sons may live and that I may be found worthy of the future world, he may all the same be a righteous man in the full sense of the word'? — There is no contradiction; in the one case we speak of an Israelite, in the other of a heathen.¹⁴

R. Joshua answered and said: '*Righteousness exalteth a nation,*' this refers to Israel of whom it is written, *Who is like thy people Israel, one nation on the earth?* 'The kindness of peoples is sin': all the charity and kindness that the heathen do is counted sin to them, because they only do it in order that their dominion may be prolonged, as it says, *Wherefore O king, let my counsel be acceptable to thee, and break off thy sins by righteousness, and thy iniquities by showing mercy to the poor, if there may be a lengthening of thy tranquility.*¹⁵ Rabban Gamaliel answered Saying: '*Righteousness exalteth a nation:*' this refers to Israel of whom it is written, *Who is like thy people Israel, etc.* '*And the kindness of the peoples is sin:*' all the charity and kindness that the heathen do is counted as sin to them, because they only do it to display haughtiness, and whoever displays haughtiness is cast into Gehinnom, as it says, *The proud and haughty man, scorner is his name, he worketh in the wrath [e'brah] of pride,*¹⁶ and '*wrath*' connotes Gehinnom, as it is written, *A day of wrath is that day.*¹⁷ Said Rabban Gamaliel: We have still to hear the opinion of the Modiite. R. Eliezer the Modiite¹⁸ says: '*Righteousness exalteth a*

nation:' this refers to Israel of whom it is written, *Who is like thy people Israel, one nation in the earth.* 'The kindness of the peoples is sin': all the charity and kindness of the heathen is counted to them as sin, since they do it only to reproach us, as it says, *The Lord hath brought it and done according as he spake, because ye have sinned against the Lord and have not obeyed his voice, therefore this thing is come upon you.*¹⁹ R. Nehuniah b. ha-Kanah answered saying: '*Righteousness exalteth a nation, and there is kindness for Israel and a sin-offering for the peoples.*' Said R. Johanan b. Zakkai to his disciples: 'The answer of R. Nehuniah b. ha-Kanah is superior to my answer and to yours, because he assigns charity and kindness to Israel and sin to the heathen.' This seems to show that he also gave an answer; what was it? — As it has been taught: R. Johanan b. Zakkai said to them: *Just as the sin-offering makes atonement for Israel, so charity makes atonement for the heathen.*²⁰

Ifra Hormiz²¹ the mother of King Shapur sent four hundred dinarim to R. Ammi,²² a but he would not accept them. She²³ then sent them to Raba, and he accepted them, in order not to offend²⁴ the Government. When R. Ammi heard, he was indignant and said: *Does he not hold with the verse, When the boughs thereof are withered they shall be broken off, the women shall come and set them on fire?*²⁵ Raba [defended himself] on the ground that he wished not to offend the Government. Was not R. Ammi also anxious not to offend the Government? — [He was angry] because he ought to have distributed the money to the non-Jewish poor. But Raba did distribute it to the non-Jewish poor? — The reason R. Ammi was indignant was

1. Who used every day to put four *zuzim* in a box for the poor of his immediate neighborhood, so that he knew to whom he gave though they did not know from whom they received.
2. Who used to go into a poor neighborhood and drop coins behind him, so that the poor knew who gave but he did not know who received. v. Keth. 6a.

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3. I.e., as reliable as R. Hanina, but not necessarily as pious. V. Tosaf. s.v. [H].
4. Lit., 'If thou wilt lift up'. (E.V. 'When thou takest up'.) The reference is to the ransom that was to be taken from the Israelites whenever they were numbered, Ex. XXX, 12. This ransom was to be given for the service of the Tabernacle, but money given for charity according to the Rabbis serves the same purpose.
5. Ps. CXII, 9.
6. Isa. XXXIII, 16.
7. Isa. XXIV, 23. I.e., everyone who is honored in this world for his wisdom.
8. I.e., the poor who are despised here are highly honored there. But v. also Tosaf, s.v. [H]
9. Who were martyred after the suppression of the revolt of Bar Cochba.
10. Lulianus and Pappus, who were executed in Lydda in the reign of Hadrian. [On these martyrs, v. J.E. IX, 512, s.v. Pappus.]
11. Prov. XIV, 34.
12. II Sam. VII, 23.
13. Ezra VI, 10. Artaxerxes wrote thus to the Governor of Jerusalem when he ordered him to give Ezra all that he required.
14. Because the Israelite, whatever he may say, really gives the charity for its own sake.
15. Dan, IV, 27.
16. Prov. XXI, 24.
17. Zeph. I, 15.
18. From Modim, near Jerusalem, the ancient home of the Maccabean family.
19. Jer. XL, 3. Spoken by Nebuzaradan to Jeremiah.
20. And we translate the verse: Righteousness exalteth a nation (Israel), and the kindness of peoples is a sin — offering for them.
21. V. *supra* 8a.
22. [R. Ammi at Caesarea (Hyman op cit. p. 222)].
23. [V. D.S. a.l.]
24. Lit., 'to be at peace with'.
25. Isa. XXVII, 11. When the heathen have received the reward of their pious deeds in this world, their power will be broken.

Baba Bathra 11a

that he had not been fully informed.¹

It has been taught: The following incident is related of Benjamin the Righteous who was a supervisor of the charity fund. One day a woman came to him in a year of scarcity, and said to him: 'Sir, assist me.' He replied, 'I swear, there is not a penny in the charity fund.' She said, 'Sir, if you do not assist me, a woman and her seven children will perish.' He

accordingly assisted her out of his own pocket. Some time afterwards he became dangerously ill. The angels addressed the Holy One, blessed be He, saying: Sovereign of the Universe, Thou hast said that he who preserves one soul of Israel is considered as if he had preserved the whole world; shall then Benjamin the Righteous who has preserved a woman and her seven children die at so early an age? Straightway his sentence² was torn up. It has been taught that twenty-two years were added to his life.

Our Rabbis taught: It is related of King Monobaz³ that he dissipated all his own hoards and the hoards of his fathers in years of scarcity. His brothers and his father's household came in a deputation to him and said to him, 'Your father saved money and added to the treasures of his fathers, and you are squandering them.' He replied: 'My fathers stored up below and I am storing above, as it says, Truth springeth out of the earth and righteousness looketh down from heaven.⁴ My fathers stored in a place which can be tampered with, but I have stored in a place which cannot be tampered with, as it says, Righteousness and judgment are the foundation of his throne.⁵ My fathers stored something which produces no fruits, but I have stored something which does produce fruits, as it is written, Say ye of the righteous [zaddik] that it shall be well with them, for they shall eat of the fruit of their doings.⁶ My fathers gathered treasures of money, but I have gathered treasures of souls, as it is written, The fruit of the righteous [zaddik] is a tree of life, and he that is wise winneth souls.⁷ My fathers gathered for others and I have gathered for myself, as it says, And for thee it shall be righteousness [zedakah].⁸ My fathers gathered for this world, but I have gathered for the future world, as it says, Thy righteousness [zedakah] shall go before thee, and the glory of the Lord shall be thy rearward.'⁹

IF HE ACQUIRES A RESIDENCE IN IT,
HE IS COUNTED AS ONE OF THE

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TOWNSMEN. The Mishnah is not in agreement with Rabban Simeon b. Gamaliel, since it has been taught: Rabban Simeon b. Gamaliel says: If he acquires a piece of property, however small,¹⁰ in it, he is reckoned as a townsman. But has it not been taught: If he acquires in it a piece of ground on which a residence can be put up [but not smaller], he is reckoned as one of the townsmen? — Two Tannaim have reported the dictum of Rabban Simeon b. Gamaliel differently.

MISHNAH. A COURTYARD SHOULD NOT BE DIVIDED UNLESS THERE WILL BE [AFTER THE DIVISION] AT LEAST FOUR CUBITS FOR EACH OF THE PARTIES. A FIELD SHOULD NOT BE DIVIDED UNLESS THERE WILL BE NINE KABS' [SPACE]¹¹ FOR EACH. R. JUDAH SAYS, UNLESS THERE WILL BE NINE HALF-KABS [SPACE] FOR EACH. A VEGETABLE GARDEN SHOULD NOT BE DIVIDED UNLESS THERE WILL BE HALF A KAB FOR EACH. R. AKIBA, HOWEVER, SAYS, A QUARTER KAB'S SPACE. A HALL, A DRAWING ROOM,¹² A DOVECOT, A GARMENT, A BATHHOUSE, AN OLIVE PRESS AND AN IRRIGATED PLOT OF LAND SHOULD NOT BE DIVIDED UNLESS SUFFICIENT WILL BE LEFT FOR EACH PARTY.¹³ THE GENERAL PRINCIPLE IS THAT IF AFTER THE DIVISION EACH PART WILL RETAIN THE DESIGNATION APPLIED TO THE WHOLE, THE DIVISION MAY BE MADE, BUT IF NOT, IT SHOULD NOT BE MADE. WHEN IS THIS THE RULE? WHEN ONE OR OTHER OF THE OWNERS IS NOT WILLING TO DIVIDE. BUT IF BOTH AGREE, THEY CAN DIVIDE EVEN IF LESS THAN THESE QUANTITIES [WILL BE LEFT]. SACRED WRITINGS, HOWEVER, MAY NOT BE DIVIDED EVEN IF BOTH AGREE.¹⁴

GEMARA. R. Assi said in the name of R. Johanan: The four cubits [of the courtyard] mentioned [in the Mishnah] are exclusive of the space in front of the doors.¹⁵ It has been also taught to the same effect: A courtyard should not be divided unless eight cubits will be left to each party. But have we not learnt,

FOUR CUBITS TO EACH? — The fact [that the Baraita says eight] shows [that we must interpret the Mishnah] as R. Assi indicates. Some put this argument in the form of a contradiction: We learn, A COURTYARD SHOULD NOT BE DIVIDED UNLESS THERE WILL BE FOUR CUBITS FOR EACH OF THE PARTIES. [But how can this be], seeing that it has been taught: 'Unless there are eight cubits for each'? — R. Assi answered in the name of R. Johanan: The four cubits mentioned [in the Mishnah] are exclusive of the space in front of the doors.

R. Huna said: Each party takes a share in the courtyard proportionate to the number of his doors;¹⁶ R. Hisda, however, says that four cubits are allowed for each door and the remainder is divided equally. It has been taught in agreement with R. Hisda: Doors opening on to the courtyard carry with them a space of four cubits. If one of the joint owners has one door and the other two doors, [if they divide] the one who has one door takes four cubits and the one who has two doors takes eight cubits, and the remainder is divided equally. If one has a doorway eight cubits broad, he takes eight cubits facing his door and four cubits in the courtyard. What are these four cubits in the courtyard doing here? — Abaye answered: What it means is this: He takes eight cubits in the length of the courtyard and four in the width of the courtyard.

Amemar said: [A pit for holding] date stones¹⁷ carries with it four cubits on every side. This is the case, however, only if he has no special door from which he goes to it,¹⁸ but if he has a special door for reaching it,

1. I.e., he had not been told that Raba had distributed the money to non-Jewish poor, as was not unusual. [The alms distributed by heathens were frequently derived from robbery, hence the Rabbis' attitude towards heathen charity; v. Buchler, Sepphoris, p. 44.]
2. In the heavenly records.
3. [King of Adiabene (first century C.E.) who embraced Judaism. v. Josephus Ant. XX, 2-4.]

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4. Ps. LXXXV, II. The righteousness (zedek) here is God's righteousness in rewarding good deeds.
5. Ibid. XCVII, 2.
6. Isa. III, 10.
7. Prov. XI, 30.
8. I.e., the *zedakah* shall be your own. Deut. XXIV, 13.
9. Isa. LVIII, 8.
10. Even too small to build a house on,
11. I.e., an area for the sowing of nine *kabs*. 1 kab's space = 416 square cubits.
12. [Or 'water-tower' (Aruk).]
13. Not necessarily as much as nine *kabs*.
14. I.e., scrolls of Scripture, since to cut them up shows disrespect.
15. A space of four cubits was allowed in front of each door for loading and unloading animals. V. *infra*.
16. Lit., 'A courtyard is divided according to its entrances'. If one has a house with two doors opening on to the courtyard and the other only one door, the former takes two-thirds and the latter one-third.
17. For feeding animals.
18. Because then he requires space to get behind it.

Baba Bathra 11b

it carries with it only four cubits in front of his door.

R. Huna said: An *exedra*¹ does not carry with it four cubits. For why are the four cubits ordinarily allowed? To provide space for the owner to unload his animals. If there is an *exedra* he can go into it and unload there. R. Shesheth raised an objection [to this from the following]: 'Gates of *exedras* equally with gates of houses carry with them four cubits? — That was taught in reference to the *exedra* of a school-house. That the gate of the *exedra* of a schoolhouse carries with it four cubits is obvious, is it not, since it is a proper room?² — We should say, therefore, [that it was taught in reference to a] Roman *exedra*.³

Our Rabbis taught: A lodge,⁴ an *exedra*, and a balcony⁵ carry with them four cubits. If there are five rooms opening on to the balcony, they carry with them only four cubits between them.⁶

R. Johanan inquired of R. Jannai whether a hen-coop⁷ carried with it four cubits or not.

He replied: Why are the four cubits ordinarily allowed? — To provide room for a man to unload his animal. Here the fowls can clamber up the wall to get out and clamber down the wall to get in.

Raba inquired of R. Nahman: If a room is half roofed over and half unroofed, has it four cubits or not? He replied: It has not four cubits. If the roofing is over the inner part,⁸ this goes without saying, since it is possible for him to go into the room and unload.⁹ But even if the roofing is over the outer part, it is still possible for him to go right through and unload [under the open part].

R. Huna inquired of R. Ammi: If a man residing in one alleyway desires to open¹⁰ a door on to another alley-way,¹¹ can the residents of this alley-way prevent him or not? He replied: They can prevent him. He then inquired: Are troops billeted per capita¹² or [on each one] according to the number of his doors? He replied: Per capita. It has been taught to the same effect: The dung in the courtyard is divided according to doors [belonging to each resident], billeted troops per capita.

R. Huna said: If one of the residents of an alley-way desires to fence in the space facing his door,¹³ the others can prevent him, on the ground that he forces more people into their space.¹⁴ An objection was brought [against this from the following]: 'If five [adjoining] courtyards open on an alley-way, all [the inner ones] share with the outside one¹⁵ the use [of the part facing it], but the outside one can use that part only. The remainder [the inner three] share with the second, but the second has the use only of the part facing itself and the outside one. Thus the innermost one has sole use of the part facing itself and shares with all the others [the use of the part facing them]?'¹⁶ — There is a difference on this point between Tannaim, as it has been taught: If one of the residents of an alley-way desires to open a door on to another alley-way, the residents of that alley-way can

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prevent him. If, however, he only desires to reopen there one which had been closed, they cannot prevent him. This is the opinion of Rabbi. R. Simeon b. Gamaliel says: If there are five adjoining courtyards opening on to an alleyway, they all share the use of it alike.¹⁷ How does 'courtyards' come in here? — There is a lacuna in the text, and it should run as follows: [They cannot prevent him;] and similarly, if there are five courtyards opening on to an alley-way, all share with the outside one, but the outside one can use that part only, etc. This is the opinion of Rabbi.¹⁸ R. Simeon b. Gamaliel, however, says that if five courtyards open on to an alley-way, they all share the use of it.

The Master has stated: If he desires to reopen a door which has been closed, the residents of the other courtyard cannot prevent him. Raba said: This rule was meant to apply only if he had not taken down the posts of the closed door,¹⁹ but if he had done so, then the residents of the courtyard can prevent him reopening it. Abaye said to Raba: It has been taught in support of your opinion:

1. A covered way, open at the sides.
2. Having sides with lattice-windows, and not being suitable for unloading.
3. Which had only sides a few feet high, not reaching to the roof, yet preventing unloading. [V. Krauss, TA. I, 367.]
4. At the entrance of a large house.
5. A verandah on an upper storey with rooms opening out on to it and reached by a ladder or stair from the courtyard.
6. In the courtyard in front of the ladder by which the landing is reached.
7. With a door opening into the courtyard.
8. The part away from the courtyard.
9. Because the unroofed part is not likely to be obstructed with furniture.
10. Lit., 'to turn round'.
11. Supposing his house abuts on two alley-ways.
12. I.e., if a certain number are billeted on a courtyard, are they distributed equally among all the residents of the courtyard. (V. however Tosaf. or Maim. Yad Shekenim II, 8.)
13. I.e., the door of a courtyard opening on to an alley-way which leads to the public thoroughfare.
14. Lit., 'increases the way for them'. This would more naturally mean, 'makes them go roundabout

way' (So Rashi). We do not, however, find anywhere that the residents of a courtyard had a right to a space in the alley-way facing their gate, as they had in the courtyard facing their door. Tosaf. therefore supposes that the reference here is to the resident of the courtyard at the extreme end of the alley-way, where it forms a cul-de-sac. Hence the rendering adopted.

15. The one nearest the street.
16. Why then should he not be allowed to fence in the space facing his door seeing that the others have no right to use that part?
17. Which supports the opinion of R. Huna.
18. And contrary to the opinion of R. Huna.
19. Because he thus shows that it is his intention to reopen it one day.

Baba Bathra 12a

A room that is shut up carries with it four cubits in the courtyard,¹ but if the posts [of the door] have been taken down, it does not carry with it four cubits. If a room is shut up it does not render unclean all the space around it,² but if the posts have been taken down it does render unclean all the space around it [to a distance of four cubits].³

Rabbah b. Bar Hana said in the name of R. Johanan: If the people of a town desire to close alley-ways which afford a through way to another town, the inhabitants of the other town can prevent them. Not only is this the case if there is no other way, but even if there is another way they can prevent them, on the ground of the rule laid down by Rab Judah in the name of Rab, that a field path to which the public have established a right of way must not be damaged.

R. 'Anan said in the name of Samuel: If the residents of alleyways which open out on to the public thoroughfare desire to set up doors at the entrance, the public [who use the thoroughfares] can prevent them. It was thought that this right extended only to a distance of four cubits [from the public thoroughfare], in accordance with what R. Zera said in the name of R. Nahman, that the four cubits [in the alley-way] adjoining the public thoroughfare are on the same footing

BABA BASRA - 2a-35b

as the public thoroughfare. This, however, is not the case. For R. Nahman's rule applies only to the matter of uncleanness,⁴ but here [in the case of the doors it does not apply because] sometimes people from the street are pushed in by the crowd a good distance.

A FIELD SHOULD NOT BE DIVIDED UNLESS THERE WILL BE NINE KABS' SPACE TO EACH. There is no difference [between this authority and R. Judah who said nine half-kabs]; each was speaking for his own district.⁵ What is the rule in Babylon? — R. Joseph said: [There must be] a day's plowing [for each]. What is meant by a day's plowing? If a day's plowing in seed time,⁶ that is not a two full days' plowing in plow time,⁷ and if a day's plowing in plow time, that is not a full day's plowing in seed time?⁸ — If you like I can say that a day's plowing in plow time is meant, and in seed time [it takes a full day] where one plows twice,⁹ or if you like I can say that a day's plowing in seed time is meant and in plow time [two full days are needed] where the ground is difficult.

If a trench is divided, R. Nahman said [enough must be left for each party to provide] a day's work in watering the field. If a vineyard, the father¹⁰ of Samuel said that three kabs' space must be left to each. It has been taught to the same effect: If a man says to another, I sell you a portion in a vineyard, Symmachus said, he must not sell him less than three kabs' space. R. Jose, however, said that this is sheer imagination.¹¹ What is the rule in Babylon? Raba b. Kisna said: Three rows each with twelve vines, enough for a man to hoe round in one day.

R. Abdimi from Haifa said: Since the day when the Temple was destroyed, prophecy has been taken from the prophets and given to the wise. Is then a wise man not also a prophet?¹² — What he meant was this: Although it has been taken from the prophets, it has not been taken from the wise. Amemar said: A wise man is even superior to a

prophet, as it says, And a prophet has a heart of wisdom.¹³ Who is compared with whom? Is not the smaller compared with the greater?¹⁴ Abaye said: The proof [that prophecy has not been taken from the wise] is that a great man makes a statement, and the same is then reported in the name of another great man.¹⁵ Said Raba: What is there strange in this? Perhaps both were born under one star.¹⁶ No, said Raba; the proof is this, that a great man makes a statement and then the same is reported

1. If ever it comes to be divided.
2. If there is a dead body lying there.
3. Because then it is regarded no longer as a room but as a grave. V. Tosef. Oh. XVIII.
4. If there is a suspicion of uncleanness in the four cubits up the alley-way it is treated as if it occurred in a public place and is deemed clean. Toh. IV, II.
5. I.e., in the district of the first Tanna, less than nine *kabs* was not reckoned a field worth sowing. V. Tosaf. s.v. [H].
6. When the ground is soft, having been already broken up by the first plowing in the autumn.
7. But something between one and two days, so that the plowman will not be able to hire oxen to advantage.
8. And therefore again the plowman will not be able to hire oxen to advantage.
9. Both before and after putting the seed in, and so takes a full day.
10. Abba b. Abbu.
11. Lit., 'words of prophesying'.
12. I.e., were not wise men prophets also before the Temple was destroyed?
13. Ps. XC, 12. The word [H] in the text (E.V. '*that we may get us*') is taken here in the sense of 'prophet'.
14. And here the prophet is compared with the wise man.
15. The first having hit upon the same idea quite independently.
16. And this was why they hit on the same idea.

Baba Bathra 12b

in the name of R. Akiba b. Joseph.¹ Said R. Ashi: What is there strange in this? perhaps in this matter he was born under the same star. No, said R. Ashi; the proof is that a great man makes a statement and then it is found that the same rule was a *halachah*

BABA BASRA - 2a-35b

communicated to Moses at Mount Sinai. But perhaps the wise man was no better than a blind man groping his way through a window?² — And does he not give reasons [for his opinions]?³

R. Johanan said: Since the Temple was destroyed, prophecy has been taken from prophets and given to fools and children. How given to fools? — The case of Mar son of R. Ashi will illustrate. He was one day standing in the manor of Mahuza⁴ when he heard a certain lunatic exclaim: The man who is to be elected head of the Academy in Matha Mehasia⁵ signs his name Tabiumi. He said to himself: Who among the Rabbis signs his name Tabiumi? I do. This seems to show that my lucky time has come. So he quickly went to Matha Mehasia. When he arrived, he found that the Rabbis had voted to appoint R. Aha of Difti as their head. When they heard of his arrival, they sent a couple of Rabbis to him to consult him.⁶ He detained them with him, and they sent another couple of Rabbis. He detained these also, [and so it went on] until the number reached ten. When ten were assembled, he began to discourse and expound the Oral Law and the Scriptures, [having waited so long] because a public discourse⁷ [on them] should not be commenced if the audience is less than ten. R. Aha⁸ applied to himself the saying: If a man is in disfavor [with Heaven] he does not readily come into favor, and if a man is in favor he does not readily fall into disfavor.

How has prophecy been given to children? A case in point is that of the daughter of R. Hisda. She was sitting on her father's lap, and in front of him were sitting Raba and Rami b. Hama. He said to her: Which of them would you like? She replied: Both. Whereupon Raba said: And let me be the second.⁹

R. Abdimi from Haifa said: Before a man eats and drinks he has two hearts,¹⁰ but after he eats and drinks he has only one heart, as it says, A hollow [nabub] man is two-hearted,¹¹ the word nabub occurring also in the text

nebul luhoth,¹² which we translate 'hollow with planks'. R. Huna the son of R. Joshua said: If a man is a wine drinker, even though his heart¹³ is closed like a virgin, the wine opens¹⁴ it, as it is said: New wine shall make open out [yenobeb] the maids.¹⁵

R. Huna the son of R. Joshua said: That the portion [of a field assigned to a first-born]¹⁶ as a first-born and the portion assigned to him as an ordinary son should be contiguous goes without saying. What is the rule in the case of a brother-in-law?¹⁷ — Abaye replied: It is just the same. Why so? Because the Divine Law calls him 'first-born'.¹⁸ Raba, however, said: The text says: And he shall be the first-born: this means that he is regarded as a firstborn, but the assignment is not made to him as to a firstborn.¹⁹

A certain man bought a field adjacent to the estate of his father-in-law.²⁰ When they came to divide the latter's estate, he said: Give me my share next to my own field. Rabbah said: This is a case where a man can be compelled not to act after the manner of Sodom.²¹ R. Joseph strongly objected to this, on the ground that the brothers²² can say to him: We reckon this field as specially valuable like the property of the family of Mar Marion.²³ The law follows R. Joseph.

If there are two fields²⁴ with two channels [running by them],²⁵ Rabbah said: This is a case where we can apply the rule that a man can be compelled not to act after the manner of Sodom. R. Joseph strongly objected to this on the ground that sometimes one channel may continue running while the other dries up.²⁶ The law follows R. Joseph. If, however, there are two fields adjoining one channel, R. Joseph says that in such a case we do compel a man not to act after the manner of Sodom.²⁷ Abaye objected to this strongly on the ground that the one [who has two fields in the middle] can say, I want you to have more metayers.²⁸ The law, however, follows R. Joseph; the increase in the number of metayers is not a matter of consequence.

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1. Who certainly was a much greater man, so that the explanation that they were born under one star will not hold.
2. I.e., he hit on the idea by chance.
3. Hence we must say that his agreement with Moses was due not to chance but to the spirit of prophecy. [This is another way of expressing the belief that revelation did not cease with the extinction of prophecy. V. Herford, Talmud and Apocrypha, 72ff.]
4. [A town on the Tigris, South of Bagdad. On the manor of Mahuza, Rostaka di Mahuza, v. Obermeyer, *op. cit.*, 172.]
5. A position previously held by his father. For Matha Mehasia v. p. 10 n. 1.
6. In connection with R. Aha's appointment (Rashi).
7. Lit., 'a discourse in the kallah'. [Name given to an assembly at which the Law was expounded to scholars, as well as to the half yearly assemblies of the Babylonian Academies. The word has been variously explained as 'bride', because of the declaration of love and loyalty to the Torah, or from 'crown', with reference to the round formation of the sitting accommodation or again [G] = school. On further suggestions, v. Krauss, S., in *Poznanski's Memorial Volume*, 142ff.]
8. When he saw that he had lost his chance.
9. [This was fulfilled, v. Yeb. 34b.]
10. I.e., he finds it hard to make up his mind for one thing.
11. Job XI, 12. E.V. 'Vain man is void of understanding.'
12. Ex. XXVII, 8.
13. 'Heart' here seems to have the sense of 'mind' or 'understanding'.
14. Lit., 'makes it open-eyed'.
15. I.e., maiden-hearts, Zech. IX, 17.
16. The first-born received a double portion in his father's inheritance, Deut. XXI, 16.
17. A man who marries his brother's widow if he has died without offspring, and who is also entitled to a double portion. The question is, can he claim that the two portions should be contiguous without making compensation to the other brothers?
18. Deut. XXV, 6: And it shall be that the firstborn which she beareth. The Rabbis, however, translate for halachic purposes thus: 'And he (the brother) shall be the first-born; she shall be one capable of bearing'.
19. Lit., 'His being is as a first-born, but his assignment is not as a firstborn'. I.e., he receives a double portion as a first-born, but cannot demand that the two portions shall be contiguous like a first-born.
20. Whom we must suppose to have had only daughters. Rashi, however, translates 'father', though this is not the usual meaning of [H].
21. I.e., not to adopt a dog-in-the-manger attitude, refusing to confer a benefit which costs him nothing.
22. According to another reading, 'sisters'. V. Tosaf. s.v. [H]
23. So Rashi. This, however, does some violence to the word [H], and Tosaf. translates: The brothers can even say to him, We value this field like those of Mar Marion's (and demand compensation accordingly).
24. Left by a father to two sons.
25. And one brother demands the field adjoining land he already possesses.
26. Hence the other brother has a right to insist on having the fields equally divided so that he should have a field by each channel; seeing that each field has a channel, the other brother stands to lose nothing by acceding to the request.
27. And to allow the other to have two fields contiguous to one another.
28. If his two fields are separated, he will want more men to work them, and therefore the fields of the other which are in between will be better guarded.

Baba Bathra 13a

If there is a channel on one side and a river on the other, the field is to be divided diagonally.¹

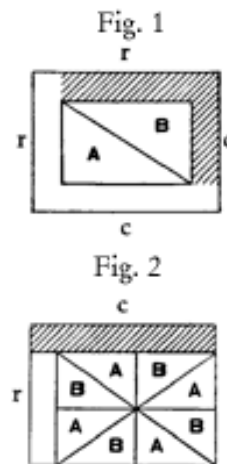
A HALL, etc. If they are not large enough to leave sufficient space for both after division, what is the ruling? — Rab Judah says: [One partner] has the right to say [to the other], You name a price [for my share] or let me name a price [for your share].² R. Nahman says: He has not the right to say, You name a price or let me name a price Said Raba to R. Nahman: On your view that one has not the right to say to the other, You name a price or let me name a price, how are a first-born and another son³ to manage to whom their father has left a slave and an unclean animal? — He replied: What I say is that they work for the one one day and the other two days.

An objection was brought [against the opinion of Rab Judah from the following]: 'If one is half a slave and half free, he works for his master one day and for himself one day alternately. This is the opinion of Beth Hillel. Beth Shammai say: You have made matters right for his master but not for him. To marry

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a bondswoman he is not permitted;⁴ to marry a free woman he is not permitted.⁵ Shall he then remain unmarried? And has not the world been created only for propagation, as it is written, He created it not a waste, he formed it to be inhabited?⁶ No; what we do is to compel his master to consent to emancipate him, and we give him a bond for half his value. Beth Hillel hearing this retracted their opinion and adopted the ruling of Beth Shammai?⁷ — This is not quite a case in point, because while the slave can say, 'I will name a price,' he cannot [at any time] say to the master, 'You name a price'.⁸ Come and hear: If there are two brothers, one rich and one poor, to whom their father leaves a bath and an olive press, if he made them for renting, then the brothers share the rental, but if he made them for his own use, then the rich brother can say to the poor one,

1. According to R. Han., we suppose the channel to be on two sides and the river on two sides, v. fig. 1. According to Rashi, however, we suppose the channel and the river to be only on each of two adjacent sides, and in order that each may have the same share both in the river and the channel, the field must be divided into eight strips, v. fig. 2.
2. I.e., either can compel the other to sell his portion, or to buy from him, so that the whole will be in one ownership.
3. The rule would apply equally if neither of the brothers was a first-born, (v. however Tosaf. s.v. [H]).
4. Being an Israelite.
5. Not being an Israelite.
6. Isa. XLV, 18.
7. Hag. 2a. Only because of Beth Shammai's argument, but not because they recognized any right to say, 'You name', etc.
8. Because as an Israelite, he cannot be sold, like an ordinary slave, for more than six years.



Baba Bathra 13b

'Take slaves and let them wash you down in the bath, take olives and make oil from them in the press'?¹ — There too, the poor brother can say to the other, 'You name a price,' but he cannot say, 'I will name a price.'²

Come and hear: ANYTHING WHICH IF DIVIDED WILL STILL RETAIN THE SAME NAME IS TO BE DIVIDED, AND IF NOT, A MONEY VALUE HAS TO BE ENTERED FOR IT?³ — There is a difference on this point between Tannaim, as it has been taught: If a man says [to his partner], You take the prescribed minimum [in the courtyard]⁴ and I will take less,⁵ his suggestion is adopted. Rabban Simeon b. Gamaliel says that his suggestion is not adopted. What are the circumstances? If we take the statement as it stands, what is the reason of Rabban Simeon b. Gamaliel? Therefore we must suppose that there is a lacuna, and it should run thus: If one says, 'You take the standard space, and I will take less,' his suggestion is adopted. If he says, 'You name a price or I will name a price,' his suggestion is also adopted. And in regard to this Rabban Simeon remarks that his suggestion is not adopted. This, however, is not so. The statement is to be taken as it stands, and as to your question, what reason can Rabban Simeon b. Gamaliel have, it is because he can say to him [the one who offers

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to take less], 'If you want me to pay for the extra, I have no money, and if you want to make me a present, I prefer not,⁶ since it is written, He that hateth gifts shall live.'⁷

Abaye said to R. Joseph: This opinion of Rab Judah⁸ really comes from Samuel, as we have learnt: **SCROLLS OF THE SCRIPTURE MAY NOT BE DIVIDED EVEN IF BOTH AGREE**, and on this Samuel remarked: This rule was only meant to apply if the whole is in one scroll, but if it is in two scrolls they may divide. Now if you maintain that a man has no right to say, 'You name a price or I will name a price,' why should the rule apply only to one scroll? Why not to two scrolls also?⁹ — R. Shalman explained that Samuel referred to the case where both consent.¹⁰

Amemar said: The law is that a partner has the right to say, 'You name a price or let me name a price.' Said R. Ashi to Amemar: What do you make of the statement of R. Nahman?¹¹ — He replied: I don't know of it; meaning, I don't hold with it. How could he say this, seeing that Raba b. Hinnena and R. Dimi b. Hinnena were left by their father two bond-women, one of whom knew how to bake and cook and the other to spin and weave, and they came before Raba¹² and he said to them: A partner has no right to say, 'You name a price or let me name a price?' — The case is different there because each of them wanted both the women. So when one said, 'You take one and I will take one', this was not the same as, 'You name a price or let me name a price.'¹³ But what of a copy of the Scriptures in two scrolls, where both are required¹⁴ and yet Samuel said: The rule that they must not be divided applies only where there is one scroll, but if there are two, they may be divided? — This has been explained by R. Shalman to refer to the case where both consent.¹⁵

Our Rabbis taught: It is permissible to fasten the Torah,¹⁶ the prophets, and the Hagiographa together. This is the opinion of R. Meir. R. Judah, however, says that the

Torah, the prophets, and the Hagiographa should each be in a separate scroll; while the Sages say that each book should be separate. Rab Judah said: it is related that Boethus b. Zonin had the eight prophets¹⁷ fastened together at the suggestion of R. Eleazar b. Azariah. Others, however, report that he had them each one separate. Rabbi said: On one occasion a copy of the Torah, the prophets, and the Hagiographa all bound up together was brought before us, and we declared them fit and proper.

Between each book of the Torah there should be left a space of four lines, and so between one Prophet and the next. In the twelve Minor Prophets, however, the space should only be three lines.¹⁸ If, however, the scribe finishes one book at the bottom [of a column], he should commence the next at the top [of the next].¹⁹ Our Rabbis taught: If a man desires to fasten the Torah, the Prophets and the Hagiographa together, he may do so. At the beginning he should leave an empty space sufficient for winding round the cylinder, and at the end an empty space sufficient for winding round the whole circumference [of the scroll].²⁰ If he finishes a section at the bottom [of one column], he commences the next at the top [of the next],

1. *Infra* 172a.
2. Because he himself has no money with which he might pay it. Hence this too is no proof that one partner has no right to say to the other, 'You name', etc.
3. And an equivalent has to be allowed by the one who obtains it. Hence a partner has the right to say, 'You name', etc.
4. I.e., four cub its.
5. Supposing the courtyard is too small to allow four cubits to each.
6. But R. Simeon may still agree that he can say, 'You name a price, etc.'
7. Prov. XV, 27.
8. That one has a right to say, 'You name a price, etc.'
9. Presumably the two scrolls are not equal in value, and if so how can one force the other to divide unless he can say to him, 'You name a price (for the extra value) or let me name it.'

BABA BASRA - 2a-35b

10. I.e., the words of the Mishnah, 'even though both agree' refer to the case where there is only one scroll, not where there are two.
11. Who said there is no such right.
12. To decide whether one could force the other to divide them, the one who received the more valuable one giving compensation.
13. Which properly means, 'You buy my portion from me or let me buy yours from you.'
14. One being deficient without the other.
15. Which shows that the principle, 'You name', etc., extends even to such cases.
16. The Pentateuch.
17. According to the Rabbinical classification, these are Joshua, Judges, Samuel, Kings, Isaiah, Jeremiah, Ezekiel and the twelve Minor Prophets.
18. Since all these only form one book.
19. And there is no need to leave a space of four lines.
20. When it is rolled up.

Baba Bathra 14a

and if he wants to divide he may do so. What is the meaning [of these last words]? — What it means is, Because if he wants to divide he may do so.¹

A contradiction was pointed out [between this rule and the following]: At the beginning of the book and the end there must be sufficient empty space to roll round. To roll round what? If to roll round the cylinder, this contradicts what was said about the circumference!² If to roll round the circumference, this contradicts what was said about the cylinder!³ — R. Nahman b. Isaac answered: The statement applies in both ways.⁴ R. Ashi, however, replied that this statement refers only to a Scroll of the Law,⁵ as it has been taught: Other books are rolled up from the beginning to the end,⁶ but the Scroll of the Law closes at its middle, there being a cylinder at each end. R. Eliezer son of R. Zadok said: This is how the scribes in Jerusalem used to make their scrolls.

Our Rabbis taught: A scroll of the Law should be such that its length does not exceed its circumference nor its circumference its length,⁷ Rabbi was asked what should be the

size of a scroll of the Law.⁸ He replied: With thick parchment, six handbreadths, with thin parchment⁹ I do not know. R. Huna wrote seventy scrolls of the Law and hit the exact measurement with only one. R. Aha b. Jacob wrote one on calf's skin, and hit it exactly. The Rabbis looked at him [enviously] and he died. The Rabbis said to R. Hamnuna: R. Ammi wrote four hundred scrolls of the Law. He said to them: Perhaps he copied out the verse, Moses commanded us a law.¹⁰ Raba [similarly] said to R. Zera: R. Jannai planted four hundred vineyards, and he answered: Perhaps each consisted of two and two vines facing and one as a tail.¹¹

An objection was brought [against the statement regarding the size of a scroll from the following]: The ark which Moses made was two cubits and a half in length, a cubit and a half in breadth, and a cubit and a half in height, the cubit being six handbreadths. The tablets were six handbreadths in length, six in breadth and three in thickness. They were placed lengthwise in the ark.¹² Now how much of the length of the ark was taken up by the tablets? Twelve handbreadths. Three therefore were left. Take away one handbreadth, a half for each side of the ark,¹³ and there were left two handbreadths, and in these the scroll of the Law was deposited. [That a scroll was in the ark we know because] it says, There was nothing in the ark save the two tables of stone which Moses put there.¹⁴ Now in the words 'nothing' and 'save' we have a limitation following a limitation, and the purpose of a limitation following a limitation is to intimate the presence of something which is not mentioned, in this case the scroll of the Law which was deposited in the ark. You have accounted for the length of the ark, now account for its breadth. How much of the [breadth of the] ark do the tables take up? Six handbreadths. Three therefore are left. Take away one, half for [the thickness of] each side, and two are left, so as to allow the scroll to be put in and taken out without squeezing. This is the opinion of R. Meir. R. Judah says that the cubit of the ark had only

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five handbreadths. The tables were six handbreadths in length, six in breadth and three in thickness, and were deposited lengthwise in the ark. How much did they take up of the ark? Twelve handbreadths. There was thus left half a handbreadth, a finger's breadth¹⁵ for each side. You have accounted for the length of the ark, now go and account for its breadth. How much of the [breadth of the] ark was taken up by the tablets? Six handbreadths. There were thus left a handbreadth and a half. Take away from them half a handbreadth, a finger's breadth for each side, and there will be left a handbreadth. Here were deposited the columns¹⁶ mentioned in the verse, King Solomon made himself a palanquin of the wood of Lebanon, he made the pillars thereof of silver, the bottom thereof of gold, the seat of purple, etc.¹⁷ At the side of the ark was placed the coffer in which the Philistines sent a present to the God of Israel, as it says, And put the jewels of gold which ye return him for a guilt offering in a coffer by the side thereof, and send it away that it may go,¹⁸ and on this was placed the scroll of the Law, as it says, Take this book of the law, and put it by the side of the ark of the covenant of the Lord;¹⁹ It was placed by the side of the ark and not in it. What then do I make of the words, There was naught in the ark save?²⁰ This intimates that

1. He should therefore take care that in case he decides to divide, one of the scrolls does not commence with an empty space of four lines. Tosaf. points out that this seems to contradict the rule given above, that a scroll should not be divided, and explains that this applies only to a division between two owners.
2. Which would require a much larger piece at the end.
3. Which would require much less at the beginning.
4. I.e., enough for the stick at the beginning and the circumference at the end.
5. Which has two cylinders.
6. Having only one cylinder.
7. When rolled up.
8. I.e., what should be its length so that when the text had been completed in script of ordinary size the length should be equal to the circumference.

9. 'Split parchment'.
10. Deut. XXXIII, 4. Life would not be long enough for writing four hundred complete scrolls.
11. V. Sotah 43a.
12. I.e., one next to the other along the length of the ark.
13. Viz., for the thickness.
14. I Kings VIII, 9.
15. One handbreadth = 4 finger-breadths.
16. Two silver sticks like the sticks of a scroll placed on each side of the tables.
17. Cant. III, 9-10.
18. I Sam. VI, 8.
19. Deut. XXXI, 26.
20. I.e., the double limitation.

Baba Bathra 14b

the fragments of the tables¹ were [also] deposited in the ark. Now if we assume that the circumference of the scroll was six handbreadths, — let us see: a circumference of three handbreadths means a width of one.² Since then the scroll closed in the middle, the space between the two cylinders must have been over and above the two handbreadths. How did this get in to the two handbreadths?³ — The scroll read in the Temple Court⁴ was rolled round one cylinder. Even so, how could two handbreadths get into exactly two? R. Ashi replied: The scroll was rolled together up to a certain point [and placed in the ark], and then the remainder was rolled up on top.

If we accept R. Judah's theory, where was the scroll placed before the coffer came? — A ledge projected from the ark, and on this the scroll was placed. What does R. Meir make of the words, At the side of the ark? — This is to indicate that the scroll is to be placed at the side of the tables and not between them; but even so, it was in the ark, only at the side.

According to R. Meir, where were the [silver] sticks placed?⁵ — Outside. And whence does R. Meir learn that the fragments of the [first] tables were deposited in the ark?⁶ — From the same source as R. Huna, who said: What is the meaning of the verse, Which is called by the Name, even the name of the Lord of Hosts that sitteth upon the Cherubim?⁷ [The

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repetition of the word 'name'] teaches that the tables and the fragments of the tables were deposited in the ark. And, what does R. Judah make of these words? — He requires them for the lesson enunciated by R. Johanan, who 'said in the name of R. Simeon b. Yohai: This teaches us that the Name [of four letters] and all the subsidiary names [of God] were deposited in the ark. And does not R. Meir also require the verse for this lesson? — Certainly he does. Whence then does he learn that the fragments of the first tables were deposited in the ark? He learns it from the exposition reported [also] by R. Joseph. For R. Joseph learned: Which thou brakest and thou shalt put them:⁸ [the juxtaposition of these words] teaches us that both the tablets and the fragments of the tablets were deposited in the ark. And what does R. Judah make of this verse? — He requires it for the lesson enunciated by Resh Lakish, who said: Which thou brakest: God said to Moses, Thou hast done well² to break.¹⁰

Our Rabbis taught: The order of the Prophets is, Joshua, Judges, Samuel, Kings, Jeremiah, Ezekiel, Isaiah, and the Twelve Minor Prophets. Let us examine this. Hosea came first, as it is written, God spake first to Hosea.¹¹ But did God speak first to Hosea? Were there not many prophets between Moses and Hosea? R. Johanan, however, has explained that [what It means is that] he was the first of the four prophets who prophesied at that period,¹² namely, Hosea, Isaiah, Amos and Micah. Should not then Hosea come first? — Since his prophecy is written along with¹³ those of Haggai, Zechariah and Malachi, and Haggai, Zechariah and Malachi came at the end of the prophets, he is reckoned with them. But why should he not be written separately and placed first? — Since his book is so small, it might be lost [if copied separately]. Let us see again. Isaiah was prior to Jeremiah and Ezekiel. Then why should not Isaiah be placed first? — Because the Book of Kings ends with a record of destruction and Jeremiah speaks throughout of destruction and Ezekiel commences with destruction and ends with

consolation and Isaiah is full of consolation;¹⁴ therefore we put destruction next to destruction and consolation next to consolation.

The order of the Hagiographa is Ruth, the Book of Psalms, Job, Prophets, Ecclesiastes, Song of Songs, Lamentations, Daniel and the Scroll of Esther, Ezra and Chronicles.¹⁵ Now on the view that Job lived in the days of Moses, should not the book of Job come first? — We do not begin with a record of suffering. But Ruth also is a record of suffering?¹⁶ — It is a suffering with a sequel [of happiness], as R. Johanan said: Why was her name called Ruth? — Because there issued from her David who replenished¹⁷ the Holy One, blessed be He, with hymns and praises.

Who wrote the Scriptures? — Moses wrote his own book and the portion of Balaam¹⁸ and Job. Joshua wrote the book which bears his name and [the last] eight verses of the Pentateuch.¹⁹ Samuel wrote the book which bears his name and the Book of Judges and Ruth. David wrote the Book of Psalms, including in it the work of the elders, namely, Adam, Melchizedek, Abraham, Moses, Heman, Yeduthun, Asaph,

1. The first tables which Moses broke.
2. And therefore the scroll must have been two handbreadths wide.
3. If we assume with R. Meir that there was a scroll in the ark.
4. On Tabernacles, in accordance with Deut. XXXI, 9-13.
5. Since there was no room for them in the ark alongside the Scroll at the base of the tables.
6. Seeing that the verse on which R. Judah bases this is needed by him for another lesson.
7. II Sam. VI, 2.
8. Deut. X, 2.
9. [H], a play on [H].
10. Although I did not tell thee. The words 'which thou brakest' can be utilized for this lesson because they are strictly speaking superfluous.
11. Hos. I; 2.
12. In the reigns of Uzziah, Jotham, Ahaz, and Hezekiah.
13. I.e., copied on the same scroll.
14. Strictly speaking, this applies only to the latter half of Isaiah, ch. XL-LXVI, though strains of

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consolation are interspersed throughout the first part also.

15. With the exception of Job, the order is meant to be chronological, Ruth being ascribed to Samuel, the Psalms to David, Proverbs, Ecclesiastes and the Song of Songs to Solomon, Lamentations to Jeremiah, and Esther to the period of the Captivity (v. Rashi).
16. As it says, 'And there was a famine in the land'. (Ruth I, 1.)
17. [H] which R. Johanan connects with [H]
18. The parables of Balaam in Num. XXIII, XXIV.
19. Recording the death of Moses.

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and the three sons of Korah.¹ Jeremiah wrote the book which bears his name, the Book of Kings, and Lamentations. Hezekiah and his colleagues wrote (Mnemonic YMSHK)² Isaiah,³ Proverbs,⁴ the Song of Songs and Ecclesiastes. The Men of the Great Assembly wrote (Mnemonic KNDG)⁵ Ezekiel,⁶ the Twelve Minor Prophets,⁷ Daniel and the Scroll of Esther. Ezra wrote the book that bears his name⁸ and the genealogies of the Book of Chronicles up to his own time. This confirms the opinion of Rab, since Rab Judah has said in the name of Rab: Ezra did not leave Babylon to go up to Eretz Yisrael until he had written his own genealogy. Who then finished it [the Book of Chronicles]? — Nehemiah the son of Hachaliah.

The Master has said: Joshua wrote the book which bears his name and the last eight verses of the Pentateuch. This statement is in agreement with the authority who says that eight verses in the Torah were written by Joshua, as it has been taught: [It is written], So Moses the servant of the Lord died there.² Now is it possible that Moses being dead could have written the words, 'Moses died there'? The truth is, however, that up to this point Moses wrote, from this point Joshua wrote. This is the opinion of R. Judah, or, according to others, of R. Nehemiah. Said R. Simeon to him: Can [we imagine the] scroll of the Law being short of one word, and is it not written, Take this book of the Law?¹⁰ No; what we must say is that up to this point the Holy One,

blessed be He, dictated and Moses repeated and wrote, and from this point God dictated and Moses wrote with tears, as it says of another occasion, Then Baruch answered them, He pronounced all these words to me with his mouth, and I wrote them with ink in the book.¹¹ Which of these two authorities is followed in the rule laid down by R. Joshua b. Abba which he said in the name of R. Giddal who said it in the name of Rab: The last eight verses of the Torah must be read [in the Synagogue service] by one person alone?¹² — It follows R. Judah and not R. Simeon. I may even say, however, that it follows R. Simeon, [who would say that] since they differ [from the rest of the Torah] in one way, they differ in another.

[You say that] Joshua wrote his book. But is it not written, And Joshua son of Nun the servant of the Lord died?¹³ — It was completed by Eleazar. But it is also written in it, And Eleazar the son of Aaron died?¹⁴ — Phineas finished it. [You say that] Samuel wrote the book that bears his name. But is it not written in it, Now Samuel was dead?¹⁵ — It was completed by Gad the seer and Nathan the prophet. [You say that] David wrote the Psalms, including work of the ten elders. Why is not Ethan the Ezrahite also reckoned with? — Ethan the Ezrahite is Abraham. [The proof is that] it is written in the Psalms, Ethan the Ezrahite,¹⁶ and it is written elsewhere, *Who hath raised up righteousness from the East.*¹⁷

[The passage above] reckons both Moses and Heman. But has not Rab said that Moses is Heman, [the proof being] that the name Heman is found here [in the Psalms] and it is written elsewhere [of Moses], *In all my house he is faithful?*¹⁸ — There were two Hemans.

You say that Moses wrote his book and the section¹⁹ of Balaam and Job. This supports the opinion of R. Joshua b. Levi b. Lahma who said that Job was contemporary with Moses — [The proof is that] it is written here [in connection with Job], O that my words were now [efo] written,²⁰ and it is written

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elsewhere [in connection with Moses], For wherein now [efo] shall it be known.²¹ But on that ground I might say that he was contemporary with Isaac, in connection with whom it is written, Who now [efo] is he that took venison?²² Or I might say that he was contemporary with Jacob, in connection with whom it is written, If so now [efo] do this?²³ or with Joseph, in connection with whom it is written, Where [efo] they are pasturing?²⁴ — This cannot be maintained; [The proof that Job was contemporary with Moses is that] it is written [in continuation of the above words of Job], Would that they were inscribed in a book, and it is Moses who is called 'inscriber', as it is written, And he chose the first part for himself, for there was the lawgiver's [mehokek, lit. 'inscriber's'] portion reserved.²⁵ Raba said that Job was in the time of the spies. [The proof is that] it is written here [in connection with Job], There was a man in the land of Uz, Job was his name,²⁶ and it is written elsewhere [in connection with the spies], Whether there be wood [ez] therein.²⁷ Where is the parallel? In one place it is Uz, in the other EZ? — What Moses said to Israel was this: [See] if that man is there whose years are as the years of a tree and who shelters his generation like a tree.

A certain Rabbi was sitting before R. Samuel b. Nahmani and in the course of his expositions remarked, Job never was and never existed, but is only a typical figure.²⁸ He replied: To confute such as you the text says, There was a man in the land of Uz, Job was his name. But, he retorted, if that is so, what of the verse, The poor man had nothing save one poor ewe lamb, which he had bought and nourished up, etc.²⁹ Is that anything but a parable? So this too is a parable. If so, said the other, why are his name and the name of his town mentioned?

R. Johanan and R. Eleazar both stated that Job was among those who returned from the [Babylonian] Exile, and that his house of study was in Tiberias. An objection [to this view] was raised from the following: 'The

span of Job's life was from the time that Israel entered Egypt till they left it.' —

1. To Adam are ascribed the verses, *Thine eyes did see mine imperfect substance*, etc. (Ps. CXXXIX, 16); to Melchizedek Ps. CX; to Moses, Ps. XC. Abraham is identified with Ethan the Ezrahite (Ps. LXXXIX).
2. [H] = *Yeshaiiah* (Isaiah); [H] = *Mishle* (Proverbs); [H] = *Shir ha-Shirim* (Song of Songs); [H] = *Koheleth* (Ecclesiastes). The word 'wrote' here seems to have the meaning of 'edited' or 'published'.
3. According to Rashi, Isaiah was executed by Manasseh before he could reduce his own prophecies to writing.
4. V. Prov. XXV, 1.
5. [H] = *Ezekiel*; [H] = *Shenem 'Asar* (Twelve minor prophets); [H] = Daniel; [H] = *Megillath Esther* (The Scroll of Esther).
6. Rashi supposes that the reason why Ezekiel did not write his own book was that he lived out of Eretz Yisrael. The same reason applies to Daniel.
7. Who apparently did not publish their prophecies themselves because they were too small.
8. This includes Nehemiah.
9. Deut. XXXIV, 5.
10. Deut. XXXI, 26. And this was said by Moses before he died.
11. Jer. XXXVI, 18.
12. Apparently this means that it is not requisite that another person should stand by him, as in the case of the rest of the Torah. Or it may mean that these eight verses must always be read to (or by) one person only.
13. Josh. XXIV, 29.
14. Ibid. 33.
15. I Sam. XXVIII, 3.
16. Ps. LXXXIX, I.
17. Isa. XLI, 2. The word 'ezrahi' is also taken to mean 'eastern', while 'Ethan' (strong) is regarded as equivalent to 'righteous'.
18. The word 'heman' is also taken to mean 'faithful'.
19. [Var. lec., rpx 'the book'.]
20. Job XIX, 23.
21. Ex. XXXIII, 16.
22. Gen. XXVII, 33.
23. Gen. XLIII, II.
24. Ibid. XXXVII, 16.
25. Deut. XXXIII, 21.
26. Job 1, 1.
27. Num. XIII, 20.
28. To teach men the virtue of resignation.
29. II Sam. XII, 3. This was Nathan's parable to David.

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Say, As long as from the time they entered Egypt till they left it.¹ An objection was further raised² [from the following]: Seven prophets prophesied to the heathen, namely, Balaam and his father, Job, Eliphaz the Temanite, Bildad the Shuhite, Zophar the Naamathite, and Elihu the son of Barachel the Buzite.³ He replied:⁴ Granted as you say [that Job was one of these], was not Elihu the son of Barachel from Israel, seeing that the Scripture mentions that he was from the family of Ram?⁵ Evidently [the reason why he is included] is because he prophesied to the heathen. So too Job [is included because] he prophesied to the heathen.⁶ But did not all the prophets prophesy to the heathen? — Their prophecies were addressed primarily to Israel, but these addressed themselves primarily to the heathen.

An objection was raised [from the following]: There was a certain pious man among the heathen named Job, but he [thought that he had] come into this world only to receive [here] his reward, and when the Holy One, blessed be He, brought chastisements upon him, he began to curse and blaspheme, so the Holy One, blessed be He, doubled his reward in this world so as to expel him from the world to come. There is a difference on this point between Tannaim, as it has been taught: R. Eliezer says that Job was in the days 'of the judging of the judges,'⁷ as it says [in the book of Job], Behold all of you together have seen it; why then are ye become altogether vain?⁸ What generation is it that is altogether vain? You must say, the generation where there is a 'judging of the judges'.⁹ R. Joshua b. Korhah says: Job was in the time of Ahasuerus, for it says, And in all the land were no women found so fair as the daughters of Job.¹⁰ What was the generation in which fair women were sought out? You must say that this was the generation of Ahasuerus. But perhaps he was in the time of David [in connection with whom] it is written, So they sought for a fair damsel?¹¹ — In the case of David [the search

was only] in all the border of Israel, in the case of Ahasuerus, in all the land. R. Nathan says that Job was in the time of the kingdom of Sheba, since it says, *The Sabaeans fell on them and took them away.*¹² The Sages say that he was in the time of the Chaldeans, as it says, *The Chaldeans made three bands.*¹³ Some say that Job lived in the time of Jacob and married Dinah the daughter of Jacob. [The proof is that] it is written here [in the book of Job], Thou speakest as one of the impious women [nebaloth] speaketh,¹⁴ and it is written in another place [in connection with Dinah], Because he had wrought folly [*nebelah*] it, Israel.¹⁵ All these Tannaim agree that Job was from Israel, except those who say [that he lived in the days of Jacob]. [This must be so,] for if you suppose that [they regarded him as] a heathen, [the question would arise,] after the death of Moses how could the Divine Presence rest upon a heathen,¹⁶ seeing that a Master has said, Moses prayed that the Divine Presence should not rest on heathens, and God granted his request as it says, That we be separated, I and thy people, from all the people that are upon the face of the earth.¹⁷

R. Johanan said: The generation of Job was given up to lewdness. [The proof is that] it says here [in the book of Job], Behold all of you have seen [hazitem] it; why then are ye become altogether vain? and it is written elsewhere, Return, return, O Shulamite, return, return that we may look upon [nehezeh,] thee.¹⁸ But may not the reference be to prophecy, as in the words, The vision [hazon] of Isaiah son of Amoz?¹⁹ — If so, why does it say: Why are ye become altogether vain?

R. Johanan further said: What is the import of the words, And it came to pass in the days of the judging of the judges? It was a generation which judged its judges. If the judge said to a man, 'Take the splinter from between your teeth,'²⁰ he would retort, 'Take the beam from between your eyes.' If the judge said, 'Your silver is dross,' he would retort, 'Your liquor is mixed with water.'²¹

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R. Samuel b. Nahmani said in the name of R. Jonathan: Whoever says that the malkath [queen] of Sheba was a woman is in error; the word malkath here²² means the kingdom of Sheba.

*Now there was a day when the sons of God came to present themselves before the Lord, and Satan came also among them. And the Lord said unto Satan, whence comest thou? And Satan answered, etc.*²³ He addressed the Holy One, blessed be He, thus: Sovereign of the Universe, I have traversed the whole world and found none so faithful as thy servant Abraham. For Thou didst say to him, Arise, walk through the land to the length and the breadth of it, for to thee I will give it,²⁴ and even so, when he was unable to find any place in which to bury Sarah until he bought one for four hundred *shekels* of silver, he did not complain against thy ways. Then the Lord said to Satan, Hast thou considered my servant Job? for' there is none like him in the earth, etc.

Said R. Johanan: Greater praise is accorded to Job than to Abraham. For of Abraham it is written, For now I know that thou fearest God,²⁵ whereas of Job it is written, That man was perfect and upright and one that feared God and eschewed evil.²⁶ What is the meaning of 'eschewed evil'? — R. Abba b. Samuel said: Job was liberal with his money. Ordinarily, if a man owes half a prutah [to a workman], he spends it in a shop,²⁷ but Job used to make a present of it [to the workman].

And then Satan answered the Lord and said, Doth Job fear God for naught? Hast thou not made at hedge about him and about his house, etc.²⁸ What is the meaning of the words, Thou hast blessed the work of his hands?²⁹ — R. Samuel b. R. Isaac said: Whoever took a prutah from Job had luck with it. What is implied by the words, His cattle is increased in the land,³⁰ — R. Jose b. Hanina said: The cattle of Job broke through the general rule. Normally wolves kill goats, but in the cattle of Job the goats killed the wolves. But put forth

thine hand now and touch all that he hath, and he will renounce thee to thy face ... And the Lord said unto Satan, Behold all that he hath is in thy power, only upon himself put not forth thine hand, etc. ... And it fell on a day when his sons and daughters were eating and drinking wine in their eldest brother's house that there came a messenger unto Job and said, The oxen were plowing, etc.³¹ What is meant by the words, The oxen were plowing and the asses feeding beside them?³² — R. Johanan said: This indicates that the Holy One, blessed be He, gave to Job a taste of the

1. Viz. 210 years. Job's years were doubled after his sufferings and he lived on for 140 years. He must therefore have been 70 at the time. This makes a total of 210.
2. Against the idea that Job was an Israelite.
3. This seems to show that Job was a heathen prophet.
4. This is omitted in some texts.
5. Job XXXII, 2. Had he not been from Israel, his genealogy would not have been given. Or possibly 'Ram' is a name of Abraham (Rashi).
6. Though he was himself an Israelite.
7. This is a literal translation of the opening words of the Book of Ruth, rendered in the E.V., 'in the days when the Judges judged.'
8. Job XXVII, 12.
9. By the common people, in whom the judges inspire no respect.
10. Job XLII, is.
11. I Kings 1-3.
12. Job 1, 15.
13. Ibid. 17.
14. Ibid. 11, 10.
15. Gen. XXXIV, 7.
16. And all agree that Job was a prophet.
17. Ex. XXXIII, 16. This difficulty, however, would not arise if we suppose Job to have been in the days of Jacob.
18. Cant. VI, 13.
19. Isa. I, I.
20. This is the reading in 'En Yakob. In the text of the Talmud the word is 'eyes', which does not seem to make such good sense.
21. Cf. Isa. 1, 22.
22. I Kings X, 1.
23. Job 1, 6, 7.
24. Gen. XIII, 17.
25. Ibid. XXII, 12.
26. Job 1, 1.
27. Since a prutah cannot be divided, if a man owes a workman half a prutah he buys something in a shop with a prutah and gives the workman half.

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- 28. Job 1, 9, 10.
- 29. Ibid.
- 30. Ibid.
- 31. Ibid. 11-14.
- 32. Ibid. 14.

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future world.¹ While he was yet speaking there came also another and said, The fire of God ... While he was yet speaking there came also another and said, The Chaldeans made three bands ... and fell upon the camels and have taken them away ... While he was yet speaking there came also another and said, Thy sons and thy daughters were eating and drinking wine in their eldest brother's house, and behold there came a great wind from the wilderness and smote the four corners of the house and it fell upon the young men ... Then Job arose and rent his mantle and shaved his head ... and he said, Naked came I out of my mother's womb and naked shall I return thither; the Lord gave and the Lord hath taken away; blessed be the name of the Lord. In all this Job sinned not nor charged God with foolishness. Again there was a day when the sons of God came to present themselves ... and the Lord said unto Satan, From whence comest thou? And Satan answered the Lord and said, From going to and fro in the earth, etc.² He said: Sovereign of the Universe, I have traversed the whole earth, and have not found one like thy servant Abraham. For thou didst say to him, Arise, walk through the land in the length of it and the breadth of it, for to thee I will give it, and when he wanted to bury Sarah he could not find a place in which to bury her, and yet he did not complain against thy ways. Then the Lord said unto Satan, Hast thou considered my servant Job, for there is none like him in the earth ... and he still holdeth fast his integrity, although thou movedst me against him to destroy him without cause.³ Said R. Johanan: Were it not expressly stated in the Scripture, we would not dare to say it. [God is made to appear] like a man who allows himself to be persuaded against his better judgment. A Tanna taught: [Satan] comes down to earth and seduces,

then ascends to heaven and awakens wrath; permission is granted to him and he takes away the soul.

And Satan answered the Lord and said, Skin for skin, yea, all that a man hath will he give for his life. But put forth thine hand now and touch his bone and his flesh, and he will renounce thee to thy face. And the Lord said unto Satan, Behold he is in thine hand: only spare his life. So Satan went forth from the presence of the Lord and smote Job, etc.⁴ R. Isaac said: Satan's torment was worse than that of Job; he was like a servant who is told by his master, 'Break the cask but do not let any of the wine spill.' Resh Lakish said: Satan, the evil prompter, and the Angel of Death are all one. He is called Satan, as it is written, And Satan went forth from the presence of the Lord.⁵ He is called the evil prompter:⁶ [we know this because] it is written in another place, [Every imagination of the thoughts of his heart] was only evil continually,⁷ and it is written here [in connection with Satan] 'Only upon himself put not forth thine hand.'⁸ The same is also the Angel of Death, since it says, Only spare his life,⁹ which shows that Job's life belonged to him.

R. Levi said: Both Satan and Peninah had a pious purpose [in acting as adversaries]. Satan, when he saw God inclined to favor Job said, Far be it that God should forget the love of Abraham. Of Peninah it is written, And her rival provoked her sore for to make her fret.¹⁰ When R. Aha b. Jacob gave this exposition in Papunia,¹¹ Satan came and kissed his feet.¹²

In all this did not Job sin with his lips.¹³ Raba said: With his lips he did not sin, but he did sin within his heart. What did he say?¹⁴ The earth is given into the hand of the wicked, he covereth the faces of the judges thereof; if it be not so, where and who is he?¹⁵ Raba said: Job sought to turn the dish upside down.¹⁶ Abaye said: Job was referring only to the Satan. The same difference of opinion is found between Tannaim: The earth is given into the

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hand of the wicked. R. Eliezer said: Job sought to turn the dish upside down. R. Joshua said to him: Job was only referring to the Satan.

Although thou knowest that I am not wicked, and there is none that can deliver out of thine hand.¹⁷ Raba said: Job sought to exculpate the whole world.¹⁸ He said: Sovereign of the Universe, Thou hast created the ox with cloven hoofs and thou hast created the ass with whole hoofs; thou hast created Paradise and thou hast created Gehinnom: thou hast created righteous men and thou hast created wicked men, and who can prevent thee?¹⁹ His companions answered him: Yea, thou doest away with fear' and restrainest devotion before God.²⁰ If God created the evil inclination, He also created the Torah as its antidote.²¹

Raba expounded: What is meant by the verse, The blessing of him that was ready to perish came upon me, and I caused the widow's heart to sing for joy.²² 'The blessing of him that lost²³ came upon me:' this shows that Job used to rob orphans of a field and improve it and then restore it to them. 'And I caused the widow's heart to sing for joy:' if ever there was a widow who could not find a husband, he used to associate his name with her,²⁴ and then someone would soon come and marry her. Oh that my vexation were but weighed, and my calamity laid ill the balances together.²⁵ Rab said: Dust should be put in the mouth of Job, because he makes himself the colleague of heaven.²⁶ Would there were an umpire between us, that he might lay his hand upon us both.²⁷ Rab said: Dust should be placed in the mouth of Job: is there a servant who argues with his master? I made a covenant with thine eyes; how then should I look upon a maid?²⁸ Rab said: Dust should be placed in the mouth of Job; he refrained from looking at other men's wives. Abraham did not even look at his own, as it is written, Behold now I know that thou art a fair woman to look upon,²⁹ which shows that up to then he did not know.

As the cloud is consumed and vanisheth away, so he that goeth down to Sheol shall come up no more.³⁰ Raba said: This shows that Job denied the resurrection of the dead. For he breaketh me with a tempest and multiplieth my wounds without cause.³¹ Rabbah said: Job blasphemed with [mention of] a tempest, and with a tempest he was answered. He blasphemed with [mention of] a tempest, as it is written, For he breaketh me as with a tempest. Job said to God: Perhaps a tempest has passed before thee, and caused thee to confuse Iyob [Job] and Oyeb [enemy]. He was answered through a tempest, as it is written, *Then the Lord answered Job out of the whirlwind³² and said, ... Gird up now thy loins like a man, for I will demand of thee and declare thou unto me.*³³ 'I have created many hairs in man, and for every hair I have created a separate groove, so that two should not suck from the same groove, for if two were to suck from the same groove they would impair the sight of a man. I do not confuse one groove with another; and shall I then confuse Iyob with Oyeb? Who hath cleft a channel for the waterflood?³⁴ Many drops have I created in the clouds, and for every drop a separate mould, so that two drops should not issue from the same mould, since if two drops issued from the same mould they would wash away the soil, and it would not produce fruit. I do not confuse one drop with another, and shall I confuse Iyob and Oyeb?' (How do we know that the word te'alah [channel] here means a mould? Rabbah b. Shila replied: Because it is written, And he made a trench [te'alah] as great as would contain two measures of seed.)³⁵ Or a way for the lightning of the thunder.³⁶ Many thunderclaps have I created in the clouds, and for each clap a separate path, so that two claps should not travel by the same path, since if two claps travelled by the same path they would devastate the world. I do not confuse one thunderclap with another, and shall I confuse Iyob with Oyeb? Knowest thou the time when the wild goats of the rock bring forth, or canst thou mark when the hinds do

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calve?³⁷ This wild goat is heartless towards her young. When she crouches for

1. R. Johanan understands the text to imply that so soon as the oxen had plowed and the seed had been cast, the produce sprang up and the asses ate it. Similarly in the future world conception and birth will be on the same day (v. Sanh. 30b).
2. Ibid. I, 18 — II, 2.
3. Ibid. 3.
4. Ibid. 4-7.
5. Ibid. 7.
6. Heb. Yezer Hara'.
7. Gen. VI, 5.
8. Job I, 12.
9. Ibid. II, 6.
10. I Sam. I, 6. By making Hannah fret, Peninah caused her to pray.
11. [A place between Bagdad and Pumbeditha, Obermeyer, *op. cit.*, p. 242.]
12. Out of gratitude.
13. Job II, 10.
14. Which shows that he harbored sinful thoughts?
15. Ibid. IX, 24.
16. I.e., to declare all God's works worthless.
17. Ibid. X, 7.
18. Raba translates [H]: Didst thou will, I should not be wicked.
19. As much as to say, that the wall is not free.
20. Ibid. XV, 4.
21. Lit., 'spices'.
22. Ibid. XXIX, 13.
23. So Raba translates the word [H].
24. By saying that she was a relative of his, or pretending to woo her.
25. Ibid. VI, 2.
26. By desiring to weigh his pleas in the balance with those of God.
27. Ibid. IX, 33.
28. Ibid. XXXI, I.
29. Gen. XII, 11.
30. Job VII, 9.
31. Ibid. IX, 17.
32. The Hebrew word is *se'arah*, which can also be translated 'hair'.
33. Ibid. XXXVIII, 1, 3.
34. Ibid. 25.
35. I Kings XVIII, 32.
36. Job XXXVIII, 25.
37. Ibid. XXXIX, 1.

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delivery, she goes up to the top of a mountain so that the young shall fall down and be killed, and I prepare an eagle to catch it in his wings and set it before her, and if he were one

second too soon or too late it would be killed.¹ I do not confuse one moment with another, and shall I confuse Iyob with Oyeb? Or canst thou mark when the hinds do calve? This hind has a narrow womb. When she crouches for delivery, I prepare a serpent which bites her at the opening of the womb, and she is delivered of her offspring; and were it one second too soon or too late, she would die.² I do not confuse one moment with another, and shall I confuse Iyob with Oyeb? Job speaketh without knowledge, and his words are without wisdom.³ Raba said: This teaches that a man is not held responsible for what he says when in distress.⁴

Now when Job's three friends heard of all this evil which was come upon him, they came every one from his own place, Eliphaz the Temanite, and Bildad the Shuhite, and Zophar the Naamathite; and they made an appointment together to come to bemoan him and to comfort him.⁵ What is the meaning of, they made an appointment together? — Rab Judah said in the name of Rab: It teaches that they all entered [the town together] through one gate, although, as it has been taught, each one lived three hundred parasangs away from the other. How did they know [of Job's trouble]? — Some say that they had crowns,⁶ and some say that they had had certain trees, the distortion or withering of which was a sign to them. Raba said: This bears out the popular saying: Either a friend like the friends of Job or death.

And it came to pass, when men began to multiply [larob] on the face of the ground and daughters were born to them.⁷ R. Johanan says: [the word larob indicates that] increase [rebiah] came in to the world;⁸ Resh Lakish says [it indicates that] strife [meribah] came into the world. Said Resh Lakish to R. Johanan: On your view that it means that increase came into the world, why was not the number of Job's daughters doubled?⁹ He replied: Though they were not doubled in number,¹⁰ they were doubled in beauty, as it says, He also had seven sons and three

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daughters. And he called the name of the first Jemimah, and the name of the second Keziah, and the name of the third Keren-Happuch¹¹ — Jemimah, because she was like the day [yom]; Keziah, because she emitted a fragrance like cassia [keziah]; Keren-Happuch¹² because — so it was explained in the academy of R. Shila¹³ — she had a complexion like the horn of a keresh.¹⁴ This explanation was laughed at in the West,¹⁵ [where it was pointed out that a complexion like] the horn of a keresh would be a blemish.¹⁶ [But what it should be], said R. Hisda, [is], like garden crocus of the best kind.¹⁷ (The word *puch* means pigment, as it is said, *Though thou enlargest thine eyes with paint [puch].*)¹⁸

A daughter was born to R. Simeon the son of Rabbi, and he felt disappointed. His father said to him: Increase has come to the world. Bar Kappara said to him: Your father has given you an empty consolation. The world cannot do without either males or females. Yet happy is he whose children are males, and alas for him whose children are females. The world cannot do without either a spice-seller or a tanner. Yet happy is he whose occupation is that of a spice-seller, and alas for him whose occupation is that of a tanner. On this point¹⁹ there is a difference between Tannaim. [It is written,] The Lord had blessed Abraham in all things²⁰ [ba-kol]. What is meant by 'in all things'? R. Meir said: In the fact that he had no daughter; R. Judah said: In the fact that he had a daughter. Others say that Abraham had a daughter whose name was ba-kol. R. Eliezer the Modiite said that Abraham possessed a power of reading the stars²¹ for which he was much sought after by the potentates of East and West.²² R. Simeon b. Yohai said: Abraham had a precious stone hung round his neck which brought immediate healing to any sick person who looked on it, and when Abraham our father departed from this world, the Holy One, blessed be He, suspended it from the orb of the sun. Abaye said: This bears out the popular saying, As the day advances the

illness lightens. Another explanation is that Esau did not break loose so long as he was alive. Another explanation is that Ishmael repented while he was still alive. How do we know that Esau did not break loose while he was alive? Because it says, And Esau came in from the field²³ and he was faint.²⁴ It has been taught [in connection with this] that that was the day on which Abraham our father died, and Jacob our father made a broth of lentils to comfort his father Isaac. Why was it of lentils? — In the West they say in the name of Rabbah b. Mari: Just as the lentil has no mouth,²⁵ so the mourner has no mouth [for speech]. Others say: Just as the lentil is round, so mourning comes round to all the denizens of this world. What difference does it make in practice which of the two explanations we adopt? — The difference arises on the question whether we should comfort with eggs.²⁶

R. Johanan said: That wicked [Esau] committed five sins on that day. He dishonored a betrothed maiden, he committed a murder, he denied God, he denied the resurrection of the dead, and he spurned the birthright. [We know that] he dishonored a betrothed maiden, because it is written here, And Esau came in from the field,²⁷ and it is written in another place [in connection with the betrothed maiden], He found her in the field.²⁸ [We know that] he committed murder, because it is written here [that he was] faint, and it is written in another place, Woe is me now, for my soul fainteth before the murderers.²⁹ [We know that] he denied God, because it is written here, What benefit is this to me, and it is written in another place, This is my God and I will make him an habitation.³⁰ [We know that] he denied the resurrection of the dead because he said, Behold, I am on the way to die: also that he spurned the birthright because it is written, So Esau despised his birthright.

And whence do we know that Ishmael repented while Abraham was still alive? — From the discussion which took place between

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Rabina and R. Hama b. Buzi when they were once sitting before Raba while he was dozing. Said Rabina to R. Hama b. Buzi: Do your people really maintain that wherever the term 'giving up the ghost' [gewi'ah] is used in connection with the death of any person, it implies that that person died righteous? That is so, he replied. But what then of the generation of the Flood?³¹ [he asked.] We only make this inference, he replied, if both, 'giving up the ghost' and 'gathering in' are mentioned. But, he rejoined, what of Ishmael, who is said both to have 'given up the ghost' and 'been gathered in'?³² At this point Raba awoke and heard them. Children, he said, this is what R. Johanan has said: Ishmael repented in the lifetime of his father. [We know this] because it says, And Isaac and Ishmael his sons buried him.³³ But perhaps the text arranges them in the order of their wisdom? — If that were so, then why in the verse, And Esau and Jacob his sons buried him³⁴ are they not arranged in the order of their wisdom? What we have to say is that the fact of the text placing Isaac first shows that Ishmael made way³⁵ for him, and from the fact that he made way for him we infer that he repented in Abraham's lifetime.

Our Rabbis taught: There were three to whom the Holy One, blessed be He, gave a foretaste

1. [V. Lewysohn, *Zoologie des Talmuds*, p. 115.]
2. V. Lewysohn, *op. cit.*, p. 111.
3. Job XXXIV, 3 5.
4. Since it simply says 'without knowledge' but not 'with wickedness'.
5. Ibid. II, II.
6. On which a portrait of each was engraved, and if trouble came upon any one of them, the portrait changed.
7. Gen. VI, 1.
8. Because girls are married earlier than boys.
9. Like his cattle. V. Job XLII, 22.
10. Lit., 'in names
11. Job XL, 13, 24.
12. Lit., 'horn of pigment'.
13. [In Nehardea.]
14. A kind of antelope.
15. Palestine. [By this expression R. Jose b. Haninah is meant. V. San. 17b.]

16. Because it is blackish.
17. This is according to the reading of Rashi, [H. Tosaf., however, reads [H] 'pigment made from saffron', which had a specially beautifying effect on the skin. In this case the name Keren-Happuch will mean, 'the gloss of pigment'.
18. Jer. IV, 30.
19. Whether a daughter is a blessing or not.
20. Gen. XXIV, 1.
21. [A variant rendering: 'He possessed an astrological instrument'. Current texts have 'in his heart' — Tosef. Kid. V, reads 'in his hand'. V. Bacher, *Agada der Tanaiten*, I, 200.]
22. Lit., 'the potentates ... used to attend early at his gate'.
23. This implies that he had broken loose, v. *infra*.
24. Gen. XXV, 29.
25. I.e., not cleft, like other kinds of pulse.
26. Which have no cleft, but are not perfectly round.
27. Gen. XXV, 29.
28. Deut. XXII, 27.
29. Jer. IV, 31.
30. Ex. XV, 2.
31. Of which it is written, And all flesh gave up the ghost (wa-yigwa'), Gen. VII, 21.
32. Gen. XXV, 17.
33. Ibid. 9.
34. Ibid. XXXV, 29.
35. Lit., 'made him lead'.

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of the future world while they were still in this world, to wit, Abraham, Isaac, and Jacob. Abraham [we know] because it is written of him, [The Lord blessed Abraham] in all,¹ Isaac, because it is written, [And I ate] of all;² Jacob, because it is written, [For I have] all.³ Three there were over whom the evil inclination⁴ had no dominion, to wit Abraham, Isaac and Jacob, [as we know] because it is written in connection with them, in all, of all, all.⁵ Some include also David, of whom it is written, My heart is wounded within me.⁶ And the other authority? — He understands him to be referring here to his distress.

Our Rabbis taught: Six there were over whom the Angel of Death had no dominion,⁷ namely, Abraham, Isaac and Jacob, Moses, Aaron and Miriam. Abraham, Isaac and Jacob we know because it is written in

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connection with them, in all, of all, all;⁸ Moses, Aaron and Miriam because it is written in connection with them [that they died] By the mouth of the Lord.⁹ But the words 'by the month of the Lord' are not used in connection with [the death of] Miriam? — R. Eleazar said: Miriam also died by a kiss, as we learn from the use of the word 'there' [in connection both with her death] and with that of Moses.¹⁰ And why is it not said of her that [she died] by the month of the Lord? — Because such an expression would be disrespectful.¹¹

Our Rabbis taught: There were seven over whom the worms had no dominion, namely, Abraham, Isaac and Jacob, Moses, Aaron and Miriam, and Benjamin son of Jacob. Abraham, Isaac and Jacob [we know] because it is written of them, 'in all, of all, all': Moses, Aaron and Miriam because it is written in connection with them, By the mouth of the Lord. Benjamin son of Jacob, because it is written in connection with him, And to Benjamin he said, The beloved of the Lord, he shall dwell thereon¹² in safety.¹³ Some say that David also [is included], since it is written of him, My flesh also shall dwell [in the grave] in safety.¹⁴ The other, however, explains this to mean that he is praying for mercy.¹⁵

Our Rabbis taught: Four died through the counsel of the serpent,¹⁶ namely, Benjamin son of Jacob, Amram the father of Moses, Jesse the father of David, and Kilab the son of David. We know this only from tradition in regard to all of them save Jesse the father of David, in regard to whom it is stated distinctly in the Scripture, as it is written, And Absalom set Amasa over the host instead of Joab. Now Amasa was the son of a man whose name was Isra the Israelite, that went in to Abigail the daughter of Nahash, sister to Zeruah Joab's mother.¹⁷ Now was she the daughter of Nahash? Was she not the daughter of Jesse, as it is written, And their [Jesse's sons'] sisters were Zeruah and Abigail?¹⁸ What it means therefore is, The daughter of him who died through the counsel of the serpent [nahash].

MISHNAH. A MAN SHOULD NOT DIG A PIT [IN HIS OWN FIELD] CLOSE TO THE PIT OF HIS NEIGHBOUR,¹⁹ NOR A DITCH NOR A CAVE NOR A WATER-CHANNEL NOR A FULLER'S POOL,²⁰ UNLESS HE KEEPS THEM AT LEAST THREE HANDBREADTHS FROM HIS NEIGHBOUR'S WALL²¹ AND PLASTERS [THE SIDES]. A MAN SHOULD KEEP OLIVE REFUSE,²² DUNG, SALT, LIME, AND FLINT STONES AT LEAST THREE HANDBREADTHS FROM HIS NEIGHBOUR'S WALL²³ OR PLASTER IT OVER. SEEDS, PLOW FURROWS, AND URINE SHOULD BE KEPT THREE HANDBREADTHS FROM THE WALL. MILL — STONES SHOULD BE KEPT THREE HANDBREADTHS AWAY RECKONING FROM THE UPPER STONE, WHICH MEANS FOUR FROM THE LOWER STONE. AN OVEN SHOULD BE KEPT THREE HANDBREADTHS RECKONING FROM THE FOOT OF THE BASE,²⁴ WHICH MEANS FOUR FROM THE TOP OF THE BASE.

1. Ibid. XXIV, 1.
2. Ibid. XXVII, 33.
3. Ibid. XXXIII, 11.
4. [On the evil inclination, v. Porter, F.C., 'The Yezer Hara', A Study in the Jewish doctrine of Sin.]
5. Which shows that they were completely righteous.
6. Ps. CIX, 22.
7. But they died by a 'kiss'.
8. And therefore they did not lack this final honor.
9. Num. XXXIII, 38; Deut. XXXIV, 5.
10. Num. XX, I, and Deut. XXXIV, 5.
11. If used in connection with a female.
12. I.e., rest in the grave in reliance on that love.
13. Deut. XXXIII, 12. E.V. 'the beloved of the Lord shall dwell in safety by him'.
14. Ps. XVI, 9.
15. In which case we translate, 'may my flesh dwell, etc.'
16. The counsel given by the serpent to Eve, which brought death on all mankind, and not for any sin they themselves committed. [The reference is to physical death only and is thus not to be confused with the doctrine of 'original sin' involving the condemnation of the whole human race to a death that is eternal.]
17. II Sam. XVII, 25.
18. I Chron. II, 16.

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19. For fear of loosening the sides. On the terms [H] (pit), [H] (ditch), [H] (cave), v. B.K. V.
20. A shallow pool for soaking and washing soiled linen.
21. I.e., the side of the pit, v. *infra*.
22. The refuse from olives which have been pressed for oil.
23. A mud wall which might be injured by the proximity of these articles, v. *infra*.
24. Ovens were fixed not on the ground but on a sort of platform narrower at the top than the bottom. According to another interpretation we should translate, 'three from the belly of the oven, which means four from the rim,' the ovens being in shape like earthenware jars swelling in the middle; v. Tosaf.

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GEMARA. The Mishnah [in the first sentence] begins by speaking of the neighbor's PIT and finishes by speaking of his WALL. [How is this]? — Said Abaye [or according to others Rab Judah]: The word WALL must here be understood to mean the wall [i.e. side] of his pit. But still why does not the Mishnah say, 'but he should keep them at least three handbreadths from his neighbor's pit'?¹ — The use of the word WALL teaches us that the wall of the pit must itself be three handbreadths thick.² This ruling has a practical bearing on cases of sale, as it was taught: If a man says to another, 'I will sell you a pit and its walls,' the wall must be not less than three handbreadths thick.

It has been stated: If a man desires to dig a pit close up to the boundary [between his field and his neighbor's]. Abaye says he may do so and Raba says he may not do so. Now in a field where pits would naturally be dug,³ both agree that he may not dig close up. Where they differ is in the case of a field where pits would not naturally be dug; Abaye says he may dig, because it is not naturally a field for digging pits [and therefore his neighbor is not likely to want to dig one on the other side], while Raba says he may not dig; because his neighbor can say to him, 'Just as you have altered your mind and want to dig, so I may alter my mind and want to dig.' Others report

[this argument as follows]: In the case of a field where pits would not naturally be dug, both [Abaye and Raba] agree that he may dig close up to the boundary. Where they differ is in the case of a field where pits would naturally be dug. Abaye says that in such a field the owner may dig, and would be allowed to dig even by the Rabbis who lay down that a tree must not be planted within twenty-five cubits of a pit;⁴ for they only rule this because at the time of planting the pit already exists, but here when the man comes to dig the pit there is no pit on the other side. Raba on the other hand says that he may not dig, and would not be allowed to dig even by R. Jose. who laid down that [in all circumstances] the one owner can plant within his property and the other dig within his;⁴ for he only rules thus because at the time when the former plants there are as yet no roots which could damage the pit, but in this case the owner of the other field can say to the man who wants to dig the pit, 'Every stroke with the spade which you make injures my ground.'

We learnt: A MAN SHOULD NOT DIG A PIT CLOSE TO THE PIT OF HIS NEIGHBOUR. [From this it appears that] the reason [why he must not dig] is because there is another pit in existence, but if there is not, then he may dig. Now this would be in order if we accept the version [of the argument reported above] according to which Abaye and Raba agree that in a field where pits would not naturally be dug the owner may dig close up to the boundary; we may then interpret the Mishnah to speak of a field where pits would not naturally be dug.⁵ If, however, we accept the version according to which Abaye and Raba differ in regard to a field where pits would not naturally be dug, then, while the Mishnah is in order according to the ruling of Abaye,⁶ it presents a difficulty [does it not], according to that of Raba? — Raba could reply to you: It has already been reported in this connection that Abaye [or it may be Rab Judah] said that the word WALL in the Mishnah means 'the wall of his pit'.⁷

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Others report this discussion as follows. [The Mishnah says that a man should not dig a pit close to the pit of his neighbor,] and it has been reported in this connection that Abaye [or it may be Rab Judah] said that WALL here must be explained to mean the wall [side] of his neighbor's pit. Now all will be in order if we accept the version of Abaye and Raba's argument according to which in a field where pits would naturally be dug both agree that he should not dig close to the boundary; for in this case we explain the Mishnah [also] to refer to a field where pits would naturally be dug.⁸ If, however, we take the version according to which Abaye and Raba differ in regard to a field where pits would naturally be dug, while the Mishnah is in order according to the ruling of Raba, it presents a difficulty [does it not], according to that of Abaye? — Abaye might reply that the Mishnah speaks of the case where both owners want to dig at the same time.²

Come and hear: If the soil at the boundary is of crumbling rock¹⁰ and the one owner wants to dig a pit on his side and the other owner on his side, the one keeps three handbreadths away from the boundary and plasters the sides of his pit, and the other does likewise?¹¹ Crumbling rock is different. But how could the questioner have raised the question at all?¹² The questioner thought that the same law would apply to ordinary soil, but that it was necessary to specify the rule about crumbling rock, as otherwise I might think that, since it is crumbling [i.e. soft] rock, an even greater space was required for it. Now the Baraitha tells us [that it is not so].

Come and hear: A MAN SHOULD KEEP OLIVE REFUSE, DUNG,

1. We suppose the neighbor's pit to commence three handbreadths from the boundary on his side. Hence if we were to understand the word 'pit' here to mean the hollow of the pit, the other would still be able to dig right up to the boundary. We should therefore have to understand 'pit' to mean 'the side of the pit', and so there is no need to substitute the word 'wall'.

2. Because we understand the Mishnah to mean, 'he must keep the hollow of his pit three handbreadths from the side of the other's pit', i.e., three from the boundary, which are filled by the side of his own pit. This is the explanation of Rashi, and is apparently forced. Tosaf, greatly simplifies the passage by omitting the sentence, 'But still why ... neighbor's pit' (or, alternatively, by inserting it after 'speaking of his wall'). The explanation would then be as follows: Abaye says that he must keep his pit three handbreadths from the side of his neighbor's pit (which presumably comes up to the boundary), and we infer from this that the neighbor also must not dig his pit close up to the boundary; whereas if the word 'pit' had been used, we should not have been able to infer this.
3. E.g., a field requiring irrigation.
4. Lest the roots spread and injure the pit, v. *infra* 25a.
5. And there is no contradiction between the Mishnah and Abaye and Raba.
6. Who said he may dig so long as there is no pit on the other side.
7. Which implies that, even if there is no pit on the other side, the pit itself must be kept three handbreadths from the boundary to allow space for the wall (i.e. side).
8. V. p. 3 n. 2.
9. For then certainly each would have to keep three handbreadths away.
10. Lit. 'a rock that comes (to pieces) in the hands.'
11. Tosef. B.B. I. From this I infer that even if there is no pit on the other side, the first pit has to be kept three handbreadths away, which is contrary to the opinion of Abaye.
12. I.e., the answer being so obvious, what was his idea in asking such a question?

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SALT, LIME, AND FLINT STONES AT LEAST THREE HANDBREADTHS FROM HIS NEIGHBOUR'S WALL OR PLASTER THEM OVER. The reason is that there is a wall, but if there is no wall he may bring these things close up to the boundary?¹ — No; even if there is no wall, he still may not bring them close up. What then does the mention of the 'WALL' here tell us? — It tells us that these things are injurious to a Wall.

SEEDS, PLOW FURROWS AND URINE SHOULD BE KEPT THREE HANDBREADTHS FROM THE WALL. The

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reason is that there is a wall, but if there is no wall he may bring these things close up to the boundary? — No; even if there is no wall he may not bring them close up. What then does the mention of the 'WALL here tell us? — It tells us that moist things are bad for a wall.

Come and hear: **MILL-STONES SHOULD BE KEPT AT A DISTANCE OF THREE HANDBREADTHS RECKONING FROM THE UPPER STONE, WHICH MEANS FOUR FROM THE LOWER STONE.** The reason is that there is a wall, and if there is no wall he may bring them close up? — No; even if there is no wall, he may not bring them close up. What then does this tell us? — It tells us that the shaking [caused by turning the millstones] is bad for the wall.

Come and hear: **AN OVEN SHOULD BE KEPT AWAY THREE HANDBREADTHS RECKONING FROM THE FOOT OF THE BASE, WHICH MEANS FOUR FROM THE TOP OF THE BASE.** The reason is that there is a wall, but if there is no wall he may bring it close up? — No; even if there is no wall he may not bring it close up. What then does this tell us? — That the heat [from the oven] is bad for the wall.

Come and hear: A man may not open a bakery or a dyer's workshop under another person's storehouse² nor make a cowshed there.³ The reason is that there is a storehouse there, but if there is no storehouse, he may, [may he not]?⁴ — A place where persons can live⁵ is different. This is indicated by the Baraitha taught in connection with this Mishnah: 'If the cowshed was there before the granary, he is permitted to keep it.'⁶

Come and hear: A man should not plant a tree nearer than four cubits to his neighbor's field. Now it has been taught in reference to this that the four cubits here mentioned are to allow space for the work of the vineyard.² The reason then is that there should be space for the work of the vineyard. but were it not for this he would be allowed to plant close up,

[would he not,] although the tree has roots which can injure the other's field?⁸ — We are dealing here with the case where there is a piece of hard rock between.⁹ This is further indicated by the fact that the passage goes on: 'If there is a fence between,¹⁰ each one can plant close up to the fence on his own side.'¹¹ If that is so,¹² what do you make of the next clause: 'If the roots of his tree spread into his neighbor's field, he may cut them out to a depth of three handbreadths, so that they should not impede the plow'?¹¹ Now if there is hard rock between, how can the roots get there? — What the passage means is this: If there is no hard rock between and the roots spread into his neighbor's field, then he may cut them out to a depth of three handbreadths, so as not to impede the plow. Come and hear: A tree [in one man's field] must be kept twenty five cubits from a pit [in another man's field]. The reason is that there is a pit; if there is no pit, he may plant close up? — No; even if there is no pit he may not plant close up, and this statement teaches us that up to twenty-five cubits the roots are liable to spread and injure the pit. If that is so, what do you make of the next clause: 'If the tree was there already, he is not required to cut it down'? Now if he may not plant close up, how can you apply this statement?¹³ — As R. papa said in another connection, 'in the case of a purchase;¹⁴ so here, in the case of a purchase.'¹⁵

Come and hear: Water in which flax is steeped must be kept at a distance from vegetables. and leeks from onions, and mustard from a beehive.¹⁶ The reason is that there are vegetables there; otherwise he may bring them close up [to the boundary]? — No; even if there are no vegetables he may not bring them close up, and what this statement teaches us is that these things are bad for one another. If that is so, what of the next clause: R. Jose declares it permissible in the case of mustard; [and it has been taught in reference to this, that the reason is]¹⁷ because the sower can say to his neighbor. 'Just as you can tell me to remove my mustard from your bees, I

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can tell you to remove your bees from my mustard, because they come and eat the stalks of my mustard plants'?¹⁸

1. Tosaf, asks here, how can we argue from these things to a pit, seeing that they do not injure the soil, and Raba might well allow them to be brought close up while disallowing the pit? The answer given is (a) that they also make the soil on the other side less suitable for a pit; (b) that it may be inconvenient for the man who wants to dig the pit to wait till they have been removed. The same would apply to the next three difficulties raised by the Gemara, which are all addressed to Raba.
2. An upper storey for storing corn, wine and oil. The reason is that the heat from the bakery or the smoke from the workshop is bad for them.
3. Because the smell is bad for the things above, v. *infra* 25b.
4. Tosef. B.B. I. Notwithstanding that the owner of the upper storey might subsequently decide to turn it into a storehouse. Similarly in the case of the pit, we should think that it may be dug close up to the boundary so long as there is not a pit on the other side.
5. Because all these places can be used for human habitation; hence we do not forbid them on account of a problematical damage which may arise from them.
6. Whereas in the case of the lime, etc., it does not say that it is permitted to keep them there. This is taken by Raba as an indication that a cowshed, as well as similar places that can be used for human habitation (v. Tosaf.), is on a different footing from the lime, etc.
7. To plow round it or to stand the wagon at harvest time. This applies not only to a vine but to any tree, only the passage quoted happens to speak of vines.
8. Similarly the pit should be allowed to be dug close up to the boundary, although it may injure the land on the other side. The argument is again against Raba.
9. Which would prevent the roots from spreading. Hence there is no analogy between this case and that of the pit.
10. Which makes it impossible for the one working in his vineyard to trespass on the field of the other. According to another reading (which seems preferable), we should translate: 'Come and hear: If there is a fence ... on his side.' — Here too we assume that there is hard rock between.
11. *Infra* 26a.
12. I.e., that there is hard rock between.
13. If, on the other hand, it was planted there illegally, why should it not be cut down?

14. V. *infra*.

15. I.e., if a man planted a tree in his field and then sold half of the field, not containing the tree, and the purchaser dug a pit within 25 cubits of the tree, the original owner is not required to cut it down.

16. *Infra* 25a. Rashi explains that the bees taste the mustard and then eat their honey to take away the sharpness.

17. The bracketed part is omitted in our printed texts.

18. And you are as liable to damage me as I am you.

Baba Bathra 18b

Now if a man is not allowed to bring these things close up to the boundary, in what conditions could such a remark be made?¹ R. Papa answered: In the case of a purchaser.² But if we are speaking of a purchaser, what reason have the Rabbis for prohibiting?³ Also, why does R. Jose permit only in the case of the mustard? Why not the water and the leeks also? — Rabina replied: The Rabbis hold that it is incumbent on the one who inflicts the damage to remove himself.⁴ We may infer from this that in the opinion of R. Jose it is incumbent on the one who suffers the damage to remove himself, and if that is so, then he should permit flax — water to be placed close to vegetables?⁵ — The truth is that R. Jose also holds that it is incumbent on the one who inflicts the damage to remove himself, and he argued with the Rabbis as follows: I grant you are right in the case of the flax water and the vegetables, because the former harms the latter but not vice versa, but the case is different with bees and mustard, because both are harmful to one another. What have the Rabbis to say to this? — That bees do no harm to mustard; the grains they cannot find, and, if they eat the leaves, they grow again.

But does R. Jose in fact hold that it is incumbent on the one who inflicts the damage to remove himself? Have we not learnt: 'R. Jose says: Even if the pit was there before the tree, the tree need not be cut down, because the one owner digs in his property and the

BABA BASRA - 2a-35b

other plants in his'?⁶ — The truth is that R. Jose holds it to be incumbent on the one who suffers the damage to remove himself, and here he was arguing with the Rabbis on their own premises. thus: 'In my view the one who suffers the damage has to remove himself, and therefore in this case it is not necessary to remove even the flax-water from the vegetables. But on your view that the one who inflicts the damage must remove himself, I grant you are right in the case of the flax-water and the vegetables, because the former injures the latter but not vice-versa. But this does not apply to bees and mustard, where both injure one another.' To which the Rabbis can reply that bees do not injure mustard; the grains

1. I.e., the man who says this virtually admits that the other had a perfect right to bring his bees close up to the boundary before he sowed his mustard.
2. I.e., after he placed flax — water or sowed mustard in his field, he sold the other half, and the purchaser sowed vegetables or put a beehive close to the boundary. But otherwise, according to Raba, the mustard and the bees would have to be removed from the boundary.
3. Why should the seller have to remove his bees or mustard, seeing that when he placed them there he was perfectly within his rights?
4. I.e. the article causing the damage. Hence, since the seller's property is causing the damage he must remove it, although he had a right to place it there at first. Rabbenu Tam here adopts the reading of R. Han. [H] "'The truth is." said Rabina...' Rabina's answer would then not be in support of Raba, but would involve the abandonment of all the defenses made on behalf of Raba above, and an admission that, according to the Rabbis, such articles as lime, tree roots, etc. *can* be brought close up to the boundary so long as there is at the time nothing to injure on the other side, the only exception being the pit, because the digging of it injures the soil on the other side.
5. And the owner of the former can say to the owner of the latter, 'It is for you to remove them if they are being injured.'
6. *Infra* 25b.

Baba Bathra 19a

they cannot find, and the leaves grow again.

NOR A FULLER'S POOL. R. Nahman said in the name of Rabba b. Abbuha: The three handbreadths mentioned here apply only to the soaking pool,¹ but the washing pool must be kept four cubits from the wall.² We find this also taught [in a Baraitha]: The fuller's pool must be kept four cubits away. But did we not learn, THREE HANDBREADTHS? — This shows [that the Mishnah must be understood] as R. Nahman has explained. Some put this statement in the form of a contradiction [which is afterwards reconciled,] thus: We learnt A FULLER'S POOL MUST BE KEPT THREE HANDBREADTHS AWAY. But does not a Baraitha say four cubits? — Said R. Nahman in the name of Rabbah b. Abbuha: There is no contradiction. The Mishnah speaks of the soaking pool and the Baraitha of the washing pool. R. Hiyya the son of R. Awia added a gloss to this effect to the Mishnah itself: 'Unless he removes the edge of the soaking pool three handbreadths from the wall.'

AND PLASTER THE SIDES. The question was raised: Is the proper reading of the Mishnah 'and plaster' or 'or plaster'? — Obviously 'and plaster' is the proper reading, for if the Mishnah meant to say 'or', then the first two clauses could have been run into one.³ But possibly ['or' is after all the right reading, and the reason why the two clauses are not combined is because] they are not in the same category. the damage in one case arising from moisture⁴ and in the other from steam?⁵ — Come and hear: R. Judah says. If there is crumbling rock between the two properties, each owner can dig a pit on his own side and each must keep away from the boundary three handbreadths and plaster his pit.⁶ The reason is [is it not,] that the soil between is crumbling, but otherwise there is no need to plaster?⁷ — No. This is the rule even if the soil is not crumbling; he still has to plaster.⁸ The case of crumbling soil, however, is specified, because otherwise I might have thought that with crumbling soil a greater distance still was required. Now he teaches us [that this is not so].

BABA BASRA - 2a-35b

OLIVE REFUSE, DUNG, SALT, LIME AND FLINT STONES SHOULD BE KEPT, etc. We have learnt in another place:² In what materials may food be kept warm [for the Sabbath] and in what may it not be kept warm? It may not be kept warm in olive refuse or in dung or in salt or in lime or in sand,¹⁰ whether moist or dry. Why is it that here flint stones are included in the list and not sand, and there sand is included and not flint stones? — R. Joseph answered: Because it is not usual to keep food warm in flint stones. Said Abaye to him: And is it usual to keep food warm in woolen fleeces and strips of purple wool? And yet [these are mentioned in] a Baraitha which says: 'Food may be kept warm in woolen fleeces and strips of purple wool and fluff, but these things must not be carried on Sabbath.' No, said Abaye. The truth is that, his neighbor telleth concerning him.¹¹ The Mishnah here mentions flint stones, and the same rule applies to sand, and there it mentions sand and the same rule applies to flint stones. Said Raba to him: If his neighbor telleth concerning him, should not the Mishnah mention the whole list in one place and only one item in the other, allowing us to understand that the same rule applies to the rest? No, said Raba. The reason why flint stones are not mentioned in connection with Sabbath is because they are liable to crack the pot,¹² and the reason why sand is not mentioned here is because while it makes hot things hotter, it makes cold things colder.¹³ But R. Oshiah included sand in his Baraitha¹⁴ [in the list of things that have to be kept away from the boundary]? — He was speaking of things which produce moisture. Then why should our Tanna also not include it on the ground of its producing moisture? — He has mentioned specifically A DITCH.¹⁵ Yet in spite of mentioning a ditch he also mentions A FULLER'S POOL?¹⁶ — Both of these required to be specified. For if he had mentioned only a ditch. I should have said that this was because it was a fixture, but I should not have included a fuller's pool which is not a fixture.¹⁷ And if he had mentioned a fuller's pool. I should have said that this was

because its waters are stagnant. but I should not have included a ditch [which has running water]. Hence both were necessary.

SEEDS AND PLOW FURROWS ARE KEPT AWAY, etc. Cannot seeds be inferred from plow furrows? — Seeds can be dropped without plowing. Cannot plow furrows be inferred from seeds?¹⁸ Plowing can be done for trees.¹⁹ Cannot both be inferred from water?²⁰ — The Tanna is speaking of Eretz Yisrael, of which it is written, it drinketh water of the rain of heaven.²¹ Our Mishnah would imply that seeds

1. A pool in which the dirty linen was soaked two or three days before washing.
2. Because of the splashing.
3. Viz., the clause about the pit., etc., and the clause about the olive refuse, etc., where we have 'or cement', the damage there being too slight to require both plastering and removal to a distance, v. Tosaf. 17a. [H]
4. From the water in the pit., etc.
5. From the olive refuse, etc.
6. *Supra* 17b.
7. And we therefore read in the Mishnah, '*or plaster*'.
8. And we therefore read, '*and plaster*'.
9. Shab. 47b.
10. All things which give off a steam.
11. Job XXXVI 33; [H] E. V. '*noise*' is rendered here 'friend', companion'; i.e. one passage elucidates the other.
12. Or 'make rusty'. They are therefore not used at all, whereas purple wool is used sometimes.
13. And therefore does not injure a wall.
14. The Tosefta of R. Oshiah.
15. And this can include all things that give off moisture.
16. And therefore he should specify (moist) sand as well.
17. Since the fuller may abandon it after a time.
18. Because plowing is only for the sake of sowing.
19. Plowing the ground under trees was supposed to improve them.
20. Trees and seeds require watering; hence their prohibition could have been inferred from that of moisture.
21. Deut. XI, 21. And therefore seeds are sown and trees planted in fields where there is no irrigation; hence their prohibition had to be mentioned separately.

BABA BASRA - 2a-35b

spread their roots; how is it then that we have learnt. 'If a man bends over the bough of a vine and plants it in the earth, if there are not three handbreadths of earth over it he must not sow seed on it'¹ and to this a gloss was added in a Baraitha 'but he may sow all round it'?² R. Hagga answered in the name of R. Jose: The reason here [in the case of the wall] is because the seeds break up the soil and bring up loose earth [and not because they spread].

AND URINE MUST BE REMOVED THREE HANDBREADTHS, etc. Rabbah b. Bar Hana said: It is permissible for a man to make water on the side of another man's wall, as it is written, And I will cut off from Ahab one that pisheth against the wall and him that is shut up and him that is left at large in Israel.³ But did we not learn, URINE MUST BE KEPT THREE HANDBREADTHS FROM THE WALL? — This refers to slop water. Come and hear: A man should not make water on the side of another man's wall, but should keep three handbreadths away. This is the rule for a wall of brick, but if the wall is of stone, he need keep away only so far as not to do any damage. How much is this? A handbreadth. If the wall is of hard stone, it is permitted.⁴ Does not this confute the dictum of Rabbah b. Bar Hana? — It does. But Rabba b. Bar Hana based himself on the Scripture? — The meaning of the verse is this: 'Even a creature whose way is to pish against a wall I will not leave him. And what is this? A dog.'

⁵R. Tobi b. Kisna said in the name of Samuel: A thin wafer does not narrow a window space.⁶ Why a thin one? The same can be said even of a thick one? — The Rabbi gave an extreme instance. It goes without saying in the case of a thick cake that since it is fit for food the owner does not mentally ignore its existence, [and therefore it does not narrow the window space]; but with a thin one, since it soon becomes uneatable,⁷ I might think that he does ignore its existence. Therefore R. Tobi tells us [that even a thin cake does not narrow

the window space]. Cannot this be derived from the fact that a wafer is a thing which is capable of becoming [ritually] unclean, and the rule is that anything which is capable of becoming ritually unclean cannot form a partition to prevent the passage of uncleanness?⁸ — We assume the wafer in this case to have been kneaded with fruit juice.⁹

An objection [to the rule as stated above] was raised: If a basket full of straw or a jar full of dry figs is placed in a window space, then we decide as follows. If when the basket and the jar are taken away the straw and the figs can stand by themselves, then they form a partition, but if not, they do not.¹⁰ Now straw is fit for the food of animals?¹¹ — We speak here of straw which has become moldy. But it is fit for making clay? — We speak of straw which has thorns in it. But it is fit for fuel? — We speak of damp straw. Even so it can be used on a big fire? — A big fire is something uncommon. But figs are fit to eat?¹² — Samuel replied: We speak of figs which have bred worms. (So Rabbah b. Abbuha also explained: We speak of figs which have bred worms.) How are we to picture this jar? If its mouth faces outwards,¹³

1. Kil. VII, 1.
2. Which shows that the roots do not spread, otherwise they would form *kilayim* (v. Deut. XXII, 9).
3. I Kings XXI, 21.
4. Tosef. B.B. 1.
5. This section seems to be an interpolation, having no connection with the subject in hand.
6. If a dead body is in a room between which and an adjoining room there is an opening of a handbreadth square or more, the uncleanness spreads to the adjoining room unless the opening is reduced to the dimension of less than a handbreadth square by means of something which is not useful for any other purpose.
7. Because it soon becomes moldy through contact with the wall.
8. Hence there would appear to be no point in stating the rule.
9. And such a wafer is not subject to uncleanness like one kneaded with water, wine, or oil.
10. Oh. VI. 2.
11. And yet it is allowed to form a partition.
12. And yet they are allowed to form a partition.

BABA BASRA - 2a-35b

13. I.e., towards the second room, with no dead body in it.

Baba Bathra 20a

it forms itself a partition, because an earthenware vessel does not communicate uncleanness from its outside?¹ — We suppose therefore that its mouth is turned inwards.²

Or if you like I can say that its mouth is turned outwards, and here we are speaking of a jar of metal.³ A [further] objection was raised [against the rule from the following]: Grass which has been plucked up and placed in the window or which has grown there of itself, rags less than three-by-three handbreadths,⁴ a limb or flesh hanging from an animal, a bird nesting in the window, a non-Jew sitting in the window or a child born at the eighth month which has been placed there, salt, an earthenware vessel, or a scroll of the Law—all these narrow the window space.⁵ On the other hand, snow, hail, ice, hoar frost and water do not narrow the window space.⁶ Now 'grass' is food for cattle?⁷ — We speak here of poisonous grass.⁸ 'Or which has grown there' of itself — will it not be removed as injurious to the wall?⁹ — Rabbah said: We speak here of the wall of a ruin. R. papa said: The rule applies even to the wall of an inhabited place, where the grass springs up from more than three handbreadths distance from the window.¹⁰ 'Rags' are useful for mending clothes? — We speak of thick rags. These are useful for a blood-letter?¹¹ — We speak of sacking. If the Baraita speaks of sacking, it should say 'less than four by four,'¹² not 'three by three'? — It means, rough like sacking. 'A limb or flesh hanging from an animal.' Will not the animal go away? — We suppose it to be tied. But it can be killed [for food]? — We suppose it to be an unclean animal. In that case it can be sold to a non-Jew? — We suppose it to be too scraggy. In that case he can cut off the limb and throw it to the dogs? — As this would cause pain to a living creature, he would not do so. 'A bird-nesting in the window' — will it

not fly away? — We suppose it to be tied. Then he will kill it [for food]? — We suppose it to be unclean. Then he will sell it to a non-Jew? — We suppose it to be a kallahitha.¹³ Then he will give it to a child? — It will scratch. A kallahitha does not scratch? — We mean, as scraggy as a kallahitha. 'A non-Jew¹⁴ sitting in the window' — will he not get up and go? — We suppose him to be tied there. Then some one will come and untie him? — We suppose him to be leprous. Another leper will come and loosen him? — We suppose he is a prisoner of the Government. Or 'a child born in the eighth month¹⁵ placed in the window.' Will not its mother come and lift it up? — We assume it is on the Sabbath, [when she may not lift him], as it was taught: A child born at eight months is on a par with a stone and may not be carried on Sabbath, but his mother may bend over him and give him suck for the sake of her health.¹⁶ 'Salt' is useful? — We speak of bitter salt. This is useful for preparing skins [for tanning]? — We suppose there are thorns in it. But since it is injurious to the wall it will be taken away? — We suppose it to be resting on a piece of earthenware. But this itself will form a partition? —

1. I.e., it does not communicate uncleanness from the room where the dead body is to the adjoining room, and therefore it should form a partition.
2. Towards the room where the dead body is, and through its mouth it communicates uncleanness to the adjoining room.
3. Which is liable to communicate uncleanness from its outside as well as inside.
4. I.e., too small to be themselves capable of receiving uncleanness.
5. And so can serve to prevent the uncleanness from penetrating into the next room.
6. Tosef. Oh. XIV.
7. Why then should it be reckoned as narrowing the window space?
8. Heb. Afrazta. St. John's wort.
9. And since it is liable to be removed at any moment, we should count it as non-existent.
10. In which case it is not injurious to the wall and is not likely to be removed.
11. For staunching the blood or wiping away stains.
12. Because for the purposes of being subject to uncleanness, the minimum size of sacking is four

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handbreadths by four, not three by three as in the case of cloth.

13. An unknown bird, which obviously must have been very scraggy.
14. A non-Jew is not subject to uncleanness.
15. A child born at eight months is not considered viable and thus is not subject to uncleanness.
16. Lit. 'danger', arising from an undue pressure of milk in her breasts.

Baba Bathra 20b

We speak of a piece which has no size to speak of, [and may even be carried on Sabbath]. as we have learnt: A piece of earthenware [which must not be carried on Sabbath] must be big enough to put between one window post and another.¹ 'An earthenware vessel' is it not useful? — We suppose it to be dirty. It is still useful for a blood-letter [to collect the blood]? — We suppose it has a hole in it. 'A scroll of the Law' can serve for reading the Law? — We suppose the scroll to be worn out.² Then it ought to be stored away?³ — That is the place where it is stored away.

Rab said: A partition may be made with anything save salt⁴ and grease.⁵ Samuel said: Even with salt. R. papa said: There is no conflict between them [Rab and Samuel] — One speaks of salt of Sodom and the other of salt of Istria.⁶ Seeing, however, that Rabbah has said that a man may set up two piles of salt and place a beam over them [to make an alley-way],⁷ because the salt keeps the beam in place and the beam keeps the salt in place, even the salt of Istria may be used for this purpose, and still there is no conflict between Rab and Samuel, because one speaks of the case where there is a beam and the other of the case where there is not.

MILL-STONES SHOULD BE KEPT AT A DISTANCE OF THREE HANDBREADTHS RECKONING FROM THE UPPER STONE WHICH MEANS FOUR FROM THE LOWER STONE. What is the reason for this? Because of the shaking. But was it not taught: Millstones fixed on a base⁸ must be kept three handbreadths from the casing which means

four from the sieve. Now what shaking is there there?² — We must say then that the reason is because of the noise.

AN OVEN MUST BE KEPT THREE HANDBREADTHS RECKONING FROM THE FOOT OF THE BASE, etc. Abaye said: We learn from this that the base of an oven projects [normally] one handbreadth. This has a practical bearing on questions of sale.¹⁰

MISHNAH. AN OVEN SHOULD NOT BE FIXED IN A ROOM UNLESS THERE IS ABOVE IT AN EMPTY SPACE OF AT LEAST FOUR CUBITS.¹¹ IF IT IS FIXED IN AN UPPER CHAMBER, THERE MUST BE UNDER IT PAVED FLOORING¹² AT LEAST THREE HANDBREADTHS THICK.¹³ FOR A SMALL STOVE¹⁴ ONE HANDBREADTH IS ENOUGH. IF IN SPITE OF THESE PRECAUTIONS DAMAGE IS CAUSED, THE OWNER OF THE OVEN MUST PAY FOR THE DAMAGE. R. SIMEON, HOWEVER, SAID THAT ALL THESE LIMITATIONS WERE ONLY LAID DOWN WITH THE IDEA THAT IF AFTER OBSERVING THEM HE STILL CAUSES DAMAGE, HE IS NOT LIABLE TO PAY. A MAN SHOULD NOT OPEN A BAKERY OR A DYER'S WORKSHOP UNDER HIS NEIGHBOUR'S STOREHOUSE,¹⁵ NOR A COWSHED. IN POINT OF FACT¹⁶ THE RABBIS PERMITTED [A BAKERY OR DYER'S WORKSHOP TO BE OPENED] UNDER WINE,¹⁷ BUT NOT A COWSHED.

GEMARA. [THERE MUST BE UNDER IT PAVED FLOORING AT LEAST THREE HANDBREADTHS, etc.] But has it not been taught that there must be four handbreadths under an [ordinary] oven and three under a small oven? — Said Abaye: This refers to the ovens of bakers, for our large oven is like their small one.

A MAN SHOULD NOT OPEN A BAKERY, etc. A Tanna taught: If the cowshed is there before the storehouse,¹⁸ it may be opened.

BABA BASRA - 2a-35b

Abaye raised the following questions: If [the owner of the upper room] has cleared out and swept¹⁹ [the room] in preparation for a storehouse [but has not yet placed any produce there], what is the ruling?²⁰ If he has opened out a number of windows²¹ there, what is the ruling? [If there is an *exedra*²² under the storehouse, what is the ruling?]²³ If he builds a room on the roof,²⁴ what is the ruling? — These questions must stand over. R. Huna the son of R. Joshua asked: If he stores there figs and pomegranates,²⁵ what is the ruling? — This question also must stand over. **IN POINT OF FACT THE RABBIS PERMITTED IN THE CASE OF WINE, etc.** A Tanna taught: They declared it permissible in the case of wine because [the smoke]²⁶ improves it, while they forbade a cowshed because [the smell] spoils it. R. Joseph said: Our wine is adversely affected even by the smoke of a lamp. R. Shesheth said: Cropped corn²⁷ is on the same footing as a cowshed.²⁸

MISHNAH. IF A MAN DESIRES TO OPEN A SHOP IN A COURTYARD, HIS NEIGHBOUR MAY PRESENT HIM ON THE GROUND THAT HE WILL NOT BE ABLE TO SLEEP THROUGH THE NOISE OF PEOPLE COMING AND GOING. A MAN, HOWEVER, MAY MAKE ARTICLES IN THE COURTYARD TO TAKE OUT AND SELL IN THE MARKET, AND HIS NEIGHBOUR CANNOT PREVENT HIM ON THE GROUND THAT HE CANNOT SLEEP FROM THE NOISE OF THE HAMMER OR OF THE MILL-STONES²⁹ OR OF THE CHILDREN.³⁰

GEMARA. Why is the rule in the second case not the same as in the first?³¹ — Abaye replied: The second clause must refer to [a man in] another courtyard. Said Raba to him: If that is so, the Mishnah should say. 'In another courtyard it is permissible'? — No, said Raba:

1. Shab. 82a. It was usual to place potsherds between the posts of a window-space at the top and the bottom and to plaster them with mud so as to support the wall.

2. And therefore it cannot be used for the synagogue reading.
3. Because it was forbidden to destroy scrolls of the Law.
4. Because it crumbles.
5. Because it melts.
6. A town in Pontus. The salt of Sodom was thick and hard. [v. Krauss *op. cit.* I. 499ff.]
7. In which things may be carried on Sabbath.
8. Lit., 'ass'.
9. According to Rashi, such millstones are small and light, and would not cause any shaking.
10. I.e., if an oven is sold without specification, it is understood that the base is to project a handbreadth.
11. So that the flames should not catch the ceiling.
12. Usually made of stone chippings, clay, etc.
13. So that it should not burn the woodwork underneath.
14. Heb. *Kirah*, [H], a portable stove with accommodation for two pots.
15. V. *supra* 182.
16. [H] On this term, v. B.M. 60a.
17. Because smoke does not injure wine, v. *infra*.
18. I.e., before the room above is actually used as a storehouse. v. p. 92 nn. 1, 2.
19. Lit., 'sprinkled' (the floor).
20. I.e., do these preparations in themselves constitute the room a storehouse?
21. Presumably for letting in air to keep the corn fresh.
22. V. *supra* p. 55.
23. This apparently means that a bakery is opened in the *exedra* under the storeroom, as it is difficult to imagine an *exedra* being actually built under an upper storey. The whole clause is suspect, and is omitted in some editions. V. BaH and R. Gershom; H.M. 255.
24. Lit., 'an upper-storey on top of his house'. Such places were normally used for storerooms. [Maimonides (*Yad. Shekenim*, IX, 13) renders: 'If the owner of the bakery made an extra floor within his shop' so that the upper part could be used as a storeroom.]
25. Does this count as a storeroom, or do we call a storeroom only one where corn, wine and oil are kept?
26. So Rashi; but according to Tosaf. (18a, s. v. [H] the heat is referred to, not the smoke.
27. Corn cut before it has grown to any height and used for fodder.
28. Because it emits an evil smell which injures the wine stored above.
29. This is one among many instances of the preference shown by the Rabbis to industry over trade.
30. This would naturally refer to the noise made by children coming to buy from the shop, and so would seem to contradict the first clause. Hence

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the question of the Gemara which immediately follows.

31. V. preceding note.

Baba Bathra 21a

the concluding words refer to school children, from the time of the regulation of Joshua b. Gamala,¹ of whom Rab Judah has told us in the name of Rab: Verily the name of that man is to be blessed, to wit Joshua ben Gamala, for but for him the Torah would have been forgotten from Israel. For at first if a child had a father, his father taught him, and if he had no father he did not learn at all. By what [verse of the Scripture] did they guide themselves? — By the verse, And ye shall teach them to your children.² laying the emphasis on the word 'ye'.³ They then made an ordinance that teachers of children should be appointed in Jerusalem. By what verse did they guide themselves? — By the verse, For from Zion shall the Torah go forth.⁴ Even so, however, if a child had a father, the father would take him up to Jerusalem and have him taught there, and if not, he would not go up to learn there. They therefore ordained that teachers should be appointed in each prefecture,⁵ and that boys should enter school at the age of sixteen or seventeen. [They did so] and if the teacher punished them they used to rebel and leave the school. At length Joshua b. Gamala came and ordained that teachers of young children should be appointed in each district and each town. and that children should enter school at the age of six or seven.

Rab said to R. Samuel b. Shilath:⁶ Before the age of six do not accept pupils; from that age you can accept them. and stuff them with Torah like an ox. Rab also said to R. Samuel b. Shilath: When you punish a pupil, only hit him with a shoe latchet.⁷ The attentive one will read [of himself]. and if one is inattentive. put him next to a diligent one.⁸

An objection was raised [from the following against the answer of Raba]: 'If a resident in a courtyard desires to become a Mohel, a blood-

letter, a tanner, or a teacher of children, the other residents can prevent him?'⁹ — The reference here is to a teacher of non-Jewish children.¹⁰

Come and hear: If two persons live in a courtyard and one of them desires to become a Mohel, a blood-letter, a tanner, or a teacher of children, the other can prevent him! — Here too the reference is to a teacher of non-Jewish children.

Come and hear: If a man has a room in a courtyard which he shares with another, he must not let it either to a Mohel, or blood-letter, or a tanner, or a Jewish teacher¹¹ or a non-Jewish teacher! — The reference here is to the head teacher of the town [who superintends the others].¹²

Raba said: Under the ordinance of Joshua ben Gamala. children are not to be sent [every day to school] from one town to another,¹³ but they can be compelled to go from one synagogue to another [in the same town]. If, however, there is a river in between, we cannot compel them. But if, again. there is a bridge, we can compel them — not, however, if it is merely a plank.

Raba further said: The number of pupils to be assigned to each teacher is twenty-five. If there are fifty, we appoint two teachers. If there are forty, we appoint an assistant, at the expense of the town.

Raba also said: If we have a teacher who gets on¹⁴ with the children and there is another who can get on better, we do not replace the first by the second, for fear that the second when appointed will become indolent.¹⁵ R. Dimi from Nehardea, however, held that he would exert himself still more if appointed: 'the jealousy of scribes increaseth wisdom.'¹⁶

Raba further said: If there are two teachers of whom one gets on fast but with mistakes and the other slowly but without mistakes, we appoint the one who gets on fast and makes

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mistakes, since the mistakes correct themselves in time. R. Dimi from Nehardea on the other hand said that we appoint the one who goes slowly but makes no mistakes, for once a mistake is implanted it cannot be eradicated. This can be shown from the Scripture. It is written, For Joab and all Israel remained there until he had cut off every male in Edom.¹⁷ When Joab came before David, the latter said to him:

1. A High Priest in the decade before the destruction of the Temple.
2. Deut. XI, 19.
3. V. Tosaf.
4. Isa. II, 3.
5. The district under an 'Eparchas', which might be either a town or a province.
6. V. *supra* p. 38.
7. I.e., do not hurt him too much.
8. So that he will listen and gradually become studious.
9. Because all these have a great many visitors who cause a good deal of noise.
10. Instruction by whom does not come within the enactment of Joshua b. Gamala.
11. Heb. *sofer* [H] generally meaning 'scribe', is here taken to denote 'teacher' (Rashi). Tosaf., however, translates 'town-scribe', to whom people come to have their documents written. R. Gershom renders 'hair-dresser', as though the original were [H]
12. And who therefore has an exceptionally large number of visitors.
13. For fear they may come to harm on the way, but any parent can compel the community of his town to appoint a teacher.
14. Lit., 'reads', viz., the prayers or the Scripture.
15. Having no competitor to fear.
16. I.e., the jealousy of the one who has been replaced will be a stimulus to the other not to disgrace himself.
17. 1 Kings XI, 16.

Baba Bathra 21b

Why have you acted thus [i.e. killed only the males]? He replied: Because it is written, Thou shalt blot out the males [zekar] of Amalek.¹ Said David: But we read, the remembrance [zeker]² of Amalek? He replied: I was taught to read zekar.³ He [Joab] then went to his teacher and asked: How didst thou teach me to read? He replied:

Zeker. Thereupon he drew his sword and threatened to kill him. Why do you do this? asked the other. He replied: Because it is written, Cursed be he that doeth the work of the Lord negligently.⁴ He said to him: Be satisfied that I am cursed.⁵ To which Joab rejoined: [It also says]. Cursed be he that keepeth back his sword from blood.⁶ According to one report he killed him; according to another, he did not kill him.

Raba further said: A teacher of young children, a vine-dresser, a [ritual] slaughterer, a blood-letter, and a town scribe are all liable to be dismissed immediately⁷ [if inefficient]. The general principle is that anyone whose mistakes cannot be rectified⁸ is liable to be dismissed immediately [if he makes one].

R. Huna said: If a resident of an alley sets up a hand-mill and another resident of the alley wants to set up one next to him, the first has the right to stop him, because he can say to him, 'You are interfering with my livelihood.' May we say that this view is supported by the following: 'Fishing nets must be kept away from [the hiding-place of] a fish [which has been spotted by another fisherman] the full length of the fish's swim.' And how much is this? Rabbah son of R. Huna says: A *parasang*? — Fishes are different, because they look about [for food].⁹

Said Rabina to Raba: May we say that R. Huna adopts the same principle¹⁰ as R. Judah? For we have learnt: R. Judah says that a shopkeeper should not give presents of parched corn and nuts to children, because he thus entices them, to come back to him. The Sages, however, allow this! — You may even say that he is in agreement with the Rabbis¹¹ also. For the ground on which the Rabbis allowed the shopkeeper to do this was because he can say to his rival, Just as I make presents of nuts so you can make presents of almonds;¹² but in this case they would agree that the first man can say to the other. 'You are interfering with my livelihood.'¹³

BABA BASRA - 2a-35b

An objection was raised [against Rab Huna's ruling from the following:] 'A man may open a shop next to another man's shop or a bath next to another man's bath, and the latter cannot object. because he can say to him, I do what I like in my property and you do what you like in yours?' — On this point there is a difference of opinion among Tannaim, as appears from the following Baraitha: 'The residents of an alley can prevent one another from bringing in¹⁴ a tailor or a tanner or a teacher or any other craftsman,¹⁵ but one cannot prevent another¹⁶ [from setting up in opposition].' Rabban Simeon b. Gamaliel, however, says that one may prevent another.¹⁷

R. Huna the son of R. Joshua said: It is quite clear to me that the resident of one town can prevent the resident of another town [from setting up in opposition in his town] not, however, if he pays taxes to that town — and that the resident of an alley cannot prevent another resident of the same alley [from setting up in opposition in his alley].¹⁸ R. Huna the son of R. Joshua then raised the question: Can the resident of one alley prevent the resident of another [from competing with him]?¹⁹ — This must stand over.

R. Joseph said: R. Huna agrees that a teacher cannot prevent [another teacher from setting up in the same alley], for the reason mentioned,

1. Deut. XXV, 19.
2. [H]
3. [H]
4. Jer. XLVIII. 20, The 'negligence' consisted in the fact that his teacher had allowed him when a boy to read zekar without correcting him (v. Tosaf.).
5. Lit., 'Leave this man that he may abide in the curse.'
6. Ibid.
7. Lit., 'Are constantly under warning.'
8. E.g., a slaughterer who made the animal *trefa*, or a blood-letter who caused the death of his patient, or a scribe who made a mistake in a scroll of the Law.
9. Hence the fisherman who knows where the hole is places bait within the fish's swim, and if another does this he is poaching on the preserves

of the first. But this cannot be said of one who sets up an opposition mill,

10. Viz., that one man must not interfere with another's livelihood.
11. I.e., the Sages just quoted.
12. And therefore I am not interfering with your chances,
13. And therefore must not set up next to me.
14. I.e., from letting an apartment to.
15. If there is already one in the court.
16. Lit., 'his neighbor'.
17. R. Huna is thus in agreement with R. Simeon b. Gamaliel.
18. According to the view of the Rabbis just given.
19. Would the Rabbis put him on the same footing as a resident of the same alley or not?

Baba Bathra 22a

that 'the jealousy of scribes increaseth wisdom'.

R. Nahman b. Isaac said: R. Huna the son of R. Joshua also agrees that itinerant spice-sellers cannot prevent one another from going to any given town, because, as a Master has stated, Ezra made a rule for Israel that spice-sellers should go about from town to town so that the daughters of Israel should be able to obtain finery. This, however, only means that they are at liberty to go from house to house [in the strange town], but not to settle there. If, however, the seller is a student, he may settle also, a precedent having been set by Raba in allowing R. Josiah and R. Obadiah to settle, in despite of the rule. The reason he gave was that, as they were Rabbis, they would be disturbed in their studies [if they had to return to their own town].

Certain basket-sellers brought baskets to Babylon [to sell]. The townspeople came and stopped them, so they appealed to Rabina. He said, 'They have come from outside and they can sell to the people from outside.'¹ This restriction, however, applied only to the market day, but not to other days; and even on the market day only for selling in the market, but not for going round to the houses.

BABA BASRA - 2a-35b

Certain wool-sellers brought wool to Pum Nahara. The townspeople tried to stop them from selling it. They appealed to Rab Kahana, who said, 'They have a perfect right to stop you.' They said, 'We have money owing to us here.' 'If so.' he replied. 'you can go and sell enough to keep you till you collect your debts, and then you must go.'

R. Dimi from Nehardea brought a load of figs in a boat. The Exilarch said to Raba, 'Go and see if he is a scholar, and if so, reserve the market for him.'² So Raba said to R. Adda b. Abba, 'Go and smell his jar.'³ The latter accordingly went out and put to him the following question: 'If an elephant swallows an osier basket and passes it out with its excrement, is it still subject to uncleanness?'⁴ He could not give an answer. 'Are you Raba?' he asked R. Adda. The latter tapped him on his shoe⁵ and said, 'Between me and Raba there is a great difference, but at any rate I can be your teacher, and so Raba is the teacher of your teacher.' They did not reserve the market for him, and so his figs were a dead loss. He appealed to R. Joseph. saying: 'See how they have treated me.' He said to him, 'He who did not delay to avenge the wrong done to the king of Edom will not delay to avenge the wrong done to you. as it is written, Thus saith the Lord, For three transgressions of Moab, yea for four I will not turn away the punishment thereof; because he burned the bones of the king of Edom into lime.'⁶ Shortly afterwards R. Adda b. Abba died. R. Joseph said: It is through me that he has been punished.⁷ because I cursed him. R. Dimi from Nehardea said: It is through me that he has been punished. because he made me lose my figs. Abaye said: It is through me⁸ that he has been punished. because he used to say to the students, 'Instead of gnawing bones in the school of Abaye. why do you not eat fat meat in the school of Raba?'⁹ Raba said: It is through me that he has been punished, because when he went to the butcher's to buy meat he used to say to the butchers, 'Serve me before the servant of Raba, because I am above him.' R. Nahman b. Isaac said: It is

through me that he has been punished. How was this? R. Nahman b. Isaac was the regular preacher [on Sabbaths]. Every time before he went to give his discourse,¹⁰ he used to run over it with R. Adda b. Abba; and only then would he attend the Kallah. One day R. Papa and R. Huna the son of R. Joshua got hold of R. Adda b. Abba because they had not been present at the concluding discourse [of Raba on the tractate Bekhoroth],¹¹ and said to him: Tell us how Raba discussed the law of the 'Tithing of cattle.'¹² He then gave them a full account of Raba's discourse.¹³ Meanwhile dusk had set in and R. Nahman b. Isaac was still waiting for R. Adda b. Abba. The Rabbis said to him: Come, for it is late; why do you still sit, Sir? He said: I am waiting for the bier of R. Adda b. Abba. Soon after the report came that R. Adda b. Abba was dead. The most likely opinion is that R. Nahman b. Isaac was the cause of his punishment.¹⁴

MISHNAH. IF A MAN HAS A WALL RUNNING ALONGSIDE HIS NEIGHBOUR'S WALL, HE SHOULD NOT BRING ANOTHER WALL ALONGSIDE UNLESS HE KEEPS IT [AT LEAST] FOUR CUBITS AWAY.¹⁵ IF THERE ARE WINDOWS [IN THE NEIGHBOUR'S WALL]. HE MUST LEAVE A CLEAR SPACE OF FOUR CUBITS WHETHER ABOVE OR BELOW OR OPPOSITE.¹⁶

GEMARA. [HE SHOULD NOT BRING ANOTHER WALL, etc.] How came the first wall to be close up?¹⁷ — Rab Judah said: The Mishnah must be understood as follows:

1. People who had come into Babylon from other towns.
2. So that no one else should sell till he has disposed of his stock.
3. To see whether the wine is good; i.e. test his scholarship.
4. I.e., is it regarded as being still a basket or as excrement.
5. As if to say that he would do better to go further.
6. Amos II, 1.
7. By an untimely death.
8. For the insult offered to me.
9. Where the teaching is so much superior.

BABA BASRA - 2a-35b

10. Heb. *kallah*, v. [Glos.](#)
11. According to another interpretation given by Rashi: 'Because they had not been present at the meeting when R. Nahman was appointed the official preacher.'
12. Name of the last chapter of Tractate Bekhoroth.
13. Lit., 'He said to them: Thus said Raba and thus said Raba.'
14. According to Tosaf., each of these Rabbis lamented the fact that through him punishment had befallen R. Adda b. Abba, because of the dictum (Shab. 249). 'Whoever is the cause of punishment befalling his fellow man is not permitted within the inner circle of the Holy One, blessed be He.'
15. The meaning of this is discussed in the Gemara which follows.
16. The reason is given in the Gemara, *infra*.
17. The point of this question apparently is that the first wall also ought to have been four cubits away.

Baba Bathra 22b

If a man wants to build a wall alongside of his neighbor's wall, he must not do so unless he keeps it [at least] four cubits away. Raba strongly objected to this, on the ground that it says. **IF A MAN [ALREADY] HAS A WALL RUNNING ALONGSIDE OF HIS NEIGHBOUR'S WALL.** No, said Raba: what it means is this: If a man had a wall running alongside of his neighbor's wall at a distance of four cubits and it falls down, he must not bring another wall alongside unless he keeps it four cubits away,¹ the reason being that the treading of the earth between [by foot passengers] is good for the walls [on both sides].²

Rab said: This Mishnah applies only to the wall of a vegetable garden,³ but [if] the wall [is that] of a courtyard, he may bring [his wall] as close to it as he likes. R. Oshiah, however, said: It makes no difference whether it is a vegetable garden or a courtyard. he must not bring his wall closer to it than four cubits. R. Jose b. Hanina says: There is no conflict between Rab and R. Oshiah; the former speaks of [a courtyard in] an old town⁴ and the latter of [one in] a new one.⁵

We learnt: **IF THERE ARE WINDOWS [IN THE NEIGHBOUR'S WALL] HE MUST LEAVE A CLEAR SPACE OF FOUR CUBITS, WHETHER ABOVE OR BELOW OR OPPOSITE;** and in a Baraita commenting on this it is stated that a space must be left 'above' so that he should not be able to peep into the other one's room, and 'below' so that he should not stand on tiptoe and look in, and opposite' so that he should not take away his light. The reason then [why the second wall must be kept away from the first] is that he should not take away his light. and not, as you say, that the ground between should be trodden?⁶ — Here [in the Baraita] we are dealing with a wall which runs at right angles to the first wall.

How far [must such a wall be kept away so as not to take away the other's light]?⁷ — R. Yeba the father-in-law of Ashian b. Nidbak said in the name of Rab: The breadth of a window. But cannot he still look through?⁸ — R. Zebid says: We presume that he makes the top of the wall slope.⁹ But does not our Mishnah say. [at least] four cubits? — There is no contradiction: in the one case the wall running at right angles is on one side [only of the window].¹⁰ in the other [there are walls at right angles] on both sides [of the window].¹¹ Come and hear: The wall must be kept away from the [neighbor's] roof-gutter four cubits, so as to allow room for setting a ladder.¹² The reason, it appears, is that there may be room for a ladder, but not that there may be room for treading? — Here we are dealing with an overhanging gutter,¹³ where there is no need to make allowance for treading, because there is room to walk under the gutter.

MISHNAH. A LADDER MUST BE KEPT AWAY FROM A PIGEON COTE FOUR CUBITS SO THAT A WEASEL SHOULD NOT BE ABLE TO SPRING [FROM THE LADDER ON TO THE COTE]. THE WALL MUST BE KEPT FOUR CUBITS FROM THE [NEIGHBOUR'S] ROOF-GUTTER SO AS TO ALLOW ROOM FOR SETTING A LADDER.¹⁴

BABA BASRA - 2a-35b

Baba Bathra 23a

GEMARA. Shall I say that the Mishnah does not concur with R. Jose. who has laid down that 'the one may dig [a pit where he likes] in his property. and the other may plant [a tree where he likes] in his property'?¹⁵ — You may say that even R. Jose would concur with the Mishnah here. For R. Ashi has told us that 'when we were with R. Kahana, he said to us that R. Jose admitted that a man was responsible for the damage of which he is the cause.'¹⁶ Here too, it may happen that while the man is setting the ladder the weasel is sitting in a hole close by and jumps on to it. But here he is merely the indirect cause? Said R. Tobi bar Mattanah: This is equivalent to saying that it is prohibited to cause damage indirectly, [even where the damage, if caused, need not be paid for].

R. Joseph had some small date trees

1. Tosaf. points out that this would imply that according to Raba the second wall must be four cubits away only if the first was also, which is incorrect.
2. By strengthening the foundations.
3. Because there is no treading from the inside.'
4. Where the ground has already been well trodden.
5. Where the ground still requires treading; hence a space must be left between the walls.
6. And therefore if there are no windows he need not leave a space.
7. This question has reference to the Baraita just mentioned, where no exact measurements are mentioned.
8. If the second wall is not considerably higher than the first.
9. So that he cannot stand or sit on it.
10. And therefore a small space is sufficient to let in light.
11. And therefore a space of full four cubits is required.
12. In case he wants to climb up to the gutter to clean it. V. next Mishnah. [This interpretation follows Rashi; for other explanations, v. H.M. Tur and Beth Joseph 154.]
13. Which projects from the roof over the neighboring courtyard.
14. V. p. 113. n. 7.
15. Whereas here the man may not place the ladder where he likes in his own property. V. *infra* 25b, and *supra* 17b.
16. Lit., 'for his arrows', i.e., for damage resulting from an action which is in itself legitimate.

under which cuppers used to sit [and let blood], and ravens used to collect to suck up the blood, and they used to fly on to the date trees and damage them. So R. Joseph said to the cuppers. 'Take away your croakers from here.' Said Abaye to him, 'But they are only the indirect cause?' — He replied: 'R. Tobi bar Mattanah has expressly said: This is equivalent to saying that it is prohibited to cause damage indirectly.' But [R. Joseph] had given them a right [to let blood under the trees]?¹ — R. Nahman has said in the name of Rabbah b. Abbuha; There is no legal title to things causing damage.² But are we not told in a gloss on this statement that R. Mari says it refers [for instance] to smoke, and R. Zebid to a privy?³ — Said R. Joseph to him, 'I am very sensitive, and these ravens are as offensive to me as smoke or a privy.'

MISHNAH. A PIGEON COTE MUST BE KEPT FIFTY CUBITS FROM A TOWN.⁴ A MAN SHOULD NOT PUT UP A PIGEON COTE ON HIS OWN ESTATE UNLESS THERE IS A CLEAR SPACE OF FIFTY CUBITS ALL ROUND. R. JUDAH SAYS, THE SPACE SHOULD BE SUFFICIENT FOR THE SOWING OF FOUR KOR,⁵ WHICH IS AS MUCH AS A BIRD FLIES AT A TIME. IF, HOWEVER, HE BUYS IT [FROM ANOTHER] WITH ONLY THE SPACE FOR SOWING A QUARTER OF A KAB ROUND IT,⁶ HE HAS A RIGHT TO KEEP IT.

GEMARA. No more than fifty cubits? — Does not this contradict the following: 'Snares may be spread for pigeons only at a distance of thirty *ris*⁷ from a Yishub [town or village]?'⁸ — Abaye replied: pigeons cover much ground. but they eat their fill within fifty cubits of their starting point. And do they fly no further than thirty *ris*?⁹ Has it not been taught: 'Where there are towns and villages. nets should not be spread even within a hundred miles'? — R. Joseph said: This means, where there is a succession of vineyards;¹⁰ Raba said: It means, where there is a succession of pigeon cotes.¹⁰ Then should

BABA BASRA - 2a-35b

not the prohibition be laid down because of the pigeon cotes themselves?¹¹ — If you like I can answer that they [the intermediate cotes] belong to [the man who sets the snares] himself; and if you like that they belong to heathens,¹² and if you like that they are no-one's property.

R. JUDAH SAYS THE SPACE SHOULD BE SUFFICIENT FOR THE SOWING OF FOUR... HE HAS A RIGHT, etc. R. papa [or, according to others, R. Zebid] said: This implies that the *Beth Din* may plead the cause¹³ of an heir and may plead the cause of a purchaser. But we have already learnt the rule about the heir in the following statement: 'He who claims [a property] qua heir has no need to plead [that his father bought the property]?'¹⁴ — The point of R. Zebid's statement lies in the reference to the purchaser. But in regard to the purchaser also we have learnt that 'if a man buys a courtyard in which are beams and balconies projecting over the main thoroughfare, he has a legal right to retain them?'¹⁵ — Both statements are necessary. For if I had only the statement regarding the main thoroughfare to go by, I should say that the reason there [for allowing the right to stand] is because the courtyard had been originally drawn back from the main thoroughfare [to allow room for the projection], or that the public had waived its right¹⁶ [to have them removed] in his favor, but this reason would not apply here [to the pigeon cote]. And if I had only the statement here, I would say that the reason is because, having only an individual to deal with, the owner obtained his consent, or that the other waived his right in his favor, but in the case of the public, who is there to consent and who is there to allow? Hence both statements are required.

HE HAS A RIGHT TO KEEP IT. But has not R. Nahman said in the name of Rabbah b. Abbuha that there is no legal title to things which cause damage? — R. Mari replied that this applies to such a thing as smoke; R. Zebid, to such a thing as a privy.¹⁷

1. Either (a) by allowing them to do so for three years without protest. or (b) by selling them the ground under the trees. V. Tosaf.
2. Cf. *infra* p. 116
3. Which are both irritating and offensive.
4. So that the pigeons should not eat the seeds of the vegetable gardens, or those spread on the roofs (Tosaf.).
5. I.e. one *Beth-Kor* on each side. A *Beth. Kor* (space for the sowing of a *kor*) = 7500 square cubits.
6. About 105 square cubits.
7. About four miles.
8. For fear that he may snare pigeons belonging to others. V. B.K. 79b.
9. This question has reference to the rule about snares, not to the rule about dovecotes.
10. So that the birds can fly from one to another.
11. And not because of the pigeons of a town.
12. V. B.K. Mishnah 37b. (Sonc. ed.).
13. I.e., if a man inherits a property from his father and another man claims it, if it is proved that the father occupied it for three years, the *Beth-Din* can plead on behalf of the heir that the father had originally bought it from the man, whereas they would not do so for the father, if he did not put forward the plea on his own account. Similarly with a man who has bought a field which is then claimed by a third party.
14. Because, if the father has occupied it three years, the *Beth-Din* assume this without his pleading it. V. *infra* 410.
15. *Infra* 60a. Which is exactly similar to the rule laid down here, that the purchaser has a right to retain the dovecotes. Why then should both statements be made?
16. According to Tosaf., through the 'seven headmen of the town', the *boni viri*, at a public meeting.
17. V. *supra* p. 115. n. 1. But a pigeon cote is in a different category.

Baba Bathra 23b

MISHNAH. A YOUNG PIGEON WHICH IS FOUND ON THE GROUND WITHIN FIFTY CUBITS FROM A COTE BELONGS TO THE OWNER OF THE COTE; IF FOUND BEYOND FIFTY CUBITS FROM THE COTE, IT BELONGS TO THE FINDER. IF IT IS FOUND BETWEEN TWO COTES IT BELONGS TO THE ONE TO WHOSE COTE IT IS NEARER. IF IT IS EXACTLY MIDWAY, THEY MUST SHARE IT.

GEMARA. R. Hanina says: If a case can be decided one way on the ground of 'majority' and another way on the ground of 'nearness',¹

BABA BASRA - 2a-35b

we decide on the ground of 'majority'. And although the plea of 'nearness' equally with the plea of 'majority' derives its warrant from the Scripture,² yet the plea of 'majority' carries greater weight.

R. Zera questioned this. Scripture tells us, *And it shall come to pass that the city nearest unto the slain man ... [shall bring a heifer]*, that is to say, even though there are other towns [in the vicinity] with a larger population? — We assume that there are none. But [if 'majority' is the decisive factor] why not take the biggest town anywhere? — Scripture speaks of a town surrounded by mountains.³

We learnt: A YOUNG PIGEON WHICH IS FOUND ON THE GROUND WITHIN FIFTY CUBITS OF A COTE BELONGS TO THE OWNER OF THE COTE; and this even though there may be a bigger cote in the neighborhood? We assume that there is not. If that is so, then what of the next clause: IF FOUND BEYOND FIFTY CUBITS FROM THE COTE, IT BELONGS TO THE FINDER? Now if there are no other cotes in the neighborhood, there can be no question that the bird comes from this one?⁴ — Our Mishnah speaks [in the first clause] of a bird which can only hop. since Mar 'Ukba has laid down that a bird which can only hop does not go further than fifty cubits.⁵

R. Jeremiah raised the question: If one foot is within fifty cubits and the other beyond. how do we decide? It was for this that they turned R. Jeremiah out of the *Beth Hamidrash*.⁶ Come and hear: IF IT IS FOUND BETWEEN TWO COTES. IT BELONGS TO THE OWNER TO WHOSE COTE IT IS NEARER: and this though one may have more birds than the other? — We are dealing here with the case where both are equal. But [if it is more than fifty cubits from each] let us say that it comes from the biggest anywhere?⁷ — We are dealing here

1. I.e., if a thing may conceivably belong to either of two categories, one of which is the more numerous, but the other in closer proximity; v. next note.
2. The plea of 'majority' is derived from the words [H] (Ex. XXIII, 2), which the Rabbis render (for purposes of *halachah*), 'Incline judgment after a majority.' i.e., according to the answer to the question. To what class do most things like this belong? The plea of 'nearness' is derived from the verse, *And it shall come to pass that the city which is nearest*, etc. (Deut. XXI. 3) i.e., we decide according to the answer to the question. Where are the nearest examples of things of this kind? (in this case, potential murderers).
3. So that the murderer would not naturally come to the spot from another town.
4. Hence we cannot assume that there is no larger cote in the neighborhood. and therefore the answer to the previous objection will not stand.
5. Hence if it is found beyond 50 cubits it must have flown and may have come from 'the biggest anywhere', and therefore belongs to the finder.
6. According to Rashi, because his question was regarded as foolish, but according to Tosaf., because he ventured to call in question the statement of the Rabbis that a young bird can hop *only* fifty cubits.
7. And therefore belongs to the finder.

Baba Bathra 24a

with a path between vineyards; for though [there is ground for saying that] it came from a distance. [because it is more than fifty cubits from a cote],¹ yet here, since it can only hop, it cannot have come from a distant cote, because a bird will only hop away from the cote so long as it can still see the cote on turning round, but no further.

Abaye said: We too know R. Hanina's rule² from the Mishnah. which says: 'If blood³ is found in the 'anteroom'⁴ and there is any doubt about its character, it is reckoned unclean, because it is presumed to be from the 'source'⁴ — notwithstanding the fact that there is an 'upper chamber'⁴ which is nearer. Said Raba to him: You are speaking of a case where there is 'frequency' as well as 'majority';⁵ where there are both 'frequency' and 'majority' no one questions that they carry more weight than 'nearness'.

BABA BASRA - 2a-35b

R. Hiyya taught:⁶ Blood found in the 'anteroom' renders [the woman] liable [for a sin-offering] if she enters the Sanctuary,⁷ and *terumah* must be burnt on its account.⁸ Raba remarked: From this statement of R. Hiyya three lessons may be derived. One is [that where we have to choose between] 'majority' and 'nearness', we decide on the ground of 'majority'.⁹ The second is that the rule of 'majority' derives its warrant from the Scripture. The third is that R. Zera was right when he laid down that [in the case of a piece of meat] we decide on the ground of 'majority' even though the town gates are closed,¹⁰ because the case of the woman here is analogous to the case where the town gates are closed,¹¹ and even so we decide on the ground of 'majority'. But was it not Raba himself who said that where 'majority' and 'frequency' were combined no one questioned that they carried more weight than 'nearness' [whereas here he says that 'majority' itself carries more weight]? — Raba retracted the objection he then made to Abaye.

It has been stated: If a barrel of wine is found floating on the river [Euphrates]. Rab says, if it is opposite a town where the majority of the inhabitants are Jews, the wine is permitted, and if opposite a town where the majority of the inhabitants are non-Jews, the wine is prohibited. Samuel, however, says that even if it is found opposite a town where the majority of the inhabitants are Jews, it is prohibited, because it may be supposed to have come from Hai di-Kira.¹² May we say that the ground on which they join issue is the dictum of R. Hanina [that we follow the 'majority' in preference to 'nearness']. Samuel accepting it¹³ and Rab not accepting it?¹⁴ — No: both accept the dictum of R. Hanina, and the ground on which they join issue is this, that in the opinion of Rab, if the barrel had come from Hai di-Kira it would have been sunk or stuck in the bays¹⁵ or shallows¹⁶ of the river, whereas Samuel thinks that it can have been carried along by the force of the stream.

A barrel of wine [which had been stolen] was found in a vineyard which was 'uncircumcised',¹⁷ and Rabina permitted the wine to be drunk. Shall we say it was because he held with R. Hanina?¹⁸ — There was a different reason in that case, viz., that if the wine had been stolen from that vineyard it would not have been hidden there. This, however, applies only to wine, but [stolen] grapes might be hidden [in the same vineyard].

A number of flasks of wine were found between trunks of vines¹⁹ [of a Jew] and Raba permitted the wine to be drunk.²⁰ Shall we say that he did not hold with R. Hanina?²¹ — There was a different reason in that case, viz, that most

1. The vines having enabled it to hop further than it would otherwise be able to do.
2. That 'majority' is the decisive factor.
3. The reference is to a woman who finds on her body blood which may be either the blood of childbirth, and therefore clean, or the blood of an issue and therefore unclean. V. Lev. XV. 25.
4. For an explanation of these terms. v. *Niddah*, ad init.
5. I.e., although the blood might have come from the 'upper chamber' which is nearer, we yet presume it to have come from the 'source' where there is more blood and whence blood more frequently flows.
6. Reading [H] v. Tosaf.
7. Before due purification, because it is certainly unclean.
8. I.e., if the woman touched the *terumah* in this unclean state.
9. Since if we decided that the blood belongs to that category to which it is nearest, it would not render the woman liable to a sin-offering nor necessitate the burning of *terumah*.
10. If there are ten butchers' shops in a town of which nine sell 'kosher' meat and the tenth 'trefa', then if a piece of meat is found near the one which sells 'trefa' meat we still say, on the ground of 'majority', it is 'kosher', and this (R. Zera maintains) not only if the town gates are open so that there is a possibility of it having been brought in by Jews from outside, forming a 'majority', but even if they are closed, i.e., even if there is only one 'majority' and not two.
11. In the fact that there is only one 'majority'. viz. that the 'majority' of blood emanates from the source; v. Keth. 15a.

BABA BASRA - 2a-35b

12. [Ihi di-Kira, the modern Hit (v. Obermeyer, *Die Landschaft Babylonien*, 59ff.). A town in the North of Babylonia which was outside the Jewish settlement.]
13. And so this barrel is prohibited. because most barrels are from non-Jews.
14. And this barrel is permitted because it is near a Jewish town.
15. Formed by protruding rocks.
16. Formed by melting snows. This is Rashi's explanation. Others render 'bends and inlets', v. Aruch.
17. I.e., had been planted less than three years. V. Lev. XIX. 23.
18. And most wine is from vineyards of more than four years' standing.
19. [[H] or 'at Be Kufai', a village 4 parasangs west of Bagdad; v. Obermeyer; p. 267.]
20. As being presumably Jewish and not Gentile wine.
21. Deciding according to 'nearness' and not 'majority'.

Baba Bathra 24b

wine-bottlers were Jews.¹ And we only say this if the flasks are big ones,² but if they are small ones, we may argue that passers-by [non-Jews] let them drop. If, however, there are some big ones with them. we can say that the small ones were [merely] used as ballast.³

MISHNAH. TREES MUST BE KEPT AT A DISTANCE OF TWENTY-FIVE CUBITS FROM A TOWN; CAROBS AND SYCAMORE TREES⁴ FIFTY CUBITS. ABBA SAUL SAYS THAT ALL WILD FRUIT TREES⁵ MUST BE KEPT AT A DISTANCE OF FIFTY CUBITS. IF THE TOWN WAS THERE FIRST, THE TREE IS CUT DOWN⁶ AND NO COMPENSATION IS GIVEN. IF THE TREE WAS THERE FIRST, IT IS CUT DOWN BUT COMPENSATION MUST BE GIVEN. IF THERE IS A DOUBT WHICH WAS FIRST, IT IS CUT DOWN AND NO COMPENSATION IS GIVEN.

GEMARA. [TREES MUST BE KEPT AT A DISTANCE, etc.] What is the reason for this regulation? — 'Ulla says. to preserve the amenities of the town.⁷ But could we not derive this rule from the regulation⁸ that suburb⁹ must not be turned into cultivated

field nor cultivated field into suburb? — The rule had to be stated here to meet the view of R. Eleazar, who said that cultivated field may be turned into suburb, and suburb may be turned into cultivated field; even on his view trees must not be planted [close to the town], so as not to spoil the amenities of the town. And the Rabbis too who said that a cultivated field may not be turned into suburb nor suburb into cultivated field, meant this to apply only to the sowing of vegetables but not to the planting of trees; yet here they too would prohibit on account of the amenities of the town. What ground have you for saying that there is a difference [in this respect] between vegetables and trees? — Because it has been taught: 'If an enclosure, big enough to sow more than two se'ahs in, is fenced round for dwelling purposes, then if the greater part of it is sown with vegetables, it is reckoned as a vegetable garden and it is forbidden [to carry in it on Sabbath], but if the greater part of it is planted with trees it is reckoned as a courtyard and it is permissible [to carry in it on Sabbath].¹⁰

IF THE TOWN WAS THERE FIRST, THE TREE IS CUT DOWN AND NO COMPENSATION IS GIVEN, etc. Why in the analogous case of a pit is it laid down¹¹ that the owner may cut down the tree but must give compensation, whereas here it is cut down without compensation being given? — R. Kahana said: A pot with two cooks¹² is neither hot nor cold.¹³ But what contradiction is there? perhaps a difference is made between injury to the public and injury to an individual?¹⁴ — [We must therefore say that] if R. Kahana really made this remark, he meant it to apply to the next clause in the Mishnah: **IF THE TREE WAS THERE FIRST, IT IS CUT DOWN BUT COMPENSATION MUST BE GIVEN** [Regarding this we may ask.] Why cannot the owner of the tree say: Give me the money first and I will then cut it down? And it was in regard to this that R. Kahana answered: A pot with two cooks is neither hot nor cold.

BABA BASRA - 2a-35b

IF THERE IS A DOUBT WHICH WAS FIRST, IT IS CUT DOWN WITHOUT COMPENSATION BEING GIVEN. Why in the analogous case of a pit is it laid down that he should not cut down the tree?¹⁵ — In the case of the pit where, if the tree was certainly [there first], it is not to be cut down, then if there is a doubt we also do not say to him 'Cut it down.' But in this case where even if the tree was certainly there first it has to be cut down, then if there is a doubt we also order him to 'Cut it down.'¹⁶ And if the question of compensation arises, we say to him: prove that it is yours¹⁷ and you will be paid.

MISHNAH. A FIXED THRESHING-FLOOR MUST BE KEPT FIFTY CUBITS FROM A TOWN.¹⁸ A MAN SHOULD NOT FIX A THRESHING-FLOOR ON HIS OWN ESTATE UNLESS THERE IS A CLEAR SPACE ALL ROUND OF FIFTY CUBITS. HE MUST KEEP IT AWAY FROM THE PLANTATION OF HIS NEIGHBOUR AND HIS PLOWED FALLOW A SUFFICIENT DISTANCE TO PREVENT DAMAGE BEING CAUSED.¹⁹

GEMARA. Why this difference between the beginning and the end [of this Mishnah]?²⁰ — Abaye said: The last clause refers to a threshing-floor which is not fixed. What do you mean by a threshing-floor which is not fixed? — R. Jose said in the name of R. Hanina: One that does not require the use of a winnowing shovel.²¹ R. Ashi [however], said: The last clause gives the reason for the first,²² as much as to say: Why is a fixed threshing-floor kept fifty cubits away from a town? — To prevent it doing damage.

An objection [to Abaye's opinion] was raised from the following: 'A fixed threshing-floor must be kept fifty cubits away from a town, and as it must be kept fifty cubits from a neighbor's cucumber and pumpkin fields, from his plantations and his plowed fallow, to prevent damage being caused.' This squares with the opinion of R. Ashi, but conflicts with that of Abaye²³ [does it not]? — [This indeed]

is a difficulty. We can understand [why the threshing-floor must be kept away] from the cucumber and pumpkin fields, because the dust goes and penetrates into them and dries them up but [why should it be kept away] from the plowed fallow? — R. Abba b. Zebid [or it may be R. Abba b. Zutra] replied:

1. And therefore the flasks were probably left there by Jews.
2. And so evidently for sale.
3. To balance the panniers of the baggage asses.
4. Which are very leafy.
5. I.e., trees not usually planted in orchards.
6. Lit., 'He cuts it'. to be taken impersonally, and denoting the townsmen who have to pay the compensation.
7. So as to leave a clear space outside the wall.
8. 'Ar. 33b.
9. Or 'open space'. Cf. Num. XXXV, 4.
10. 'Er. 23b. This shows that vegetables turn ground into a 'field', but trees do not.
11. V. *infra* 25b.
12. Lit., 'partners'.
13. If therefore compensation is to be given, every resident in the town will wait for some other to make the first move, and the eyesore will remain. V. Tosaf. s.v. [H].
14. The former kind being regarded more seriously.
15. V. *infra* 25b.
16. I.e., in each case the rule where there is a doubt is the same as the rule where there is no doubt whether the tree was there first.
17. I.e., that your tree was there first.
18. On account of the chaff which flies about.
19. This distance being presumably less than fifty cubits. Hence this rule apparently contradicts the preceding clause.
20. V. note I.
21. I.e., where only a small heap is placed which is winnowed by the wind itself without being lifted by a shovel.
22. And the distance required there also is fifty cubits.
23. Because it shows that there is no reason to take the last clause of the Mishnah, despite the phrase to prevent damage being caused', as referring to a threshing-floor which is not fixed (v. Tosaf.).

Baba Bathra 25a

Because it over-manures it.

MISHNAH. CARRION, GRAVES, AND TANYARDS MUST BE KEPT FIFTY CUBITS

BABA BASRA - 2a-35b

FROM A TOWN.¹ A TANYARD MUST ONLY BE PLACED ON THE EAST SIDE OF THE TOWN. R. AKIBA, HOWEVER, SAYS IT MAY BE PLACED ON ANY SIDE EXCEPT THE WEST, PROVIDING IT IS KEPT FIFTY CUBITS AWAY. FLAXWATER² MUST BE KEPT AWAY FROM VEGETABLES AND LEEKS FROM ONIONS AND MUSTARD PLANTS FROM A BEEHIVE. R. JOSE. HOWEVER, DECLARES IT PERMISSIBLE [TO COME NEARER] IN THE CASE OF MUSTARD.

GEMARA. The question was asked: How are we to understand R. Akiba's ruling?³ [Does he mean to say that] IT [a tanyard] MAY BE PLACED ON ANY SIDE, namely, be set close to the city, EXCEPT ON THE WEST, where also it may be set, but only at a distance of fifty cubits? Or IT MAY BE PLACED ON ANY SIDE ... PROVIDING IT IS KEPT FIFTY CUBITS AWAY, EXCEPT ON THE WEST, where it must not be placed at all? — Come and hear: R. Akiba says: [A tanyard] may be set on any side at a distance of fifty cubits, save on the west side, where it must not be placed at all, because it is a constant abode.

Said Raba to R. Nahman: A constant abode of what? Shall I say of winds? How can this be, seeing that R. Hanan b. Abba has said in the name of Rab: Four winds blow every day and the north wind with all of them, for without this the world could not endure a moment. The south wind is the most violent, and were it not that the Son of the Hawk⁴ stays it with his wings it would destroy the world, as it says, Doth the hawk soar by the wisdom, and stretch her wings towards the south?⁵ — No; what it means is that it is the constant abode of the *Shechinah*.⁶ For so said Joshua b. Levi: Let us be grateful to our ancestors⁷ for showing us the place of prayer, as it is written, And the host of heaven worshippeth thee.⁸ R. Aha bar Jacob strongly demurred to this [interpretation]. Perhaps, he said, [the sun and moon bow down to the east], like a servant who has received a gratuity from his master and retires backwards, bowing as he

goes.⁹ This [indeed] is a difficulty. R. Oshaia expressed the opinion that the *Shechinah* is in every place. For R. Oshaia said: What is the meaning of the verse, *Thou art the Lord, even thou alone; thou hast made heaven, the heaven of heavens, etc.*?¹⁰ Thy messengers are not like the messengers of flesh and blood. Messengers of flesh and blood report themselves [after performing their office] to the place from which they have been sent, but thy messengers report themselves to the place to which they are sent, as it says. *Canst thou send forth lightnings that they may go and say to thee, here we are.*¹¹ It does not say, 'that they may come and say,' but 'that they may go and say,' which shows that the *Shechinah* is in all places. R. Ishmael also held that the *Shechinah* is in all places, since R. Ishmael taught: From where do we know that the *Shechinah* is in all places?¹² — Because it says, *And behold, the angel that talked with me went forth, and another angel went out to meet him.*¹³ It does not say, 'went out after him,' but went out to meet him.' This shows that the *Shechinah* is in all places. R. Shesheth also held that the *Shechinah* is in all places, because [when desiring to pray] he used to say to his attendant:¹⁴ Set me facing any way except the east. And this was not because the *Shechinah* is not there, but because the *Minim*¹⁵ prescribe turning to the east. R. Abbahu, however, said that the *Shechinah* is in the west; for so said R. Abbahu: What is the meaning of '*Uryah*'?¹⁶ It is equivalent to *avir Yah*¹⁷ [air of God].

R. Judah said: What is the meaning of the verse, *My doctrine shall drop* [ya'arof]¹⁸ *as the rain?*¹⁹ This refers to the west wind which comes from the back [oref]²⁰ of the world. *My speech shall distil* [tizzal]²¹ *as the dew:*²² this is the north wind which makes gold flow,²³ and so it says: *Who lavish* [ha-zalim] *gold from the purse.*²⁴ *As the small rain* [se'irim]²⁵ *upon the tender grass:*²⁶ this is the east wind which rages through the world like a demon [sa'ir].²⁷ *And as showers upon the herb:*²⁸ this is the south wind which brings up showers and causes the grass to grow.

BABA BASRA - 2a-35b

It has been taught: R. Eliezer says that the world

1. Because of the bad smell.
2. V. *supra* 18a.
3. Lit., 'how does R. Akiba say.'
4. An angel so called.
5. Job XXXIX. 26.
6. Divine Presence, v. [Glos.](#)
7. The 'Members of the Great Assembly', who handed down the Book of Nehemiah with this verse in it.
8. Nehem. IX. 6. This would show that the sun and moon in the east bow down to the *Shechinah* which is in the west.
9. I.e., the verse refers to the sun and moon at their setting and not at their rising, and hence the *Shechinah* is in the east.
10. Nehem. IX, 6.
11. Job XXXVIII. 35.
12. [Cf. Ahelson, *The Immanence of God in Rabbinic Literature*, p. 208.]
13. Zech. II, 7.
14. R. Shesheth was blind.
15. Jewish sectaries, here probably a sect of Jewish fire-worshippers.
16. [H], from a Persian word meaning 'evening'. V. Levy, *Worterbuck*.
17. [H]
18. [H]
19. Deut. XXXII, 2.
20. [H] The West is called 'back' as opposed to the East, the Hebrew word for which (*kedem*) also means 'front'.
21. [H]
22. Deut. XXXII, 2.
23. According to Rashi, because it dries up the produce and causes scarcity, so that corn has to be bought with money.
24. Isa. XLVI, 6, *tizzal*, being taken from root *zalat* meaning both 'to flow' and 'to be cheap'.
25. [H]
26. Deut. XXXII, 2.
27. Lit., 'he-goat'. It was anciently believed that he-goats were possessed with demons. Cf. *Zohar*, on Lev. XVII.
28. Deut. XXXII, 2.

Baba Bathra 25b

is like an *exedra*,¹ and the north side is not enclosed, and so when the sun reaches the north-west corner, it bends back and returns [to the east] above the firmament. R. Joshua, however, says that the world is like a tent,² and the north side is enclosed, and when the

sun reaches the north-west corner it goes round at the back of the tent [till it reaches the east], as it says. *It goeth toward the south and turneth again toward the north*, etc.:³ 'it goes toward the south' — by day, and 'turneth again toward the north' — by night. *It turneth about continually in its course and the wind returneth again to its circuits*:⁴ this refers to the eastern and western sides of the heaven, which the sun sometimes traverses and sometimes goes round.⁵ He [R. Joshua] used to say: We have come round to the view of R. Eliezer,⁶ [since we have learnt]: '*Out of the chamber cometh the storm*':⁷ this is the south wind; and *from the scatterers cold*:⁸ this is the north wind.⁹ *By the breath of God ice is given*:¹⁰ this is the west wind: and *the abundance of waters in the downpouring*:¹¹ this is the east wind.' But it has just been stated by a Master that it is the south wind which brings showers and makes the grass grow? — There is no contradiction; when the rain falls gently [it is from the south], and when it falls heavily [it is from the east.]

R. Hisda said: What is meant by the verse, *Out of the north cometh gold*?¹² This refers to the north wind which makes gold flow; and so it says: *Who lavish [ha-zalim] gold from the purse*.¹³

Rafram b. Papa said in the name of R. Hisda: Since the day when the Temple was destroyed the south wind has not brought rain, as it says. And he decreed on the right hand and there was hunger and he consumed on the left and they were not satisfied;¹⁴ and it is written, *North and right hand*¹⁵ thou hast created them.

Rafram b. Papa also said in the name of R. Hisda: Since the day when the Temple was destroyed, rain no longer comes down from the 'good storehouse', as it says. The Lord shall open up to thee his good treasure:¹⁶ When Israel act according to the will of God and are settled in their own land, then rain comes down from a 'good storehouse', but when Israel are not settled on their own land,

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then the rain does not come down from a 'good storehouse'.

R. Isaac said: He who desires to become wise should turn to the south [when praying], and he who desires to become rich should turn to the north. The symbol [by which to remember this] is that the table [in the Tabernacle] was to the north of the altar and the candlestick to the south.¹⁷ R. Joshua b. Levi, however, said that he should always turn to the south, because through obtaining wisdom he will obtain wealth, as it says. length of days are in her [wisdom's] right hand, in her left hand are riches and honour.¹⁸ But was it not R. Joshua b. Levi who said that the *Shechinah* is in the west? — [He means that] one should turn partly to the south. Said R. Hanina to R. Ashi: Those like you who live to the north of Eretz Yisrael¹⁹ should turn to the south. How do we know that Babylon is to the north of Eretz Yisrael? — From the scriptural verse, Out of the north evil shall break forth upon all the inhabitants of the land.²⁰

FLAX-WATER MUST BE KEPT AWAY FROM VEGETABLES, etc. A Tanna has taught: R. Jose holds it permissible in the case of mustard. because the owner can say to the other, 'As well as you can tell me to remove my mustard from your bees, I can tell you to remove your bees from my mustard, because they come and eat the twigs of my mustard plants.'²¹

MISHNAH. A TREE MUST BE KEPT AWAY FROM A PIT [IN A NEIGHBOUR' S FIELD] TWENTY-FIVE CUBITS — A SYCAMORE OR A CAROB FIFTY CUBITS;²² IT MAKES NO DIFFERENCE WHETHER THE TREE IS ON HIGHER OR LOWER GROUND OR ON A LEVEL WITH THE PIT. IF THE PIT WAS THERE FIRST, THE OWNER CAN HAVE THE TREE CUT DOWN ON GIVING COMPENSATION. IF THE TREE WAS THERE FIRST, HE CAN NOT HAVE IT CUT DOWN. IF THERE IS A DOUBT WHICH WAS THERE FIRST, HE CANNOT HAVE IT CUT DOWN. R. JOSE, HOWEVER, SAYS THAT EVEN IF THE

PIT WAS THERE BEFORE THE TREE THE OWNER CANNOT HAVE THE TREE CUT DOWN, BECAUSE THIS ONE DIGS IN HIS PROPERTY, THE OTHER PLANTS IN HIS.

GEMARA. A Tanna has taught: 'Whether the tree is on higher ground than the pit or the pit is on higher ground than the tree.' If the tree is on higher ground than the pit, we can understand the prohibition, because the roots spread and damage the pit. But if the pit is higher than the tree, what reason is there? — R. Haga said in the name of R. Jose: Because the roots undermine the soil and damage the floor of the pit.

R. JOSE SAYS THAT EVEN IF THE PIT WAS THERE BEFORE THE TREE THE OWNER CANNOT HAVE THE TREE CUT DOWN, BECAUSE THIS ONE DIGS IN HIS PROPERTY. THE OTHER PLANTS IN HIS. R. Judah says in the name of Samuel: The *halachah* is according to R. Jose. R. Ashi said: When we studied with R. Kahana we used to say that R. Jose admits that a man is responsible for damage of which lie is the cause.²³

Papi Yona'ah²⁴ was a poor man who made some money and built a country house. There were in his neighborhood some sesame-oil makers who, when they crushed the sesame seeds, used to make his villa shake. He appealed against them to R. Ashi,²⁵ who said to him: When we studied with R. Kahana, we used to say that R. Jose admits that a man is responsible for the damage of which he is the cause.²⁶ How much

1. I.e., closed on three sides and open on the fourth.
2. I.e., completely enclosed (by the firmament).
3. Eccl. I, 6. Although in the text this is said of the wind, it is taken to refer to the sun also.
4. Ibid.
5. I.e., it traverses them in summer when it is above the horizon, and goes round in winter when it is below the horizon.
6. That the world resembles an exedro.
7. Job XXXVII, 9'
8. Ibid.

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9. The Hebrew word translated scatterers' is [H] which is taken by R. Joshua to mean 'unenclosed'.
10. Job XXXVII, 20.
11. Ibid.
12. Ibid. 22.
13. Isa. XLVI. 6; v. *supra* p. 126, n. 2.
14. Isa. IX. 19.
15. Ps. LXXXIX, 13; this shows that the right hand is the south.
16. Deut. XXVIII, 12.
17. The table being the symbol of plenty, and the candlestick of knowledge.
18. Prov. III, 16.
19. R. Ashi was in Babylonia.
20. Jer. I, 14.
21. V. *supra* 18a.
22. Because the roots spread to a great distance.
23. Lit., 'for his own arrows.' V. *supra* p. 114, n. 3.
24. Perhaps 'of Yawan', i.e. Greece.
25. Lit., 'He came before R. Ashi.'
26. And therefore you are entitled to stop them.

Baba Bathra 26a

[must the house shake to constitute damage]?
— Enough to make the lid of a pitcher rattle.¹

When the people in the house of Bar Marion the son of Rabin used to beat flax, the dust used to fly about and annoy people. They appealed to Rabina. He said to them: When we say that R. Jose admits that a man is responsible for damage of which he is the cause, this applies only to the case where he himself sets the cause of the damage in motion. Here it is the wind which carries the dust about, [and therefore they are not liable]. Mar, son of R. Ashi, strongly objected to this, saying: How do these men differ from a man winnowing [on Sabbath] when the wind carries the chaff further?² — The case was stated before Meremar. and he said: This is in fact on all fours with that of the man winnowing on Sabbath when the wind comes and helps him.³ And how does Rabina⁴ differentiate this case from that of the spark flying from the smith's hammer and doing damage, for which the smith is responsible?⁵ — [He could reply that] the smith is glad to see the spark fly out,⁶ but here the people

beating the flax do not want the dust to fly about.

MISHNAH. A MAN SHOULD NOT PLANT A TREE [IN HIS OWN FIELD] CLOSE TO HIS NEIGHBOUR'S FIELD⁷ UNLESS HE KEEPS IT AT A DISTANCE OF FOUR CUBITS; THIS APPLIES BOTH TO A VINE AND TO ALL OTHER TREES. IF THERE IS A FENCE BETWEEN THE TWO FIELDS, EACH MAY PLANT CLOSE UP TO THE FENCE ON HIS OWN SIDE.⁸ IF THE ROOTS [OF ONE MAN'S TREE] SPREAD INTO HIS NEIGHBOUR'S FIELD, [THE LATTER] CAN CUT THEM AWAY TO A DEPTH OF THREE HANDBREADTHS SO THAT THEY SHOULD NOT IMPEDE THE PLOW. IF HE DIGS A PIT, DITCH, OR CAVE, HE CAN CUT RIGHT DOWN [TO ANY DEPTH]. AND THE WOOD BELONGS TO HIM.⁹

GEMARA. A Tannahas taught: The four cubits here mentioned are to allow space for the work of the vineyard.¹⁰ Samuel said: This rule was only laid down for Eretz Yisrael; in Babylonia two cubits are sufficient.¹¹ This is also stated in a Baraitha: 'A man should not plant a tree nearer than two cubits to his neighbor's field.' But does not our Mishnah say four? — It must be therefore as Samuel has explained. This argument is also stated in the form of a contradiction [which is afterwards reconciled, thus]: Our Mishnah says: A MAN SHOULD NOT PLANT A TREE CLOSE TO HIS NEIGHBOUR'S FIELD UNLESS HE KEEPS IT AT A DISTANCE OF FOUR CUBITS. But does not a Baraitha say two cubits? — Said Samuel: There is no contradiction. The Mishnah refers to Eretz Yisrael, the Baraitha to Babylon.¹²

Raba, son of R. Hanan, had some date trees adjoining a vineyard of R. Joseph. and birds used to roost on the date trees and fly down and damage the vines. So Raba, son of R. Hanan, told R. Joseph to cut down his date trees. Said the latter: But I have kept them [four cubits] away? This, replied the other, applies only to other trees, but for vines we

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require more. But does not our Mishnah say that THIS APPLIES BOTH TO VINES AND TO ALL OTHER TREES? Said he:¹³ This is so where there are other trees or vines on both sides,¹⁴ but where there are other trees on one side and vines on the other a greater space is required.¹⁵ Said R. Joseph: I will not cut them down, because Rab has said that it is forbidden to cut down a date tree which bears a *kab* of dates, and R. Hanina has said, 'My son Shikhath only died because he cut down a date tree before it was dead.'¹⁶ You, Sir, can cut them down if you like.

R. Papa had some date trees close to the field of R. Huna the son of R. Joshua. [One day] he found him¹⁷ digging and cutting out the roots. What [do you mean by] this? he said to him. He replied: We learnt: IF THE ROOTS SPREAD INTO HIS NEIGHBOUR'S FIELD, [THE LATTER] MAY CUT THEM AWAY TO A DEPTH OF THREE HANDBREADTHS SO THAT THEY SHOULD NOT IMPEDE THE PLOW. Said the other: [The Mishnah] only [says] three, but you, Sir, are going deeper. He replied: I am digging for pits, ditches, and caves, In regard to which we learnt: IF HE DIGS A PIT, DITCH, OR CAVE, HE CAN CUT RIGHT DOWN AND THE WOOD BELONGS TO HIM. Said R. Papa [subsequently]: I tried all kinds of argument with him, but I could not convince him

1. According to others, 'as much as the lid shakes when the jar is held in the hands.'
2. If a man winnows on Sabbath and the wind carries the chaff more than four cubits, he breaks the law regarding throwing on Sabbath.
3. And therefore the flax-beating could be stopped.
4. Who may say that a principle applying to a Sabbath prohibition does not necessarily apply to a trespass against property.
5. This being also a trespass against property rendering the smith liable although the spark is carried by the wind.
6. So that it shall not damage his own smithy.
7. Whether a corn field or an orchard.
8. Lit., 'This one may plant it close to the fence on this side, and this one, etc.' because then there is no danger of *Kilayim*. V. *supra* 18a.

9. The Gemara discusses which one is meant.
10. I.e., so that he can plow under his vine without encroaching on his neighbor's field.
11. Because a shorter plow was used there.
12. Lit., 'here in Eretz Yisrael, here in Babylon.'
13. Raba.
14. Lit., 'a tree for a tree, and vines for vines, but a tree for vines, etc.'
15. Tosaf. points out that R. Joseph could be held responsible only if he had planted the date trees as saplings, but not if they had grown from date stones.
16. Lit., not its time.'
17. Lit., 'he went and found him.'

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till I adduced the dictum of Rab Judah: 'A strip of land over which the public has established a right of way must not be obstructed.'¹ After he [R. Papa] had left him, he [R. Huna] said: Why did I not answer him, '[The prescriptive right of a tree is only]² within sixteen cubits [from the trunk].³ [but I am cutting at a distance of]⁴ more than sixteen cubits'?

IF HE DIGS A PIT, DITCH OR CAVE HE CAN CUT RIGHT DOWN [TO ANY DEPTH] AND THE WOOD BELONGS TO HIM. Jacob of Hadayab⁵ put the question to R. Hisda: To whom does the wood belong? — He replied: We [can] learn the answer [from the following Mishnah]: If the roots of a tree belonging to a layman spread into a field belonging to the Sanctuary, they may not be used [by a layman], but their use does not involve a trespass.⁶ If now you say that the roots follow the tree, then there is a good reason why the use of them does not involve a trespass. But if you say that they take their character from the soil in which they are found, why is a trespass not involved? — What then [will you conclude] — that the tree is the decisive factor?⁷ [If so], let us see what follows:⁸ If the roots of a tree belonging to the Sanctuary spread into the field of a layman, they must not be used, but their use does not involve a trespass. Now if the tree is the decisive factor, why is no trespass involved? In fact, [this Mishnah, I should say,] tells us

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nothing about the question in hand, because it is concerned with 'a subsequent growth',² and it holds that the law of trespass does not apply to 'subsequent growth'.¹⁰ Rabina replied that there is no contradiction [although in the first case the tree is the decisive factor and not in the second]. [In the first case we suppose]¹¹ the roots to be within sixteen cubits of the tree, [and in the second case]¹¹ beyond sixteen cubits from it.

'Ulla said: A tree which is nearer than sixteen cubits to the boundary of a neighbor's field is a robber, and the offering of first fruits should not be brought from it.¹² From whence does 'Ulla derive this idea? Shall we say from [the following Mishnah] which we learnt: 'If ten shoots are planted at [equal] intervals in a beth *se'ah*,¹³ then the whole of the beth seah may be plowed up to New Year [of the Sabbatical year]'?¹⁴ [This cannot be.] For what is the total area occupied? — Two thousand five hundred cubits. How much is that for each tree? — Two hundred and fifty cubits. Now, this is less than the space mentioned by 'Ulla.¹⁵ Can it be then from [the following Mishnah] which we learnt: 'If there are in a field three trees belonging to three different men, they can be combined [to place the field in the category of a plantation field],¹⁶ and the whole

1. Because the public has acquired a prescriptive right of way over it. I also have a prescriptive right to let my tree stand where it is.
2. Lit., 'here.'
3. Because up to that distance the roots suck from the soil, though they actually spread 25 cubits. V. *infra*.
4. Lit., 'here'.
5. Adiabene.
6. (Me'i. 13b). Heb. *me'ilah*, [H] the technical name for the improper use of holy things by laymen (as distinct from the Sanctuary). V. Lev. V. 15.
7. And the wood in this case belongs to the owner of the tree.
8. Lit., 'read the end (clause)' in the Mishnah just quoted.
9. E.g., the roots, which spread after the tree was consecrated.
10. V. Pes. 66b.

11. Lit. 'here'.
12. Because it says, *thou shalt take the first of all the fruit of the ground which thou bringest from thy land* (Deut. XXVI, 2.)
13. An area of fifty cubits by fifty.
14. (Sheb. I, 6). Because the whole of the area is required for the nourishment of the trees and the plowing is therefore purely for their benefit, and not for the purpose of sowing.
15. Who says that the tree sucks from an area with a radius of 26 cubits, which would be much more than 250 cubits.
16. A 'plantation field' was allowed to be plowed up to the Feast of Weeks preceding the Sabbatical year, but a cornfield only up to the Passover. If the three trees are not combined, only the space required for each one can be plowed up to the Feast of Weeks.

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beth *se'ah* may be plowed in virtue of them.' What is the total area of the field? — Two thousand five hundred cubits. How much is that for each tree? — Eight hundred and thirty-three and a third. 'Ulla still claims more for his tree!¹ — [We must suppose that] 'Ulla did not give an exact figure. [Is that so?] We may presume that an authority does not give an exact figure where by so doing he makes the law more stringent. But can I say that he does so where he makes the law less stringent?² — You are assuming that 'Ulla was thinking of a square. In reality he was thinking of a circle. Let us see. The area of a square exceeds that of the [inscribed] circle by a quarter. Hence there remains for [the circle from which 'Ulla's tree sucks] seven hundred and sixty-eight cubits.³ But the space allowed [by the Mishnah] is still half a cubit more [in length]?⁴ — That is where 'Ulla was not exact, and he thereby made the law more stringent. Come and hear: 'If a man buys a tree and the soil around, he brings first-fruits from it and makes the declaration.⁵ ['Soil' means any quantity,] does it not, however small?⁶ — No: it must be sixteen cubits.

Come and hear: If a man buys two trees in another man's field, he brings first-fruits from them but does not make the declaration. [We infer] from this that if he buys three he

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does make the declaration. And any quantity of soil is sufficient, is it not?² — No; here too it must be sixteen cubits.

Come and hear: R. Akiba says: 'The smallest piece of landed property is subject to the rule of the corner⁸ and first-fruits. and a *proshul*⁹

1. 1024 cubits (reckoning 32 square).
2. As 'Ulla does, by exempting from the obligation of first fruits a tree which is really liable to it.
3. = three quarters of 1024.
4. The area of the circle allowed by the Mishnah for each tree is 833 1/3 cubits. The square in which this is inscribed would (according to the reckoning of the Talmud) have an area of 1111 1/9 cubits. The side of such a square would be 33.3 cubits. Hence the radius of the area from which the tree sucks would be practically 16 2/3 cubits. (Rabbenu Tam proposed to read here 'two-thirds' instead of 'one-half'.)
5. V. Deut. XXVI. 3ff.
6. Which would show that a tree sucks only from a very narrow space.
7. The rule is that if a man buys three trees in a field he acquires the soil under them unless the contrary is specified. V. *infra* 81a.
8. [H] V. Lev. XIX, 9.
9. V. [Glos.](#)

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can be made out on the strength of it, and movables can be acquired by means of it'?¹ — Here we are speaking of [the first-fruits of] wheat. This is indicated also by the expression in the Mishnah 'the very smallest'.² Come and hear: If a tree is partly in Eretz Yisrael and partly outside of Eretz Yisrael,³ fruit subject to tithe and fruit not subject to tithe are mixed up in it. This is the opinion of Rabbi. Rabban Simeon b. Gamaliel, however, says that that which grows where the obligation extends [i.e., in Eretz Yisrael] is liable and that which grows where the obligation does not extend [i.e., outside Eretz Yisrael] is not liable.' The difference of opinion between them only consists in this, does it not, that the latter holds that we can decide retrospectively [which fruit belongs to which root] and the former holds that we cannot, but both agree that anything which grows where the

obligation does not extend is not liable?⁴ — No. We here deal with the case where the roots are divided by a hard rock. If so, what is the reason of Rabbi [for declaring the two kinds to be mixed together]? Because they mix again higher up. Wherein then lies the ground of the difference between Rabbi and Rabban Simeon? — The former holds that the air mixes the saps [though coming from separate roots], and the latter holds that each remains separate.⁵

And must the tree be kept sixteen cubits from the boundary and no more? Have we not learnt that 'a tree must be kept a distance of twenty-five cubits from a pit'?⁶ — Abaye replied: Though the roots spread much further, they only exhaust the soil up to a distance of sixteen cubits, no more. When R. Dimi came,⁷ he reported that Resh Lakish had asked R. Johanan what the ruling was regarding a tree situated within sixteen cubits of the boundary, and he had answered: It is a robber, and first-fruits should not be brought from it. When Rabin came he said in the name of R. Johanan: The rule both for a tree close to the boundary of a neighbor's field, and for one which overhangs [another's field], is that the owner brings first-fruits and makes the declaration, since it was on that condition that Joshua gave Israel possession of the land.⁸

MISHNAH. IF A MAN'S TREE OVERHANGS HIS NEIGHBOUR'S FIELD. THE LATTER MAY CUT AWAY THE BRANCHES TO A HEIGHT SUFFICIENT TO ALLOW HIM TO USE THE OXGOAD OVER THE PLOW.⁹ IF THE TREE IS A CAROB OR SYCAMORE, HE CAN CUT DOWN [ALL THE BRANCHES] PLUMB [WITH THE BOUNDARY].¹⁰ IF THE FIELD IS AN IRRIGATED ONE. [THE BRANCHES OF ALL] TREES MAY BE CUT DOWN PLUMB.¹¹ ABBA SAUL SAYS THAT THE BRANCHES OF ANY WILD FRUIT-BEARING TREE¹² CAN BE CUT DOWN PLUMB.

GEMARA. The question was raised: Does Abba Saul's statement refer to the first clause

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in the Mishnah or the second?¹³ — Come and hear: Abba Saul says, If the field is an irrigated one, the branches of all trees may be cut down plumb, because the shade is injurious to an irrigated field. This shows that his statement refers to the first clause.¹⁴ R. Ashi said: The language of [his statement as recorded in] our Mishnah also indicates this, since it states ANY WILD FRUIT-BEARING TREE.¹⁵ If this refers to the first clause, the word ANY ... [TREE] is in place, but if it refers to the second clause, it should say simply 'wild fruit-bearing trees'. This shows that it refers to the first clause.

MISHNAH. IF A TREE OVERHANGS A PUBLIC THOROUGHFARE THE BRANCHES SHOULD BE CUT AWAY TO A HEIGHT SUFFICIENT TO ALLOW A CAMEL TO PASS UNDERNEATH WITH ITS RIDER. R. JUDAH SAYS, SUFFICIENT FOR A CAMEL LADEN WITH FLAX OR BUNDLES OF VINE-RODS. R. SIMEON SAYS THAT [THE BRANCHES OF] ALL TREES SHOULD BE CUT AWAY PLUMB [WITH THE STREET] TO GUARD AGAINST UNCLEANNESS.

GEMARA. Who is the Tanna [of the Mishnah] who rules that in [making regulations to prevent] damage we consider only conditions as they are at present [and not as they are likely to become in the future]?¹⁶ — Resh Lakish replied: This ruling is not a unanimous one, and it follows the opinion of R. Eliezer. For we learnt: 'A cavity must not be made under a public thoroughfare, nor pits, ditches, or caves. R. Eliezer says it is permissible if the covering is sufficient to bear a moving cart laden with stones.'¹⁷ R. Johanan said: You may even say that the Rabbis [of that Mishnah] also concur [with the ruling here]. For there they prohibit because the cover may give way unexpectedly, but here every branch can be cut down as it grows.¹⁸

R. JUDAH SAYS: A CAMEL LADEN WITH FLAX OR BUNDLES OF VINE-RODS. The question was asked: Which is the higher limit,

that of R. Judah or that of the Rabbis?¹⁹ — There can be no doubt that the limit of the Rabbis is higher, for if the limit of R. Judah is higher, how do the Rabbis manage with anything that [still] comes within the limit of R. Judah?²⁰ You say then that the limit of the Rabbis is higher. How then will R. Judah manage with something which [still] comes within the limit of the Rabbis?²¹ — He [i.e. the rider] can bend down and pass underneath.

RABBAN SIMEON SAYS: [THE BRANCHES OF] ALL TREES SHOULD BE CUT AWAY PLUMB TO GUARD AGAINST UNCLEANNESS. A Tanna taught [in connection therewith]: 'Because [they can form] a tent over uncleanness.'²² This is self-evident, since we learnt, TO GUARD AGAINST UNCLEANNESS? — If I only had our Mishnah to go by I might say that [what it means is that] a raven may bring uncleanness²³ and throw it on the branches, and therefore It is sufficient to thin out the branches.²⁴ Now I know [that this is not sufficient].

1. I.e., the same act which confers ownership of the land can confer ownership of the movables also (*Pe'ah* III, 6).
2. Which could not be applied to land on which a tree was planted.
3. I.e., right on the border.
4. Even within 16 cubits of the boundary, and we do not say that it sucks from Eretz Yisrael.
5. Lit., 'this one stands by itself and this one stands by itself.'
6. *Supra* 25b.
7. From Palestine.
8. Viz., that they should not begrudge one another this liberty.
9. I.e., to allow him to raise his hand to the full height over the plow while holding the whip; or, 'as far as the handle protrudes over the plow' (*Jast.*).
10. Because they throw an excessive shade.
11. Because the shade is injurious to such a field.
12. V. *supra* p. 121, n. 2.
13. I.e., does he mean that the branches of wild fruit-bearing trees can be cut down plumb in any fields, or that in an irrigated field only the branches of such trees may be cut down plumb, but not of other trees?

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14. And he means that the branches of wild fruit-bearing trees can be cut down plumb anywhere.
15. I.e., besides the sycamore and carob.
16. I.e., seeing that the branches will grow again, why not have the whole tree cut down?
17. In spite of the fact that the covering will in course of time wear out (v. *infra* 60a).
18. Lit., 'first, first.'
19. The representatives of the anonymous opinion cited first in the Mishnah.
20. Seeing that according to the Rabbis the boughs are to be cut away only enough to allow a camel with its rider to pass under, if a load of flax is higher, how will it go under?
21. I.e., a camel with its rider.
22. If any part of a dead body is under the tree, the branches form a tent over it, and all who pass under become unclean.
23. I.e., any part of a dead body, which communicates defilement to all who pass beneath it.
24. So that nothing can rest on them. According to another interpretation 'to put scarecrows on the branches' (Jast.).

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CHAPTER III

MISHNAH. A PRESUMPTIVE TITLE¹ TO HOUSES, PITS, DITCHES AND CAVES, DOVECOTES, BATHS, OLIVE PRESSES, IRRIGATED FIELDS, SLAVES, AND ANYTHING WHICH IS CONTINUALLY PRODUCING² IS CONFERRED BY THREE YEARS [UNCHALLENGED POSSESSION]³ FROM DAY TO DAY.⁴ A PRESUMPTIVE TITLE TO A NON-IRRIGATED FIELD IS CONFERRED BY THREE YEARS' POSSESSION NOT RECKONED FROM DAY TO DAY.⁵ R. ISHMAEL SAYS: IT IS SUFFICIENT TO HAVE THREE MONTHS IN THE FIRST YEAR, THREE MONTHS IN THE LAST AND TWELVE IN THE MIDDLE,⁶ MAKING EIGHTEEN MONTHS IN ALL. R. AKIBA SAYS: ALL THAT IS REQUIRED IS A MONTH IN THE FIRST, A MONTH IN THE LAST, AND TWELVE MONTHS IN THE MIDDLE, MAKING FOURTEEN MONTHS IN ALL.⁷ R. ISHMAEL SAYS: THIS REFERS ONLY TO A CORNFIELD,⁸ BUT IN A FIELD PLANTED WITH TREES,⁹ IF A MAN HARVESTS HIS GRAPES, GATHERS IN HIS

OLIVES, AND CULLS HIS FIGS, THIS COUNTS AS THREE YEARS.¹⁰

GEMARA. R. Johanan said: I have heard those who attended at Usha¹¹ reasoning thus: Whence do we derive the rule that a presumptive title is acquired in three years?¹² — From the 'goring ox'.¹³ Just as in the case of the 'goring ox', after goring three times¹⁴ it passes out of the denomination¹⁵ of *Tam*¹⁶ into that of *Mu'ad*,¹⁷ so after a man has cropped¹⁸ a field for three years it passes [entirely] out of the possession of the seller and is established in the possession of the buyer.¹⁹ It may be objected to this that just as in the case of the goring ox its master does not become liable²⁰ till the fourth goring, so here the property should not become the fixed possession of the holder²¹ till the end of the fourth year? — How can you compare the two cases.²² There, as soon as the ox has gored three times, it is regarded as *Mu'ad*,

1. Heb. *hazakah*, [H], which combines the meanings of 'holding' or 'occupation', and 'presumed ownership'. What is meant is a title not supported by documents or witnesses, but based on the mere fact of possession. The English legal term is usucaption'.
2. Lit., 'yielding fruits'.
3. As will be seen later, such possession creates a presumption of ownership only if the possessor pleads at the same time that he came by the object in a lawful manner, e.g., by purchase or gift. If he does not advance this plea, the fact of his years' possession has no legal value.
4. I.e., from any date in one year to a corresponding date three years later. The reason for this regulation is discussed in the Gemara.
5. As explained in what follows.
6. Because some crops are sown in the last three months of the year and some in the first three, and to crop the field at these times is equivalent to possessing it for a year.
7. For R. Akiba's reason, v. *infra* 362.
8. Lit., 'field of white', so called because the corn casts no shade. (Jast.)
9. Which is also a kind of non-irrigated field.
10. Even though all three processes are carried out in one year, the idea being that the rightful owner would not permit another to take three crops off his field without protesting.

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11. Usha was a town in Upper Galilee near Tiberias. Here, after the destruction of the Second Temple, the Sanhedrin was established when it left Jabneh, and here too after the war of Bar Cochba a synod was held composed mainly of the pupils of Judah b. Baba. On the question who is meant here by 'those who attended at Usha,' v. *infra*, p. 141, n. 4.
12. I.e., Why three precisely?
13. Lit., 'Mu'ad ox' (v. [Glos.](#)). V. Ex. XXI, 29.
14. This is based on the words of the text, from yesterday and the day before,' which, with today, make three; v. B.K 23b.
15. Here again. the Hebrew word is *hazakah*, which here has the meaning of 'presumed character'.
16. Lit., 'innocent', involving the payment of half the damage only. V. [Glos.](#)
17. Lit., 'testified against' and liable to pay for the damage in full.
18. Lit., 'eaten'.
19. I.e., so completely that he need no longer retain his title-deeds.
20. To pay the full damage.
21. If he can bring no proof of ownership.
22. Lit., 'so now'

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but until it has gored the fourth time there is no reason why the owner should pay, whereas here, as soon as the use of it has been enjoyed for three years, the property becomes the fixed possession of the holder.

Now if this is correct¹ [that the law of *hazakah* is derived from the law of the ox], it would follow that three years' possession would confer a legal title even without a plea [of justification].² Why then have we learnt³ that possession without a plea of justification does not confer a legal title? — The reason why [we confirm the holder in possession when he pleads justification] is because it is possible that his plea is truthful.⁴ But if he himself advances no plea, shall we put in a plea for him?⁵

R. 'Awira brought a strong objection against this analogy [between the field and the ox]. On this principle, he said, a protest made not in the presence of the holder should not be valid,⁶ after the analogy of the *Mu'ad* ox; for just as in the case of the *Mu'ad* ox [the

warning] must be given in the presence of the owner, so here the protest should be made in the presence of the holder? — There [in the case of the ox] Scripture says, And it hath been testified to his owner';⁷ here [in the case of property] 'your friend has a friend, and the friend of your friend has a friend.'⁸

Now [suppose we accept the ruling] according to R. Meir, who said: 'If there was an interval between the gorings the owner is liable, all the more so then if they followed closely on one another.'⁹ [On the analogy of this], if a man gathered three crops on one day, as for instance figs [in three stages of ripeness], this should constitute presumptive right, [should it not]?¹⁰ — No; the action must be strictly analogous to the case of the *Mu'ad* ox. Just as in the case of the *Mu'ad* ox at the time when the first goring took place there was as yet no second goring, so here at the time when the first fruit is plucked the second must not yet be in existence. But suppose he gathered¹¹ three crops in three days, as of a caperbush,¹² should not that confer presumptive right? — In this case also the [second] fruit exists already [when he gathers the first crop] and it merely goes on ripening. But suppose he gathered three crops in thirty days, as of clover¹³ — should not this confer presumptive right? How exactly do you mean? That it is cropped as it grows? Then this is merely partial eating¹⁴ [and not the full eating required to confer presumptive right]. But suppose then that he consumed three crops in three months, as of clover,¹⁵ should not this confer presumptive right? — Who is meant by the 'Rabbis who attended Usha'? — R. Ishmael,¹⁶ and this actually would be the view of R. Ishmael, as we have learnt: R. ISHMAEL SAYS: THIS REFERS ONLY TO A CORNFIELD, BUT IN A FIELD PLANTED WITH TREES, IF A MAN HARVESTS HIS GRAPES, GATHERS IN HIS OLIVES, AND HARVESTS HIS FIGS, THIS COUNTS AS THREE YEARS.

And whence do the Rabbis¹⁷ derive the rule [that three years possession confers

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presumptive right]? — R. Joseph said: They derive it from the Scriptural verse, Men shall buy fields for money and subscribe the deeds and seal them.¹⁸ For there the prophet is speaking in the tenth year [of Zedekiah]¹⁹ and he warns the people [that they will go into captivity] in the eleventh.²⁰ Said Abaye to him: perhaps he was merely giving a piece of good advice?

1. Here follows a further objection against the analogy from the goring ox.
2. E.g., that the holder bought it from the claimant, but has lost the deed. V. *infra* 41a.
3. *Infra* 49a.
4. Lit., 'as he says now', E.g., if the claimant says, 'You stole it from me,' and the holder says, 'I bought it from you,' the fact that he has had the use of the land for three years creates a presumption that he is speaking the truth.
5. Hence the fact that a plea of justification is required does not militate against deriving the law of *hazakah* from that of the ox,
6. And the rule is that it is valid. V. *infra* 39a.
7. Ex. XXI, 29, implying 'in the presence of the owner'.
8. A popular saying. Someone is bound to tell the holder that the claimant has protested against his occupation of the land, and he will therefore take care not to lose his title-deed.
9. R. Meir uses this *a fortiori* argument in support of his view against that of R. Judah who defines a *Mu'ad*, 'an ox who gored on three successive days but not who gored three times in one day,' v. B.K. 24a.
10. And this is against all authority.
11. Lit., 'ate'.
12. One fruit of which is still very small when another is plucked.
13. Which is cropped three times in a month.
14. Lit., 'he merely plucks and eats it.'
15. Which is plucked up and sown afresh every month, so that all three crops have time to ripen fully.
16. We do not hear of R. Ishmael after the war of Bether, so he probably attended the Sanhedrin at Usha in the early part of the 2nd century C.E. As R. Johanan was not born till the later part of the century, he could hardly have known R. Ishmael personally. Perhaps we should translate above: 'I heard from those who attended (the Synod) at Usha that (those who attended the Sanhedrin there in the previous generation) used to say, etc.'
17. Who do not accept it. Ishmael's view that the rule of *hazakah* is derived from that of the ox.
18. Jer. XXXII, 44.

19. V. *Ibid.* 1.

20. V. *Ibid.* XXXIX, 2. As they will thus not have the use of the fields for more than two years, he warns them to be careful of their title-deeds.

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For if you hold otherwise, what do you make of the verse, Build ye houses and dwell in them, and plant gardens and eat the fruit of them?¹ That obviously is a piece of good advice,² and so here too; the proof is that it says in the same connection, and put them in an earthen vessel that they may continue many days!³ — No, said Raba, [the reason according to the Rabbis is this]: For the first year a man will forgo [his rights to the produce], for two years a man will forgo [his rights], but for a third year no man will forgo his rights. Said Abaye to him: In that case, when the land is restored [to the original owner on claiming it after two years], it should be restored without the produce;⁴ why then has R. Nahman laid down that both the property and the produce have to be restored?⁵ — Raba therefore correcting himself said: For the first year a man is not particular about another man usurping his field,⁶ nor is he particular for the second year, but the third year he is particular. Said Abaye to him: If that is so, what of the people of Bar Eliashib who object even to anyone crossing their field? In their case should not occupation confer presumptive right immediately [if they do not object]? And if you say that that if so, then you introduce a kind of sliding scale?⁷ — Raba therefore [again corrected himself and] said: For one year a man takes care of his title-deed, and so for two, three years does he take care; beyond that he does not take care. Said Abaye to him: If that is so, then [it would follow that] a protest made not in the presence of the holder is no protest, since the latter can say, 'If you had protested to me personally, I should have taken more care of my title-deed'? — The other can retort, '[You must have known of my protest because] your friend has a friend and your friend's friend has a friend.'⁸

BABA BASRA - 2a-35b

R. Huna said: The three years mentioned in the Mishnah only count if the occupier took the crops in all three successively. What does this statement tell us? Does not the Mishnah say that **PRESUMPTIVE TITLE IS CONFERRED BY THREE YEARS [POSSESSION] FROM DAY TO DAY?** — You might think that the expression **FROM DAY TO DAY** was only meant to exclude short years,² and that interrupted years were permissible;¹⁰ now I know that this is not so. R. Hama said: R. Huna admits [that interrupted years are also sufficient] in places where it is customary to leave fields fallow [in alternate years]. Is not this self-evident?¹¹ — It required to be stated in view of the case where some owners leave their fields fallow and some do not, this man being one of those who do. You might think that in this case the claimant can say to him, 'If the field is yours, you ought to have sown it.'¹² Now I know that this is not so, because the other can answer, 'I cannot keep watch over a single field in a whole valley';¹³ or he can also answer, 'I prefer this way, because it makes the field more productive.'

We learnt: [**PRESUMPTIVE TITLE TO HOUSES**] IS CONFERRED BY THREE YEARS [POSSESSION]. [Why should this be, seeing that] in the case of houses we can know if a man lives there by day but not if he lives there by night?¹⁴ Abaye answered: Who is it that testifies to [a man having lived in] a house? — The neighbors; and the neighbors know whether he has lived in it by night as well as by day. Raba answered: [The way it can be known] is if, for instance, two persons come forward and say, We hired the house from him and lived in it day and night for three years. Said R. Yemar to R. Ashi: But these men are interested witnesses,¹⁵ because if they do not make this assertion we shall tell them to go and pay the rent to the claimant?¹⁶ — R. Ashi replied: Only incompetent judges would proceed thus.¹⁷ [No.] The case Raba has in mind is where they come with the rent and inquire to whom they are to give it.

Mar Zutra said: If the claimant demands that two witnesses should be produced to testify that the occupier lived in the house three years day and night, his demand is valid.

1. Ibid. XXIX, 5.
2. And not a rule of law.
3. Ibid. XXXII, 24. This obviously is a piece of good advice merely, and thus the question remains, whence do the Rabbis derive the rule that three years' possession confers presumptive right?
4. Because the original owner waived his right for the time being.
5. v. *infra* p. 155.
6. Though he does not waive his right to the produce.
7. The period required to confer *hazakah* will vary with the degree to which the original owners are particular.
8. V. *supra* p. 140.
9. E.g. six months in the first year and six in the last.
10. So long as three full years were made up altogether.
11. That in such places there must be three full years of occupation in all, but not necessarily at one stretch.
12. Even though the fields all round are left fallow.
13. Because he would have to bear singly the whole expense of the watchman.
14. And according to R. Huna, the occupation must be continuous.
15. And therefore their evidence cannot be accepted.
16. To whom but for their evidence we should assign the house.
17. I.e., accept their evidence, if they have already paid rent to the defendant.

Baba Bathra 29b

[And though in this case the court does not suggest the plea] Mar Zutra admits that where the claimant is an itinerant peddler,¹ even if he does not raise the plea, the court raises it for him.² R. Huna also admits that [though normally the three years must be continuous], in the case of the shops of Mahuza³ [this is not necessary], because they are only used by day and not by night.

Rami b. Hama and R. 'Ukba b. Hama bought a maidservant in partnership, the arrangement being that one should have her services during the first, third and fifth years,

BABA BASRA - 2a-35b

and the other during the second, fourth and sixth. Their title to her was contested, and the case came before Raba. He said to the brothers: Why did you make this arrangement? So that neither of you should obtain a presumptive right against the other [was it not]?⁴ Just as you have no presumptive right against each other, so you have no presumptive right against outsiders. This ruling, however, only holds good if there was no written agreement between them to share [the maidservant]: if there was such an agreement, it would become bruited abroad.⁵

Raba said: If the occupier has utilised⁶ the whole field except the space of the sowing of a quarter of a *kab*, he acquires ownership [after three years] of the whole field with the exception of that space. Said R. Huna the son of R. Joshua: This only applies [if the space so left over] was suitable for sowing; but if it was not suitable for sowing, it is acquired along with the rest of the field. To this R. Bibi b. Abaye strongly objected, saying: If that is so, how does a man acquire a piece of rock [through occupation]? Is it not by stationing his animals there and laying out his crops there?⁷ So here too, he should have stationed his animals there and laid out his crops there.

A certain man said to another, 'What right have you⁸ in this house?' He replied, 'I bought it from you, and I have had the use of it for a period of *hazakah*.'⁹ To which the other replied, 'But I have been living in an inner room [and therefore did not protest].'¹⁰ The case was brought before R. Nahman, who said to the defendant: You must prove that you have had constant use of the house¹¹ [for three years without the claimant]. Said Raba to him: Is this a right decision? Is not the onus probandi in money cases always on the claimant?

A contradiction was pointed out between Raba's ruling here and his ruling in another place, and between R. Nahman's ruling here and his ruling in another place. For a certain man

1. *V. supra* p. 109.
2. Because as such people are away for long periods, it is easy for other persons to occupy their houses without being noticed.
3. An important commercial centre in Babylonia.
4. By having three years' undisturbed possession.
5. And therefore it was incumbent on the claimant to lodge a protest before three years had passed, and since he did not do so, a presumptive right has been established.
6. Lit., 'eaten'.
7. I.e., by making some use of the ground to show that it is his.
8. Lit., 'What do you want?'
9. I.e., three years. And therefore it is mine, although I cannot produce any record of the purchase.
10. Because to a certain extent I had the use of your room, being able to pass in and out, and therefore it has not belonged to you for three years.
11. Lit., 'prove your eating'.

Baba Bathra 30a

said to another, 'I will sell you all the property of Bar Sisin's.'¹ There was a piece of land which was called Bar Sisin's, but the vendor said, 'This is not really the property of Bar Sisin though it is called Bar Sisin's.' The case was brought before R. Nahman, and he decided in favor of the purchaser. Said Raba to him: Is this a right decision? Does not the onus probandi always lie on the claimant? There is thus a contradiction between these two remarks of Raba, and also between the two rulings of R. Nahman.² Between the two remarks of Raba there is no contradiction. In the latter case the seller is in possession; in the former the purchaser is in possession.³ Neither is there any contradiction between the two rulings of R. Nahman. [In the latter case,] since the seller professed to sell the property of Bar Sisin's and this land is called Bar Sisin's, it is for him to prove that it is not Bar Sisin's, but here let the occupier [in pleading presumptive right] be but treated as if he produced a document of sale,⁴ in which case should we not say to him: 'Prove your document to be valid and you can remain in ownership of the property'?⁵

BABA BASRA - 2a-35b

A certain man said to another, 'What right have you in this house?' He replied, 'I bought it from you and have had the use of it for the period of *hazakah*.' Said the other, 'I was abroad¹ all the time [and therefore did not know or protest].' 'But,' said the first, 'I have witnesses to prove that you used to come here for thirty days every year.' 'Those thirty days,' he replied, 'I was occupied with my business.' [On hearing of the case] Raba said: It is quite possible for a man to be fully occupied with his business for thirty days [and not to know that another has occupied his house].

A certain man said to another, 'What right have you on this land?' He replied, 'I bought it from so-and-so who told me that he had bought it from you.' Said the first, 'You admit then

1. I.e., which I acquired from Bar Sisin.
2. Because in the former case Raba decides in favor of the purchaser and R. Nahman in favor of the seller, and in the latter case Raba decides in favor of the seller and R. Nahman in favor of the purchaser.
3. And Raba decides in each case in favor of the party in possession.
4. The three years' occupation taking the place of a title-deed.
5. So here we can say to him, 'Prove that you have had unchallenged occupation'. Thus in both cases R. Nahman requires the party in possession to prove his right.
6. Lit., 'in outside markets;' i.e., in places not on any caravan route.

Baba Bathra 30b

that this land was once mine and that you did not buy it from me. Clear out; you have no case against me.'¹ [On hearing of this] Raba said: He was quite within his rights in what he said to him.²

A certain man said to another, 'What right have you on this land?' He replied, 'I bought it from so-and-so and have had the use of it for the period of *hazakah*.' Said the other, 'So-and-so is a robber.' 'But,' said the first, 'I have

witnesses to prove that I came and consulted you and you advised me to buy the property.' 'The reason is,' said the other, 'that I preferred to go to law with you rather than with him.'³ [On hearing of this] Raba said: He was quite within his rights in what he said to him. What authority does Raba follow? — The authority of Admon; for we have learnt: 'If a man claims a field after having witnessed⁴ to the sale of it to another, Admon says that [his claim is still admissible] because he can say, I prefer to go to law with the second rather than the first; the Sages, however, say that [by so doing] he forfeits his right [to put forward a claim]. — You may even say that Raba is in agreement with the Rabbis⁵ also. For in that case [they quash his right to make a claim] because he has actually done something [which conflicts with it],⁶ but in this case [he has merely said something], and a man may easily let a word slip out of his mouth.

A certain man said to another, 'What right have you on this land?' He replied, 'I bought it from so-and-so and I have had the use of it for the period of *hazakah*.' Said the first, 'So-and-so is a robber.' 'But,' said the other, 'I have witnesses to prove that you came the evening [before] and said to me, "Sell it to me".' 'My idea was,' said the first, 'to buy what I was already legally entitled to. [On hearing of it] Raba said: It is not unusual for a man to buy what he is already legally entitled to.'⁷

A certain man said to his neighbor, 'What right have you on this land?' He replied, 'I bought it from so-and-so and have had the use of it for the period of *hazakah*.'⁸ Said the other, 'But I have a title deed to prove that I bought it from him four years ago.' Said the other; 'Do you think that when I say the period of *hazakah* I mean only three years? I mean a lot of years.'⁹ Said Raba: It is not unusual to refer to a long period of years as 'the period of *hazakah*'. This [maxim] would apply [to the present case] only if the occupier has had the use of the land for seven years, so

BABA BASRA - 2a-35b

that his presumptive right came before the deed;¹⁰

1. Lit., 'you are not my litigant.'
2. Because the occupier had no proof that the man from whom he bought the land bought it from the original owner. Hence his occupation is not supported by any genuine plea.
3. Lit., 'The second suits me, the first is a harder customer.'
4. I.e., signed his name as witness to the contract of sale.
5. I.e., the Sages.
6. Viz., signed a document.
7. In order to avoid the trouble of going to law.
8. Meaning thereby presumably 'three years'.
9. And the reason why I said merely 'period of hazakah' was because I did not know you had a deed going back further than three years.
10. Since he had already had the use of the land for three years after his alleged purchase of it, and his title was therefore unassailable.

Baba Bathra 31a

but if only six years, then no protest could be more effective than this.¹

[There was a case] where one said, '[This land belonged] to my father,'² and the other pleaded, 'It belonged to my father'. The one brought witnesses to prove that it belonged to his father, and the other brought witnesses to prove that he had had the use of it for the period of *hazakah*. Rabbah said [in giving judgment]: What motive had he³ to tell a falsehood? If he liked, he could have pleaded [without fear of contradiction], 'I bought it from you and had the use of it for the period of *hazakah*.'⁴ Said Abaye to him: But the consideration, 'why should he tell a falsehood,' is not taken into account where it conflicts with evidence?⁵ So the occupier pleaded again, 'Yes, it did belong to your father, but I bought it from you, and what I meant by saying that it belonged to my father was that I felt as secure in it as if it had belonged to my father.'

[The question here arises:] Is a litigant allowed to alter his pleas⁶ [in the course of the case], or is he not allowed to alter his pleas?

'Ulla said: He is allowed to alter his pleas; the Nehardeans say, he is not allowed to alter his pleas. 'Ulla, however, admits that if this man had pleaded at first, 'It belonged to my father and not to yours,' he could not later alter his plea [to say, 'It did belong to yours']. 'Ulla also admits that if a man does not amend his pleas in any way when in court, but after leaving the court comes in again and amends them, the rule that he may alter his original plea does not apply, because we assume that someone has suggested the amended plea to him. The Nehardeans [on their side] admit that if [after saying, 'It belonged to my father'] he pleads, 'my father who bought it from your father,' he is allowed to alter his plea [to this effect];⁷ also that if a man makes certain statements outside [the court] and then wants to plead something quite different in court, he may do so, because a man often does not wish to state his case save in actual court. Amemar said: I am a Nehardean, and I hold that pleas may be altered. And such is the accepted ruling, that pleas may be altered.

[A case arose in which] one said, 'This [land belonged] to my father,' and the other said, 'To my father,' but the one brought witnesses to prove that it had belonged to his father and that he had had the use of it for the period of *hazakah*, and the other brought witnesses [only] to prove that he had had the use of it for a sufficient number of years to confer a legal title. Said R. Nahman: The evidence that the one has had the use of it cancels out the evidence that the other has had the use of it, and the land is therefore assigned to the one who brings evidence that it belonged to his father. Said Raba to him: But the evidence has been confuted? — He replied: Granted that it has been confuted in regard to the user,⁸

1. Namely, the action of the original owner in selling the land after the occupier had been on it only two years, so that in reality he never acquired *hazakah*.
2. Lit., 'fathers'.

BABA BASRA - 2a-35b

3. The latter, who occupied the field.
5. Which is a stronger plea and therefore we believe him when he says that he inherited it from his father.
6. In this case, the evidence brought by the claimant that the land had belonged to his father.
7. Lit., 'plead and again plead,' i.e., modify or expand the first plea, but not contradict it entirely. V. *infra*.
8. Because he is simply making his former plea more emphatic, and not altering it.
9. Lit., 'the eating of it.'

Baba Bathra 31b

has it been confuted in regard to the father? May we say that [in principle] the difference between R. Nahman and Raba here is the same as that between R. Huna and R. Hisda in the following statement: If two sets¹ of witnesses contradict one another [so that one set must be giving false evidence], R. Huna says that each set may give evidence as a whole [in another case];² R. Hisda, however, says, 'What have we to do with false witnesses?' May we say then that R. Nahman here follows R. Huna³ and Raba, R. Hisda? — No. There is no difference between them in the application of R. Hisda's ruling.⁴ Where they differ is in the application of R. Huna's ruling. R. Nahman would thus have acted on the ruling of R. Huna, whereas Raba [would maintain] that R. Huna only meant it to apply to evidence given in another case entirely, but not, as here, to another part of the same case.

He⁵ then brought witnesses to prove that the land had belonged to his father. R. Nahman [thereupon] said: As we put him out, so we can put him in;⁶ and we disregard any disrepute that this may bring on the *Beth din*.⁷ Raba [or others say R. Ze'ira] objected [to this ruling on the strength of the following]: If two witnesses declare that a man is dead and two others declare that he is not dead, or if two declare that his wife had been divorced from him and two that she had not been divorced, she must not marry again, but if she has married she need not leave [her

husband]. R. Menahem, son of R. Jose, says that she must leave [the second husband]. Said R. Menahem, son of R. Jose: When do I say that she must leave the husband? — If the witnesses [who say he is not dead] came first and she married afterwards;⁸ but if she was married before these witnesses came she need not leave her husband.⁹ R. Nahman replied: I was going to act [according to the declaration I just made].¹⁰ Now, however, that you have brought arguments against me and that R. Hamnuna in Sura has [likewise] refuted me, I shall not act so. [In spite of this statement, however,] he subsequently did act so. Those who saw it thought he had made a mistake, but this was not the case, because he had the support of great authorities.¹¹ For we learnt: A man is not given the status of priest¹² on the evidence of one witness. Said R. Eliezer: This is only when his title is called into question; but if no one calls his title into questions one witness is sufficient. Rabban Simeon b. Gamaliel said in the name of R. Simeon the son of the Segan:¹³ One witness is sufficient to prove a man's title to be a priest. Is not Rabban Simeon b. Gamaliel merely repeating R. Eliezer? And should you say that they differ in regard to the case where there is only one challenger, R. Eliezer holding that an objection is valid if raised by one challenger, and Rabban Simeon b. Gamaliel holding

1. In regard to all the discussion which follows it should be borne in mind that according to Jewish law, two witnesses are required to establish a case (v. Deut. XIX, 15).
2. I.e., it is not disqualified by the suspicion of having given false evidence in this case. But one witness from one set may not combine with one from the other in another case, because one of them has certainly given false evidence in this case.
3. In admitting the evidence of witnesses whose veracity is suspect.
4. Both would agree that according to R. Hisda the evidence in regard to the father cannot be accepted.
5. I.e., the occupier, having heard R. Nahman's decision.
6. Lit., we put him down and we can raise him up.'
7. Which will be criticized for altering its decisions.

BABA BASRA - 2a-35b

8. Because in that case if she had consulted the *Beth din*, they would not have allowed her to marry.
9. For fear that she might bring into disrepute the *Beth din* which gave her permission to marry again. This refutes R. Nahman.
10. And reverse the first decision on the production of new evidence.
11. Lit., 'trees'.
12. So as to be entitled to receive the priestly dues and perform the priestly functions.
13. The title given to the Deputy High Priest.

Baba Bathra 32a

that there must be two, then what of the statement of R. Johanan who said that according to all authorities no objection is valid unless it is raised by two challengers? We suppose therefore that the objection has been raised by two; and here we are dealing with a case where the father of this man is known to have been a priest, but a report has been spread that his mother was a divorced woman¹ or a *haluzah*,² and we therefore deposed him, and then one witness came and testified that he was a genuine priest and we reinstated him, and then two came and testified that his mother was a divorced woman or a *haluzah* and we degraded him again, and then one more witness came and testified that he was a genuine priest. Now all authorities agree that the evidence [of the two witnesses who testify to his genuineness] is combined [although they did not testify in each other's presence], and the point at issue is whether or not we disregard any disrepute that may be brought upon the *Beth din* [for altering its decision]. R. Eliezer held that once we have deposed him we do not reinstate him, for fear of bringing disrepute on the *Beth din*, whereas Rabban Simeon b. Gamaliel says that just as we have deposed him so we can reinstate him, and we disregard any disrepute that may be brought thereby on the *Beth din*.³

R. Ashi strongly disputed this explanation [saying]: If this is the case, why [should R. Eliezer refuse to reinstate him] if only one witness appears at the end? Why not even if two come together?⁴ No, said R. Ashi. All

agree that we disregard any disrepute that may be brought on the *Beth din*,⁵ and the point at issue here is whether the evidence [of different witnesses] can be combined, a point on which we find a difference between Tannaim. For it has been taught: 'The evidence of the two witnesses is not combined, and does not carry weight unless they both [testify to] have seen at the same time. R. Joshua b. Korhah, however, says that the evidence is combined even if one [testifies that he] saw at one time and the other at another.⁶ Nor is their evidence accepted in the *Beth Din* unless they testify together. R. Nathan, however, says that the evidence of one may be taken on one day and the evidence of the other when he comes on the next day.'⁷

A certain man said to another, 'What are you doing on this land?' He replied, 'I bought it from you, and here is the deed of sale.'

1. And therefore he was disqualified, on the basis of Lev. XXI, 7.
2. V. [Glos.](#) The Rabbis forbade a priest to marry a *haluzah* also.
3. And R. Nahman in his dictum was thus following R. Simeon b. Gamaliel.
4. Since R. Eliezer is anxious to safeguard the dignity of the *Beth din*.
5. And therefore R. Nahman had great authorities on his side.
6. E.g., one testifies that he saw the claimant lend the defendant a certain sum on one day, while the other maintains that it was on the next day. This first clause of the Baraita here quoted has nothing to do with the argument, and is only inserted to make the quotation complete.
7. Thus R. Gamaliel agrees with R. Nathan and R. Eliezer with the anonymous opinion.

Baba Bathra 32b

'It is a forged document,' said the first. On this the other leaned over to Rabbah and whispered to him, 'It is true that this is a forged document;¹ I had a proper deed but I lost it, so I thought it best to come into court with some sort of document.' Said Rabbah: What motive has he for telling a falsehood? If he had liked he could have said [without fear of contradiction] that the document was

BABA BASRA - 2a-35b

genuine. Said R. Joseph to him: On what do you base your decision? On this document? But this document is only a piece of clay!²

A certain man said to another, 'Pay me the hundred *zuz* that I am claiming from you; here is the bond.' Said the other: 'It is a forged bond.' The first thereupon leaned over and whispered to Rabbah, 'It is true the bond is forged, but I had a genuine bond and lost it, so I thought it best to come into court with some sort of document.' Rabbah thereupon said: What motive has he for telling a falsehood? If he had liked, he could have said that it is a genuine bond. Said R. Joseph to him: On what do you base your decision? On this document? But this document is only a piece of clay. R. Idi b. Abin said: The accepted ruling follows the view of Rabbah in the case of the land³ and that of R. Joseph in the case of the money.⁴ It follows the view of Rabbah in the case of the land, because [we say,] Let the land remain in its present ownership;⁵ and that of R. Joseph in the case of the money, because we again say, Let the money remain in its present ownership.⁶

A certain [man who had gone] surety for a borrower said to him, 'Give me the hundred *zuz* which I paid the lender on your behalf; here is your bond.' Said the other, 'Did I not pay you?' He rejoined, 'Did you not borrow the money from me again?' R. Idi b. Abin [before whom the case came] sent a message to Abaye [enquiring] as to the ruling for such a case.⁷ Abaye sent him back answer: What do you want to know?⁸ Did you not yourself say that the accepted ruling is that of Rabbah in the case of the land and of R. Joseph in the case of the money, namely, that the money should remain in its present ownership?⁹ This, however, holds good only if the surety said to the other, 'After repaying, you again borrowed the money from me.'¹⁰ If, however, he says, 'I returned it to you because the coins were worn or rusty,' the obligation of the bond still remains.

It was rumored of Raba b. Sharshom that he was using for himself land that belonged to orphans [for whom he was trustee]. So Abaye sent for him and said to him: Tell me now the main facts of the case. He said: I took over this land from the father of the orphans as a mortgage [for money that he owed me], and he owed me

1. Possibly one not actually forged but referring to a fictitious sale.
2. And since he has admitted as much, how can you say that 'if he had liked he could have said it was genuine'?
3. Where the defendant produces the forged document.
4. Where the claimant produces the forged document.
5. Lit., 'where it stands'.
6. Since there is a doubt to whom it belongs.
7. I.e., which he should believe.
8. Following reading of Rashb.
9. The bond after it has been honored is regarded by Abaye as on the same footing as the 'forged' bond mentioned above.
10. Because the previous transaction was now closed, and the bond no longer had any force.

Baba Bathra 33a

other money besides.¹ When I had had the use of the land for the number of years covered by the mortgage, I said to myself: If I restore the land to the orphans and then tell them that I have still a claim on their father for more money, [I shall have to comply with] the rule of the Rabbis that 'anyone who claims to recover from orphans must support his claim with an oath.' I will therefore keep back the mortgage bond and continue to use the land to the extent of the money still owing to me; for since, if I were to say that I had bought the land, my plea would be accepted,² I shall certainly be believed when I say that they owe me money. Said Abaye to him: You could not plead that you have bought the land, because common report says that it belongs to the orphans.³ Go therefore and restore it to them, and when they become of age⁴ claim your debt from them in court.

BABA BASRA - 2a-35b

A relative of R. Idi b. Abin died, leaving a date tree. [R. Idi and another man disputed its possession] R. Idi saying, 'I am the nearer relative,' whilst the other man said, 'I am the nearer relative;' [and the other man seized the tree]. Eventually, however, he admitted that R. Idi was a nearer relative, and R. Hisda assigned to him the tree. He [R. Idi] then claimed: 'Let him return me the produce which he has consumed from the time he seized it.' Said R. Hisda: 'So this is the man⁵ who is said to be a great authority! On what ground do you base⁶ [your ownership]? On this man's admission. But he has been saying till now that he was the nearer relative.'⁷ Abaye and Rab did not concur in R. Hisda's decision;

1. For which no land had been mortgaged to him.
2. Because he had had unchallenged occupation for more than three years.
3. And this is equivalent to a protest, in which case no right can be proved save through a deed of sale.
4. I.e., thirteen years old.
5. Referring to R. Idi.
6. Lit., 'on whom'.
7. And therefore he is in effect making you a gift of the tree, though you cannot claim it by law. Hence you cannot claim the produce, if he does not choose to give you that also.

Baba Bathra 33b

they held that the man's admission covered the produce as well as the tree.¹

[A case arose] in which one said, ['The land belonged] to my father,' and another said 'To my father,' but while the one brought witnesses to prove that it had belonged to his father [up to the time of his death], the other brought witnesses to prove that he had had the use of it for the period of *hazakah*.² [When the case came before] R. Hisda, he said: What motive has he [who occupies it] to tell a falsehood? If he likes he can say, 'I bought it from you and have had the use of it for the period of *hazakah*.'³ Abaye and Raba, however, did not concur in this judgment of R. Hisda, on the ground that we do not

advance the plea 'What motive had he to tell a falsehood' when it conflicts with direct evidence.

A certain man said to another, 'What are you doing on this land?' He replied, 'I bought it from you and have had the use of it for the period of *hazakah*.' He then went and brought witnesses to prove that he had had the use of it for two years [but could not find witnesses for the third]. R. Nahman thereupon decided that he should restore both the land and the produce. R. Zebid said: If he had pleaded, 'I was working⁴ the land for the produce only [as a metayer],' his plea would have been accepted.⁵ For has not Rab Judah laid down that if a man takes a pruning knife and rope in his hand and says, 'I am going to gather the dates from the tree of so-and-so who has sold them to me,' his word is accepted, because a man would not take the liberty of gathering the dates from a tree which did not belong to him? So here, a man would not take the liberty to consume produce that did not belong to him. But might not the same be said of the land also?⁶ — If he [the occupier] claims the land, we say to him: Show us your deed of sale. Cannot we then say the same in the case of the produce also? — Written agreements are not usually made in regard to produce.

A certain man said to another, 'What right have you on this land?' He replied, 'I bought it from you and I have had the use of it for the period of *hazakah*;' and he brought one witness to prove that he had had the use of it for three years. The Rabbis of the court of Abaye⁷ propounded the opinion that this case was parallel to that of the bar of metal⁸ [which was decided] by R. Abbah. [What happened was] that a certain man seized a bar of metal from another, and the latter brought the case before R. Ammi, before whom R. Abbah was sitting at the time. He brought one witness to prove that the man had snatched the article from him. 'Yes,' said the other, 'I did snatch, but it was my own property that I snatched.' R. Ammi thereupon said:

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1. Lit., 'Since he admitted, he admitted.' The above is the interpretation of this passage given by Rashb., and though satisfactory in itself it does a certain amount of violence to the original. Tosaf. therefore reads, instead of 'he admitted that R. Idi was a nearer relative', simply 'he admitted', i.e., he gave way, allowing R. Idi to keep the tree, though he did not formally admit that he was the nearer relative. We then translate lower down: 'Through whose word (do you become owner of the tree)? Through this man's etc.' and in the last sentence, 'Since he gave way (in regard to the tree), he must give way (in regard to the produce).' R. Han. reads, instead of 'he admitted, etc.', 'R. Idi brought witnesses to prove that he was the relative' (or, alternatively, 'the nearer relative'). In that case we translate the last sentence, 'Abaye and Raba held ... that since he admitted (that he consumed the produce), he must abide by the admission (and pay for it).'
2. I.e., not less than three years.
3. And therefore we believe him when he says that it belonged to his father.
4. Lit., 'I went down to.'
5. And he would not have had to restore the produce as well as the land.
6. I.e., that if the occupier pleads, 'I bought it from the claimant', his word should be accepted, because he would not take the liberty of occupying it otherwise.
7. Lit., 'the Rabbis sitting before Abaye.'
8. Presumably silver or gold.

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How are the judges to decide this case? Shall we make him pay? — There are not two witnesses against him. Shall we let him off scot free? — There is one witness.¹ Shall we administer an oath to him? — But he admits that he snatched the article, and since he admits that, he is, as far as this case goes, a robber.² Said R. Abba to him: He is [in the position of a man who is] legally under obligation to take an oath and is yet unable to take it; and the rule is that whoever is under obligation to take an oath which he cannot take must pay.³ Abaye, however, said to the Rabbis: Are the two cases on all fours? [There in the case of the bar of metal] the witness comes to oppose [the defendant], and if there were another witness with him we should make him give up the article. Here [in the case of the land] the witness comes to support [the

defendant], and if there were another witness we should confirm his title to the land.⁴ If you do wish to draw a parallel with the case of R. Abbah, it would be in the case of one witness [who testifies that the occupier has had the use of the land] two years, and [where the claim is for] the produce.⁵

1. And therefore, since the claim is a pecuniary one, he could be called upon to deny the allegation on oath (V. Shebu. 40a).
2. And therefore he is disqualified in this case from taking an oath in court.
3. In the case of the land the occupier ought to take an oath to deny the allegation of the one witness, but he cannot take an oath since he admits that he made use of the produce. Hence he should not only give up the land but make restitution for the produce he has consumed.
4. Since therefore the witness is in support of the occupier he cannot be made without more ado to pay for the produce, but might take an oath to confirm his claim in regard to the produce, though in the absence of two witnesses to prove his right he would have to return the land; v. Yad Ramah, a.l.
5. Here the witness is against the occupier, since he testifies that he occupied it only two years and not three, and if another witness made the same statement he would have to pay. Hence he is under obligation to deny the statement of the one witness on oath. This, however, he cannot do, as he admits that he has consumed the produce for two years. Hence he must pay.

Baba Bathra 34b

There was a certain river boat about which two men were disputing.¹ One said, 'It is mine', and the other said, 'It is mine. One of them went to the *Beth din* and appealed to them: 'Attach the boat² until I bring witnesses to prove that it belongs to me.' [In such a case] should we attach the boat or not?³ R. Huna says we should attach it,⁴ and Rab Judah says we should not.⁵ [The *Beth din* having attached the boat],⁶ the man went to look for his witnesses but did not find them, whereupon he requested the *Beth din* to release the boat, leaving it to the stronger to obtain possession.⁷ In such a case should we release or not? Rab Judah says we should not release,⁸ R. Papa says we should release.⁹ The

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accepted ruling is that we should not attach in the first instance, but if we have attached we should not release.¹⁰

[If there are two claimants to a property¹¹ and] one says, 'It belonged to my father,' while the other says, 'To my father' [without either of them bringing any evidence], R. Nahman says that whichever is stronger can take possession.¹² Why, [it may be asked,] should the ruling be different here from the case in which two deeds [of sale or gift relating to the same property and] bearing the same date

1. But apparently without having actually seized the boat, since in that case the law would be that they should divide it, according to B.M. ad init.
2. So that the other should not sell it in the meanwhile.
3. I.e., which course is more likely to assist the rightful owner to obtain possession?
4. Because we presume that he will succeed in finding witnesses, and therefore we prevent the boat from being disposed of in the interval.
5. Because we are afraid he will not find witnesses and we shall not know to whom to restore the boat, and therefore it is best to leave it alone.
6. It is not clear from the text whether this is a hypothetical case, or whether the *Beth din* really did attach the boat, perhaps on the request of both parties.
7. Lit., 'to prevail' — whether by argument or by force.
8. Because once property has come into the hands of the *Beth din*, it is not right that they should release it except to restore it to the proper owner.
9. Because they only attached it from the first on this condition.
10. I.e., the *halachah* follows R. Judah.
11. Whether landed property or other.
12. v. *supra* n. 7.

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are presented in court,¹ in which case Rab rules that the property should be divided between the claimants, and Samuel that the judges should assign it according to their own discretion?² — In that case there is no chance that further evidence should come to light,³ here there is a chance that further evidence may come to light.⁴ But why should the ruling

here be different from what we have learnt: 'If a man exchanges a cow for an ass and it calves, and similarly if a man sells a female slave and she bears a child, if the seller says that the birth took place before the sale⁵ and the purchaser that it took place after the sale,⁶ they must share the offspring'?⁷ In that case each

1. I.e., where a man has first assigned a property to Reuben and then on the same day made out another deed assigning it to Simeon. The hour of the day at which the deed was written or transferred was not usually specified, save in Jerusalem.
2. According to Rashb. this means that they should estimate which of the two claimants the donor was more likely to favor; according to Tosaf. they should consult purely their own judgment.
3. The deeds themselves being the whole of the evidence bearing on the case.
4. In which case the man who has seized the property may still be dispossessed.
5. Lit., 'before I sold it, I.e., before the purchaser had taken possession, and therefore the offspring was not included in the sale.
6. Lit., 'since I bought it.'
7. The transaction has to be one of exchange and not of sale in the case of the cow, for the reason that, in the case of all movables except human beings, a transaction of sale is not completed until the article bought is 'pulled' by the purchaser. Hence no dispute would have been possible about the calf. In the case of an exchange, however, the transaction is concluded as soon as the article given in exchange—here, the ass—is handed over. V. B.M. 100a.

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had [at some time] a pecuniary interest [in the article in dispute].¹ but in this case of R. Nahman, if the property belonged to one, It never belonged to the other.

The Nehardeans laid down that if an outsider² comes and seizes the property, he is not forced to surrender it,³ because R. Hiyya taught: He who robs the public⁴ is not a robber in the legal sense.⁵ R. Ashi said: He is indeed a robber in the legal sense,⁶ and why [does R. Hiyya say that] he is not a robber in

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the legal sense? Because he is unable to make restitution like an ordinary robber.⁷

THEIR PERIOD OF HAZAKAH IS THREE YEARS FROM DAY TO DAY. R. Abba said: If [the claimant of a piece of land] helps [the man in possession] to lift a basket of produce on to his shoulders, this at once creates a presumption [that the land belongs to the latter].⁸ R. Zebid said: If, however, he pleads, 'I have installed him [as a metayer] with a right to the produce [but not the ownership of the land],' his plea is accepted. This too is only the case if the plea is made within three years [of the alleged transfer], but not later. Said R. Ashi to R. Kahana: If he had made him a metayer [for more than three years], what was he to do?⁹ He said: He should have lodged a protest within three years. For, were you not to say so, then what about the so-called 'mortgage of Sura'¹⁰ containing the stipulation, 'On the termination of these [X] years this land shall be given up without payment.' Now suppose the mortgagee suppresses the mortgage bond and asserts that he has bought the land; are we indeed to say that his plea is to be accepted? Would the Rabbis make a regulation¹¹ which would expose the mortgager to unfair loss? But the fact is that he can protect himself by lodging a protest within three years; and so in this case also he can protect himself by lodging a protest within three years.

Rab Judah said in the name of Rab: A Jew who derives his title from a non-Jew is on the same footing as a non-Jew:¹² just as a non-Jew cannot prove his right save through producing a deed of sale,¹³ so the Jew who derives his title from a non-Jew [to a field originally belonging to a Jew] cannot prove his right save through producing a deed of sale.¹⁴ Said Raba: If, however, the Jew pleads,

4. The two claimants being regarded as the 'public' (lit., 'many').
5. And cannot be forced to make restitution.
6. And must be deprived of the property.
7. Because he does not know to which of the two claimants he should restore the property, and therefore he cannot make atonement like an ordinary robber.
8. This act being a kind of admission that the land belongs to him.
9. So as to ensure that he will be able to recover the property at the end of the period of leasing.
10. A form of deed by which a borrower transferred property to the lender for a fixed number of years.
11. Viz., that three years' occupation gives a title to ownership.
12. In the matter of *hazakah*.
13. It is assumed that a Jew is afraid to protest against the occupation of his land by a non-Jew, and therefore three years' undisturbed occupation confers no *hazakah* on the latter.
14. Given by the original Jewish owner to the non-Jew, even though both he himself and the non-Jew have enjoyed undisturbed occupation for three years.

1. I.e., each was at some time the owner of the cow or the slave.
2. Lit., 'a man from the street'.
3. Because possibly it belongs to neither of the claimants.