JUDAISM

The Talmud

Bava Batra

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Chapter 1

[1] MISHNA: Partners who wished to make a partition [meḥitza] in a jointly owned courtyard build the wall for the partition in the middle of the courtyard. What is this wall fashioned from? In a place where it is customary to build such a wall with non-chiseled stone [gevil], or chiseled stone [gazit], or small bricks [kefisin], or large bricks [leveinim], they must build the wall with that material. Everything is in accordance with the regional custom.

[2] If they build the wall with non-chiseled stone, this partner provides three handbreadths of his portion of the courtyard and that partner provides three handbreadths, since the thickness of such a wall is six handbreadths. If they build the wall with chiseled stone, this partner provides two and a half handbreadths and that partner provides two and a half handbreadths, since such a wall is five handbreadths thick. If they build the wall with small bricks, this one provides two handbreadths and that one provides two handbreadths, since the thickness of such a wall is four handbreadths. If they build with large bricks, this one provides one and a half handbreadths and that one provides one and a half handbreadths, since the thickness of such a wall is three handbreadths. Therefore, if the wall later falls, the assumption is that the space where the wall stood and the stones belong to both of them, to be divided equally.

[3] And similarly with regard to a garden, in a place where it is customary to build a partition in the middle of a garden jointly owned by two people, and one of them wishes to build such a partition, the court obligates his neighbor to join in building the partition. But with regard to an expanse of fields [babbika], in a place where it is customary not to build a partition between two people’s fields, and one person wishes to build a partition between his field and that of his neighbor, the court does not obligate his neighbor to build such a partition.

[4] Rather, if one person wishes to erect a partition, he must withdraw into his own field and build the partition there. And he makes a border mark on the outer side of the barrier facing his neighbor’s property, indicating that he built the entire structure of his own materials and on his own land. Therefore, if the wall later falls, the assumption is that the space where the wall stood and the stones belong only to him, as is indicated by the mark on the wall.

[5] Nevertheless, in a place where it is not customary to build a partition between two people’s fields, if they made such a partition with the agreement of the two of them, they build it in the middle, i.e., on the property line, and make a border mark on the one side and on the other side. Therefore, if the wall later falls, the assumption is that the space where the wall stood and the stones belong to both of them, to be divided equally.

[6] GEMARA: The Sages initially assumed: What is the meaning of the term meḥitza mentioned in the mishna? It means a partition, as it is taught in a baraita: Consider the case where a partition of [meḥitzat] a vineyard which separates the vineyard from a field of grain was breached, resulting, if

the situation is not rectified, in the grain and grapes becoming items from which deriving benefit is prohibited due to the prohibition of diverse kinds planted in a vineyard. The owner of the field of grain may say to the owner of the vineyard: Build a partition between the vineyard and the field of grain. If the owner of the vineyard did so, and the partition was breached again, the owner of the field of grain may say to him again: Build a partition.

[7] If the owner of the vineyard neglected to make the necessary repairs and did not properly build a partition between the fields, the grain and grapes are rendered forbidden due to the prohibition of diverse kinds planted in a vineyard, and he is liable for the monetary loss. He must compensate the owner of the grain for the damage suffered, as it is the vineyard owner's fault that deriving benefit from the grain is now prohibited.

[8] According to the understanding that the term meḥitza means a partition, one can infer: The reason that they build a wall is that they both wished to make a partition in their jointly owned courtyard. But if they did not both wish to do so, the court does not obligate the reluctant partner to build such a wall, although his neighbor objects to the fact that the partner can see what he is doing in his courtyard. Apparently, it may be concluded that damage caused by sight, that is, the discomfort suffered by someone because he is exposed to the gaze of others while he is in his own private domain, is not called damage.

[9] The Gemara objects to this conclusion: But say that the term meḥitza used in the mishna means a division, as it is written: "And the division of [meḥetzat] the congregation was" (Numbers 31:43), referring to the half of the spoil that belonged to the entire congregation. According to this interpretation the mishna means: Since they wished to divide the jointly owned courtyard, they build a proper wall in the center even against the will of one of the partners. Apparently, it may be concluded that damage caused by sight is called damage.

[10] The Gemara rejects this line of reasoning: If it is so that the term meḥitza means a division, the words: Who wished to make a division, are imprecise, as the tanna should have said: Who wished to divide. Rather, what is the meaning of the term meḥitza? A partition. The Gemara retorts: If so, the words: They build the wall, are imprecise, as the tanna should have said: They build it, since the wall and the partition are one and the same. The Gemara responds: Had the tanna taught: They build it, I would say that a mere partition of pegs [bimseifas] would suffice. He therefore teaches us that they build an actual wall, all in accordance with the regional custom.

[11] The mishna teaches: Partners who wished to make a partition in a jointly owned courtyard build the wall for the partition in the middle of the courtyard. The Gemara asks: Isn't it obvious that if they agree to build a wall it should be built in the middle? Why should one of them contribute more than the other?

[12] The Gemara answers: No, it is necessary to state this halakha in a case where one of the partners went ahead and convinced the other that they should build a partition. Lest you say that the second can later say to the first when the latter comes to begin construction: When I was persuaded by you to build a partition, it was with regard to the airspace. I agreed to the erection of a minimal barrier that would result in a loss of open space in the courtyard. But I was not persuaded by you with regard to the use of the courtyard. I did not agree to forfeit any usable space on the ground in my share of the courtyard for the building of a wall. To counter this, the mishna teaches us that since they agreed to make a partition, they must each contribute a part of the courtyard for the building of the wall.

[13] § After having determined that the wording of the mishna is unproblematic only if the term meḥitza means a wall, it follows that damage caused by sight is not called damage. The Gemara asks: And is damage caused by sight in fact not called damage? The Gemara provides a mnemonic for the proofs, which follow, that challenge this assumption: Garden, wall, compels, and they divide, windows, as Rav Naḥman.

[14] The Gemara suggests: Come and hear that which the mishna teaches: And similarly with regard to a garden, in a place where it is customary to build a partition in the middle of a garden jointly owned by two people, and one of them wishes to build such a partition, the court obligates his neighbor to join in building the partition. This indicates that invading one's privacy by looking at him while he is in his private domain is called damage.

[15] The Gemara answers: A garden is different with regard to the halakha governing invasion of privacy, in accordance with the statement of Rabbi Abba, as Rabbi Abba says that Rav Huna says that Rav says: It is prohibited for a person to stand in another's field and look at his crop while the grain is standing, because he casts an evil eye upon it and thereby causes him damage, and the same is true for a garden. Since the issue in this case is damage resulting from the evil eye, no proof can be brought with regard to the matter of damage caused by sight.

[16] The Gemara objects: But the mishna teaches: And similarly with regard to a garden, which suggests that a garden and a courtyard are governed by the same rationale. The Gemara answers: The term: And similarly, is stated not with regard to the reason for the obligation to construct a wall, but with regard to the halakha concerning non-chiseled and chiseled stones. A partition in a garden is built with the same materials used for the building of a wall in a courtyard, in accordance with regional custom.

[17] The Gemara suggests: Come and hear a proof from a mishna (5a): In the case of a dividing wall in a jointly owned courtyard that fell, if one of the owners wishes to rebuild the wall, the court obligates the other owner to build the wall with him again up to a height of four cubits. This indicates that damage caused by sight is called damage. The Gemara rejects this proof: The case of a wall that fell is different; since a wall had already stood there, the court compels the owners to rebuild it as it was.

[18] The Gemara expresses its astonishment: And he who asked the question, why did he ask it at all? The mishna is clearly referring to a wall that has fallen, which means that the joint owners have already agreed in the past to build a partition between their respective portions. The Gemara answers: He who asked the question maintains that the joint owners can be compelled to build a wall even in a case where a wall had not stood there before, to prevent any invasion of privacy. And the mishna does not address the case of a wall that fell to teach that only in such a case is there an obligation to build a wall. Rather, it was necessary to teach the latter clause, which states that even in a case where there had previously been a high wall the court does not obligate him to rebuild it higher than four cubits, because once there is a wall of four cubits there is no further invasion of privacy.

[19] The Gemara suggests: Come and hear an additional proof that damage caused by sight is called damage, from what is taught in a mishna (7b): The residents of a courtyard can compel each inhabitant of that courtyard to financially participate in the building of a gatehouse and a door to the jointly owned courtyard, so that the courtyard not be open to the eyes of those standing in the public domain. Learn from it that damage caused by sight is called damage. The Gemara answers: This is not a proof to the halakha in the case of two neighbors, as the damage of being exposed to the gaze of

the general public, which has unimpeded sight of what is happening in the courtyard, is different and certainly called damage.

[20] The Gemara asks: And is exposure to the sight of an individual not considered damage? Come and hear a proof that it is called damage from what is taught in a mishna (11a): One divides a courtyard at the request of one of the co-owners only if its area is sufficient so that there will be in it four by four cubits for this one and four by four cubits for that one, that is, the same minimal dimensions for each of the co-owners. This means that if there is enough for this one and enough for that one, they do divide the courtyard at the request of one of the owners. What, is it not so that the courtyard must be divided with a wall that will prevent one neighbor from seeing the other? The Gemara answers: No, perhaps it is divided with a mere partition of pegs through which one can still see.

[21] The Gemara further suggests: Come and hear another proof that damage caused by sight is called damage from what is taught in a mishna (22a): One who desires to build a wall opposite the windows of a neighbor's house must distance the wall four cubits from the windows, whether above, below, or opposite. And a baraita is taught with regard to that mishna: Concerning the requirement of a distance above, the wall must be high enough so that one cannot peer into the window and see into the window; concerning the requirement of a distance below, the wall must be low so that he will not be able to stand on top of it and see into the window; and concerning the requirement of a distance opposite, one must distance the wall from the windows so that it will not darken his neighbor's house by blocking the light that enters the house through the window. This indicates that there is a concern about the damage caused by exposure to the gaze of others.

[22] The Gemara rejects this argument: The damage of being exposed to the sight of others while in one's own house is different, as people engage in activities in their homes that they do not want others to see. By contrast, a courtyard is out in the open and it is possible that the residents are indifferent to being observed.

[23] The Gemara challenges this distinction: Come and hear a proof, as Rav Naḥman says that Shmuel says: If one's roof is adjacent to another's courtyard, he must make a parapet around the roof four cubits high so that he will not be able to see into his neighbor's courtyard. This indicates that the damage of being exposed to the eyes of others even in a courtyard is called damage. The Gemara refutes this proof: The situation is different there, as the owner of the courtyard can say to the owner of the roof: I make use of my courtyard on a regular basis. You, by contrast, do not make use of your roof on a regular basis, but only infrequently. Consequently, I do not know when you will go up to the roof,

[24] so that I can hide from you at that time and avoid coming under your gaze.

[25] § The Gemara has so far presented one version of the discussion of the mishna. A different version relates the discussion as follows: The Sages initially assumed: What is the meaning of the term meḥitza mentioned in the mishna? A division, not a partition, as it is written: "And the division of [meḥetzat] the congregation was" (Numbers 31:43). According to this interpretation, the mishna means to say: Since they wished to divide the jointly owned courtyard, they build a proper wall in the center even against the will of one of the partners. Apparently, it may be concluded that damage caused by sight is called damage.

[26] The Gemara objects to this conclusion: But why not say: What is the meaning of the term meḥitza mentioned in the mishna? It means a partition. This usage would be as we learned in a baraita:

Consider the case where a partition of [meḥitzat] a vineyard which separates the vineyard from a field of grain was breached, resulting, if the situation is not rectified, in the grain and grapes becoming items from which deriving benefit is prohibited. The owner of the field of grain may say to the owner of the vineyard: Build a partition between the vineyard and the field of grain. If the owner of the vineyard did so, and the partition was breached again, the owner of the field of grain may say to him again: Build a partition. If the owner of the vineyard neglected to make the necessary repairs and did not properly build a partition between the fields, the grain and grapes are rendered forbidden due to the prohibition of diverse kinds planted in a vineyard, and he is liable for the monetary loss.

[27] The Gemara concludes stating the objection: And according to the understanding that the term meḥitza means a partition, one can infer: The reason that they build a wall is that they both wished to make a partition in their jointly owned courtyard. But if they did not both wish to do so, the court does not obligate the reluctant partner to build such a wall, although his neighbor objects to the fact that the partner can see what he is doing in his courtyard. Apparently, it may be concluded that damage caused by sight is not called damage.

[28] The Gemara rejects this argument: If so, the words: They build the wall, are imprecise, as the tanna should have said: They build it, since the wall and the partition are one and the same. The Gemara retorts: Rather, what is the meaning of the term meḥitza? A division. If it is so that the term meḥitza means a division, the words: Who wished to make a division, are imprecise, as the tanna should have said: Who wished to divide. The Gemara answers: The phrasing of the mishna is as people commonly say: Come, let us make a division. Consequently, the mishna can also be understood as referring to two people who wished to divide a jointly owned area.

[29] The Gemara asks, according to the understanding that meḥitza means division: But if damage caused by sight is called damage, why does the tanna specifically teach that if they wish, they build a wall? Even if they did not both wish to do so, it should also be possible to compel the reluctant party to build a wall between them. Rabbi Asi said that Rabbi Yoḥanan said: Our mishna is referring to a courtyard that is not subject to the halakha of division. Joint owners of a courtyard cannot be compelled to divide the courtyard unless each party will receive at least four square cubits of the courtyard. And therefore, this ruling of the mishna applies only in the case where they both wished to divide the courtyard.

[30] The Gemara asks: According to this understanding, what is the tanna teaching us? Is he teaching us that when a courtyard is not subject to the halakha of division, if they nevertheless wished to do so, they divide it? But we already learned this in the latter clause of a different mishna (11a): When do they not divide the courtyard because it is not large enough to compel division? When the joint owners do not both wish to divide it. But when both of them wish to divide it, they divide it even if it is smaller than this, i.e., smaller than four square cubits for each party. The Gemara answers: If we had learned this halakha only from there, I would say that they divide the courtyard even if it is smaller than this by constructing a mere partition of pegs, which does not prevent invasion of privacy. Therefore, the tanna teaches us here in this mishna that if they wish to divide the courtyard they can be compelled to build a proper wall.

[31] The Gemara asks: If so, let the tanna teach this mishna and not teach that other mishna, as this mishna teaches more details than the later one. The Gemara answers: It was necessary for the tanna to teach the other mishna to introduce the last clause of that mishna, which states: And jointly owned

sacred writings that are contained in a single scroll should not be divided even if both owners wish to do so.

[32] The Gemara brings a different version of the previous discussion: And if they wished to divide the courtyard, what of it? What forces them to build the wall? If one of the parties does not wish to build a wall, let him retract. Rav Asi said that Rabbi Yoḥanan said that the mishna is not discussing a case where they merely reached a verbal agreement to divide the courtyard, but rather with a case where each party performed an act of acquisition with the other, confirming their respective commitments. Therefore, neither side can retract.

[33] The Gemara asks: Rather than teaching us a case where the courtyard is not subject to the halakha of division, but nevertheless they wished to divide it, let the mishna teach us a case where the courtyard is subject to the halakha of division, even if they did not both wish to divide it. The Gemara answers: Had it taught us only a case where the courtyard is subject to the halakha of division that applies even if they did not both wish to divide it, I would say that in a case where the courtyard is not subject to the halakha of division then even if they both wished to divide it, if one of the parties does not wish to build a proper wall he cannot be compelled to do so. Therefore, the mishna teaches us that he is compelled to participate.

[34] The Gemara asks: But how can you say this? Doesn't the latter clause of the mishna (11a) teach: When do they not divide the courtyard because it is not large enough to compel division? When the joint owners do not both wish to divide it. But when both of them wish to divide it, they divide it even if it is smaller than this. What, is this clause of the mishna not referring to the fact that either one can force the other to build a proper wall? The Gemara answers: No, it is referring to a mere partition of pegs and not to an actual wall.

[35] The Gemara asks: If so, let the tanna teach this mishna and not teach that other mishna, as this mishna teaches more details than the later one. The Gemara answers: It was necessary to teach the other mishna for the last clause of that mishna, which states: And jointly owned sacred writings that are contained in a single scroll should not be divided even if both owners wish to do so. This concludes the alternative version of the discussion.

[36] The Gemara continues its analysis of the mishna: To what case did you interpret the mishna to be referring? To a case where the courtyard is not subject to the halakha of division. But if there is no halakha of division, then if they wished to divide the courtyard, what of it; how can either one force the other to build a wall? If the parties no longer want to build a wall, let them retract. Rabbi Asi said that Rabbi Yoḥanan said: It is referring to a case where each party performed an act of acquisition with the other, confirming their respective commitments. Therefore, neither party can retract.

[37] The Gemara asks: But even if each party performed an act of acquisition with the other, what of it? It is merely a verbal acquisition, meaning there was no actual transfer of property, but only a verbal agreement to act in a certain manner in the future and not a true act of acquisition. The Gemara answers: They performed an act of acquisition with the other with regard to directions, i.e., not only did they verbally agree to divide the courtyard, they also determined which of them would get which part of the courtyard. Consequently, the acquisition related to actual property, a particular plot of land. Rav Ashi said: For example, this one walked through his designated portion and performed an act demonstrating ownership there, and that one walked through his designated portion and performed an act demonstrating ownership there.

[38] § The mishna teaches: In a place where it is customary to build such a wall with non-chiseled stone [gevil], or chiseled stone [gazit], or small bricks [kefisin], or large bricks [leveinim], they must build the wall with that material. The Gemara identifies the various building materials: Gevil refers to stones that are not planed. Gazit means stones that are planed, as it is written: “All these were of costly stones, according to the measures of chiseled stones [gazit], sawed with saws, within and without” (I Kings 7:9). This teaches that chiseled stones are those that have been planed and smoothened. Kefisin refers to small bricks. Leveinim means large bricks.

[39] Rabba, the son of Rava, said to Rav Ashi: From where do you know that gevil refers to stones that are not planed, and this extra handbreadth that a wall of gevil has compared to what a wall of gazit has is for the protruding edges? That is, a wall of gevil is six handbreadths thick because the stones have not been planed and smoothened, and therefore protrude somewhat outward. Perhaps gevil refers to planed stones that are half the thickness of gazit, namely, just two and a half handbreadths, as compared to gazit, which is five handbreadths thick; and this extra handbreadth in a wall of gevil is for the space between the two rows [urbei]. That is, a wall of gevil is actually two walls of planed stones that are each two and a half handbreadths thick; and the two walls are separated by one handbreadth, which is later filled in with mortar for added strength.

[40] A proof for this explanation can be brought from what we say, i.e., that kefisin are small bricks, whereas leveinim are large bricks, twice the thickness of small bricks. And this extra handbreadth of thickness that a wall of kefisin has compared to what a wall of levinim has is for the space between the two rows of small bricks.

[41] Rav Ashi said to him: And according to your reasoning, from where do we derive that kefisin are small bricks? Rather, the Sages learned this as a tradition. And so too, they learned as a tradition that gevil refers to non-planed stones.

[42] The Gemara presents a different version of the discussion. There are those who say that Rav Aḥa, son of Rav Avya, said to Rav Ashi: From where do you know that kefisin are small bricks, one-half the width of large bricks, and this extra handbreadth of thickness that a wall of kefisin has compared to what a wall of leveinim has covers the space between the two rows of kefisin? Perhaps you should say what are kefisin? Stones that are not planed, and this extra handbreadth of thickness that a wall of kefisin has in comparison to what a wall of leveinim has is for the protruding edges. And proof for this explanation can be brought from what we say, i.e., that gevil refers to stones that are not planed, whereas gazit means planed stones, and this extra handbreadth of thickness that a wall of gevil has compared to what a wall of gazit has is for the protruding edges.

[43] Rav Ashi said to him: And according to your reasoning, from where do we derive that gevil are stones that are not planed? Rather, the Sages learned this as a tradition. Here too, they learned as a tradition that kefisin are small bricks.

[44] Abaye said: Learn from it that the space left between the two rows of a wall is always a handbreadth. The Gemara comments: This matter applies only when the two rows of the wall are filled in with mortar. But when they are filled in with gravel [berikhsa], more space is required. And there are those who say that this matter applies only when the two rows of the wall are filled in with gravel. But when mortar is used to fill in the space, not as much space is required, and less than a handbreadth suffices.

[45] § The Gemara asks: Is this to say that in the case of a wall of chiseled stone, if for every four cubits of height there are five handbreadths of thickness the wall will stand, and if not it will not stand, as this is the required ratio between a wall's height and its thickness? But wasn't there the one-cubit-thick wall separating the Holy of Holies from the Sanctuary of the Temple [amah teraksin] separating the Holy of Holies from the Sanctuary, which was thirty cubits high and its thickness was only six handbreadths and nevertheless stood? The Gemara answers: Since there was an extra handbreadth of thickness, it was able to stand even to such a great height.

[46] The Gemara asks: And what is the reason that in the Second Temple they did not fashion an amah teraksin to separate between the Holy of Holies and the Sanctuary, as they had done in the First Temple? The Gemara answers: When a partition stands even though it is only six handbreadths thick, it is able to remain standing up to thirty cubits in height. But it will not be able to stand if it is more than that height. The Second Temple was taller than the First Temple, and therefore the partition separating the Holy of Holies from the Sanctuary also had to be higher.

[47] The Gemara comments: And from where do we derive that the Second Temple was taller than the First Temple? As it is written: "The glory of this latter house shall be greater than that of the former" (Haggai 2:9). Rav and Shmuel disagree about the meaning of this verse, and some say it was Rabbi Yoḥanan and Rabbi Elazar who disagreed as to its meaning. One of them said that it means that the Second Temple will be greater in the size of its structure, i.e., taller. And one of them said

[48] that it will be greater in years, meaning that the Second Temple will stand for a longer period of time than the First Temple. And the Gemara comments that this is true and that is true, meaning that the Second Temple was taller than the First Temple and also stood for a longer period of time.

[49] The Gemara asks: If so, if the Second Temple building was taller, then to separate between the Holy of Holies and the Sanctuary in the Second Temple they should have made a wall thirty cubits high and then made a curtain for the rest of the height, the seventy-cubit difference in height between the First and Second Temples. The Gemara answers: This would have been impossible, as even when a thirty-cubit wall that is six handbreadths thick stands, it is due to the ceiling and plaster which attaches it to the ceiling that it stands. But without a ceiling and plaster holding it in place, it does not stand.

[50] The Gemara continues: But they should have made a wall as high as can possibly stand by itself, and then should have made a curtain for the rest of the height. Abaye said: The Sages learned as a tradition that the partition separating the Holy of Holies from the Sanctuary should be built either entirely as a wall or entirely as a curtain. It should be built either entirely as a wall, as is learned from the First Temple, or it should be built entirely as a curtain, as is learned from the Tabernacle. At no time, however, was there a partition that combined a wall and a curtain.

[51] § A dilemma was raised before the Sages: Do the measurements given in the mishna apply to them, the thickness of the materials themselves, and the plaster with which the materials were coated, or perhaps just to them without their plaster? Rav Naḥman bar Yitzḥak said: It is reasonable to say the measurements refer to them and their plaster, as, if it should enter your mind to say they refer to them without their plaster, then the tanna should have taught the measurements of the plaster as well. Rather, isn't it correct to conclude from here that the measurements refer to them and their plaster? The Gemara rejects this conclusion: No, actually I could say to you that they apply to them without

their plaster, and since the plaster does not have the thickness of one handbreadth the tanna did not teach such a small measurement.

[52] The Gemara asks: But doesn't the tanna teach with regard to bricks that this one provides one and a half handbreadths, and that one provides one and a half handbreadths? Evidently, the tanna lists even an amount less than one handbreadth. The Gemara answers: There mention is made of half-handbreadths because they are fit to be combined into a full handbreadth.

[53] The Gemara suggests: Come and hear a solution to the question, from a mishna (Eiruvin 13b) in which it is taught: The cross beam, which the Sages stated may be used to render an alleyway fit for one to carry within it on Shabbat, must be wide enough to receive and hold a small brick. And this small brick is half a large brick, the width of which is three handbreadths. That mishna is referring to a brick without the plaster.

[54] The Gemara answers: There, the mishna in Eiruvin is referring to large bricks that measure three full handbreadths, whereas here the mishna is referring to bricks that measure slightly less than three handbreadths, and the measurement of three handbreadths includes the plaster with which they are coated. The Gemara comments: The language of the mishna there is also precise, as it teaches about a brick of three handbreadths, from which one can conclude by inference that there exists also a smaller-sized brick. The Gemara affirms: Learn from here that the mishna there is referring to large bricks.

[55] § Rav Ḥisda says: A person may not demolish a synagogue until he first builds another synagogue to take its place. There are those who say that the reason for this halakha is due to potential negligence, lest he fail to build a new structure after the old one has been razed. And there are those who say that the reason for this halakha is due to the disruption of prayer, for in the meantime there will be nowhere to pray.

[56] The Gemara asks: What is the practical difference between these two explanations? The Gemara answers that there is a difference between them in a situation where there is another synagogue. Even though the community has an alternative place to pray there is still a concern that the new synagogue will never get built. It is related that Mareimar and Mar Zutra demolished and built a summer synagogue in the winter, and, in like manner, they built a winter synagogue in the summer, so that the community would never be left without a synagogue.

[57] Ravina said to Rav Ashi: What is the halakha if money for the construction of a new synagogue has already been collected and it rests before us for that purpose? Is it then permitted to demolish the old synagogue before building the new one? Rav Ashi said to him: Even if the money has been collected there is still concern that perhaps an opportunity for redeeming captives will present itself, and they will hand over the money for that urgent requirement, and the community will be left without a synagogue.

[58] Ravina continues: What is the halakha if the bricks to be used for the construction of the new synagogue are piled up, the boards are prepared, and the beams are ready? Is it permitted to demolish the old synagogue before building the new one? Rav Ashi said to him: Even so, sometimes an opportunity for redeeming captives will present itself, and they will sell the building materials and hand over the proceeds for this purpose. Ravina raises an objection: If so, that is, if you are concerned that they will sell the materials to redeem captives, then even in a case where they already built the synagogue there should be a concern that they might come to sell the structure for that

purpose, and therefore one should never be permitted to destroy an old synagogue. Rav Ashi said to him: People do not sell their residences, and certainly not their synagogues.

[59] The Gemara comments: And we said that an old synagogue must not be razed before its replacement is built only in a case where cracks are not seen in the old synagogue. But if cracks are seen they may first demolish the old synagogue and then build the new one. This is like the incident involving Rav Ashi, who saw cracks in the synagogue in his town of Mata Meḥasya and immediately demolished it. He then brought his bed in there, to the building site, so that there should be no delays in the construction, as he himself required shelter from the rain, and he did not remove his bed from there until they finished building the synagogue and even affixed drainpipes to the structure.

[60] The Gemara asks: How could Bava ben Buta have advised Herod to raze the Temple and build another in its place, as will be described later? But doesn't Rav Ḥisda say that a person must not demolish a synagogue unless he first builds another synagogue to take its place? The Gemara answers: If you wish, say that he saw cracks in the old Temple structure. And if you wish, say that actions taken by the government are different, as the government does not go back on its decisions. Therefore, there is no need to be concerned about negligence, as there is in the case of ordinary people. As Shmuel says: If the government says it will uproot mountains, it will uproot mountains and not retract its word.

[61] § The Gemara elaborates on the episode involving Bava ben Buta. Herod was a slave in the house of the Hasmoneans. He set his eyes upon a certain young girl from the house of the Hasmoneans. One day that man, Herod, heard a Divine Voice that said: Any slave who rebels now will succeed. He rose up and killed all his masters, but spared that girl. When that girl saw that he wanted to marry her, she went up to the roof and raised her voice, and said: Whoever comes and says: I come from the house of the Hasmoneans, is a slave, since only that girl, i.e., I, remained from them. And that girl fell from the roof to the ground and died.

[62] It is related that Herod preserved the girl's body in honey for seven years to prevent it from decaying. There are those who say that he engaged in necrophilia with her corpse and there are those who say he did not engage in necrophilia with her corpse. According to those who say he engaged in necrophilia with her corpse, the reason that he preserved her body was to gratify his carnal desires. And according to those who say he did not engage in necrophilia with her corpse, the reason that he preserved her body was so that people would say he married a king's daughter.

[63] Herod said to himself: Who expounds the verse: "One from among your brothers you shall set as king over you" (Deuteronomy 17:15) as meaning that he who is appointed as king must come from a Jewish family and cannot be an emancipated slave or a convert? It is the Sages who expound the verse in this manner, insisting that a king must have Jewish roots. He then rose up and killed all the Sages, but spared Bava ben Buta in order to take counsel with him.

[64] Herod placed a garland made of porcupine hide on Bava ben Buta's head, which pricked his eyes out. One day Herod came and sat before him without identifying himself in order to test him. He, Herod, said: See, Master, what this evil slave Herod is doing. Bava ben Buta said to him: What should I do to him? Herod said to him: The Master should curse him. Bava ben Buta said to him: But it is written: "Do not curse the king, not even in your thoughts" (Ecclesiastes 10:20). Herod said to him: He is not a king, since he rules illegally. Bava ben Buta said to him: And even if he were merely a rich man I would not curse him, as it is written: "And do not curse a rich person in your

bedchamber” (Ecclesiastes 10:20). And even were he only a leader I would not curse him, as it is written: “And you shall not curse a leader among your people” (Exodus 22:27).

[65] Herod said to him: That halakha stated with regard to “a leader among your people,” that is, to a fit Jew who acts as a member of your people, i.e., in accordance with Torah law, and this one does not do the deeds of your people. Bava ben Buta said to him: Nevertheless, I am afraid of him. Herod said to him: There is nobody who will go and tell him, since you and I are sitting here alone. Bava ben Buta said to him: Nevertheless, it is written: “For a bird of the sky shall carry the sound, and that which has wings shall tell the matter” (Ecclesiastes 10:20).

[66] Herod said to him: I am he. Had I known that the Sages were so cautious I would not have killed them. Now, what is that man’s remedy, i.e., what can I do to repent for my sinful actions? Bava ben Buta said to him: He who extinguished the light of the world by killing the Torah Sages, as it is written: “For the mitzva is a lamp, and the Torah is light” (Proverbs 6:23), should go and occupy himself with the light of the world, the Temple, as it is written with regard to the Temple: “And all the nations shall flow [venaharu] unto it” (Isaiah 2:2), the word venaharu alluding to light [nehora]. There are those who say that this is what he said to him: He who blinded the eye of the world, as it is written in reference to the Sages: “And if it be committed through ignorance by the eyes of the congregation” (Numbers 15:24), should go and occupy himself with the eye of the world, the Temple, as it is written: “I will desecrate my Temple, the pride of your strength, the delight of your eyes” (Ezekiel 24:21).

[67] Herod said to him: I am afraid of the Roman government, that they will not permit me to make changes in the Temple. Bava ben Buta said to him: Send a messenger who will travel there for a year, and remain there for another year, and take yet another year to return. In the meantime, you can demolish the Temple and rebuild it. He did so. Eventually, they sent a message to Herod from Rome: If you have not yet demolished it, do not demolish it; and if you have already demolished it, do not rebuild it; and if you have demolished it and already rebuilt it, you shall be counted among those who act wickedly, seeking counsel only after they have already acted. Even if you are armed and in command of a military force, your book, i.e., your genealogical record, is here. You are neither a king [reikha] nor the son of a king, but rather Herod the slave who has made himself a freeman [kelonya].

[68] The Gemara explains: What is the meaning of the word reikha? It denotes royalty, as it is written: “I am today a tender [rakh] and anointed king” (II Samuel 3:39). And if you wish, say that the meaning of the word is learned from here, from the term describing Joseph after he was appointed viceroy to the king: “And they cried before him, Avrekh” (Genesis 41:43).

[69] The Sages say: One who has not seen Herod’s building has never seen a beautiful building in his life. The Gemara asks: With what did he build it? Rabba said: With stones of white and green marble [umarmara]. There are those who say that he built it with stones of blue, white, and green marble. Alternate rows of stones sent out an edge a bit and drew in an edge a bit, so that they would better receive and hold the plaster. He considered covering it with gold, but the Rabbis said to him: Leave it, and do not cover it, since it is more beautiful this way, as it looks like the waves of the sea.

[70] The Gemara asks: And how did Bava ben Buta do this, i.e., give advice to Herod the wicked? But doesn’t Rav Yehuda say that Rav says, and some say it was Rabbi Yehoshua ben Levi who says: For what reason was Daniel punished? Because he offered advice to Nebuchadnezzar, as after sharing a harsh prophecy with him, it is stated: “Therefore, O king, let my counsel be acceptable to you,

redeem your sins with charity and your iniquities with graciousness to the poor, that there may be a lengthening of your prosperity” (Daniel 4:24). And it is written: “All this came upon King Nebuchadnezzar” (Daniel 4:25). And it is written: “And at the end of twelve months” (Daniel 4:26). Only after a year was the prophecy fulfilled but not before that, apparently because Nebuchadnezzar heeded Daniel’s advice.

71 The Gemara answers: If you wish, say that a slave like Herod is different since he is obligated in the mitzvot, and therefore Bava ben Buta had to help him repent. And if you wish, say the Temple is different, as without the help of the government it would not have been built.

72 The Gemara asks: And from where do we derive that Daniel was punished? If we say we know this because it is written: “And Esther called for Hatach, one of the king’s chamberlains, whom he had appointed to attend upon her” (Esther 4:5), and Rav said: Hatach is Daniel. This works out well according to the one who says Daniel was called Hatach because they cut him down [ḥatakh] from his greatness and turned him into a minor attendant. But according to the one who says he was called Hatach because all governmental matters were determined [ḥatakh] according to his word, what is there to say? What punishment did he receive? The Gemara answers: His punishment was that they threw him into the den of lions.

73 § The mishna teaches: In a place where it is customary to build a wall of non-chiseled stone, or chiseled stone, or small bricks, or large bricks, they must build the partition with that material. Everything is in accordance with the regional custom. The Gemara asks: What does the word everything serve to add? The Gemara answers: It serves to add a place where it is customary to build a partition out of palm and laurel branches. In such a place, the partition is built from those materials.

74 The mishna teaches: Therefore, if the wall later falls, the assumption is that the space where the wall stood and the stones belong to both of them, to be divided equally. The Gemara questions the need for this ruling: Isn’t it obvious that this is the case, since both neighbors participated in the construction of the wall? The Gemara answers: No, it is necessary to teach this halakha for a case where the entire wall fell into the domain of one of them. Alternatively, it is necessary in a case where one of them already cleared all the stones into his own domain. Lest you say that the other party should be governed by the principle that the burden of proof rests upon the claimant, that is, if the other party should have to prove that he had been a partner in the construction of the wall, the mishna teaches us that they are presumed to have been partners in the building of the wall, and neither requires further proof.

75 § The mishna continues: And similarly with regard to a garden, in a place where it is customary to build a partition in the middle of a garden jointly owned by two people, and one of them wishes to build such a partition, the court obligates his neighbor to join in building the partition. The Gemara comments: This matter itself is difficult. On the one hand, you said: And similarly with regard to a garden, in a place where it is customary to build a partition in the middle of a garden jointly owned by two people, and one of them wishes to build such a partition, the court obligates his neighbor to join in building the partition. One can infer that ordinarily, where there is no custom, the court does not obligate him to build a partition.

76 But say the latter clause of the mishna: But with regard to an expanse of fields, in a place where it is customary not to build a partition between two people’s fields, and one person wishes to build a partition between his field and that of his neighbor, the court does not obligate his neighbor to build

such a partition. One can infer that ordinarily, where there is no custom, the court obligates him to build a partition. The Gemara explains the difficulty: Now that you said by inference that in an ordinary garden the court does not obligate him to build a partition, is it necessary to say that the court does not obligate him to build a partition in an ordinary field? Clearly in a field there is less of a need for a partition, as there is less damage caused by exposure to the gaze of others.

77 Abaye said that this is what the tanna is saying: And similarly with regard to an ordinary garden, and also in a place where it is customary to build a partition in an expanse of fields, the court obligates him to build a partition. Rava said to him: If so, what is the point of the word: But, mentioned afterward in connection with an expanse of fields, which seems to indicate that the issue of fields had not yet been addressed? Rather, Rava said that this is what the tanna is teaching: And similarly an ordinary garden is treated like a place where it is customary to build a partition, and therefore the court obligates him to build a partition. But an ordinary expanse of fields is treated like a place where it is customary not to build a partition, and therefore the court does not obligate him to build one.

78 § The mishna teaches: Rather, if one person wishes to erect a partition, he must withdraw into his own field and build the partition there. And he makes a border mark on the outer side of the barrier facing his neighbor’s property, indicating that he built the entire structure of his own materials and on his own land. The Gemara asks: What is the meaning of a border mark? Rav Huna said: He bends the edge of the wall toward the outside. The Gemara suggests: Let him make it on the inside. The Gemara explains: In that case, his neighbor might also make a mark on the outside, that is, on the side facing his own property, and say: The wall is both mine and his. The Gemara responds: If so, that is, there is a concern about such deception, now also when the person who builds the wall makes a border mark on the outer side of the wall, his neighbor might cut it off and say: The wall is both mine and his. The Gemara answers: Such a cut is noticeable and the deception will not work.

79 There are those who say that in answer to the question: What is the meaning of a border mark, Rav Huna said: He bends the edge of the wall toward the inside. The Gemara suggests: Let him make it on the outside. The Gemara explains: In that case, his neighbor might cut it off and say: The wall is both mine and his. The Gemara asks: If so, that is, there is a concern for such deception, now also when the person who builds the wall makes a border mark toward the inside, his neighbor might add a border mark on his own side and say: The wall is both mine and his. The Gemara answers: An addition is noticeable and the deception will not work. The Gemara asks: But doesn’t the mishna teach that he makes the border mark on the outside and not on the inside? The Gemara comments: This is a difficulty.

80 Rabbi Yoḥanan said:

81 The party who builds the wall should smear it with clay up to a cubit at the top of the wall on the outside. The Gemara suggests: Let him do this on the inside. The Gemara explains: In that case, his neighbor might also do it on the outside, that is, on the side facing his own property, and say: The wall is both mine and his. The Gemara responds: If so, that is, if there is a concern for such deception, now also when the person who builds the wall smears it with clay on the outside, his neighbor can peel it off and say: The wall is both mine and his. The Gemara explains: Peeling clay is noticeable and the deception will not succeed.

[82] The Gemara asks: If he builds a partition of palm branches, how does he make a border mark? Rav Naḥman said: He directs the tips of the branches to the outside. The Gemara suggests: Let him do this to the inside. The Gemara states: If he so directs the branches, his neighbor might also do the same to the outside, that is, to the side facing his own property, and say: The partition is both mine and his. The Gemara objects: If so, that is, if there is concern for such deception, now also when the one who builds the partition directs the tips of the branches to the outside, the neighbor can cut off the tips and throw them away, and say: The partition is both mine and his. The Gemara counsels: He should smear the tips of the palm branches with clay. The Gemara comments: Now also, the neighbor might come and peel the clay off. The Gemara answers: Peeling is noticeable.

[83] Abaye said: One who builds a partition of palm branches has no remedy to prove who erected it, except with a written document. The neighbor should draw up a document stating that he has no claim to the space or to the partition, because they belong exclusively to the other neighbor.

[84] § The mishna teaches: Nevertheless, in a place where it is not customary to build a partition between two people’s fields, if they made such a partition with the agreement of the two of them, they build it in the middle, i.e., on the property line, and make a border mark on the one side and on the other side. Therefore, if the wall later falls, the assumption is that the space where the wall stood and the stones belong to both of them, to be divided equally. Rava from Parzika said to Rav Ashi: Neither this one nor that one should make a border mark. Rav Ashi said to him: No, this ruling is necessary in a case where one of them went ahead and made a border mark for himself, so that if his neighbor does not make one as well, the first one will say that it is entirely his.

[85] Rava from Parzika asked him: And is the tanna of the mishna teaching us a remedy to be used against a swindler? Rav Ashi said to him: But isn’t the former clause of the mishna’s ruling also a remedy to be used against a swindler? That clause teaches that one who builds a wall should make a border mark to indicate that the wall is his.

[86] Rava from Parzika said to him: Granted, in the former clause the tanna taught the halakha that if one wishes to build a partition between his own field and that of his neighbor, he does so at his own expense and on his own land, and due to the need to teach that halakha he also taught a remedy to be used against a swindler. But does he teach a halakha in the latter clause, so that he also teaches a remedy to be used against a swindler? Ravina said: Here, in the latter clause, we are dealing with a barrier made of palm branches. This is to the exclusion of the opinion of Abaye, who said: One who builds a partition of palm branches has no remedy to prove who erected it, except with a written document. He teaches us that a border mark suffices.

[87] MISHNA: With regard to one who surrounds another on three sides, that is, he owns parcels of land on three sides of the other person’s field, and he built a partition on the first, the second, and the third sides, the court does not obligate the neighbor who owns the inner field to contribute to the construction of the partition if he does not wish to do so. Rabbi Yosei says: If he arose and built a partition on the fourth side of the field, the court imposes upon the owner of the inner field the responsibility to pay his share for all of the partitions.

[88] GEMARA: Rav Yehuda says that Shmuel says: The halakha is in accordance with the opinion of Rabbi Yosei, who says that if he arose and built a partition on the fourth side of the field, the court imposes upon the owner of the inner field the responsibility to pay his share for all of the partitions. The Gemara comments: It is no different if it was the owner of the surrounded field who arose and

built a partition on the fourth side, and it is no different if it was the owner of the surrounding field who arose and built a partition on the fourth side. The halakha is the same in both cases.

[89] It was stated that the amora'im disagreed with regard to the following point. Rav Huna says that when Rabbi Yosei said the court obligates the owner of the inner field to pay his share for all of the partitions, he pays in accordance with what the other person actually spent when he built the partitions. That is, the owner of the inner field must contribute his share according to the cost of the partition his neighbor built. Ḥiyya bar Rav says: He must pay his share for all of the partitions in accordance with a reduced assessment of the price of reeds, and no more. The owner of the surrounded field can claim he had no desire for a more substantial partition.

[90] The Gemara attempts to bring a proof from what we learned in the mishna: With regard to one who surrounds another on three sides, that is, he owns parcels of land on three sides of the other person's field, and he built a partition on the first, the second, and the third sides, the court does not obligate the neighbor who owns the inner field to contribute to the construction of the partition. By inference, if he also built a partition on the fourth side of the field, the court does obligate the owner of the inner field to contribute to the building of the partition. The Gemara continues with its proof: Say the latter clause of the mishna: Rabbi Yosei says: If he arose and built a partition on the fourth side of the field, the court imposes upon the owner of the inner field the responsibility to pay his share for all of the partitions. The first tanna and Rabbi Yosei seem to be stating the same ruling.

[91] Granted, according to Rav Huna, who says that the owner of the inner field pays for all of the partitions in accordance with what the other person actually spent when he built the partitions, this is the difference between the first tanna and Rabbi Yosei: The first tanna maintains that yes, he pays his share for all of the partitions in accordance with a reduced assessment of the price of reeds, but not a larger sum in accordance with what the other person actually spent when he built the partitions. And Rabbi Yosei maintains that he pays his share for all of the partitions in accordance with what the other person actually spent when he built the partitions.

[92] But according to Ḥiyya bar Rav, who says he pays his share for all of the partitions in accordance with the value of a partition fashioned from inexpensive reeds, what difference is there between the first tanna and Rabbi Yosei? If according to the first tanna he does not give him his share for all of the partitions in accordance with a reduced assessment of the price of reeds, what does he give him?

[93] The Gemara answers: If you wish, say there is a practical difference between them with regard to the wage of a watchman. The first tanna maintains that yes, since his field is safeguarded by the partition which surrounds it, the one who built the partition can demand payment of the wage of a watchman. He cannot, however, demand the cost of building the partition, not even the other's share for all of the partitions in accordance with a reduced assessment of the price of reeds. And Rabbi Yosei maintains that he can demand the other's share for all of the partitions in accordance with a reduced assessment of the price of reeds.

[94] And if you wish, say there is a practical difference between them with regard to the partitions built on the first, second, and third sides of the inner field. The first tanna maintains that the owner of the inner field must give to his neighbor money for the partition built on the fourth side, but he is not required to give him money for the partitions built on the first, second, and third sides. And Rabbi Yosei maintains that he must also give him money for the partitions built on the first, the second, and the third sides.

[95] The Gemara suggests another difference between the two opinions: If you wish, say there is a practical difference between them with regard to the issue of whether the partition on the fourth side was built by the owner of the surrounding field or by the owner of the surrounded field. This is because the first tanna maintains that the reason the owner of the surrounded field must contribute his share of the entire expense is that he arose and built a partition on the fourth side of his field. Therefore, the court imposes upon him the responsibility to pay his share for all of the partitions, because his actions demonstrate that he wants the partition between their fields. But if the owner of the surrounding field arose and built a partition on the fourth side of the field, the owner of the surrounded field must give him only his share of the value of the partition of the fourth side.

[96] And Rabbi Yosei maintains that it is no different if it was the owner of the surrounded field who arose and built a partition on the fourth side, and it is no different if it was the owner of the surrounding field who arose and built a partition on the fourth side. If either one arose and built a partition on the fourth side, the court imposes upon the owner of the inner field the obligation to pay his share for all of the partitions.

[97] The Gemara reports another version of this last answer: There is a practical difference between them with regard to the issue of whether the partition on the fourth side was built by the owner of the surrounding field or by the owner of the surrounded field. The first tanna maintains that even if the owner of the surrounding field built a partition on the fourth side, the owner of the surrounded field also gives him his share of the cost of the partitions. And Rabbi Yosei maintains that only if the owner of the surrounded field arose and built a partition on the fourth side does he give the owner of the surrounding field his share of the cost of the partitions. Why is that? Because he reveals that he is pleased with the partitions. But if the owner of the surrounding field built a partition on the fourth side, the owner of the surrounded field does not give him anything, as he can continue to claim that he has no interest in the partitions.

[98] It is related that a man named Ronya had a field that was surrounded by fields belonging to Ravina on all four sides. Ravina built partitions around his fields and said to him: Give me your share of the expense in accordance with what I actually spent when I built the partitions, i.e., half the cost of the partitions. Ronya did not give it to him. Ravina said to him: Give me then at least your share of the expense in accordance with a reduced assessment of the price of reeds. Ronya did not give it to him. Ravina said to him: Give me then at least the wage of a watchman. But he did not give even this to him.

[99] One day, Ronya was harvesting dates. Ravina said to his sharecropper: Go take a cluster [kibbura] of dates from him. The sharecropper went to bring them, but Ronya raised his voice at him in protest, whereupon Ravina said to him: You have revealed that you are pleased with the partitions and the protection that they provide you. Even if it were only a goat that entered your field, wouldn’t the field need safeguarding, to prevent the goat from eating the dates? Ronya said to him: If it were only a goat, doesn’t one need merely to chase it away [le’akhluyei]? No partition is required. Ravina said to him: But wouldn’t you need a man to chase the goat away? Pay me then at least the wage of a watchman.

[100] Ravina came before Rava to adjudicate the matter. Rava said to Ronya: Go appease Ravina with what he expressed his willingness to be appeased with, namely, the wage of a watchman. And if not, I will judge you in accordance with the ruling of Rav Huna in accordance with the opinion of Rabbi

Yosei, and you will be required to pay half the cost of the partition based on what Ravina actually spent on it.

[101] Incidental to that episode, the Gemara relates another encounter between Ravina and Ronya. Ronya once bought land adjoining property belonging to Ravina. Ravina considered removing him due to the halakha of one whose field borders the field of his neighbor. When land is up for sale, the owners of the adjoining fields have the right of first refusal. If one of the neighbors is willing to match the highest price being offered to the seller, that neighbor has the preemptive right to purchase the property, and if somebody else buys it, that buyer can be removed. Since Ravina owned the adjacent property, he thought that he enjoyed the right of first refusal. Rav Safra, son of Rav Yeiva, said to Ravina: People say: Four dinars for a large hide [tzalla], four for a small hide [tzelala]. Since Ronya also owned land bordering the desired parcel, you cannot remove him even though his plot of land is smaller than yours.

[102] MISHNA: In the case of a dividing wall in a jointly owned courtyard that fell, if one of the owners wishes to rebuild the wall, the court obligates the other owner to build the wall with him up to a height of four cubits. If after the wall was built one of the neighbors claims he alone constructed it and the other did not participate in its building, the latter is nevertheless presumed to have given his share of the money, unless the claimant brings proof that the other did not give his part.

[103] The court does not obligate the reluctant neighbor to contribute to the building of the wall higher than four cubits. But if the reluctant neighbor built another wall close to the wall that had been built higher than four cubits, in order to set a roof over the room that was thereby created, the court imposes upon him the responsibility to pay his share for all of the rebuilt wall, even though he has not yet set a roof over it. Since he has demonstrated his desire to make use of what his neighbor built, he must participate in the cost of its construction. If the builder of the first wall later claims that he did not receive payment from his neighbor, the neighbor is presumed not to have given his share of the money, unless he brings proof that he did in fact give money for the building of the wall.

[104] GEMARA: Reish Lakish says: If a lender set a time for another to repay the loan that he had extended to him and when the debt came due the borrower said to the lender: I already repaid you within the time, he is not deemed credible, as people do not ordinarily repay their debts before they are due. The lender would be happy if the borrower would only repay his debt on time. Abaye and Rava disagree with Reish Lakish, as they both say: A person is apt to repay his debt within its time, i.e., before it is due. This is because sometimes he happens to have money and the borrower says to himself: I will go and repay my debt

[105] so that he will not trouble me later by constantly demanding the money.

[106] The Gemara attempts to bring a proof in support of the opinion of Abaye and Rava from what we learned in the mishna (5a): If after the wall was built one of the neighbors claims he alone constructed it and the other did not participate in its building, the latter is nevertheless presumed to have given his share of the money, unless the claimant brings proof that the other did not give his part.

[107] The Gemara clarifies the matter: What are the circumstances of the case under discussion? If we say that he said to him: I paid you at the time when the payment became due, when the wall was completed, it is obvious that he is presumed to have given his part. Rather, is it not that he said to him: I paid you within the time before the payment became due, while the wall was still under

construction? And with regard to such a case the mishna states that he is presumed to have given his share. Apparently, a person is apt to repay his debt within its time, in accordance with the opinion of Abaye and Rava. The Gemara rejects this proof: Here it is different, because the time to pay is upon the completion of each and every row. Payment does not become due specifically at the completion of the entire wall.

[108] The Gemara further suggests: Come and hear a proof in support of the opinion of Reish Lakish from the continuation of the mishna (5a): The court does not obligate the reluctant neighbor to contribute to the building of the wall higher than four cubits. But if the reluctant neighbor built another wall close to the wall that had been built higher than four cubits, in order to set a roof over the room that was thereby created, the court imposes upon him the responsibility to pay his share for all of the rebuilt wall, even though he has not yet set a roof over it. If the builder of the first wall later claims he did not receive payment from his neighbor, the neighbor is presumed not to have given his share of the money, unless he brings proof that he did in fact give money for the building of the wall.

[109] The Gemara clarifies the matter: What are the circumstances of the case under discussion? If we say that he said to him: I paid you at the time that the payment became due, when the wall was completed, why is he not deemed credible? Rather, is it not that he said to him: I paid you within the time before the payment became due, and therefore he is not deemed credible? Apparently, a person is not apt to repay his debt within its time, in accordance with the opinion of Reish Lakish. The Gemara rejects this proof: Here it is different, since the reluctant neighbor says: Who says that the Rabbis will obligate me to pay for this wall? In such a case he certainly does not pay before the payment becomes due.

[110] Rav Pappa and Rav Huna, son of Rav Yehoshua, acted in such a case in accordance with the opinion of Abaye and Rava. Mar bar Rav Ashi acted in accordance with the opinion of Reish Lakish. The Gemara concludes: And the halakha is in accordance with the opinion of Reish Lakish that one is not deemed credible when he says that he repaid a loan before it became due. And if the debtor dies, the court collects payment even from his orphans based on this assumption. And even though the Master said that one who comes to collect money from the property of orphans cannot collect unless he first takes an oath that he did not already collect the debt from the deceased, here he can collect without taking an oath because there is a presumption that a person is not apt to repay his debt within its time.

[111] A dilemma was raised before the Sages: What is the halakha if the lender stipulated a time with the borrower for repayment of the debt, and he demanded payment of the money after the time that the payment became due had passed, and the borrower said to him: I already repaid you within the time before the payment became due? Do we say that even where there is a presumption against someone’s claim, as in this case where there is a presumption that people do not pay their debts before they become due, we say that the borrower can claim: Why would I lie? If one of the litigants could have advanced a claim more advantageous to his cause than the one he actually did, the assumption is that he is telling the truth. Consequently, in this case had the borrower wished to lie, he could have said that he repaid his debt when it became due, and he would have been deemed credible. Therefore, when he claims that he repaid it before it came due he should also be deemed credible.

[112] Or perhaps where there is a presumption against a person’s claim, we do not say that the borrower can claim: Why would I lie? The Gemara suggests: Come and hear a proof from the mishna: If after the wall was built one of the neighbors claims he alone constructed it and the other did not participate in its building, the latter is nevertheless presumed to have given his share of the money, unless the claimant brings proof that the other did not give his share.

[113] The Gemara clarifies the matter: What are the circumstances of the case? If we say that one partner demanded that the other party pay the money after the time that the payment became due, i.e., after the wall was rebuilt, and the other partner said to him: I paid you at the time that the payment became due, it is obvious that he is presumed to have given him the money. Rather, is it not a case where he said to him: I paid you within the time, i.e., before the payment became due? Apparently, even where there is a presumption against a person’s claim, we say that the defendant can claim: Why would I lie? The Gemara rejects this proof: Here it is different, because the time to pay is upon the completion of each and every row. Therefore, it is as if he said: I paid you at the time that the payment became due.

[114] The Gemara suggests: Come and hear another proof from the continuation of the mishna. The court does not obligate the reluctant neighbor to contribute to the building of the part of the wall that is above four cubits. But if the reluctant neighbor built another wall close to the wall that was built higher than four cubits, in order to set a roof over the room that was thereby created, the court imposes upon him the responsibility to pay his share for all of the rebuilt wall, even though he has not yet set a roof over it. If the builder of the first wall later claims that he did not receive payment from his neighbor, the neighbor is presumed not to have given his share of the money, unless he brings proof that he did in fact give money for the building of the wall.

[115] The Gemara clarifies: What are the circumstances of the case? If we say that one partner demanded that the other party pay the money after the time that the payment became due, and he, the latter, said to him: I paid you at the time that the payment became due, why is he not deemed credible? Rather, is it not that he said: I paid you within the time, before the payment became due? And with regard to this case, the mishna states that he is not deemed credible. Apparently, where there is a presumption against a person’s claim, we do not say that the defendant can claim: Why would I lie? The Gemara rejects this proof: Here it is different, since the reluctant neighbor says: Who says that the Rabbis will obligate me to pay for this additional part of the wall? In such a case he certainly does not pay before the payment becomes due. The mishna does not provide a proof one way or the other.

[116] Rav Aḥa, son of Rava, said to Rav Ashi: Come and hear a proof from what is taught in a mishna (Shevuot 38b): If one said to another: I have one hundred dinars in your possession, and the other one said to him in the presence of witnesses: Yes, that is so; and the next day the lender said to the borrower: Give me the money that you owe me, the halakha is as follows: If the borrower said: I already gave it to you, he is exempt. But if he said: Nothing of yours is in my possession, he is liable.

[117] The Gemara clarifies the matter: What, is it not that when he says: I already gave it to you, he is saying to him: I repaid you at the time that the payment became due; and when he says: Nothing of yours is in my possession, he is saying to him: I repaid you within the time, before the payment became due? And yet, the mishna teaches with regard to the latter case that he is liable. Apparently, where there is a presumption against a person’s claim, we do not say that the borrower can claim:

Why would I lie? The Gemara rejects this proof: No, what does he mean when he says: Nothing of yours is in my possession? He is saying: There were never such matters; i.e., the purported loan never occurred. As the Master says: Anyone who says: I did not borrow, is treated as one who says: I did not repay, and since it is known by his own admission that he borrowed money, he is liable to pay.

[118] § The mishna teaches: But if the reluctant neighbor built another wall close to the wall that was built higher than four cubits, in order to set a roof over the room that was thereby created, the court imposes upon him the responsibility to pay his share for all of the rebuilt wall. Rav Huna says: If he built another wall close to the first wall that was half the length or the height of the wall that was built higher than four cubits, it is as if he built it close to the height and length of the entire wall. Since he can easily add to his wall so that it will be equal in length or height to the wall the neighbor rebuilt, he must therefore pay half the cost of the entire rebuilt wall. And Rav Naḥman says: With regard to that which he built close, he built it close; with regard to that which he did not build close, he did not yet build it close. Accordingly, he is required to pay an additional share only for the part of the wall corresponding to the new wall he built.

[119] And Rav Huna concedes with regard to an attachment to the corner of his house that he is not required to pay half the cost of the entire rebuilt wall. If he built the extension of his house in this manner, it is not considered as if he built it close to the entire wall, as it is unlikely that he will add to it. And Rav Naḥman concedes that in a case in which he places a heavy beam [be'afriza] on the wall that can support a roof, or carves into the wall indentations to fix beams in place, then even if he has not yet made use of the entire height of the wall, he has demonstrated his desire to do so in the future, and therefore he must pay half the cost of the entire wall.

[120] § The mishna teaches that if the builder of the first wall later claims that he did not receive payment from his neighbor, the neighbor is presumed not to have given his share of the money, unless he brings proof that he did in fact give money for the building of the wall. Rav Huna says: Even if openings in the wall were built on the side facing the reluctant partner and these openings are suited to serve as beam rests, this does not create a presumption that the reluctant partner contributed his share to the building of the wall. And this is the halakha even if the builder of the wall made sills for these openings. As the builder of the wall can say to his neighbor: I said to myself that when you will appease me and pay me for the construction of the wall, you might want to attach beams to it, and I do not want the foundations of my wall to be damaged by your fashioning new openings in it. Therefore, from the outset, I built the wall with these openings.

[121] With regard to the use of a neighbor's wall, Rav Naḥman says: If one acquired the privilege to place thin beams on his neighbor's wall, i.e., if one had used the wall in that manner in the past and the owner did not protest, so the one using it can maintain that he had acquired from the owner the right to do so, he has not acquired the privilege to place thick beams there. But if he acquired the privilege to place thick beams on the wall, he has acquired the privilege to place thin beams there. Rav Yosef says: If he acquired the privilege to place thin beams, he also has acquired the privilege to place thick beams.

[122] There are those who say that Rav Naḥman says: If one acquired the privilege to place thin beams on his neighbor's wall, he has acquired the privilege to place thick beams there; and if he acquired

the privilege to place thick beams, he has acquired the privilege to place thin beams. This version of Rav Naḥman's statement accords with the statement of Rav Yosef.

[123] With regard to a similar matter, Rav Naḥman says: If one acquired the privilege to let water drip from his roof into his neighbor's courtyard, he has acquired the privilege to let the water pour there through a drainpipe. If the neighbor did not protest about the water dripping from the roof into his courtyard, he would certainly allow him to build a drainpipe, which would limit the water to a single place. But if he acquired the privilege to let the water pour through a drainpipe into his neighbor's courtyard, he has not acquired the privilege to let water drip there from his roof. And Rav Yosef says: Even if he acquired the privilege to let water pour there through a drainpipe, he also has acquired the privilege to let water drip there from his roof.

[124] There are those who say that Rav Naḥman said: If one acquired the privilege to let water pour through a drainpipe into his neighbor's courtyard, he has acquired the privilege to let water drip there from his roof; and if he acquired the privilege to let water drip from his roof into his neighbor's courtyard, he has acquired the privilege to let water pour there through a drainpipe. But he has not acquired the privilege to let water drip from a hut whose roof is composed of willow branches into his neighbor's courtyard. Rav Yosef said: He has acquired the privilege to let water drip there even from a hut whose roof is composed of willow branches. The Gemara comments: Rav Yosef performed an action, i.e., issued a practical ruling, with regard to a hut whose roof is composed of willow branches, allowing the neighbor to let water drip from there after he had acquired the privilege to use a drainpipe.

[125] Rav Naḥman says that Rabba bar Avuh says: If one rents a room to another

[126] in a large building with many residences, the renter may make use of the building's projections and of the cavities in its external walls up to a distance of four cubits from his room, and he may make use of the thickness of the wall in a place where it is customary to do so. But as for making use of the building's front garden [betarbatz], he may not do so. And Rav Naḥman himself said: He may make use of even the building's front garden. But he may not use the yard that is at the back of the house. And Rava said: He may use even the yard that is at the back of the house.

[127] Apropos the use of a wall between neighbors, Ravina says: If one's beam supporting a covering for shade was resting on his neighbor's wall for up to thirty days, there is no acquired privilege for him to continue using it, since the neighbor can claim that he had assumed that the beam was there only temporarily and for that reason he did not protest. But after thirty days, there is an acquired privilege. And if it was for a sukka that was being used for the mitzva on the festival of Sukkot, for up to seven days there is no acquired privilege for him to continue using it, since it is assumed that it is there for the mitzva and that after the Festival it will be removed. But if after seven days the neighbor did not protest, there is an acquired privilege for him to continue using it. And if the one using the beam attached it with clay, there is immediately such an acquired privilege.

[128] § Abaye says: If there were two houses on two sides of a public domain, this one, the owner of one of the houses, must build a fence for half his roof, and that one, the owner of the other house, must build a fence for half his roof. They must position the fences so that one fence is not opposite the other fence, and each one must add to his fence a little beyond the midway point, so that each one should not be able to see the activity on the other's roof.

[129] The Gemara asks: Why discuss specifically the case of two houses on opposite sides of a public domain, considering that the same halakha should apply even if the two houses are separated by a private domain? The Gemara answers: It was necessary for Abaye to mention a public domain, lest you say that one neighbor can say to the other: Ultimately, you need to conceal yourself from people in the public domain. Since in any event you have to build a fence across your entire roof, you cannot compel me to build a fence on my roof.

[130] To counter this, Abaye teaches us that this is not so, because the second homeowner can say to the first in response: The public can see me only during the day, when pedestrians pass by, but they cannot see me at night. You, by contrast, can see me both during the day and at night. Alternatively, he can say: The public can see me from the street only when I am standing, but they cannot see me when I am sitting. You, by contrast, can see me both when I am standing and when I am sitting. And furthermore, the public can see me only when they look specifically at me, but they cannot see me when they do not look specifically at me, since the average pedestrian does not look up to see what is happening on the roofs. You, by contrast, can see me in any case, because you live opposite me.

[131] The Master, i.e., Abaye, said above: This one, the owner of one of the houses, must build a fence for half his roof, and that one, the owner of the other house, must build a fence for half his roof. They must position the fences so that one fence is not opposite the other fence, and each one must add to his fence a little beyond the midway point. The Gemara asks: Isn't it obvious that each one must make a fence for half his roof?

[132] The Gemara answers: No, it is necessary in a case where one of them went ahead on his own and constructed a fence on half his roof, lest you say that the other can say to him: Take from me compensation for the expenditure [uzinka], and you build the entire fence, and in that way we will not invade one another's privacy. Therefore, Abaye teaches us that the neighbor who built the fence for half his roof can say to him: What is the reason you do not want to build a fence? It is because the added weight will damage your house's foundation. My foundation too will be damaged if I continue to build on my roof.

[133] Rav Naḥman says that Shmuel says: If one's roof is adjacent to his neighbor's courtyard, he must build a fence on the roof four cubits high, so that he will not be able to see into his neighbor's courtyard, but he is not required to build a fence between one roof and another roof. And Rav Naḥman himself says: He is not required to build a fence four cubits high on the roof, but he is required to build a partition that is ten handbreadths high.

[134] The Gemara asks: For what purpose, according to Rav Naḥman, does the neighbor have to build such a partition? If it is to prevent damage caused by exposure to the sight of others, we require a partition of four cubits. If it is to catch the neighbor as a thief, i.e., to set a boundary between the two properties so that any trespass will be construed as attempted theft, a mere partition of pegs suffices. And if it is to prevent kid goats and lambs from crossing from one roof to the other, a low partition that is high enough so that the goat or lamb will not be able to leap headlong from one roof to the other suffices. The Gemara answers: Actually, it is built to catch the neighbor as a thief. With a partition of pegs he can give an excuse and say that he was merely stretching himself, but with a partition of ten handbreadths he cannot give such an excuse.

[135] The Gemara raises an objection to the opinion of Rav Naḥman from a baraita: If his courtyard was higher than the other's roof, he is not required to attend to it. What, is it not teaching that he is

not required to attend to it at all, i.e., that he need not build any type of fence? The Gemara answers: No, it means that he is not required to attend to building a partition of four cubits, but he must attend to building a partition of ten handbreadths, as maintained by Rav Naḥman.

[136] It was stated that amora'im disagree about the following case: If there are two adjoining courtyards, one higher than the other, Rav Huna says that the owner of the lower courtyard builds the wall separating the courtyards from his level and upward, and the owner of the upper courtyard builds the wall from his level and upward. And Rav Ḥisda says: The owner of the upper courtyard assists the owner of the lower courtyard and builds from below, even including that part of the wall which is opposite the lower courtyard.

[137] The Gemara notes that it is taught in a baraita in accordance with the opinion of Rav Ḥisda: If there were two adjoining courtyards, one higher than the other, the owner of the upper courtyard cannot say: I will build from my level and upward, but rather he assists the owner of the lower courtyard and builds from below. And if his courtyard is higher than the roof of his neighbor, he is not required to attend to it. The owner of the upper courtyard need not build a partition because people do not ordinarily use their roofs.

[138] § It is related that two people were living in a two-story building; one was living in the upper story, and one was living in the lower one. The lower story began to collapse, its walls sinking into the ground to the point that it was no longer fit for dwelling. The owner of the lower story said to the owner of the upper story: Come and let us demolish the whole building and rebuild it together. The owner of the upper story said to him: I am living comfortably and am under no obligation to rebuild your residence.

[139] The owner of the lower story said to him: I will dismantle the structure and rebuild it. The owner of the upper story said: But then I will have no place to live while you are renovating. The owner of the lower story said to him: I will rent a place for you to live for the duration. The owner of the upper story said to him: I do not want to bother with moving. The owner of the lower story said to him: But I cannot live in my apartment in this condition, as the walls have sunk into the ground. The owner of the upper story said to him: That is not my problem. Crawl on your stomach to go in, and crawl on your stomach to go out.

[140] Rav Ḥama said: By law, the owner of the upper story can prevent his downstairs neighbor from rebuilding. The Gemara comments: And this statement applies only when the beams supporting the second story have not reached lower than ten handbreadths from the ground. But if those beams have reached lower than ten handbreadths from the ground, the owner of the lower story can say to the owner of the upper story: Below ten handbreadths is my domain and my domain is not bound to you to support your residence.

[141] The Gemara further comments: And this statement, that the owner of the upper story can prevent his downstairs neighbor from rebuilding, applies only when they did not stipulate with each other that if the house sinks they will rebuild the house anew. But if they made such a stipulation with each other, they must dismantle the house and rebuild it.

[142] The Gemara asks: And if they made such a stipulation with each other, to what extent must the ceiling of the lower story drop before they implement the stipulation? The Sages said before Rabba in the name of Mar Zutra, son of Rav Naḥman, who said in the name of Rav Naḥman: Like that which we learned in a mishna (98b): If one takes upon himself to build a house for another person,

without stipulating its dimensions, its height must be equal to the sum of half its length and half its width. Rabba said to them: Did I not tell you not to hang empty pitchers on Rav Naḥman, meaning not to attribute foolish opinions to him? Rather, this is what Rav Naḥman said: As people normally live, and no more. And how much space is that? Rav Huna, son of Rav Yehoshua, said: The ceiling of the lower story must be high enough so that one could bring in bundles of reeds of the type made in Meḥoza and be able to turn around.

143 It is further related that a certain man built a wall outside the windows of his neighbor. The neighbor said to him: You are blocking the light with your wall and darkening my house. The one who built the wall said to him: I will seal your windows here and make new windows for you in your wall above the wall that I am building. The neighbor said to him: By doing so you will damage my wall. The one who built the wall said to him: I will demolish your wall until the level of the windows and rebuild it, and then I will make windows for you in the new part of the building above my wall. The neighbor said to him: A wall that is old at the bottom and new at the top will not endure.

144 The one who built the wall said to him: I will demolish the wall until the ground and entirely rebuild it, and then I will make windows for you in it above my wall. The neighbor said to him: One new wall in an old house will not endure. The one who built the wall said to him: I will demolish your entire house and put windows in the new building that I will erect in its place. The neighbor said to him: But in the meantime I will have no place to live. The one who built the wall said to him: I will rent a place for you to live. The neighbor said to him: I do not want to bother with moving. Rav Ḥama said: By law, the neighbor can prevent him from building the wall.

145 The Gemara asks: This case is identical to that case; this case is very similar to the previous case of the owner of the upper story who can prevent the owner of the lower story from rebuilding. Why do I need this additional case? The Gemara answers: This teaches us that even if he uses the house only for storing straw and wood, he can still maintain that blocking the light causes him damage and can prevent the neighbor from erecting the wall.

146 The Gemara further relates: There were two brothers who divided their father’s estate between them. One received a hall [aspelida] in his share and one received a garden. The one who received the garden went and built a wall in front of the opening of the hall. His brother said to him: You are blocking the light with your wall and darkening my house. The one who received the garden said to him: I am building on my property. Rav Ḥama said: By right he said that to him, as it is permitted for him to build there.

147 Ravina said to Rav Ashi: In what way is this different from that which is taught in a baraita: If two brothers divided their father’s estate between them, one of them taking a vineyard and the other one taking a grain field, the owner of the vineyard has the right to an area four cubits wide in the grain field for the purpose of working the vineyard, since it was on that condition that they divided the estate. Why in this case does the owner of the hall not have the right to make use of the light coming in from the garden?

148 Rav Ashi said to him: There, the reason is that they made an assessment with each other with regard to the value of the fields, arranging for compensation if one received more than the other, and they took the work area into account. Ravina asked: But what did they do here? Did they not make an assessment with each other? Are we dealing with fools, that this one took the valuable hall and the other one took the much less valuable garden without making an assessment with each other? Rav

Ashi said to him: Although they assessed with each other the value of the bricks, the beams, and the boards, they did not assess with each other the value of the airspace. With regard to that, each one retained full rights to his respective airspace.

[149] The Gemara says: And let the one who received the hall say to the other: Initially, you gave me a well-lit hall; now you are making it into a small dark room [idrona]. Rav Shimi bar Ashi said: He gave him only a place that is called a hall by name, that is, a place that is called a hall even though it is no longer used that way.

[150] Rav Ashi continues: Isn't it taught in a baraita: In the case of one who says to another: I am selling you a beit kor of dirt, it becomes his even if it is only a letekh, i.e., a half-kor, and the sale is not void, because he sold him only a place that is called a beit kor by name. The Gemara comments: And this ruling applies only as long as the land he is selling him is actually called a beit kor. Similarly, if he says to him: I am selling you an orchard, it becomes his even if it lacks pomegranates, because he sold him only a place that is called an orchard by name. The Gemara comments: And this applies only as long as the land he is selling is actually called an orchard. And similarly, if he says to him: I am selling you a vineyard, it becomes his even if it lacks grapevines, because he sold him only a place that is called a vineyard by name. The Gemara comments: And this applies only as long as the land he is selling is actually called a vineyard.

[151] The Gemara rejects this argument: Are these cases comparable? There, the seller can say to the buyer: I sold you only a place that is called that by name; here, the one who received the hall can say to his brother: I took this portion as my share on condition that I would live there the way our fathers lived there, and that you would not change that by blocking the light entering through the windows.

[152] With regard to Rav Ḥama's ruling that it is permitted for the brother who received the garden to build a wall in front of the hall, they said to him,

[153] i.e., Mar Yenuka and Mar Kashisha, sons of Rav Ḥisda, said to Rav Ashi: The Sages of Neharde'a follow their usual line of reasoning, as Rav Ḥama, who was from Neharde'a, issued his ruling in accordance with the opinion of Shmuel, who was also from that city. As Rav Naḥman says that Shmuel says: In the case of brothers who divided their father's estate, they do not have a right-of-way against each other. Although the father would traverse the outer field from the inner field to access the public domain, the brother who received the inner field as an inheritance does not have the right to traverse his brother's outer field.

[154] Shmuel continues: Nor do they have the right of windows against each other, i.e., the right to prevent the other from building a wall facing his windows; nor do they have the right of ladders against each other, i.e., the right to set up a ladder in the other's property in order to get to his own; nor do they have the right of a water channel against each other, i.e., the right to pass a water channel through the other's property. And be careful with these, since they are established halakhot. Rava says: The brothers do have all of the aforementioned rights. Rav Ḥama agrees with Shmuel's opinion, that each brother can do as he pleases on his own property without the other one preventing him from doing so.

[155] Since Rav Ḥama's rulings were mentioned, the Gemara cites another halakhic ruling in his name. There was a certain promissory note inherited by orphans from their father, stating that somebody owed them money, against which a receipt was produced by the borrower, stating that the debt was already paid. Rav Ḥama said: We cannot use the note to collect the debt on behalf of the orphans, nor

can we tear it up. The Gemara explains: We cannot collect with the note because a receipt against it was produced by the borrower; and we cannot tear the note up because perhaps when the orphans grow up they will bring proof that the receipt was forged and undermine it.

[156] Rav Aḥa, son of Rava, said to Ravina: What is the halakha? Ravina said to him: In all the cases in this discussion, the halakha is in accordance with the opinion of Rav Ḥama, except for the case of the receipt, because we do not presume that the witnesses are liars. Since witnesses signed the receipt, the court trusts that the debt was paid and they tear up the promissory note.

[157] Mar Zutra, son of Rav Mari, said: In this case as well, the halakha is in accordance with the opinion of Rav Ḥama, because the validity of the receipt is in doubt. As, if it is so that it is a valid receipt, the borrower should have produced it during their father's lifetime. And since he did not produce it at the proper time, we learn from this that he may have forged it. Even though this is not an absolute proof, it is sufficient reason not to tear up the promissory note.

[158] MISHNA: The residents of a courtyard can compel each inhabitant of that courtyard to financially participate in the building of a gatehouse and a door to the jointly owned courtyard. Rabban Shimon ben Gamliel disagrees and says: Not all courtyards require a gatehouse, and each courtyard must be considered on its own in accordance with its specific needs. Similarly, the residents of a city can compel each inhabitant of that city to contribute to the building of a wall, double doors, and a crossbar for the city. Rabban Shimon ben Gamliel disagrees and says: Not all towns require a wall.

[159] With regard to this latter obligation, the mishna asks: How long must one live in the city to be considered like one of the people of the city and therefore obligated to contribute to these expenses? Twelve months. But if he bought himself a residence in the city, he is immediately considered like one of the people of the city.

[160] GEMARA: The Gemara asks: Is this to say that making a gatehouse is beneficial? But wasn't there that pious man, with whom the prophet Elijah was accustomed to speak, who built a gatehouse, and after-ward Elijah did not speak with him again? The objection to the building of a gatehouse is that the guard who mans it prevents the poor from entering and asking for charity. The Gemara answers: This is not difficult: This, the case presented in the mishna, is referring to a gatehouse built on the inside of the courtyard, in which case the poor can at least reach the courtyard's entrance and be heard inside the courtyard; that, the story of the pious man and Elijah, involves a gatehouse that was built on the outside of the courtyard, completely blocking the poor's access to the courtyard's entrance.

[161] And if you wish, say instead that in both cases the gatehouse was built outside the courtyard, and yet this is not difficult: In the one case, there is a door to the gatehouse, so that the poor cannot be heard inside the courtyard, while in the other case there is no door. Or if you wish, say that in both cases there is a door, and still this is not difficult: In the one case, there is a key needed to open the door, and the key is not available to the poor people, whereas in the other case, there is no key needed. Or if you wish, say that in both cases there is a key needed, and even so this is not difficult: In the one case the key is on the inside, so that the poor cannot reach it, while in the other case of the mishna, the key is on the outside.

[162] § The mishna teaches that the residents of a courtyard can compel each inhabitant of that courtyard to financially participate in the building of a gatehouse and a door to the jointly owned

courtyard. It is taught in a baraita that Rabban Shimon ben Gamliel says: Not all courtyards require a gatehouse. Rather, a courtyard that adjoins the public domain requires a gatehouse to prevent people from peering in. But a courtyard that does not adjoin the public domain does not require a gatehouse. The Gemara asks: And why don't the Rabbis make this distinction? The Gemara answers: Even if a courtyard does not adjoin the public domain, people in the public domain sometimes are forced toward the courtyard due to crowding in the public domain, and come and enter the courtyard.

163 § The mishna teaches that the residents of a city can compel each inhabitant of that city to contribute to the building of a wall, double doors, and a crossbar for the city. The Sages taught in a baraita: The residents of a city can compel each inhabitant of that city to build double doors and a crossbar for the city. And Rabban Shimon ben Gamliel says: Not all cities require a wall. Rather, a city that adjoins the state border requires a wall, whereas a city that does not adjoin the state border does not require a wall. The Gemara asks: And why don't the Rabbis make this distinction? The Gemara answers: Even if a city does not adjoin the border, it sometimes happens that invading troops come into the area. Therefore, it is always good for a city to be protected by a wall.

164 With regard to this issue, Rabbi Elazar asked Rabbi Yoḥanan: When the residents of the city collect money to build a wall, do they collect based on the number of people living in each house, or perhaps they collect based on the net worth of each person? Rabbi Yoḥanan said to him: They collect based on the net worth of each person, and Elazar, my son, you shall fix nails in this, i.e., this is an established halakha, and you must not veer from it.

165 There are those who say that Rabbi Elazar asked Rabbi Yoḥanan: When they collect money to build a wall, do they collect based on the proximity of the houses to the wall, so that those people who live closer to the wall pay more? Or perhaps they collect based on the net worth of each person. Rabbi Yoḥanan said to him: They collect based on the proximity of the houses to the wall, and Elazar, my son, you shall fix nails in this.

166 § It is related that Rabbi Yehuda Nesia once imposed payment of the tax for the wall even on the Sages. Reish Lakish said to him: The Sages do not require protection, as it is written: "How precious are your dear ones to me, O God…If I should count them, they are more in number than the sand" (Psalms 139:17–18). If I should count whom? If we say this is referring to the righteous, and the verse is saying that they are greater in number than the grains of sand, this is difficult. Now if it is written about all of Israel: "As the sand which is upon the seashore" (Genesis 22:17), can the righteous themselves, who are a part of Israel, be greater in number than the grains of sand? How can they possibly outnumber the grains of sand upon the seashore?

167 Rather, this is what the verse is saying: If I should count the deeds of the righteous, they are greater in number than the grains of sand. And it follows by an a fortiori inference: If the grains of sand, which are fewer in number, protect the shore from the sea, barring it from flowing inland (see Jeremiah 5:22), do not all the more so the deeds of the righteous, which are greater in number, protect them? Consequently the Sages do not need additional protection.

168 When Reish Lakish came before Rabbi Yoḥanan and reported the exchange to him, Rabbi Yoḥanan said to him: What is the reason that you did not quote this verse to him: "I am a wall and my breasts are like towers" (Song of Songs 8:10), which may be explained as follows: "I am a wall"; this is referring to the Torah. "And my breasts are like towers";

[169] these are Torah scholars, and towers do not require additional protection? The Gemara comments: And Reish Lakish, who did not cite this verse, holds in accordance with the way that Rava expounded the verse: “I am a wall”; this is referring to the Congregation of Israel. “And my breasts are like towers”; these are the synagogues and study halls.

[170] It is similarly related that Rav Naḥman bar Rav Ḥisda once imposed payment of the poll tax [karga] even on the Sages. Rav Naḥman bar Yitzḥak said to him: You have transgressed the words of the Torah, the Prophets, and the Writings.

[171] You have transgressed the words of the Torah, as it is written: “Even when He loves the peoples, all His holy ones are in Your hand” (Deuteronomy 33:3), which is understood to mean that Moses said to the Holy One, Blessed be He: Master of the Universe, even when You hold the other nations dear and grant them dominion over Israel, let “all His holy ones,” meaning the Torah scholars, be exclusively in Your hand and free from the authority of the nations, and therefore be exempt from paying taxes. The continuation of that verse can also be understood as referring to Torah scholars, as it states: “And they sit [tukku] at Your feet, receiving Your words” (Deuteronomy 33:3), and Rav Yosef teaches: These are Torah scholars who pound [mekhatetim] their feet from city to city and from country to country to study Torah; “receiving [yissa] Your words,” to discuss [lissa velitten] the utterances of God.

[172] And you have transgressed the words of the Prophets, as it is written: “Though they have hired lovers [yitnu] among the nations, now I will gather them, and they will begin to be diminished by reason of the burden of kings and princes” (Hosea 8:10). With regard to this verse, Ulla says: Part of this verse is stated in the Aramaic language; the word yitnu should be understood here in its Aramaic sense: To learn. And the verse should be interpreted as follows: If all of Israel learns Torah, I will gather them already now; and if only a few of them learn Torah, they will be excused from the burden imposed by kings and princes. This indicates that those who study Torah should not be subject to paying taxes.

[173] And furthermore, you have transgressed the words of the Writings, as it is written: “It shall not be lawful to impose tribute, impost or toll upon them” (Ezra 7:24), i.e., upon the priests and Levites who serve in the Temple. This halakha would apply to Torah scholars as well. And Rav Yehuda says: “Tribute”; this is referring to the king’s portion, a tax given to the king. “Impost”; this is referring to the head tax. “Toll”; this is referring to a tax [arnona] paid with property that was imposed from time to time.

[174] It is related that Rav Pappa once imposed a tax for the digging of a new cistern even on orphans. Rav Sheisha, son of Rav Idi, said to Rav Pappa: Perhaps they will dig, but in the end they will not draw any water from there, and it will turn out that the money will have been spent for nothing. The rest of the townspeople can relinquish their rights to their money, but orphans who are minors cannot do so. Rav Pappa said to him: I shall collect money from the orphans; if they draw water, they will draw water, and if not, I will return the money to the orphans.

[175] Rav Yehuda says: All of the city’s residents must contribute to the building and upkeep of the city gates [le’aglei gappa], and for this purpose money is collected even from orphans. But the Sages do not require protection and are therefore exempt from this payment. All of the city’s residents must contribute to the digging of cisterns [lekarya patya], and for this purpose money is collected even from the Sages, since they too need water. The Gemara comments: And we said this only when the

people are not required to go out en masse [be’akhluza] and do the actual digging, but are obligated merely to contribute money for that purpose. But if the people are required to go out en masse and actually dig, the Sages are not expected to go out with them en masse, but rather they are exempt from such labor.

176 It is related that Rabbi Yehuda HaNasi once opened his storehouses to distribute food during years of drought. He said: Masters of Bible, masters of Mishna, masters of Talmud, masters of halakha, masters of aggada may enter and receive food from me, but ignoramuses should not enter. Rabbi Yonatan ben Amram, whom Rabbi Yehuda HaNasi did not know, pushed his way in, and entered, and said to him: Rabbi Yehuda HaNasi, sustain me. Rabbi Yehuda HaNasi said to him: My son, have you read the Bible? Rabbi Yonatan ben Amram said to him, out of modesty: No. Rabbi Yehuda HaNasi continued: Have you studied Mishna? Once again, Rabbi Yonatan ben Amram said to him: No. Rabbi Yehuda HaNasi then asked him: If so, by what merit should I sustain you? Rabbi Yonatan ben Amram said to him: Sustain me like a dog and like a raven, who are given food even though they have not learned anything. Rabbi Yehuda HaNasi was moved by his words and fed him.

177 After Rabbi Yonatan left, Rabbi Yehuda HaNasi sat, and was distressed, and said: Woe is me, that I have given my bread to an ignoramus. His son, Rabbi Shimon bar Rabbi Yehuda HaNasi, said to him: Perhaps he was your disciple Yonatan ben Amram, who never in his life wanted to materially benefit from the honor shown to the Torah? They investigated the matter and found that such was the case. Rabbi Yehuda HaNasi then said: Let everyone enter, as there may also be others who hide the fact that they are true Torah scholars.

178 Commenting on Rabbi Yehuda HaNasi’s opinion, the Gemara notes that Rabbi Yehuda HaNasi conformed to his standard line of reasoning, as Rabbi Yehuda HaNasi says: Suffering comes to the world only due to ignoramuses. This is like the incident of the crown tax [kelila] that was imposed on the residents of the city of Tiberias. The heads of the city came before Rabbi Yehuda HaNasi and said to him: The Sages should contribute along with us. Rabbi Yehuda HaNasi said to them: No, the Sages are exempt. They said to him: Then we will run away and the entire burden will fall on the Torah scholars. Rabbi Yehuda HaNasi said to them: Run away as you please. Half of the city’s residents ran away. The authorities then waived half the sum that they had initially imposed on the city.

179 The half of the population that remained in the city then came before Rabbi Yehuda HaNasi, and said to him: The Sages should contribute along with us. Rabbi Yehuda HaNasi said to them: No, the Sages are exempt. They said to him: Then we too will run away. Rabbi Yehuda HaNasi said to them: Run away as you please. They all ran away, so that only one launderer was left in the city. The authorities imposed the entire tax on the launderer. The launderer then ran away as well. The crown tax was then canceled in its entirety. Rabbi Yehuda HaNasi said: You see from this that suffering comes to the world only due to ignoramuses, for as soon as they all fled from the city, the crown tax was completely canceled.

180 § The mishna teaches: And how long must one live in the city to be considered like one of the people of the city? Twelve months. And we raise a contradiction from what is taught in a baraita: In the case of a donkey caravan or a camel caravan that was journeying from place to place, and it lodged inside an idolatrous city, and its members were led astray along with the other residents of the city, and they too engaged in idol worship, they, the members of the caravan, are liable to death by stoning like ordinary individual idolaters, and their property escapes destruction, i.e., they are not

treated like the residents of an idolatrous city, who are liable to death by the sword and whose property is destroyed.

181 The baraita continues: And if the caravan members had remained in that city for thirty days, they are liable to death by the sword and their property is destroyed, just as it is for the rest of the residents of the city. This seems to indicate that once an individual has lived in a city for thirty days, he is already considered one of its residents.

182 Rava said: This is not difficult. This period, i.e., twelve months, is required in order to be considered one of the members of the city; and that period, i.e., thirty days, suffices in order to be considered one of the residents of the city. As it is taught in a baraita: One who is prohibited by a vow from deriving benefit from the people of a particular city is prohibited from deriving benefit from anyone who has stayed there for twelve months, but it is permitted for him to derive benefit from anyone who has stayed there for less time than that. By contrast, if he prohibited himself by way of a vow from deriving benefit from the residents of a particular city, he is prohibited from deriving benefit from anyone who has stayed there for thirty days, but it is permitted for him to derive benefit from anyone who has stayed there for less time than that.

183 The Gemara asks: And do we require that one lives in a city for twelve months for all matters? But isn’t it taught in a baraita: If one lives in city for thirty days, he must contribute to the charity platter from which food is distributed to the poor. If he lives there for three months, he must contribute to the charity box. If he lives there for six months, he must contribute to the clothing fund. If he lives there for nine months, he must contribute to the burial fund. If he lives there for twelve months, he must contribute to the columns of the city [lepassei ha’ir], i.e., for the construction of a security fence. Rabbi Asi said that Rabbi Yoḥanan said: When we learned twelve months in the mishna, we learned that with regard to contributing to the columns of the city, money used for protecting and strengthening the city, but not for other matters.

184 And Rabbi Asi says that Rabbi Yoḥanan says: All are required to contribute to the columns of the city, and money is collected for that purpose even from orphans. But the Sages are not required to contribute, since the Sages do not need protection. Rav Pappa said: Money is collected even from orphans for the city wall, for the city horseman, and for the guard [uletarzina] of the city armory, but the Sages do not require protection. The principle of the matter is: Money is collected even from orphans for anything from which they derive benefit.

185 It is reported that Rabba imposed a contribution to a certain charity on the orphans of the house of bar Maryon. Abaye said to him: But didn’t Rav Shmuel bar Yehuda teach: One does not impose a charity obligation on orphans even for the sake of redeeming captives, since they are minors and are not obligated in the mitzvot? Rabba said to him: I did this to elevate them in standing, i.e., so that people should honor them as generous benefactors; not in order that the poor should benefit.

186 Incidental to this story, the Gemara relates that Ifera Hurmiz, the mother of King Shapur, king of Persia, sent a purse [arneka] full of dinars to Rav Yosef. She said to him: Let the money be used for a great mitzva. Rav Yosef sat and considered the question: What did Ifera Hurmiz mean when she attached a condition to the gift, saying that it should be used for a great mitzva? Abaye said to him: From what Rav Shmuel bar Yehuda taught, that one does not impose a charity obligation on orphans even for the sake of redeeming captives, learn from this

187 that redeeming captives is a great mitzva.

188 Rava said to Rabba bar Mari: Concerning this matter that the Sages stated, that redeeming captives is a great mitzva, from where is it derived? Rabba bar Mari said to him: As it is written: “And it shall come to pass, when they say to you: To where shall we depart? Then you shall tell them: So says 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 famine; and such as are for captivity, to captivity” (Jeremiah 15:2). And Rabbi Yoḥanan says: Whichever punishment is written later in this verse is more severe than the one before it.

189 Rabbi Yoḥanan explains: The sword is worse than death. If you wish, say that this is learned from a verse; if you wish, say instead that it is derived by way of logical reasoning. If you wish, say that this is derived by way of logical reasoning: This punishment, i.e., death by sword, mutilates the body, but that punishment, i.e., natural death, does not mutilate it. And if you wish, say that the fact that the sword is worse than death is learned from a verse: “Precious in the sight of the Lord is the death of His pious ones” (Psalms 116:15).

190 Famine is worse than the sword. If you wish, say that this is derived by way of logical reasoning: This one, who dies of famine, suffers greatly before departing from this world, but that one, who dies by the sword, does not suffer. If you wish, say instead that the fact that famine is worse than the sword is learned from a verse: “More fortunate were the victims of the sword than the victims of famine” (Lamentations 4:9). And captivity is worse than all of them, as it includes all of them, i.e., famine, the sword, and death.

191 § In connection with the previous discussion concerning charity distribution, the Gemara cites a baraita in which the Sages taught: Money for the charity fund is collected by two people and distributed by three people. It is collected by two people because one does not appoint an authority over the community composed of fewer than two people. And it is distributed by three people, like the number of judges needed in cases of monetary law, since the distributors determine who receives money and who does not, as well as how much each person receives.

192 Food for the charity platter is collected by three people and distributed by three people because its collection and its distribution take place on the same day. Food for the charity platter is collected and distributed every day, and therefore a third individual must participate in the collection so that he will be available to take part in the distribution without delay; whereas the money of the charity fund is distributed only once a week, on each Shabbat eve.

193 There are additional differences between these two types of charity operations: The food from the charity platter is distributed to the poor of the world, meaning, to any poor individual arriving in the city; the money of the charity fund is allocated exclusively to the poor of the city. But it is permitted for the residents of the city to use money that has been collected for the charity fund to purchase food for the charity platter to feed the poor; and similarly they may use food that had been collected for the charity platter for the charity fund. In general, it is permitted for them to change the purpose toward which charity will be used to whatever they want, in accordance with the needs of the community.

194 Similarly, it is permitted for the residents of the city to set the measures used in that city, the prices set for products sold there, and the wages paid to its workers, and to fine people for violating their specifications, in order to enforce observance of these halakhot. This marks the end of the baraita, the details of which the Gemara proceeds to analyze.

195 The Master said in the baraita: One does not appoint an authority over the community composed of fewer than two people. The Gemara asks: From where are these matters derived? Rav Naḥman says that this is derived from a verse referring to those engaged in building the Tabernacle and weaving the priestly vestments, who received the community's donations. The verse states: "And they shall take the gold, and the sky-blue wool, and the purple wool" (Exodus 28:5). The plural "they" indicates that the collection must be performed by two people.

196 The Gemara comments: The baraita indicates that authority may not be exercised by less than two people, but even a single individual is trusted to be a treasurer. That is, money for the charity fund is collected by two people, not because a single individual is not trusted not to misappropriate the money, but rather because a single individual should not be given authority over the community. This supports the opinion of Rabbi Ḥanina, as Rabbi Ḥanina says: There was an incident where Rabbi Yehuda HaNasi appointed two brothers to administer the charity fund. Even though the brothers were relatives who are not trusted to testify against each other, Rabbi Yehuda HaNasi was not concerned and he appointed them.

197 The Gemara asks: What authority is associated with collecting charity? The Gemara answers: As Rav Naḥman says that Rabba bar Avuh says: Because they can seize collateral for the charity; i.e., they can collect charity by force, and even on Shabbat eve, when people are busy and might claim that they have no time or money. The Gemara objects: Is that so? But isn't it written: "I will punish all that oppress them" (Jeremiah 30:20), and Rabbi Yitzḥak bar Shmuel bar Marta says in the name of Rav: And punishment will be meted out even to charity collectors? If charity collectors are permitted to force people to contribute charity, why are they counted among Israel's oppressors?

198 The Gemara answers: This is not difficult. This, Rabbi Naḥman's statement, applies when the contributor is rich, in which case the collectors may seize money from him even by force. That, Rabbi Yitzḥak's statement, applies when he is not rich, in which case the collectors who take money from him by force are termed oppressors of Israel. This right to force contributions from the rich is like what occurred in the incident in which Rava compelled Rav Natan bar Ami and took four hundred dinars from him for charity.

199 Having raised the issue of charity collection, the Gemara cites various rabbinic expositions with regard to the matter. The verse states: "And they who are wise shall shine like the brightness of the firmament; and they who turn many to righteousness like the stars for ever and ever" (Daniel 12:3). "And they who are wise shall shine like the brightness of the firmament"; this is a judge who judges an absolutely true judgment, as his wisdom and understanding lead him to a correct judgment. "And they who turn many to righteousness like the stars for ever and ever"; these are the charity collectors, who facilitate the giving of charity.

200 It was taught in a baraita: "And they who are wise shall shine like the brightness of the firmament"; this is a judge who judges an absolutely true judgment and also charity collectors. "And they who turn many to righteousness like the stars for ever and ever"; these are schoolteachers. The Gemara asks: Like whom? Certainly not every schoolteacher is worthy of such accolades. Rav said: For example, Rav Shmuel bar Sheilat. As it is told that Rav once found Rav Shmuel bar Sheilat standing in a garden. Rav said to him: Have you abandoned your trust and neglected your students? Rav Shmuel bar Sheilat said to him: It has been thirteen years now that I have not seen my garden, and even now my thoughts are on the children.

[201] In light of the praises heaped upon judges, tax collectors, and schoolteachers, the Gemara asks: And what was said about the Sages? Ravina said that about them it is stated: “But let them that love Him be as the sun when it comes out in its might” (Judges 5:31).

[202] The Gemara resumes its discussion of the halakhot of charity collection: The Sages taught in a baraita: Charity collectors may not separate from each other, each one collecting in a different place; but in a place where the two can see each other, one collector may separate from the other, e.g., this one going to the gate of a house and that one going to a store. If a charity collector found coins in the market, he may not put them into his own pocket, but rather he must put them into the charity purse, and then later when he comes home, he may take them from there. This is necessary so that people should not suspect him of taking charity money for himself. Similarly, if the charity collector was owed one hundred dinars by another, and the latter repaid his debt in the market, the collector may not put the money he received into his own pocket, but rather he must put it into the charity purse, and then later when he comes home, he may take it.

[203] The Sages taught in a baraita: Charity collectors who have no poor people to whom they can distribute the money, may exchange [poretin] the money, i.e., exchange the copper coins, which tend to rust, for silver dinars, with other people, but they should not change it by themselves, i.e., with their own coins, to avoid any suspicion of wrongdoing. Likewise, collectors of food for the charity platter who do not have poor people to whom to distribute the food may sell the food to others, but they should not sell it to themselves, for a similar reason. Coins of charity are not counted two by two, but rather one by one, to avoid errors in tallying.

[204] Abaye said: At first, my Master, Rabba, would not sit on the mats in the synagogue because they had been purchased with charity funds. Once he heard that which is taught in a baraita, that it is permitted for the residents of a city to change the purpose toward which charity will be used to whatever they want, he did sit on them. Abaye said: At first, my Master, Rabba, would make two purses, one for the poor of the rest of the world, and one for the poor of his city. Once he heard what Shmuel said to Rav Taḥalisa bar Avdimi: Make only one purse,

[205] and stipulate about it with the people of your city that the money collected will be given to whomever needs it, he too made only one purse and stipulated with the people of his city about it. Rav Ashi said: I do not even need to make a stipulation, as whoever comes to donate to this charity fund comes relying on my discretion and understanding that I will give the funds to whomever I want.

[206] The Gemara relates: There were these two butchers who made an agreement with each other that whichever one of them worked on the day assigned to the other according to their mutually agreed-upon schedule would tear up the hide of the animal that he slaughtered that day. One of them went and worked on the other’s day, and the other butcher tore up the hide of the animal that he slaughtered. They came before Rava for judgment, and Rava obligated him to pay the butcher who slaughtered that animal.

[207] Rav Yeimar bar Shelamya raised an objection to Rava: Isn’t it stated among actions that the residents of a city may take: And to fine people for violating their specifications, i.e., those ordinances that the residents passed? Rava did not respond to him. Rav Pappa said: He did well that he did not respond to him, as this matter applies only where there is no important person in the city, in which case it is permitted for the residents of the city to draw up ordinances on their own. But

where there is an important person, it is not in the residents' power to make stipulations, i.e., regulations; rather, they are required to obtain the approval of the city's leading authority to give force to their regulations.

208 § The Sages taught: One does not calculate sums with charity collectors concerning the money they collected for charity, to verify how much they received and how much they distributed, nor does one calculate sums with the Temple treasurers concerning the property consecrated to the Temple. And even though there is no explicit proof of the matter from the Bible, there is nevertheless an allusion to the matter, as it is stated: "And they did not reckon with the men into whose hand they delivered the money to pay out to the workmen; for they dealt in good faith" (II Kings 12:16).

209 Rabbi Elazar says: Even though a person has a trusted treasurer in his house like the aforementioned Temple treasurers, who were fully trusted, he should nevertheless tie up his money and count it, as it is stated: "And the king's scribe and the High Priest came up, and they tied it in bags and counted the money…And they gave the money that was counted into the hands of them that did the work, that had the oversight of the House of the Lord" (II Kings 12:11–12).

210 Rav Huna says: Charity collectors examine the level of poverty of one who asks for food, but they do not examine the level of poverty of one who asks for clothing. If a person comes before the charity collectors in tattered clothes, he is given clothing without any questions being asked. If you wish, say that this distinction is derived from a verse; if you wish, say instead that it is derived via logical reasoning.

211 If you wish, say that this distinction is derived via logical reasoning: This one who stands before us in rags is exposed to contempt, whereas that one who is hungry is not exposed to contempt. If you wish, say instead that this distinction is derived from a verse, as it is written: "Is it not to share [paros] your bread with the hungry?" (Isaiah 58:7). The word paros is written with a shin, alluding to the word parosh, meaning examine and investigate, and only then should you give him. And there in the same verse it is written with regard to clothing: "When you see the naked, that you cover him," indicating that "when you see" him you should immediately cover him.

212 And Rav Yehuda says just the opposite: Charity collectors examine the level of poverty of one who asks for clothing, but they do not examine the level of poverty of one who asks for food. He too adduces supports for his opinion. If you wish, say that this distinction is derived via logical reasoning; if you wish, say instead that it is derived from a verse.

213 If you wish, say that this distinction is derived via logical reasoning: This one who is hungry suffers, whereas that one who is in tattered clothing does not suffer in the same way. And if you wish, say instead that this distinction is derived from a verse. Here, it is written: "Is it not to share [paros] your bread with the hungry?" meaning, share it immediately, just as the word is read. Since the word is read with a samekh, Rav Yehuda does not understand it as alluding to examining the recipient. And there, it is written: "When you see the naked, that you cover him," meaning, when it will be clearly apparent to you, after you have investigated the matter and found that the supplicant is deserving, then you shall cover him. The Gemara comments: It is taught in a baraita in accordance with the opinion of Rav Yehuda: If a poor person said: Cover me with clothing, the charity collectors examine him; but if he said: Sustain me with food, they do not examine him.

214 We learned in a mishna there (Pe'a 8:7): One does not give a poor person who is traveling from place to place requesting charity less than a loaf worth a pundeyon, one forty-eighth of a sela, when

the standard price of grain is four se’a for a sela. If the poor person sleeps in that place, one gives him provisions for lodging. The Gemara asks: What is meant by provisions for lodging? Rav Pappa said: A bed and a pillow [bei sadya]. And if he spends Shabbat in that place, one gives him food for three meals. A Sage taught in a baraita: If a poor person was going door to door asking for charity, one is not required to attend to him and give him money from the charity fund.

215 It is related that a certain poor person who was going door to door requesting charity came before Rav Pappa, the local charity collector, but Rav Pappa did not attend to him. Rav Sama, son of Rav Yeiva, said to Rav Pappa: If the Master does not attend to him, nobody else will attend to him either; should he be left to die of hunger? Rav Pappa said to him: But isn’t it taught in a baraita: If a poor person was going door to door asking for charity, one is not required to attend to him? Rav Sama said to him: That baraita means to say that one is not required to attend to him and give him a large gift, since he is already collecting money as he goes door to door, but one does attend to him and give him a small gift.

216 Rav Asi says: A person should never prevent himself from giving at least one-third of a shekel a year in charity, as it is stated: “And we also established mitzvot upon ourselves, to charge ourselves yearly with the third part of a shekel for the service of the House of our God” (Nehemiah 10:33). And Rav Asi says: Charity is equivalent to all the other mitzvot combined, as it is stated in that verse: “We also established mitzvot upon ourselves.” A mitzva is not written here, but rather mitzvot, in the plural, thereby teaching that this mitzva is equivalent to all the other mitzvot.

217 The Gemara offers a mnemonic device for the following statements extolling the mitzva of charity: Greater; Temple; Moses. Rabbi Elazar says: One who causes others to perform [me’aseh] a meritorious act is greater than one who performs that act himself, as it is stated: “And the causing [ma’aseh] of righteousness shall be peace, and the work of righteousness, quietness, and assurance forever” (Isaiah 32:17). If one merits, the following verse is applied to him: “Is it not to share your bread with the hungry?” (Isaiah 58:7), i.e., he will wholeheartedly give charity to the poor. If he does not merit, the latter clause of that verse is applied to him: “You shall bring the poor that are cast out to your house,” i.e., he will be compelled by the government to billet soldiers in his house and sustain them against his will.

218 Rava said to the people of Meḥoza: I beg of you, strive with each other to perform acts of charity and righteousness, so that you will live in peace with the government, since if you do not act charitably toward each other, you will end up paying fines to the government. And Rabbi Elazar says: When the Temple is standing, a person contributes his shekel for the Temple service and achieves atonement for his sins. Now that the Temple no longer stands, if people act charitably, it will be well for them; but if not, the nations of the world will come and take their money by force. The Gemara comments: And even so, the money taken from them by force is credited to them as if they had freely given charity, as it is stated: “And I will make your oppressors charity” (Isaiah 60:17).

219 Rava said: This following matter was told to me by the infant

220 who perverted the ways of his mother. He said in the name of Rabbi Elazar: What is the meaning of that which is written: “And He donned charity like a coat of mail” (Isaiah 59:17)? This verse serves to tell you that just as with regard to this coat of mail, each and every scale of which it is fashioned combines to form one large coat of mail, so too with regard to charity, each and every

peruta that one gives combines to form a great sum. Rabbi Ḥanina says: The same idea is derived from here, as it is stated: “And all our charity is as a polluted garment” (Isaiah 64:5). Just as with regard to this garment, each and every thread in it combines to form one large garment, so too with regard to charity, each and every peruta combines to form a great sum.

221 The Gemara comments: Why was this Sage called the infant who perverted the ways of his mother? It was because of the following incident: Rav Aḥadvoi bar Ami asked Rav Sheshet: From where is it derived that a leper renders a person impure through contact during his days of counting, i.e., during the seven days that the leper must count from the start of his purification process, when he brings his birds, until he completes that process with the bringing of his sacrifices? Rav Sheshet said to him: Since he renders his garments impure, as it states that on the seventh day of his purification he must wash his clothes (see Leviticus 14:9), he also renders people impure.

222 Rav Aḥadvoi said to him: Perhaps connected impurity is different, meaning perhaps he renders his garments impure because they are connected to the source of the impurity, but this does not mean that he renders impure a person whom he touches. A proof for this distinction may be brought from the fact that if one moves an animal carcass, an action that renders him impure even if there was no actual contact with the carcass, he renders the garments that he is wearing impure but does not render another person impure.

223 Rav Sheshet said to him: But from where do we derive that the carcass of a creeping animal renders a person impure? Is it not because we know that it renders his garments impure? Rav Aḥadvoi said to him: It is written explicitly with regard to the carcass of a creeping animal: “Or a man who touches any creeping animal, whereby he may be made unclean” (Leviticus 22:5). Rav Sheshet said to him: But from where do we derive that semen renders a person impure? Is it not because we say that since it renders his garments impure (see Leviticus 15:17) it also renders a person impure? Rav Aḥadvoi said to him: It is also written explicitly with regard to semen: “Or a man from whom semen is expelled” (Leviticus 22:4), and the Sages expound the superfluous word “or” as serving to include as impure one who touches semen.

224 The Gemara relates that with each of his answers Rav Aḥadvoi responded to Rav Sheshet in a mocking tone, intimating that he doubted Rav Sheshet’s grasp of Torah verses. Rav Sheshet was deeply offended, and as punishment, Rav Aḥadvoi bar Ami became mute and forgot his learning. Rav Aḥadvoi’s mother came and wept before Rav Sheshet. She cried and cried but he ignored her. As she had once been Rav Sheshet’s nursemaid, she said to him: Look at these breasts of mine from which you suckled. Upon hearing that, Rav Sheshet prayed for mercy for Rav Aḥadvoi, and he was healed. And since it was Rav Aḥadvoi whose behavior led to his mother’s acting in this manner, he was referred to as the infant who perverted his mother’s ways.

225 The Gemara comments: With regard to that which we arrived at, i.e., this particular subject, let us clarify the matter: From where do we derive that a leper renders impure a person with whom he comes into contact during his days of counting? As it is taught in a baraita: Rabbi Shimon bar Yoḥai says: Washing garments is stated with respect to his days of counting, and washing garments is stated with respect to his days of confirmed leprosy, after he has been declared conclusively impure by a priest. Just as there, when he is a confirmed leper he renders a person impure, as is explicitly stated in the Torah, so too here, during his days of counting he renders a person impure.

226 § The Gemara resumes its discussion of the virtues of giving charity. Rabbi Elazar said: One who performs acts of charity in secret is greater than Moses, our teacher. Whereas with regard to Moses, our teacher, it is written: “For I was afraid of the anger and the wrath” (Deuteronomy 9:19), with regard to one who performs acts of charity it is written: “A gift in secret pacifies anger, and a present in the bosom fierce wrath” (Proverbs 21:14). The Gemara comments: And this statement disagrees with a statement of Rabbi Yitzḥak, as Rabbi Yitzḥak says: A secret gift pacifies anger, but it does not pacify wrath, as it is stated: “And a present in the bosom fierce wrath,” meaning that although a present is in the bosom, i.e., even if one gives charity in secret, nevertheless fierce wrath can still harm him. There are those who say that Rabbi Yitzḥak says as follows: Any judge who accepts a bribe brings fierce wrath upon the world, as it is stated: “And a present in the bosom fierce wrath.”

227 And Rabbi Yitzḥak says: Anyone who gives a peruta to a poor person receives six blessings, and whoever consoles him with words of comfort and encouragement receives eleven blessings. The Gemara explains: One who gives a peruta to a poor person receives six blessings, as it is written: “Is it not to share your bread with the hungry, and that you shall bring the poor that are cast out to your house? When you see the naked, that you cover him” (Isaiah 58:7). And the next verses list six blessings: “Then shall your light break forth like the dawn, and your health shall spring forth speedily, and your righteousness shall go before you, the glory of the Lord shall be your rearguard. Then, shall you call, and the Lord shall answer; you shall cry, and He shall say: Here I am” (Isaiah 58:8–9).

228 And whoever consoles a poor person with words of comfort and encouragement receives eleven blessings, as it is stated: “And if you draw out your soul to the hungry and satisfy the afflicted soul, then shall your light shine in darkness, and your gloom shall be as the noonday. And the Lord shall guide you continually, and satisfy your thirst in drought… And they that shall be of you shall build the old waste places, you shall raise up the foundations of many generations” (Isaiah 58:10–12).

229 And Rabbi Yitzḥak says: What is the meaning of that which is written: “He who pursues charity and mercy finds life, charity, and honor” (Proverbs 21:21)? Is this to say that because one has pursued charity, he himself shall find charity? That is, shall the reward of one who has always given charity be that he will eventually become poor and other people will act charitably toward him? Rather, the verse serves to tell you that with regard to anyone who pursues charity, giving to the poor and leading others to do so, the Holy One, Blessed be He, furnishes him with money with which to perform his acts of charity.

230 Rav Naḥman bar Yitzḥak says: The Holy One, Blessed be He, sends him people who are deserving of charity, so that he will reap his just reward for helping them. The Gemara comments: What does this statement serve to exclude? It serves to exclude Rabba’s homiletical interpretation of a different verse, as Rabba taught: What is the meaning of that which is written: “Let them be made to stumble before You; deal thus with them in the time of Your anger” (Jeremiah 18:23)? The prophet Jeremiah said before the Holy One, Blessed be He: Master of the Universe, even when those wicked men who pursued me subdue their inclinations and seek to perform acts of charity before You, cause them to stumble upon dishonest people who are not deserving of charity, so that they will not receive reward for coming to their assistance.

231 Rabbi Yehoshua ben Levi says: Anyone who is accustomed to performing acts of charity merits blessing; he will have sons who are masters of wisdom, masters of wealth, and masters of aggada. The Gemara explains: Masters of wisdom, as it is written:

232 “He who pursues charity and mercy, finds life” (Proverbs 21:21), and with regard to wisdom it is written: “He who finds Me, finds life” (Proverbs 8:35). Masters of wealth, as it is written: “He who pursues charity and mercy finds charity,” meaning he will be able to give charity. Masters of aggada, as it is written: “He who pursues charity and mercy, finds honor.” And how do we know that this refers to masters of aggada? It is written here “honor,” and it is written there: “The wise shall inherit honor” (Proverbs 3:35).

233 § It is taught in a baraita: Rabbi Meir would say: An opponent may bring an argument against you and say to you: If your God loves the poor, for what reason does He not support them Himself? In such a case, say to him: He commands us to act as His agents in sustaining the poor, so that through them we will be credited with the performance of mitzvot and therefore be saved from the judgment of Gehenna. And this is the question that Turnus Rufus the wicked asked Rabbi Akiva: If your God loves the poor, for what reason does He not support them Himself? Rabbi Akiva said to him: He commands us to sustain the poor, so that through them and the charity we give them we will be saved from the judgment of Gehenna.

234 Turnus Rufus said to Rabbi Akiva: On the contrary, it is this charity which condemns you, the Jewish people, to Gehenna because you give it. I will illustrate this to you with a parable. To what is this matter comparable? It is comparable to a king of flesh and blood who was angry with his slave and put him in prison and ordered that he should not be fed or given to drink. And one person went ahead and fed him and gave him to drink. If the king heard about this, would he not be angry with that person? And you, after all, are called slaves, as it is stated: “For the children of Israel are slaves to Me” (Leviticus 25:55). If God decreed that a certain person should be impoverished, one who gives him charity defies the will of God.

235 Rabbi Akiva said to Turnus Rufus: I will illustrate the opposite to you with a different parable. To what is this matter comparable? It is comparable to a king of flesh and blood who was angry with his son and put him in prison and ordered that he should not be fed or given to drink. And one person went ahead and fed him and gave him to drink. If the king heard about this once his anger abated, would he not react by sending that person a gift? And we are called sons, as it is written: “You are sons of the Lord your God” (Deuteronomy 14:1).

236 Turnus Rufus said to him: You are called sons and you are called slaves. When you fulfill the will of the Omnipresent, you are called sons; when you do not fulfill the will of the Omnipresent, you are called slaves. And since now you do not fulfill the will of the Omnipresent, the parable that I offered is more apt. Rabbi Akiva said to him: The verse states: “Is it not to share your bread with the hungry, and that you shall bring the poor that are cast out to your house?” (Isaiah 58:7). When do we bring the poor that are cast out into our houses? Now, when we have to billet the Roman soldiers in our homes; and about that very time, the verse states: “Is it not to share your bread with the hungry?”

237 Rabbi Yehuda, son of Rabbi Shalom taught: Just as a person’s entire livelihood is allocated to him from Rosh HaShana, when God issues His judgments for the entire year, so too are a person’s monetary losses allocated to him from Rosh HaShana. If one merits, the following verse is applied to him: “You shall share your bread with the hungry,” i.e., he will spend the sum allocated to him on

gifts of charity; and if he does not merit, the following verse is applied to him: “You shall bring the poor that are cast out to your house, i.e., he will be compelled by the government to billet soldiers in his house and feed them against his will.

[238] It is like this incident involving the nephews of Rabban Yoḥanan ben Zakkai, who once saw in a dream that his nephews were destined to lose seven hundred dinars over the course of the year. He encouraged them and took money from them for charity, and they were left with seventeen dinars out of the seven hundred. When Yom Kippur eve arrived, the government sent messengers who came and took the remaining seventeen dinars.

[239] Rabban Yoḥanan ben Zakkai said to them: Do not fear that they will take even more from you; they took from you the seventeen dinars that were still with you. The nephews said to him: How did you know? Rabban Yoḥanan ben Zakkai said to them: I saw a dream about you, and he related his dream to them. They said to him: And why did you not tell us about the dream? Rabban Yoḥanan ben Zakkai said to them: I said, It is better that they perform a mitzva for its own sake. Had you known from the start that you were fated to lose that amount of money, the mitzva would not have been performed purely for its own sake.

[240] The Gemara relates: Rav Pappa was once climbing up a ladder when his foot slipped and he almost fell. He said: Now, is the one who hates us, a euphemism for himself, liable like Shabbat desecrators and idol worshippers, who are subject to death by stoning, which is similar to death by falling, the punishment that Rav Pappa narrowly escaped? Ḥiyya bar Rav of Difti said to Rav Pappa: Perhaps a poor person once approached you and you did not sustain him, and therefore you were given a glimpse of the punishment that you actually deserve.

[241] As it is taught in a baraita: Rabbi Yehoshua ben Korḥa says: Anyone who turns his eyes away from one seeking charity is considered as if he worships idols. From where is this derived? It is written here: “Beware that there be not a base thought in your heart…and your eye be evil against your poor brother, and you give him nothing” (Deuteronomy 15:9). And it is written there: “Certain base men have gone out…and have drawn away the inhabitants of their city, saying, Let us go and serve other gods” (Deuteronomy 13:14). Just as there, the base men sin with idolatry, so too here, the base thought is treated like idolatry.

[242] It is taught in a baraita that Rabbi Elazar, son of Rabbi Yosei, said: All acts of charity and kindness that Jews perform in this world make great peace and are great intercessors between the Jewish people and their Father in Heaven, as it is stated: “So said the Lord, enter not into a house of mourning, neither go to lament nor bemoan them, for I have taken away My peace from this people, says the Lord, both kindness and mercy” (Jeremiah 16:5). “Kindness”; this is referring to acts of kindness. “Mercy”; this is referring to acts of charity. This indicates that when there is kindness and mercy, God is at peace with His people.

[243] It is taught in a baraita that Rabbi Yehuda says: Great is charity in that it advances the redemption, as it is stated: “So said the Lord, uphold justice and do charity, for My salvation is near to come, and My righteousness to be revealed” (Isaiah 56:1). He would say: Ten strong entities were created in the world, one stronger than the other. A mountain is strong, but iron, which is stronger, cleaves it. Iron is strong, but fire melts it. Fire is strong, but water extinguishes it. Water is strong, but clouds bear it. Clouds are strong, but wind disperses them. Wind is strong, but the human body withstands it. The human body is strong, but fear breaks it. Fear is strong, but wine dispels it. Wine is

strong, but sleep drives it off. And death is stronger than them all, but charity saves a person from death, as it is written: “And charity delivers from death” (Proverbs 10:2, 11:4).

244 Rabbi Dostai, son of Rabbi Yannai, taught: Come and see that the attribute of the Holy One, Blessed be He, is not like the attribute of flesh and blood. An illustration of the attribute of flesh and blood is that when a person brings a great gift to the king, it is uncertain whether the king will accept it from him or will not accept it from him. And if you say that the king will accept it from him, it is uncertain whether the person who brought the gift will eventually see the face of the king, or will not see the face of the king. But the Holy One, Blessed be He, does not act in this way. Even when a person gives a mere peruta to a poor person, he merits to receive the Divine Presence, as it is stated: “As for me, I will behold Your face through charity; I will be satisfied, when I awake, with Your likeness” (Psalms 17:15).

245 It is related that Rabbi Elazar would first give a peruta to a poor person and only then would he pray. He said: As it is written in the same verse: “I will behold Your face through charity.” The Gemara asks: What is the meaning of that which is written: “I will be satisfied, when I awake, with your likeness”? Rav Naḥman bar Yitzḥak says: These are Torah scholars, who in pursuit of their studies banish sleep from their eyes in this world, and the Holy One, Blessed be He, satiates them with the radiance of the Divine Presence in the World-to-Come.

246 Rabbi Yoḥanan says: What is the meaning of that which is written: “He that graciously gives to the poor makes a loan to the Lord, and that which he has given, He will pay him back” (Proverbs 19:17)? How can it be that one is considered to have granted a loan to God? Were it not explicitly written in the verse, it would be impossible to say this, that somebody who is gracious to a poor person is seen as lending to God. It would be impertinent, since “the borrower is servant to the lender” (Proverbs 22:7), as it were.

247 Rabbi Ḥiyya bar Abba says: Rabbi Yoḥanan raises a contradiction between two texts. In one place it is written: “Riches profit not on the day of wrath, but charity delivers from death” (Proverbs 11:4), and elsewhere it is written: “Treasures of wickedness profit nothing, but charity delivers from death” (Proverbs 10:2). Why is it necessary to have these two verses about charity, that it delivers from death? Rabbi Ḥiyya bar Abba continues: One verse serves to teach that charity delivers from an unnatural death in this world, and one verse serves to teach that charity delivers from the judgment of Gehenna in the World-to-Come. And in which of the verses is that charity which delivers from the judgment of Gehenna mentioned? It is in that verse in which “wrath” is written, as with regard to the day of judgment it is written: “That day is a day of wrath” (Zephaniah 1:15). And which type of charity is that which delivers from an unnatural death?

248 It is the type in which one gives the charity without knowing to whom he gave it, and the other one takes it without knowing from whom he took it. The Gemara explains: One gives it without knowing to whom he gave it, this serves to exclude the practice of Mar Ukva, who would personally give charity to poor people without their knowing he was the donor. The other one takes it without knowing from whom he took it; this serves to exclude the practice of Rabbi Abba, who would render his money ownerless, so that poor people would come and take it without his knowing whom he helped, although they would know from whom the money came. The Gemara asks: Rather, how then should one act to conceal his own identity and also remain ignorant of the identities of the recipients? The Gemara answers: The best method is to put the money into the charity purse.

249 The Gemara raises an objection from what is taught in a baraita: What should a person do to have male offspring? Rabbi Eliezer says: He should distribute his money liberally among the poor. Rabbi Yehoshua says: He should gladden his wife before engaging in the mitzva of conjugal relations. Rabbi Eliezer ben Ya'akov says: A person should not donate a peruta to the charity purse unless a great and trusted individual like Rabbi Ḥananya ben Teradyon is appointed as supervisor over it. This seems to indicate that putting money into the charity box is not always preferred. The Gemara answers: When we say that putting money into the charity box is the preferred way to give charity, this is referring to when a man like Rabbi Ḥananya ben Teradyon is appointed as supervisor over it.

250 The Gemara discusses other matters concerning charity. Rabbi Abbahu says: Moses said before the Holy One, Blessed be He: Master of the Universe, with what shall the horn of Israel be exalted? God said to him: With the passage of "When you raise," i.e., Israel will be exalted by way of the donations and charity that they will give, as it is stated: "When you raise the heads of the children of Israel…then shall they give" (Exodus 30:12).

251 And Rabbi Abbahu says: They asked King Solomon, son of David: How far does the power of charity extend? King Solomon said to them: Go out and see what my father David explained: "He has distributed freely, he has given to the poor, his righteousness endures forever, his horn shall be exalted with honor" (Psalms 112:9). Rabbi Abba said: It is derived from here how far the power of charity extends: "He shall dwell on high, his place of defense shall be the fortress of rocks; his bread shall be given, his water shall be sure" (Isaiah 33:16). What is the reason that "He shall dwell on high, his place of defense shall be the fortress of rocks"? Because "his bread shall be given" to the poor, and "his water shall be sure," i.e., it shall be given faithfully and he can be trusted in the matter.

252 And Rabbi Abbahu says: They asked King Solomon: Who is one who is destined for the World-to-Come? King Solomon said to them: All those about whom it is stated: "And before His Elders will be His glory" (Isaiah 24:23), referring to those who are honored in this world due to their wisdom. This is like the incident involving Yosef, son of Rabbi Yehoshua, who became ill and fainted. When he returned to good health, his father said to him: What did you see when you were not conscious? Yosef said to him: I saw an inverted world. Those above, i.e., those who are considered important in this world, were below, insignificant, while those below, i.e., those who are insignificant in this world, were above. Rabbi Yehoshua said to him: You have seen a clear world. The world you have seen is the true world, one in which one's spiritual and moral standing determines his true importance. Rabbi Yehoshua further asked him: And how did you see us, the Torah scholars, there? Yosef said to him: Just as we are important here, we are important there.

253 Yosef added: And I heard that they were saying in that world: Happy is the one who arrives with his studies in hand. And I also heard that they were saying: Those executed by the government enjoy such exalted status that no one can stand in their section. The Gemara asks: Who are these martyrs to whom Yosef was referring? If we say that he was referring to Rabbi Akiva and his colleagues, who were killed by the Romans, this cannot be: Is their elevated status due only to the fact that they were martyred by the Roman government and nothing more? These men were exceptional in their piety and sanctity during their lives as well. Therefore it is obvious that even without their martyrdom they would be greater than other people. Rather, it is referring to those like the martyrs of Lod, who died for the sanctification of God's name but were not Torah scholars.

254 It is taught in a baraita: Rabban Yoḥanan ben Zakkai said to his students: My sons, what is the meaning of that which the verse states: “Righteousness exalts a nation, but the kindness of the peoples is sin” (Proverbs 14:34)? Rabbi Eliezer answered and said: “Righteousness exalts a nation”; these are the people of Israel, as it is written: “And who is like your people Israel, one nation on the earth?” (I Chronicles 17:21). “But the kindness of the peoples is sin,” meaning that all the acts of charity and kindness that the nations of the world perform are counted as a sin for them, since they perform them only to elevate themselves in prestige, as it is stated: “That they may sacrifice offerings of pleasing aroma to the God of heaven, and pray for the life of the king and of his sons” (Ezra 6:10). Even though they donated offerings, they did so only for their own benefit.

255 The Gemara asks: And if one acts this way, is it not full-fledged charity? But isn’t it taught in a baraita that one who says: I am contributing this sela to charity so that my sons will live, or if he says: I am performing the mitzva so that I will merit a share in the World-to-Come, this person is a full-fledged righteous person, as far as that mitzva is concerned, even though he has his own welfare in mind? The Gemara answers: This is not difficult. Here, the statement that he is considered absolutely righteous is with regard to a Jew; while there, the statement that such benefaction is not credited as charity is with regard to a gentile.

256 Rabbi Yehoshua answered Rabban Yoḥanan ben Zakkai’s challenge to interpret the verse and said: “Righteousness exalts a nation”; these are the people of Israel, as it is written: “And who is like your people Israel, one nation on the earth.” “But the kindness of the peoples is sin” means that all the acts of charity and kindness that the nations of the world perform is counted as a sin for them, since they perform them only to perpetuate their dominion, as it is stated by Daniel to Nebuchadnezzar: “Therefore, O king, let my counsel be acceptable to you, and break off your sins by charity, and your iniquities by showing mercy to the poor; that there may be an extension of your serenity” (Daniel 4:24). Since this is the argument that persuaded Nebuchadnezzar, it would appear that his actual motive was his own benefit.

257 Rabban Gamliel answered and said: “Righteousness exalts a nation”; these are the people of Israel, as it is written: “And who is like your people Israel, one nation on the earth.” “But the kindness of the peoples is sin” means that all the acts of charity and kindness that the nations of the world perform is counted as a sin for them, since they perform them only in order to act haughtily through them, and whoever acts haughtily falls into Gehenna, as it is stated: “The proud and haughty one, scorner is his name, acts in arrogant wrath” (Proverbs 21:24). And wrath means nothing other than Gehenna, as it is stated: “That day is a day of wrath” (Zephaniah 1:15).

258 Rabban Gamliel said: We still need to hear what the Moda’i has to say, as Rabbi Eliezer HaModa’i says: “Righteousness exalts a nation”; these are the people of Israel, as it is written: “And who is like your people Israel, one nation on the earth.” “But the kindness of the peoples is sin” means that all the acts of charity and kindness that the nations of the world perform is counted as a sin for them, since they perform them only to taunt us with them, as it is stated that the Babylonian officer Nebuzaradan said: “The Lord has brought it, and done according as He has said; because you have sinned against the Lord and have not obeyed His voice, therefore this matter is come upon you” (Jeremiah 40:3).

259 Rabbi Neḥunya ben HaKana answered and said: “Righteousness exalts a nation and kindness” is referring to Israel; and in addition, “of the peoples is sin.” Rabban Yoḥanan ben Zakkai said to his

students: The statement of Rabbi Neḥunya ben HaKana appears to be more precise than both my statement and your statements, because he assigns both righteousness and kindness to Israel, and sin to the peoples of the world. The Gemara asks: By inference, it appears that he, Rabban Yoḥanan ben Zakkai, also offered an interpretation of this verse. What is it? As it is taught in a baraita: Rabban Yoḥanan ben Zakkai said to them that the verse should be understood as follows: Just as a sin-offering atones for Israel, so charity atones for the nations of the world.

[260] It is related that Ifera Hurmiz, the mother of King Shapur, king of Persia, sent four hundred dinars to Rabbi Ami, but he did not accept them. She then sent them to Rava, and he accepted them for the sake of peace with the kingdom. Rabbi Ami heard what Rava had done and was angry. He said: Does Rava not accept the lesson of the verse: “When the boughs are withered, they shall be broken off; the women shall come and set them on fire” (Isaiah 27:11), meaning that when righteousness has ceased from a particular nation, it is time for its citizens to be punished, and therefore we should not help them perform any meritorious deeds, which would delay their punishment? The Gemara asks: And why did Rava accept the money? The Gemara answers: He did so for the sake of peace with the kingdom.

[261] The Gemara asks: But did Rabbi Ami not also see the importance of accepting the money for the sake of peace with the kingdom? The Gemara answers: Rabbi Ami maintains that Rava should have distributed the money to the gentile poor rather than to the Jewish poor, as it is a disgrace to the Jews to require the kindness of the nations of the world in order to support their poor. The Gemara comments: In fact, Rava also gave the money to the gentile poor and not to the Jewish poor. And Rabbi Ami got angry because

[262] those who reported the story to him did not conclude it before him; consequently, Rav Ami was not informed that Rava had indeed given the money to the gentile poor.

[263] § It is taught in a baraita: The following was said about Binyamin the righteous, who was appointed supervisor over the charity fund. Once, a woman came before him during years of drought and said to him: My master, sustain me. He said to her: I swear by the Temple service that there is nothing left in the charity fund. She said to him: My master, if you do not sustain me, a woman and her seven sons will die. He arose and sustained her with his own funds. After some time, he fell deathly ill. The ministering angels said to the Holy One, Blessed be He: Master of the Universe, You said that anyone who preserves a single life in Israel is regarded as if he has preserved an entire world. Should then Binyamin the righteous, who saved a woman and her seven sons, die after these few years, still in his youth? They immediately tore up his sentence. A Sage taught: They added twenty-two years to his life.

[264] The Sages taught: There was an incident involving King Munbaz, who liberally gave away his treasures and the treasures of his ancestors in the years of drought, distributing the money to the poor. His brothers and his father’s household joined together against him to protest against his actions, and they said to him: Your ancestors stored up money in their treasuries and added to the treasures of their ancestors, and you are liberally distributing it all to the poor. King Munbaz said to them: Not so, my ancestors stored up below, whereas I am storing above, as it is stated: “Truth will spring out of the earth and righteousness will look down from heaven” (Psalms 85:12), meaning that the righteous deeds that one has performed are stored up in heaven. My ancestors stored up treasures in a place where the human hand can reach, and so their treasures could have been robbed, whereas I am

storing up treasures in a place where the human hand cannot reach, and so they are secure, as it is stated: “Righteousness and justice are the foundation of Your throne” (Psalms 89:15).

265 My ancestors stored up something that does not generate profit, as money sitting in a treasury does not increase, whereas I am storing up something that generates profit, as it is stated: “Say of the righteous, that it shall be well with them, for they shall eat the fruit of their doings” (Isaiah 3:10). My ancestors stored up treasures of money, whereas I am storing up treasures of souls, as it is stated: “The fruit of the righteous is a tree of life, and he that wins souls is wise” (Proverbs 11:30). My ancestors stored up for others, for their sons and heirs, when they themselves would pass from this world, whereas I am storing up for myself, as it is stated: “And it shall be as righteousness to you” (Deuteronomy 24:13). My ancestors stored up for this world, whereas I am storing up for the World-to-Come, as it is stated: “And your righteousness shall go before you, the glory of the Lord shall be your rearguard” (Isaiah 58:8).

266 § The Gemara resumes its analysis of the mishna, which taught that one must reside in a place for twelve months in order to be considered a resident for the purposes of issues such as paying taxes. But if he bought himself a residence in the city, he is immediately considered like one of the people of the city. The Gemara comments: The mishna is not in accordance with the opinion of Rabban Shimon ben Gamliel, as it is taught in a baraita that Rabban Shimon ben Gamliel says: If he bought any amount of land in the city, and not necessarily a residence, he is immediately considered like one of the people of the city.

267 The Gemara asks: But isn’t it taught otherwise in a different baraita: Rabban Shimon ben Gamliel says: If one bought land that is suitable for a residence, he is immediately considered like one of the people of the city. This contradicts the first baraita. The Gemara answers: This is a dispute between two tanna’im and they disagree with regard to the opinion of Rabban Shimon ben Gamliel.

268 MISHNA: The court does not divide a courtyard at the request of one of the joint owners unless there will be in it four by four cubits for this one and four by four cubits for that one, i.e., this minimum area for each of the joint owners. And the court does not divide a jointly owned field unless there is space in it to plant nine kav of seed for this one and nine kav of seed for that one. Rabbi Yehuda says: The court does not divide a field unless there is space in it to plant nine half-kav of seed for this one and nine half-kav of seed for that one. And the court does not divide a jointly owned garden unless there is space in it to plant a half-kav of seed for this one and a half-kav of seed for that one. Rabbi Akiva says that half that amount is sufficient, i.e., the area required for sowing a quarter-kav of seed [beit rova].

269 Similarly, the court does not divide a hall [hateraklin], a drawing room, a dovecote, a cloak, a bathhouse, an olive press, and an irrigated field unless there is enough for this one to use the property in the usual manner and enough for that one to use the property in the usual manner. This is the principle: Anything for which when it is divided, each of the parts is large enough to retain the name of the original item, the court divides it. But if the parts will not retain the original name, the court does not divide it.

270 When does this rule apply? It applies when the joint owners do not both wish to divide the item; when only one of the owners wishes to divide the property, he cannot force the other to do so. But when both of them wish to divide the item, they may divide it, even if each of the owners will receive less than the amounts specified above. But in the case of sacred writings, i.e., a scroll of any of the

twenty-four books of the Bible, that were inherited by two people, they may not divide them, even if both of them wish to do so, because it would be a show of disrespect to cut the scroll in half.

271 GEMARA: Rabbi Asi says that Rabbi Yoḥanan says: The four cubits of the courtyard which they said each of the joint owners must receive is in addition to the space in front of the entrances to each of the houses that is assigned to the owner of the house for loading and unloading. That opinion is also taught in a baraita: The court does not divide a courtyard unless its area is sufficient so that there will be in it eight cubits for this one and eight cubits for that one. The Gemara asks: But didn't we learn in the mishna that it suffices that there be four cubits for this one and four cubits for that one? Rather, conclude from it that the baraita was taught in accordance with the opinion of Rabbi Asi. The Gemara affirms: Conclude from it that it is so.

272 And there are those who raise the baraita as a contradiction to what is taught in the mishna and use the previously mentioned point to reconcile the two texts. We learned in the mishna: The court does not divide a courtyard at the request of one of the joint owners unless there will be in it four by four cubits for this one and four by four cubits for that one. But isn't it taught in a baraita: The court does not divide a courtyard unless there are eight cubits for this one and eight cubits for that one? About this Rabbi Asi said that Rabbi Yoḥanan said: The four cubits of the courtyard which they said each of the joint owners must receive is in addition to the space in front of the entrances to each of the houses.

273 Further with regard to the division of a courtyard, Rav Huna says: A courtyard is divided according to its entrances. Each of the owners receives a share of the courtyard in proportion to the number of entrances that his house has opening onto the courtyard. And Rav Ḥisda says: Four cubits are allotted to each of the owners for each and every entrance, and the rest of the courtyard is then divided equally between them.

274 The Gemara comments: It is taught in a baraita in accordance with the opinion of Rav Ḥisda: Each of the entrances opening to a courtyard is allotted four cubits. If this one has one entrance and that one has two entrances, the one who has one entrance takes four cubits, and the one who has two entrances takes eight cubits, and they divide the rest of the courtyard equally between them. If this one had an entrance eight cubits wide, he takes eight cubits adjacent to the entrance and four cubits in the courtyard. The Gemara expresses surprise: What are these four cubits in the courtyard doing here? Doesn't it all depend on the size of the courtyard? Abaye said: This is what the baraita is saying: For the entrance he takes eight cubits along the length of the courtyard and four cubits along the width of the courtyard. In other words, he takes a strip four cubits wide along the entire length of his entrance.

275 Ameimar says: A pit for holding animal food [peira desuflei] has four cubits on each and every side so that there will be sufficient space for the animals to stand. The Gemara adds: And we said this only when the pit has no special entrance to reach it, but rather it is accessed from all sides.

276 But if he designates an entrance leading to this pit and does not approach it from all sides, he has four cubits only in front of his entrance.

277 Rav Huna says: A portico [akhsadra] that opens onto a courtyard does not have the adjoining four cubits. The Gemara explains: What is the reason that four cubits were granted for each entrance? The four cubits were granted so that the owner would have room for unloading his animal of its burden. Here he can go inside the portico and unload. Rav Sheshet raises an objection from a baraita: Both

gates of houses and gates of porticos have the adjoining four cubits for unloading. The Gemara answers: When that baraita is taught, it is specifically with regard to the portico of a study hall, which is closed and is not used for unloading burdens. The Gemara expresses surprise at this answer: It is obvious that this is the halakha governing the portico of a study hall, as it is a proper room. Rather, the baraita is referring to a Roman portico, which is more open than the portico of a study hall, but also not used for unloading.

278 The Sages taught in a baraita: A gatehouse, a portico, and a balcony with a staircase leading down to the courtyard have the adjoining four cubits for unloading. Even if five houses open onto the balcony, they only have four cubits in front of the entrance to the staircase that leads to the balcony. Rabbi Yoḥanan asked Rabbi Yannai: Does a chicken coop that also has a staircase have four cubits or does it not have four cubits? Rabbi Yannai said to him: What is the reason that four cubits are granted? It is so that the owner will have room for unloading the burden of his animal. Here this space is not needed, as the chickens climb up to get into the coop and climb down to get out. No additional place is required for the owner to stand alongside them.

279 Rava asked Rav Naḥman: If a house is half roofed and half unroofed, does it have the adjoining four cubits or does it not have the four cubits? Rav Naḥman said to him: It does not have the four cubits. The Gemara comments: It is not necessary to state this halakha when the house's roofing is over the inside portion of the house, since it is possible for the owner to go inside and unload his animal. Rather, even when the house's roofing is over the outside portion of the house, it is not given four cubits, as even in such a case it is possible for the owner to go inside and unload his animal there.

280 § Rav Huna asked Rabbi Ami: If one of the residents of an alleyway onto which several courtyards open wishes to alter his entrance to a different alleyway, i.e., to make an entrance to his courtyard that will open onto a different alleyway, can the residents of the other alleyway prevent him from opening this entrance, or can they not prevent him from doing so? Rabbi Ami said to him: The residents of the other alleyway can prevent him from making the change.

281 Rav Huna further asked: When a king issues a billeting order to the residents of a courtyard, obligating them to house his soldiers in their homes, is the burden divided according to the number of people in each household, or is it divided according to the number of entrances that each house has opening into the courtyard? Rabbi Ami said to him: It is divided according to the number of people in each household. The Gemara comments: That opinion is also taught in a baraita: The dung in a courtyard which the residents wish to use is divided among them according to the number of entrances that open into the courtyard, whereas billeting is divided according to the number of people in each household.

282 Rav Huna says: If one of the residents of an alleyway wishes to close off an area adjacent to his entrance, i.e., to build a structure in the alleyway adjacent to the entrance to his courtyard, the residents of the alleyway can prevent him from doing so. This is because it will increase the way for them, since they will have to circumvent the structure when going to and from their homes.

283 The Gemara raises an objection from a baraita: If five courtyards open onto an alleyway, all the residents of the alleyway may use that part of the alleyway that faces the entrance to the outermost courtyard, and the residents of the outermost courtyard may use only that part of the alleyway adjacent to its own entrance. And similarly, the residents of the other courtyards may use that part of

the alleyway that faces the second courtyard, i.e., the one next to the outermost courtyard, and the residents of the second courtyard may use that part of the alleyway adjacent to its own entrance and they may use that part of the alleyway facing the outermost courtyard.

284 The baraita continues: The outcome is that the residents of the innermost courtyard may use that part of the alleyway adjacent to its own entrance, and they may use that part of the alleyway facing each and every other courtyard as well. According to this analysis, it should be permitted for the owner of the innermost courtyard to close off the area in front of his courtyard, since he is the only one who has permission to use it.

285 The Gemara answers: It is a dispute between tanna'im, as it is taught in a baraita: If one of the residents of an alleyway wishes to alter his entrance to a different alleyway, the residents of the other alleyway can prevent him from doing so. If there had been an entrance there beforehand which is now sealed and he wishes to open it, the residents of the other alleyway cannot prevent him from doing so; this is the statement of Rabbi Yehuda HaNasi. Rabbi Shimon ben Elazar says: If there are five courtyards which open onto an alleyway, the residents of all the courtyards may all use the alleyway with each other.

286 The Gemara expresses surprise about this last ruling: Courtyards, who mentioned anything about them? Why are they mentioned, considering that the baraita is not discussing the halakhot of courtyards? The Gemara answers: The baraita is incomplete and this is what it is teaching: Additionally, if there are five courtyards which open onto an alleyway, the residents of all the courtyards may all use the area facing the outermost courtyard, and the residents of the outermost one may use only the area facing their own entrance; this is the statement of Rabbi Yehuda HaNasi. Rabbi Shimon ben Elazar says: If there are five courtyards which open onto an alleyway, the residents of all the courtyards may all use the alleyway.

287 The Gemara directs the discussion to the details mentioned in the baraita. The Master said: If there had been an entrance there beforehand that is now sealed and he wishes to open it, the residents of the other alleyway cannot prevent him from doing so. Rava says: This was taught only when he did not break its doorposts, i.e., when the doorposts remained intact even after the entrance was sealed. But if he sealed the entrance and broke its doorposts, thereby demonstrating that the entrance had been completely negated, the residents of the other alleyway can prevent him from opening a new entrance. Abaye said to Rava: A baraita is taught which supports you:

288 A house that has a sealed entrance still has the four cubits adjoining that entrance because the entrance can be reopened. If one broke its doorposts and sealed the entrance, the entrance is completely negated, and it does not have the four cubits adjoining it.

289 There is a similar distinction with regard to the halakhot of ritual impurity. There is a halakha that a house in which there is a corpse transmits ritual impurity only through its doorways. The baraita continues: A grave whose entrance is sealed does not render all its surroundings ritually impure; the ritual impurity extends only to the area opposite the entrance. But if one broke its doorposts and sealed it, it is no longer considered an entrance, and the grave renders all its surroundings ritually impure, because impurity that has no egress bursts from all sides. Similarly, a house in which there is a corpse that has a sealed entrance does not render all its surroundings ritually impure. But if one broke its doorposts, it is no longer considered an entrance, and the corpse renders all of its surroundings ritually impure.

290 Rabba bar bar Ḥana says that Rabbi Yoḥanan says: With regard to alleyways that are open to another city, and through which one would ordinarily travel to reach that other city, if the residents of the city in which the alleyways are located wished to block them off, the residents of the city into which the alleyways open can prevent them from doing so, because they have a right to reach their city via those routes. The Gemara explains: It is not necessary to state that they can prevent them from blocking the alleyways when there is no alternative route to reach their town, but they can prevent them from blocking the alleyways even when there is an alternative route.

291 This is due to the reasoning that Rav Yehuda says that Rav says. As Rav says: One is prohibited from ruining a path that the public has established as a public thoroughfare, i.e., steps may not be taken to prevent people from using it. This is in accordance with the statement of Rav Giddel, as Rav Giddel says: If the public has chosen a route for itself and they walk on it, what they have chosen is chosen, and it cannot be taken away from them.

292 Rav Anan says that Shmuel says: With regard to alleyways that open onto a public thoroughfare, if the residents of the alleyways wished to put up doors at the entrance to their alleyways, the people who use the public thoroughfare can prevent them from doing so.

293 Some Sages understood from this that this statement applies specifically to the area within four cubits of the public thoroughfare, in accordance with the statement that Rabbi Zeira says that Rav Naḥman says, as Rabbi Zeira says that Rav Naḥman says: The four cubits in an alleyway that are adjacent to the public thoroughfare are considered like the public thoroughfare itself. Consequently, this area has the halakha of a public thoroughfare. But that is not so. There, the ruling of Rav Naḥman was stated with regard to the issue of ritual impurity, with regard to which only the first four cubits of the alleyway are considered like the public thoroughfare. But here, with regard to doors set up at the entrance to the alleyway, sometimes the public thoroughfare becomes crowded with people and they enter far into the alleyway, even farther than four cubits.

294 § The mishna teaches: And the court does not divide a jointly owned field unless there is space in it to plant nine kav of seed for this one and nine kav of seed for that one. Rabbi Yehuda says: The court does not divide a field unless there is space in it to plant nine half-kav of seed for this one and nine half-kav of seed for that one. The Gemara comments: And they do not disagree with regard to the fundamental halakha, as this Sage ruled in accordance with the custom of his locale, and that Sage ruled in accordance with the custom of his locale. In Rabbi Yehuda’s locale, even a smaller parcel of land was considered a viable field.

295 The Gemara asks: The mishna was taught in Eretz Yisrael; what practice should be followed in Babylonia? Rav Yosef said: In Babylonia, a parcel of land the size of which is the area of a day’s plowing is considered a field; if each of the parties will receive less than that, the field should not be divided.

296 The Gemara asks: What is meant by a parcel of land the size of which is the area of a day’s plowing? If it means a day’s plowing in the planting season, i.e., the winter, when it is easy to plow, since the earth has already been turned over at the end of the summer, the field will not require two full days of plowing in the plowing season, i.e., at the end of the summer, when it is more difficult to plow, since the earth is hard and dry. In that case, he will have to pay his summer plowman two days’ wages for less than two days of work. And if it means a day’s plowing in the plowing season, the

field will not require a full day of plowing in the planting season. In that case, he will have to pay his winter plowman a full day's wages for less than a full day of work.

297 The Gemara answers: If you wish, say it is referring to a day's plowing in the plowing season, and the field will still require a full day of plowing in the planting season since he plows once before he sows the seeds and then he repeats the plowing after the seeds are sown. And if you wish, say instead that it is referring to a day's plowing in the planting season, and the field will in fact require two full days of plowing in the plowing season if it is rocky ground, on which plowing takes longer.

298 In connection with this discussion, the Gemara clarifies the conditions under which a cistern, from which its joint owners draw their water, is divided. Rav Naḥman said: It should be divided only if each party will receive the volume of water needed for a day's irrigation work. As for an orchard, Shmuel's father says: It should be divided only if each party will receive an area large enough to plant three kav, one-third of the measure required for a field.

299 That opinion is also taught in a baraita: With regard to one who says to another: I am selling you part of a vineyard, without specifying how much of the vineyard, Sumakhos says: He may not give him less than an area large enough to plant three kav. Rabbi Yosei said: These are nothing other than words of prophecy, i.e., I do not see the logic behind this statement, and it is as if based on prophecy and a heavenly decree, as the seller did not mention any area, but rather spoke in the most general of terms: Part of a vineyard. The Gemara asks: What is the measure with regard to this matter in Babylonia? Rava bar Kisna said: Three rows [atzyata] of twelve vines, which is the area a person can hoe in a single day.

300 § In connection with Rabbi Yosei's statement that Sumakhos's words are nothing but words of prophecy, the Gemara reports that Rabbi Avdimi from Haifa says: From the day that the Temple was destroyed prophecy was taken from the prophets and given to the Sages. The Gemara expresses astonishment: Is that to say that a Sage is not fit to be a prophet? Rabbi Avdimi seems to say that these are two distinct categories of people. The Gemara explains: This is what Rabbi Avdimi is saying: Even though prophecy was taken from the prophets, it was not taken from the Sages.

301 Ameimar said: And a Sage is greater than a prophet, as it is stated: "And a prophet has a heart of wisdom" (Psalms 90:12), i.e., he is wise. When comparisons are drawn, who is compared to whom? You must say that the lesser is compared to the greater. Here too, prophecy is compared to wisdom, thus indicating that wisdom is greater than prophecy.

302 Abaye said: Know that this is so, that the Sages still enjoy the prophetic gift, as a great man makes a statement with regard to a point of halakha and the same statement is then cited in the name of a different great man in accordance with his statement, indicating that the Sages makes their statements by way of prophecy. Rava disagreed and said: And what is the difficulty with explaining this? Perhaps they were born under the same constellation, and since they are similar in their traits, they reach the same conclusions. Rather, Rava said: Know that this is so, as a great man makes a statement and the same statement is then cited

303 in the name of the well-known tanna Rabbi Akiva bar Yosef in accordance with his statement. It certainly cannot be maintained that the first Sage is similar in his nature to the illustrious Rabbi Akiva, so he must have arrived at his statement through prophecy. Rav Ashi said: And what is the difficulty with explaining this? Perhaps they were born under the same constellation, and with regard to this issue the first Sage has the same understanding as Rabbi Akiva.

[304] Rather, Rav Ashi said: Know that this is so, as a great man makes a statement and the same statement is then cited as a halakha transmitted to Moses from Sinai in accordance with his statement. The Sage makes a statement that corresponds to words pronounced in Heaven, which, without prophecy, is beyond human capability. The Gemara states: But perhaps he arrived at this idea by chance, without the assistance of prophecy, like a blind man who makes his way through a skylight. A blind man cannot deliberately find a skylight; therefore, his finding it occurs by chance. The Gemara answers: But does the Sage not offer a reason for his statement? The fact that he demonstrates an understanding of the issue indicates that he does not arrive at his idea by chance, but rather by prophecy.

[305] Rabbi Yoḥanan said: From the day that the Temple was destroyed, prophecy was taken from the prophets and given to imbeciles and children. The Gemara explains: In what way was prophecy given to imbeciles? It was like this incident involving Mar bar Rav Ashi, who was standing in the street [beristeka] of Meḥoza when he heard a certain imbecile say: The head of the yeshiva who will be appointed in Mata Meḥasya signs his name Tavyumei. Mar bar Rav Ashi said to himself: Who among the Sages signs his name Tavyumei? Nobody but me. Conclude from the statement by the imbecile that my hour has arrived, and I will reap success in this matter. He arose and went to Mata Meḥasya. By the time he arrived, the Sages had already decided to appoint Rav Aḥa of Difti as the head of the yeshiva.

[306] As soon as the Sages heard that Mar bar Rav Ashi had arrived, they determined not to proceed with their appointment without the approval of an important figure such as him. They sent a pair of Sages to him to consult with him, and he detained them. They again sent a pair of Sages to him, and he detained them as well. This continued until they completed a quorum of ten Sages. Once they reached ten men, Mar bar Rav Ashi opened his lecture, taught, and expounded. He did not speak earlier because one should not open a lecture during kalla, the gatherings for Torah study during the months of Elul and Adar, when less than ten men are present. He was then appointed as head of the yeshiva.

[307] Understanding that he had been passed over for the position, Rav Aḥa of Difti read about himself the rabbinic aphorism: Anyone who is treated poorly will not soon be treated well; and anyone who is treated well will not soon be treated poorly. Rav Aḥa understood that he had lost the chance to be appointed, whereas Mar bar Rav Ashi had the good fortune to be appointed, and would remain in his position.

[308] And in what way was prophecy given to children? It was like this incident involving the daughter of Rav Ḥisda, who when she was a child was sitting on her father’s lap while he sat and learned. Rava and Rami bar Ḥama were sitting before him. Rav Ḥisda jokingly said to his daughter: Which of them would you want as a husband? She said: I want both of them. Rava said: And I will be last. And this is what happened; first she married Rami bar Ḥama, and when he died she married Rava.

[309] Having already cited one statement of Rabbi Avdimi from Haifa, the Gemara cites another statement in his name: Rabbi Avdimi from Haifa says: Before a person eats and drinks he has two hearts, meaning his heart is unsettled because he is distracted by hunger. But after he eats and drinks he has only one heart, as it is stated: “A hollow [nevuv] man is two-hearted” (Job 11:12). How is it indicated that “nevuv” means hungry? As it is written concerning the altar: “Nevuv luḥot” (Exodus

27:8), which we translate into Aramaic as: Hollow with planks, meaning that a hollow person, i.e., one who has not yet eaten, is two-hearted.

310 The Gemara continues to discuss the meaning of nevuv, Rav Huna, son of Rav Yehoshua, says: With regard to one who is accustomed to wine, although his heart, i.e., his mind, is closed like a virgin, wine opens it, as it is stated: “And new wine opens [yenovev] the virgins” (Zechariah 9:17). The word yenovev is used here in the sense of clearing out a space: Even if one’s heart and mind are closed, wine will open them to understanding.

311 § The Gemara resumes its discussion of the division of property. Rav Huna, son of Rav Yehoshua, says: It is obvious that if a person inherits a portion of his father’s estate because he is the firstborn, and he also inherits a portion of that estate as an ordinary son, like the rest of his brothers, he is given his two portions along one boundary, so that they are adjacent to one another and form a single property. The Gemara asks: What is the halakha with regard to a yavam, a man whose brother died without children, who is obligated by Torah law to marry his deceased brother’s widow or grant her ḥalitza? If he marries his brother’s widow, the halakha dictates that he receive his brother’s portion of their father’s estate in addition to his own. Does he too receive the two portions along one boundary?

312 Abaye said: This case is equal to that case. What is the reason for this? The Merciful One calls the yavam “firstborn” (see Yevamot 24a) and therefore he is treated like a firstborn in all regards. He receives the two portions of his father’s estate as a single parcel of land. But Rava said: The verse states: “And it shall be, the firstborn” (Deuteronomy 25:6). With regard to his being, i.e., his inheritance itself, he is like a firstborn; but as for the distribution of the estate, he is not like a firstborn, and the brothers are not obligated to give him two adjacent portions.

313 It is reported that a certain person bought land along the boundary of his father’s property. After some time the father died. When they came to divide the estate, this person said to his brothers: Give me my portion of the estate along my boundary. Rabba said: In a case such as this, the court compels people to refrain from conduct characteristic of Sodom. The court forces a person to waive his legal rights in order to prevent him from acting in a manner characteristic of the wicked city of Sodom. Since it makes no difference to the brothers which portion they receive since the parcels of land must be of equal value, whereas it matters to this brother that the area he receives should be adjacent to the land he already bought, the court forces the others to give this brother his portion along his boundary.

314 Rav Yosef objects to this, saying this is not a case involving conduct characteristic of Sodom, since the brothers can explain their refusal to grant the request. The brothers can say to him: We assess this field that you want for yourself as particularly valuable, like the property of the house of bar Maryon. The brothers can claim that the portion he wants is more desirable than the others, and for that reason they do not want to give it to him. The Gemara concludes: And the halakha is in accordance with the opinion of Rav Yosef, and the brothers can refuse the request.

315 If a father leaves his two sons two parcels of land next to two water channels [nigrei], and one brother requests the field that is next to a field that he already owns, Rabba says: In a case such as this, the court compels people to refrain from conduct characteristic of Sodom and allows that brother to receive the field adjoining his own. Rav Yosef objects to this, saying that if the other brother protests and wants that parcel of land, it is not a case involving conduct characteristic of Sodom because he may have a valid reason for objecting: Sometimes this water channel continues

running well, while this second one does not continue running well; therefore, the second brother wants to receive land that adjoins a water channel on both sides. The Gemara concludes: And the halakha is in accordance with the opinion of Rav Yosef.

316 If a father leaves his two sons two parcels of land next to one channel and one of the brothers already owns a field next to one of those parcels of land, Rav Yosef said: In a case such as this, the court compels people to refrain from conduct characteristic of Sodom and allows that brother to receive the field adjoining his own. Abaye objects to this, saying that this is not a case involving conduct characteristic of Sodom because the other brother can say to him: I want the number of sharecroppers to increase. If my field is in the middle and you have fields on either side, you will need more sharecroppers to work them and my field will enjoy greater security. And the halakha is in accordance with the opinion of Rav Yosef because the increase of sharecroppers is considered as nothing, and this is therefore not a valid reason for objecting.

317 If there is a water channel on one side of the field and a river on the other side, the field is divided diagonally [bekarna zol] between the two brothers, so that they each receive land adjoining both the river and the water channel.

318 § The mishna teaches that a hall, a drawing room, and the like should not be divided unless the two parties will be able to use their respective portions in the same manner that they had previously used them. The Gemara asks: What is the halakha if there is not enough for this one and that one? What is to be done if one of the parties wishes to dissolve the partnership? Rav Yehuda said: There is a halakha of: Either you set a price or I will set a price. That is to say, one party can say to the other: Set a price you are willing to pay for my share, and I will sell my share to you or purchase your share from you at that price. Rav Naḥman said: There is no halakha of: Either you set a price or I will set a price; rather, the partnership continues.

319 Rava said to Rav Naḥman: According to you who say that there is no halakha of: Either you set a price or I will set a price, what should they do if there was a firstborn son and an ordinary brother whose father left them a slave and a non-kosher animal as an inheritance? How are they to be divided? Rav Naḥman said to him: I say that they work for this one, the ordinary brother, one day, and for the other one, the firstborn, two days.

320 The Gemara raises an objection to Rav Yehuda’s approach from what is taught in a mishna (Gittin 41a): One who is half-slave half-freeman, e.g., a slave who had been jointly owned by two people, one of whom emancipated him, serves his master one day and himself one day; this is the statement of Beit Hillel. Beit Shammai say: You have remedied the situation of his master, who benefits fully from all his rights to the slave, but you have not remedied his own situation. He cannot marry a maidservant, since half of him is free, and a free Jew may not marry a Canaanite maidservant. He is also not able to marry a free woman, since half of him is a slave, and a Jewish woman may not marry a Canaanite slave. And if you say he should be idle and not marry, but is it not true that the world was created only for procreation, as it is stated: “He did not create it to be a waste; He formed it to be inhabited” (Isaiah 45:18)?

321 Rather, the court forces his master to make him a freeman by emancipating the half that he owns, and the court writes a bill in which the slave accepts responsibility to pay half his value to his master. This was the original version of the mishna. The ultimate version of the mishna records the retraction of Beit Hillel: And Beit Hillel retracted its opinion and ruled in accordance with the statement of Beit

Shammai. This indicates that it is only in this case, where there is the particular consideration of procreation, that the court compels one of the parties to forfeit his portion and dissolve the partnership. But in other cases there is no halakha of: Either you set a price or I will set a price.

322 The Gemara answers: It is different here, because the slave can say: I will set a price, but he is not able to say: You set a price. In other words, the slave cannot offer to sell himself, because his Jewish side precludes him from selling himself as a Canaanite slave. Therefore, the court would not be able force the master to sell his share, were it not for the consideration of procreation. By contrast, in a situation where either side can buy or sell, one partner can compel the other to either buy his portion or sell his portion to him.

323 The Gemara suggests: Come and hear a proof from what is taught in a mishna (172a): In a case where there are two brothers, one poor and one rich, and their father left them a bathhouse or an olive press as an inheritance, if the father had built these facilities for profit, i.e., to charge others for using them, the profit that accrues after the father's death is shared equally by the two brothers. If the father had built them for himself and for the members of his household to use, the poor brother, who has little use for these amenities, cannot force the rich brother to convert the facilities to commercial use; rather, the rich brother can say to the poor brother:

324 Go take servants for yourself, and they will bathe in the bathhouse. Or he can say: Go take olives for yourself and come and transform them into oil in the olive press. Evidently, the poor brother cannot say to him: Buy my share. The Gemara rejects this proof: There too the poor brother can say: You set a price and buy my share, as the rich brother has the means to buy his poor brother's portion; but he is not able to say: Or else I will set a price and buy your share, as the poor brother does not have the money to buy his brother out.

325 The Gemara further proposes: Come and hear a proof from what is taught in a baraita: Anything which, even after it is divided, each of the parts retains the name of the original item, may be divided. And if the parts will not retain the original name, the item should not be divided, but rather its monetary value is assessed, because one of the joint owners can say to the other: Either you set a price and buy it from me, or I will set a price and buy it from you. The Gemara explains: Actually, this matter is a dispute between tanna'im, as it is taught in a baraita: If a courtyard or the like was not large enough to warrant division into two, and one of the co-owners said to the other: You take a minimum measure of the courtyard, e.g., four cubits, and I will take less, the court listens to him. Rabban Shimon ben Gamliel says: They do not listen to him.

326 The Gemara clarifies the baraita: What are the circumstances of the case under discussion? If we say it is exactly as it is taught, what is Rabban Shimon ben Gamliel's reasoning? Why does he rule that the court ignores the party who is prepared to settle for less? Rather, is it not that the baraita is incomplete and this is what it is saying: If one of the co-owners said to the other: You take a minimum measure of the courtyard, and I will take less, all agree that the court listens to him. And the tanna of the baraita adds: And if one says: Either you set a price and buy it from me, or I will set a price and buy it from you, they also listen to him. And Rabban Shimon ben Gamliel comes to say: In the first case the court does listen to him, but they do not listen to him when he says: Either you set a price or I will set a price. Accordingly, this issue is the subject of a tannaitic dispute.

327 The Gemara rejects this interpretation of the baraita: No, the baraita should actually be understood exactly as it is taught. And with regard to what you said: What is Rabban Shimon ben

Gamliel’s reasoning? Why can’t one of the parties say that they should divide the property and he will settle for less? It is because the second one can say to him: If you want me to compensate you with money for the difference between my share and your share, I have no money to give you. And if you wish to give it to me as a gift, I am not at ease with that, as it is written: “But he who hates gifts shall live” (Proverbs 15:27). The baraita indicates that there is a halakha of: Either you set a price or I will set a price, in accordance with the opinion of Rav Yehuda.

328 As a continuation of this discussion, Abaye said to Rav Yosef: That statement of Rav Yehuda is actually the opinion of Shmuel, his teacher, as we learned in the mishna (11a): But in the case of sacred writings, i.e., a scroll of any of the twenty-four books of the Bible, that were inherited by two people, they may not divide them, even if both of them wish to do so, because it would be a show of disrespect to cut the scroll in half. And Shmuel said: They taught that sacred writings should not be divided only if they are contained in one scroll; but when they are contained in two scrolls, they may be divided. And if it should enter your mind to say that there is no halakha of: Either you set a price or I will set a price, why does the halakha apply specifically to one scroll? Even if the sacred writings were contained in two scrolls, they should also not divide them, since the respective parts will not be even and one of the recipients will have to compensate the other.

329 Rav Shalman interpreted the mishna: It is referring to a case where they both want to divide the sacred writings; therefore, Shmuel said that they may do so when they are contained in two scrolls. But if just one of them wishes to divide them, there is no proof that he can compel the other one to accept the division.

330 Ameimar said: The halakha is in accordance with the opinion of Rav Yehuda that there is a halakha of: Either you set a price or I will set a price. Rav Ashi said to Ameimar: What about that statement of Rav Naḥman, who disagrees with Rav Yehuda and says that there is no such halakha? Ameimar said to him: I do not know of it, that is to say, I do not maintain this opinion. The Gemara asks: And is the halakha not in accordance with the opinion of Rav Naḥman? But it happened that the father of Ravin bar Ḥinnana and Rav Dimi bar Ḥinnana died and left them two maidservants, one of whom knew how to bake and to cook, and the other of whom knew how to spin and to weave. One of the brothers suggested that each of them take one of the maidservants entirely for himself and forfeit his rights to the other maidservant. They came before Rava and he said to them: There is no halakha of: Either you set a price or I will set a price.

331 The Gemara answers: It is different there, since this master wanted both of them and the other master wanted both of them. Therefore, when one of the brothers said to the other: You take one and I will take the other one, it is not a case of: Either you set a price or I will set a price. The Gemara asks: And can we not say so? But there is the case of sacred writings, which both of them presumably want, and Shmuel said: They taught that sacred writings should not be divided only if they are contained in one scroll; but when they are contained in two scrolls, they may be divided. The Gemara answers: Rav Shalman interpreted the mishna: It is referring to a case where they both want to divide the sacred writings, and in such a case they may divide them, provided that they are in two scrolls.

332 § The Gemara now begins a general discussion about sacred writings. The Sages taught: A person may attach the Torah, the Prophets, and the Writings together as one scroll; this is the statement of Rabbi Meir. Rabbi Yehuda says: The Torah should be a scroll by itself, the books of the Prophets a

scroll by themselves, and the books of the Writings a scroll by themselves. And the Sages say: Each one of the books of the Prophets and the Writings should be a scroll by itself.

[333] And Rabbi Yehuda said: There was an incident involving Baitos ben Zunin, who had eight books of the Prophets attached together as one scroll, and he did this with the approval of Rabbi Elazar ben Azarya. And others say that each and every one of the books was a scroll by itself, in accordance with the opinion of the Sages. Rabbi Yehuda HaNasi said: There was an incident where they brought before us the Torah, the Prophets, and the Writings attached together as one scroll and we ruled in accordance with the opinion of Rabbi Meir and deemed them fit.

[334] The Gemara states: When different books are included in the same scroll, four empty lines of space should be left between each book of the Torah, and similarly between one book of the Prophets and another. But between each of the books of the Twelve Prophets only three empty lines should be left, because they are considered one book. And the scribe may finish a book at the bottom of one column and begin the next book at the top of the next column without leaving any empty space in between.

[335] The Sages taught in a baraita: One who wishes to attach the Torah, the Prophets, and the Writings together as one scroll may attach them. He should leave enough empty parchment at the beginning of the scroll for winding around the pole to which the beginning of the scroll is fastened. And at the end of the scroll he should leave enough empty parchment for winding around the entire circumference of the rolled-up scroll. And he may finish a book at the bottom of one column and begin the next book at the top of the next column without leaving any empty space between them.

[336] And if he wishes to cut the scroll, he may cut it. The Gemara is surprised at this: What is the tanna saying? Why is mention made here of cutting the scroll? The Gemara answers: This is what the tanna is saying: He arranges the text so that if he finishes a book at the bottom of one column, he begins the next book at the top of the next column without leaving any empty space, so that if he wishes to cut the scroll, he may cut it. If he does not begin the next book at the top of the next column, he will not be able to cut the scroll, because it is not fitting for a scroll to begin with an empty space.

[337] The Gemara raises a contradiction between this baraita and another baraita that teaches: Enough parchment should be left at the beginning of the scroll and at its end for winding. The Gemara clarifies: For winding around what? If it means for winding around the pole to which the beginning of the scroll is fastened, this is difficult in light of what is taught in the first baraita, that at the end of the scroll enough parchment should be left for winding around the entire circumference of the scroll. And if it means for winding around the entire circumference, this is difficult in light of what is taught in the first baraita that at the beginning of the scroll enough parchment should be left for winding around the pole.

[338] Rav Naḥman bar Yitzḥak said: The tanna teaches the halakha disjunctively, referring to two separate cases. He issues a general statement requiring that enough parchment be left for winding as needed: At the beginning of the pole, enough to wind around the pole, and at the end of the scroll, enough to wind around the circumference.

[339] Rav Ashi said: When that second baraita is taught, indicating that the same measure of parchment is left at both the beginning and the end of the scroll, it was referring to a Torah scroll, as it is taught in a baraita: All other scrolls are wound from the beginning to the end around a single pole, but a

Torah scroll is wound from both ends to the middle around two poles, one of which he attaches at this end of the scroll and the other at the other end. Rabbi Eliezer, son of Rabbi Tzadok, said: This is how the scribes in Jerusalem made their scrolls, i.e., with poles at either end so that it could be rolled to the middle.

340 § The Sages taught: A Torah scroll should not be made in such a manner that its length, i.e., its height, is greater than its circumference when it is rolled up; nor should its circumference be greater than its length. They asked Rabbi Yehuda HaNasi: What should the size of a Torah scroll be? Rabbi Yehuda HaNasi said to them: If it was written on a hide that was treated with gallnuts [gevil] it should be six handbreadths long. They asked him further: How much should it be if it was written on ordinary parchment [kelaf]? Rabbi Yehuda HaNasi said to them: I do not know.

341 It is related that Rav Huna wrote seventy Torah scrolls himself, and it happened for him only once that the length and the circumference were equal. Rav Aḥa bar Ya’akov wrote one Torah scroll on calf hide and it happened to have the same length and circumference. The Sages looked at him and his achievement with jealousy, and he died from their envious gaze.

342 The Sages said to Rav Hamnuna: Rabbi Ami wrote four hundred Torah scrolls. Rav Hamnuna said to them: Perhaps he wrote the verse: “Moses commanded us the Torah” (Deuteronomy 33:4) four hundred times, rather than four hundred complete Torah scrolls, as it is difficult to say that he could have written so many, even over a lifetime. Similarly, Rava said to Rabbi Zeira: Rabbi Yannai planted four hundred vineyards. Rava said to him: Perhaps he did not plant large vineyards, but only the smallest possible vineyards recognized by halakha, which are composed of two vines facing another two vines, with a fifth one protruding like a tail, extending out beyond the square.

343 The Gemara raises an objection to what is taught with regard to the length of a Torah scroll from a baraita: With regard to the Ark of the Covenant that Moses fashioned, its length was two and one-half cubits, its width was one and one-half cubits, and its height was one and one-half cubits (see Exodus 25:10), the cubit used for these measurements being six handbreadths. Therefore, the Ark was fifteen handbreadths long, nine handbreadths wide, and nine handbreadths high.

344 The baraita continues: And as for the tablets, their length was six handbreadths, their width was six handbreadths, and their thickness was three handbreadths. The tablets were placed along the length of the Ark, one next to the other. If so, how much space did the tablets occupy along the length of the Ark? Twelve handbreadths, as each tablet was six handbreadths long. Three handbreadths were left there along the length of the Ark, for a total of fifteen handbreadths. Deduct a handbreadth from them: One-half a handbreadth for this wall, namely, the thickness of the wooden Ark itself, and one-half a handbreadth for the other wall. Accordingly, two handbreadths were left there, in which the Torah scroll written by Moses lay.

345 What biblical source indicates that a Torah scroll was placed there? As it is stated: “There was nothing in the Ark except the two tablets of stone which Moses put there” (I Kings 8:9). What does “there was nothing in the Ark except” mean? This is an example of a restriction following a restriction, as both terms, “nothing” and “except,” indicate that the Ark was empty. And there is a hermeneutical principle that a restriction following a restriction serves only to amplify and include other matters. In this case, it serves to include a Torah scroll that lies in the Ark.

346 The baraita continues: With this explanation you have accounted for the entire length of the Ark; go now and account for the width of the Ark, which was nine handbreadths. How much space did the

tablets occupy of the width of the Ark, which was nine handbreadths wide? Six handbreadths; therefore, three handbreadths were left there along the width of the Ark. Deduct a handbreadth from them: One-half a handbreadth for the thickness of this wall and one-half a handbreadth for the thickness of the other wall. Accordingly, two handbreadths were left there. What was their purpose? These were necessary so that the Torah scroll would be able to go in and out without being pressed; this is the statement of Rabbi Meir.

[347] Rabbi Yehuda disagrees and says: The cubit used for all the measurements of the Ark was five handbreadths long. There-fore, the Ark was twelve and one-half handbreadths long, seven and one-half handbreadths wide, and seven and one-half handbreadths high. And as for the tablets, their length was six handbreadths, their width was six handbreadths, and their thickness was three handbreadths, and they were placed along the length of the Ark, one next to the other. If so, how much space did the tablets occupy along the length of the Ark? Twelve handbreadths, so that one-half a handbreadth was left there, which is two fingerbreadths. One fingerbreadth of those two was for the thickness of this wall and one fingerbreadth of those two was for the thickness of the other wall.

[348] With this explanation, you have accounted for the entire length of the Ark; go now and account for the width of the Ark, which was seven and one-half handbreadths. How much space did the tablets occupy in the Ark? Six handbreadths, meaning that one and one-half handbreadths were left there along the width of the Ark. Deduct one-half a handbreadth, one and one-half fingerbreadths for the thickness of this wall, and one and one-half fingerbreadths for the thickness of the other wall. Accordingly, one handbreadth was left there in which the silver columns were placed on either side of the tablets, as it is stated: “King Solomon made himself a palanquin of the timbers of Lebanon; he made its columns of silver, its back of gold, its seat of purple” (Song of Songs 3:9–10). This is understood as an allusion to the Ark of the Covenant.

[349] And the chest in which the Philistines sent the gift to the God of Israel was placed alongside the Ark, as it is stated: “And put the golden devices which you are restoring to Him for a guilt-offering in a chest by the side of it, and send it away that it may go” (I Samuel 6:8). And upon this chest lay the Torah scroll, as it is stated: “Take this Torah scroll and put it at the side of the Ark of the Covenant of the Lord” (Deuteronomy 31:26). This means that it was placed at the side of the Ark, and not inside it.

[350] And accordingly, how do I realize the meaning of that which is stated: “There was nothing in the Ark except the two tablets of stone which Moses put there,” which, according to the opinion of Rabbi Meir, teaches that something else was in the Ark besides the tablets themselves? It serves to include

[351] the broken pieces of the first set of tablets, which were placed in the Ark. Having cited the baraita, the Gemara now presents its objection to what was taught earlier with regard to the dimensions of a Torah scroll: And if it should enter your mind to say, as Rabbi Yehuda HaNasi held, that the circumference of a Torah scroll is six handbreadths, now since any cylindrical object having a circumference of three handbreadths has a diameter of one handbreadth, a Torah scroll with a circumference of six handbreadths has a diameter of two handbreadths. And since a Torah scroll is wound to the middle, since it is rolled from both sides, it must take up more than two handbreadths due to the space between the sheets of parchment and the double rolling. According to Rabbi Meir, who says that the Torah scroll was placed inside the ark, how did the scroll fit in the remaining two handbreadths [pushkei] of space in the Ark?

352 Rav Aḥa bar Ya’akov said: The scroll of the Temple courtyard, which was kept in the Ark, was wound to its beginning, i.e., it had only a single pole, so that its circumference was only two handbreadths. The Gemara asks: But still, how does an item that is two handbreadths wide fit into a space that is precisely two handbreadths? It would be impossible to fit it in. Rav Ashi said: A small section of the scroll was wound separately and then placed on top of the scroll.

353 Having concluded its current discussion, the Gemara now addresses the details of the aforementioned baraita and asks: And according to Rabbi Yehuda, who says that the Torah scroll rested on the chest that came from the Philistines, where was the Torah scroll placed before the chest arrived? The Gemara answers: A shelf protruded from the Ark and the Torah scroll rested on it. The Gemara asks: And according to Rabbi Meir, who says that the Torah scroll rested inside the Ark, what does he do with this verse: “Take this Torah scroll and put it at the side of the Ark” (Deuteronomy 31:26)? The Gemara answers: He requires that verse to teach that the Torah scroll was placed at the side of the tablets, and that it was not placed between the two tablets, but it was actually placed inside the Ark at the side of the tablets.

354 The Gemara asks: And according to Rabbi Meir, where were the silver columns placed? The Gemara answers: Outside the Ark. The Gemara further asks: And from where does Rabbi Meir derive that the broken pieces of the first set of tablets were placed in the Ark, as the verse from which Rabbi Yehuda learns this: “There was nothing in the Ark except” (I Kings 8:9), is needed by Rabbi Meir to teach that the Torah scroll was placed there? The Gemara answers: He derives this point from what Rav Huna expounded, as Rav Huna says: What is the meaning of that which is written: “The Ark of God, whereupon is called the Name, the name of the Lord of hosts that sits upon the cherubs” (II Samuel 6:2)? The phrase “the name, the name of the Lord” teaches that both the second tablets and the broken pieces of the first set of tablets were placed in the Ark.

355 The Gemara asks: And what does the other Sage, i.e., Rabbi Yehuda, derive from this verse? The Gemara responds: He requires that text for that which Rabbi Yoḥanan says, as Rabbi Yoḥanan says that Rabbi Shimon ben Yoḥai says: This teaches that the ineffable name of God and all of His appellations were placed in the Ark.

356 The Gemara inquires: And doesn’t the other Sage, Rabbi Meir, also require it for that? The Gemara answers: Yes, it is indeed so. Rather, from where does he derive that the broken pieces of the first set of tablets were placed in the Ark? The Gemara expounds: He derives this from that which Rav Yosef taught, as Rav Yosef taught a baraita: The verses state: “At that time the Lord said to me: Hew for yourself two tablets of stone like the first…and I will write on the tablets the words that were on the first tablets, which you broke, and you shall put them in the Ark” (Deuteronomy 10:1–2). This teaches that both the second set of tablets and the broken pieces of the first set of tablets were placed in the Ark.

357 The Gemara asks: And what does the other one, Rabbi Yehuda, learn from this verse? The Gemara answers: He requires it for that which Reish Lakish teaches, as Reish Lakish says: What is the meaning of that which is stated: “The first tablets, which you broke [asher shibbarta]”? These words allude to the fact that God approved of Moses’ action, as if the Holy One, Blessed be He, said to Moses: May your strength be straight [yishar koḥakha] because you broke them.

358 § The Sages taught: The order of the books of the Prophets when they are attached together is as follows: Joshua and Judges, Samuel and Kings, Jeremiah and Ezekiel, and Isaiah and the Twelve

Prophets. The Gemara asks: Consider: Hosea preceded some of the other prophets whose books are included in the Bible, as it is written: “The Lord spoke first to Hosea” (Hosea 1:2). At first glance this verse is difficult: But did God speak first with Hosea, and not with any other prophet before him? Weren’t there many prophets between Moses and Hosea? And Rabbi Yoḥanan says: He was the first of four prophets who prophesied in that period, and they were: Hosea and Isaiah, Amos and Micah. Accordingly, Hosea preceded those three prophets; and the book of Hosea as well should precede the books of those prophets.

[359] The Gemara answers: Since his prophecy is written together with those of Haggai, Zechariah, and Malachi in one book of the Twelve Prophets, and Haggai, Zechariah, and Malachi were the last of the prophets, he is counted with them. The Gemara inquires: But let the book of Hosea be written separately and let it precede the others. The Gemara answers: Were it written separately, since it is small it would be lost.

[360] The Gemara further asks: Consider: Isaiah preceded Jeremiah and Ezekiel; let the book of Isaiah precede the books of those other prophets. The Gemara answers: Since the book of Kings ends with the destruction of the Temple, and the book of Jeremiah deals entirely with prophecies of the destruction, and the book of Ezekiel begins with the destruction of the Temple but ends with consolation and the rebuilding of the Temple, and Isaiah deals entirely with consolation, as most of his prophecies refer to the redemption, we juxtapose destruction to destruction and consolation to consolation. This accounts for the order: Jeremiah, Ezekiel, and Isaiah.

[361] The baraita continues: The order of the Writings is: Ruth and the book of Psalms, and Job and Proverbs; Ecclesiastes, Song of Songs, and Lamentations; Daniel and the Scroll of Esther; and Ezra and Chronicles. The Gemara asks: And according to the one who says that Job lived in the time of Moses, let the book of Job precede the others. The Gemara answers: We do not begin with suffering, i.e., it is inappropriate to start the Writings with a book that deals so extensively with suffering. The Gemara asks: But the book of Ruth, with which the Writings opens, is also about suffering, since it describes the tragedies that befell the family of Elimelech. The Gemara answers: This is suffering which has a future of hope and redemption. As Rabbi Yoḥanan says: Why was she named Ruth, spelled reish, vav, tav? Because there descended from her David who sated, a word with the root reish, vav, heh, the Holy One, Blessed be He, with songs and praises.

[362] The baraita now considers the authors of the biblical books: And who wrote the books of the Bible? Moses wrote his own book, i.e., the Torah, and the portion of Balaam in the Torah, and the book of Job. Joshua wrote his own book and eight verses in the Torah, which describe the death of Moses. Samuel wrote his own book, the book of Judges, and the book of Ruth. David wrote the book of Psalms by means of ten elders of previous generations, assembling a collection that included compositions of others along with his own. He included psalms authored by Adam the first man, by Melchizedek king of Salem, and by Abraham, and by Moses, and by Heman, and by Jeduthun, and by Asaph,

[363] and by the three sons of Korah.

[364] Jeremiah wrote his own book, and the book of Kings, and Lamentations. Hezekiah and his colleagues wrote the following, and a mnemonic to remember which books they wrote is yod, mem, shin, kuf: Isaiah [Yeshaya], Proverbs [Mishlei], Song of Songs [Shir HaShirim], and Ecclesiastes [Kohelet]. The members of the Great Assembly wrote the following, and a mnemonic to remember

these books is kuf, nun, dalet, gimmel: Ezekiel [Yeḥezkel], and the Twelve Prophets [Sheneim Asar], Daniel [Daniel], and the Scroll of Esther [Megillat Ester]. Ezra wrote his own book and the genealogy of the book of Chronicles until his period.

365 The Gemara comments: This supports Rav, as Rav Yehuda says that Rav says: Ezra did not ascend from Babylonia to Eretz Yisrael until he established his own genealogy, and after that he ascended. This genealogy is what is written in the book of Chronicles. And who completed the book of Chronicles for the generations following Ezra? Nehemiah, son of Hacaliah.

366 The Gemara elaborates on the particulars of this baraita: The Master said above that Joshua wrote his own book and eight verses of the Torah. The Gemara comments: This baraita is taught in accordance with the one who says that it was Joshua who wrote the last eight verses in the Torah. This point is subject to a tannaitic dispute, as it is taught in another baraita: “And Moses the servant of the Lord died there” (Deuteronomy 34:5); is it possible that after Moses died, he himself wrote “And Moses died there”? Rather, Moses wrote the entire Torah until this point, and Joshua wrote from this point forward; this is the statement of Rabbi Yehuda. And some say that Rabbi Neḥemya stated this opinion.

367 Rabbi Shimon said to him: Is it possible that the Torah scroll was missing a single letter? But it is written: “Take this Torah scroll” (Deuteronomy 31:26), indicating that the Torah was complete as is and that nothing further would be added to it. Rather, until this point the Holy One, Blessed be He, dictated and Moses repeated after Him and wrote the text. From this point forward, with respect to Moses’ death, the Holy One, Blessed be He, dictated and Moses wrote with tears. The fact that the Torah was written by way of dictation can be seen later, as it is stated concerning the writing of the Prophets: “And Baruch said to them: He dictated all these words to me, and I wrote them with ink in the scroll” (Jeremiah 36:18).

368 The Gemara asks: In accordance with whose opinion is that which Rabbi Yehoshua bar Abba says that Rav Giddel says that Rav says: When the Torah is read publicly in the synagogue, one person reads the last eight verses in the Torah, and that section may not be divided between two readers? Shall we say that this is in accordance with the opinion of Rabbi Yehuda and not in accordance with the opinion of Rabbi Shimon, as according to Rabbi Shimon these verses are an integral part of the Torah, written by Moses just like the rest? The Gemara answers: Even if you say that this was said in accordance with the opinion of Rabbi Shimon, since they differ from the rest of the Torah in one way, as Moses wrote them with tears, they differ from the rest of the Torah in this way as well, i.e., they may not be divided between two readers.

369 It is stated in the baraita that Joshua wrote his own book. The Gemara asks: But isn’t it written toward the end of the book: “And Joshua, son of Nun, the servant of the Lord, died” (Joshua 24:29)? Is it possible that Joshua wrote this? The Gemara answers: Aaron’s son Eleazar completed it. The Gemara asks: But isn’t it also written: “And Eleazar, son of Aaron, died” (Joshua 24:33)? The Gemara answers: Pinehas completed it.

370 It is also stated in the baraita that Samuel wrote his own book. The Gemara asks: But isn’t it written: “And Samuel died” (I Samuel 28:3)? The Gemara answers: Gad the seer and Nathan the prophet finished it.

371 It is further stated that David wrote the book of Psalms by means of ten elders, whom the baraita proceeds to list. The Gemara asks: But then let it also count Ethan the Ezrahite among the

contributors to the book of Psalms, as it is he who is credited with Psalms, chapter 89. Rav says: Ethan the Ezrahite is the same person as Abraham. Proof for this is the fact that it is written here: “A Maskil of Ethan the Ezrahite” (Psalms 89:1), and it is written there: “Who raised up one from the east [mizraḥ], whom righteousness met wherever he set his foot” (Isaiah 41:2). The latter verse is understood as referring to Abraham, who came from the east, and for that reason he is called Ethan the Ezrahite in the former verse.

372 The Gemara asks: The baraita counts Moses among the ten elders whose works are included in the book of Psalms, and it also counts Heman. But doesn’t Rav say: The Heman mentioned in the Bible (I Kings 5:11) is the same person as Moses? This is proven by the fact that it is written here: “Heman” (Psalms 88:1), which is Aramaic for trusted, and it is written there about Moses: “For he is the trusted one in all My house” (Numbers 12:7). The Gemara answers: There were two Hemans, one of whom was Moses, and the other a Temple singer from among the descendants of Samuel.

373 The baraita further states that Moses wrote his own book, i.e., the Torah, the portion of Balaam, and the book of Job. This supports Rabbi Levi bar Laḥma, as Rabbi Levi bar Laḥma says: Job lived in the time of Moses. It is written here with regard to Job: “Oh, that my words were written now [eifo]” (Job 19:23), and it is written there in Moses’ words to God: “For in what shall it be known here [eifo]” (Exodus 33:16). The unusual use of the word eifo in these two places indicates that Job and Moses lived in the same generation.

374 The Gemara comments: But if that is the proof, say that Job lived in the time of Isaac, as it is written in connection with Isaac: “Who then [eifo] is he that has taken venison” (Genesis 27:33). Or say that he lived in the time of Jacob, as it is written with respect to Jacob: “If it must be so now [eifo], do this” (Genesis 43:11). Or say that he lived in the time of Joseph, as it is written with respect to Joseph: “Tell me, I pray you, where [eifo] are they feeding their flocks?” (Genesis 37:16).

375 The Gemara answers: It could not enter your mind to say this, as it is written in the continuation of the previously mentioned verse: “Oh, that my words were inscribed [veyuḥaku] in a book” (Job 19:23), and it is Moses who is called the inscriber, as it is written with regard to him: “And he provided the first part for himself, for there was the inscriber’s [meḥokek] portion reserved” (Deuteronomy 33:21).

376 Rava says: Job lived at the time of the spies whom Moses sent to scout the land of Canaan. This is proven by the fact that it is written here: “There was a man in the land of Utz, whose name was Job” (Job 1:1), and it is written there in the account of the spies: “Whether there are trees [eitz] in it” (Numbers 13:20). The Gemara asks: Is it comparable? Here the word that is used is Utz, whereas there the word is eitz. The Gemara answers: This is what Moses said to Israel, i.e., to the spies: Is that man named Job still alive, he whose years are as long as the years of a tree and who protects his generation like a tree? This is why the allusion to him here is through the word eitz, rather than Utz.

377 The Gemara relates that one of the Sages sat before Rabbi Shmuel bar Naḥmani and he sat and said: Job never existed and was never created; there was never such a person as Job. Rather, his story was a parable. Rabbi Shmuel bar Naḥmani said to him: In rebuttal to you, the verse states: “There was a man in the Land of Utz whose name was Job” (Job 1:1), which indicates that such a man did indeed exist.

378 The Gemara asks: But if that is so, that the words “there was” prove that Job existed, what shall we say about the parable that Natan the prophet presented to David: “There were two men in one

city; the one rich and the other poor. The rich man had very many flocks and herds, but the poor man had nothing except one little lamb, which he had bought and reared” (II Samuel 12:3)? Was there really such a person? Rather, it was merely a parable; here too it is merely a parable. The Gemara answers: If so, that it is a parable, why state his name and the name of his city? Rather, Job was clearly a real person.

379 The Gemara cites another opinion with regard to the time when Job lived. Rabbi Yoḥanan and Rabbi Elazar both say: Job was among those who ascended from the exile to Eretz Yisrael at the start of the Second Temple period, and his house of study was in Tiberias. The Gemara raises an objection from what is taught in a baraita: The days of Job’s life extended from when Israel entered Egypt until they left, indicating that this is the period during which he lived and not, as suggested, in the early days of the Second Temple.

380 The Gemara answers: Say that the baraita means that the duration of Job’s life lasted as long as from when Israel entered Egypt until when they left, but not that he lived during that specific time frame.

381 The Gemara raises an objection from another baraita against the notion that Job was a Jew: Seven prophets prophesied to the nations of the world, and they are: Balaam and his father Beor, and Job, Eliphaz the Temanite, and Bildad the Shuhite, and Zophar the Naamathite, and Elihu ben Barachel the Buzite, which indicates that Job was not Jewish. He said to him: And according to your reasoning that Job could not have been Jewish because he prophesied to the nations of the world, was Elihu ben Barachel not a Jew? Is it not written: “Of the family of Ram” (Job 32:2), meaning Abraham?

382 Rather, one must explain that Elihu is included in this list because he prophesied to the nations of the world; and so too it may be maintained that Job is included in this list, even though he is Jewish, because he prophesied to the nations of the world. The Gemara asks: But did not all the other prophets also prophesy to the nations of the world? Why then are only these seven mentioned? The Gemara answers: There, with regard to the other prophets, their main prophecies were directed to Israel, whereas here, with regard to these seven prophets, their main prophecies were directed to the nations of the world.

383 The Gemara raises an objection from what is taught in a different baraita: There was a certain pious man among the nations of the world and his name was Job, and he came into the world only to receive his reward. The Holy One, Blessed be He, brought afflictions upon him, and he began to blaspheme and curse. The Holy One, Blessed be He, doubled his reward in this world in order to expel him from the World-to-Come. This baraita states that Job was not a Jew, but rather a gentile.

384 The Gemara responds: The matter of whether or not Job was Jewish is a dispute between tanna’im, as it is taught in a baraita with regard to the period during which Job lived: Rabbi Elazar says: Job lived in the days of the judging of the Judges, as it is stated in connection with Job: “Behold, all you yourselves have seen it; why then have you become altogether vain?” (Job 27:12). Which generation was completely vain? You must say it was the generation of the judging of the Judges, when the people judged the Judges, as will be explained shortly.

385 Rabbi Yehoshua ben Korḥa says: Job lived in the days of Ahasuerus, as it is stated: “And in all the world were no women found so beautiful as the daughters of Job” (Job 42:15). In which generation were beautiful women sought? You must say it was the generation of Ahasuerus (Esther, chapter 2). The Gemara asks: But why not say it was in the days of David, as it is written: “And they

sought a beautiful maiden” (I Kings 1:3)? The Gemara answers: There, in the time of David, they searched “throughout the territory of Israel” (I Kings 1:3), whereas here, in the time of Ahasuerus, they searched throughout the world, as is similarly stated with regard to Job’s daughters.

386 Rabbi Natan says: Job lived in the days of the kingdom of Sheba, as it is stated: “And Sheba fell upon them, and took them away” (Job 1:15). And the Rabbis say: Job lived in the days of the kingdom of the Chaldeans in the time of Nebuchadnezzar, as it is stated: “The Chaldeans formed three bands” (Job 1:17). And some say that Job lived in the days of Jacob and that he married Dina, the daughter of Jacob. As it is written here: “You speak as one of the loathsome women speaks” (Job 2:10), and it is written there in the account of the incident involving Dina: “He has done a loathsome act in Israel” (Genesis 34:7). This concludes the text of the baraita. The Gemara comments: And all these tanna’im hold that Job was a Jew except for the opinion introduced with the phrase: And some say, according to which Job lived in the time of Jacob, and he was certainly not one of Jacob’s sons.

387 And what is the proof that all these tanna’im maintain that Job was Jewish? As if it should enter your mind to say that he came from the nations of the world, there is a difficulty: After Moses died, did the Divine Presence rest any longer on the nations of the world? But doesn’t the Master say: Moses requested that the Divine Presence not rest again on the nations of the world, and his request was granted to him, as it is stated: “That we shall be differentiated, I and Your people, from all the people that are upon the face of the earth” (Exodus 33:16), and it is stated there that God acceded to his request.

388 Rabbi Yoḥanan says: The generation of Job was awash in licentiousness, as it is stated: “Behold, all of you yourselves have seen [ḥazitem] it; why then have you become altogether vain?” (Job 27:12), and it is written: “Return, return, O Shulamite; return, return, that we may look [veneḥeze] upon you” (Song of Songs 7:1), which teaches that the phrase “you have seen it” connotes a licentious gaze. The Gemara asks: But say that the phrase “you yourselves have seen it” signifies prophecy, as it is written: “The vision [ḥazon] of Isaiah ben Amoz” (Isaiah 1:1). The Gemara answers: If so, why do I need the words: “Why then have you become altogether vain”? Rather, the reference must be to inappropriate licentious gazing.

389 And further, with regard to Rabbi Elazar’s statement in the baraita that the generation of the judging of the Judges was one of vanity, Rabbi Yoḥanan says: What is the meaning of that which is written: “And it happened in the days of the judging of the Judges” (Ruth 1:1)? This indicates a generation that judged its judges. If a judge would say to the defendant standing before him: Remove the splinter from between your eyes, meaning rid yourself of some minor infraction, the defendant would say to him: Remove the beam from between your eyes, meaning you have committed far more severe sins. If the judge would say to him: “Your silver is become dross” (Isaiah 1:22), meaning your coins are counterfeit, the defendant would say to him: “Your wine is mixed with water” (Isaiah 1:22), meaning you yourself dilute your wine with water and sell it. Since nobody behaved in proper manner, the judges were unable to judge.

390 Rabbi Shmuel bar Naḥmani says that Rabbi Yonatan says: Anyone who says that the queen of Sheba [malkat Sheva] who came to visit King Solomon (see I Kings, chapter 10) was a woman is nothing other than mistaken. What is the meaning of malkat Sheba? The kingdom [malkhuta] of Sheba, as is mentioned in Job: “And Sheba fell on them and took them away” (Job 1:15).

391 § Having mentioned the book of Job, the Gemara addresses several matters relating to it. It is stated: “Now there was a day when the sons of God came to present themselves before the Lord, and the Satan came also among them. And the Lord said to the Satan: From where do you come? And the Satan answered the Lord, and said: From going to and fro in the earth, and from walking through it” (Job 1:6–7). The Satan said to God: Master of the Universe, I have gone to and fro throughout the entire world and I have not found anyone as faithful as Your servant Abraham, to whom You said: “Arise, walk through the land in the length of it and in the breadth of it; for I will give it to you” (Genesis 13:17). And even so, when he did not find a place to bury Sarah before he purchased a burial site for four hundred silver shekels, he did not find fault with Your ways or complain about the fact that you had failed to fulfill Your promise.

392 “And the Lord said to the Satan: Have you considered My servant Job, that there is none like him on earth, a perfect and upright man, one who fears God and turns away from evil?” (Job 1:8). About this Rabbi Yoḥanan says: That which is stated about Job is greater than that which is stated about Abraham. As with regard to Abraham it is written: “For now I know that you fear God” (Genesis 22:12), with regard to Job it is written: “A perfect and an upright man, one who fears God and turns away from evil” (Job 1:8).

393 The Gemara clarifies the meaning of the aforementioned verse: What is meant by “and turns away from evil”? Rabbi Abba bar Shmuel says: Job was forgiving with his money. It is the way of the world that one pays the storekeeper for even half-peruta of merchandise purchased from him. But if somebody bought an item of such little value from Job, he would forgive him his half-peruta.

394 The Gemara continues to clarify the verses concerning Job. “Then the Satan answered the Lord, and said: Does Job fear God for naught? Have You not made a hedge about him, and about his house, and about all that he has on every side? You have blessed the work of his hands, and his cattle is increased in the land” (Job 1:9–10). What is meant by: “You have blessed the work of his hands”? Rabbi Shmuel bar Rav Yitzḥak says: Anyone who took a peruta from Job was blessed. Not only was Job’s own handiwork blessed, but anybody who received anything from him was also blessed.

395 The Gemara continues with its explication of these verses. What is meant by: “And his livestock is increased [paratz] in the land” (Job 1:10)? Rabbi Yosei bar Ḥanina says: Job’s livestock breached [paretzu] the order of the world. It is the way of the world that wolves kill goats, but in the case of Job’s livestock, the goats killed the wolves.

396 The Gemara continues to relate the Satan’s challenge to God: “But now put forth Your hand, and touch all that he has, and he will curse You to Your face. And the Lord said to the Satan: Behold, all that he has is in your power; only upon himself do not put forth your hand. And the Satan went out from the presence of the Lord” (Job 1:11–12). The verses relate what then occurred: “Now there was a day when his sons and his daughters were eating and drinking wine in their eldest brother’s house, and there came a messenger to Job, and said: The oxen were plowing, and the asses were feeding beside them” (Job 1:13–14). The Gemara asks: What is meant by: “The oxen were plowing and the asses were feeding beside them”? Rabbi Yoḥanan says: This teaches that the Holy One, Blessed be He, gave Job a taste

397 of the World-to-Come, when plowing and harvesting will take place at the same time. Here too, the oxen plowed and the donkeys grazed on the crops that grew from that effort.

398 The Gemara continues to interpret verses from the book of Job. “While he was yet speaking, there came also another and said: The fire of God has fallen from heaven, and has burned up the sheep, and the servants, and consumed them…While he was yet speaking, there came also another and said: The Chaldeans formed three bands, and fell among the camels, and have carried them away, and have slain the servants with the edge of the sword…While he was yet speaking, there came also another and said: Your sons and your daughters were eating and drinking wine in their eldest brother’s house; and, behold, there came a great wind from across the wilderness, and smote the four corners of the house, and it fell upon the young men, and they are dead…Then Job arose, and rent his coat, and shaved his head, and fell down on the ground and prostrated himself. And he said: I came naked out of my mother’s womb, and naked I shall return there; the Lord gave, and the Lord has taken away, blessed be the name of the Lord. In all this Job sinned not, nor did he lay reproach on God” (Job 1:16–22).

399 “Again there was a day when the sons of God came to present themselves before the Lord, and the Satan came also among them to present himself before God. And the Lord said to the Satan: From where do you come? And the Satan answered the Lord, and said: From going to and fro in the earth and from walking up and down in it” (Job 2:1–2). The Satan said before God: Master of the Universe, I have gone to and fro across the entire world and have not found anyone as faithful as your servant Abraham, to whom you said: “Arise, walk through the land in the length of it and in the breadth of it; for I will give it to you” (Genesis 13:17). And when he wanted to bury Sarah, he could not find a place to bury her, and yet he did not criticize Your ways, or accuse You of having failed to keep Your promise.

400 About this it says: “And the Lord said to the Satan: Have you considered My servant Job, that there is none like him on earth, a perfect and an upright man, one that fears God and turns away from evil? And still he holds fast to his integrity, although you moved Me against him, to destroy him without cause” (Job 2:3).

401 Rabbi Yoḥanan says: Were it not explicitly written in the verse, it would be impossible to say this, as it would be insulting to God’s honor. The verse states: “You moved Me against him,” like a person whom others persuade and allows himself to be persuaded, as if God had not wanted to do anything, but allowed Himself to be persuaded to bring harm to Job.

402 It was taught in a baraita with regard to the methods of the Satan: He descends to this world and misleads a person into sinning. He then ascends to Heaven, levels accusations against that very sinner, and inflames God’s anger against him. He then receives permission to act and takes away the sinner’s soul as punishment.

403 The Gemara returns to discuss the text of the book of Job: “And the Satan answered the Lord, and said: Skin for skin, for all that a man has he will give for his life. But put forth Your hand now, and touch his bone and his flesh, and he will curse You to Your face. And the Lord said to the Satan: Behold, he is in your hand; only spare his life. So the Satan went forth from the presence of the Lord, and smote Job with vile sores from the sole of his foot to his crown” (Job 2:4–7). Rabbi Yitzḥak says: Satan’s suffering was more difficult than that of Job. This can be explained by means of a parable involving a servant whose master said to him: Break the barrel but save its wine. Here too, God told the Satan that he could do whatever he liked short of taking Job’s life, and that limitation caused Satan to suffer.

[404] Reish Lakish says: Satan, the evil inclination, and the Angel of Death are one, that is, they are three aspects of the same essence. He is the Satan who seduces people and then accuses them, as it is written: “So the Satan went forth from the presence of the Lord, and smote Job with vile sores” (Job 2:7). He is also the evil inclination, as it is written there: “The impulse of the thoughts of his heart was only evil continuously” (Genesis 6:5); and it is written here: “Only upon himself do not put forth your hand” (Job 1:12). The verbal analogy between the various uses of the word “only” teaches that the evil inclination is to be identified with the Satan. He is also the Angel of Death, as it is written: “Only spare his life” (Job 2:6); apparently Job’s life depends upon him, the Satan, and accordingly the Satan must also be the Angel of Death.

[405] Rabbi Levi says: Both Satan, who brought accusations against Job, and Peninnah, who tormented Hannah, mother of Samuel the prophet, acted with intent that was for the sake of Heaven. As for Satan, when he saw that the Holy One, Blessed be He, inclined to favor Job and praised him, he said: Heaven forbid that He should forget the love of Abraham. With regard to Peninnah, as it is written: “And her rival wife also provoked her sore, to make her fret” (I Samuel 1:6), i.e., Peninnah upset Hannah in order to motivate her to pray. Rav Aḥa bar Ya’akov taught this in Paphunya, and Satan came and kissed his feet in gratitude for speaking positively about him.

[406] The Gemara considers the character of Job. The verse states: “In all this Job did not sin with his lips” (Job 2:10). Rava says: A close reading of the verse indicates that he did not sin with his lips, but he sinned in his heart. What did he say that suggests that he had wicked thoughts? “The earth is given into the hand of the wicked, he covers the faces of its judges; if not he, then who is it?” (Job 9:24). Rava says: Job sought to turn the bowl upside down, that is to say, he alluded here to a heretical thought, as he said that the earth is given into the hand of the wicked, indicating that he had God in mind. Abaye said to him: Job was referring here only to the Satan, he being the wicked one into whose hands the land was given.

[407] The Gemara comments: This is parallel to a dispute between tanna’im, as it was taught in a baraita: “The earth is given into the hand of the wicked.” Rabbi Eliezer says: Job sought to turn the bowl upside down; Rabbi Yehoshua said to him: Job was referring here only to the Satan.

[408] The Gemara continues to discuss Job’s statements: “Although You know that I am not wicked, and there is none that can deliver out of Your hand” (Job 10:7). Rava says: Job sought to exempt the whole world from judgment, claiming that all of a person’s actions are directed by God, and therefore one cannot be held culpable for his misdeeds. Job said before God: Master of the Universe, You created the ox with split hooves, making it kosher, and You created the donkey with closed hooves, making it forbidden; You created the Garden of Eden, and You created Gehenna; and similarly, You created righteous people and You created wicked people; who can restrain You? Seeing that You created people as either righteous or wicked, You cannot later complain about their actions.

[409] And how did Job’s friends answer him? “You do away with fear, and impair devotion before God” (Job 15:4) with such statements. True, the Holy One, Blessed be He, created the evil inclination, but He also created the Torah as an antidote to counter its effects and prevent it from gaining control of a person.

[410] Rava interpreted a verse homiletically: What is the meaning of that which is written, Job saying about himself: “The blessing of him that was lost came upon me, and I caused the widow’s heart to sing for joy” (Job 29:13). “The blessing of him that was lost came upon me” teaches that Job used to

steal a field from orphans, cultivate it, improve it, and then return it to them; consequently, they would bless him for the field they had lost. “I caused the widow’s heart to sing for joy” teaches that anywhere that there was a widow whom no one would marry, he would go and cast his name upon her, i.e., he would start a rumor that she was related to him, and then somebody would come forward and marry her.

411 Job further said: “O that my vexation were thoroughly weighed, and my calamity laid in the balances” (Job 6:2). Rav says: Dust should be put in the mouth of Job, meaning, he should not have spoken in such a manner, as if he were weighing his deeds against those of God; may one act as if he is in a friendship with Heaven? And similarly, Job said: “There is no arbiter between us, who may lay his hand upon us both” (Job 9:33). Rav says: Dust should be put in the mouth of Job for saying this; is there a servant who rebukes his master? Job also said: “I have made a covenant with my eyes; why then should I look upon a virgin?” (Job 31:1). Rava says: Dust should be put in the mouth of Job for saying this; he did not look at other women, but Abraham did not even look at his own wife, as it is written: “Now I know that you are a beautiful woman” (Genesis 12:11). One may learn by inference that initially he did not know how beautiful she was because he had not gazed at her.

412 Job further said: “As the cloud is consumed and vanishes away, so he who goes down to the grave shall come up no more” (Job 7:9). Rava says: From here it may be inferred that Job denied the resurrection of the dead, as he said that one who goes down to the grave will not come up and live again, just as a cloud that dissipates will not return. He also stated: “He crushes me with a tempest, and multiplies my wounds without cause” (Job 9:17). Rabba says: Job blasphemed with mention of a tempest and he was answered with mention of a tempest.

413 Rabba explains: He blasphemed with mention of a tempest [bise’ara], as it is written: “He crushes me with a tempest.” Job said before God: Master of the Universe, perhaps a tempest passed before You and You confused Iyov, Job, with oyev, enemy. He was answered with mention of a tempest, as it is written: “Then the Lord answered Job out of the tempest, and said: Who is this that darkens counsel by words without knowledge? Gird up now your loins like a man, for I will demand of you and let me know your answer” (Job 38:1–3).

414 What is the meaning of “out of the tempest”? God said to him: I have created many hairs [nimin] on a person, and for each hair I created its own follicle through which the hair is sustained, so that two hairs should not draw from one follicle. As were two hairs to draw from one follicle, they would impair a man’s vision. Now, if I do not confuse one follicle with another, would I confuse Iyov with oyev? The Hebrew word for tempest, se’ara, is phonetically identical to the Hebrew word for hair.

415 God further said to Job: “Who has divided a channel [te’ala] for the torrent of rain, or a path for the lightning of thunder”? (Job 38:25). I have created many drops of water in the clouds, and for each drop I created its own channel, so that two drops should not emerge from the same channel. As were two drops to emerge from the same channel they would destroy the earth and it would not yield produce. Now, if I do not confuse one drop with another, would I confuse Iyov with oyev? Incidentally, the Gemara asks: From where may it be inferred that this term te’ala means a channel? Rabba bar Sheila said: As it is written with regard to Elijah the prophet: “And he fashioned a channel [te’ala] about the altar, as great as would contain two se’a of seed” (I Kings 18:32).

416 The second half of the aforementioned verse in Job states: “Or a path for the lightning of thunder,” which is interpreted as follows: God said: I have created many thunderclaps in the clouds,

and for each and every thunderclap I created its own path, so that two thunderclaps should not issue forth from the same path. As were two thunderclaps to issue from the same path, they would destroy the world. Now, if I do not confuse one thunderclap with another, would I confuse Iyov with oyev?

417 It is further stated there: “Do you know when the wild goats of the rock give birth? Can you mark when the hinds do calve?” (Job 39:1). This goat is cruel to her young and shows them no pity; when she squats

418 to give birth she ascends to the top of a mountain so that the kid should fall down from her and die. And I summon her an eagle that receives it with his wings and places it before her; and if the eagle reached her one moment early or was one moment late, the kid would immediately die. Now, if I do not confuse one moment with another moment, would I confuse Iyov with oyev?

419 Similarly: “Can you mark when the hinds do calve?” (Job 39:1). The womb of this hind is narrow, which makes for a difficult delivery. When she squats to give birth, I summon her a snake [derakon] that bites her at the opening of the womb, which then becomes loose, and she gives birth, and if the snake reached her one moment early or was one moment late, she would immediately die. Now, if I do not confuse one moment with another moment, would I confuse Iyov with oyev?

420 The Gemara comments: On the one hand, the text states: “Job has spoken without knowledge, and his words were without wisdom” (Job 34:35). But on the other hand, it is written with regard to Job’s friends: “You have not spoken of Me the thing that is right, like my servant Job” (Job 42:8). Rava said: From here it may be inferred that a person is not held responsible for what he says when he is in distress. Although Job uttered certain words that were wrong and inappropriate, he was not punished for them because he said them at a time of pain and hardship.

421 The verse states: “And Job’s three friends heard of all this evil that was come upon him, they came every one from his own place, Eliphaz the Temanite, and Bildad the Shuhite, and Zophar the Naamathite; for they had made an appointment together to come to mourn with him and to comfort him” (Job 2:11). What does “they had made an appointment together” mean? Rav Yehuda says that Rav says: This phrase teaches that they all entered through one gate at the same time. And a Sage taught in a baraita: There were three hundred parasangs between each and every one of them, i.e., each one lived three hundred parasangs away from the other.

422 The Gemara asks: How did they all know at the same time what had happened to Job so that the three of them came together? There are those who say that they each had a crown which displayed certain signs when something happened to one of the others. And there are those who say they each had trees and when the trees withered they knew that sorrow had visited one of them. Rava said that this closeness between Job and his friends explains the adage that people say: Either a friend like the friends of Job or death. If a person lacks close friends, he is better off dead.

423 The Gemara cites another place where Job is mentioned. “And it came to pass, when men began to multiply [larov] on the face of the earth, and daughters were born to them” (Genesis 6:1). Rabbi Yoḥanan says: Larov means that propagation [reviyya] came to the world through these daughters. Reish Lakish says: Strife [meriva] came to the world. Once daughters were born, the men began to fight among themselves over them. Reish Lakish said to Rabbi Yoḥanan: According to you who say that due to the daughters propagation came to the world, for what reason were the number of Job’s daughters not doubled, when at the end of the story God doubled everything that Job had lost (see Job 1:3, 42:12)?

424 Rabbi Yoḥanan said to him: Granted, the numbers of Job’s daughters were not doubled in name, meaning they did not become twice as many, but they were doubled in beauty, as it is written: “He had also seven sons and three daughters. And he called the name of the first Jemimah, and the name of the second was Keziah, and the name of the third one was Keren-happuch” (Job 42:13–14). All three names relate to the daughters’ beauty.

425 Jemimah [Yemima]; in her beauty she was similar to the day [yom]. Keziah; her scent wafted like the cassia [ketzia] tree. Keren-happuch; in the school of Rav Sheila they say: She was similar to the horn [keren] of a keresh, an animal whose horns are particularly beautiful. They laughed at this in the West, Eretz Yisrael, since it is considered a blemish when a person resembles the horn of a keresh. Rather, Rav Ḥisda said: She was like garden saffron [kekurkema derishka], which is the best of its kind. Keren refers to a garden, and pukh means ornament, as it is stated: “Though you enlarge your eyes with paint [pukh], you beautify yourself in vain” (Jeremiah 4:30).

426 It is reported that a daughter was born to Rabbi Shimon, son of Rabbi Yehuda HaNasi, and he was upset that he did not have a son. His father said to him: Propagation has come to the world through the birth of a daughter. Bar Kappara said to Rabbi Shimon: Your father has consoled you with meaningless consolation, as it is taught in a baraita: The world cannot endure without males and females, as both are needed for the perpetuation of humanity. But fortunate is he whose children are males and woe to him whose children are females. Similarly, the world cannot endure without either a spice dealer whose wares are sweet-smelling, or a tanner [bursi], who is engaged in a foul-smelling occupation. Fortunate is he whose occupation is a spice seller, and woe to him whose occupation is a tanner.

427 The Gemara comments that this disagreement is parallel to a dispute between tanna’im: The Torah states: “And the Lord blessed Abraham with everything [bakkol]” (Genesis 24:1), and the Sages disagree about what bakkol means. Rabbi Meir says: The blessing is that he did not have a daughter. Rabbi Yehuda says: On the contrary, the blessing was that he had a daughter. Others say: Abraham had a daughter and her name was Bakkol. Rabbi Elazar HaModa’i says: Abraham our forefather was so knowledgeable in astrology [itztagninut] that all the kings of the East and the West would come early to his door due to his wisdom. This is the blessing of bakkol, that he possessed knowledge that everybody needed. Rabbi Shimon ben Yoḥai says: A precious stone hung around the neck of Abraham our forefather; any sick person who looked at it would immediately be healed. When Abraham our forefather died, the Holy One, Blessed be He, hung this stone from the sphere of the sun, which from that point on brought healing to the sick. Abaye said: This explains the adage that people say: As the day progresses, sickness is lifted.

428 Alternatively, what is the blessing of bakkol? That Esau did not rebel in Abraham’s lifetime, that is to say, as long as Abraham lived Esau did not sin. Alternatively, the blessing of bakkol is that Ishmael repented in Abraham’s lifetime. The Gemara explains: From where do we derive that Esau did not rebel in Abraham’s lifetime? As it is written: “And Jacob was cooking a stew and Esau came in from the field and he was faint” (Genesis 25:29), and a baraita taught: On that day Abraham our forefather passed away, and Jacob our forefather prepared a lentil stew to comfort Isaac, his father, as it was customary to serve mourners lentil stew.

429 The Gemara explains: And what is different about lentils that they in particular are the fare customarily offered to mourners? They say in the West, Eretz Yisrael, in the name of Rabba bar Mari:

Just as this lentil has no mouth, i.e., it does not have a crack like other legumes, so too a mourner has no mouth, that is, his anguish prevents him from speaking. Alternatively, just as this lentil is completely round, so too mourning comes around to the inhabitants of the world. The Gemara asks: What is the practical difference between the two explanations? The Gemara answers: There is a practical difference between them with regard to whether it is appropriate to console a mourner with eggs, which have no opening but are not completely round.

430 Rabbi Yoḥanan says: That wicked Esau committed five transgressions on that day that Abraham died: He engaged in sexual intercourse with a betrothed maiden, he killed a person, he denied the principle of God's existence, he denied resurrection of the dead, and he despised the birthright.

431 The Gemara cites proofs to support these charges. He engaged in sexual intercourse with a betrothed maiden, as it is written here: "And Esau came in from the field"; and it is written there with regard to rape of a betrothed maiden: "For he found her in a field" (Deuteronomy 22:27). He killed a person, as it is written here: "And he was faint"; and it is written there: "Woe is me, for my soul faints before the slayers" (Jeremiah 4:31). And he denied the principle of God's existence, as it is written here: "What profit is this to me" (Genesis 25:32); and it is written there: "This is my God and I will glorify Him" (Exodus 15:2). When he questioned the profit of "this," he was challenging the assertion that "this is my God." And he denied resurrection of the dead, as it is written: "Behold, I am at the point of death" (Genesis 25:32), indicating that he did not believe in resurrection after death. And he despised the birthright, as it is written: "And Esau despised the birthright" (Genesis 25:34).

432 And from where do we derive that Ishmael repented in Abraham's lifetime? From the incident involving Ravina and Rav Ḥama bar Buzi, who were sitting before Rava, and Rava was dozing while they were talking. Ravina said to Rav Ḥama bar Buzi: Is it true that you say that any death with regard to which the word gevia, expire, is mentioned is the death of the righteous? Rav Ḥama bar Buzi said to him: Yes. For example: "And Isaac expired [vayyigva], and died" (Genesis 35:29). Ravina objected: But with regard to the generation of the flood it states: "And all flesh expired [vayyigva]" (Genesis 7:21), and there they died for their wickedness. Rav Ḥama bar Buzi said to him: We say this only when both gevia and asifa, gathering, are used; when these two terms are mentioned together they indicate the death of a righteous person.

433 Ravina asked: But isn't there Ishmael, about whom gevia and asifa are written, as it is stated: "And these are the years of the life of Yishmael…and he expired and died [vayyigva vayyamot]; and was gathered to his people" (Genesis 25:17)? Meanwhile Rava, who had heard the discussion in his dozed state, fully awoke and said to them: Children [dardekei], this is what Rabbi Yoḥanan says: Ishmael repented in the lifetime of his father, as it is stated: "And Isaac and Ishmael, his sons, buried him" (Genesis 25:9). The fact that Ishmael allowed Isaac to precede him demonstrates that he had repented and accepted his authority.

434 The Gemara asks: But perhaps the verse listed them in the order of their wisdom; that is to say, perhaps in fact Ishmael preceded Isaac but the Torah did not list them in that order. The Gemara answers: But if that is so, consider that the verse states: "And Esau and Jacob, his sons, buried him" (Genesis 35:29). What is the reason that the verse there did not list them in the order of their wisdom? Rather, since Ishmael allowed Isaac to precede him, it is clear that he made Isaac his leader, and since he made him his leader, learn from it that he repented in Abraham's lifetime.

[435] Incidental to the discussion of the verse “And God blessed Abraham with everything” (Genesis 24:1), the Gemara states that the Sages taught: There were three people to whom the Holy One, Blessed be He, gave already in this world

[436] a taste of the World-to-Come. They are: Abraham, Isaac, and Jacob. Abraham, as it is written with regard to him: “And the Lord blessed Abraham with everything” (Genesis 24:1). Isaac, as it is written with regard to him: “And I have eaten from everything” (Genesis 27:33). Jacob, as it is written with regard to him: “Because I have everything” (Genesis 33:11). This teaches that already in their lifetimes they merited everything, i.e., perfection.

[437] There were three people over whom the evil inclination had no sway. They are: Abraham, Isaac, and Jacob, as it is written with regard to them, respectively: “With everything,” “from everything,” “everything.” The completeness of their blessings means that they did not have to contend with their evil inclinations. And some say that even David was not subject to his evil inclination, as it is written: “And my heart has died within me” (Psalms 109:22), meaning that the evil inclination in his heart was nullified as if his heart had died. And how does the other authority, who does not include David in his list, explain this verse? He is mentioning his travails. David means to say that his heart died within him owing to all the suffering that he endured, but he says nothing about his evil inclination.

[438] The Sages taught: There were six people over whom the Angel of Death had no sway in their demise, and they are: Abraham, Isaac, and Jacob, Moses, Aaron, and Miriam. Abraham, Isaac, and Jacob, as it is written with regard to them, respectively: “With everything,” “from everything,” “everything”; since they were blessed with everything they were certainly spared the anguish of the Angel of Death. Moses, Aaron, and Miriam, as it is written with regard to them that they died “by the mouth of the Lord” (Numbers 33:38; Deuteronomy 34:5), which indicates that they died with a kiss, and not at the hand of the Angel of Death.

[439] The Gemara asks: But with regard to Miriam it is not written: “By the mouth of the Lord.” Rabbi Elazar says: Miriam also died with a kiss, as this is learned through a verbal analogy between the word “there” mentioned in regard to Miriam: “And Miriam died there” (Numbers 20:1), and the word “there” mentioned in regard to Moses: “And Moses died there” (Deuteronomy 34:5). And for what reason is “by the mouth of the Lord” not stated with regard to her? It is unseemly to mention death by a kiss with regard to a woman.

[440] The Sages taught: There were seven people over whom the worm and the maggot had no sway, and they are: Abraham, Isaac, and Jacob, Moses, Aaron and Miriam, and Benjamin, son of Jacob. Abraham, Isaac, and Jacob, as it is written with regard to them, respectively: “With everything,” “from everything,” “everything.” Moses, Aaron, and Miriam, as it is written with regard to them: “By the mouth of the Lord”; Benjamin, son of Jacob, as it is written: “And to Benjamin he said: The beloved of the Lord, he shall dwell in safety by Him” (Deuteronomy 33:12). Even in death, he rests securely, unbothered by worms. And some say that even David is included, as it is written: “My flesh also dwells secure” (Psalms 16:9). The Gemara asks: And how does the other authority, who does not include David, explain this? The Gemara answers: He is asking for mercy, that his flesh should dwell secure and not be subject to worms and maggots, but his request was denied.

[441] The Sages taught in a baraita: There were four people who died only because of the counsel of the primordial snake, in the wake of which all of humanity became mortal, and not on account of any

personal sin. And they are: Benjamin, son of Jacob; Amram, father of Moses; Yishai, father of David; and Chileab, son of David. And all of these are known through tradition except for Yishai, father of David, with regard to whom it is written explicitly: “And Absalom placed Amasa over the army instead of Joab, and Amasa was the son of a man whose name was Ithra the Israelite, who engaged in intercourse with Abigail, daughter of Nahash, the sister of Zeruiah, mother of Joab” (II Samuel 17:25). But was Abigail the daughter of Nahash? Was she not the daughter of Yishai, as it is written: “And their sisters were Zeruiah and Abigail” (I Chronicles 2:16)? Rather, she was called “daughter of Nahash” to indicate that she was the daughter of one who died only because of the counsel of the snake.

Chapter 2

[1] MISHNA: A person may not dig a pit close to the pit of another, in order to avoid damaging the latter’s pit. And similarly, one may not dig a ditch, nor a cave, i.e., a covered pit, nor a water channel, nor a launderer’s pond, which is a pit used for washing clothes, unless he distanced all of these three handbreadths from the wall of another and he plasters lime on the place where there is water.

[2] And one must distance the solid residue of produce that has been pressed free of its oil, e.g., the refuse of olives from which oil has been squeezed, and animal manure, and salt, and lime, and rocks three handbreadths from the wall of another, as all these items produce heat and can damage the wall. Or, alternatively, he may plaster the wall with lime to prevent damage. One must likewise distance seeds, i.e., one may not plant seeds, and one may not operate the plow, and one must eliminate urine, three handbreadths from the wall of another.

[3] The mishna continues: And one must distance a mill from a neighbor’s wall by three handbreadths from the lower stone of the mill, which is four handbreadths from the smaller upper stone of the mill. And there must be a distance of three handbreadths from the protruding base [hakalya] of an oven until the wall, which is four handbreadths from the narrow upper rim [hassafa] of the oven.

[4] GEMARA: The tanna of the mishna opens by speaking of a pit: A person may not dig a pit close to the pit of another, and yet he ends with a reference to a wall: Unless he distances it from the wall of another. Let the tanna teach: Unless he distanced his pit or ditch three handbreadths from the pit of another, just as he begins his statement by referring to a pit. Why does the mishna suddenly mention a wall here?

[5] Abaye said, and some say it was Rav Yehuda who said: We learned that the mishna means: From the wall of his pit. In other words, one should read the mishna as follows: Unless he distanced his pit or ditch three handbreadths from the wall of another’s pit. The neighbor also built his pit close to the border between the two properties, and the mishna is teaching that the one digging a pit must distance it three handbreadths from the wall of the pit of the other.

[6] The Gemara challenges: But even so, let it teach: Unless he distanced his excavations three handbreadths from the pit of another, and one would understand that the term pit is referring to the wall of the other’s pit. The Gemara responds: By using the phrase: From the wall of another, this teaches us incidentally that the wall of a pit must be at least three handbreadths thick, as the wall of the other’s pit occupied the full three handbreadths between the cavity of his pit and the property of

his neighbor. The practical difference of this observation is with regard to buying and selling, as it is taught in a baraita: With regard to one who says to another: I am selling you a pit and its walls, the wall of the pit must be at least three handbreadths thick.

[7] § It was stated: With regard to one who comes to dig any of these excavations or place any of the items listed in the mishna close to the boundary of his field, where his neighbor currently has no pit, Abaye says: He may dig or place them close to the boundary; and Rava says: He may not dig or place them close to the boundary. The Gemara explains: All agree that he may not dig or place them close to a field of his neighbor if that field is designated for digging pits, as he will thereby restrict his neighbor from using his field in the manner it is expected to be used. When they disagree it is with regard to a field that is not designated for digging pits.

[8] The Gemara elaborates: Abaye says: He may dig these excavations or place these items close to the boundary, as the neighbor's field is not designated for pits, so he is not causing any damage by doing so. Rava says: He may not dig these excavations or place these items close to the boundary, as the neighbor can say to him: Just as you changed your mind and dug a pit, I too might change my mind and dig a pit, and I will no longer be able to dig near my border if you dig your pit close to the boundary.

[9] There are those who say a different version of this discussion: All agree that one may dig these excavations or place these items close to the boundary of a field that is not designated for digging pits. When they disagree it is with regard to a field that is designated for digging pits. Abaye says: One may dig these excavations or place these items close to the boundary; and this is the halakha even according to the opinion of the Rabbis, who say in the mishna (25b): One must distance a tree twenty-five cubits from a cistern, lest the roots of the tree grow and damage a neighbor's cistern in his field. The difference is that there it is prohibited, as when he plants the tree there is already a cistern. But here, at the time when he digs his cistern, there is as yet no cistern in his neighbor's field.

[10] And Rava says: One may not dig these excavations or place these items close to the boundary; and this is the halakha even according to the opinion of Rabbi Yosei, who says in that same mishna: This one may dig in his field and that one may plant in his field, i.e., one need not distance his tree for fear of damaging his neighbor's field through expanding roots. The reason that Rava maintains that his ruling is correct even according to the opinion of Rabbi Yosei is that this matter applies only there, as when he plants the tree, its roots, which might damage the cistern, are not yet present. Consequently, when he plants he does not cause any damage. But here, the neighbor can say to him: Each and every strike of yours with the hoe loosens my earth, and therefore you are already causing damage as you dig your cistern.

[11] The Gemara suggests a proof: We learned in the mishna that a person may not dig a pit close to the pit of another, unless he does so at a distance of three handbreadths from his neighbor's wall. The Gemara analyzes this statement: Apparently, the reason he may not dig close to the boundary of his neighbor's field is that there is a pit there, from which it may be inferred that if there is no pit he may dig his pit close to his neighbor's wall. Granted, according to that second version of the dispute, in which you said: All agree that one may dig these excavations or place these items close to the boundary of a field that is not designated for digging pits, one can explain that the mishna is referring to a field that is not designated for digging pits.

[12] But according to that first version of the dispute, in which you said that they disagree with regard to a field that is not designated for digging pits, there is a difficulty. Granted, this works out well according to the opinion of Abaye, who says that one may dig one's pit near the boundary when the neighbor has no pit. But according to the opinion of Rava, who maintains that it is prohibited to dig a pit near the boundary under any circumstances, the ruling of this mishna is difficult.

[13] The Gemara explains: Rava could have said to you: Wasn't it stated with regard to that mishna that Abaye says, and some say it was Rav Yehuda who says: We learned that the mishna means: From the wall of his pit? This indicates that the neighbor must distance the edge of his pit from the boundary by the thickness of his wall, which is three handbreadths. Therefore, even according to the ruling of the mishna, one may not dig his pit directly adjacent to the boundary.

[14] There are those who say this discussion in the form of a challenge to the opinion of Abaye. The mishna teaches that one must distance his pit from that of his neighbor, and it was stated with regard to that ruling that Abaye says, and some say it was Rav Yehuda who says: We learned that it means: From the wall of his pit. In other words, the edge of the neighbor's pit must be three handbreadths away from the boundary. Granted, according to that first version of the dispute, in which you said: All agree that he may not dig or place them close to a field of his neighbor if that field is designated for digging pits, one can explain that the mishna is referring to a field that is designated for digging pits.

[15] But according to that second version of the dispute, in which you said that they disagree with regard to a field that is designated for digging pits, there is a difficulty. Granted, this works out well according to the opinion of Rava, who says that it is prohibited to dig a pit near the boundary in this case. But according to the opinion of Abaye, the ruling of this mishna is difficult, as if the mishna is referring to the wall of the neighbor's pit, this indicates that the first pit was dug close to the boundary.

[16] The Gemara explains: Abaye could have said to you: The mishna is referring to the specific case where both neighbors came to dig their pits at the same time. Consequently, they must both distance their pits from one another. If there is no pit as yet next to the boundary, and the neighbor is not digging at that point, one may dig his pit alongside the boundary.

[17] The Gemara suggests: Come and hear a proof from a baraita: In the case of rock that is so soft that it crumbles in one's hands, and no tool is needed, this one may dig his pit from here, and that one may dig his pit from there. This one distances his pit three handbreadths and plasters with lime, and that one distances his pit three handbreadths and plasters with lime. This indicates that the first one who digs a pit must distance his pit even when the second one does not yet have a pit. The Gemara rejects this proof: Rock that crumbles in one's hands is different. In this case, one must maintain a distance from the boundary due to the softness of the ground.

[18] The Gemara is puzzled by this exchange: And he who asked it, why did he ask it? The baraita is explicitly referring to rock that crumbles in one's hands, so this is clearly a unique case. The Gemara answers that the Sage who asked the question assumed that the halakha of the baraita includes all types of soil, and he thought that it was necessary for the tanna to mention the specific example of rock that crumbles in one's hands, as it could enter your mind to say that since this substance crumbles in one's hands he is required to keep his pit at an even greater distance. To counter this, the baraita teaches us that a distance of three handbreadths is sufficient.

[19] The Gemara suggests: Come and hear a proof from the mishna: One must distance the solid residue of produce that has been pressed free of its oil, and animal manure, and

[20] salt, and lime, and rocks three handbreadths from the wall of another, or he can plaster the wall with lime. The Gemara analyzes this statement: The reason for this ruling is that there is a wall there belonging to his neighbor, from which it may be inferred that if there is no wall there, one may place these substances close to the boundary of his neighbor's courtyard. This presents a difficulty for the opinion of Rava according to the first version of the dispute, which states that one may not place these substances close to a boundary even in the case of a field that is not designated for pits.

[21] The Gemara rejects this proof: No, even if there is no wall one may also not place these substances close to the boundary. The Gemara asks: Rather, what does mentioning a wall here teach us? The Gemara answers: This teaches us that all these substances are damaging to a wall.

[22] The Gemara suggests: Come and hear another proof from the mishna: One must distance seeds, and the plow, and urine three handbreadths from the wall of another. The Gemara analyzes this ruling: The reason for this ruling is that there is a wall, from which it may be inferred that if there is no wall, one may place these substances close to the boundary of the field. The Gemara rejects this proof as well: No, even if there is no wall, one may also not place these substances close by the boundary. The Gemara asks: But rather, what does this teach us? The Gemara answers: This teaches us that dampness [dimtunta] is damaging to a wall.

[23] The Gemara suggests: Come and hear another proof from the mishna: And one must distance a mill from a wall by three handbreadths from the lower stone of the mill, which is four handbreadths from the upper stone. The Gemara analyzes this statement: The reason for this ruling is that there is a wall, from which it may be inferred that if there is no wall, one may place a mill close by the boundary. The Gemara rejects this proof: No, even if there is no wall, one may also not place his mill close by the boundary. The Gemara asks: But rather, what does this teach us? The Gemara answers: This teaches us that vibrations are damaging to a wall.

[24] The Gemara suggests: Come and hear another proof from the mishna: And the oven must be distanced three handbreadths from the base, which is four handbreadths from the upper rim of the oven. The Gemara analyzes this statement: The reason for this ruling is that there is a wall, from which it may be inferred that if there is no wall, one may place an oven close by the boundary. The Gemara rejects this proof as well: No, even if there is no wall, one may also not place his oven close by the boundary. The Gemara asks: Rather, what does this teach us? The Gemara answers: This teaches us that heat is damaging to a wall.

[25] The Gemara suggests: Come and hear a proof from the mishna (20b): A person may not open a bakery or a dye shop beneath the wine storeroom of another, nor may one open a cattle barn there. The Gemara analyzes this mishna: The reason for this ruling is that there is a storeroom already in place, from which it may be inferred that if there is no storeroom one may do so. If this is the case, then with regard to a pit as well, one may dig next to a boundary if there is as yet no pit.

[26] The Gemara answers: The case of a residence is different, as in general one can use his domicile in any manner of his choosing unless he directly causes damage to another or his property. The Gemara adds: The language of the mishna is also precise, as an explicit baraita is taught with regard to that mishna: If the construction of the cattle barn preceded the storeroom, it is permitted. Nothing

can be inferred from the case of the baraita with regard to the halakha of the mishna, which does not concern living quarters.

[27] The Gemara suggests: Come and hear a proof from a mishna (26a): A person may not plant a tree close to another's field unless he distances it four cubits from his neighbor. And it is taught with regard to this mishna: The four cubits of which the Sages spoke are to enable the work of the vineyard, i.e., a small space next to the trees is necessary to enable animals to plow between them.

[28] The Gemara analyzes this ruling: The reason this distance is required is due to the work of the vineyard, from which it may be inferred that if not for the problem due to the work of the vineyard, it would be permitted for one to plant his tree close to the boundary, and apparently, this is the halakha even though there are roots of the tree that damage his neighbor's field. The Gemara answers: With what are we dealing here? We are dealing with a case where a hard rock [tzunema] interrupts between the two fields, preventing the roots from passing through to the other field.

[29] The Gemara continues: The language of the mishna is also precise with regard to this point, as it teaches further on: If there was a fence between them, this one places, i.e., plants a tree, close to the fence from here, and that one places, i.e., plants a tree, close to the fence from here. If the baraita were referring to a case where the roots could travel across, how could it be permitted for both neighbors to plant their trees alongside each other? Consequently, it must be referring to a situation where a rock separates between the two fields below, and therefore the neighbors may plant their trees near the fence.

[30] The Gemara responds: If so, say the last clause of that mishna: If the roots of the tree extended into the field of another, the neighbor may cut them off to a depth of three handbreadths, so that they do not impede the plow. The Gemara asks: But if a rock interrupts between the two fields and forms a barrier, what are these roots doing there, i.e., how did they get there? The Gemara answers: This is what the tanna of the mishna is saying: And if there is no rock, and the roots of the tree extended into the field of another, the neighbor may cut them off to a depth of three handbreadths so that they do not impede the plow.

[31] The Gemara suggests: Come and hear a proof from a mishna (25b): One must distance a tree twenty-five cubits from a cistern. The Gemara analyzes this halakha: The reason for this ruling is that there is a cistern, from which it may be inferred that if there is no cistern, one may place, i.e., plant, his tree close to the neighbor's field. The Gemara answers: No, even when there is no cistern one may also not place it close to the neighbor's field. And by mentioning a cistern, the tanna of the mishna teaches us this: That the roots of a tree extend and damage the cistern up to a distance of twenty-five cubits away.

[32] The Gemara asks: If so, say the last clause of that mishna: And if the tree preceded the cistern, one is not required to cut down the tree. But if one may not place the tree close to the boundary even if there is no cistern, how can you find a case where the tree preceded the cistern? Why would its owner not be required to cut it down? The Gemara answers: This is as Rav Pappa says with regard to a similar matter, that it is referring to a buyer who purchases part of a field. So too here, it is referring to a buyer. In other words, a field contained a cistern and tree alongside each other, and the owner sold the part of the field containing the cistern.

[33] The Gemara cites yet another source: Come and hear a proof from a mishna (25a): One must distance the water in which flax is steeped from vegetables growing in a neighbor's field, and one

must distance leeks from onions growing in a neighbor’s field, and one must likewise distance mustard from bees that are in a neighbor’s field. The Gemara analyzes this statement: The reason is that there are vegetables present, from which it may be inferred that if there are no vegetables, one may place the water close to the neighbor’s field. The Gemara rejects this opinion: No, even if there are no vegetables one may also not place the water close to the neighbor’s field. And the tanna teaches us that these items mentioned in that mishna are harmful to each other.

[34] The Gemara responds: If so, say the last clause of that mishna: Rabbi Yosei renders it permitted to plant near the neighbor’s bees in the case of mustard. As explained in a baraita, this is because he can say to the owner of the bees: Just as you say to me: Keep your mustard away from my bees, I can say to you: Keep your bees away from my mustard, as they come and eat my mustard plants. In other words, you are damaging my property as well.

[35] And if one may not place an item that might cause damage close to his neighbor’s boundary, how can you find a case where each neighbor is damaging the property of the other? Rav Pappa says: This is referring to a buyer who purchased part of his neighbor’s field, and it contains a substance or items that might cause damage, e.g., the water in which flax is steeped or mustard. In the other section of the field the neighbor retained an item or substance that could be damaged. In this manner, it is possible for the item that causes damage to be found near the boundary of the neighbor without one having violated the ruling of the mishna.

[36] The Gemara asks: If this is referring to a buyer, what is the reason of the Rabbis, who say that the neighbor can demand that the buyer distance that which causes damage? After all, he has not acted improperly. And furthermore, what is the reason of Rabbi Yosei for disagreeing only in the case of the mustard and the bees? Even the case of water in which flax is steeped and vegetables is also subject to the same reasoning: Why should he have to distance his water, considering that he did not act improperly?

[37] Ravina said that the explanation is as follows: The Rabbis hold that the responsibility falls on the one who causes damage to distance himself. The one who has the potential to cause damage must act to prevent the damage from occurring. This is the halakha even if his initial placement was done in accordance with halakha, as in the case where one bought part of a field.

[38] The Gemara asks: Does this prove by inference that Rabbi Yosei, who disagrees with the ruling of the Rabbis, holds that the responsibility falls on the one whose property was damaged to distance himself; i.e., to avoid being damaged? But if the responsibility to distance oneself falls on the one whose property was damaged, even in the case of water in which flax is steeped and vegetables the owner should also not have to distance himself. Why does Rabbi Yosei distinguish between that situation and the case of bees and mustard?

[39] Rather, actually Rabbi Yosei also holds that the responsibility to distance oneself falls on the one who causes damage, even if he did not act improperly. And this is what Rabbi Yosei is saying to the Rabbis: Your explanation works out well with regard to water in which flax is steeped and vegetables, where the one who causes damage must distance himself, as these damage those, but those do not damage these, i.e., the water in which flax is steeped damages the vegetables, but the vegetables do not damage the water. But in the case of mustard and bees, they both damage one another. In light of this factor, and since the initial planting of the mustard was permitted, the owner of the bees should distance them from the mustard.

[40] And as for the Rabbis, how do they respond to this claim? They maintain that bees do not damage mustard. Their reasoning is that if it is referring to a seed, the bees will not find it. If it is referring to a leaf, it will grow back, and therefore no damage has been caused.

[41] The Gemara asks: And does Rabbi Yosei hold that the responsibility falls on the one who causes damage to distance himself? But didn't we learn in a mishna (25b) that Rabbi Yosei says: Even though the cistern preceded the tree, the owner need not cut down the tree, as this one digs a cistern in his property, and that one plants the tree in his property? Rather, actually Rabbi Yosei holds that the responsibility falls on the one whose property was damaged to distance himself. And Rabbi Yosei spoke to the Rabbis in accordance with their statement.

[42] The Gemara elaborates: Rabbi Yosei was saying to the Rabbis: In my opinion, the responsibility falls on the one whose property was damaged to distance himself, and therefore even in the case of water in which flax is steeped and vegetables, the owner of the water need not distance himself. But according to your opinion, that the responsibility falls on the one who causes damage to distance himself, this works out well with regard to water in which flax is steeped and vegetables, as these damage those and those do not damage these. But mustard and bees both damage one another, and if the mustard owner acted properly, the owner of the bees should be required to move his bees.

[43] The Gemara continues: And how do the Rabbis respond to this claim? They hold that bees do not damage mustard: If this is referring to a seed,

[44] the bees will not find it; if it is referring to a leaf, it will grow back.

[45] § The mishna teaches: Nor may one set up a launderer's pond near his neighbor's wall unless he distances it three handbreadths from the wall. Rav Naḥman says that Rabba bar Avuh says: They taught this only with regard to a soaking pond, in which soiled clothes are left to soak for several days. But in the case of a washing pond [hanadyan], where clothes are actively cleaned, four cubits are required. That opinion is also taught in a baraita: A launderer's pond must be kept four cubits from one's neighbor's wall. But didn't we learn in the mishna that one must keep a distance of only three handbreadths? Rather, must one not conclude from the baraita that the statement of Rav Naḥman is correct?

[46] And some raise this as a contradiction, and present the mishna and baraita as apparently conflicting sources. We learned in the mishna that a launderer's pond must be kept three handbreadths from his neighbor's property. But isn't it taught in a baraita that four cubits are required? Rav Naḥman says that Rabba bar Avuh says: This is not difficult. Here, the mishna is referring to a soaking pond, which requires three handbreadths; there, the baraita is referring to a washing pond, in which case four cubits are necessary. Rav Ḥiyya, son of Rav Avya, teaches the mishna explicitly as reading: Unless he distanced three handbreadths from the rim of the soaking pond and the wall.

[47] § The mishna teaches that one who digs a pit must distance it three handbreadths from another's property and plaster it with lime. A dilemma was raised before the Sages: What is the precise wording of the mishna? Did we learn: And plasters with lime, meaning that the walls must be plastered with lime in addition to distancing the pit three handbreadths, or perhaps we learned: Or plasters with lime, i.e., one may plaster the walls with lime instead of digging the pit at a distance of three handbreadths.

[48] The Gemara answers: It is obvious that we learned: And plasters with lime, as, if it enters your mind that we learned: Or plasters with lime, which is the same as what is stated in the clause of the mishna discussing olive refuse, if so, let the tanna combine them and teach them together. If the same halakha applied in all circumstances, all of the mishna's cases could be taught together.

[49] The Gemara answers: This is not proof, as perhaps these cases are taught separately because this type of damage is not similar to that type of damage. The first clause of the mishna addresses the issue of damage due to moisture, whereas the last clause addresses the issue of damage due to heat.

[50] The Gemara suggests: Come and hear a proof from a baraita. Rabbi Yehuda says: With regard to rock that is so soft it crumbles in one's hands, this one digs his pit from here, on his property, and that one digs his pit from there. This one distances his pit three handbreadths and plasters with lime, and that one distances his pit three handbreadths and plasters with lime. The Gemara analyzes this ruling: The specific reason one must also plaster with lime is that he is using rock that crumbles in one's hands, from which it may be inferred that if it is rock that does not crumble in one's hands, one would not be required to plaster with lime as well.

[51] The Gemara answers: One could say that the same is true, i.e., that even though he is using rock that does not crumble in one's hands, he must also plaster with lime. And it was necessary for the tanna to mention the case of rock that crumbles in one's hands, as it might enter your mind to say that since it crumbles in one's hands, let us require a greater distance. Therefore, the tanna teaches us that this is not the case.

[52] § The mishna teaches that one must distance the solid residue of produce that has been pressed free of its oil, and animal manure, and salt, and lime, and rocks three handbreadths from the wall of another, or plaster its receptacle with lime. The Gemara comments: We learned in a mishna there (Shabbat 47b): With what substances may one insulate a pot of cooked food on Shabbat eve, and with what substances may one not insulate it?

[53] One may insulate the pot neither with the solid residue of produce that has been pressed free of its oil, nor with manure, nor with salt, nor with lime, nor with sand, whether those materials are moist or whether they are dry. All of these materials spontaneously generate heat when piled up for an extended period of time. Therefore, they add heat to the pot they insulate. The Gemara asks: What is different here that the mishna teaches the halakha in the case of rocks and it does not teach the halakha in the case of sand, and what is different there that it teaches the halakha in the case of sand and it does not teach the halakha in the case of rocks?

[54] Rav Yosef says: There is a practical reason for this difference. Rocks are not mentioned there because it is not customary for people to insulate food with rocks. Abaye said to him: And is it customary for people to insulate food with wool fleece and tabs of purple wool? As it is taught in a baraita: One may insulate food with wool fleece; with combed wool clumps, which are unwoven; with tabs of purple wool; and with swatches of soft material; but one may not move them on Shabbat because they are set-aside [muktze].

[55] Rather, Abaye said that the tanna follows the biblical aphorism in the verse that states: "Its neighbor tells about him" (Job 36:33), i.e., one example is mentioned and the same applies to the other case. He taught the halakha in the case of rocks here and the same is true of sand; he taught the halakha in the case of sand there and the same is true of rocks. Rava said to Abaye: If this is correct, that "its neighbor tells about him," let him teach the halakha of all of these examples in one case, and

let him teach the halakha of just one in the other case, and it can be said that the same is true with regard to the others.

[56] Rather, Rava said: There, this is the reason that the tanna does not teach the halakha in the case of rocks: Because they break, i.e., scratch, the pot, and consequently people do not use them for insulating food at all. Here, this is the reason that the tanna does not teach the halakha in the case of sand: Because it heats hot items and cools cold items, and therefore it does not cause any damage to the wall.

[57] The Gemara asks: But Rabbi Oshaya taught in a baraita that one must distance sand from his neighbor's wall. The Gemara answers: There, it is referring to damp sand, which must be kept at a distance due to its moisture. The Gemara challenges: Let the tanna of our mishna also teach the halakha in the case of sand and we will interpret it as referring to damp sand. The Gemara answers: This tanna already taught the case of a water channel, which is a source of dampness, and therefore there was no need to mention damp sand as well.

[58] The Gemara rejects this answer: That is incorrect, as is that to say that the mishna includes only one example of a source of dampness? Doesn't the mishna teach the case of a water channel? And yet it also teaches the example of a launderer's pond. This demonstrates that the mishna teaches many cases, despite the similarity between them, and therefore it should have mentioned the halakha in the case of sand as well.

[59] The Gemara answers: Both of those particular examples are necessary, as, had the tanna taught only the case of a water channel, one would have claimed that a distance must be kept because it is fixed, i.e., water constantly passes through it. But with regard to a launderer's pond, which is not fixed, as it sometimes holds water and sometimes does not, one might say that one need not distance it from his neighbor's property. And conversely, had the tanna taught only the case of a launderer's pond, one might have said that this must be distanced because its water is fixed and standing in one location and therefore leaks out. But with regard to a water channel, one might say distancing it is not required. Consequently, it is necessary to state both examples. By contrast, including the halakha in the case of sand would not add any novel understanding.

[60] § The mishna teaches: One must distance seeds, i.e., one may not plant seeds, and one may not operate the plow, and one must eliminate urine, three handbreadths from the wall of another. The Gemara asks: Why is it necessary to mention seeds? Let him derive this requirement to distance the seeds due to the requirement to distance a plow, as in any event the ground must be plowed before it can be sown? The Gemara answers: This is referring to planting with a single hand motion, which is performed without plowing.

[61] The Gemara further challenges: The mishna teaches that one must distance a plow; but let him derive this requirement to distance a plow due to the requirement to distance the seeds, as plowing is preparation for planting. The Gemara answers: This is referring to one who plows to prepare the ground for trees. The Gemara challenges: But if so, let him derive this requirement to distance a plow due to the requirement to distance the water. If there are trees, there must be a water channel to irrigate them, and arranging one's field in such a manner should be prohibited for that reason. The Gemara answers: The tanna is referring to Eretz Yisrael, concerning which it is written: "And drinks water as the rain of heaven comes down" (Deuteronomy 11:11). In Eretz Yisrael, water channels were not needed.

[62] The Gemara asks: Is this to say that seeds

[63] take root to the sides, i.e., the growing roots spread sideways and cause damage to walls? But didn't we learn in a mishna (Kilayim 7:1): With regard to one who bends a branch of a grapevine into the ground so that it strikes roots and produces a new vine, if it does not have three handbreadths of earth over it he may not plant a seed above it, as he would thereby transgress the prohibition of diverse kinds?

[64] And it is taught with regard to this mishna: But one may plant on either side of that bent branch. This indicates that there is no concern that the roots of the seeds will spread out sideways. Rabbi Ḥagga says in the name of Rabbi Yosei: The issue here is not that the roots will spread out sideways and reach the wall. Rather, it is prohibited to plant seeds near one's neighbor's property because they break up the ground and cause loose soil to rise up, which damages the foundation of the wall.

[65] § The mishna teaches: And urine must be kept at a distance of three handbreadths from the wall of one's neighbor. Rabba bar bar Ḥana says: It is permitted for a person to urinate alongside the wall of another, as it is written: "And I will cut off from Ahab those who urinate against the wall, and him that is shut up and him that is left at large in Israel" (I Kings 21:21). As the verse employs the term "those who urinate against the wall" to mean males, it seems that urinating against a wall was a common practice. The Gemara asks: But didn't we learn in the mishna that urine must be kept a distance of three handbreadths from the wall? The Gemara answers: There, the mishna is referring to urine that is poured from a chamber pot, as opposed to urine that is passed from the body.

[66] The Gemara suggests: Come and hear a baraita: A person may not pour water at the side of the wall of another unless he distances the water three handbreadths from it. If pouring water is prohibited, then all the more so should urination be prohibited. The Gemara explains: There too, it is referring to urine that is poured from a chamber pot.

[67] The Gemara suggests: Come and hear another proof from a baraita: A person may not urinate alongside the wall of another unless he distances himself three handbreadths from it. In what case is this statement said? It is said in the case of a brick wall. But in the case of a stone wall, one must distance himself enough so that it does not cause damage. And how far must he distance himself? One handbreadth. And if there is hard rock present, it is permitted to urinate there. The Gemara comments: The refutation of the opinion of Rabba bar bar Ḥana is a conclusive refutation, and his ruling is rejected.

[68] The Gemara asks: But Rabba bar bar Ḥana stated a verse in support of his opinion; how can the baraita rule counter to what is written in a verse? The Gemara answers: This is what it is saying there, i.e., this is the meaning of that verse: I will not even leave Ahab something whose manner is to urinate against a wall. And what is that? A dog. According to this interpretation, the verse is not referring to people at all.

[69] § Rabbi Tovi bar Kisna says that Shmuel says: A wafer does not reduce the dimensions of a window. When a corpse, or a significant part thereof, is in one room, its impurity can spread to a room adjacent to it if there is a window of a certain size between the rooms. Shmuel states that when one puts a wafer in a window, the wafer is not considered an obstruction, so the size of the opening as relevant to this halakha remains the same. The Gemara asks: Why discuss specifically this case? Why does Shmuel teach this halakha with regard to a wafer? Even a thick chunk of bread also does not reduce the dimensions of a window.

[70] The Gemara answers: Shmuel is speaking utilizing the style of: It is not necessary, as follows: It is not necessary to state this halakha with regard to thick bread. Since it is fit for him to consume, he does not nullify it, i.e., he does not plan to leave it in the window for an extended amount of time. But in the case of a wafer, which becomes disgusting when placed in a window, I might say that he does nullify it and it becomes part of the house, thereby reducing the size of the window. To counter this, Shmuel teaches us that even a wafer is not nullified, as it can be used to feed animals, as one is not particular about their food. Therefore, the wafer does not become part of the window in which it is placed.

[71] The Gemara challenges: And let him derive this halakha from the fact that a wafer is an item that is susceptible to ritual impurity, and any item that is susceptible to impurity does not serve as a barrier against the spread of impurity. The Gemara explains: This is referring to a wafer that was kneaded in fruit juice, which is not one of the liquids that renders food susceptible to ritual impurity, and therefore the wafer is not susceptible to ritual impurity. Consequently, one might have thought that it serves as a barrier before ritual impurity and reduces the dimensions of the window.

[72] The Gemara raises an objection to Shmuel's opinion from a mishna (Oholot 6:2): With regard to a basket that is full of straw, or an earthenware barrel full of dried figs, which are placed in a window, one considers: If the straw or dried figs would stand on their own were the basket or barrel removed, then they would serve as a barrier against the spread of impurity. But if they would not stand on their own they would not serve as a barrier. The Gemara explains the objection: But why should the straw or dried figs serve as a barrier? Even straw that can stand on its own is fit for feeding to one's animal and will likely be removed from the opening, which means it should not be considered part of the window.

[73] The Gemara answers: The ruling of the mishna is stated with regard to rotted straw, which is unfit for animal consumption. The Gemara asks: But it is fit for use in the making of clay for bricks. The Gemara answers: This is referring to straw that has thorns in it and therefore is not fit for making bricks. The Gemara challenges: Even so, it is fit for kindling a fire. The Gemara answers that this is referring to wet straw. The Gemara responds: Nevertheless, it is fit for kindling a large fire. If one builds a large fire, wet straw will dry and become ignitable. The Gemara answers: A large fire is not common, and therefore, in all likelihood, the straw will remain in the window.

[74] The Gemara further asks: But dried figs are fit for him to consume, and he will certainly remove them. Consequently, they should not be considered fixed in their place. Shmuel says: This is referring to a case where the figs became worm infested [beshehitrifu]. And so Rabba bar Avuh teaches: This is referring to a case where the figs became worm infested.

[75] The Gemara clarifies: What are the exact circumstances of this barrel that held the dried figs? If this is referring to a case where its opening faced outward, i.e., not toward the source of the ritual impurity,

[76] let the barrel itself serve as a barrier. It should not be susceptible to impurity in this case, as an earthenware vessel does not contract impurity if its exterior is exposed to impurity. Rather, one must say that its opening faces inward, and it is rendered impure because the impurity enters through its opening. And if you wish, say instead that actually its opening faces outward, and with what are we dealing here? We are dealing with a metal barrel, which does contract impurity through its exterior.

[77] The Gemara raises another objection to the assumption that an item for which there is a use does not reduce the dimensions of a window, even if is not susceptible to impurity, from a baraita (Tosefta, Oholot 14:6): With regard to grass that one plucked and placed in a window or that grew on its own in windows; and scraps of fabric that do not measure three by three fingerbreadths; and a limb or flesh dangling from an animal or a beast; and a bird resting in the window; and a gentile sitting in the window; and a child born after eight months of pregnancy, who is not expected to survive, that is placed in the window; and salt; and an earthenware vessel; and a Torah scroll, all these reduce the dimensions of the window. Consequently, impurity passes through only if there remains an open space of a square handbreadth. But with regard to snow, hail, frost, ice, and water, all these do not reduce the dimensions of a window.

[78] The Gemara proceeds to challenge Shmuel's ruling from each of the cases of the baraita. The Gemara asks: But according to Shmuel, who says that an item that has a use is not considered part of the window and does not reduce the dimensions of the space, grass is fit for consumption by one's animal, so it will not remain in the window. Yet the baraita states that grass reduces the dimensions of the window. The Gemara answers: This is referring to afrazta, which is poisonous grass that is unfit for an animal to consume.

[79] The baraita teaches: Or grass that grew on its own also reduces the dimensions of the window. The Gemara asks: But since the grass damages the wall, the owner will remove it. Therefore, it should not serve as a barrier to impurity. Rabba says: This is referring to a wall of a ruin, whose structural integrity is insignificant, and therefore the owner will not trouble himself to remove the grass. Rav Pappa says: The baraita may even be referring to a wall in a settled house, and it is referring to a case where the grass comes from three handbreadths beyond the window. In other words, the grass does not grow on the window but takes root some distance away, and from there it reaches the window. The homeowner is not particular about this grass and will not uproot it.

[80] The Gemara further asks: Why do scraps of fabric reduce the dimensions of the window? After all, they are fit for patching a tear in a garment. The Gemara answers: This is referring to thick scraps, which are unsuitable for patching. The Gemara challenges: Nevertheless, they are fit for a bloodletter to wipe up the blood at the point of incision. The Gemara answers: It is referring to sackcloth, which scratches the skin, and would not be used for that purpose.

[81] The Gemara asks: If it is referring to sackcloth, why does the baraita state that it is not three by three fingerbreadths? It should have said that it is not four by four handbreadths. Rough woven material of the kind used for sacks rather than clothes is susceptible to impurity only if its area measures at least four by four handbreadths. The Gemara answers: It is not actual sackcloth; rather, it is like sackcloth, i.e., it is stiff, and will therefore not be used by a bloodletter, but is woven like regular clothing.

[82] The baraita teaches: And a limb or flesh dangling from an animal or a beast reduces the dimensions of a window. The Gemara asks: According to the opinion of Shmuel, why should this be so? After all, the animal can arise and escape, and therefore it should not be considered as part of the window. The Gemara answers: This is referring to an animal that is tied in place.

[83] The Gemara challenges: But the owner of the animal will take it and slaughter it. The Gemara answers: It is referring to an animal that is non-kosher and will not be slaughtered. The Gemara challenges: Even so, he will take it and sell it to a gentile. The Gemara responds: It is referring to a

lean animal, which no one will buy. The Gemara continues: Even if the animal does not move, there is a use for the part that is dangling, since he can cut it off and throw it to the dogs. The Gemara answers: Since there is suffering to an animal if he cuts it off, he will not do that.

[84] The baraita further teaches: And a bird resting in the window reduces its dimensions. The Gemara challenges: But it will fly away, and therefore it should not be considered as part of the window. The Gemara answers: This is referring to a bird that is tied in place. The Gemara further challenges: But the owner will take it and slaughter it. The Gemara answers: This is referring to a non-kosher bird, which he will not slaughter. The Gemara continues: Even if it is non-kosher he will take it and sell it to a gentile. The Gemara responds: It is referring to a kelanita, a type of bird that is so bony that no one would purchase it to consume it.

[85] The Gemara asks: But even so, he can give it to a child to play with, so why does it reduce the dimensions of the window? The Gemara answers: It is referring to a bird that scratches. The Gemara challenges: But a kelanita does not scratch. The Gemara answers: The baraita is referring to a type of bird that is like a kelanita in that it is bony, but is inclined to scratch people.

[86] The baraita further states: And a gentile sitting in the window reduces its dimensions. The Gemara asks: But the gentile will arise and leave, so why does he reduce the dimensions of the window? The Gemara answers: This is referring to someone who is tied in place. The Gemara continues: Another person will come and release him. The Gemara answers: This is referring to a leper, whom people are afraid to touch. The Gemara challenges: Another leper will come and release him. Rather, this is referring to a prisoner of the monarchy. Since he is confined as a punishment, others are afraid to release him.

[87] The baraita teaches: And a child born after eight months of pregnancy who is placed in the window reduces its dimensions. The Gemara challenges: Perhaps his mother will come and remove him from there. The Gemara answers: This is referring to Shabbat, when it is prohibited to move this child, as it is taught in a baraita: A child born after eight months is like a stone with regard to the halakhot of set-aside [muktze], and therefore it is prohibited to move him; but his mother may bend over the child and nurse him, due to the danger that failure to nurse will cause her to fall ill.

[88] The baraita teaches: Salt reduces the dimensions of a window. The Gemara challenges: It is fit for use and people will remove it from there. The Gemara answers: This is referring to bitter salt, which is not used as a seasoning. The Gemara challenges: Nevertheless, it is fit for tanning hides. The Gemara responds: It is referring to salt that has thorns mixed with it, and therefore it will not be used for tanning.

[89] The Gemara challenges: Even so, since this salt is damaging to the wall, he will remove it from there. The Gemara answers: This is referring to a case where it sits on a shard of earthenware, and consequently it does not damage the wall. The Gemara states: If it is resting on earthenware, let the shard itself serve as a barrier against the spreading of the impurity. Why, then, is the salt mentioned?

[90] The Gemara answers: This is referring to a case where the shard does not have the sufficient measure for ritual impurity, and is therefore considered insignificant. As we learned in a mishna (Shabbat 82a): One who carries a shard of earthenware on Shabbat is liable only if it is equivalent in size to that which is used to place between one pillar and another when they are piled on the ground, to strengthen the pillars.

91 The baraita teaches: An earthenware vessel reduces the dimensions of a window. The Gemara challenges: But it is fit for one to use; therefore, it is likely to be removed from the window. The Gemara answers: This is referring to a case where the earthenware is dirty. The Gemara challenges: Even so, it is fit for a bloodletter to collect the blood. It would not matter to him if the earthenware were dirty. The Gemara answers: It is referring to a case where it is perforated and therefore unfit for that use.

92 The baraita teaches: A Torah scroll reduces the dimensions of a window. The Gemara challenges: But it is fit for reading; therefore, it might be removed. The Gemara answers: This is referring to a Torah scroll that is worn out and unfit for reading. The Gemara challenges: But one is required to place the Torah scroll in a repository for unusable sacred books; therefore, he will certainly remove it to be stored away. The Gemara answers: This is referring to one who determines that its repository will be there. In other words, it was placed in the window with the intent of storing it there in its worn-out state.

93 § With regard to the halakha of the baraita referring to salt, the Gemara cites that which Rav says: One can construct a barrier to delineate a private domain on Shabbat or to block the spreading of ritual impurity with anything except for salt and fat, as salt crumbles and fat melts in the heat. And Shmuel says: Even salt can be used as a barrier. Rav Pappa said: And they do not disagree, as this ruling of Shmuel is referring to Sodomite salt, which is like stone and can be used as a barrier, and that ruling of Rav is referring to isterokanit salt, which is taken from the sea and is composed of grains.

94 The Gemara adds: And now that Rabba said: If a person makes two piles of salt at the opening to an alleyway and places a cross beam on top of them, so that the salt supports the cross beam and the cross beam supports the salt by weighing it down and compressing it, he can use this beam to render it permitted to carry in the alleyway on Shabbat, one can say that even isterokanit salt can be used as a barrier. And even so, Rav and Shmuel do not disagree: This ruling of Shmuel is referring to a case where there is a cross beam to weigh the salt down, and that ruling of Rava is referring to a case where there is no cross beam.

95 § The mishna teaches that one must distance a mill from a neighbor’s wall by a distance of three handbreadths from the lower stone of the mill, which is four handbreadths from the upper stone of the mill. The Gemara asks: What is the reason that one must distance a mill from the property of his neighbor? It is due to the vibrations it causes. The Gemara asks: But isn’t it taught in a baraita: And the measure for distancing a mill on a base is three handbreadths from the lower millstone [ha’isterobil], which is four handbreadths from the mouth [hakelet], where the wheat is fed in? But there, what vibrations are there? Rather, the reason for the distancing is due to the noise generated by the mill.

96 The mishna teaches: And there must be a distance of three handbreadths from the protruding base of an oven until the wall, which is four handbreadths from the narrow upper rim of the oven. Abaye said: Learn from the mishna that the base of an oven is a handbreadth wider than its rim. The practical difference of this observation is with respect to buying and selling, i.e., a buyer should know that this is the proper ratio for the dimensions of an oven.

97 MISHNA: A person may not set up an oven inside a house unless there is a space four cubits high above it, i.e., between the top of the oven and the ceiling, to avoid burning the ceiling, which serves

as the floor of the residence above. If one was setting up an oven in the upper story, there must be a plaster floor beneath it, which serves as the ceiling of the lower story, at least three handbreadths thick, so that the ceiling below does not burn. And in the case of a stove the plaster floor must be at least one handbreadth thick.

[98] And if he causes damage in any case, he pays compensation for that which he damaged. Rabbi Shimon says: They said all of these measurements to teach only that if he causes damage he is exempt from paying, as he took all reasonable precautions.

[99] The mishna continues: A person may not open a bakery or a dye shop beneath the storeroom of another, and he may not establish a cattle barn there, as these produce heat, smoke, and odors, which rise and damage the items in the storeroom. The mishna comments: In truth, the halakha is that in the case of a storeroom of wine the Sages rendered it permitted to set up a bakery and a dye shop beneath, as the heat that rises does not damage the wine. But they did not render it permitted to establish a cattle barn, because its odor damages the wine.

[100] GEMARA: The Gemara asks: But isn't it taught in a baraita that in the case of an oven the plaster floor must be four handbreadths thick, and with regard to a stove it must be three? By contrast, the mishna says that the plaster floor beneath and oven and a stove must be three handbreadths and one handbreadth thick, respectively. Abaye said: When that baraita is taught it is with regard to ovens and stoves of bakers. Since they bake all day long, their implements get very hot. The oven discussed in our mishna is similar to a baker's stove, which is why in both cases a distance of three handbreadths is required.

[101] The mishna teaches that one may not open a bakery or a dye shop beneath the storeroom of another, and he may not establish a cattle barn there. A Sage taught: If the cattle barn preceded the storeroom it is permitted, i.e., the barn owner is not required to move it. With regard to this point, Abaye raises a dilemma: If he cleaned and sprinkled the area, i.e., he prepared it for use as a storeroom but he has not yet filled it, what is the halakha? Is it considered a storeroom already, and therefore others may no longer put a cattle barn beneath it, or perhaps the halakha is that as long as it is empty he cannot prevent others from establishing a cattle barn?

[102] Similarly, if he added windows for ventilation, which demonstrates his intention to use it as a storeroom, what is the halakha? Likewise, if he establishes an enclosed veranda beneath the storeroom, what is the halakha? If he built an upper room on top of his house for storage, what is the halakha? None of these questions are answered, and the Gemara declares that they shall stand unresolved. The Gemara cites a similar question: Rav Huna, son of Rav Yehoshua, raises a dilemma: If he placed dates and pomegranates there, what is the halakha? Is this considered the start of its use as a storeroom or not? No answer was found to this question either, and the Gemara declares: The dilemma shall stand [teiku] unresolved.

[103] § The mishna teaches that in truth, it is permitted in the case of wine but not in the case of a cattle barn. The Gemara states that a Sage taught: They permitted it in the case of wine because the heat and the smoke improve the wine. But they did not permit one to establish a cattle barn, because a barn creates a bad odor. Rav Yosef said: This wine of ours spoils quickly, and therefore even the smoke of a candle also damages it. Rav Sheshet said: And alfalfa [ve'aspasta] is considered like a cattle barn in this regard, because it rots over time and creates a foul odor.

104 MISHNA: If a resident wants to open a store in his courtyard, his neighbor can protest to prevent him from doing so and say to him: I am unable to sleep due to the sound of people entering the store and the sound of people exiting. But one may fashion utensils in his house and go out and sell them in the market, despite the fact that he is not allowed to set up a store in the courtyard, and the neighbor cannot protest against him doing so and say to him: I am unable to sleep due to the sound of the hammer you use to fashion utensils, nor can he say: I cannot sleep due to the sound of the mill that you use to grind, nor can he say: I cannot sleep due to the sound of the children. It is permitted for one to make reasonable use of his own home.

105 GEMARA: The Gemara asks: What is different in the first clause of the mishna, which states that one can prevent his neighbor from opening a store in the courtyard because the noise keeps him awake, and what is different in the latter clause, which states that one cannot protest when his neighbor performs labor that is noisy? Abaye said: In the latter clause we arrive at the case of one who operates in another courtyard, i.e., one cannot prevent activity in a separate courtyard that is connected to the alleyway in which he lives. Rava said to him: If so, let it teach that in a different courtyard it is permitted. Why does the mishna not specify that it is referring to a different courtyard? Rather, Rava said:

106 In the latter clause we arrive at the case of schoolchildren who come to learn Torah in his house, and this ruling applies from the time of the ordinance of Yehoshua ben Gamla and onward.

107 What was this ordinance? As Rav Yehuda says that Rav says: Truly, that man is remembered for the good, and his name is Yehoshua ben Gamla. If not for him the Torah would have been forgotten from the Jewish people. Initially, whoever had a father would have his father teach him Torah, and whoever did not have a father would not learn Torah at all. The Gemara explains: What verse did they interpret homiletically that allowed them to conduct themselves in this manner? They interpreted the verse that states: “And you shall teach them [otam] to your sons” (Deuteronomy 11:19), to mean: And you yourselves [atem] shall teach, i.e., you fathers shall teach your sons.

108 When the Sages saw that not everyone was capable of teaching their children and Torah study was declining, they instituted an ordinance that teachers of children should be established in Jerusalem. The Gemara explains: What verse did they interpret homiletically that enabled them to do this? They interpreted the verse: “For Torah emerges from Zion” (Isaiah 2:3). But still, whoever had a father, his father ascended with him to Jerusalem and had him taught, but whoever did not have a father, he did not ascend and learn. Therefore, the Sages instituted an ordinance that teachers of children should be established in one city in each and every region [pelekh]. And they brought the students in at the age of sixteen and at the age of seventeen.

109 But as the students were old and had not yet had any formal education, a student whose teacher grew angry at him would rebel against him and leave. It was impossible to hold the youths there against their will. This state of affairs continued until Yehoshua ben Gamla came and instituted an ordinance that teachers of children should be established in each and every province and in each and every town, and they would bring the children in to learn at the age of six and at the age of seven. With regard to the matter at hand, since this system was established for the masses, the neighbors cannot prevent a scholar from teaching Torah in the courtyard.

110 Concerning that same issue, Rav said to Rav Shmuel bar Sheilat, a teacher of children: Do not accept a student before the age of six, as he is too young, and it is difficult for him to learn in a

steady manner. From this point forward, accept him and stuff him with Torah like an ox. And Rav further said to Rav Shmuel bar Sheilat: When you strike a child for educational purposes, hit him only with the strap of a sandal, which is small and does not cause pain. Rav further advised him: He who reads, let him read on his own; whoever does not read, let him be a companion to his friends, which will encourage him to learn to read.

111 With regard to a courtyard, the Gemara concluded that it is permitted for one to establish an elementary school to teach Torah and the neighbors cannot protest. The Gemara raises an objection to this ruling from a baraita: With regard to one member of a courtyard who wishes to become a doctor, a bloodletter, a weaver [vegardi], or a teacher of children, the other members of the courtyard can prevent him from doing so. This indicates that neighbors can protest the teaching of children in their shared courtyard. The Gemara answers: With what are we dealing here, i.e., when can they protest his teaching children? We are dealing with a case of gentile children, as there is no mitzva to educate them. In this situation, the neighbors can protest about the noise.

112 Come and hear another baraita: With regard to two people who are residing in one courtyard, and one of them sought to become a doctor, a bloodletter, a weaver, or a teacher of children, the other can prevent him from doing so. The Gemara answers: Here too, we are dealing with a case of gentile children.

113 The Gemara suggests: Come and hear another baraita: One who has a house in a jointly owned courtyard may not rent it to a doctor, nor to a bloodletter, nor to a weaver, nor to a Jewish teacher [sofer], nor to a gentile teacher. This indicates that one’s neighbors can prevent him from teaching Jewish children. The Gemara answers: With what are we dealing here? We are dealing with the scribe [sofer] of the town, who does not teach children but writes documents and letters for residents of the town. This type of work is not a mitzva, and since many people seek his services, the residents of the courtyard can prevent him from performing this job near their houses.

114 § With regard to the ordinance of Yehoshua ben Gamla, and concerning teaching children in general, Rava says: From the time of the ordinance of Yehoshua ben Gamla, that schoolteachers must be established in each town, and onward, one does not bring a child from one town to another. Rather, each child is educated where he resides. But one does bring them from one synagogue where they learn to another synagogue. And if a river separates the areas one does not bring the children across, lest they fall into the river. And if there is a bridge spanning the river one may bring them across the river. But if there is only a narrow bridge [gamla] one does not bring them.

115 And Rava said: The maximum number of students for one teacher of children is twenty-five children. And if there are fifty children in a single place, one establishes two teachers, so that each one teaches twenty-five students. And if there are forty children, one establishes an assistant, and the teacher receives help from the residents of the town to pay the salary of the assistant.

116 And Rava said: If there is a teacher of children who teaches a few subjects, and there is another who teaches more subjects than him, one does not remove the first teacher from his position to hire the second, as perhaps the other teacher will come to be negligent due to the lack of competition. Rav Dimi from Neharde’a said: On the contrary, all the more so is it the case that he will teach in a better manner if he knows that he is the sole instructor in the place, as jealousy among teachers increases wisdom. The one who was dismissed will try to refine his skills so that he will be rehired, and this will prevent negligence on the part of the other teacher.

[117] And Rava said: If there are two teachers of children, one who teaches a lot of material but is not precise in his statements, and one who is precise but does not teach a lot of material, one hires the one who teaches a lot of material but is not precise. Why is this? Errors will be corrected by themselves, and no lasting harm will be caused. By contrast, Rav Dimi of Neharde'a said: One hires the instructor who is precise and does not teach a lot of material, as once an error is taught, it is taught, and cannot be easily corrected.

[118] The Gemara cites a proof for the opinion of Rav Dimi of Neharde'a: This is as it is written: "For Joab and all Israel remained there six months until he had cut off every male in Edom" (I Kings 11:16). When Joab came before King David after this episode, David said to him:

[119] What is the reason that you did that? Why did you kill only the males? Joab said to him: As it is written: You shall blot out the males [zakhar] of Amalek, i.e., the male descendants of Amalek, who descend from Edom. David said to him: But we read the verse as stating: "You shall blot out the remembrance [zekher] of Amalek" (Deuteronomy 25:19). Joab said to him: I was taught to read it as zakhar. Joab went and asked his childhood Bible teacher. Joab said to him: How did you read this word to us? The teacher said to him: I read it as zekher. The teacher had read it the proper way, but he failed to notice that his student had learned it incorrectly.

[120] Joab took a sword to kill him. The teacher said to him: Why do you want to kill me? Joab said to him: As it is written: "Cursed is he who does the work of the Lord with a slack hand" (Jeremiah 48:10), and you taught me incorrectly. The teacher said to him: Leave that man to remain as cursed. This is a sufficient punishment; there is no need to kill me. Joab said to him: It is also written: "And cursed is he who keeps back his sword from blood" (Jeremiah 48:10). There are those who say that Joab killed him, and there are those who say that he did not kill him. In any event, this episode demonstrates that an error learned in one's childhood stays with him his whole life.

[121] And Rava says: With regard to a teacher of children, a professional tree planter, a butcher, a bloodletter, and a town scribe, all these are considered forewarned. In other words, they need not be exhorted to perform their jobs correctly, as if they err in the performance of their duties they can be dismissed immediately. The principle of the matter is: With regard to any case where loss is irreversible, the individual is considered forewarned.

[122] § Rav Huna said: There was a certain resident of an alleyway who set up a mill in the alleyway and earned his living grinding grain for people. And subsequently another resident of the alleyway came and set up a mill next to his. The halakha is that the first one may prevent him from doing so if he wishes, as he can say to him: You are disrupting my livelihood by taking my customers.

[123] The Gemara suggests: Let us say that a baraita supports his opinion: One must distance fish traps from fish, i.e., from other fish traps, as far as the fish travels, i.e., the distance from which the fish will travel. The Gemara asks: And how much is this distance? Rabba bar Rav Huna says: Up to a parasang [parsa]. This indicates that one must distance himself from the place where another has established his business. The Gemara responds that this is no proof: Perhaps fish are different, as they look around. One fish explores the area ahead of the others, indicating to them where to go. Once they encounter the first trap they will not approach the second.

[124] Ravina said to Rava: Shall we say that Rav Huna spoke in accordance with the opinion of Rabbi Yehuda? As we learned in a mishna (Bava Metzia 60a): Rabbi Yehuda says: A storekeeper may not hand out toasted grain and nuts to children who patronize his store, due to the fact that he thereby

accustoms them to come to him at the expense of competing storekeepers. And the Rabbis permit doing so. This indicates that according to the opinion of Rabbi Yehuda, all forms of competition are prohibited, which would include the scenario concerning the mill.

125 The Gemara rejects this suggestion: You may even say that Rav Huna holds in accordance with the opinion of the Rabbis. The Rabbis disagree with Rabbi Yehuda only there, as the storekeeper can say to his competitor: If I distribute walnuts, you can distribute almonds [shiyuskei]. But here, with regard to a resident of an alleyway who sets up a mill in that alleyway where another mill already exists, even the Rabbis concede that the owner of the first mill can say to him: You are disrupting my livelihood, as beforehand whoever required grinding came to me, and you have provided them with another option.

126 The Gemara raises an objection from a baraita: A man may establish a shop alongside the shop of another, and a bathhouse alongside the bathhouse of another, and the other cannot protest, because the newcomer can say to him: You operate in your space, and I operate in my space.

127 The Gemara answers: This entire matter is a dispute between tanna’im, as it is taught in a baraita: The residents of an alleyway can compel one another to agree not to allow among them in that alleyway a tailor, a tanner, a teacher of children, nor any type of craftsman. They can bar outside craftsmen from plying their trade in that alleyway. But one cannot compel his neighbor, i.e., one who already lives in the alleyway, to refrain from practicing a particular occupation there. Rabban Shimon ben Gamliel says: One can even compel his neighbor not to conduct such work in the alleyway. Rav Huna holds in accordance with the opinion of Rabban Shimon ben Gamliel.

128 Rav Huna, son of Rav Yehoshua, says: It is obvious to me that a resident of one town can prevent a resident of another town from establishing a similar business in the locale of the first individual. But if he pays the tax of that first town, he cannot prevent him from doing business there, as he too is considered a resident of the town. The resident of an alleyway cannot prevent a resident of his alleyway from practicing a particular trade there, in accordance with the opinion of the Rabbis in the baraita, and contrary to the opinion of Rabban Shimon ben Gamliel.

129 With these conclusions in mind, Rav Huna, son of Rav Yehoshua, raises a dilemma: With regard to a resident of one alleyway protesting about a resident of another alleyway conducting business there, what is the halakha? No answer was found, and the Gemara states that the dilemma shall stand unresolved. Rav Yosef said: And Rav Huna, who said that a resident of an alleyway can prevent another from setting up an additional mill, concedes with regard to those who teach children that one cannot prevent him from working, as the Master said: Ezra instituted an ordinance for the Jewish people requiring that they establish one teacher alongside another teacher, to raise the standard of teaching.

130 The Gemara challenges: And let us be concerned lest the teachers will thereby come to be negligent. Rav Yosef said to the Sage who raised this objection:

131 Jealousy among teachers increases wisdom.

132 Rav Naḥman bar Yitzḥak said: And Rav Huna, son of Rav Yehoshua, who said that townspeople can bar craftsmen who come from other cities, concedes with regard to perfume salesmen who travel from one town to another that the townspeople cannot prevent them from entering their town. As the Master said: Ezra instituted an ordinance for the Jewish people that perfume salesmen shall travel

from town to town so that cosmetics will be available to Jewish women. Since this ordinance was instituted on behalf of Jewish women, the Sages ruled that these peddlers could not be barred from entering a town.

133 The Gemara continues: And this matter applies only to one who seeks to travel from town to town as a salesman. But if he wants to establish a shop, this ruling was not stated, and the townspeople can prevent him from doing so. And if he is a Torah scholar he may even establish a shop as a perfume salesman. This is like that incident in which Rava permitted Rabbi Yoshiya and Rav Ovadya to establish a shop not in accordance with the halakha. What is the reason for this ruling? The reason is that since they are rabbis, they are likely to be distracted from their studies should they be required to travel from place to place.

134 § The Gemara relates: There were these basket sellers who brought baskets to Babylonia. The townspeople came and prevented them from selling there. The two parties came before Ravina for a ruling. Ravina said to them: The basket sellers came from outside the town, and they sell to those from outside the town, i.e., to guests who are not residents of the town. The Gemara comments: And this statement applies only on a market day, when people from other towns come to shop, but they may not sell their wares on non-market days. And even with regard to market days, we say so only with regard to selling in the market, but this halakha does not apply to circulating around the town.

135 The Gemara further relates: There were these wool sellers who brought wool to the city of Pum Nahara. The townsfolk came and prevented them from selling it. The two parties came before Rav Kahana for a ruling. Rav Kahana said to them: The halakha is that they may prevent you from selling your wares. The wool sellers said to him: We have debts to collect in the city, and we must sell our wares in the meantime to sustain ourselves until we are paid. Rav Kahana said to them: Go and sell the amount needed to sustain yourselves until you have collected your debts, and then leave.

136 § The Gemara relates: Rav Dimi of Neharde’a brought dried figs on a ship to sell them. The Exilarch said to Rava: Go and see; if he is a Torah scholar, reserve the market for him, i.e., declare that he has the exclusive right to sell dried figs. Rava said to his student Rav Adda bar Abba: Go and smell his jar, i.e., determine whether or not Rav Dimi is a Torah scholar.

137 Rav Adda bar Abba went and asked Rav Dimi a question: With regard to an elephant that swallowed a wicker basket and excreted it intact along with its waste, what is the halakha? Is the vessel still susceptible to ritual impurity or is it considered digested and not susceptible to impurity? An answer was not available to Rav Dimi. Rav Dimi said to Rav Adda bar Abba: Is the Master Rava, i.e., are you Rava, as you have asked me such a difficult question? Rav Adda bar Abba struck him on his shoe in a disparaging way and said to him: There is a great difference between me and Rava; but I am perforce your teacher, and Rava is your teacher’s teacher.

138 Based on this exchange, Rav Adda bar Abba decided that Rav Dimi was not a great Torah scholar, and therefore he did not reserve the market for him, and Rav Dimi lost his dried figs, as they rotted. Rav Dimi came before Rav Yosef to complain, and said to him: The Master should see what they did to me. Rav Yosef said to him: He Who did not delay retribution for the humiliation of the King of Edom should not delay His response to your humiliation, but should punish whoever distressed you, as it is written: “So says the Lord: For three transgressions of Moab, indeed for four I will not reverse for him, because he burned the bones of the King of Edom into lime” (Amos 2:1).

[139] The Gemara reports that Rav Adda bar Abba died. Rav Yosef said: I punished him, i.e., I am to blame for his death, as I cursed him. Rav Dimi from Neharde’a said: I punished him, as he caused my loss of dried figs. Abaye said: I punished him, i.e., he was punished on my account because he did not exhibit the proper respect for me. As Rav Adda bar Abba said to the Sages: Instead of gnawing the bones in the school of Abaye, you would do better to eat fatty meat in the school of Rava, i.e., it is preferable to study with Rava than with Abaye. And Rava said: I punished him, as when he would go to the butcher to buy a piece of meat, he would say to the butchers: I will take meat before Rava’s servant, as I am greater than he is.

[140] Rav Naḥman bar Yitzḥak said: I punished him, i.e., he was punished because of me, as Rav Naḥman bar Yitzḥak was the head of the kalla lectures, the gatherings for Torah study during Elul and Adar. Rav Naḥman bar Yitzḥak would teach the students immediately following the lesson taught by the head of the academy. Every day, before he went in for the kalla lecture, he reviewed his lecture with Rav Adda bar Abba, and then he would enter the study hall for the kalla lecture.

[141] On that day Rav Pappa and Rav Huna, son of Rav Yehoshua, seized Rav Adda bar Abba, because they had not been present at the conclusion of Rava’s lecture. They said to him: Tell us how Rava stated these halakhot of animal tithe. Rav Adda bar Abba said to them: Rava said this and Rava said that. Meanwhile, it grew late for Rav Naḥman bar Yitzḥak, and Rav Adda bar Abba had not yet arrived.

[142] The Sages said to Rav Naḥman bar Yitzḥak: Arise and teach us, as it is late for us. Why does the Master sit and wait? Rav Naḥman bar Yitzḥak said to them: I am sitting and waiting for the bier of Rav Adda bar Abba, who has presumably died. Meanwhile, a rumor emerged that Rav Adda bar Abba had indeed died. The Gemara comments: And so too, it is reasonable to conclude that Rav Naḥman bar Yitzḥak punished him, i.e., he died as a result of Rav Naḥman bar Yitzḥak’s statement, as the unfortunate event occurred just as he announced that Rav Adda bar Abba’s bier was on its way.

[143] MISHNA: One whose wall was close to the wall of another may not build another wall close to the neighbor’s wall unless he distances it four cubits from the wall of the neighbor. And one who desires to build a wall opposite the windows of a neighbor’s house must distance the wall four cubits from the windows, whether above, below, or opposite.

[144] GEMARA: The Gemara comments: Before addressing the construction of the second wall, one could ask: And with regard to the first man, how did he place his wall close to the neighbor’s wall in the first place? Rav Yehuda said that this is what the tanna is saying:

[145] One who comes to place a wall close to his neighbor’s wall may place that wall close to the neighbor’s wall only if he distances his wall four cubits from the existing wall. Accordingly, the mishna is discussing one constructing a wall close to his neighbor’s wall the first time. Rava objects to this explanation: But the mishna teaches: One whose wall was near the wall of another, which indicates that there had already been a wall there.

[146] Rather, Rava said that this is what the mishna is teaching: In a case of one whose wall was near the wall of another at a distance of four cubits and it fell, he may not place another wall close to his neighbor’s wall unless he distances the wall four cubits from it. What is the reason that this distance must be observed? The reason is that walking here benefits there, i.e., the ground is strengthened by people walking on the land in the area between the walls.

[147] Rav says: They taught that one must leave a space of four cubits between his wall and that of his neighbor only if he builds it alongside the wall of his neighbor’s garden, where people do not usually walk due to the seeds. But with regard to the wall of a courtyard, where people walk, if he comes to place his wall close by, he may place it close by. By contrast, Rabbi Oshaya says: With regard to both the wall of a garden and the wall of a courtyard, if one comes to place his wall close by, he may not place his wall close by.

[148] Rabbi Yosei bar Ḥanina said: And the two amora’im do not disagree, as they are referring to different cases. This statement of Rav is referring to an old city, whose ground is well trodden and stable, and that statement of Rabbi Oshaya is referring to a new city, where even the wall of a courtyard requires walking on its adjacent ground to strengthen it.

[149] With regard to the claim that the halakha of the mishna is due to the need for space for people to walk on the ground between the walls, the Gemara asks: We learned in the mishna: And one who desires to build a wall opposite the windows of a neighbor’s house must distance the wall four cubits from the windows, whether above, below, or opposite. And it is taught in a baraita with regard to this ruling: Concerning the requirement of a distance above, the wall must be high enough so that one cannot peer into the window and see into the window; concerning the requirement of a distance below, the wall must be low so that he will not be able to stand on top of it and see into the window; and concerning the requirement of a distance opposite, one must distance the wall from the windows so that it will not darken his neighbor’s house by blocking the light that enters the house through the window.

[150] The Gemara analyzes this statement: The reason that distance is required opposite the window is so that he will not darken his neighbor’s house by blocking the light that enters the house through the window, but it is not due to the fact that walking will strengthen the ground. The Gemara answers: With what are we dealing here? We are dealing with a wall that is positioned to the side, i.e., perpendicular to the wall with the window in it, and therefore it blocks the light from entering the house through the window but does not prevent walking along the length of the neighbor’s wall.

[151] The Gemara asks: And how far must one distance his wall if it is perpendicular to the other wall? Yeiva, the father-in-law of Ashyan bar Nidbakh, says in the name of Rav: As much as the full width of the window. The Gemara asks: But why is this sufficient? Can’t he still peer into the window if he is that close? Rav Zevid says: This is referring to one who slopes his wall, i.e., he fashions an incline on the upper surface of the wall so that he will not be able to stand on top of it and look through the window.

[152] The Gemara asks: But didn’t we learn in the mishna that one must keep the wall four cubits away from the window? The Gemara answers: This is not difficult; here, he builds the wall on one side of the window, whereas there, in the mishna, he builds walls on two sides of the window. In the latter case, if he builds the walls any closer he will block the light from entering the house through the window even if they are perpendicular.

[153] The Gemara suggests: Come and hear a further difficulty from the mishna below with regard to the claim that the requisite gap between the walls is for the purpose of walking, as the mishna teaches: And one must distance his wall four cubits from a roof gutter so that his neighbor can lean a ladder in the empty space to clean and repair the gutter. The Gemara analyzes this statement: The reason this distance is required is due to the fact that he will be able to lean a ladder, but it is not due

to the fact that walking will strengthen the ground. The Gemara answers: With what are we dealing here? We are dealing with a sloping roof gutter, which protrudes beyond the boundary of the wall. As in this case, if the reason for distancing the wall is due to walking, one can walk back and forth beneath it. Nevertheless, a distance of four cubits from the roof gutter is required so that repairs can be performed.

154 MISHNA: One must distance his ladder four cubits from a neighbor's dovecote so that a mongoose will not be able to jump from the ladder to the dovecote and devour the birds. And one must distance his wall four cubits from a roof gutter, so that the neighbor can lean a ladder in the empty space to clean and repair the gutter.

155 GEMARA: Let us say that the mishna is not in accordance with the opinion of Rabbi Yosei, as, if it were in accordance with the opinion of Rabbi Yosei, doesn't he say with regard to planting a tree next to a neighbor's cistern: This one digs within his land, and that one plants within his land, and neither individual need consider what is happening in the property of the other?

156 The Gemara answers: You may even say that the mishna follows the opinion of Rabbi Yosei, as didn't Rav Ashi say: When we were studying in the study hall of Rav Kahana, he would say to us that Rabbi Yosei concedes with regard to his arrows, i.e., he concedes that one must distance himself if his actions will cause damage to his neighbor. Here too, sometimes when he places the ladder, the mongoose might be sitting in a hole and will immediately jump up and climb the ladder to the dovecote. The Gemara challenges: But that is indirect damage, as he is not the immediate cause. Rav Tovi bar Mattana said: That is to say that it is prohibited to cause even indirect damage.

157 The Gemara relates: Rav Yosef had certain small palm trees [talei], and

158 bloodletters would come and sit beneath them and perform their work there, and crows would come, eat the blood, and fly up to the palm trees and damage the dates. Rav Yosef said to the bloodletters: Remove these crowing birds from here, i.e., leave in order to avoid further damage. Abaye said to him: But it is an indirect action, as the bloodletters themselves are not damaging the dates. Rav Yosef said to him that Rav Tovi bar Mattana said as follows: That is to say that it is prohibited to cause even indirect damage.

159 Abaye said to Rav Yosef: But they have established an acquired privilege to use that particular spot for their work. Rav Yosef replied: Doesn't Rav Naḥman say that Rabba bar Avuh says: There is no acquired privilege of use in cases of damage, i.e., an established situation may not be allowed to continue in the event that damage results. Abaye inquired further: But wasn't it stated with regard to that statement of Rav Naḥman that Rav Mari said it is referring specifically to smoke, and Rav Zevid said it is referring to a bathroom? In other words, this principle was stated specifically in the context of damage caused by these substances. Rav Yosef said to him: For me, as I am sensitive, these are like smoke and a bathroom to me, which is why I have the right to demand that the bloodletters leave.

160 MISHNA: One must distance a dovecote fifty cubits from the city to prevent doves from eating seeds in the town. And a person should not establish a dovecote within his own property unless he has fifty cubits in each direction between the dovecote and the edge of his property. Rabbi Yehuda says that one must have surrounding the dovecote the area required for sowing four kor of seed on each side, which generally extends as far as a dove flies in a single flight. And if one bought the dovecote with the land, he has the acquired privilege of its use even if it has surrounding it only the

area required for sowing a quarter-kav of seed [beit rova] around it, and he need not remove it from there.

[161] GEMARA: The Gemara asks: Must one distance a dovecote only fifty cubits from the city and no more? Is that as far as one can expect a dove to fly? And the Gemara raises a contradiction from a mishna (Bava Kamma 79b): One may spread out traps [neshavin] for doves only if this was performed at a distance of at least thirty ris, or four mil, which is eight thousand cubits, from any settled area, to avoid catching birds that belong to another. Apparently, doves fly a distance of thirty ris, whereas the mishna here states fifty cubits.

[162] Abaye said: Doves do fly great distances, which is why one must avoid catching others' birds by keeping traps thirty ris away from settled areas. But as they eat along their way, their stomachs are filled after a distance of fifty cubits, at which point they will do no more damage to seeds. The Gemara asks: And do they fly only thirty ris and no more? But isn't it taught in a baraita: And in a settled area, one may not spread out a trap even if the area under his control extends as far as one hundred mil in each direction? Rav Yosef says: That baraita is referring to a settled area of vineyards, i.e., a contiguous region of vineyards and gardens. In that case the doves pass from place to place even over a great distance.

[163] Rava said: The baraita is referring to a settled area of dovecotes, i.e., where many dovecotes are distributed. The Gemara asks: And according to Rava, let the tanna derive that one may not establish a new dovecote there due to the other dovecotes themselves, as he will trap doves belonging to others. The Gemara answers: If you wish, say that this is referring to his own dovecotes. And if you wish, say it is referring to the dovecotes of a gentile, whose property one is not obligated to protect from harm. And if you wish, say it is referring to ownerless dovecotes.

[164] § Rabbi Yehuda says that one must have surrounding the dovecote the area required for sowing four kor of seed on each side, which is as far as a dove flies in a single flight. And if one bought the dovecote with the land, he has the acquired privilege of its use. Rav Pappa said, and some say it was Rav Zevid: That is to say that a court issues a claim on behalf of a buyer, and issues a claim on behalf of an heir. This is referring to the halakha of taking possession. If one has been physically in possession of an item for a period of time, generally three years, this serves as proof that he is in fact the legal owner. This possession must be accompanied by a claim of how one acquired the item; he cannot simply state that no one protested his possessing the item for three years. Rav Pappa is saying that the court will lodge a claim on behalf of a buyer or heir that they acquired the item from someone who was the owner, just as here the court assumes that the previous owner of the dovecote came to an agreement with his neighbors that he may use it.

[165] The Gemara asks: Why is it necessary for Rav Pappa to state this halakha? We already learn this with regard to an heir (41a): In the case of land that comes as an inheritance, one is not required to make a claim as to how the land came into his benefactor's possession when one's ownership of the land is challenged. The Gemara answers: It was necessary for him to state this halakha with regard to a buyer. The Gemara asks: With regard to a buyer as well, we learn this in a mishna (60a): If one bought a courtyard in which there are projections and balconies [ugzuztraot] extending into the public domain, this courtyard retains its presumptive status, i.e., the owner has the acquired privilege of their use, and the court does not demand their removal.

166 The Gemara answers: It was necessary for the tanna of the mishna to state this halakha in both cases, as, if he had taught us this only there, in that mishna, one might have said that it applies specifically with regard to a protrusion or a balcony that extends into the public domain, as one can say that perhaps it is a case where the seller had drawn back into his own land before adding the projections and balconies, and they in fact do not extend into the public thoroughfare. Alternatively, perhaps the public waived their right to him and allowed him to place them over the common area, as otherwise they would have protested. But here, where he causes damage to private individuals, one might have thought that the buyer does not have a privilege of use, and therefore the mishna teaches us otherwise.

167 And if he had taught this only in the mishna here, one might say that since the party potentially suffering damage is an individual, the owner of the dovecote appeased his neighbor by paying him to permit him to construct it. Alternatively, the neighbor might have waived his right to him. But in a case where damage is caused to the public, one might argue: Whom did he appease, and who yielded to him? Consequently, one might say that the purchaser does not retain the privilege of use. Therefore, it is necessary for the tanna to state the halakha in this case as well.

168 § The mishna teaches that if one bought the dovecote with the land, he has the acquired privilege of use. The Gemara asks: But doesn't Rav Naḥman say that Rabba bar Avuh says: There is no acquired privilege of use for cases of damage? Why should he retain his acquired privilege of use when his doves cause damage? Rav Mari said: Rav Naḥman's statement is referring specifically to smoke, which causes serious damage, and that is why it overrides an acquired privilege. Rav Zevid said: It is referring to a bathroom, whose odor is particularly strong.

169 MISHNA: With regard to a dove chick [nippul] that was found within fifty cubits of a dovecote, it belongs to the owner of the dovecote. If it was found beyond fifty cubits from a dovecote, it belongs to its finder. In a case where it was found between two dovecotes, if it was close to this one, it belongs to the owner of this dovecote; if it was close to that one, it belongs to the owner of that dovecote. If it was half and half, i.e., equidistant from the two dovecotes, the two owners divide the value of the chick.

170 GEMARA: Rabbi Ḥanina says: When resolving an uncertainty with regard to the halakhic status of an item, e.g., a found item, if the status of the majority of like items indicates that it has one status but the item in question is proximate to a source that indicates otherwise, one follows the majority. And even though the halakha of majority applies by Torah law and the halakha of proximity also applies by Torah law, even so the majority is preferable.

171 Rabbi Zeira raises an objection from the Torah's statement with regard to a murder victim where the identity of the murderer is unknown. In a case of this kind, the court measures the distances between the corpse and the nearby towns, in order to determine which town is closest and must consequently perform the rite of the heifer whose neck is broken. The verse states: "And it shall be, that the city that is nearest to the slain man, the Elders of that city shall take a heifer of the herd…and shall break the heifer's neck" (Deuteronomy 21:3–4). And this town is chosen even though there might be another town that is larger in population than it. According to Rabbi Ḥanina, in a case of this kind one should follow the majority.

172 The Gemara answers: This verse is referring to a situation where there is no other town that is larger than that one. The Gemara asks: And still, if one follows the majority, why should the court

follow the closest city? Let us follow the majority of the world, as most people are found elsewhere. The Gemara answers: This is referring to a case where the city sits in isolation between mountains, and therefore it is unlikely that the murderer arrived from elsewhere.

[173] The Gemara continues to discuss the issue of majority as opposed to proximity. We learned in the mishna: With regard to a dove chick that was found within fifty cubits of a dovecote, it belongs to the owner of the dovecote. And as the mishna does not make a distinction between different cases, it indicates that this is the halakha even though there is another dovecote that is larger than the proximate one in terms of number of birds. This shows that closeness, not majority, is the determining factor. The Gemara answers: This is referring to a case where there is no other dovecote in the area.

[174] The Gemara asks: If so, say the latter clause of the mishna: If it was found beyond fifty cubits from a dovecote, it belongs to its finder. And if there is no other dovecote in the area, it certainly fell from that dovecote. How, then, can it be given to the finder? The Gemara answers: With what are we dealing here? We are dealing with a chick that hops from place to place but does not yet fly. As Rav Ukva bar Ḥama says: With regard to any creature that hops, it does not hop more than fifty cubits. Consequently, any bird found within fifty cubits of a dovecote is assumed to have come from there. If it is farther away than that, it likely came from elsewhere or was dropped by travelers.

[175] Rabbi Yirmeya raises a dilemma: If one leg of the chick was within fifty cubits of the dovecote, and one leg was beyond fifty cubits, what is the halakha? The Gemara comments: And it was for his question about this far-fetched scenario that they removed Rabbi Yirmeya from the study hall, as he was apparently wasting the Sages' time.

[176] The Gemara further suggests: Come and hear the mishna: In a case where it was found between two dovecotes, if it was close to this one, it belongs to the owner of this dovecote; if it was close to that one, it belongs to the owner of that dovecote. The Gemara comments: And this is the halakha even though one of them is greater in number of birds than the other one. Apparently, one rules based on proximity, not majority. The Gemara explains: With what are we dealing here? We are dealing with a situation where the two dovecotes are equal in size. The Gemara asks: But even so, why should one follow the closer dovecote? Let us follow the majority of the world, as there are many other dovecotes besides these, and the number of doves they contain is greater. The Gemara responds: With what are we dealing here?

[177] We are dealing with a path that passes between vineyards, and these two dovecotes are situated there. As, if it is so that you claim the chick came from anywhere else in the world, since it only hops, it could not have come there. The reason is that any bird that hops and turns and sees its nest will continue to hop; but if it does not see its nest because it has gone too far, it will not hop farther. Consequently, this found chick that hops must have come from one of these two dovecotes.

[178] Abaye said: We learn in a mishna (Nidda 17b) as well that one follows the majority rather than proximity: With regard to blood that is found in the corridor [baperozdor], i.e., the cervical canal, and it is uncertain whether or not it is menstrual blood, it is ritually impure as menstrual blood, as there is a presumption that it came from the uterus, which is the source of menstrual blood. And this is the halakha even though there is an upper chamber, which empties into the canal, which is closer.

[179] Rava said to Abaye, in response to this claim: You state a proof from a case where the factors of majority and frequency are both present. When there is majority and frequency, there is no one who

says that one ignores the majority and follows proximity. Here, not only is the blood from the uterus greater in quantity, it also passes through the canal more frequently, as blood generally does not come from the upper chamber.

180 Rava cites a proof for his statement. As Rabbi Ḥiyya teaches: Blood that is found in the corridor is considered definite menstrual blood, and therefore if she engages in sexual intercourse, both she and her partner would be liable as a result of it to receive karet for entering the Temple intentionally when ritually impure or to bring an offering for entering unwittingly. And one burns teruma due to it, if the woman touches such produce. Evidently, the status of this blood is not considered uncertain.

181 And Rava says: Learn from that which Rabbi Ḥiyya said three conclusions: Learn from his statement that when the relevant factors are majority and proximity, follow the majority; and learn from his statement that the halakha that one follows the majority applies by Torah law, as teruma is burned in this case on account of the blood and she is liable to receive karet if she enters the Temple in this state; and learn from his statement that there is a source for that which Rabbi Zeira said.

182 This statement of Rabbi Zeira was issued in reference to a case discussed in tractate Ketubot (15a). If there are ten stores in a city, nine of which sell kosher meat and one of which sells non-kosher meat, and one found meat outside the stores and he does not know from which store it came, one follows the majority. The Gemara there suggests that perhaps one follows the majority only in a case where the gates of the city are unlocked, when the meat could have come to the city from the majority of kosher meat outside in a circumstance where the majority of the meat sold in the surrounding area was kosher. In this case there are two majorities, the majority of kosher meat stores inside the city, and the majority from outside. The Gemara there explains that Rabbi Zeira says that even if the city gates are locked one follows the majority, and the meat is kosher, as there is a no need for a double majority.

183 The Gemara elaborates: The two cases are analogous, as the woman here is considered like the locked gates of the city, i.e., there is only a single majority, and even so we follow the majority.

184 The Gemara asks: But Rava is the one who says with regard to the case of the blood that when there is majority and frequency, there is no one who says that one ignores the majority and follows the proximity. In other words, Rava rejected this case as proof of the principle that one follows the majority even when it is not frequent. Here, by contrast, Rava claims that one can learn from the ruling of Rabbi Ḥiyya that one follows the majority by Torah law. The Gemara answers: Rava retracted that claim in favor of the opinion that one follows the majority in all cases.

185 § It was stated: In the case of a barrel of wine that was found floating in a river, and the status of the wine was unknown, Rav says: If it was found opposite a town of which the majority of residents are Jews, the wine is permitted, as it can be assumed that the wine belongs to a Jew. If it was found opposite a town of which the majority are gentiles, it is forbidden, as it presumably belongs to a gentile. And Shmuel says: It is forbidden even if it was found opposite a town of which the majority are Jews. Why? Regardless of where it was found, one can say that it came from that place called Dekira, where the majority of people are gentiles. In other words, there is a distinct possibility that a floating barrel came from far away.

186 The Gemara suggests: Shall we say that Rav and Shmuel disagree with regard to the statement of Rabbi Ḥanina, in that one Sage, Shmuel, is of the opinion that the ruling is in accordance with the opinion of Rabbi Ḥanina, and he rules based on the majority, which in this case includes even distant

locales, and one Sage, Rav, is of the opinion that the ruling is not in accordance with the opinion of Rabbi Ḥanina, which is why he rules based on proximity.

187 The Gemara rejects this suggestion: No; everyone agrees with the opinion of Rabbi Ḥanina, and here they disagree about this: As one Sage, Rav, holds that if it is so, that the barrel came from that place called Dekira, this cannot be, as the currents and bays of the river, where the river flow is weak, would have sunk it. Therefore, it is logical that the barrel came from a nearby town. And one Sage, Shmuel, holds that perhaps the force of the river caught the barrel and brought it, as it is evident that the flow of a river can bring items from far away.

188 The Gemara relates that Ravina deemed permitted a certain barrel of wine that was found hidden in a vineyard where there were orla grapes, and he was not concerned that the wine might be from the grapes of that vineyard. The Gemara asks: Shall we say that this is because he holds in accordance with the opinion of Rabbi Ḥanina that one follows the majority of vineyards, which are not orla, rather than proximity?

189 The Gemara answers: It is different there, as, if thieves had stolen the barrel from that very vineyard they would not have hidden it there. Since the barrel was hidden there, it is reasonable to assume that it was stolen from somewhere else. The Gemara comments: And this matter, that thieves would not hide a stolen barrel in the same vineyard from which they stole it, applies only to wine; but they would hide grapes there, as grapes are not readily identifiable by the owner. Consequently, there is a concern that grapes found hidden there might be from that same vineyard.

190 The Gemara further relates that there were these jugs of wine that were found between vines [bei kofa'ei] of a Jew. Rava deemed the contents permitted and was unconcerned that they might be wine owned by a gentile. The Gemara asks: Shall we say that Rava does not hold in accordance with the opinion of Rabbi Ḥanina, who says that one follows the majority, in this case gentiles? The Gemara answers: There it is different, as the majority

191 of those who pour wine from barrels into jugs are Jews, and therefore it is reasonable that the wine belongs to a Jew. The Gemara comments: And this matter applies only to large jugs. But if they were small jugs, one can say that they were dropped by travelers, most of whom are gentiles, and therefore the jugs of wine are forbidden. And if there are large jugs among the found jugs, say that they all belong to Jews, as travelers do not usually carry large jugs; it can be assumed that the small ones were placed to balance the donkey's load, and the jugs all fell together.

192 MISHNA: One must distance a tree twenty-five cubits from the city, and in the cases of a carob tree and of a sycamore tree, which have a great many branches, they must be distanced fifty cubits. Abba Shaul says: Every barren tree must be distanced fifty cubits. And if the city preceded the tree, as one later planted the tree alongside the city, he cuts down the tree, and the city does not give money to the tree's owner in compensation. And if the tree preceded the city, which expanded after one planted the tree until it reached the tree, he cuts down the tree and the city gives money to its owner. If it is uncertain whether this one was first or that one was first, he cuts down the tree and the city does not give money.

193 GEMARA: The Gemara asks: What is the reason that one must distance a tree from a city? Ulla says: It is due to the beauty of the city, as it is unattractive for a city's walls to be obscured by tree branches. The Gemara suggests: And let him derive this halakha from the statement in tractate Arakhin (33b) that one may neither convert a field of a city into an open area surrounding the city,

nor may one convert an open area into a field, as these have fixed places and measurements (see Numbers 35:1–8). If one plants trees in a city’s open area, he thereby turns the open area into a field.

194 The Gemara answers: No, it is necessary to supply the reason given by Ulla according to the opinion of Rabbi Elazar, who says: One may convert a field into an open area, and an open area into a field. Here, we do not plant trees, due to the beauty of the city.

195 And according to the opinion of the Rabbis as well, who say that one may not convert a field into an open area, nor convert an open area into a field, one can say that this matter applies only to seeds, i.e., one may not plant seeds in a city’s open area and thereby turn it into a field. But with regard to trees, we do plant them in an open area. But here we do not plant trees, due to the beauty of the city.

196 And from where do you say, i.e., on what basis do you maintain, that there is a difference between seeds and trees? As it is taught in a baraita that discusses the halakhot of Shabbat: With regard to an enclosure [karpef] whose area is greater than two beit se’a but that was enclosed from the outset for the purpose of residence, it is permitted to carry within it on Shabbat regardless of its size, as it is considered a private domain.

197 If subsequently the greater part of it was sown with seed crops, it is considered like a garden, which is not a place of residence, and it is prohibited to carry anything within it on Shabbat. If the greater part of it was planted with trees, it is considered like a courtyard, which is a place of dwelling, and it is permitted to carry there on Shabbat. This shows that planting trees in an enclosure does not transform the area into a field, as is the case when seeds are planted.

198 § The mishna teaches: And if the city preceded the tree he cuts down the tree, and the city does not give money. The Gemara asks: What is different with regard to a cistern, that the tanna of another mishna (25b) teaches that if one plants a tree next to a neighbor’s existing cistern, the owner of the tree cuts down the tree and the owner of the cistern gives money; and what is different here that the mishna teaches that the owner of the tree cuts down the tree and the city does not give money?

199 Rav Kahana said, citing a popular aphorism: A pot belonging to partners is neither hot nor cold, i.e., no one takes responsibility for an item that belongs to several people, as opposed to a single individual. Here too, there is no specific person who will pay for the tree.

200 The Gemara asks: And what is the difficulty to begin with? Perhaps damage caused to public property is different from damage caused to the property of an individual. Consequently, when one’s tree causes damage to the public he is not compensated for having to cut it down, whereas he does receive payment when his tree damages a private cistern.

201 Rather, if Rav Kahana’s comment was stated in this context, it was stated about the latter clause: If the tree preceded the city, he cuts down the tree and the city gives money to its owner. Concerning this halakha one could ask: And let the tree owner say to the city residents: Give me money first and then I will cut down the tree. In this context, Rav Kahana said: A pot belonging to partners is neither hot nor cold. If the owner of the tree is entitled to wait until he had first collects money, a good deal of time would pass before the tree would be cut down. Therefore, a community need not collect money and pay immediately, unlike an individual.

202 § The mishna teaches that if it is uncertain whether this one was first or that one was first, he cuts down the tree and the city does not give money. The Gemara asks: In what way is this case different

from that of a tree alongside a cistern, concerning which you said in the mishna (25b) that in a case of uncertainty the owner of the tree need not cut down the tree?

203 The Gemara answers: There, if it were a case of certainty the tree would not be subject to being cut down; therefore, in a case of uncertainty too, we do not say to the owner of the tree: Cut it down. In that case, if the tree preceded the cistern, the owner of the tree would not be required to cut it down. Here, if it were a case of certainty, the tree would be subject to being cut down even if it preceded the city, and the only uncertainty is whether or not the owner of the tree would need to be compensated. Consequently, in a case of uncertainty too, we say to the owner of the tree: Cut it down. And if the owner of the tree lodges a claim due to the value of the tree, as he wants compensation for it, we say to him: Bring proof that your tree came first, and take your money. Since he has no proof, he does not receive any money.

204 MISHNA: One must distance a permanent threshing floor fifty cubits from the city, so that the chaff will not harm the city's residents. Furthermore, a person should not establish a permanent threshing floor even on his own property unless he has fifty cubits of open space in every direction. And one must distance a threshing floor from the plantings of another and from another's plowed field far enough that it does not cause damage.

205 GEMARA: The Gemara asks: What is different in the first clause of the mishna, which states a fixed measurement for the distance of a threshing floor from a city, and what is different in the latter clause, which does not provide a measurement but simply states in general terms: Enough that it does not cause damage? Abaye said: In the latter clause we arrive at the case of a threshing floor that is not permanent. This threshing floor must be far enough from a neighbor that it does not cause damage to his property.

206 The Gemara asks: What are the circumstances of a threshing floor that is not permanent? Rabbi Yosei, son of Rabbi Ḥanina, says: It refers to any threshing floor where one processes such a small quantity of grain that he does not winnow with a winnowing shovel, but employs some other method that does not scatter the chaff as far. This is one resolution of the contradiction.

207 Rav Ashi said that the phrase: Enough that it does not cause damage, is not referring to a distance but provides an explanation. In other words, the tanna is saying: What is the reason for the ruling of the first clause, as follows: What is the reason that one must distance a permanent threshing floor fifty cubits from the city? It must be far enough away that it does not cause damage.

208 The Gemara raises an objection against the opinion of Abaye from a baraita: One must distance a permanent threshing floor fifty cubits from the city; and just as one distances it fifty cubits from the city, so too does one distance it fifty cubits from the gourds, cucumbers, plantings, and plowed field of another, enough that it does not cause damage. Granted, this works out well according to the opinion of Rav Ashi, as he claims that in both clauses the same distance is required: One must move a threshing floor fifty cubits from a plowed field and from those plantings. But according to the explanation of Abaye, it is difficult. The Gemara comments: Indeed, it is difficult.

209 The Gemara asks with regard to the baraita: Granted, one must distance his threshing floor from his neighbor's cucumbers and gourds, as the chaff from the threshing floor goes and penetrates into the heart of the flower and dries it out. But why must one distance the threshing floor from another's plowed field? Rabbi Abba bar Zavda said, and some say it was Rabbi Abba bar Zutra: It is because

[210] he turns it into manure, i.e., the chaff acts like manure, and an excessive amount of manure damages the seeds.

[211] MISHNA: One must distance animal carcasses, and graves, and a tannery [haburseki], a place where hides are processed, fifty cubits from the city. One may establish a tannery only on the east side of the city, because winds usually blow from the west and the foul smells would therefore be blown away from the residential area. Rabbi Akiva says: One may establish a tannery on any side of a city except for the west, as the winds blowing from that direction will bring the odors into the city, and one must distance it fifty cubits from the city. One must distance from vegetables water in which flax is steeped, because this water ruins them; and likewise one must distance leeks from onions, and mustard from bees. And Rabbi Yosei permits one not to do so in the case of mustard.

[212] GEMARA: A dilemma was raised before the Sages: With regard to what case is Rabbi Akiva speaking? Did he mean that one may establish a tannery on any side of a city, and one may even place the tannery close to the city, except for the west side, where one must establish it at a distance of fifty cubits? Or perhaps he meant that one may establish a tannery on any side and distance it fifty cubits, except for the west side, where one may not establish a tannery at all.

[213] The Gemara cites a proof: Come and hear, as it is taught in a baraita: Rabbi Akiva says that one may establish a tannery on any side of the city and distance it fifty cubits, except for the west side, where one may not establish a tannery at all, because the western wind is frequent.

[214] § With regard to the last statement of the baraita, Rava said to Rav Naḥman: What does frequent mean in this context? If we say it means frequent among the winds, i.e., this wind blows all the time, that is difficult. But doesn't Rav Ḥanan bar Abba say that Rav says: Four winds blow every day from different directions, and the northern wind blows with each of the other three; as, if this were not so, i.e., if it did not blow, the world would not exist for even one hour, as the northern wind is pleasant and tempers the bitter effects of the other winds. And the southern wind is harsher than all of them, and were it not for the angel named Ben Netz, who stops it from blowing even harder, it would destroy the entire world, as it is stated: "Does the hawk [netz] soar by your wisdom, and stretch her wings toward the south?" (Job 39:26). This indicates that the northern wind is the most constant, not the western wind.

[215] Rather, what is the meaning of frequent? It means frequent with the Divine Presence, i.e., the Divine Presence is found on the western side, and therefore it is inappropriate to set up a tannery there with its foul odors. As Rabbi Yehoshua ben Levi says: Come and let us be grateful to our ancestors who revealed to us the place of prayer, as it is written: "And the hosts of heaven bow down to You" (Nehemiah 9:6). Since the celestial bodies move from east to west, they bow in that direction, which indicates that the Divine Presence is in the west.

[216] Rav Aḥa bar Ya'akov objects to this: But perhaps the celestial bodies are like a servant who receives a gift from his master and walks backward while bowing. If so, the Divine Presence is in the east and the celestial bodies are moving backward. The Gemara comments: Indeed, this is difficult, i.e., the verse does not provide a definitive proof.

[217] The Gemara comments: And Rabbi Oshaya holds that the Divine Presence is found in every place, as Rabbi Oshaya says: What is the meaning of that which is written: "You are the Lord, even You alone, You have made heaven…You preserve them all alive and the hosts of heaven bow down to You" (Nehemiah 9:6)? This indicates that Your messengers are not like the messengers of flesh

and blood. The messengers of flesh and blood return to the place from where they were sent to report on their mission. But Your messengers return and report on their mission from the very same place to which they are sent, as it is stated “Can you send forth lightnings, that they may go out and say to you: Here we are?” (Job 38:35). The verse does not state: They will come and say, i.e., they do not return to their point of departure, but: “They may go out and say,” which teaches that the Divine Presence is found in every place.

218 The Gemara comments: And Rabbi Yishmael, too, holds that the Divine Presence is in every place, as one of the Sages of the school of Rabbi Yishmael taught: From where is it derived that the Divine Presence is in every place? As it is stated: “And behold the angel who spoke with me went forth, and another angel went out to meet him” (Zechariah 2:7). Although both angels were coming from the Divine Presence, the verse does not state: After him, but: “To meet him,” which teaches that the Divine Presence is in every place, and therefore the angels depart for their missions from every place.

219 And Rav Sheshet, too, holds that the Divine Presence is in every place, as Rav Sheshet said to his servant: Set me facing any direction to pray except for the east. Rav Sheshet, who was blind, required the assistance of his aide to prepare for prayer. He explained to his servant: And the reason I do not wish to face east is not because it does not contain the Divine Presence, but because the heretics instruct people to pray in that direction.

220 But Rabbi Abbahu says: The Divine Presence is in the west, as Rabbi Abbahu says: What is the meaning of oriyya, which is a name for the west? It means the air of God [avir Yah], i.e., this is the place of the Divine Presence.

221 The Gemara cites a statement connected to the four winds. Rav Yehuda said: What is the meaning of that which is written: “My doctrine shall drop as the rain, my speech shall distill as the dew; as the small rain upon the tender growth, and as the showers upon the herb” (Deuteronomy 32:2)? “My doctrine shall drop [ya’arof] as the rain”; this is the western wind, which comes from the back of [me’orpo] the world, as the west is also referred to as the back.

222 “My speech shall distill [tizzal] as the dew”; this is the northern wind, which brings dry air that reduces the rain and grain and thereby devalues [mazzelet] gold. When grain crops are reduced their price appreciates, and consequently the value of gold decreases. And in addition, it says: “You who lavish [hazzalim] gold out of the bag” (Isaiah 46:6).

223 “As the small rain [kisirim] upon the tender growth”; this is the eastern wind that rages through [maseret] the entire world like a demon [sa’ir] when it blows strongly. “And as the showers upon the herb”; this is the southern wind, which raises showers and causes herbs to grow.

224 It is taught in a baraita that Rabbi Eliezer says: The world

225 is similar to a partially enclosed veranda [le’akhsadra], enclosed on three sides, and the northern side of the world is not enclosed with a partition like the other directions. The sun begins its revolution in the east and passes to the south and the west, and once the sun reaches the northwestern corner it turns around and ascends throughout the night above the sky to the east side and does not pass the north side. And Rabbi Yehoshua says: The world is similar to a small tent [lekubba], and the north side is enclosed with a partition as well, but once the sun reaches the northwestern corner it

emerges from this small tent, and circles and passes behind the dome, i.e., outside the northern partition, until it reaches the east.

226 As it is stated: “The sun also rises and the sun goes down, and hastens to its place, where it rises again. It goes toward the south, and turns about to the north; round and round goes the wind, and on its circuits the wind returns” (Ecclesiastes 1:5–6). The verse is understood as describing the sun’s movements, as follows: “It goes toward the south” during the day, “and turns about to the north,” on the outside of the firmament, at night. “Round and round goes the wind [ruaḥ] and the wind returns again to its circuits”; as the word ruaḥ can also mean direction or side, Rabbi Yehoshua explains that these are the face of the east and the face of the west. Sometimes, in the short winter days, the sun turns about them without being seen, and sometimes, in the long summer days, it traverses them visibly.

227 The baraita continues: He would say. Before continuing its citation, the Gemara interjects: In this statement, we arrive at the opinion of Rabbi Eliezer that the world is like a partially enclosed veranda. The Gemara resumes its citation of the baraita: There is proof from a verse that the north side is open: “Out of the chamber comes the storm”; this is the southern side that forms a room with the other two sides. “And cold out of the dispersed parts” (Job 37:9); this is the northern side, which is open, and from which a cold wind comes. “By the breath of God ice is given”; this is the western side. “And the breadth of the waters is straitened” (Job 37:10); this is the eastern side, from which the rains come.

228 The Gemara asks: But doesn’t the Master say that the southern wind raises showers and causes herbs to grow? The Gemara answers that this is not difficult: This is referring to rain that falls gently, which waters plants and brings growth; that is referring to a downpour of rain that causes damage.

229 Rav Ḥisda said: What is the meaning of that which is written: “Out of the north comes gold” (Job 37:22)? This is the northern wind, which devalues gold by causing a drought that raises the price of grain. And, in addition, it says: “You who lavish gold out of the bag” (Isaiah 46:6).

230 § Rafram bar Pappa says that Rav Ḥisda says: From the day the Temple was destroyed the southern wind has not brought rain, as it is stated in the description of the destruction of the Temple: “He decrees on the right and there is hunger, and consumes on the left and they are not satisfied” (Isaiah 9:19). This means that God decreed that the southern wind, which is called right, shall bring famine with it. And it is written: “North and right, You have created them” (Psalms 89:13). This proves that the term right means south.

231 And Rafram bar Pappa says that Rav Ḥisda says: From the day the Temple was destroyed, the rains no longer descend from the good storehouse, as it is stated: “The Lord will open to you His good storehouse, the skies, to give the rain of your land in its season” (Deuteronomy 28:12). In a time when the Jewish people perform God’s will, and the Jewish people are settled in their land, rain descends from the good storehouse. In a time when the Jewish people are not settled in their land, rain does not descend from the good storehouse.

232 Rabbi Yitzḥak says: One who wishes to become wise should face south, and one who wishes to become wealthy should face north. And your mnemonic for this is that in the Temple the Table, which symbolized blessing and abundance, was in the north, and the Candelabrum, which symbolized the light of wisdom, was in the south of the Sanctuary. And Rabbi Yehoshua ben Levi says: One should always face south, as once he becomes wise he will subsequently also become

wealthy, as it is stated with regard to the Torah: “Length of days is in her right hand; in her left hand are riches and honor” (Proverbs 3:16).

233 The Gemara asks: But Rabbi Yehoshua ben Levi says that the Divine Presence is in the west. How, then, can one pray facing south? The Gemara explains that one should turn aside slightly, so that he faces southwest. Rabbi Ḥanina said to Rav Ashi: An individual such as you, who lives to the north of Eretz Yisrael, should face south when you pray. And from where do we derive that Babylonia is located to the north of Eretz Yisrael? As it is written in a prophecy concerning the destruction of Jerusalem by the Babylonians: “Out of the north evil shall break forth upon all the inhabitants of the land” (Jeremiah 1:14).

234 § The mishna teaches that one must distance from vegetables the water in which flax is steeped, and distance mustard from bees. A Sage taught that Rabbi Yosei permits one not to do so in the case of mustard because he can say to the beekeeper: Before you tell me: Distance your mustard from my bees, I can tell you: Distance your bees from my mustard, as they come and eat my mustard plants. In other words, you are also causing damage to my property. Since they each cause damage to the other, neither can force his neighbor to move.

235 MISHNA: One must distance a tree twenty-five cubits from a cistern, and in the case of a carob and of a sycamore tree, whose roots extend farther, one must distance the tree fifty cubits. This is the halakha whether the cistern or tree is located above or to the side of the other. If the digging of the cistern preceded the tree, the owner of the tree cuts down the tree and the owner of the cistern pays him money. And if the tree preceded the cistern the owner of the tree need not cut down the tree. If it is uncertain whether this came first or that came first, the owner of the tree need not cut down the tree. Rabbi Yosei says: Even if the cistern preceded the tree, the owner of the tree need not cut down the tree. This is due to the fact that this one digs in his own property, and that one plants in his own property.

236 GEMARA: The Gemara discusses the mishna’s statement that a tree must be distanced if it is above a cistern. A Sage taught: This is the halakha whether the cistern is below and the tree is above, or whether the cistern is above and the tree is below. The Gemara asks: Granted, if the cistern is below and the tree is above, it will cause damage, as the roots extend and damage the cistern when they breach its walls. But if the cistern is above and the tree is below, why should he have to distance the tree, considering that the roots extend downward? Rabbi Ḥagga says in the name of Rabbi Yosei: He must distance the tree because its roots form holes in the ground and ruin the floor of the cistern.

237 Rabbi Yosei says: Even if the cistern preceded the tree, the owner of the tree need not cut down the tree. This is due to the fact that this one digs in his own property, and that one plants in his own property. Rav Yehuda says that Shmuel says: The halakha is in accordance with the opinion of Rabbi Yosei. Rav Ashi said: When we were studying in the study hall of Rav Kahana, we would say that Rabbi Yosei concedes with regard to one’s arrows, i.e., one must distance his activities from his neighbor if his actions will cause immediate damage to his neighbor, even if he is acting on his own property.

238 The Gemara relates that a man called Pappei Yona’a was poor and became wealthy. He built a mansion [appadna] on his land. There were these sesame seed pressers in his neighborhood who would work, and when they would press the sesame seeds their activity would shake his mansion. He came before Rav Ashi to complain. Rav Ashi said to him: When we were studying in the study hall

of Rav Kahana, we would say that Rabbi Yosei concedes with regard to one’s arrows. Here too, because the sesame seed pressers cause immediate damage they must distance themselves.

239 The Gemara asks: And how much must the mansion shake for the owner to have the right to compel the sesame seed pressers to distance themselves?

240 It must shake enough that the lid [nakhtema] positioned at the mouth of a jug shakes if it is placed on a wall.

241 The Gemara relates: When the members of the household of bar Maryon, son of Ravin, would beat their flax, the chaff [rakta] would fly off and harm people. Those people came before Ravina to complain. Ravina said to them: When we say that Rabbi Yosei concedes with regard to his arrows, this statement applies only when the damaging item moves by his direct force. Here, by contrast, it is the wind that carries the chaff.

242 Mar bar Rav Ashi objects to this: In what way is this case different from one who winnows on Shabbat by throwing the grain into the wind so that the chaff is blown away and the wind assists him? That is considered a primary category of labor on Shabbat despite the fact that the act is performed partly with the aid of the wind. The Gemara relates that the Sages stated this objection with regard to beating flax before Mareimar. Mareimar said to them: This case is the same as one who winnows and the wind assists him. Just as this is considered his direct force for the purposes of the halakhot of Shabbat, it is likewise considered his direct force with regard to the halakhot of damages.

243 The Gemara asks: And according to the opinion of Ravina, who rejects this comparison and claims that flying chaff is not considered one’s arrow, in what way is this situation different from that of a spark that flies from a hammer and causes damage, in which case all agree that the one wielding the hammer is liable to pay? The Gemara answers: There, it is preferable for him that the spark go as far as possible, rather than staying nearby. Here it is not preferable for him, i.e., it is immaterial to him, that the chaff go some distance.

244 MISHNA: A person may not plant a tree near the field of another unless he distances it four cubits from the field. This is the case whether he is planting grapevines or any kind of tree. If there was a fence between them, this one may place, i.e., plant, his grapevines or trees close to the fence from here, and that one may place, i.e., plant, his produce close to the fence from there.

245 If the roots were spreading into the field of another, the owner of the field may dig to a depth of three handbreadths even if he severs those roots, so that they do not impede his plow. If he was digging a cistern in that spot, or a ditch, or a cave, and he came upon the roots of his neighbor’s tree, he may cut downward normally, and the wood from the roots is his.

246 GEMARA: A tanna taught: The four cubits that the Sages stated one must leave between a vineyard and a neighbor’s field are for the work of the vineyard, so that the owner of the vineyard does not take oxen and a plow into his neighbor’s field while working his vineyard. Shmuel says: They taught this halakha only with regard to Eretz Yisrael, but in Babylonia two cubits are sufficient, as their plows are shorter. This opinion is also taught in a baraita: A person may not plant a tree near the field of another unless he distances the tree two cubits from the field. But didn’t we learn in the mishna: Four cubits? Rather, is it not correct that there is a difference between Eretz Yisrael and

Babylonia in this regard, as stated by Shmuel? The Gemara concludes: Indeed, learn from it that it is so.

[247] And there are those who raise this matter in the form of a contradiction. We learned in the mishna that a person may not plant a tree near the field of another unless he distances it four cubits from the field. But isn't it taught in a baraita that two cubits are sufficient? Shmuel said that this is not difficult: Here it is referring to Babylonia, whereas there it is referring to Eretz Yisrael.

[248] The Gemara relates: Rava bar Rav Ḥanan had these palm trees that stood adjacent to the boundary of Rav Yosef's vineyard. Birds would come and roost on the palm trees and would subsequently descend to the vineyard and damage it. Rav Yosef said to Rava bar Rav Ḥanan: Go and cut down your palm trees. Rava bar Rav Ḥanan said to him: But I distanced them the required amount. Rav Yosef said to him: This matter, i.e., this specific distance, applies only to trees, but a greater distance is required for vines.

[249] Rava bar Rav Ḥanan protested: But didn't we learn in the mishna that this is the halakha whether he is planting grapevines or any kind of tree? Rav Yosef said to him: This matter applies only to the distance between one tree and another tree, or the distance between one vine and other vines. But with regard to the space between a tree and vines, one requires a greater distance.

[250] Rava bar Rav Ḥanan said to him: I myself will not cut them down, as Rav said: With regard to this palm tree that produces one kav of fruit, it is prohibited to cut it down, due to the verse: "You shall not destroy the trees" (Deuteronomy 20:19). And Rabbi Ḥanina says: My son Shikhḥat died only because he cut down a fig tree before its time. Rava bar Rav Ḥanan continued: If the Master is amenable to do so, he may cut them down, but I will not do it.

[251] The Gemara further relates that Rav Pappa had these palm trees that stood adjacent to the boundary of the property of Rav Huna, son of Rav Yehoshua. He went and found Rav Huna digging and cutting his roots. Rav Pappa said to him: What is this? Rav Huna said to him that we learned in the mishna: If the roots were spreading into the field of another, the owner of the field may dig to a depth of three handbreadths even if he severs those roots, so that they do not impede his plow.

[252] Rav Pappa said to him: This statement applies only up to three handbreadths, whereas the Master is digging and cutting more than three. Rav Huna said to him: I am digging cisterns, ditches, and caves, as we learned in the mishna: If he was digging a cistern, a ditch, or a cave, he may cut downward normally and the wood from the roots is his. Rav Pappa said: I told him all the proofs I could find, but I was unable to convince him that I was correct,

[253] until I told him that which Rav Yehuda says: With regard to a strip of land over which the public has an acquired privilege of use, one may not destroy it. Here too, since I have an acquired privilege of use of this land, you are not permitted to destroy that which I possess. After Rav Pappa left, Rav Huna, son of Rav Yehoshua, said: Why did I not say to him that there, an acquired privilege of use is effective when it is within sixteen cubits, as within that area the roots are considered part of the tree, whereas here I cut the roots of the palm trees beyond sixteen cubits.

[254] § The mishna teaches that if he was digging a cistern, a ditch, or a cave, he may cut downward and the wood is his. The Sage Ya'akov of Hadeyyav raised a dilemma before Rav Ḥisda: To whom does the wood belong? The mishna says that the wood is his, without specifying to which of the two individuals this refers, the owner of the tree or the owner of the land.

255 Rav Ḥisda said to him: You learned the answer in a mishna in tractate Me’ila (13b). If roots of a tree belonging to an ordinary person [hedyot] extend into a field belonging to the Temple treasury, one may not derive benefit from them, but if one derived benefit from them he is not liable for misuse of consecrated property. That is, even if one does transgress the prohibition and benefit from them, it is not considered misuse and he is not liable to bring an offering.

256 Granted, if you say that we follow the tree, and the roots are considered part of it, it is due to that reason that one is not liable for misuse, as the tree is not consecrated. But if you say we follow the land, i.e., the roots belong to the land’s owner, why is he not liable for misuse of consecrated property?

257 The Gemara asks: Rather, what will you say, that we follow the tree? If so, say the last clause of that mishna: If roots of a tree belonging to the Temple treasury extend into a field of an ordinary person, one may not derive benefit from them, but if one derived benefit from them he is not liable for misuse of consecrated property. But if we follow the tree, why is he not liable for misuse of consecrated property?

258 The Gemara responds: Are the cases comparable? In both clauses of the mishna we are dealing with growths that came thereafter, i.e., after the tree was consecrated, and the tanna of that mishna holds that with regard to growths that grew from a consecrated plant or tree, they are not subject to the halakhot of misuse of consecrated property. Only the original plant is. Consequently, there is no connection between that mishna and the question of whether roots are considered part of the tree or part of the land.

259 Ravina said that it is not difficult: Here, in the first clause of the mishna in Me’ila, it is referring to within sixteen cubits of the tree. In this case the roots are considered part of the tree. There, in the second clause, it is referring to roots beyond sixteen cubits, in which case the roots are considered part of the ground where they are found.

260 Ulla said: An individual who maintains a tree that is within sixteen cubits of a boundary is a robber, as it draws nourishment from the neighbor’s land, and one does not bring first fruits from it, since that would be a mitzva that is fulfilled by means of a transgression.

261 The Gemara asks: From where does Ulla derive that measurement? If we say it is from that which we learned in a mishna (Shevi’it 1:6), this is problematic. That mishna teaches: If there were ten saplings scattered in a beit se’a, one may plow the entire beit se’a for their sake until Rosh HaShana of the Sabbatical Year. Although it is prohibited to plow other land in the time leading into the Sabbatical Year, to avoid the appearance of preparing to work the ground in that year, it is permitted to do so for the purpose of sustaining these young trees.

262 The Gemara calculates: How much is the area of a beit se’a? It is 2,500 square cubits. And how much area is allocated for each and every one of the ten trees? It is 250 square cubits. This is not the distance that Ulla taught. An area of sixteen cubits to each side of the tree is a square of thirty-two by thirty-two cubits, or 1,024 square cubits, which is much larger than 250.

263 But rather, Ulla derived this measurement from that which we learned in the following mishna (Shevi’it 1:5): If there were three large trees belonging to three different people in one beit se’a, these trees combine, and one may plow the entire

[264] beit se’a for their sake. How much is that area in cubits? It is 2,500 square cubits. And how much area is that for each of the trees? It is 833⅓. Still, Ulla's amount is greater than this. The Gemara answers: Ulla was not precise in this matter.

[265] The Gemara asks: One can say that we say that a Sage was not precise in his measurements when his ruling leads to a stringency; but do we say that he was not precise if his measurements lead to a leniency? According to the previous explanation, Ulla exempts the owner of a tree from first fruits even in a case where his tree does not in fact draw nourishment from his neighbor’s field.

[266] The Gemara answers: Do you maintain that we say the roots extend that far in a square, i.e., one measures sixteen cubits to each side of the tree? Not so; we say this with regard to a circle, that is, the roots extend in a circle surrounding the tree, as the area of a circle is smaller than that of the square circumscribing it.

[267] The Gemara asks: Now, by how much is the area of a square greater than the area of a circle with a diameter the length of the side of that square? It is greater by one-quarter of the area of the circle. If so, 768 square cubits, three-quarters of 1,024, remain for each tree, but there still remains half a cubit more based on the mishna’s calculation. In other words, the measurement would be more accurate if a tree is considered to draw nourishment from a distance of sixteen and a half cubits on each side. The Gemara answers: This is why we said that Ulla was not precise, and he was not precise in a manner that leads to a stringency, as one brings first fruits even from a tree that stands just sixteen cubits from the boundary, rather than 16½.

[268] The Gemara cites a proof against the opinion of Ulla. Come and hear the following mishna (Bikkurim 1:11): One who buys a tree and its land brings first fruits and recites the requisite Torah verses (Deuteronomy 26:5–11) over them. What, is it not referring to a case where one buys any amount of land with the tree? The Gemara rejects this claim: No; it is referring to a case where one buys sixteen cubits of land around the tree.

[269] The Gemara suggests: Come and hear an additional proof from another mishna (Bikkurim 1:6): If one bought two trees in the field of another, he brings first fruits and does not recite the verses, because the land does not belong to him. It may be inferred from here that if he bought three trees he does bring first fruits and recite the verses. What, is it not referring to a case where one buys any amount of land with the trees? The Gemara rejects this claim as well: No; here too it is referring to a case where he acquires sixteen cubits of land around the trees.

[270] The Gemara suggests: Come and hear a proof from a mishna (Pe’a 3:6). Rabbi Akiva says: The owner of land of any size is obligated in pe’a and in first fruits, and a lender can write a document that prevents the Sabbatical Year from abrogating an outstanding debt [prosbol] for this land, so that loans he provided will not be canceled at the close of the Sabbatical Year,

[271] and he can acquire property that does not serve as a guarantee, i.e., movable property, along with it. There are specific modes of acquisition for movable property, but if one is acquiring any amount of land at the same time as the movable property, the mode of acquisition employed to acquire the land suffices for the acquisition of the movable property as well. Apparently, any amount of land is subject to first fruits, whereas according to Ulla a tree acquired with less than sixteen cubits of land surrounding it draws nourishment from the land surrounding it and is exempt from first fruits. The Gemara rejects this: With what are we dealing here? We are dealing with wheat, which is subject to the halakhot of first fruits and requires very little land to nourish it.

[272] The Gemara comments that the language of the mishna is also precise, as it teaches: Land of any size, which indicates even a miniscule amount, and all normal trees certainly require more land than that. The Gemara affirms: Learn from it that it is so.

[273] The Gemara further suggests: Come and hear a proof from a baraita (Tosefta, Ma’asrot 2:22): If there is a tree, part of which is in Eretz Yisrael and part of which is outside of Eretz Yisrael, it is considered as though untithed produce, i.e., produce that is subject to the halakhot of terumot and tithes, and non-sacred produce, i.e., produce that is exempt from the halakhot of terumot and tithes, are mixed together in each one of this tree’s fruits. This is the statement of Rabbi Yehuda HaNasi.

[274] Rabban Shimon ben Gamliel says: With regard to the fruits in the part of the tree that is growing in a place where there is an obligation to separate tithes, i.e., in Eretz Yisrael, the owner is obligated to separate tithes. With regard to the fruits that are growing in a place where there is an exemption from separating tithes, i.e., outside of Eretz Yisrael, the owner is exempt.

[275] The Gemara comments: They disagree only in that one Sage, Rabban Shimon ben Gamliel, holds that there is retroactive designation, and therefore it is assumed that the nourishment drawn from Eretz Yisrael sustained the fruit that grew on that side of the tree, and the nourishment drawn from outside Eretz Yisrael sustained the fruit that grew there. And one Sage, Rabbi Yehuda HaNasi, holds that there is no retroactive designation, and the fruit is considered mixed.

[276] But if the tree grew entirely in a place where there is an exemption from separating tithes, i.e., outside Eretz Yisrael, all agree that the owner is exempt, even though the tree might have roots within sixteen cubits of Eretz Yisrael and draw nourishment from there. This presents a difficulty for the opinion of Ulla, as he claims that the place from where a tree draws its nourishment is decisive with regard to first fruits.

[277] The Gemara answers: With what are we dealing here? We are dealing with a case where a rock divides the roots up to the trunk, and therefore it is possible to distinguish between the parts of the tree that draw nutrients from Eretz Yisrael and the parts that draw nutrients from outside of Eretz Yisrael. The Gemara asks: If so, what is the reasoning of Rabbi Yehuda HaNasi? Why does he view the fruits as being a mixture? The Gemara answers: He holds that although there is a division between the roots, they cannot be distinguished from one another, as they then become mixed in the body of the tree.

[278] The Gemara asks: And with regard to what principle do they disagree? The Gemara answers: One Sage, Rabbi Yehuda HaNasi, holds: The air above the ground mixes the nutrients, and one Sage, Rabban Shimon ben Gamliel, holds: This part of the tree stands alone and this part of the tree stands alone. From the roots up to the branches, it is as if the tree were cut along the line of the border.

[279] The Gemara raises a difficulty against Ulla’s opinion from a different perspective: And do roots extend sixteen cubits and no more? Didn’t we learn in a mishna (25b): One must distance a tree twenty-five cubits from a cistern? This indicates that tree roots reach more than sixteen cubits. Abaye said: The roots extend farther, but they weaken the ground only up to sixteen cubits; with regard to an area any more distant than that, they do not weaken the ground.

[280] Concerning this matter the Gemara relates that when Rav Dimi came from Eretz Yisrael he said: Reish Lakish raised a dilemma before Rabbi Yoḥanan: With regard to a tree that is within sixteen

cubits of a boundary, what is the halakha? Rabbi Yoḥanan said to him: The owner is a robber, and one does not bring first fruits from it.

281 By contrast, when Ravin came from Eretz Yisrael, he related that Rabbi Yoḥanan says: Both in the case of a tree that is close to a boundary and a tree that leans into a neighbor’s yard, one brings first fruits and recites the verses, as it was on this condition that Joshua apportioned Eretz Yisrael to the Jewish people, i.e., that they would not be particular about such matters.

282 MISHNA: With regard to a tree that leans into the field of another, the neighbor may cut the branches to the height of an ox goad raised over the plow, in places where the land is to be plowed, so that the branches do not impede the use of the plow. And in the case of a carob tree and the case of a sycamore tree, whose abundance of branches cast shade that is harmful to plants, all the branches overhanging one’s property may be removed along the plumb line, i.e., along a line perpendicular to the boundary separating the fields. And if the neighbor’s field is an irrigated field, all branches of the tree are removed along the plumb line. Abba Shaul says: All barren trees are cut along the plumb line.

283 GEMARA: A dilemma was raised before them: Is Abba Shaul referring to the first clause of the mishna, which states that a tree extending into a neighbor’s field is cut only to the height of an ox goad, and Abba Shaul maintains that barren trees have the same halakha as carob and sycamore trees in that they are cut along the plumb line? Or is he referring to the latter clause, which discusses an irrigated field, and he permits cutting only barren trees along the plumb line, but not fruit trees?

284 The Gemara answers: Come and hear a resolution to this dilemma, as it is taught in a baraita: With regard to an irrigated field, Abba Shaul says: All types of trees are cut along the plumb line, because the shade is harmful to an irrigated field. This shows that he does not dispute the halakha of the latter clause. Learn from it that he is referring to the first clause of the mishna. The Gemara affirms: Learn from it that it is so.

285 Rav Ashi said that the wording of the mishna is also precise, as it teaches: All barren trees. Granted, if you say that Abba Shaul is referring to the first clause of the mishna, this is the reason that Abba Shaul teaches: All barren trees. But if you say that he is referring to the latter clause, he should have said simply: Barren trees, as the first tanna permits one to cut down any type of tree. Rather, isn’t it correct to conclude from it that he is referring to the first clause? The Gemara affirms: Learn from it that it is so.

286 MISHNA: With regard to a tree that extends into the public domain, one cuts its branches so that a camel can pass beneath the tree with its rider sitting on it. Rabbi Yehuda says: One cuts enough branches that a camel loaded with flax or bundles of branches can pass beneath it. Rabbi Shimon says: One cuts all branches of the tree that extend into the public domain along the plumb line, so that they do not hang over the public area at all, due to ritual impurity.

287 GEMARA: The Gemara asks: Who is the tanna who taught that with regard to damage one follows the current assessment, and future damage is not taken into account? The mishna states that the tree’s branches are cut to the height of a camel and its rider or load but no more, despite the fact that they will certainly grow again.

288 Reish Lakish says: This halakha is taught as a dispute, and it is the opinion of Rabbi Eliezer. As we learned in a mishna (60a): One may not make an empty space beneath the public domain by

digging pits, ditches, or caves. Rabbi Eliezer permits one to dig a pit if it is subsequently covered with material strong enough that a wagon loaded with stones can travel on it without it collapsing. If the cover can withstand such weight when the pit is dug, it is permitted, despite the fact that the cover might eventually rot.

[289] Rabbi Yoḥanan said: You may even say that the mishna here represents the opinion of the Rabbis, who prohibit one from digging beneath the public domain under any circumstances. The difference is that there, the cover will occasionally deteriorate, and as this matter is not on his mind it will cause damage. But here, as each branch grows he cuts it off. Since the potential cause of damage is visible, there is no concern that it might be neglected.

[290] § The mishna teaches that if the branches of a tree extend into the public domain, one may cut them to allow a camel and its rider to pass underneath; Rabbi Yehuda says: One cuts enough branches that a camel loaded with flax or bundles of branches can pass beneath it. A dilemma was raised before the Sages: Is Rabbi Yehuda's measure greater, or is perhaps the Rabbis' measure greater? Which reaches a greater height, a camel and rider or a camel loaded with flax?

[291] The Gemara answers: It is obvious that the Rabbis' measure is greater, as, if it enters your mind that Rabbi Yehuda's measure is greater, how would the Rabbis act in the circumstance of Rabbi Yehuda's measure? It is clear that a camel will have to pass beneath the tree with a burden, and it would not be able to do so. The Gemara expresses surprise at this claim: Rather, what then would you say? That the Rabbis' measure is greater? If so, how would Rabbi Yehuda act in the circumstance of the Rabbis' measure? It is also clear that a camel will have to pass there with its rider. The Gemara answers: It is possible for the rider to bend over and to pass underneath the branches.

[292] § The mishna teaches that Rabbi Shimon says: One cuts all branches of the tree that extend into the public domain along the plumb line, due to ritual impurity. The Gemara explains: A tanna taught in a baraita that this is due to ritual impurity imparted in a tent. Branches over a corpse might create a tent, thereby transferring impurity to whatever is beneath the branches, rendering impure those passing under the tree in the public domain. The Gemara expresses surprise at this statement: It is obvious that this is the reason. We already learned that it is due to ritual impurity. How else could ritual impurity be transferred through branches other than by means of a tent?

[293] The Gemara answers: If this is learned from the mishna alone, I would say that the concern is that perhaps a crow might bring a source of impurity and perch on the tree's branches and throw it there. And if that were the only concern, a mere scarecrow [bedaḥlulei] would be sufficient to frighten the crows away and prevent that type of impurity. Therefore, the tanna of the baraita teaches us that the concern is due to impurity imparted in a tent.

Chapter 3

[1] MISHNA: With regard to the presumptive ownership of houses; and of pits; and of ditches; and of caves, which are used to collect water; and of dovecotes; and of bathhouses; and of olive presses; and of irrigated fields, which must be watered by people; and of slaves; and all similar property that constantly, i.e., throughout the year, generates profits, their presumptive ownership is established by working and profiting from them for a duration of three years from day to day. If the one in

possession of the property can prove that he worked and profited from it for the previous three full years, there is a presumption that it belongs to him, and would remain in his possession if another were to claim that the property belonged to him or to his ancestors.

[2] With regard to a non-irrigated field, i.e., one that is watered by rain, in which produce grows during certain seasons during the year, its presumption of ownership is established in three years, but they are not from day to day, since the fields are not worked and harvested continually throughout the three-year period.

[3] Rabbi Yishmael says: Three months of possession in the first year, three months of possession in the last year, and twelve months of possession in the middle, which are eighteen months, suffice to establish the presumption of ownership with regard to a non-irrigated field.

[4] Rabbi Akiva says: A month of possession in the first year, and a month of possession in the last year, and twelve months of possession in the middle, which are fourteen months, suffice to establish the presumption of ownership with regard to a non-irrigated field.

[5] Rabbi Yishmael said: In what case is this statement, that eighteen months are required for a non-irrigated field, said? It is said with regard to a white field [bisdeh lavan], i.e., a grain field. But with regard to a field of trees, once he gathered his produce, and then harvested his olives, and then gathered his figs, these three harvests are the equivalent of three years. Since he harvested three types of produce, this is equivalent to having possessed the field for three years.

[6] GEMARA: Rabbi Yoḥanan says: I heard from those who travel to Usha to study with the Sages there that they would say: From where is it derived that presumptive ownership is established in three years? From the forewarned ox: Just as in the case of a forewarned ox, once it has intentionally gored three gorings, it left the presumptive status of an innocuous ox and it is established as having the presumptive status of a forewarned ox, here too, once he has worked and profited from the land for three years, the land left the possession of the seller, and it is established as being in the possession of the buyer.

[7] The Gemara questions this comparison: If so, say that just as with a forewarned ox, the owner is not liable to pay full damages until the fourth goring, here too, the land should not be established as being in his possession until the fourth year. The Gemara rejects this question: How can these cases be compared? There, once it has gored three times it is forewarned,

[8] and the requirement for there to be another, fourth, incident for the owner to be liable to pay full damages exists because before it gores after having become a forewarned ox, what is there for the owner to pay? Here, once he has worked and profited from the land for three years, the land is established as being in his possession.

[9] The Gemara asks: If that is so, according to the explanation that the forewarned ox is the source for the presumption of ownership with regard to land, even possession that is not accompanied by a claim, i.e., where the possessor has no explanation as to how he acquired it, should be sufficient to establish the presumption of ownership, just as goring three times automatically establishes its having the status of a forewarned ox. Why did we learn in a mishna (41a): Any possession that is not accompanied by a claim explaining how the possessor became the owner is not sufficient to establish the presumption of ownership?

[10] The Gemara answers: What is the reason that possession that is not accompanied by a claim is not sufficient to establish the presumption of ownership? Because in a standard case where one has presumptive ownership, we say that even if the claimant proves that the field was once his, since the other is in possession of the land, perhaps the truth is as he says, that he purchased it from the previous owner. But now that he himself does not claim that he purchased it, will we claim this for him?

[11] Rav Avira objects to the explanation that the presumption with regard to land is derived from the halakha of a forewarned ox: If that is so, a protest that the claimant lodges during the three years not in the presence of the possessor should not be considered a protest, because it must be similar to the halakha of a forewarned ox: Just as we require that the testimony concerning a forewarned ox be in its owner's presence, so too here, we should also require that a protest be lodged in the possessor's presence.

[12] The Gemara answers: This is not difficult. There, with regard to a forewarned ox, it is written: "And warning has been given to its owner" (Exodus 21:29), indicating that the warning must be issued in the presence of the owner. Here, with regard to the protest, your friend has a friend, and the friend of your friend has a friend, so that the protest will become known even if lodged not in the presence of the possessor, as word of it will spread. There is no Torah edict mandating that the protest be lodged in his presence, and it is sufficient that he hears of it, even secondhand.

[13] The Gemara further asks: And according to Rabbi Meir, who says: When the ox performs its gorings at intervals its owner is liable, if it performs its gorings successively, is it not all the more so the case that its owner is liable? According to his opinion, the animal must gore only three times to become forewarned, and it is not required that the gorings occur on three separate days; they can all occur on the same day. Similarly, one could say that if he profited from the field by consuming three fruits of, for example, a fig tree, within one day, that should be sufficient to establish the presumption of ownership.

[14] The Gemara answers: This would not be a valid comparison, as presumptive ownership with regard to land must be similar to the halakha of a forewarned ox: Just as with a forewarned ox, at the time when the animal has this goring, it does not have that goring, as each act of goring occurs at a separate time, here too, in order for the consumption of the produce to establish the presumption of ownership, it must be that at the time when this fruit is here, that fruit is not here. When all the produce of the field is extant concurrently, consumption of this produce does not establish the presumption of ownership, even if the produce is consumed at three different times.

[15] The Gemara asks: Based on this, if he profited from the field by consuming three fruits within three consecutive days, for example, the fruits of a caper bush, whose fruits ripen day after day, that should be sufficient to establish the presumption of ownership, as all three fruits were not ripe concurrently. The Gemara answers: There, with regard to the caper bush, at least the fruit is here and it is in the process of finishing its ripening during the three days. This is not similar to the goring ox, where each goring is fully independent of the others.

[16] The Gemara challenges: Based on this, if he profited from the field by consuming three fruits within thirty days, for example, alfalfa [aspasta], which quickly regrows when cut, and which is repeatedly cut over a short period of time, that should be sufficient to establish the presumption of ownership. The Gemara explains: What are the circumstances where it could regrow three times

within thirty days? Where it grows a little and he cuts and consumes it, where it grows a little more and he consumes it, such that he cuts it three times within thirty days. There, he is seizing and consuming the alfalfa, which is not the normal way of farming it, and consequently he does not establish the presumption of ownership, which is established only through standard use of the land.

17 The Gemara challenges: Based on this, if he profited from the field by consuming three fruits within three months, for example, alfalfa, where he did employ the standard method of harvesting it, that should be sufficient to establish the presumption of ownership. The Gemara explains: Who are they who travel to Usha whose opinion is under discussion? It is Rabbi Yishmael. Indeed, according to Rabbi Yishmael, this would establish the presumption of ownership.

18 This is as we learned in the mishna that Rabbi Yishmael says: In what case is this statement, that eighteen months are required for a non-irrigated field, said? With regard to a white field, i.e., a grain field. But with regard to a field of trees, once he gathered his produce, and then harvested his olives, and then gathered his figs, these three harvests are the equivalent of three years. Rabbi Yishmael is of the opinion that three harvests are sufficient.

19 The Gemara asks: According to the Rabbis, who hold that three years, and not three harvests, are required to establish the presumption of ownership, what is the source for the concept of this type of presumptive ownership?

20 Rav Yosef said that it is written in the verse detailing the purchase of a field from Hanamel by Jeremiah, his cousin, during the time of the siege of Eretz Yisrael: “Men shall buy fields for money, and subscribe the deeds, and seal them” (Jeremiah 32:44). This describes the writing of a bill of sale to serve as proof of ownership of the field, since he was unable to remain living there for three years to establish the presumption of ownership. As the prophet Jeremiah stood in the tenth year of King Zedekiah’s reign and warned people to write bills of sale for the eleventh year, when Eretz Yisrael would be overrun. Consequently, despite the fact that one purchasing a field there would be able to live on the land for two years, this would not be sufficient to establish the presumption of ownership, which is why he said that they should have bills of sale written.

21 Abaye said to him: Perhaps there he merely teaches us good advice, that it is advisable to have documents to preclude the need to present witnesses that can attest that one had been living on the land. This is not a proof that the presumption of ownership cannot be established in less than three years.

22 Because if you do not say so, then when he states: “Build houses, and dwell in them, and plant gardens, and eat the fruit of them” (Jeremiah 29:5), what halakhic statement was he saying? Rather, he teaches us good advice, and here too he teaches us good advice. The Gemara comments: Know that this was mere advice, as it is written: “And put them in an earthen vessel; that they may continue many days” (Jeremiah 32:14). This is obviously good advice to preserve the items properly, and is not a halakhic statement. Therefore, this is not a proof that the presumption of ownership cannot be established in under three years.

23 Rather, Rava said a different reason: A person who sees another profiting from his field might waive his rights during the first year, and he might waive his rights for two years, but he will not waive his rights for three years. Therefore, if one does not lodge a protest by the end of the third year, it is tantamount to a concession that the land is not his.

[24] Abaye said to him: If that is so, when it becomes clear that the land is in fact owned by another and it is returned to its owner, it should be returned, save for the produce that the possessor consumed during the first two years, as the owner waived his rights to it. Why did Rav Naḥman say: The land is returned and the produce is returned?

[25] Rather, Rava said a different reason: A person is not particular the first year to lodge a protest, and he is not particular for two years, even though he does not waive his rights to the produce. He is particular to lodge a protest when he sees another profiting from his field for three years. Therefore, if one does not lodge a protest by the end of the third year, it is tantamount to a concession that the land is not his.

[26] Abaye said to him: If that is so, for people such as those of the bar Elyashiv household, who are particular even with regard to one who goes on the boundary of their field, here too, will you say that presumptive ownership is established immediately, as soon as one makes use of their property without their lodging a protest? And if you would say that is indeed the halakha, if so, you have subjected your statement to the varying circumstances of each case, as there will be a different length of time needed to establish the presumption of ownership depending on who the prior owner is. This is untenable.

[27] Rather, Rava said a different reason: A person is careful with his document detailing his purchase of land for the first year after the purchase, and he is also careful for two and three years. For more time than that, he is not careful and might discard the document if no one has lodged a protest concerning his possession of the land. Therefore, the Sages ruled that after three years have passed, he can prove his ownership by means of presumptive ownership.

[28] Abaye said to him: If that is so, a protest that is lodged not in his presence should not be a valid protest, and if three years pass with no protest in his presence, presumptive ownership should be established even if there was a protest lodged before other people. This is because the one possessing the land can say to the claimant: If you had protested in my presence, I would have been careful with my document and would not have discarded it.

[29] The Gemara explains that this claim would not be accepted, because the claimant can say to him: Your friend has a friend, and your friend's friend has a friend, and the assumption is that word of the protest reached you.

[30] § Rav Huna says: The three years that the Sages said are required to establish the presumption of ownership is referring to when he worked and profited from the field in consecutive years. The Gemara asks: What is Rav Huna teaching us with this statement? We learned this in the mishna: Their presumption of ownership is established by use for a duration of three years from day to day. The Gemara answers: Lest you say that the phrase: From day to day, serves to exclude partial years and to teach that each of the three years must be full, and actually even scattered, i.e., non-consecutive, years are sufficient, therefore, Rav Huna teaches us that the years must be consecutive.

[31] Rav Ḥama says: And Rav Huna concedes with regard to locations where they leave fields [bagei] to lie fallow by planting in alternate years, that the three years combine despite not being consecutive, as that is the manner in which owners profit from the land.

[32] The Gemara asks: Isn't it obvious that this is the halakha? The Gemara answers: No, it is necessary to state this with regard to locations where there are some people who leave the fields to lie

fallow and there are some people who do not leave the fields to lie fallow, and this man left the field to lie fallow. Lest you say that the claimant can say to him: If it is so that the land is yours, you should have sown it, therefore, Rav Ḥama teaches us that the possessor can say to the claimant: I am not able to hire someone to guard one parcel of land within an entire field, and I acted like those who own other land in this location and let the field lie fallow.

[33] And alternatively, the possessor can say to the claimant: In this manner of farming it is beneficial for me to farm, because the land produces more later, and I do not wish to plant year after year and weaken the soil.

[34] The Gemara clarifies Rav Huna's statement that the presumption of ownership can be established only by consecutive use. We learned in the mishna about the presumptive ownership of houses. But with regard to the use of houses, where the witnesses attesting to its use know who uses the house only in the day, but they do not know who uses the house in the night, how then can one establish the presumption of ownership in the case of a house? The possessor's use is not consecutive, as it is continually interrupted by the nights.

[35] Abaye said: Who testifies about houses? Neighbors, and neighbors know who is inside in the day and in the night.

[36] Rava said that there is another scenario in which one can bring witnesses with regard to the use of a house. This is such as when two people come and say: We rented the house from him and we lived in it for three years, in the day and in the night. This testimony substantiates that the house was used under the authority of the one who is attempting to prove that he has established the presumption of ownership.

[37] Rav Yeimar said to Rav Ashi: How can their testimony be relied upon? These witnesses are biased in their testimony, because if they do not say this testimony, that they rented the house from the possessor for three consecutive years, we say to them: Go and give payment for the rental of the house to that one who is claiming ownership, as the one you paid has not established that he is the true owner.

[38] Rav Ashi said to him: Low-level judges rule this way. In other words, only a court composed of ignorant judges would accept the testimony of the renters of the house in a case where they are biased in their testimony. Nevertheless, Rava's scenario is still possible, as, are we not dealing with a case where they are holding the money for the payment for the rental of the house, and they are saying to the court: To whom shall we give it? Therefore, they are not biased in their testimony, because they will pay the same amount, regardless of who the actual owner is.

[39] The Gemara quotes a related statement. Mar Zutra said: And if the claimant claims and says: Let two witnesses come to testify for the possessor that he lived in the house three years in the day and in the night, his claim is a legitimate claim.

[40] And Mar Zutra concedes with regard to peddlers who travel through cities, during which time others might live in their houses, that even though the claimant does not claim that he insists on testimony that there was continuous use, day and night, over three years, we the court claim this for him. Since people know they are traveling salesmen, it is more likely that people lived in their houses without permission and without their knowledge.

[41] With regard to the requirement for continuous day and night use to establish the presumption of ownership, the Gemara comments: And Rav Huna concedes with regard to a store in the town of Meḥoza, which is generally used in the day and is not generally used in the night, that one is not required to use it in the night to establish the presumption of ownership.

[42] With regard to the requirement of continuous use to establish the presumption of ownership, the Gemara relates that Rami bar Ḥama and Rav Ukva bar Ḥama purchased a maidservant together. One Sage made use of her during the first, third, and fifth years, and one Sage made use of her during the second, fourth, and sixth years. One individual who contested their ownership of the maidservant emerged and claimed that he was the owner.

[43] They came before Rava for a judgment. He said to them: What is the reason you acted like this, making use of her in alternate years, so that each of you would not establish the presumption of ownership concerning each other by making use of her for three consecutive years? Just as this usage does not establish the presumption of ownership with regard to you, it does not establish the presumption of ownership with regard to others, i.e., the claimant in this case, as well.

[44] The Gemara adds: And we said this only in a case where it was not written in a document that they are partners and are dividing the use, but if it was written in a document, the document generates publicity that they own the maidservant as partners rather than individually, and they can jointly establish the presumption of ownership.

[45] § The Gemara continues its discussion of the requirement for full use of land to establish the presumption of ownership. Rava says: If one worked and profited, for three years, from all of the land except for the area required for sowing a quarter-kav of seed [beit rova], which he did not use, he acquires all of the field based on presumptive ownership except for that beit rova.

[46] Rav Huna, son of Rav Yehoshua, says: And we said this ruling only where that beit rova is suitable for planting, but if it is not suitable for planting, he acquires it by means of the acquisition of the rest of the land.

[47] Rav Beivai bar Abaye objects to this: If that is so, how could one acquire an area that is only rock by establishing the presump-tion of ownership, as one does not plant rocky land? Rather, the presumption of ownership can be established by standing animals on it or spreading produce on it. Here too, he should be required to stand animals on the beit rova or to spread produce on it. If he did not profit from this small piece of land at all, he has not established the presumption of ownership with regard to it, and acquires only the rest of the field.

[48] § The Gemara relates that there was a certain person who said to another: What do you want, i.e., what are you doing, with this house of mine? The other said to him: I purchased it from you and I worked and profited from it for the years necessary for establishing the presumption of ownership. The claimant said to him: I was among the distant settlements, and was unaware that you were residing in my house, which is why I did not lodge a protest.

[49] The one residing in the house came before Rav Naḥman for a judgment. Rav Naḥman said to him: Go clarify your profiting, i.e., prove that you really resided there for three years, and then the case can be judged. Rava said to Rav Naḥman: Is this the correct judgment? The halakha is that the burden of proof rests upon the claimant. Therefore, the one who is attempting to take the house from the possessor should have to prove that the other did not reside in the house.

[50] And the Gemara raises a contradiction between this statement of Rava and another statement of Rava, and it raises a contradiction between this statement of Rav Naḥman and another statement of Rav Naḥman. As there was a certain person

[51] who said to another: I am hereby selling to you all of the property that I own of the house of bar Sisin. There was a certain parcel of land that was called: Of the house of bar Sisin. The seller said to the buyer: This parcel of land that I own is not actually of the house of bar Sisin, and it is merely called: Of the house of bar Sisin, and it is not included in the sale. They came before Rav Naḥman for judgment, and he established the land in the possession of the buyer. Rava said to Rav Naḥman: Is this the halakha? Isn’t the halakha that the burden of proof rests upon the claimant, and the land should remain in the possession of the seller?

[52] The Gemara continues: There is a difficulty from one statement of Rava to another statement of Rava, and there is also a difficulty from one statement of Rav Naḥman to another statement of Rav Naḥman, as in the first case, where the claimant states that he had been in a distant location, Rav Naḥman ruled in favor of the claimant, and Rava ruled in favor of the possessor; while in the second case, that of the property of bar Sisin, their opinions were reversed.

[53] The Gemara answers: The contradiction between one statement of Rava and another statement of Rava is not difficult, because there, in the case of the property of bar Sisin, the seller had been established as having the land in his property, which is why Rava rules in his favor. But here, in the case where the claimant states that he had been in a distant location, the buyer is established as having the house in his property.

[54] The contradiction between one statement of Rav Naḥman and the other statement of Rav Naḥman is not difficult as well, because there, since the seller said to him: I am hereby selling you all of the property that I own of the house of bar Sisin, and this parcel of land is called: Of the house of bar Sisin, it is incumbent on him to reveal that the parcel under dispute is not of the house of bar Sisin. But here, in the case where the claimant states that he had been in a distant location, it should not be any different from a case where the possessor is holding a document as evidence that he purchased the house. Wouldn’t we then say to him: First ratify your document, and only then be established in the property? In this case as well, since his presumptive ownership is in place of a document, he needs to clarify the matter by means of witnesses.

[55] There was a certain person who said to another: What do you want with this house of mine? The possessor said to him: I purchased it from you and I worked and profited from it for the years necessary for establishing the presumption of ownership. The claimant said to him: I was in the outer marketplaces, and was unaware that you were residing in my house, and therefore did not lodge a protest, so your profiting does not establish the presumption of ownership. The possessor said to him: But I have witnesses that every year you would come here for thirty days and had an opportunity to know that I was residing in your house and to lodge a protest. The claimant said to him: I was occupied with my business in the marketplaces for those thirty days. Rava said: A person is apt to be occupied with business in the marketplace for all of thirty days, and accepted his claim.

[56] There was a certain person who said to another: What do you want with this land of mine? The possessor said to him: I purchased it from so-and-so, who told me that he purchased it from you. The claimant said to him: Don’t you concede

[57] that this land is formerly mine, and that you did not purchase it from me? Go away; I am not legally answerable to you. Rava said: The claimant stated the halakha to the possessor, as this is a legitimate claim, and Rava accepted his claim.

[58] There was a certain person who said to another: What do you want with this land of mine? The possessor said to him: I purchased it from so-and-so and then I worked and profited from it for the years necessary for establishing the presumption of ownership. The claimant said to him: So-and-so is a robber who robbed me of the field, and he did not have the authority to sell it to you.

[59] The possessor said to him: But I have witnesses that I came and consulted with you, and you said to me: Go purchase the land, indicating that you conceded that he had the authority to sell it. The claimant said to him: The reason that I advised you to purchase it was because the second person, i.e., you, the possessor, is amenable to me, while the first, i.e., the purported thief, is more difficult than he, i.e., I prefer to litigate with you rather than with him. Rava said: The claimant stated the halakha to the possessor, as this is a legitimate claim, and Rava accepted his claim.

[60] The Gemara asks: In accordance with whose opinion is Rava's statement? Is it in accordance with the opinion of Admon? As we learned in a mishna (Ketubot 109a): With regard to one who contests ownership of a field, claiming that a field possessed by someone else actually belongs to him, and the claimant himself is signed as a witness on the bill of sale of the field to that other person, Admon says: His signature does not disprove his claim of ownership of the property, as it is possible that the claimant said to himself: The second person is amenable to me to deal with, as I can reason with him, while the first owner, who sold the field to the current possessor, is more difficult to deal with than he. And the Rabbis say: He lost his right to contest, as he signed a bill of sale that states that the field belongs to the possessor. Rava's ruling appears to be in accordance with the individual opinion of Admon, and not with the opinion of the Rabbis.

[61] The Gemara explains: You may even say that Rava's ruling is in accordance with the opinion of the Rabbis. There, in the case of the mishna in tractate Ketubot, by signing the bill of sale the claimant performed an action indicating that the field was not his for the benefit of the possessor of the field, but here, in Rava's case, there was no action, only speech, and a person is apt to casually say statements, and he does not lose his right by virtue of this.

[62] There was a certain person who said to another: What do you want with this land of mine? The possessor said to him: I purchased it from so-and-so and then I worked and profited from it for the years necessary for establishing the presumption of ownership. The claimant said to him: So-and-so is a robber who robbed me of the field, and he did not have the authority to sell it to you. The possessor said to him: But I have witnesses that you came to me at night and you said to me: Sell it to me, indicating that it is not your land, as if it were yours, you would have demanded that I return it without your paying for it. The claimant said to him: I said to myself: Let me purchase the benefit of avoiding my litigation in order to reclaim my land. Rava said: A person is apt to pay money to purchase the benefit of avoiding his litigation.

[63] There was a certain person who said to another: What do you want with this land of mine? The possessor said to him: I purchased it from so-and-so and then I worked and profited from it for the years necessary for establishing the presumption of ownership, indicating that he possessed it for three years, as this is the minimum number of years required for establishing the presumption of ownership. The claimant said to him: But I am holding a document stating that I purchased it from

that seller four years ago. Therefore, if it was sold to you three years ago, as you claim, he did not have the authority to sell it at that time.

64 The possessor said to him: Do you maintain that when I said: I profited from the land for the years necessary for establishing the presumption of ownership, that I was saying I worked and profited from the land for precisely three years? What I actually was saying was that I worked and profited from the land for many years and thereby established the presumption of ownership. Since my purchase predated yours, it was effective. Rava said: It is common for people to refer to many years as: Years necessary for establishing the presumption of ownership, and his claim is accepted.

65 The Gemara comments: And this matter applies only if he profited from the land for seven years, so that presumptive ownership of this possessor preceded the document of that claimant.

66 But if he profited from the land for only six years, so that the sale to the claimant took place before the years necessary for establishing the presumption of ownership were completed, you can have no greater protest than this, that the purported seller then sold the land to another. By doing so he indicated that he does not concede that the possessor was the rightful owner, and the possessor should have been careful to hold on to his bill of sale for even longer than three years.

67 There was an incident where two people disputed the ownership of land. This one says: The land belonged to my ancestors and I inherited it from them, and that one says: The land belonged to my ancestors and I inherited it from them. This one brings witnesses that the land belonged to his ancestors, and that one brings witnesses that he currently possesses the land and that he worked and profited from the land for the years necessary for establishing the presumption of ownership.

68 Rabba said: The judgment is in favor of the possessor, due to the legal principle that if the judgment would have been decided in one’s favor had he advanced a certain claim, and he instead advanced a different claim that leads to the same ruling, he has credibility, as why would he lie and state this claim? If the possessor wanted to lie, he could have said to the claimant: I purchased the land from you and I worked and profited from it for the years necessary for establishing the presumption of ownership, in which case he would have been awarded the land. Abaye said to Rabba: We do not say the principle of: Why would I lie, in a case where there are witnesses contradicting his current claim, as they testify that the land belonged to the ancestors of the claimant. Therefore, he should not be awarded the land.

69 The possessor then said to the claimant: Yes, it is true that it had belonged to your ancestors, but I purchased it from you, and by stating that which I said to you: It belonged to my ancestors, I merely meant that I rely upon my ownership of it as if it belonged to my ancestors, as I purchased it and then profited from it for the years necessary for establishing the presumption of ownership.

70 The Gemara asks: Can he state a claim and return and state a modified version of his claim, or can he not state a claim and return and state a modified version of his claim? Ulla said: He can state a claim and return and state a modified version of his claim. The Sages of Neharde’a say: He cannot state a claim and return and state a modified version of his claim.

71 The Gemara clarifies their respective opinions: And Ulla concedes that in a case where he had initially said to him: The land belonged to my ancestors and did not belong to your ancestors, that he cannot state a claim and return and state a modified version of his claim, as Ulla allows the litigant only to reinterpret his initial claim, not to replace it with a contradictory claim. And Ulla also

concedes that in a case where he was standing in court and did not state a particular claim, and he later came in from outside and back into the court and he stated that claim, that he cannot return and state that claim. What is the reason for this? It is because it is apparent that these claims of his were taught to him by someone after he left the court.

[72] And the Sages of Neharde’a concede that in a case where the litigant who changed his claim said to the other litigant that when he had initially claimed: The land belonged to my ancestors, he had actually meant: It belonged to my ancestors, who purchased it from your ancestors, that he can state a claim and return and state a modified version of his claim, as this serves only to clarify, and not negate, his initial claim. And the Sages of Neharde’a also concede that in a case where he discussed the matter outside of the court and did not state a particular claim, and then he came in to the court and stated that claim, that he can return and state that claim. What is the reason for this? Because a person is apt not to reveal his claims except to the court.

[73] Ameimar said: I am from Neharde’a, but I nevertheless hold that a litigant can state a claim and return and state a modified version of his claim. The Gemara concludes: And the halakha is that a litigant can state a claim and return and state a modified version of his claim.

[74] In an incident where two people dispute the ownership of land, this one says: The land belonged to my ancestors and I inherited it from them, and that one says: The land belonged to my ancestors and I inherited it from them. The first one brings witnesses that the land belonged to his ancestors, and that he worked and profited from the land for the years necessary for establishing the presumption of ownership. And the second one brings witnesses only that he worked and profited from the land for the years necessary for establishing the presumption of ownership.

[75] Rav Naḥman said: Establish the testimony with regard to the profiting by the first litigant alongside the testimony with regard to the profiting by the second, and the two testimonies cancel each other out, leaving the testimony with regard to ownership by the ancestors of the first litigant. And therefore, establish the land in the presumptive ownership of the litigant who brought witnesses that it belonged to his ancestors. Rava objected and said to him: This testimony cannot be relied on, as it is contradicted by the other testimony. Rav Naḥman responded and said to him: Although it is so that the testimony was contradicted with regard to profiting from the land,

[76] was the testimony contradicted with regard to ownership of the ancestors?

[77] The Gemara asks: Shall we say that Rava and Rav Naḥman disagree in the dispute between Rav Huna and Rav Ḥisda?

[78] As it was stated concerning two groups of witnesses that contradict each other, that Rav Huna says: This one comes to court on its own and testifies, and that one comes to court on its own and testifies. Despite the fact that one group certainly testified falsely, which should serve to disqualify one of the groups, each group is able to testify in another case. And Rav Ḥisda says: Why do I need these lying witnesses? In other words, they are all disqualified to testify in another case until it is clarified which of them had testified falsely. The Gemara asks: Shall we say that Rav Naḥman is the one who says his ruling in accordance with the opinion of Rav Huna, and Rava says his ruling in accordance with the opinion of Rav Ḥisda?

[79] The Gemara explains: According to the opinion of Rav Ḥisda, who holds that the witnesses are disqualified, everyone agrees that the testimony concerning ancestral ownership is not accepted, as

the witnesses were contradicted concerning their testimony of usage of the land, and Rav Naḥman's ruling cannot accord with his opinion. When Rav Naḥman and Rava disagree it is according to the opinion of Rav Huna, who does not disqualify the witnesses. The ruling of Rav Naḥman is in accordance with the opinion of Rav Huna, and he therefore accepts the testimony with regard to ancestral ownership, and Rava would say: Rav Huna says that the witnesses are accepted only for another testimony, i.e., in a different case. But they are not accepted for the same testimony, as in this incident, where both testimonies concerned ownership of the same land.

[80] The Gemara relates the continuation of the case above. The one who had brought witnesses only to his having profited from the land then brought witnesses that it had belonged to his ancestors, thereby balancing the evidence for the two litigants. Therefore, Rav Naḥman said: We previously brought down to the land the one who initially had evidence of ancestral ownership to take possession of it, and we now bring him up from it, removing him from the land. And we are not concerned about the possible contempt of court that might result from perceived indecisiveness.

[81] Rava, and some say it is Rabbi Zeira, raises an objection from a baraita. If there was a married man whose fate was unknown, and two witnesses say: This married man died, and two witnesses say: He did not die; or if two witnesses say: This woman was divorced, and two witnesses say: She was not divorced, this woman may not marry, as there is not unequivocal testimony that she is no longer married, but if she marries, the marriage is valid and she need not leave her husband. Rabbi Menaḥem, son of Rabbi Yosei, says: She must leave her husband.

[82] Rabbi Menaḥem, son of Rabbi Yosei, said: When do I say that she must leave her husband? She must leave him in a case where witnesses came to testify that she is still married and she then married despite their testimony. But if she married and the witnesses then came to testify that she is still married, this woman is not required to leave her husband based on the uncertainty created by contradictory witnesses. The fact that she is not required to leave her marriage in light of the new testimony seems to indicate an unwillingness to reverse the court's ruling that she may marry, contrary to the ruling of Rav Naḥman.

[83] Rav Naḥman said to him: I had thought to perform an action and reverse the court's ruling, but now that you raised an objection against me, and Rav Hamnuna also raised a similar objection against me in Syria, I will not perform an action in this matter.

[84] The Gemara relates that Rav Naḥman then went out and performed an action, taking away the land from the litigant in whose favor he had previously ruled. One who saw what he did thought that he made a mistake, but that is not so. Rather, he performed an action despite the objections that had been raised because the matter depends on great authorities [ashlei ravrevei]. Since, as the Gemara will demonstrate, this issue is subject to dispute between great authorities, he relied on those that supported his opinion.

[85] As we learned in a mishna (Ketubot 23b): Rabbi Yehuda says: One is not elevated to the presumptive status of priesthood on the basis of the testimony of one witness. Two witnesses are required for that purpose. Rabbi Elazar says: When is that the halakha? In a case where there are challengers to his claim that he is a priest. But in a case where there are no challengers, one is elevated to the presumptive status of priesthood on the basis of the testimony of one witness. Rabban Shimon Ben Gamliel says in the name of Rabbi Shimon, son of the deputy High Priest: One is elevated to the presumptive status of priesthood on the basis of the testimony of one witness.

[86] The Gemara asks: The opinion of Rabban Shimon Ben Gamliel is identical to the opinion of Rabbi Elazar, as they agree that one is elevated to the presumptive status of priesthood on the basis of one witness when there are no challengers. What is their dispute? And if you would say that there is a practical difference between them in a case where there is a challenge posed by one person, as Rabbi Elazar holds: A challenge posed by one person is sufficient to undermine one's presumptive status of priesthood, and two witnesses are required to overcome that challenge;

[87] and Rabban Shimon Ben Gamliel holds that an effective challenge requires two witnesses, one could then ask: But doesn't Rabbi Yoḥanan say: Everyone agrees that there is no effective challenge with fewer than two witnesses?

[88] Rather, the challenge was established by two witnesses. And with what are we dealing here? We are dealing with a case where we presume with regard to the father of that man that he is a priest, and a rumor emerged about the son that he is the son of a priest and a divorced woman, or the son of a priest and a ḥalutza, and we downgraded him from the presumptive status of priesthood based on that rumor, and one witness came and said that the man in question is a priest of unflawed lineage, and we elevated him back to the priesthood, as one witness is sufficient to negate a rumor.

[89] The Gemara continues the case: And then two witnesses came and said that he is the son of a divorced woman or the son of a ḥalutza, and we downgraded him from the priesthood based on their testimony. Then one witness came and said that he is a priest of unflawed lineage, resulting in two witnesses testifying that his lineage is unflawed, and two testifying that it is flawed. And everyone agrees that the testimony of the two single witnesses combine to produce testimony that he is a priest of unflawed lineage, and his presumptive status of priesthood should be restored.

[90] The Gemara explains the dispute: And here it is with regard to concern about contempt of court that they disagree. Rabbi Elazar holds: Once we downgraded him from the presumptive status of priesthood based on the testimony of two witnesses, we do not then elevate him, as we are concerned about contempt of court, as a reversal in the court's decision creates the impression that the court operates indecisively. And Rabban Shimon Ben Gamliel holds: We downgraded him from the presumptive status of priesthood and we then elevate him, and we are not concerned about contempt of court. The primary concern is that the matter should be determined based on the relevant testimonies.

[91] Rav Ashi objects to the analysis that they disagree with regard to concern about contempt of court: If so, why specifically is it necessary to establish the dispute in a case where first one witness testified as to his unflawed lineage, and then another testified later? The same would hold true even in a case where two witnesses testified together that he is unfit for the priesthood and the court downgraded him, and two witnesses testified together that he is fit for the priesthood and the court elevated him. The tanna'im would also disagree, as the same concern applies. Rather, Rav Ashi said: Everyone agrees that we are not concerned about contempt of court. And here, it is with regard to whether the court is able to combine the testimony of two single witnesses that they disagree, and it is with regard to the issue that is the subject of the following dispute between these tanna'im.

[92] As it is taught in a baraita (Tosefta, Sanhedrin 5:5): The testimony of individual witnesses never combines unless it is so that the two of them see the incident transpire together as one. Rabbi Yehoshua ben Korḥa says: Their testimony combines even in a case where they witnessed the event one after the other, but their testimony is established in court only if it is so that the two of them

testify together as one. Rabbi Natan says: They are not required to testify together. Their testimony is combined even if the court hears the statement of this witness today and when the other witness arrives tomorrow the court hears his statement. Rabbi Elazar and Rabban Shimon ben Gamliel disagree in the dispute between Rabbi Natan and the Rabbis, whether the separate testimonies can be combined.

93 § The Gemara relates an incident where two people disputed the ownership of land. There was a certain person who said to another: What do you want with this land of mine? The possessor said to him: I purchased it from you, and this is the bill of sale.

94 The first said to him in response: It is a forged bill of sale. The possessor leaned over and whispered to Rabba: Yes, it is a forged bill. But I had a proper bill of sale and it was lost, and I said to myself: I will hold this bill of sale in my possession, such as it is.

95 Rabba said: Why would he lie and state this claim? If he wants to lie, he can say to him that it is a proper bill of sale, and he would have been deemed credible and awarded the field. Rav Yosef said to Rabba: In the final analysis, on what are you relying to award him the land? On this bill of sale? This admittedly forged bill is merely a worthless shard, and cannot be used in court as evidence.

96 The Gemara relates a similar incident: There was a certain person who said to another: Give me one hundred dinars that I am attempting to collect from you, and this is the promissory note that attests to the debt. The latter said to him in response: It is a forged promissory note. The first person leaned over and whispered to Rava: Yes, it is a forged promissory note. But I had a proper promissory note and it was lost, and I said to myself: I will hold this promissory note in my possession, such as it is.

97 Rabba said: Why would he lie and state this claim? If he wants to lie, he can say to him that it is a proper promissory note, and he will be deemed credible and awarded the money. Rav Yosef said to Rabba: In the final analysis, on what are you relying to award him the money? On this promissory note? This document is merely a shard, and cannot be used in court as evidence.

98 The Gemara notes the final ruling in these two cases. Rav Idi bar Avin said: The halakha is in accordance with the opinion of Rabba with regard to land, and the possessor is awarded the land, and the halakha is in accordance with the opinion of Rav Yosef with regard to money, and the one demanding payment is not awarded the money. He explains: The halakha is in accordance with the opinion of Rabba with regard to land, as the court rules that the land should remain where it is, i.e., with the possessor. And the halakha is in accordance with the opinion of Rav Yosef with regard to money, as the court rules that the money should remain where it is, i.e., in the possession of the purported debtor.

99 The Gemara relates: There was a certain guarantor who said to a debtor: Give me one hundred dinars for the money that I repaid the creditor on your behalf, and this is the document that I received from him when I repaid your debt. The debtor said to the guarantor: Is it not so that I repaid you? The guarantor said to the debtor: Yes, you did, but is it not so that you later took the money from me again?

100 Rav Idi bar Avin sent the following question before Abaye: What is the halakha in a case like this? Abaye sent him the following response: What does he, i.e., Rav Idi bar Avin, ask? Isn’t he the one who said: The halakha is in accordance with the opinion of Rabba with regard to land, and the

halakha is in accordance with the opinion of Rav Yosef with regard to money, as the court rules that the money should remain where it is? Based on his own ruling, the money should remain with the debtor.

[101] The Gemara notes: And this matter applies only in a case where the guarantor says to the debtor: You later borrowed the money from me after you had repaid me. But if the guarantor said to the debtor: I returned to you the money that you had repaid me because of the fact that the coins were worn out or overly reddish, i.e., discolored, and would not be easily accepted as currency, then the lien of the document is still in effect. The debt to the guarantor had not actually been repaid, and the document is still in effect. In that case, the guarantor collects from the debtor.

[102] The Gemara relates: A rumor emerged concerning Rava bar Sharshom that he was profiting from land belonging to orphans. Abaye said to him: Tell me, my friend, concerning the incident itself, how is it that this rumor was generated? Rava bar Sharshom said to him: I was holding on to the land as collateral from the father of the orphans, and I had

[103] other money with him, i.e., he owed me money for a different reason, for which I had no collateral, and I profited from the land for the duration of the years of the collateral.

[104] I then said to myself: If I return the land to the orphans now that the years of collateral have finished, and I say that I have other money with your late father, I will not be able to collect it, as the Sages say that one who comes to collect a debt from the property of orphans can collect only by means of an oath, and I do not wish to take an oath. Rather than do that, I will suppress the document detailing the terms of the collateral, and profit from the land up to the measure of the money that their father owed me. This is legitimate, since if I so desire I can say: It is purchased, and that is why it is in my possession, and I would have been deemed credible, as I profited from the land for the years necessary to establish the presumption of ownership, so when I say that I have money with you, I am also deemed credible.

[105] Abaye said to Rava bar Sharshom: Your reasoning is incorrect. You would not have been able to say: It is purchased, and that is why it is in my possession, as there is publicity concerning it that it is land of orphans. Therefore, you are unable to collect your debt based on the fact that you could have made a more advantageous claim [miggo]. Rather, return the land to the orphans now, and when the orphans become adults, then litigate with them, as you have no other option.

[106] The Gemara relates: A relative of Rav Idi bar Avin died and left a date tree as an inheritance. Another relative took possession of the tree, claiming to be a closer relative than Rav Idi bar Avin. Rav Idi bar Avin said: I am closer in relation to the deceased than he, and that man said: I am closer in relation to the deceased than Rav Idi bar Avin. Ultimately, the other man admitted to Rav Idi bar Avin that, in fact, Rav Idi was closer in relation to the deceased. Rav Ḥisda established the date tree in the possession of Rav Idi bar Avin.

[107] Rav Idi bar Avin said to Rav Ḥisda: The value of the produce that he consumed unlawfully from that day when he took possession of the tree until now should be returned to me. Rav Ḥisda said: Is this he about whom people say: He is a great man? On whom is the Master basing his claim to receive the value of the produce? On this other relative. But he was saying until this point: I am closer in relation to the deceased than he. Therefore, you have ownership of the tree only from the time of his admission, and not from when he took possession of the tree. The Gemara comments: Abaye and Rava do not hold in accordance with this opinion of Rav Ḥisda,

[108] as they hold that once it is so that the other relative admitted that he is not a closer relative, he admitted that he never had any right to the produce of the tree. Therefore, by his own admission, he is liable to reimburse Rav Idi bar Avin.

[109] § There was an incident where two people dispute the ownership of land. This one says: The land belonged to my ancestors and I inherited it from them, and that one says: The land belonged to my ancestors and I inherited it from them. This one brings witnesses that the land belonged to his ancestors, and that one brings witnesses that he worked and profited from the land for the years necessary for establishing the presumption of ownership.

[110] Rav Ḥisda said: The one who is in possession of the land is deemed credible due to the legal principle that if one would have been deemed credible had he stated one claim but instead stated another claim that accomplishes the same result, he has credibility, because why would he lie and state this claim? If he wants to lie, he could have said to him: I purchased it from you and I worked and profited from it for the years necessary for establishing the presumption of ownership. Abaye and Rava do not hold in accordance with this opinion of Rav Ḥisda, because they hold that we do not say that the principle of: Why would I lie, applies in a case where there are witnesses contradicting the claim he is stating, and in this case, witnesses testify that it belonged to the ancestors of the other claimant.

[111] There was a certain person who said to another: What do you want with this land of mine? The possessor said to him in response: I purchased it from you and I worked and profited from it for the years necessary for establishing the presumption of ownership. He then went and brought witnesses that he had profited from the land for two years, but he was unable to bring witnesses to testify about a third year. Rav Naḥman said: The land reverts back to the prior owner, and payment for the produce consumed during those two years reverts to the prior owner. Since the possessor was unable to substantiate his claim to the land, the assumption is that he consumed the produce unlawfully.

[112] Rav Zevid said: If initially, when questioned by the other, the one occupying the land claimed and said: I entered the land to consume its produce that I had purchased, he is deemed credible. After all, didn’t Rav Yehuda say: This one who is holding a sickle and rope [vetovelaya] and says: I will go cull [igderei] the dates from the date tree of so-and-so who sold it to me, is deemed credible that he has the right to do so? Apparently, a person is not so brazen that he would cull the dates of a date tree that is not his. Here too, in the case discussed by Rav Zevid, a person is not so brazen as to consume produce that is not his.

[113] The Gemara asks: If that is so, that the assumption is that he would not lie, let one be deemed credible with regard to the land as well. The Gemara answers: In terms of the land, we say to him: Show your bill of sale if you indeed purchased it. The Gemara challenges: If that is so, then in terms of the produce as well, let him be deemed credible only if he can produce documentation of his claim. The Gemara explains: It is not common for people to write documents to establish the right to consume produce alone, and one can therefore claim to have consumed the produce based on an oral agreement.

[114] There was a certain person who said to another: What do you want with this land of mine? The possessor said to him in response: I purchased it from you and I worked and profited from it for the years necessary for establishing the presumption of ownership. He then brought one witness who testified that he profited from the land for the necessary three years. The Rabbis who were studying

before Abaye maintained that it made sense to say that the principle in this case is the same as that in the case of the piece of cast metal [naskha] adjudicated by Rabbi Abba.

[115] The Gemara now presents that case: As there was a certain man who snatched a piece of cast metal from another. The one from whom it was taken came before Rabbi Ami while Rabbi Abba was sitting before him, and he brought one witness who testified that it was, in fact, snatched from him. The one who snatched it said to him: Yes, it is true that I snatched it, but I merely snatched that which was mine. Rabbi Ami said:

[116] How should judges judge for this judgment? There are reasons not to implement all potential rulings. If they were to order the one who snatched the metal to pay for it, that would not be the correct ruling, because there are not two witnesses who saw him snatch it, and the court does not force payment based on the testimony of one witness. If they were to accept his claim and exempt him entirely, that would not be the correct ruling, because there is one witness who testified against him. If they were to order him to take an oath, which is the usual response to counter the testimony of one witness, didn't he say that he did in fact snatch it, and since he said that he snatched it and there is no proof that it is his, he is like a robber, and the court does not allow a robber to take an oath.

[117] Rabbi Abba said to them: He is one who is liable to take an oath who is unable to take an oath, and anyone who is liable to take an oath who is unable to take an oath is liable to pay. The Rabbis who were studying before Abaye thought that the case of the witness to the years of profiting and Rabbi Abba's case are similar, in that since the possessor is unable to take an oath to refute the witness, as he concedes that he profited from the land for those years, he should have to pay for his consumption of the produce.

[118] Abaye said to these Rabbis: Are these two cases comparable? There, in Rabbi Abba's case, the witness is coming to undermine the position of the one who snatched the metal. This can be seen from the fact that when it would be the case that another witness comes to court and testifies with the first witness, we would take away the piece of metal from the one who snatched it. By contrast, here, in the case of the individual who brought one witness to attest to his profiting from the land, the witness is coming to support the possessor. This can be seen from the fact that when another witness would come to court and testify with the first witness, we would establish the land in his possession. Therefore, the testimony of the one witness does not render the one who profited from the land liable to take an oath.

[119] Rather, if this case of Rabbi Abba is comparable to a case such as this, it is comparable to a case where there is one witness and he testifies to someone's profiting from land for two years, and the comparison is in terms of payment for the produce that he consumed. In terms of the consumption of the produce, two witnesses would have rendered the possessor liable to pay, as consumption of the produce for only two years does not establish the presumption of ownership. Therefore, one witness renders him liable to take an oath. Since he himself claimed that he profited from the land as the witness testified, he cannot take an oath to contest the testimony. Therefore, he would have to pay for the produce.

[120] § The Gemara relates: There was a certain boat that two people were quarreling about with regard to its ownership. This one said: It is mine, and that one also said: It is mine. One of them came to court and said: Seize it until I am able to bring witnesses that it is mine. The Gemara asks: In such a

case, do we seize it or do we not seize it? Rav Huna said: We seize it. Rav Yehuda said: We do not seize it, as there is no cause for the court to intervene.

[121] The court seized the boat. The one who requested of the court to seize it went to seek witnesses, but did not find witnesses. He then said to the court: Release the boat, and whoever is stronger prevails, as this is the ruling in a case where there is neither evidence nor presumptive ownership for either litigant. The Gemara asks: In such a case, do we release it or do we not release it? Rav Yehuda said: We do not release it. Rav Pappa said: We release it. The Gemara concludes: And the halakha is that we do not seize property in a case where ownership is uncertain, and where it was seized, we do not release it.

[122] There was an incident where two people dispute the ownership of property. This one says: It belonged to my ancestors and I inherited it from them, and that one says: It belonged to my ancestors and I inherited it from them. There was neither evidence nor presumptive ownership for either litigant. Rav Naḥman said: Whoever is stronger prevails. The Gemara asks: And in what way is this case different from the case where two people produce two deeds of sale or gift for the same field that are issued on one day,

[123] as Rav said: In that case, they should divide the property between them, and Shmuel said: It is decided based on the discretion [shudda] of the judges. Why in the seemingly equivalent case of a dispute where there is no evidence for either litigant did Rav Naḥman rule that whoever is stronger prevails? The Gemara answers: There, in the case of the two deeds, it will not be possible for the court to clarify the matter in the future, and therefore, the court issues a ruling according to the information they currently have. Here, in the case of Rav Naḥman, it may be possible for the court to clarify the matter in the future, if one of the litigants was to bring witnesses supporting his claim.

[124] The Gemara asks: And in what way is this case different from that which we learned in a mishna (Bava Metzia 100a): With regard to one who exchanges a cow for a donkey and the cow calved, and similarly one who sells his Canaanite maidservant and she gave birth, and this one, i.e., the seller, says: She gave birth before I sold either the cow or maidservant, and the offspring belongs to me; and that one, i.e., the buyer, says: She gave birth after I purchased her and the offspring belongs to me, the ruling is that they should divide the value of the newborn. In that case, the court is not able to clarify the matter, so they should rule that whoever is stronger prevails.

[125] The Gemara answers: There, in the case of the exchange, for this one, i.e., the buyer,

[126] he has financial involvement [derara], and for that one, i.e., the seller, he has financial involvement. Since each of them has a definite claim to owning the offspring, as each of them owned the cow or maidservant at one point, it is reasonable for the court to divide the offspring between the two parties. By contrast, here, in the case of Rav Naḥman, if it belongs to this Master it does not belong to that Master, and if it belongs to that Master it does not belong to this Master. Only one of the two litigants has any claim to the property, as it belonged either to the ancestors of this one or of that one. Therefore, a ruling to divide it would not be appropriate.

[127] The Sages of Neharde’a say: In a case where two parties disputed the ownership of a certain property and the court ruled that whoever is stronger prevails, if one from the marketplace who had no claim came and took possession of it, the court does not remove it from his possession, as Rabbi Ḥiyya teaches (Tosefta, Bava Kamma 10:14): A robber of the public, meaning a robber whose victim is unknown, is not called a robber. Since it is unclear whom he robbed, no one is able to demand

payment. Here too, since it is unclear whose property it is, neither can demand that it be taken from the robber.

[128] Rav Ashi said in disagreement: Actually, he is called a robber, and the property is taken from him, and what is meant by: He is not called a robber? It means that the stolen item is not subject to being returned, and consequently he is unable to fully atone, as he does not know whom to repay.

[129] § The mishna teaches with regard to certain types of property that their presumptive ownership is established by use of a duration of three years from day to day. The Gemara comments: Rabbi Abba says: Nevertheless, there are cases where presumptive ownership is established immediately. For example, if the prior owner himself lifted a basket of fruit from that field for the possessor, that immediately is sufficient to establish the presumption of ownership, and the prior owner can no longer lodge a protest. Rav Zevid says: But if the prior owner stated a claim and said: I brought him down into my field solely to consume the produce, e.g., as a sharecropper, he is deemed credible. And that halakha, that the prior owner is deemed credible were he to state such a claim, applies only if he stated it within three years of when the other took possession, but after three years he is not deemed credible.

[130] Rav Ashi said to Rav Kahana: If in fact he did bring him down into the field solely to consume the produce, what was there for him to do to prevent the possessor from establishing the presumption of ownership? Rav Kahana said to him: He should have protested during the first three years and publicized that he had granted the possessor rights to the produce alone.

[131] The assumption that lodging a protest would be effective must be correct, since if you do not say so, then in the case of this mortgage according to the custom in Sura, a city in Babylonia, in which is written: At the completion of these years this land will be released to its prior owner without any need for the prior owner to give money, if the creditor were to hide the mortgage document in his possession and say: This land is purchased and that is why it is in my possession, here is it also the case that he would be deemed credible? That cannot be, as is it reasonable that the Sages would institute a matter, such as this type of arrangement, that people can be led by it to suffer a loss? Rather, in the case of the mortgage the debtor should have protested, and by not protesting, he causes his own loss. Here, too, in the case of the field, the owner should have protested.

[132] § Rav Yehuda says that Rav says: With regard to a Jew who comes to claim land due to having received it from a gentile, he is like a gentile in terms of which legal claims are available to him. Therefore, just as a gentile has the ability to establish the presumption of ownership only by means of a document, so too, a Jew who comes to claim land due to having received it from a gentile has the ability to establish the presumption of ownership only by means of a document. Rava said: And if the Jew said to a prior owner, who claims to still own the land:

[133] The gentile told me that he purchased a field from you, this claim is deemed credible. The Gemara asks: Is there any case where if a gentile says it he is not deemed credible, but if a Jew said it in the gentile’s name he would be deemed credible?

[134] Rather, Rava said: If a Jew said to the prior owner: A gentile purchased a field from you in my presence, and then he sold it to me, this claim is deemed credible, since if he wanted to, he could have said to the prior owner of the land: I purchased it from you.

[135] The Gemara records a series of halakhot pertaining to presumptive ownership. And Rav Yehuda says: This one who is holding a sickle and rope and says: I will go cull the dates from the date tree of so-and-so, from whom I purchased it, is deemed credible. The reason for this is that a person is not so brazen that he would cull the dates from a date tree that is not his.

[136] And Rav Yehuda says: With regard to this one, who possesses a field only from the fence built to prevent the entry of the wild donkeys and outward toward the public property, this conduct is not sufficient to establish the presumption of ownership. What is the reason? The owner says to himself: Everything that he sows, the wild donkeys will eat as well, and cannot establish the presumption of ownership for him, as he is not profiting from the land as an owner would.

[137] And Rav Yehuda says: With regard to one who profited from the land by consuming produce from the first three years after it was planted [orla], during which time one is prohibited from deriving benefit from the produce, this conduct is not sufficient to establish the presumption of ownership. This is also taught in a baraita: With regard to one who profited from the land by consuming orla produce, or profited from the land by consuming produce of the Sabbatical Year, or consumed produce that was prohibited as it was of diverse kinds, this conduct is not sufficient to establish the presumption of ownership.

[138] Rav Yosef says: With regard to one who profited from the land by consuming fodder, i.e., produce that has grown stalks but is not yet ripe, this conduct is not sufficient to establish the presumption of ownership. Rava said: But if the land was located in the neck of Meḥoza, a valley where it was common to harvest unripe produce to feed animals, this conduct is sufficient to establish the presumption of ownership.

[139] Rav Naḥman says: Consumption of produce of land that is fissured is not sufficient to establish the presumption of ownership. This is due to the fact that produce does not grow well there, and therefore, owners do not bother to protest if a trespasser uses the land. Therefore, their silence should not be understood as an admission that it belongs to the possessor. Similarly, consumption of produce of land where one expends a kor of seed to sow and retrieves a kor of produce when harvesting it, is not sufficient to establish the presumption of ownership. Here, too, the owners do not bother to protest, as the land is of inferior quality.

[140] Rav Naḥman continues: And these members of the household of the Exilarch do not establish the presumption of ownership in our land, as people are afraid to lodge a protest against them, and we do not establish the presumption of ownership in their land, as, due to their wealth, they might not lodge a protest against one who trespasses on their land.

[141] § The mishna teaches: And of slaves, presumption of ownership of them is established by using them for a duration of three years from day to day. The Gemara asks: With regard to slaves, is there presumptive ownership of them? But doesn’t Reish Lakish say: With regard to livestock [hagoderot], possession of them does not establish the presumption of ownership, since they wander from place to place. Therefore, one cannot claim that his mere possession of livestock demonstrates ownership as one can with regard to other movable items, because it may have wandered into his property on its own. The same halakha should apply with regard to a slave. Rava said: It is true that possession of them does not establish the presumption of ownership immediately, but there is presumptive ownership of them after three years.

142 Rava said: If the slave in question was a small child placed in a cradle, possession of him does establish the presumption of ownership immediately, as it does with regard to other movable items. The Gemara asks: Isn't that obvious, since he cannot move on his own? The Gemara answers: No, it is necessary in a case where he has a mother. Lest you say: One should be concerned that perhaps his mother brought him up to there, and his being on another's property does not indicate that the latter is his master. Therefore, Rava teaches us that there is no concern about this possibility, since a mother does not forget her son. Therefore, possession of the infant slave does establish the presumption of ownership.

143 The Gemara relates: There were these certain goats that ate peeled barley [ḥushela] in Neharde'a. The owner of the peeled barley came and seized the goats, and was claiming a large sum of money for the barley from the owner of the goats. Shmuel's father said: He is able to claim up to the value of the goats, since if he wants to, he could say: The goats are purchased and that is why they are in my possession. The Gemara asks: But doesn't Reish Lakish say: With regard to livestock, possession of them does not establish the presumption of ownership? The Gemara answers: Goats are different, as they are given to shepherds, and do not wander on their own.

144 The Gemara challenges: But there is morning and evening to consider, when the goats are unsupervised when traveling between the owner and the shepherd, and during those times this halakha of livestock should apply with regard to them. The Gemara explains: The case under discussion took place in Neharde'a, and Arabs [tayya'ei] who steal animals are common in Neharde'a, and goats there are delivered from hand to hand and are never left unsupervised.

145 § The mishna teaches that Rabbi Yishmael says: Three months of possession in the first year, three months of possession in the third year, and twelve months of possession in the middle, which are eighteen months, suffices to establish the presumption of ownership. Rabbi Akiva disagrees, and says that one month in the first and third year, in addition to the full middle year, is sufficient. The Gemara asks: Shall we say that the difference between them is whether plowing the land is sufficient to establish the presumption of ownership? As Rabbi Yishmael holds that plowing is not sufficient to establish the presumption of ownership, and three months are needed for the crop to grow, and Rabbi Akiva holds that plowing is sufficient to establish the presumption of ownership, and therefore one month is sufficient.

146 The Gemara asks: And how can you understand their opinions this way? If so, according to Rabbi Akiva, why specifically require a full month?

147 Even if he plowed the land for one day in the first and third years respectively, it should be sufficient to establish the presumption of ownership. Rather, everyone agrees that plowing is not sufficient to establish the presumption of ownership, and here the difference between their opinions is whether in order to establish the presumption of ownership one needs to possess the land long enough to grow major produce, which requires three months to grow, or only minor produce, which requires one month.

148 The Sages taught in a baraita: Plowing is not sufficient to establish the presumption of ownership. And there are those who say: This is sufficient to establish the presumption of ownership. Whose opinion is it that the baraita refers to as: There are those who say? Rav Ḥisda said: It is the opinion of Rabbi Aḥa, as it is taught in a baraita: If the possessor plowed the field for a year and sowed it for two years, or if he plowed it for two years and sowed it for a year, it is not sufficient to

establish the presumption of ownership. Rabbi Aḥa says: This is sufficient to establish the presumption of ownership, which indicates that he holds that plowing establishes the presumption of ownership.

149 Rav Ashi said: I asked all of the great men of the generation about this, and they said to me: With regard to plowing, this is sufficient to establish the presumption of ownership. Rav Beivai said to Rav Naḥman: What is the reason of the one who says that plowing is sufficient to establish the presumption of ownership? Rav Naḥman answered: A person is not apt to have his land plowed by someone else and remain silent. Rav Beivai asked: And what is the reason of the one who says that plowing is not sufficient to establish the presumption of ownership? Rav Naḥman answered: The owner says to himself: Let each and every clump [shibba] of earth enter the plow. That is to say, the owner is amenable to having someone else plow the land for him, and then he will sow and harvest.

150 The residents of Pum Nahara sent a question to Rav Naḥman bar Rav Ḥisda. Our teacher, instruct us: Is plowing sufficient to establish the presumption of ownership, or is it not sufficient to establish the presumption of ownership? Rav Naḥman bar Rav Ḥisda said to them: Rabbi Aḥa and all of the great men of the generation say: With regard to plowing, this is sufficient to establish the presumption of ownership.

151 Rav Naḥman bar Yitzḥak said: Is it a novelty to enumerate great men who maintain an opinion without taking into account that of others? But what of Rav and Shmuel in Babylonia, and Rabbi Yishmael and Rabbi Akiva in Eretz Yisrael, who say: Plowing is not sufficient to establish the presumption of ownership?

152 The Gemara presents the sources for ascribing to these Sages the opinion that plowing does not establish the presumption of ownership. The basis for ascribing it to Rabbi Yishmael and Rabbi Akiva is the mishna, as the Gemara explained above. What is the basis for ascribing this opinion to Rav? As Rav Yehuda says that Rav says: This ruling that either a month or three months is sufficient use for the first and third years is the statement of Rabbi Yishmael and Rabbi Akiva, but the Rabbis, whose opinion is accepted, say: With regard to a field, its presumption of ownership is established by three years, from day to day. The phrase: From day to day, serves to exclude what? Does it not serve to exclude plowing, which does not establish the presumption of ownership?

153 What is the basis for ascribing this opinion to Shmuel? As Rav Yehuda says that Shmuel says: This ruling that either a month or three months is sufficient use for the first and third years is the statement of Rabbi Yishmael and Rabbi Akiva, but the Rabbis, whose opinion is accepted, say: He does not establish the presumption of ownership until he harvests three date crops, or harvests three grape crops, or harvests three olive crops. This indicates that Shmuel holds that plowing does not establish the presumption of ownership. What is the difference between the opinions of Rav and Shmuel? Abaye said: The difference between their opinions is whether three harvests of a young [na’ara] date tree, which produces a crop three times in one year, establishes the presumption of ownership.

154 § The mishna teaches that Rabbi Yishmael said: In what case is this statement, that eighteen months are required to establish the presumption of ownership of a non-irrigated field, said? With regard to a white field, i.e., a grain field. But with regard to an orchard, harvesting three different crops suffices. Abaye said: From the opinion of Rabbi Yishmael we infer the proper understanding of a detail of the opinion of the Rabbis who disagree with him, and hold that three years of harvesting

one crop is required to establish the presumption of ownership even with regard to an orchard: If one had thirty trees of one type in a field, and they were planted with a density of ten trees per each area required for sowing one se’a of seed [beit se’a], and one consumed the produce of ten trees in this first year, and of another ten trees in this second year, and of another ten trees in this third year, this is sufficient to establish the presumption of ownership.

155 The Gemara explains the inference from the statement of Rabbi Yishmael and how it clarifies the opinion of the Rabbis: Didn’t Rabbi Yishmael say that harvesting one type of fruit is sufficient to establish the presumption of ownership for all of the types of fruit, i.e., for the entire field? Here too, these trees are sufficient to establish the presumption of ownership for those trees, and those trees are sufficient to establish the presumption of ownership for these trees.

156 The Gemara notes two restrictions to the aforementioned ruling: And this statement applies specifically where the other twenty trees did not produce fruit, but if the other trees produced fruit and he did not consume their fruit, then his conduct is not sufficient to establish the presumption of ownership with regard to the other trees. And this principle, that consuming the produce of some of the trees each year establishes the presumption of ownership for the entire field, applies only if it is the case that the trees are scattered [devazei bazuzei] throughout the field. Otherwise, he establishes the presumption of ownership only over the section where the trees are located.

157 § In a case where there was a field with trees in it, and this person took possession of the trees and that person took possession of the land, Rav Zevid says: This one acquired the trees and that one acquired the land. Rav Pappa objects to this: If this is so, then the owner of the trees has no share in the land at all. Let the owner of the land say to the owner of the trees: Uproot your trees, take them, and go. Rather, Rav Pappa said: This one acquired the trees and half of the land, and that one acquired half of the land.

158 The Gemara notes: It is obvious that if one sold a section of land and left the ownership of the trees in that land for himself, he has ownership of the land surrounding the trees. And this is the halakha even according to the opinion of Rabbi Akiva, who says: One who sells, sells generously, and he is presumed to have included in the sale even items that were not explicitly specified, because that statement applies only concerning a case such as when one sold land and retained ownership of a pit or a cistern. In that case, Rabbi Akiva ruled that he does not retain any land, not even a path to access the pit or cistern, as he sold generously, including all of the land in the sale.

159 The Gemara explains the difference between the cases: That ruling applies there, as the pit or cistern causes no harm to the land surrounding them, and since the seller does not foresee a conflict arising from his pit and cistern being located adjacent to the buyer’s property, he therefore transfers the entire land. But in the case of his retaining the trees,

160 since they are causing harm to the land, the seller does leave the land that is surrounding the trees for himself, as if he did not leave it, let the buyer say to him: Uproot your trees and go.

161 The Gemara discusses the reverse case: If one sold the trees and left the ownership of the land for himself, the halakha depends on the outcome of the dispute of Rabbi Akiva and the Rabbis. According to Rabbi Akiva, who says: One who sells, sells generously, the buyer has ownership of the land surrounding the trees, as the presumption is that the seller included it in the sale. According to the Rabbis, who say: One who sells, sells sparingly, the buyer does not have ownership of the land surrounding the trees, as the presumption is that the seller did not include it in the sale.

[162] The Gemara stated previously that according to the opinion of Rabbi Akiva, the buyer has ownership of the land surrounding the trees. The Gemara clarifies this opinion: And even according to Rav Zevid, who said (37a) that in a case where one took possession of the land and another took possession of the trees, the one who took possession of the trees has no share in the land, that matter applies only concerning the case of two buyers. As in that case, the one who acquired the land can say to the other: Just as it is so that I have no share in the trees, you also have no share in the land; but here, where one sold the trees and left the land for himself, one who sells, sells generously. Therefore, it is reasonable to assume that the sale included the land surrounding the trees.

[163] The Gemara stated earlier that according to the opinion of the Rabbis, the buyer does not have ownership of the land surrounding the trees. The Gemara clarifies this opinion: And even according to Rav Pappa, who says above that in a case where one took possession of the land and another took possession of the trees that the one who took possession of the trees has ownership of half of the land as well, that matter applies only concerning the case of two buyers. As in that case, the one who acquired the trees can say to the other: Just as it is so that the seller sold to you generously, as you have both the land and the right to consume its produce, he also sold to me generously, including the land surrounding the trees; but here, where one sold the trees and left the land for himself, one who sells, sells sparingly, retaining for himself whatever he did not explicitly include in the sale.

[164] § The Sages of Neharde’a say: If one consumed the produce of an overcrowded orchard, he does not thereby have presumptive ownership of the orchard. Rava objects to this: If that is so, how does one ever acquire this alfalfa field, which is planted without spacing? Rather, Rava said: If one sold an overcrowded orchard, the buyer does not have ownership of the land surrounding the trees. Generally, if one purchases three or more trees, he acquires the surrounding land, as the trees are considered an orchard. If the trees are overcrowded, they will soon have to be uprooted, and that is why the buyer does not acquire the land surrounding the trees.

[165] Rabbi Zeira said: This is like a dispute between tanna’im (Kilayim 5:2): With regard to a vineyard that is planted on an area where there is less than four cubits of open space between the vines, Rabbi Shimon says: It is not considered to be a vineyard with regard to the prohibition of diverse kinds and other halakhot, as it is overcrowded. And the Rabbis say: This is considered to be a vineyard, and the reason for this is that the middle vines are viewed as if they are not there, and the outer vines meet the requirements for a vineyard. It follows that according to the opinion of the Rabbis, if one sold an overcrowded orchard, the middle trees would be viewed as if they were not there. Therefore, it would be considered an orchard and the buyer would acquire the land surrounding the trees.

[166] The Sages of Neharde’a say: This one who sells a date tree to another, the buyer acquires the land from its bottom until the depths.

[167] Rava objects to this ruling that the buyer of the tree acquires the land beneath it: And let the seller say to him: I sold you only the saffron crocus, a small plant normally uprooted by the buyer and taken with him. Therefore, uproot the saffron crocus and go. Rather, Rava said: This ruling is stated with regard to one who comes to court with a specific claim that the seller had stipulated that he would acquire the land. Without this specific claim he does not acquire the land beneath the tree.

[168] Mar Kashisha, the son of Rav Ḥisda, said to Rav Ashi: And if, in fact, the seller sold him the saffron crocus, what was there for the seller to do to prevent the buyer from claiming the land

beneath the tree, as the buyer could claim that there had been an explicit stipulation that he receive it? Rav Ashi answered: He should have protested during the first three years and publicized that the land was not included in the sale.

169 The assumption that lodging a protest would be effective must be correct, since if you do not say so, then in the case of these mortgages according to the custom in Sura, a city in Babylonia, the debtor will not have a way to prevent the creditor from keeping his land. As in mortgages of that type it is written like this: At the completion of these years this land will be released to its prior owner without any need for the prior owner to give money. If the creditor were to hide the mortgage document in his possession and say: This land is purchased and that is why it is in my possession, here is it also the case that he would be deemed credible? That cannot be, as is it reasonable that the Sages would institute a matter, such as this type of arrangement, that people can be led by it to suffer a loss? Rather, in the case of the mortgage the debtor should have protested, and by not protesting, he causes his own loss. Here too, in the case of the tree, the owner should have protested.

170 MISHNA: There are three independent lands in Eretz Yisrael with regard to establishing presumptive ownership: Judea, and Transjordan, and the Galilee. If the prior owner of the field was in Judea and another took possession of his field in the Galilee, or if he was in the Galilee and another took possession of his field in Judea, the possessor does not establish presumptive ownership until the one possessing the field will be with the prior owner in one province. Rabbi Yehuda says: The Sages said that establishing presumptive ownership requires three years only in order that if the owner will be in Spain [Aspamya], and another possesses his field for a year, people will go and inform the owner by the end of the next year, and the owner will come back in the following year and take the possessor to court.

171 GEMARA: What does the first tanna hold in ruling that the prior owner and the field need be in the same province in order for the possessor to establish presumptive ownership? If he holds that a protest that is lodged not in the presence of the one possessing the field is a valid protest, even in the case where one is in Judea and one is in the Galilee, the protest should be valid as well. If he holds that a protest lodged not in his presence is not a valid protest, even in the case where one is in Judea and the other one is in Judea, the protest should not be valid as well.

172 Rabbi Abba bar Memel says that Rav says: Actually, the tanna holds that a protest lodged not in his presence is a valid protest, and the Sages taught our mishna with regard to a period of crisis, when travel is perilous and information cannot be transmitted between Judea and the Galilee. Therefore, although no word of a protest was received, the possessor does not establish presumptive ownership of the field. The Gemara asks: But if it is due only to the exigent circumstances that word of the protest does not reach the one possessing the field, what is different about Judea and the Galilee that the tanna cited? Ostensibly, even within one of the three lands, if travel and communications are restricted the same halakha would apply.

173 The Gemara answers: The tanna, by citing specifically a case where each is located in a different land, teaches us this:

174 That an ordinary situation with regard to travel between Judea and the Galilee is tantamount to a period of crisis.

175 § Rav Yehuda says that Rav says: One cannot establish the presumption of ownership with regard to the property of one who is fleeing, as he is unable to lodge a protest. Rav Yehuda reports: When I

said this ruling before Shmuel, he disagreed and said to me: But does the owner actually have to protest in the presence of the possessor? Since that is not the case, and he can lodge a protest wherever he is, one can establish the presumption of ownership with regard to the property of one who is fleeing.

176 The Gemara asks: And Rav, who ruled that one cannot establish the presumption of ownership with regard to the property of one who is fleeing, what is he teaching us, that a protest that is lodged not in his presence is not a valid protest? But doesn't Rav say: A protest that is lodged not in his presence is a valid protest? The Gemara answers: Rav was explaining the reason of the tanna of our mishna, but he himself does not hold accordingly. Rav holds, in accordance with the opinion of Rabbi Yehuda, that the protest is valid.

177 And there are those who say a different version of the previous discussion: Rav Yehuda says that Rav says: One can establish the presumption of ownership with regard to the property of one who is fleeing. Rav Yehuda reports: When I said this ruling before Shmuel, he said to me: Isn't that obvious? But does the owner actually have to protest in the presence of the possessor?

178 The Gemara asks: And Rav, who ruled that one can establish the presumption of ownership with regard to the property of one who is fleeing, what is he teaching us, that a protest that is lodged not in his presence is a valid protest? But Rav already said this halakha one time, and he would not need to repeat it. Rather, Rav teaches us this: That even if the owner protested in the presence of two witnesses who are personally unable to tell the possessor about the protest, it is nevertheless a valid protest.

179 The Gemara explains: As Rav Anan said: This was explained to me personally by Shmuel himself: If the owner protested in the presence of two people who are able to personally tell the possessor, it is a valid protest, but if the owner protested in the presence of two people who are unable to personally tell the possessor, it is not a valid protest. And why does Rav hold that it is a valid protest? Because your friend who heard the protest has a friend to whom he tells about the protest, and your friend's friend has a friend to whom he tells about the protest, and so forth. Therefore, word of the protest will reach the possessor.

180 Rava says: The halakha is that one cannot establish the presumption of ownership with regard to the property of one who is fleeing, and a protest that is lodged not in a possessor's presence is a valid protest. The Gemara asks: How can he say these two statements that contradict each other? The Gemara answers: This is not difficult. Here, the second statement, is referring to a case where he is fleeing due to monetary difficulties. In such a case, he is able to ensure that the protest reaches the possessor, while there, the first statement, is referring to a case where he is fleeing due to a charge of killing [meradin]. In such a case, he is unable to publicize his protest out of fear of revealing his whereabouts.

181 § The Gemara presents a series of disputes with regard to what is considered a valid protest. What manner of statement constitutes a protest? Rav Zevid said: If the owner says in general terms: So-and-so is a robber, it is not a valid protest, but if he says: So-and-so is a robber as he is holding my land through robbery,

182 and tomorrow, i.e., in the future, I will bring a claim against him in court, it is a valid protest.

[183] If the one lodging a protest also said: Do not tell the possessor of the protest, what is the halakha? Rav Zevid said: It is not a valid protest, because isn't he saying: Do not tell him? Therefore, word of the protest will not reach the possessor and it is meaningless. Rav Pappa disagreed and said that the owner merely meant: Do not tell him personally, but they, i.e. the witnesses, should tell others. In that case, word of the protest will reach the possessor, since your friend has a friend whom he tells about the protest, and your friend's friend has a friend whom he tells about the protest; therefore, it is a valid protest.

[184] If the witnesses before whom the owner lodged the protest said to him: We are not going to tell the possessor about your protest, what is the halakha? Rav Zevid said: It is not a valid protest, and he has to lodge a protest before other witnesses, as are they not saying to him: We are not going to tell him about your protest? Rav Pappa disagreed and said that they merely meant: We are not going to tell him personally, but we are going to tell others. In that case, word of the protest will reach the possessor, since your friend has a friend whom he tells about the protest, and your friend's friend has a friend whom he tells about the protest; therefore, it is a valid protest.

[185] If the one lodging the protest also said to them: A word [shuta] should not emerge from you about this, what is the halakha? Rav Zevid said: It is not a valid protest, as isn't he saying to them: A word should not emerge from you? Similarly, if the people before whom he protested said to him: We will not have a word emerge from us, Rav Pappa said: It is not a valid protest, as aren't they saying to him: We will not have a word emerge from us? Rav Huna, the son of Rav Yehoshua, disagreed and said: It is a valid protest, because with regard to any matter that is not actually incumbent on a person to keep secret, it is likely that he will say it to others unawares, and therefore the presumption is that word will reach the possessor.

[186] § Rava says that Rav Naḥman says: A protest that is lodged not in the presence of the possessor is a valid protest. Rava raised an objection to what Rav Naḥman said from the mishna: Rabbi Yehuda says: The Sages said that establishing the presumption of ownership requires three years only in order that if the owner will be in Spain and another possesses his field for a year, people will go and inform the owner by the end of the next year, and the owner will come back in the following year and take the possessor to court. And if it enters your mind that a protest that is lodged not in his presence is a valid protest, why do I need the owner to come? Let him remain there in his place and protest. The Gemara answers: There, Rabbi Yehuda wishes to teach us good advice, that he should come and collect the land and its produce.

[187] The Gemara asks: From the fact that Rava raised an objection to Rav Naḥman, it may be inferred that he does not hold that a protest that is lodged not in his presence is a valid protest. But doesn't Rava say: A protest that is lodged not in his presence is a valid protest? The Gemara answers: He held that conclusion only after he heard this halakha from Rav Naḥman.

[188] § The Gemara relates: Rabbi Yosei, son of Rabbi Ḥanina, encountered the students of Rabbi Yoḥanan and said to them: Did Rabbi Yoḥanan say in the presence of how many people a protest must be lodged? Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: A protest must be lodged in the presence of two people. Rabbi Abbahu said that Rabbi Yoḥanan said: A protest must be lodged in the presence of three people.

[189] The Gemara suggests: Shall we say that they disagree with regard to the halakha of Rabba bar Rav Huna? As Rabba bar Rav Huna says: Any matter that is said in the presence of three people

[190] is not subject to the prohibition of malicious speech, as it is already public knowledge. The Gemara elaborates on the suggestion that the dispute hinges upon this point: The one who says that a protest can be lodged in the presence of two people is not of the opinion that the ruling is in accordance with the opinion of Rabba bar Rav Huna and holds that even if only two people hear of a matter it will become a matter of public knowledge. Therefore, it is sufficient to protest in the presence of two witnesses. And the one who says that a protest must be lodged in the presence of three people is of the opinion that the ruling is in accordance with the opinion of Rabba bar Rav Huna.

[191] The Gemara rejects this suggestion: No, everyone is of the opinion that the ruling is in accordance with the opinion of Rabba bar Rav Huna, and here they disagree with regard to this: The one who says that a protest can be lodged in the presence of two people holds that a protest that is lodged not in his presence is not a valid protest. Therefore, two witnesses suffice, as they are needed to attest only to the fact that the owner protested. And the one who says that a protest must be lodged in the presence of three people holds that a protest that is lodged not in his presence is a valid protest. Since the protest can be lodged not in the possessor’s presence, three people are needed to ensure that word of the protest will reach him.

[192] If you wish, say instead that everyone holds that a protest that is lodged not in his presence is a valid protest, and here they disagree with regard to this: The one who says that a protest can be lodged in the presence of only two people holds that we require testimony, and two are sufficient for testimony. And the one who says that a protest must be lodged in the presence of three people holds that we require that the matter of the protest be revealed, and for that purpose three people are needed.

[193] § The Gemara relates: Giddel bar Minyumi had a protest to lodge with regard to his property. He found Rav Huna and Ḥiyya bar Rav and Rav Ḥilkiya bar Tuvi, who were sitting, and he protested before them. After a year, he came to them again to protest. They said to him: You do not need to do so; this is what Rav says: Once the owner protested in the first year, he no longer needs to protest. And there are those who say that Ḥiyya bar Rav said to him, not in the name of Rav: Once the owner protested in the first year, he no longer needs to protest.

[194] Reish Lakish says in the name of bar Kappara: And he needs to protest at the end of each and every period of three years, so that the possessor will not hold his property for three consecutive years uncontested. Rabbi Yoḥanan expressed surprise at this ruling of Reish Lakish and said: But does a robber have the ability to establish the presumption of ownership? Once the owner lodged one protest, he demonstrated that the possessor occupied his land unlawfully. Therefore, the possessor should never be able to establish the presumption of ownership. The Gemara clarifies: Does it enter your mind that the possessor is actually a robber? There is no evidence that he robbed, there is only a protest by the prior owner. Rather, emend his question as follows: Does one who is akin to a robber have the ability to establish the presumption of ownership?

[195] Rava says that the halakha is: The owner needs to protest at the end of each and every period of three years. Bar Kappara teaches: If the owner protested, returned and protested, and then returned and protested, if, when he protested the later times, his protest was based on the same claim as the initial claim, the possessor has no presumptive ownership. But if the later protests were not based on

the same claim as the initial protest, the possessor has presumptive ownership since each time the owner advanced a new claim, he thereby nullified his earlier claims.

196 § Rava says that Rav Naḥman says: A protest can be lodged in the presence of two witnesses,

197 and the prior owner does not need to say to the witnesses: Write a document detailing the protest; they can write one even absent a directive. Similarly, one who desires to state a declaration, preemptively invalidating a bill of sale by notifying the court that it was executed under duress, needs to state the declaration in the presence of two witnesses, and he does not need to say to them: Write a document detailing the declaration; they can write one even absent a directive.

198 The Gemara continues with the statement of Rava: An admission of a monetary obligation needs to be stated in the presence of two witnesses, and in this case, the one stating the admission needs to say to the witnesses: Write a document detailing the admission, as this document is to his detriment; they may not write one absent a directive. Acquisition by means of a symbolic act utilizing a cloth needs to be done in the presence of two witnesses, and the parties do not need to say to the witnesses: Write a document detailing the acquisition; they can write one even absent a directive. And ratification of legal documents needs to be done by means of three people.

199 The Gemara presents a mnemonic for the cases discussed above: Mem, protest [meḥa’a]; mem, declaration [moda’a]; heh, admission [hoda’a]; kuf, acquisition [kinyan].

200 Rava now discusses the statement of Rav Naḥman that he quoted. Rava said: If any part of this statement is difficult to me, this is what is difficult to me. This acquisition, what is it like? If it is like an act of the court, it should require three witnesses for it to take effect, as a court must consist of at least three men. If it is not like an act of the court, why does he not have to say to the witnesses that they should write the document detailing the acquisition? Isn’t transferring an item to another tantamount to admitting a monetary obligation?

201 After Rava raised the dilemma, he then resolves it. Actually, it is not considered like an act of the court. And here, what is the reason that he does not have to say to the witnesses that they should write? It is due to the fact that a record of an unspecified acquisition is ready to be written. A symbolic act of acquisition indicates one’s intention to do everything possible to finalize the transaction as soon as possible without waiting for the actual transfer of the item. Therefore, it is assumed that the parties would desire that a document be written, and no explicit authorization is necessary.

202 § The Gemara discusses the halakhot of a preemptive declaration. Rabba and Rav Yosef both say: We write a preemptive declaration only concerning one who does not generally listen to and implement the judgment of the court. In such a case, there is no recourse other than to write a preemptive declaration on behalf of the seller nullifying the transaction. If the buyer would be willing to listen to the court, the seller is expected to deal with the matter in court, rather than participating in the sale and writing a preemptive declaration. Abaye and Rava both say: A preemptive declaration may be written even concerning someone who is law abiding, such as for me and for you, as not every issue can be settled through the courts. The Sages of Neharde’a say: Any preemptive declaration

[203] that does not have written in it the formulation: We are aware of so-and-so's duress, i.e., we are aware of the nature of the coercion that forced him to enter this arrangement against his will, is not a valid preemptive declaration.

[204] For what type of transaction is the preemptive declaration being stated? If one were to say that it is a preemptive declaration for a bill of divorce or for a gift, the preemptive declaration is merely revealing the matter. Since these actions can't take place unless he desires it, it is sufficient that he stated that he does not desire them, and he need not specify a particular reason for nullifying them. And if it is for a sale, but doesn't Rava say: We do not write a preemptive declaration for a sale?

[205] The Gemara answers: Actually, it is referring to a preemptive declaration for a sale, as Rava concedes in a case where one was compelled to act due to a threat of monetary loss, as with the incident of the orchard, as there was a certain man who mortgaged his orchard to another for three years. After he worked and profited from it for the three years necessary for establishing the presumption of ownership, he said: If you sell the orchard to me, it is well. And if not, then I will hide the mortgage document and I will say that this land is purchased and that is why it is in my possession, and you will receive no payment for the orchard. In a case like this, we write a preemptive declaration. The declaration states that he does not actually desire to sell his property but was forced to do so.

[206] § Rav Yehuda says: With regard to this document detailing a concealed gift, we do not collect with it. The Gemara clarifies: What are the circumstances of a concealed gift? Rav Yosef said: It is referring to a case in which the giver said to witnesses: Go and hide and write a document for the recipient of this gift. And there are those who say that Rav Yosef said: It is referring to a case in which the giver did not say to witnesses: Sit outdoors in the marketplace and write it for him. The Gemara asks: What is the difference between the two versions of Rav Yosef's statement? The Gemara answers: The difference between the two versions is in a case where his instructions were without specification, i.e., he did not tell them to write the document in private or in public.

[207] Rava said: But a concealed gift is effective as a preemptive declaration for another gift. In other words, if he first gave an item as a concealed gift to one person, and then he gave this item as a gift to someone else, the second gift is null and void. Rav Pappa said: This ruling of Rava was not stated explicitly; rather, it was stated by inference, and he did not, in fact, hold accordingly.

[208] Rav Pappa explains the inference: As there was a certain man who went to betroth a woman. She said to him: If you write a document signing over all of your property to me, then I will be your wife, and if not, I will not be your wife. He went and wrote a document signing over all of his property to her. His eldest son came and said to him: And that man, i.e., me, what will become of him if you give all of your property to this woman? The father said to two witnesses: Go hide in Avar Yemina and write a document for the son, giving him the father's property as a gift. Later, the witnesses came before Rava. He said to them: This Master, i.e., the son, did not acquire the property and that Master, i.e., the wife, did not acquire it either. The son did not acquire the property because it was a concealed gift.

[209] The Gemara explains why the wife does not acquire it as well. One who observed this incident assumed that Rava invalidated the wife's acquisition because the concealed gift to his son was a preemptive declaration to the other gift, but that is not so. There, in the case of the woman and the son, the matter is self-evident that he wrote a document signing over his property to her because of

duress, as she had told him that she would not marry him otherwise; but here, in a typical case of giving one person a concealed gift and then giving a public gift to another, that is not the case. It is possible that it is simply amenable to him that this Master, i.e., the one to whom he gave it publicly, should acquire the gift, and it is not amenable to him that this Master, i.e., the one to whom he gave it privately, should acquire the gift. Consequently, an incorrect inference was drawn concerning Rava's opinion.

[210] A dilemma was raised before the Sages:

[211] What is the status of a document detailing a gift that is without specification as to whether the giver desired that it be publicized? Ravina says: We are not concerned that it may be a concealed gift, and Rav Ashi says: We are concerned. And the halakha is that we are concerned.

[212] MISHNA: Any possession that is not accompanied by a claim explaining how the possessor became the owner is not sufficient to establish the presumption of ownership. How so? If the prior owner said to the possessor: What are you doing in my land? And the possessor said to him in response: I am in possession of the land because no person ever said anything to me about my being here, i.e., he states no valid claim as to why he would be the owner of the land, his mere use is not sufficient to establish the presumption of ownership.

[213] But if the possessor claimed: I am in possession of the land because you sold it to me, or: Because you gave it to me as a gift, or: Because your father sold it to me, or: Because your father gave it to me as a gift, these are valid claims to ownership. In these cases, his possession is sufficient to establish the presumption of ownership. And one who comes to claim the land based on inheritance does not need a claim explaining why his ancestors had a right to the land.

[214] GEMARA: The Gemara asks: Why does the mishna need to say this? Isn't it obvious that one cannot establish the presumption of ownership absent a claim of ownership?

[215] The Gemara answers: It is necessary for the mishna to state this, lest you say: That man had actually purchased this land that he possessed, and he had a bill of sale, but it was lost. And the reason that he said that he is in possession of the land because no person ever said anything to him, is that he thought: If I say that the prior owner sold me this land, the court will say to me: Show us your bill of sale. Therefore, being that this may be the case, let us say to him: Perhaps you had a bill of sale and it was lost. In a case such as this, one would think that it is a situation where the court should apply the verse: "Open your mouth for the mute" (Proverbs 31:8), meaning the court should advise a litigant of his possible claims, because perhaps he does not state them out of ignorance. Therefore, the mishna teaches us that the court does not advance this claim on his behalf, and if he does not make the claim of his own volition, he does not establish the presumption of ownership.

[216] § The Gemara presents a mnemonic for the discussion that follows: Ayin, nun, bet.

[217] The Gemara tells of a related incident: A torrent [bideka] of water swept through Rav Anan's land, removing the wall which marked the boundary between his land and that of his neighbor. Rav Anan went back and rebuilt the wall, inadvertently placing it in his neighbor's land. Rav Anan came before Rav Naḥman to ask him what he should do about it. Rav Naḥman said to him: Go return the boundary to its prior position.

[218] Rav Anan replied: Why should I return the boundary? But didn't I already establish the presumption of ownership of this land? Rav Naḥman said to him: In accordance with whose opinion

are you claiming a right to the land? Is it in accordance with the opinion of Rabbi Yehuda and Rabbi Yishmael, who say: Any taking of possession that is done in the presence of the prior owner is sufficient to establish the presumption of ownership immediately? If so, your claim is not accepted since the halakha is not in accordance with their opinion.

[219] Rav Anan said to Rav Naḥman: But didn't the neighbor waive his ownership of this land, as he came and assisted in the building of the wall with me? Rav Naḥman said to Rav Anan: It is an erroneous waiving, since you yourself would not have placed the wall there if you had known that it was the wrong location for it. Just as you did not know that you were building it in the wrong location, so too, he did not know. Therefore, it is reasonable to assume that he did not knowingly waive his ownership of his property.

[220] The Gemara relates a similar incident: A torrent of water swept through Rav Kahana's field, removing the wall that marked the boundary between his land and that of his neighbor. Rav Kahana went back and rebuilt the wall, inadvertently placing it in land that was not his.

[221] Rav Kahana came before Rav Yehuda. Rav Kahana's neighbor went and brought two witnesses. One said: Rav Kahana entered two rows into his neighbor's land, and one said: Rav Kahana entered three rows into his neighbor's land. Rav Yehuda said to Rav Kahana: Go and pay two out of the three that your neighbor is claiming by moving the wall two rows into your property.

[222] Rav Kahana said to Rav Yehuda: In accordance with whose opinion are you ruling that the testimony of witnesses who contradict each other is valid? Is it in accordance with the opinion of Rabbi Shimon ben Elazar? As it is taught in a baraita that Rabbi Shimon ben Elazar said: Beit Shammai and Beit Hillel did not disagree with regard to two sets of witnesses, where one set says that a litigant owes one hundred dinars and one set says that he owes two hundred. In such a case, everyone agrees that two hundred includes one hundred, and he is liable to pay one hundred.

[223] With regard to what did Beit Shammai and Beit Hillel disagree? They disagree with regard to one set of witnesses, where one witness says that a litigant owes one hundred dinars and one witness says that he owes two hundred; as in such a case, Beit Shammai say that their testimony is divided, and they do not combine to form a set of witnesses, and Beit Hillel say that two hundred includes one hundred, and they combine to form a set of witnesses. Rav Kahana assumed that Rav Yehuda based his ruling on Rabbi Shimon ben Elazar's interpretation of the opinion of Beit Hillel.

[224] Rav Kahana then said to Rav Yehuda: How can you rely on this opinion? But I can bring you a letter from the West, Eretz Yisrael, stating that the halakha is not in accordance with the opinion of Rabbi Shimon ben Elazar, and that in fact Beit Hillel also disqualify two witnesses in such a case. Rav Yehuda said to Rav Kahana: I will accept that ruling when you will bring such a letter. Until then, I stand by my ruling.

[225] § The Gemara relates: There was a certain man who resided in a loft in Kashta for four years. At the end of that period, the prior owner of the house came and found him there. The prior owner said to him: What do you want with this house of mine? The possessor said to him: I purchased it from so-and-so, who purchased it from you. The possessor came before Rabbi Ḥiyya, who said to him: If you have witnesses who will testify that he, from whom you purchased the house, resided in it, even if there is testimony that he resided in it for only one day, I will establish it in your possession, but if there is no testimony to his having resided there then I will not establish it in your possession, and it will revert back to its prior owner.

[226] Rav said: I was sitting before my uncle [deḥavivi], Rabbi Ḥiyya, and I said to him: But isn't it common for a person to purchase a house and sell it immediately during the same night? It is possible that the seller purchased and sold the house without witnesses who saw him residing in it. And I saw that Rabbi Ḥiyya's opinion was that if the possessor said to the claimant: The one who sold it to me purchased it from you in my presence, this claim is deemed credible, since if the possessor wanted to, he could have said to the prior owner of the house: I purchased it from you.

[227] Rava said: It stands to reason that the halakha is in accordance with the opinion of Rabbi Ḥiyya, as the mishna (41a) teaches: In the case of land that comes as an inheritance, one is not required to make a claim as to how the land came into his benefactor's possession when one's ownership of the land is challenged. This indicates that it is a claim that he does not need, but he does need proof that it had been in the possession of his ancestors.

[228] The Gemara rejects the inference from the mishna: But perhaps he does not need proof and does not need a claim. The only reason that the mishna mentions that he does not need a claim is to clarify that this does not fall into the category of a possession that is not accompanied by a claim. Therefore, one cannot infer from the ruling of that mishna what the halakha should be in this case. And if you wish, say instead that although the inference from the mishna is correct, it is not relevant to this case, as the case of a buyer is different, since he would not throw money away for nothing. The fact that he purchased the house indicates that he must have ascertained that the seller had a right to it.

[229] A dilemma was raised before the Sages: If the seller was seen in the house, what is the halakha? Is this sufficient proof that he had purchased the house? Abaye said: It is identical to testimony that he had resided there. Rava said: This does not constitute proof, as a person is apt to survey [desayyar] land and ultimately not purchase it.

[230] § The Gemara issues a ruling concerning the establishment of the presumption of ownership. Three buyers combine to establish the presumption of ownership. If one purchased a field and sold it to another, who then sold it to a third party, and in total, the three of them worked and profited from the field for three years, the third one has established the presumption of ownership. Rav says: And this is the halakha only if they all purchased the land with a bill of sale. As a result of the bill of sale, the prior owner will know that it is not the case that each of them worked and profited from the field for only one year and abandoned it, which would explain why he did not bother to lodge a protest.

[231] The Gemara asks: Is this to say that Rav holds that a bill of sale generates publicity, but witnesses do not generate publicity? But doesn't Rav say that with regard to one who sells a field in the presence of witnesses, and that field is later seized by the creditors of the seller, the buyer collects from the liened property that the seller had sold to others, to be reimbursed for his seized field? If not for the fact that the sale in the presence of witnesses generates publicity, those who later purchased land from the seller would not have been aware that the property they are purchasing is liened to the first buyer. The Gemara answers: There, with regard to buyers,

[232] they caused their own loss by not investigating whether there was a lien on the property that they intended to buy.

[233] The Gemara asks: And did Rav, in fact, say this, that one can collect sold property by means of witnesses alone? But didn't we learn in a mishna (175a): One who lends money to another with a promissory note collects his debt from liened property that had been sold after the loan, if the debtor

has no other property; but if one lent by means of witnesses without a promissory note, he collects his debt only from unsold property?

234 And if you would say that Rav is a tanna, and as such has the authority to dispute the determination in the mishna, but didn't Rav himself and Shmuel both say: One who is owed a debt due to a loan by oral contract does not collect liened property, not from the heirs of the debtor nor from the buyers, despite the fact that there are witnesses?

235 The Gemara answers: Are you raising a contradiction from a case of a loan to a case of a sale? They are not comparable. In the case of a loan, when one borrows money he borrows discreetly, in order that his property not be devalued, as people will pay less for his property if they know that he is pressed for capital. Since a loan is issued discreetly, the presumption is that the buyers were unaware of the loan. Therefore, the creditor does not collect from sold property. By contrast, in the case of a sale, one who sells land sells it in public in order that publicity be generated with regard to it. Therefore, the cases of loans and sales are not comparable.

236 The Gemara continues the discussion of the establishment of the presumption of ownership by successive possessors. The Sages taught: If the father worked and profited from the land for one year and the son who inherited it from him worked and profited from it for two years, or if the father worked and profited from the land for two years and the son worked and profited from it for one year, or if the father worked and profited from the land for one year and the son worked and profited from it for one year, and the buyer, who purchased it from the son, worked and profited from it for one year, this is sufficient to establish the presumption of ownership.

237 The Gemara asks: Is this to say that with regard to a buyer, the transaction generates publicity? And one can raise a contradiction from a baraita (Tosefta 2:8): If one worked and profited from the land in the presence of the father, the prior owner, for one year, and in the presence of the son, who then inherited it from the father, for two years; or in the presence of the father for two years and in the presence of the son for one year; or in the presence of the father for one year and in the presence of the son for one year and in the presence of the buyer, who purchased it from the son, for one year; this is sufficient to establish the presumption of ownership. And if it enters your mind that with regard to a buyer, the transaction generates publicity, there is no greater protest than this. By selling his land to someone else, the son of the prior owner is clearly stating that it does not belong to the possessor.

238 Rav Pappa said: That is not a contradiction, as when that baraita is taught, it is taught with regard to one who sells his fields without specification. The son of the prior owner sold his fields without clarifying which fields he was selling. Since he did not specify the field from which the possessor is profiting, the possessor had no reason to assume that this field was being sold and that he needed to hold on to his deed, and he establishes the presumption of ownership despite the sale. In a case where the son of the prior owner stated explicitly that he was selling the field in question, the sale would serve as his protest.

239 MISHNA: Craftsmen who are in possession of items that they are repairing, and partners, and sharecroppers, and stewards [veha'apotropin] do not have the ability to establish the presumption of ownership with regard to property in their possession, as their possession is not indicative of ownership. Similarly, a man does not have the ability to establish the presumption of ownership with regard to his wife's property, and a wife does not have the ability to establish the presumption of

ownership with regard to her husband’s property. And a father similarly does not have the ability to establish the presumption of ownership with regard to a son’s property, and a son does not have the ability to establish the presumption of ownership with regard to a father’s property. A husband and wife, or son and father, use each other’s property freely. Possession is therefore not indicative of ownership.

240 The mishna continues: In what case is this statement, that one establishes the presumption of ownership after profiting from the property for a certain duration, with the exception of the above people, said? It is said in a case of one who has mere possession of the property, which does, in some cases, serve as proof of ownership. But in a case where another person gives one a gift, or there are brothers who divided their inheritance, or there is one who takes possession of the property of a convert who died without heirs and his property is now ownerless, as soon as one locked the door of the property, or fenced it or breached its fence even a bit, this is considered taking possession of the property, and it effects acquisition.

241 GEMARA: Shmuel’s father and Levi taught: A partner does not have the ability to establish the presumption of ownership of property in his possession, and, all the more so, this inability applies to a craftsman as well. But Shmuel teaches: A craftsman does not have the ability to establish the presumption of ownership of property in his possession, but a partner does have the ability to establish the presumption of ownership. The Gemara comments: And Shmuel follows his line of reasoning, as Shmuel says: Partners establish the presumption of ownership with regard to the property of each other, and they testify for each other and become paid bailees of their joint property with regard to each other. In terms of these issues, Shmuel considers partners to be independent parties.

242 Rabbi Abba raises a contradiction to Rav Yehuda in the case of Rav Zakkai’s house: Did Shmuel actually say that a partner has the ability to establish the presumption of ownership? But doesn’t Shmuel say: A partner is considered as one who enters the field with permission, such as a sharecropper? Isn’t that to say that a partner does not have the ability to establish the presumption of ownership? The Gemara answers: It is not difficult. This is referring to where he enters all of the field, and that is referring to where he enters half of the field.

243 The Gemara explains: Some say it in this manner and some say it in that manner. On the one hand, it is possible to explain that if he entered half of the field he establishes the presumption of ownership with regard to that half, but if he entered the entire field he is merely acting as a partner. On the other hand, one could explain that entering half of the field does not establish the presumption of ownership at all, while entering the entire field does establish it.

244 Ravina stated a different resolution to the contradiction: Both this and that are referring to a case where he enters the entire field, and it is not difficult. This is referring to a case where the field is of sufficient area to be subject to the halakha of division. In this case, his being in possession of the other half of the field as well, which belonged to his partner, establishes the presumption of ownership. That is referring to a case where the field is not of sufficient area to be subject to the halakha of division. Since the property will not be divided but will remain co-owned, he is merely possessing it as a partner and does not establish the presumption of ownership.

245 § The Gemara addresses the matter itself. Shmuel says: A partner is considered as one who enters the field with permission. What is this teaching us, that there is not the presumption of ownership in

the context of partnership? If so, let him say explicitly: A partner does not have the ability to establish the presumption of ownership of property in his possession.

246 Rav Naḥman says that Rabba bar Avuh says: Shmuel's intent was to state that a partner who proactively works to improve their mutual property collects the enhancement that reaches shoulders, i.e., when the produce that grew due to the efforts of the partner is fully grown and ripened and can be harvested and carried upon one's shoulders. He is not considered as one who entered another's field without permission and improved it, who collects only for his expenditures. This is the halakha if he planted trees in a field that is not commonly used for planting trees, just as it is if he planted in a field that is commonly used for planting trees.

247 The Gemara continues its discussion of Shmuel's statement: And testify for each other. A partner may join another witness in testifying with regard to the fact that his partner owns a share of their field in order to counter the claim of a one who claims ownership of the field, and his testimony is not disqualified due to being biased.

248 The Gemara asks: Why is this so? Aren't partners biased in their testimony, as they jointly own the property in question?

249 The Gemara answers: With what are we dealing here? We are dealing with a case where the partner who is testifying wrote to the other partner: I do not have any legal dealings or involvement with regard to this field, thereby relinquishing his ownership of the field. The Gemara asks: And if he wrote this to him, what of it? But isn't it taught in a baraita that one who says to another: I do not have any legal dealings or involvement concerning this field, or: I have no dealings with it, or: My hands are removed from it, has said nothing? That is to say, these statements have no legal standing.

250 The Gemara answers: With what are we dealing here? We are dealing with a case where the one testifying performed an act of acquisition with the other partner. Since relinquishing his share in this fashion is effective, his testimony is no longer biased. The Gemara asks: And if he performed an act of acquisition with the one testifying, what of it? His testimony is still biased, as he is establishing the field before his creditor. Once he transferred his share to his partner, his creditor will now be able to collect from the property that he formerly co-owned, as a creditor can collect from property that a debtor once owned despite the fact that he has relinquished his ownership of it. Since his testimony enables him to repay his debt, it is biased.

251 As Ravin bar Shmuel says in the name of Shmuel: One who sells a field to another even without a guarantee that if the field will be repossessed the seller will compensate the buyer for his loss cannot testify with regard to ownership of that field on behalf of the buyer because he is establishing the field before his creditor.

252 The Gemara answers: With what are we dealing here? We are dealing with a case where the one testifying assumes financial responsibility for the field. Therefore, his testimony is not biased. The Gemara clarifies: Responsibility with regard to whom? If we say that he assumes general responsibility, such that if anyone collects the field from his former partner for whatever reason, he is liable to compensate the partner, then all the more so it is preferable for him that the field remain in his former partner's possession, as if the claimant will be successful in obtaining the field, the witness will have to compensate the partner. Rather, it is referring to a case where he assumes responsibility only for a loss that comes to his former partner in the property resulting from the field

being seized by one of his creditors to collect payment for his debts. He is, therefore, not an interested party, as in any event he owes the same debt, either to his creditor or to his partner.

253 The Gemara asks: And if he removes himself from the property by having the former partner acquire his share in it, is it actually effective to remove him, so that there is no longer a concern for biased testimony? But isn't it taught in a baraita: With regard to a case of residents of a city whose Torah scroll was stolen, the case is not adjudicated by the judges of that city, and proof may not be brought from the testimony of the people of that city, as their testimony is biased? And if it is so that relinquishing one's share renders one as not biased, then let two of them remove themselves from their share in the Torah scroll, and then the court can judge the case based on their testimony.

254 The Gemara answers: A Torah scroll is different, as it stands for the people to listen to the Torah reading from it. Since they are obligated to listen to the Torah reading, they stand to benefit from this Torah scroll even if they relinquish their ownership share in it, and their testimony is biased.

255 The Gemara suggests: Come and hear a proof from a baraita: With regard to one who says: Give one hundred dinars to the residents of my city, the distribution of the funds is not adjudicated by the judges of that city, and proof may not be brought from the testimony of the people of that city, as their testimony is biased. Why not? Let two people remove themselves from their share in the funds and then the court can judge the case based on their testimony.

256 The Gemara answers: Here too, this halakha is stated with regard to a case where the gift was for the purpose of procuring a Torah scroll, and the same aforementioned reasoning applies.

257 The Gemara suggests: Come and hear a proof from a baraita: With regard to one who says: Give one hundred dinars to the poor people of my city, the distribution of the funds is not adjudicated by the judges of that city, and proof may not be brought from testimony of the people of that city, as their testimony is biased. And how can you understand the fact that the poor take the money and the judges are thereby disqualified as interested parties? Rather, say: The distribution of the funds is not adjudicated by the poor judges of that city, and proof may not be brought from the testimony of the poor people of that city. And why not? Let two people remove themselves from their share in the funds and then the court can judge the case based on their testimony.

258 The Gemara answers: Here, too this halakha is stated with regard to a case where the gift was for the purpose of procuring a Torah scroll, and the same aforementioned reasoning applies. The Gemara asks: And if it is referring to money for purchasing a Torah scroll rather than money earmarked for charity, why does the baraita call the recipients: Poor people? Because everyone is poor with regard to a Torah scroll, as it is very expensive.

259 And if you wish, say instead: Actually, it is referring to people who are literally poor, as it teaches. And the ruling of the baraita is stated with regard to poor people, whose support is incumbent upon all of the residents. Therefore, a gift to these poor people reduces their obligation, and all of their testimony is biased. The Gemara clarifies: And what are the circumstances in which this baraita states its ruling? If it is a place where the sum of charity that each resident is obligated to give is fixed for them, let two of them give what is fixed for them to give to the poor, and then the court can judge the case based on their testimony.

260 The Gemara answers: With what are we dealing here? We are dealing with a case where the sum is not fixed for them. Therefore, this is not an option. And if you wish, say instead: Actually, it is

referring to a place where the sum is fixed for them. And nevertheless, it is amenable to the residents of the city that the poor receive a gift, because once there is a gain for the poor people from this donation, there is a gain, and it lightens the burden on all of the people of the city.

[261] § The Gemara returns to discuss Shmuel's statement concerning partners: And they become paid bailees of their joint property with regard to each other.

[262] The Gemara asks: Why are they liable as paid bailees? Isn't it a case of safeguarding accompanied by employment of the owner? Since both partners are safeguarding each other's property, they are both employed by each other, and they should therefore be exempt from the obligations of safeguarding. Rav Pappa said: Shmuel is referring to a case where he says to his partner: Safeguard for me today, and I will safeguard for you tomorrow. In this circumstance, they are each the sole bailee at any given moment, and they do not receive the exemption from bailee payments for being employed by the owner.

[263] § The Sages taught: If one sold a house to another, or if he sold a field to him, he cannot testify about it for the buyer against a claimant because the financial responsibility to compensate the buyer for it is upon him, and his testimony is biased. By contrast, if he sold a cow to him, or if he sold a cloak to him, he can testify about it for the buyer because the financial responsibility to compensate the buyer for it is not upon him. The Gemara asks: What is different in the first clause that he cannot testify and what is different in the latter clause that he can? Why would one assume that in the first case he does bear responsibility, but not in the second?

[264] Rav Sheshet said: The first clause is stated with regard to the case of Reuven, who robbed Shimon of a field and sold it to Levi, and then Yehuda comes and contests Levi's ownership, stating that it was actually his. The baraita teaches that Shimon cannot go to court to testify for Levi, because it is preferable for Shimon that the field be returned to Levi, so that he can later collect it from him.

[265] The Gemara asks: But once he testified that the field is Levi's, how is he able to later remove it from his possession? The Gemara answers: This is referring to a case where Shimon says in his testimony: I know that this land is not Yehuda's, but he did not explicitly testify that it belonged to Levi. He is therefore able to later claim it is his and not Levi's. The Gemara asks: But why should he testify that it does not belong to Yehuda? With that same right by which he removes the land from the possession of Levi, let him remove it from the possession of Yehuda. It is not to his advantage to lie in order to establish it in the possession of Levi, and his testimony should not be considered biased.

[266] The Gemara answers: Because Shimon says to himself: The second person is amenable to me, while the first is more difficult than he is, i.e., I prefer to litigate with Levi rather than with Yehuda.

[267] And if you wish, say instead: It is referring to a case where this Master, Shimon, has witnesses attesting to his ownership, and that Master, Yehuda, also has witnesses attesting to his ownership, and the Sages said that under such circumstances the land should remain where it is. That is to say, it should remain with the one currently in possession. If Yehuda were to be awarded the land, Shimon would not be able to remove the land from his possession despite having witnesses to support his claim, as Yehuda also has witnesses supporting his claim and would be in possession of the land. As a result of Shimon's testimony, the land will be awarded to Levi, who has possession as a result of his purchase from Reuven. Then Shimon will be able to remove the land from Levi's possession by proving that Reuven stole it from him. Therefore, Shimon's testimony is biased.

[268] The Gemara asks: And according to the understanding of Rav Sheshet, that the baraita is disqualifying one whose field was stolen from testifying on behalf of one who purchased the field from the robber, why is it necessary to discuss a case involving a buyer, when it would be simpler to establish it with regard to testifying for the robber himself?

[269] The Gemara answers: The tanna of the baraita discusses a case involving a buyer because he wants to teach the latter clause: If he sold a cow to him, or if he sold a cloak to him, he can testify about it for the buyer. As in this clause, the tanna specifically needs to discuss a case where the robber sold it, because then it is a case of despair by the owners due to the robbery, and there is also a change in possession due to the sale, and the one who was robbed can no longer reclaim the stolen item. He is therefore no longer biased in his testimony and can testify for the one who purchased the item. But in the latter clause, if the robber did not sell it, in which case the stolen item is returned to the robbery victim, he cannot testify, as he prefers that the item be in the possession of the robber, so that he can recover it from him. Therefore, the tanna taught in the first clause as well about a case where he sold it.

[270] The Gemara asks: And in the latter clause as well, where there is despair and change in possession, granted that he despairs of recovering the item itself, but did he despair of being reimbursed for its value? While it is true that he lost his ownership of the item, he is still entitled to payment. Therefore, he is still biased in his testimony. The Gemara answers: No, it is necessary in a case where the robber died, in which case the robbery victim cannot collect even the value of the stolen item, and is no longer biased in his testimony. As we learned in a mishna (Bava Kamma 111b): In the case of one who robs another of food and feeds it to his own children, or who left a stolen item to them as an inheritance, the children are exempt from paying the victim of the robbery after their father’s death. Since he is no longer able to collect the value of the stolen item, he is not biased in his testimony and can testify on behalf of the buyer.

[271] The Gemara asks: And why not establish the entire baraita with regard to testifying for the robber’s heir? This would demonstrate the contrast that the tanna wanted to teach. In the case of a stolen field, which always must be returned to its owner, the robbery victim is biased in his testimony because the field can be recovered. Therefore, it is in his interest to establish that it is in the possession of the robber’s heirs. In the case of movable property, which cannot be recovered after the death of the robber, he is not biased in his testimony.

[272] The Gemara notes: This works out well according to the one who says that the transfer of an item to the possession of an heir is not like the transfer of an item to the possession of a buyer, but is viewed as an extension of the possession of the legator. According to this opinion, it is well that the baraita did not establish its case with regard to the robber’s heir, as the robbery victim would be able to recover the item, and would be considered biased in his testimony. But according to the one who says that the transfer of an item to the possession of an heir is like the transfer of an item to the possession of a buyer, and the item is not recoverable in either case, what can be said to explain why the baraita does not state its case with regard to an heir?

[273] And furthermore, this explanation was difficult for Abaye to understand, as according to Rav Sheshet’s explanation, is it accurate to state, as the baraita does, that the distinction exists between the cases of land and movable property because in the first clause the financial responsibility to compensate the buyer for the land is upon him, and in the latter clause the financial responsibility to

compensate the buyer for the movable property is not upon him? That is not the crucial distinction. The tanna should have taught instead that the difference is: Here he cannot testify because the stolen field returns to him, and here he can testify because the stolen item does not return to him.

274 The Gemara offers a new explanation of the baraita: Rather, explain instead in accordance with the statement of Ravin bar Shmuel, as Ravin bar Shmuel says in the name of Shmuel: One who sells a field to another even without a guarantee that if the field will be repossessed the seller will compensate the buyer for his loss cannot testify with regard to ownership of that field on behalf of the buyer, because he is establishing the field before his creditor.

275 The Gemara clarifies this by noting: And this is the case specifically in the case of a house or a field. But in the case of a cow or a cloak, he is not biased in his testimony, and can testify on behalf of the buyer. The Gemara explains: It is not necessary to say that this is the halakha

276 in a case where he sold a cow or cloak without specification, where it is not liened to the creditor. What is the reason for this? It is because these items are movable property, and movable property is not liened to a creditor. And even though it is so that the debtor wrote to the creditor that he can collect the debt even from the cloak that is on his shoulders, that matter applies only when it is as is and in the possession of the debtor, but if it is not as is, since it is in the possession of the buyer, then no, the creditor cannot collect from movable property. Therefore, the debtor can testify on behalf of the buyer.

277 The Gemara continues: But even in a case where he set the cow or cloak aside as designated repayment [apoteiki], the creditor cannot collect from it. What is the reasoning? It is in accordance with the statement of Rava, as Rava says: If a master set aside his slave as designated repayment of a debt and then sold him, the master’s creditor collects the debt from the proceeds from the sale of the slave. But if one set aside his ox or his donkey as designated repayment and then sold it, the creditor does not collect the debt from the proceeds of the sale of the ox or the donkey.

278 What is the reason for this distinction? This setting aside of the slave as designated repayment generates publicity, and that setting aside of the ox or donkey as designated repayment does not generate publicity. Therefore, when the slave had been set aside as designated repayment, the buyer would have been aware of this. Since he bought the slave while having this knowledge, the slave can be seized from him by the seller’s creditor. By contrast, the buyer of the cow or cloak would not have been aware that it had been set aside as designated repayment, so the seller’s creditor cannot seize it from him.

279 The Gemara asks: But let there be a concern that perhaps the debtor transferred the movable property to the creditor, not for him to own, but for him to have a lien on the movable property, by means of, i.e., together with, an acquisition of land, as Rabba said: If the debtor transferred movable property to the creditor as liened property by means of an acquisition of land, the creditor acquires the land and acquires the movable property, i.e., a lien is created with regard to both. And Rav Ḥisda said: And that is the halakha only where the debtor wrote to the creditor: This lien is not like a transaction with inconclusive consent [ke’asmakhta], which does not effect acquisition, and not like the template [ketofesa] for documents, which are not actually used to collect debts. Rather, it is a legally binding document.

280 The Gemara answers: With what are we dealing here? We are dealing with a case where the debtor had purchased the movable property and immediately sold it, and there was no opportunity for

him to have it become liened to a creditor. Therefore, there is no possibility of his being biased in his testimony due to a desire to repay his debt.

281 The Gemara asks: But let there be a concern that perhaps it is a case in which the debtor wrote to the creditor: I will repay you even from that which I will acquire in the future, which would presumably mean that the creditor can collect from the buyer even though the debtor purchased the item after taking the loan. From the fact that this is not a concern, do you learn from it that even if the debtor wrote: I will repay you even from that which I will acquire in the future, and he then purchased and sold property or purchased and bequeathed it, that which he purchases is not liened to his creditor? This would seem to settle what is otherwise assumed to be an unresolved question.

282 The Gemara rejects this proof: No, one need not reach that conclusion, as it is necessary to teach the halakha in a case where witnesses say: We know about this one who sold these items that he never had any land. Therefore, it cannot be that the creditor acquired a lien on the movable property by means of an acquisition of land.

283 The Gemara asks: But doesn't Rav Pappa say that even though the Sages said: In the case of one who sells a field to another without a guarantee, and a creditor came and repossessed it, the buyer cannot return to the seller, i.e. the debtor, who sold him the field, to claim reimbursement; but if it is found that the field was not the seller's in the first place, the buyer can return to the seller to claim reimbursement. In this case, if the claimant establishes that the cow or cloak is his and was not the seller's, the buyer will be able to claim reimbursement. The seller is therefore biased in his testimony, and should not be able to testify on behalf of the buyer.

284 The Gemara answers: With what are we dealing here? We are dealing with a case where the buyer admits that he recognizes that this is the offspring of the seller's donkey, and will not claim in court that the seller had no right to sell it.

285 The Gemara returns to the statement of Rav Pappa and comments: But in contrast to the opinion of Rav Pappa, Rav Zevid says: Even if it is found that the field was not the seller's, the buyer cannot return to the seller to claim reimbursement, as the seller can say to the buyer: It is for this reason that I sold it to you without a guarantee, i.e., so that if it is taken from you, I will not bear liability.

286 § The Gemara returns to Shmuel's statement, in order to examine the matter itself. Ravin bar Shmuel says in the name of Shmuel: One who sells a field to another even without a guarantee that if the field will be repossessed the seller will compensate the buyer for his loss cannot testify with regard to ownership of that field on behalf of the buyer, because he is establishing the field before his creditor. The Gemara asks: What are the circumstances of this halakha?

287 If this is a case where the seller has other land, that he did not sell, in addition to the field that he sold with regard to which he currently wishes to testify, his creditor will go after it, and collect from that land. In that case, he is not biased in his testimony concerning the field that he sold. If this is a case where the seller does not have other land, what difference does it make to him if the buyer is unable to keep the land? In any event the creditor cannot collect directly from the seller.

288 The Gemara answers: Actually, Shmuel is referring to a case where the seller does not have other land, and the reason that he is nevertheless biased in his testimony is that he wants his creditors to be able to collect the debt because he says to himself that it is uncomfortable for him to be in the category of: "The wicked borrows, and pays not" (Psalms 37:21).

[289] The Gemara asks: But ultimately, he is also in the category of: “The wicked borrows, and pays not” (Psalms 37:21) with regard to the other one, to whom he sold the land. He took money from the buyer, who did not receive anything in exchange, as the land was seized from him. The Gemara answers: He is not concerned about his behavior toward the buyer, as he can say to him: For this very reason I sold it to you without a guarantee, so that if it would be seized from you I would not be liable.

[290] § The Gemara relates: Rava announced, and some say it was Rav Pappa who announced: All those who ascend from Babylonia to Eretz Yisrael and all those who descend from Eretz Yisrael to Babylonia should be aware of the following: In a case of this Jew who sold a donkey to another Jew, and then a gentile came and seized it from him, claiming that it was really his, the halakha is that the seller should rescue [dimfatzei] it from the gentile or reimburse the buyer.

[291] The Gemara points out: And we said this halakha only in a case where the buyer does not recognize that this is the offspring of the seller’s donkey, and it is possible that the gentile’s claim is true. But if the buyer recognizes that this is the offspring of the seller’s donkey, then the seller is not liable to reimburse him. It is clear that the gentile’s claim is false, so the seller bears no responsibility for the buyer’s loss. And furthermore, we said this halakha only in a case where the gentile did not seize it and the saddle with it. But if he seized it and the saddle with it, it is clear that the gentile is a robber, and it is assumed that there is no validity to his claim with regard to the donkey. Therefore, the seller is not liable to reimburse him.

[292] Ameimar said: Even if there are not any of these factors, the seller is not liable to reimburse him. What is the reasoning for this? It is that it is known that an ordinary gentile is an extortionist, so it is assumed that the donkey did indeed belong to the seller, as it is stated: “Whose mouth speaks falsehood, and their right hand is a right hand of lying” (Psalms 144:8).

[293] § The Gemara returns to discuss the statement of Shmuel (42b): A craftsman does not have the ability to establish the presumption of ownership of the property in his possession, but a partner has the ability to establish the presumption of ownership. Rabba says: They taught this only in a case where the owner transferred the item to the craftsman in the presence of witnesses. But if the owner transferred the item to the craftsman not in the presence of witnesses, then, since the craftsman is able to say to the one who claims to be the owner: These matters never occurred, i.e., you did not give me this item but it was mine to begin with, and he would keep possession of the item with that claim, then even when the craftsman says to him: It is purchased by me from you, and that is why it is in my possession, he is deemed credible.

[294] Abaye said to Rabba: If so, then even if the owner transferred the item to the craftsman in the presence of witnesses as well, he should be deemed credible. Since the craftsman is able to say to the owner: I returned the item to you, and he would be exempt from payment, when the craftsman says to him: It is purchased by me from you, and that is why it is in my possession, he is deemed credible.

[295] Rabba said to Abaye: Do you maintain that

[296] in the case of one who deposits an item with another in the presence of witnesses the recipient need not return it to him in the presence of witnesses? If that were to be so, the craftsman could claim that he had returned it to the owner, even though there are no witnesses. That possibility should not enter your mind. Rather, in the case of one who deposits an item with another in the presence of

witnesses, the recipient must return it to him in the presence of witnesses. Therefore, the craftsman could not have claimed that he returned it to the owner.

[297] Abaye raises an objection to Rabba's ruling from a baraita (Tosefta 2:6): There is a case where one saw his slave in the possession of a craftsman, or his cloak in the possession of a launderer, and says to him: What is the nature of its presence in your possession? If the craftsman or launderer replied: You sold me the slave or cloak, or: You gave the slave or cloak to me as a gift, he has not said anything, and must return it, since a craftsman does not establish the presumption of ownership. But if the craftsman or launderer replied: You said in my presence to someone else to sell the slave or cloak to him or to give the slave or cloak to him, i.e., to sell or give the slave or cloak to the craftsman or launderer himself, as a gift, then his statement is valid.

[298] Before Abaya raises his objection, he first clarifies the ruling of the baraita. What is different in the first clause that the craftsman is not deemed credible and what is different in the latter clause that he is?

[299] Rabba said: The latter clause is stated with regard to a case where the slave or cloak emerges from the possession of another, and not from the possession of the craftsman, and this other person is saying to the owner: You said in my presence to the craftsman to sell the slave or cloak or to give the slave or cloak to me as gift. This person is deemed credible despite acknowledging that he received it from the craftsman, since if he had wanted to, he could have said to the owner of the item: I purchased the slave or cloak from you. As this third party is not a craftsman, he is able to establish the presumption of ownership through possession and would be deemed credible. Therefore, when he says to him as well: You said to him in my presence to sell the slave or cloak, his statement is valid, and he is also deemed credible.

[300] After having clarified the ruling of the baraita, Abaye presents his objection: In any event, the first clause of the baraita teaches that the case where a craftsman is not deemed credible is where the owner saw the slave or cloak in the possession of the craftsman. What are the circumstances? If it is referring to where there are witnesses to the fact that the owner gave the slave or cloak to the craftsman for training or cleaning, respectively, why do I need for the owner to have seen them in the craftsman's possession? Let the owner simply bring witnesses and take back his slave or cloak. Rather, is it not referring to a case where there are no witnesses, and nevertheless, when the owner saw the slave or cloak in the craftsman's possession, he may seize the slave or cloak in any case? This contradicts Rabba's statement that the decisive factor is whether the transfer took place in the presence of witnesses.

[301] Rabba answers this objection: No, that is not the case of the baraita. Actually, it is referring to a case where there are witnesses, and nevertheless, that is the halakha, that he may seize the slave or cloak only where he saw it currently in the possession of the craftsman. But if there are no witnesses that it is currently in his possession, he would be deemed credible if he were to claim that he purchased the slave or cloak from the owner, as he could have claimed that he returned the slave or cloak.

[302] Abaye asked him: But you are the one who said: In the case of one who deposits an item with another in the presence of witnesses, the recipient must return it to him in the presence of witnesses. Therefore, if it was given to the craftsman in the presence of witnesses, he would not have the ability

to make a more advantageous claim [miggo] that he returned it. Rabba said to Abaye: I retracted that opinion and hold that he may return it even when not in the presence of witnesses.

[303] Rava raises an objection from a baraita to support the opinion of Rabba: With regard to one who gives his cloak to a craftsman, and then the craftsman says: You fixed two dinars as my payment, and that one, the owner, says: I fixed only one dinar as your payment, then, so long as it is so that the cloak is in the possession of the craftsman, it is incumbent upon the owner to bring proof that the fee was one dinar. If the craftsman gave the cloak back to him, then there are two scenarios: If the claim is lodged in its proper time, i.e., on the day of the cloak's return, then the craftsman takes an oath and receives the two dinars. But if its proper time passed, then the burden of proof rests upon the claimant, and the craftsman would need to bring proof that the fee was two dinars.

[304] Rava continues with an analysis of this baraita: What are the circumstances of the case discussed in this baraita? If it is a case where there are witnesses who saw the transfer of the item, let us see what the witnesses say about the fee, as they presumably heard the details of the arrangement.

[305] Rather, is it not referring to a case where there are no witnesses to the transfer, and it teaches that the craftsman is deemed credible? Since if he had wanted to he could have said to him: It is purchased and that is why it is in my possession, he is deemed credible with regard to his claim about his fee as well. This supports the ruling of Rabba that if there are no witnesses, the craftsman is deemed credible if he says that the item belongs to him.

[306] The Gemara rejects this proof: No, actually, perhaps the baraita is referring to a case where there are no witnesses to the transfer, but it is specifically referring to a case where the owner did not see the cloak in the possession of the craftsman, who could consequently deny ever having received it from the owner. Therefore, it is not a proof in support of the ruling of Rabba that the craftsman would be deemed credible even if there are witnesses that it is currently in his possession.

[307] Rav Naḥman bar Yitzḥak raises an objection to Rabba's ruling from Shmuel's paraphrase of the mishna: A craftsman does not have the ability to establish the presumption of ownership of property in his possession. This indicates that it is specifically a craftsman who does not have the ability to establish the presumption of ownership, but another person in similar circumstances has the ability to establish the presumption of ownership.

[308] What are the circumstances in which this would apply? If it is referring to a case where there are witnesses that the person in question received the item from another, why is it that another person has the ability to establish the presumption of ownership, when there are witnesses that he received this item as a deposit? Rather, is it not referring to a case where there are no witnesses, and yet, the mishna teaches: A craftsman does not have the ability to establish the presumption of ownership. This indicates that a craftsman does not establish the presumption of ownership under any circumstances, contrary to the ruling of Rabba. The Gemara concludes: The refutation of the opinion of Rabba is indeed a conclusive refutation, and his ruling is rejected.

[309] § The Gemara discusses another halakha pertaining to the giving of an item to a craftsman. The Sages taught: If one's utensils were mistakenly switched with another's utensils in the house of a craftsman, this one who received the wrong utensils may use them until the time when that one, whose utensils he received, comes and takes his. But if his utensils and another's utensils were mistakenly switched in a house of mourning or in a house of a wedding feast, this one who took the wrong utensils may not use them in the interim, i.e., until the time when that one, whose utensils he

took, comes and takes his. The Gemara asks: What is different in the first clause where he may use the utensils, and what is different in the latter clause where he may not?

310 Rav said: I was sitting before my uncle, Rav Ḥiyya, and he said the explanation to me: And is a person not likely to say to the craftsman: Sell my cloak for me after you finish repairing it? It is possible that the craftsman mistakenly sold the utensils of another client instead, and gave to that other client the utensils that should have been sold. Since the owner of these utensils received the money from the sale of the other client's utensils, the craftsman has a right to give the remaining utensils to the other client in the interim. This reasoning does not apply in the case of the house of mourning or a wedding feast, where one simply took utensils belonging to another.

311 Rav Ḥiyya, son of Rav Naḥman, said: They taught that it is permitted to use the utensils only if the craftsman himself gave them to his customer, as in that case, the above reasoning applies. But if the craftsman's wife or children gave them to him, the customer may not use the utensils, as it is likely that they were given to him in error. And even if the craftsman himself gave the utensils to his customer, we said that it is permitted for him to use them only in a case where the craftsman said to him, for example: I am returning a cloak, without specification. But if the craftsman said to him: I am returning your cloak, then he may not use it, as this is not his cloak, and clearly it was given to him in error.

312 § The Gemara presents another statement with regard to craftsmen. Abaye said to Rava: Come and I will show you what the swindlers of Pumbedita do. There was a case where the owner of an item said to a craftsman: Give me back my cloak [sarbelai] that I gave you to repair, and the craftsman replied: These matters never occurred. The owner responded: But I have witnesses who saw it in your possession. The craftsman said to the owner: That was a different cloak that they saw. The witnesses are uncertain as to whether it was really his cloak. The owner then said: Bring it out and we will see it, so as to determine whose it is. The craftsman said to the owner: In truth, I will not bring it out, as you have no valid claim to the cloak and I am not willing to show you another's property. This is the trickery to which Abaye referred, as it is not a sincere response, and the craftsman merely wishes to keep the cloak.

313 Rava said to Abaye: The craftsman is saying well to the owner, and his claim will be accepted,

314 as it is taught in the earlier baraita that the owner has a valid claim only when he, and witnesses, saw his cloak in the possession of the launderer and can definitively identify it. He cannot state a claim based on the mere possibility that it is his. This validates the claim of the craftsmen of Pumbedita.

315 Rav Ashi said: And if the owner is clever, he will render the situation into one of his having seen his cloak, as the owner can say to the craftsman: Why are you holding it? Is it not due to the fact that there is money of yours with me, and you are using the cloak as a means of collecting the debt that I owe you? Now bring out my cloak before the appraisers and they will appraise its value, and then you take what is rightfully yours, and I will take what is rightfully mine. When the craftsman presents the cloak, the ruling will change, as the owner will have seen the cloak. Rav Aḥa, son of Rav Avya, said to Rav Ashi: If the craftsman is clever, he can say to the owner: I do not need your appraisal, as the earlier ones who preceded you already appraised it and determined that its value does not exceed that of your debt to me.

316 § The Gemara discusses a ruling that it paraphrases from the mishna: A sharecropper does not have the ability to establish the presumption of ownership of property in his possession. Why not? Isn’t it so that until that time, while he was definitely working as a sharecropper, he consumed only half of the produce of the land, and now, for the past three years, he consumed all of its produce? He should be able to establish the presumption of ownership by consuming more produce than a sharecropper does. Rabbi Yoḥanan says: The ruling of the mishna is stated with regard to family sharecroppers. This type of sharecropper, who works for a family for many years, gathers all of the produce into his property, and then returns the landowner’s share. Therefore, his collecting all of the produce into his property does not establish the presumption of ownership.

317 Rav Naḥman says: A sharecropper who installed other sharecroppers in his place has the ability to establish the presumption of ownership. What is the reason? It is that it is not common for a person to see that unknown sharecroppers have been installed in his land and remain silent. If the prior owner did not lodge a protest, it indicates that the sharecropper is the owner of the land.

318 Rabbi Yoḥanan says: A sharecropper who divided among different sharecroppers does not have the ability to establish the presumption of ownership by that act. What is the reason? It is that one can say that the landowner merely appointed him as an administrator [harmanya], and there is no indication that he is acting as an owner.

319 The Gemara relates: Rav Naḥman bar Rav Ḥisda sent this message to Rav Naḥman bar Yaakov: Our teacher, instruct us. Can a sharecropper testify with regard to the ownership of a field of which he is a sharecropper, or can he not testify, as he is biased in his testimony? Rav Yosef was sitting before Rav Naḥman bar Yaakov and said to him: This is what Shmuel said: A sharecropper can testify. Rav Naḥman bar Yaakov said to him: But isn’t it taught in a baraita that a sharecropper cannot testify?

320 Rav Yosef answered: It is not difficult. This baraita, which states that he cannot testify, is referring to a case where there is produce on the land. Therefore, he is biased in his testimony, as, if the current owner will lose possession of the land, the sharecropper will lose his right to consume the produce. And that statement of Shmuel that he can testify is referring to a case where there is no produce on the land, and he is not biased in his testimony.

321 § The Gemara presents the word Amalek as a mnemonic for the cases discussed in the baraita. It stands for: Ayin, guarantor [arev]; mem, creditor [malve]; lamed, buyer [loke’aḥ]; kuf, unconditional guarantor [kablan].

322 The Sages taught: A guarantor can testify for the benefit of the debtor that the latter owns a particular parcel of land, but that is the halakha only if the debtor has other land from which the creditor can collect the debt. Otherwise, he is biased in his testimony, as the creditor could collect from him if the debtor were to lose ownership of this land. A creditor can testify for the benefit of the debtor that the latter owns a particular parcel of land, but that is the halakha only if the debtor has other land from which the creditor can collect. Otherwise, he is biased in his testimony, as this land is the only land available for collection.

323 Similarly, if two people purchase land from one seller, the first buyer can testify for the benefit of the second buyer if someone else were to claim that the land was his, but that is the halakha only if the second buyer has other land that he purchased from the same seller either concurrent with or subsequent to the first buyer’s purchase of the land in question. A creditor of the seller can collect a

debt from the land that the seller sold most recently. Therefore, if the second buyer purchased only the land in question from the seller, the first buyer is biased in his testimony, as the second buyer's ownership of the land prevents the creditor from collecting a debt from the land from the first buyer.

[324] With regard to an unconditional guarantor [kablan], from whom the creditor can collect even if the debtor is able to repay the loan, some say that he can testify on behalf of the debtor if the latter owns other land, and some say that he cannot testify even if the debtor owns other land. The Gemara explains: Some say that he can testify because he is like a guarantor, and some say that he cannot testify, as it is preferable for him that both fields be in the debtor's possession, so that when a creditor comes to collect the debt, he will take what he wants, and not collect from the unconditional guarantor.

[325] § Rabbi Yoḥanan said: A craftsman does not have the ability to establish the presumption of ownership, but the son of a craftsman has the ability to establish the presumption of ownership. A sharecropper does not have the ability to establish the presumption of ownership, but the son of a sharecropper has the ability to establish the presumption of ownership. Both a robber and the son of a robber do not have the ability to establish the presumption of ownership, but the son of the son of a robber has the ability to establish the presumption of ownership.

[326] The Gemara asks: What are the circumstances under which there is a distinction between the sons of the craftsman and the sharecropper and the son of the robber? If they come to court with the claim that the item in question belonged to their fathers, then even these sons of the craftsman and the sharecropper should not be able to establish the presumption of ownership, since their claims are based on ownership by those who cannot establish the presumption of ownership. If the case is that they do not come to court with the claim that the item in question belonged to their fathers, but that they own the item in their own right, then even the son of a robber should be able to establish the presumption of ownership.

[327] The Gemara answers: No, it is necessary to state this distinction in a case where the witnesses say: The prior owner admitted to their father in our presence that the property was the father's and not stolen. The Gemara explains: With regard to these, the sons of the craftsman and sharecropper, it can be said that the sons are saying the truth, as their claim is substantiated by the testimony of the admission. But with regard to that one, the son of the robber, even though the prior owner admitted this, the son is still not deemed credible, in accordance with the statement of Rav Kahana, as Rav Kahana said: If the prior owner would not have admitted this to the robber, the robber would have brought him and his donkey to the taskmaster [leshaḥvar], meaning he would have caused him great difficulties. As a robber is assumed to be a ruffian, it is likely that the prior owner admitted this because he was intimidated, and not because the statement was true, so there is no evidence to support the claim of the robber's son.

[328] Rava says: There are times when even the son of the son of the robber does not have the ability to establish the presumption of ownership. What are the circumstances under which this is so? This is so, for example, in a case where he comes to court with the claim that the item in question belonged to his father's father. Since his claim is based on its having belonged to one who did not have the ability to establish the presumption of ownership, he too is unable to establish the presumption of ownership.

[329] The Gemara asks: What are the circumstances under which one is considered a robber, who does not have the ability to establish the presumption of ownership? Rabbi Yoḥanan says: In a case such as where it is established that he is in possession of this field through robbery. And Rav Ḥisda says: Not only in a case where there is knowledge about this specific field, but even in a case such as one where he is a member of the household of so-and-so, a certain known criminal family at the time who kill people over monetary matters. Since people would be afraid to lodge a protest against them, members of this family cannot establish the presumption of ownership with regard to any land.

[330] § The Sages taught: A craftsman does not have the ability to establish the presumption of ownership. If he descended from his position of craftsmanship and no longer works at that craft, then he has the ability to establish the presumption of ownership with regard to items related to his former craft. A sharecropper does not have the ability to establish the presumption of ownership. If he descended from his position as a sharecropper, then he has the ability to establish the presumption of ownership with regard to land that he works and from which he profits for three years. A son does not have the ability to establish the presumption of ownership with regard to his father's property, nor a wife with regard to her husband's property. But with regard to a son who separated himself from his father's finances, and a woman who became divorced, they are like other people with regard to this property, and have the ability to establish the presumption of ownership.

[331] The Gemara asks: Granted, it was necessary to state that a son who separated himself establishes the presumption of ownership. If the baraita had not stated this, it would enter your mind to say that the father forgave the unauthorized use of his land by his son, and did not lodge a protest despite the fact that the land did not belong to the son. Therefore, the baraita teaches us that this is not so, and that the son does establish the presumption of ownership. But in the case of the woman who became divorced, it is obvious that she has no relationship with her ex-husband, so why is it necessary for the baraita to teach that she is able to establish the presumption of ownership? The Gemara answers: No, it is necessary to teach that she does not establish the presumption of ownership

[332] in a case where there is uncertainty whether she is divorced or whether she is not divorced, and this is in accordance with the opinion of Rabbi Zeira. As Rabbi Zeira says that Rabbi Yirmeya bar Abba says that Shmuel says: Wherever the Sages said with regard to a woman that there is uncertainty whether she is divorced or whether she is not divorced, her husband is still obligated with regard to her sustenance. One might have thought that since she still has some right to her husband's property, insofar as he still has an obligation with regard to her sustenance he would not lodge a protest if she used his land without his authorization. It is therefore necessary to clarify that this is not so, and she has the ability to establish the presumption of ownership in her husband's property.

[333] § Rav Naḥman said: Rav Huna said to me that with regard to all of the types of people who do not have the ability to establish the presumption of ownership, when they bring proof by means of a document or witnesses that a field belongs to them, their proof is a valid proof and the court places the field in their possession. But if there is a robber who brings proof that a field is his, his proof is not a valid proof, and the court does not place the field in his possession. This is due to a concern that the proof was obtained through illegitimate means.

[334] The Gemara asks: What is this teaching us? We already learned in a mishna (Gittin 55b): If one purchased land from a Sicarius [Sikarikon], a violent gentile who had extorted the field from its owner with threats, and afterward one returned and purchased the same field from the prior owner,

his purchase is void, as the owner of the field can say that he did not actually intend to sell him the field. This teaches that a purchase following a robbery is invalid, despite the existence of documents or testimony, rendering the statement of Rav Huna superfluous.

335 The Gemara answers: Rav Huna's statement serves to exclude that which Rav says, as Rav says: They taught that the purchase of a field from the prior owner after one purchased it from a Sicarius is void only when the prior owner said to the buyer at the time of the sale: Go take possession and thereby acquire the field, but did not write a document. But if the transaction was performed along with a document being given, the buyer acquired the field.

336 Therefore, Rav Huna teaches us that he rules in accordance with the opinion of Shmuel, as Shmuel says: He does not acquire the field even if the transaction was performed along with a document being given, until the owner of the field writes a property guarantee, i.e., a document that states that if the property is seized by the seller's creditor, the seller will reimburse the buyer for his loss. Writing such a document indicates that it is a sincere transaction.

337 And Rav Beivai concludes that discussion of the statement of Rav Huna, that a robber does not retain possession of the field even if he brings proof of the transaction, with a comment in the name of Rav Naḥman: The robber does not have rights to the land, but he does have rights to the money that he paid for the land, and the owner has to reimburse him. In what case is this statement that the robber is reimbursed said? It is specifically where the witnesses said: The robber counted out the money for the owner and gave it to him in our presence; but if the witnesses said: The owner admitted to the robber in our presence that he received payment, then the robber is not reimbursed, as the admission may have been made under duress. This is in accordance with the opinion of Rav Kahana, who says: If the owner would not have admitted to the robber that he received payment, the robber would have brought him and his donkey to the taskmaster.

338 § Apropos transactions performed under duress, the Gemara cites that which Rav Huna says: If one was suspended, e.g., from a tree, and thereby coerced to sell a certain item, and he sold it, his sale is valid. What is the reason? The Gemara suggests that it is because whatever a person sells, were it not for the fact that he is compelled by his need for money, he would not sell it, and even so, his sale is valid. This indicates that a transaction performed under duress is valid. The Gemara rejects this: But perhaps duress that results from his own needs, such as his need for money, is different from duress that results from another, as in this case. Rather, the basis for Rav Huna's ruling is as it is taught in a baraita:

339 With regard to one who pledges to bring a burnt-offering, the verse states: "If his offering be a burnt-offering of the herd, he shall offer it a male without blemish; he shall bring it to the door of the Tent of Meeting, according to his will, before the Lord" (Leviticus 1:3). The seemingly superfluous phrase "he shall offer it" teaches that they can coerce him to bring the offering. One might have thought that it can be offered entirely against his will, by taking it from his possession and sacrificing it. Therefore, the verse states: "According to his will" (Leviticus 1:3). How can these texts be reconciled? They coerce him with various punishments until he says: I want to bring the offering. This seems to prove that consent resulting from coercion is considered to be valid consent. Perhaps this principle can apply to acquisition, as a source for Rav Huna's ruling.

340 The Gemara rejects this proof: But perhaps there it is different, since he is in fact amenable to achieving atonement, despite his earlier statement to the contrary. But rather, prove Rav Huna's

ruling from the latter clause of a mishna (Arakhin 21a): And similarly you find this halakha with bills of divorce, that when the court rules that he must divorce his wife, they coerce him until he says: I want to divorce my wife.

341 The Gemara rejects this proof as well: But perhaps there it is different, because it is a mitzva to listen to the statement of the Sages. The assumption is that when he is required by the court to divorce his wife, his real desire is to perform the mitzva of listening to the Sages, and therefore he actually wants to divorce her. This does not apply to the case of a transaction performed under duress. Rather, Rav Huna's ruling does not have a source in a mishna or baraita, but is based on logical reasoning: By means of his being coerced, the seller then willingly decides to sell the field and transfers it.

342 Rav Yehuda raises an objection to Rav Huna's ruling from a mishna (Gittin 88b): With regard to a bill of divorce that the husband was compelled by the court to write and give his wife, if he was compelled by a Jewish court it is valid, but if he was compelled by gentiles it is not valid. And with regard to gentiles, they may beat him at the request of the Jewish court and say to him: Do what the Jews are telling you, and the divorce would then be valid. The Gemara asks: But why is a bill of divorce compelled by a gentile court invalid? There too, let us say that as a result of his coercion, the husband decides to do what the court says and divorces her.

343 The Gemara answers: In fact that reasoning is correct, as for this reason wasn't it stated with regard to that mishna that Rav Mesharshiyya says: By Torah law a bill of divorce that the husband was compelled to give, even if he was compelled by gentiles, is valid. And what is the reason the Sages said that if it is compelled by gentiles it is not valid? It is so that each and every woman will not go and through temptation or bribery depend on a gentile to compel her husband to divorce her, and thereby release herself from her husband illegitimately.

344 Rav Hamnuna raises an objection to Rav Huna's ruling from a mishna (Gittin 55b): If one purchased land from a Sicarius and afterward returned and purchased the same field from the prior owner, his purchase is void, as the prior owner of the field can say that he did not actually intend to sell the field to this buyer. But why is the sale invalid? There too, let us say that by means of his being coerced, the seller then willingly decides to sell the field and transfers it.

345 The Gemara answers: In fact that reasoning is correct, as it was stated with regard to that mishna that Rav says: They taught that the purchase from the prior owner after the purchase from a Sicarius is void only when the prior owner said to the buyer at the time of the sale: Go take possession and thereby acquire the field, but did not write a bill of sale. But if the transaction was performed along with a bill of sale being given, the buyer acquires the field.

346 The Gemara asks: And according to Shmuel, who says: He does not acquire the field even if the transaction was performed along with a bill of sale being given, what can be said? The Gemara answers: Shmuel concedes that the sale is valid where the buyer gave money for the field even though the owner sold it under duress, as is the case in the ruling of Rav Huna.

347 The Gemara asks: And according to Rav Beivai, who concludes that statement of Rav Huna with a comment in the name of Rav Naḥman: The robber does not have rights to the land, but he does have rights to the money that he paid for the land, and the owner has to reimburse him, what can be said? Rav Beivai, who is referring to a case where there was a payment, as the robber is being reimbursed, seems to hold that the sale is invalid even where the robber paid for the field. The

Gemara answers: The statement of Rav Beivai is an amoraic statement, not a citation of a tannaitic ruling, and Rav Huna, who is also an amora, does not hold in accordance with that amoraic statement.

[348] Rava says: The halakha is that if one was suspended and thereby coerced to sell a certain item, and he sold it, his sale is valid. And we said that this is the halakha only

[349] in a case where the seller was compelled to sell an unspecified field. Since he had a choice as to which field to sell, the presumption is that he sold it sincerely. But in a case where the one coercing him specified this specific field to be sold, the sale is not valid, as the seller did not decide freely on any aspect of the sale.

[350] And even in a case where the one coercing him specified this specific field to be sold, we said that the sale is invalid only where the seller did not count [artzei] the money for the field, but if the seller did count the money, then we do not say that the sale is invalid.

[351] And we said that the sale is invalid in the case of a specified field when money was not counted only where the seller had no way to avoid the coercion. But if the seller had a way to avoid the coercion and did not avoid it, then we do not say that the sale is invalid.

[352] The Gemara concludes: And the halakha in all of these cases is that the sale is valid, and this is so even in the case of a specified field. This can be inferred because the case of a woman forced to accept betrothal is comparable to the case of a specified field, as a specific man is performing the betrothal, and Ameimar says: If a man suspended a woman and betrothed her, his betrothal is valid, despite the fact that she was coerced.

[353] Mar bar Rav Ashi said: In the case of a woman who was forced to accept betrothal, the betrothal is certainly not valid. This man acted improperly; consequently, the Sages acted improperly with him, and the Sages expropriated her betrothal from him.

[354] Ravina said to Rav Ashi: This works out well in a case where he betrothed his wife with money, as it is possible to say that the Sages expropriated from the possession of its owner the money used for the betrothal, resulting in a retroactive cancellation of the betrothal. But if he betrothed her by means of sexual intercourse, then what is there to say? Rav Ashi said to him: The Sages deemed his sexual intercourse as licentious sexual intercourse, which does not create a bond of betrothal.

[355] § The Gemara relates: Someone named Tavi suspended another person named Pafi on a kinara and compelled him to sell his field. Rabba bar bar Ḥana signed both on Pafi’s preemptive declaration nullifying the sale (see 40b) and on the bill of sale [ashkalta]. Rav Huna said: The one who signed on the preemptive declaration acted well by signing, and the one who signed on the bill of sale acted well by signing.

[356] The Gemara challenges: Whichever way you look at it, Rav Huna’s statement is problematic. If the preemptive declaration is valid, then there is no place for a bill of sale. And if the bill of sale is valid, then there is no place for a preemptive declaration. How can Rav Huna commend signing on both of these mutually exclusive documents? The Gemara explains: This is what Rav Huna is saying: If it were not for his also having signed the preemptive declaration, the one who signed on the bill of sale acted well by signing. In this statement, Rav Huna conforms to his line of reasoning, as Rav Huna says: If one was suspended and thereby coerced to sell a certain item and he sold it, his sale is valid.

[357] The Gemara asks: Is that so that Rabba bar bar Ḥana can, by means of the preemptive declaration, invalidate the bill of sale that he himself signed? But doesn't Rav Naḥman say: With regard to witnesses who said: Our statement that we signed was a document of trust, i.e., a false promissory note given by one person to another, trusting that he will not make use of it until there is an actual loan,

[358] they are not deemed credible. And similarly, witnesses who said: Our statement that we signed was accompanied by a preemptive declaration, are not deemed credible. They cannot negate the testimony of the document that they themselves signed by claiming that there had been a preemptive declaration. Similarly, how could Rabba bar bar Ḥana's signing of the preemptive declaration override his signing the bill of sale?

[359] The Gemara answers: That matter of witnesses not being deemed credible to nullify a document applies only when the witnesses attempt to nullify the document by means of an oral declaration, as an oral declaration cannot come and weaken a written document. But if the witnesses attempt to nullify the bill of sale by means of testimony in another document, e.g., by signing the preemptive declaration, then this preemptive document can come and weaken a written document, in this case, the bill of sale.

[360] The Gemara returns to discuss the matter itself: Rav Naḥman says that witnesses who said: Our statement that we signed was a document of trust, are not deemed credible. And similarly, witnesses who said: Our statement that we signed was accompanied by a preemptive declaration, are not deemed credible.

[361] And Mar bar Rav Ashi says that witnesses who said: Our statement that we signed was a statement of trust, are not deemed credible; but witnesses who said: Our statement that we signed was accompanied by a preemptive declaration, are deemed credible. What is the reason for the difference between the cases? The reason is that this document that was accompanied by a preemptive declaration may be written, as it is merely written under duress, but that document of trust may not be written, as it is a false document. Testifying that they wrote it is self-incriminating, and the witnesses are not deemed credible to incriminate themselves.

[362] § The mishna teaches that a man does not have the ability to establish the presumption of ownership with regard to his wife's property and a wife does not have the ability to establish the presumption of ownership with regard to her husband's property. The Gemara asks: Isn't this obvious? Since he has the right to enjoy the profits of her property while they are married, it is known that he is only enjoying the profits and that he has no claim to the field itself. On what grounds, then, would he establish the presumption of ownership?

[363] The Gemara responds: No, it is necessary to teach this halakha in a case where the husband wrote to his wife: I do not have any legal dealings or involvement with your property, i.e., he forfeits his right to enjoy the profits of her property, and therefore if he subsequently did enjoy the profits of her field, one might assume that it is because he acquired the land from her. It was therefore necessary for the mishna to teach that this does not indicate that he owns the land, since it is possible that she does not prevent him from enjoying the profits, due to their relationship.

[364] The Gemara asks: And if he wrote this to her, what of it? And isn't it taught in a baraita: One who says to another: I do not have any legal dealings or involvement concerning this field, or: I have no

dealings with it, or: My hands are removed from it, has not said anything. That is to say, these statements have no legal standing.

[365] The scholars of the school of Rabbi Yannai said with regard to this: The mishna states its ruling with regard to one who writes this formulation to her while she is still only betrothed, before he had any rights to her property. Therefore, he is able to prevent his rights from taking effect after the marriage. And this is in accordance with the statement of Rav Kahana, as Rav Kahana says:

[366] With regard to an inheritance that comes to a person from another place, i.e., an inheritance one will receive in the future, a person can make a condition about it from the outset that he will not inherit it, since one can waive his future rights to property that is not currently his. And this ruling is in accordance with the opinion of Rava, as Rava said that with regard to anyone who says: I do not want to avail myself of an ordinance of the Sages such as this one that was instituted for my benefit, one listens to him.

[367] The Gemara asks: What is meant by: Such as this one? The Gemara explains: Rava is referring to that statement of Rav Huna, who said that Rav says a certain ruling. As Rav Huna says that Rav says: A woman can say to her husband: I will not be sustained by you and, in turn, I will not work, i.e., you will not keep my earnings. The Sages instituted that a husband must provide sustenance for his wife, and in exchange is entitled to her wages. Since this was instituted for the benefit of wives, the wife is able to opt out of this arrangement. Similarly, the husband may waive his rights to the profits from his wife's land. It is in such a circumstance that the mishna rules that even if he relinquished his rights, he does not establish the presumption of ownership by enjoying the profits.

[368] § The mishna teaches that a husband does not establish the presumption of ownership of his wife's field by enjoying its profits. The Gemara suggests: By inference, the husband has the ability to bring proof that he purchased the field from his wife or received it as a gift from her and consequently be regarded as the owner of the field. The Gemara asks: Why is this proof decisive? Let her say: I did it, i.e., I gave or sold the field to my husband, only to please my husband, but I did not mean it.

[369] The Gemara quotes a source for this claim: Didn't we learn in a mishna (Gittin 55b): If one first purchased land from the husband and afterward returned and purchased it from the wife, i.e., he purchased her rights to this land for after the death of her husband or in the event of their divorce, as stipulated in her marriage contract, then his transaction is void. Apparently, she said: I did it, i.e., signed this bill of sale, only to please my husband, but I did not mean it. Here too let her say: I did it only to please my husband but did not mean to give or sell the field to him.

[370] The Gemara answers: But wasn't it stated with regard to that mishna that Rabba bar Rav Huna says: The halakha that a woman can claim that she acted only in order to please her husband is not stated with regard to all of her property, but is necessary only with regard to those three types of fields that have special status: One field about which he wrote to her in her marriage contract that it would serve as payment of her marriage contract;

[371] and one that he specified to her as payment for her marriage contract, even though it was not stipulated explicitly in the contract; and one in a case where she brought into the marriage an appraisal of a field from her own property that she owned prior to the marriage, which took on the status of guaranteed property, meaning that she will receive it if her husband dies or divorces her. If a

field of one of these three types is sold with her approval, she can claim that she did not truly consent to this sale, but stated her consent only in order to please her husband.

372 The Gemara clarifies: To exclude what type of property did Rabba specify these three types of fields? If we say that he intends to exclude the rest of the husband's property secured to pay her marriage contract, it is all the more so the case that he will bear her enmity if she does not agree to the sale, as he will say to her: You have placed your eyes on divorce or on my death, i.e., you will not allow me to sell my property because you are expecting and planning for my death or our divorce. Therefore, she should be able to claim that she consented to the sale only in order to please her husband with regard to other property as well.

373 Rather, these three types of fields were specified in order to exclude usufruct property, i.e., property that belongs to the wife and remains in her possession while the husband has the right to enjoy the profits, in which case if the wife consents to the sale, it is valid. The Gemara asks: But doesn't Ameimar say that if there was a man or a woman, i.e., a husband or a wife, who sold the wife's usufruct property, they did not accomplish anything, as the sale does not take effect?

374 The Gemara answers: When the statement of Ameimar was stated, it was to say that neither the husband nor the wife can sell the property unilaterally. Where he sold the property and then died, she can come and remove it from the buyer. Alternatively, in a case where she sold it and then died, he can come and remove it, due to a rabbinic ordinance, and in accordance with the statement of Rabbi Yosei bar Ḥanina, as Rabbi Yosei bar Ḥanina says: When the Sanhedrin convened in Usha, they instituted that in the case of a woman who sold her usufruct property in her husband's lifetime and then died, the husband repossesses it from the buyers.

375 But where the two of them sold it to someone, or if she sold it to her husband, the sale is valid. The inference that the Gemara drew from the mishna, that if the husband produces evidence that his wife sold usufruct property to him then he is regarded as the owner, is relevant when she sells her usufruct property to him.

376 And if you wish, say instead that Ameimar said his statement in accordance with the opinion of Rabbi Elazar, who holds that one can sell property only if he possesses the item itself and also has the right to enjoy its profits.

377 This is as it is taught in a baraita: In the case of one who sells his Canaanite slave to another, and contracted with him that the sale is on the condition that the slave will serve the seller for thirty days before he is transferred to the buyer, the outcome of this sale is that during those thirty days, the first master enjoys the use of the slave and the buyer is the owner of the slave himself. As detailed in the Torah (Exodus 21:18–21), if one strikes another and the injury leads directly to the victim's death, the one who struck him is subject to court-imposed capital punishment. But if a master strikes his Canaanite slave, and the slave lingers with his injuries for more than a day or two days and then dies, the master is exempt from court-imposed capital punishment. The baraita addresses who is considered the owner of the slave with regard to this halakha.

378 The baraita states four opinions: Rabbi Meir says that during those thirty days, only the first master is included in the halakha of "a day or two days" (Exodus 21:21). Rabbi Meir holds that in this case, the first master is included in this exemption, because the slave is under his authority, as he enjoys the use of the slave, but the second master is not included in the halakha of "a day or two days," because the slave is not under his authority.

379 Rabbi Meir’s reasoning is that he holds that ownership of the rights to use an item and the profits it engenders is like ownership of the item itself. The status of the first master as the owner negates the possibility that the second master would be regarded as the owner with regard to this halakha, and he would not be included in the exemption.

380 The baraita continues: Rabbi Yehuda says that the second master is included in the halakha of “a day or two days,” because the slave is “his money” (Exodus 21:21), i.e., his property; but the first master is not included in the halakha of “a day or two days,” because the slave is not “his money.” Rabbi Yehuda’s reasoning is that he holds that ownership of the rights to use an item and the profits it engenders is not like ownership of the item itself. Therefore, the first master, who currently enjoys the use of the slave, does not have the status of an owner with regard to this halakha.

381 The baraita continues: Rabbi Yosei says that

382 both of them are included in the halakha of “a day or two days.” This first master is included because the slave is under his authority, and that second master is included because the slave is “his money.” The Gemara explains Rabbi Yosei’s reasoning: And he is uncertain if ownership of the rights to use an item and the profits it engenders is like ownership of the item itself, in which case only the first master would be exempt, or if it is not like ownership of the item itself, in which case only the second master would be exempt. And where there is an uncertainty in a case of capital law, the ruling is to be lenient. Therefore, neither of them would receive court-imposed capital punishment in this case.

383 The baraita continues: Rabbi Elazar says that both of them are not included in the halakha of “a day or two days,” and both would receive court-imposed capital punishment. This second master is not included because the slave is not under his authority, and that first master is not included because the slave is not “his money.” Rabbi Eliezer holds that one must both own the slave himself and enjoy the use of the slave to be included in the exemption.

384 The Gemara explains how Ameimar’s statement is in accordance with the opinion of Rabbi Elazar. And Rava says: What is the reason for the opinion of Rabbi Elazar? The verse states: “Notwithstanding if he continue a day or two days, he shall not be punished; for he is his money” (Exodus 21:21), and he understands this to be referring to a slave that is “his money,” a slave that is unique to him, so this exemption does not apply to one who does not have total ownership of the slave. Rabbi Elazar holds that one is considered to own an item only if he owns the item itself and also enjoys the use of it. This is the source of Ameimar’s statement that neither the husband nor the wife can sell usufruct property: The husband cannot sell it because he does not own it, and the wife cannot sell it because only the husband has the right to enjoy the profits.

385 § The mishna teaches that a man does not have the ability to establish the presumption of ownership with regard to his wife’s property. The Gemara asks: But doesn’t Rav say that a married woman must protest? The Gemara clarifies: With regard to whom must she protest? If we say: With regard to another, i.e., one who is not her husband who has taken possession of her property, that is problematic: But doesn’t Rav say that one cannot establish the presumption of ownership with regard to the property of a married woman, as she can claim that she did not lodge a protest because she expected her husband to do so? Rather, Rav’s intention must be that she must lodge a protest with regard to the husband. This indicates that absent her protest, it is possible for a husband to establish the presumption of ownership with regard to her property, in contrast to the ruling of the mishna.

[386] Rava said: Actually, Rav is referring to her lodging a protest with regard to the husband, and is speaking of a case where he dug pits, ditches, and caves in her property. In other words, he did not simply work and profit from the land, but damaged it in a way that demonstrates that he considered himself the owner. If he does this for three years and she does not lodge a protest, he establishes the presumption of ownership. The mishna, which states that he cannot establish the presumption of ownership, is referring to standard use.

[387] The Gemara asks: But doesn't Rav Naḥman say that Rabba bar Avuh said: There is no presumptive ownership with regard to damage? This is understood to mean that one cannot establish the presumption of ownership of another's field by damaging it, as it is not considered to be standard use. Therefore, even after three years have passed the owner can remove one from his field. Since in this case the husband is damaging the field, he should not be able to establish the presumption of ownership.

[388] The Gemara answers: Say that this means that the halakha of presumptive ownership does not apply with regard to damage, meaning that one who damages another's property without the owner lodging a protest does not need three years to establish the presumption of ownership, but does so immediately, as an owner who sees another damage his land is expected to protest without delay. Consequently, a husband who digs pits and the like in his wife's property without her lodging a protest establishes the presumption of ownership immediately.

[389] The Gemara offers an alternative answer. If you wish, say instead: Was it not stated with regard to the halakha that there is no presumptive ownership with regard to damage that Rav Mari says: Damage is referring specifically to smoke, and Rav Zevid says that it is referring to a bathroom? The statement that there is no presumptive ownership [ḥazaka] with regard to damage was not stated concerning establishing the presumption of ownership of property, but concerning acquiring the privilege [ḥazaka] to engage in certain activities on one's own property, and is stating that even if one has engaged in activities that produce smoke or foul odors, the fact that the neighbors did not lodge a protest in the past does not prevent them from doing so in the future.

[390] Rav Yosef said: Actually, Rav is referring to her lodging a protest with regard to another, and is speaking of a case where the one who has possession of her property worked and profited from the field for part of the time necessary to establish the presumption of ownership during the husband's lifetime, and for three additional years after the husband's death. In this case, if the woman does not lodge a protest, the possessor establishes the presumption of ownership, since if he wanted to, he could say to the woman: I purchased it from you and then possessed the field for three years, and he would be awarded the field. When he said to her as well: You sold the field to your husband and he sold it to me, he is deemed credible.

[391] The Gemara returns to discuss Rav's statement: With regard to the matter itself, Rav says that one cannot establish the presumption of ownership with regard to the property of a married woman,

[392] but the judges of the exile said that one can establish the presumption of ownership. Rav says: The halakha is in accordance with the opinion of the judges of the exile. Rav Kahana and Rav Asi said to Rav: Has the Master retracted his halakha that one cannot establish the presumption of ownership with regard to the property of a married woman? Rav said to them: I said that the opinion of the judges of the exile is reasonable, as the presumption of ownership can be established with regard the property of a married woman under certain circumstances. The Gemara comments: This is

like that ruling of Rav Yosef with regard to one who possesses the land for three years after the death of the husband.

393 § The mishna teaches: And a wife does not have the ability to establish the presumption of ownership with regard to her husband’s property. The Gemara asks: Isn’t that obvious? Since she has the right to sustenance from her husband’s property, she is enjoying the profits as payment of her sustenance, so her use of the property does not establish the presumption of ownership. The Gemara responds: No, it is necessary to state this halakha in the event that he designated another parcel of land for her sustenance. The mishna teaches that even if she enjoys the profits of a second field for three years, she does not establish the presumption of ownership of that field.

394 The Gemara asks: By inference, the wife has the ability to bring proof of her ownership and take possession of her husband’s field. Why is this proof valid? Let him say that he desires to expose her concealed money. If he offers to sell the field to her and she agrees, it will be discovered that she has money of which he had been unaware. His intention was never to sell the property, but to claim money to which he is entitled.

395 Can one conclude from this mishna that in the case of one who sells a field to his wife, she has acquired it, and we do not say that he desires to expose her concealed money? The Gemara answers: No, as one may say that the inference from the mishna that if she has proof then she has ownership rights is the halakha only with regard to a deed of gift, as, if her husband gave her the field as a gift, he cannot claim that he did so in order to expose her concealed money.

396 The Gemara relates: Rav Naḥman said to Rav Huna: The Master was not with us in the evening in the study hall that is within the boundaries of the town, where we said a superior matter. Rav Huna said to him: What superior matter did you say? Rav Naḥman responded: In the case of one who sells a field to his wife, she has acquired it, and we do not say that he desires to expose her concealed money.

397 Rav Huna said to him: That is obvious; remove the money from here and she will acquire the property by means of the bill of sale, as, even if she has not yet given him the money, she acquires the land by means of the bill of sale. Didn’t we learn in a mishna (Kiddushin 26a): Property that serves as a guarantee, i.e., land, can be acquired by means of giving money, by means of giving a document, or by means of taking possession of it?

398 Rav Naḥman said to him: But wasn’t it stated with regard to this that Shmuel says: They taught that the document alone suffices only if the transaction is with a deed of gift, but if the transaction is with a bill of sale, the buyer does not acquire the property until he gives him its money? Rav Huna responded: But didn’t Rav Hamnuna raise an objection to this, based on this following baraita: How is acquisition by means of giving a document performed? If he wrote it for him on paper or earthenware, then even though the paper or the earthenware is not worth even one peruta, if he writes: My field is sold to you, or: My field is acquired by you as a gift, it is thereby sold or given. This indicates that a document suffices to complete an acquisition both in the case of a sale and a gift.

399 Rav Naḥman responded: But is it not so that he, Rav Hamnuna, raises the objection and he himself resolves it? The baraita states its ruling with regard to one who sells his field due to its poor quality. The seller wants to be rid of his field due to its low value, and would like to transfer ownership of it as quickly as possible. In this case, writing a document suffices to complete the

acquisition. By contrast, in standard cases it does not. Since the acquisition of a field requires monetary payment in addition to a bill of sale, Rav Naḥman's statement, that if one sells a field to his wife the sale is valid and we do not say that he desires to expose her concealed money, is a novelty.

400 The Gemara notes that in interpreting this baraita, Rav Beivai would conclude in the name of Rav Naḥman, or, according to another version, Rav Ashi says: Why does a document suffice for him to acquire the land? It is because it is assumed that he wanted to give it to him as a gift. And why did he write the document for him employing the terminology of a sale? It was in order to enhance the power of the one acquiring the land, since with regard to a property guarantee, i.e., a document that states that if the property is seized by the seller's creditor, the seller will reimburse the buyer for his loss, a bill of sale is superior to a deed of gift.

401 The Gemara raises an objection to the ruling of Rav Naḥman, that we do not say that he desires to expose her concealed money, from a baraita: If one borrowed money from his own slave and then frees him, or if one borrowed money from his wife and then divorces her, they do not have any claim on him, and he need not repay them. What is the reason for this? Is it not because we say that he desires to expose their concealed money, and his taking of the loan was a mere artifice to claim money to which he was entitled?

402 The Gemara answers: It is different there, because there is an additional reason to think it was an artifice, as it is uncomfortable for him to make applicable to himself the verse: "The rich rules over the poor, and the borrower is servant to the lender" (Proverbs 22:7). It is therefore reasonable to posit that his intention was not to borrow money, but to expose the concealed money that was in the possession of his slave or wife. This concern does not apply to one who sells property to his wife, and therefore the sale is valid.

403 The Gemara relates that Rav Huna bar Avin sent a ruling to those in the study hall: In the case of one who sells a field to his wife, she has acquired it,

404 and as long as they remain married, the husband enjoys the profits, as he would with any usufruct property. But Rabbi Abba and Rabbi Abbahu and all of the great Sages of the generation said that the assumption is that the husband wanted to give it to her as a gift. And why did he write the deed for her employing terminology indicating that it is for the sake of a sale? It was in order to enhance her power.

405 The Gemara raises an objection from a baraita to the ruling that the wife acquires the property: If one borrowed from his own slave and then freed him, or if one borrowed from his wife and then divorced her, they do not have any claim on him, and he need not repay them. What is the reason for this? Is it not because we say that he desired to expose their concealed money, and his taking of the loan was merely an artifice to claim money to which he was entitled? Similarly, the assumption should be that his sale to her was merely an artifice.

406 The Gemara answers: It is different there, because there is an additional reason to think it was an artifice, as it is uncomfortable for a person to be described by the verse: "The rich rules over the poor, and the borrower is servant to the lender" (Proverbs 22:7). It is therefore reasonable to posit that his intention was not to borrow money, but to expose the concealed money that was in the possession of his slave or wife. This concern does not apply to one who sells property to his wife, and therefore the sale is valid.

[407] The Gemara quotes a related statement. Rav says: In the case of one who sells a field to his wife, she has acquired it, and the husband enjoys the profits. In the case of one who gives a married woman the field as a gift, she has acquired it and the husband does not enjoy the profits, since he gave it to her completely. And Rabbi Elazar says: In both this case and that case she has acquired it, and the husband does not enjoy the profits.

[408] The Gemara relates: Rav Ḥisda performed an action in accordance with the opinion of Rabbi Elazar, and did not allow a husband to enjoy the profits of a field he sold to his wife. Rabban Ukva and Rabban Neḥemya, the sons of Rav's daughters, said to Rav Ḥisda: Does the Master abandon a greater Sage, i.e., Rav, the greatest Sage of his generation, and act in accordance with the opinion of a lesser Sage, i.e., Rabbi Elazar, who was Rav's student? Rav Ḥisda said to them: But I too am acting in accordance with the opinion of a greater Sage, as when Ravin came from Eretz Yisrael, he said that Rabbi Yoḥanan said: In both this case and that case she has acquired it, and the husband does not enjoy the profits. I am consequently not relying exclusively on Rabbi Elazar's opinion, but also on that of Rabbi Yoḥanan.

[409] Rava says that the halakha is: In the case of one who sells a field to his wife, she has not acquired it, and the husband enjoys the profits. In the case of one who gives a married woman the field as a gift, she has acquired it and the husband does not enjoy the profits. The Gemara asks with regard to the first halakha: Can these two ostensibly contradictory rulings be given? Rava's statement that the wife has not acquired the field means that the husband still owns it, while his statement that the husband enjoys the profits, i.e., he merely enjoys the profits but does not own the field, indicates that the field itself is owned by the wife.

[410] The Gemara responds: This is not difficult, because Rava is referring to two different cases. Here, where he says that she has not acquired the land, he is referring to a case where her money was concealed, and the sale was an artifice to expose it; while there, where he says that she acquires the land, he is referring to a case where she had money that is not concealed. As Rav Yehuda says: If she purchased the field with concealed money, she has not acquired it; if she purchased it with money that is not concealed, she has acquired it.

[411] § The Sages taught in a baraita: One may not accept deposits from women, and not from slaves, and not from children. Since it is likely that they do not own property, they might have taken the item without authorization from their husband, master, or parent, respectively. Consequently, one should not accept the deposit. If, however, one accepted a deposit from a woman, he must return it to the woman, as he cannot be certain that it is not hers. And if the woman died, he must return it to her husband, as he is her heir. If one accepted a deposit from a slave, he must return it to the slave, since it might not belong to the master. And if the slave died, he must return it to his master.

[412] If one accepted a deposit from a minor, he cannot return it to him, as a minor is unable to properly safeguard the item. Instead, he must make a safe investment [segulla] for him, and if the minor dies, he must return it to his heirs.

[413] And with regard to all these people, who said at the time of their death that the deposited item belongs to so-and-so, the bailee should act as they had explained, and if their explanation was not credible, the bailee should form an explanation of their explanation, i.e., ignore what they said.

[414] The Gemara relates: When the wife of Rabba bar bar Ḥana was dying she said: These rings that are in my possession belong to Marta and the sons of her daughter. Rabba bar bar Ḥana came before

Rav to ask what he should do. Rav said to him: If she is credible in your eyes, act as she had explained, and if not, form an explanation of her explanation, i.e., ignore what she said, and as her heir, keep them for yourself.

[415] And there are those who say that this is what Rav said to him: If you assess that it is likely that the rings were deposited with her, act as she had explained, and if not, form an explanation of her explanation.

[416] The baraita stated that if the bailee took a deposit from a minor, he must make a safe investment for him. The Gemara asks: What is meant by a safe investment? Rav Ḥisda says: The bailee should purchase a Torah scroll for the minor. Rabba bar Rav Huna says: He should purchase a date palm, from which the minor will consume dates.

[417] § The mishna teaches: And a father does not have the ability to establish the presumption of ownership with regard to a son's property, and a son does not have the ability to establish the presumption of ownership with regard to a father's property. Rav Yosef says: Even if they separated and the son is no longer dependent on his father, the presumption of ownership still cannot be established by a father or son with regard to the other's property. Rava says: If they separated, that is not the halakha, and the presumption of ownership can be established.

[418] Rav Yirmeya of Difti said: Rav Pappi performed an action and ruled that if they separated, that is not the halakha, in accordance with the opinion of Rava. Rav Naḥman bar Yitzḥak said that Rav Ḥiyya, from the city of Hurmiz Ardeshid, told me that Rav Aḥa bar Yaakov told him in the name of Rav Naḥman bar Yaakov: If they separated, that is not the halakha. The Gemara notes: And this is the halakha: If they separated, that is not the halakha, and the presumption of ownership can be established. This is also taught in a baraita: A son who separated himself from his father's finances and a wife who became divorced are like all other people with regard to establishing the presumption of ownership.

[419] § It was stated: There was a case of one of the brothers in a family who was engaging in commerce in the house, managing the family finances after the death of their father, and there were bills of sale [onot] and other documents circulating with his name appearing as the owner of the property and as a lender, and that brother said: The money and property are mine, as they fell to me as an inheritance from the house of the father of my mother, who is not the mother of the other brothers, Rav says: It is upon him to bring proof of ownership; otherwise the property is divided equally among the brothers. And Shmuel says: It is upon the brothers to bring proof that the money or property belonged to their common father and consequently now belongs to all of them. Shmuel says: Abba, i.e., Rav, concedes to me that if that brother dies, it is upon the brothers to bring proof in order to collect money from the deceased brother's heirs.

[420] Rav Pappa objects to Shmuel's addendum: Do we claim on behalf of orphans anything that their father could not claim for them? But didn't Rava remove a pair of scissors used for cutting garments and a book of aggada from orphans without requiring the prior owner who had asked the orphans to return these items to bring proof of ownership, and he would rule the same in the case of all items with regard to which it is common for them to be lent, and the one in possession has no presumption of ownership?

[421] As Rav Huna bar Avin sent a ruling: If one other than the one previously established to be the owner is in possession of items that are typically lent or rented, and says: They are purchased, and

that is why they are in my possession, he is not deemed credible. In this case as well, as the father of the orphans could not be awarded these documents without bringing proof, the same should be true of his orphans. Why, then, would Rav concede to Shmuel? The Gemara concedes: This is difficult.

422 Rav Ḥisda says: They, i.e., Rav, taught his ruling, that the brother must bring proof that he owns the property listed in the documents that appear under his name, only when they do not divide any of their property, even with regard to their dough, i.e., they share everything, even their food. But if they divide with regard to their dough, say that this brother removed money from his dough, i.e., reduced his expenses for food, thereby amassing his own property.

423 With regard to the requirement that proof be brought, the Gemara asks: With what is one considered to have brought proof? Rabba says: Proof is brought with the testimony of witnesses that he purchased the property listed in the document or granted the loan with his own money or that he inherited it from his mother's family. Rav Sheshet says: Proof is brought with the court's ratification of the document in which his name appears.

424 Rava said to Rav Naḥman: This is the opinion of Rav and this is the opinion of Shmuel; this is the opinion of Rabba and this is the opinion of Rav Sheshet. In accordance with whose opinion does the Master hold? Rav Naḥman said to him: I know a baraita, which is the source of my opinion, as it is taught (Tosefta 9:2): In a case where there was one of the brothers who was engaging in commerce in the house, managing the family finances, and there were bills of sale and other documents circulating with his name appearing as the owner of the property or as a lender, and that brother said: The money and property are mine, as they fell to me as an inheritance from the house of the father of my mother, who is not the mother of the other brothers, it is upon him to bring proof of ownership.

425 The baraita continues: And similarly, in the case of a woman, i.e., a widow, if her husband's heirs see that she is engaging in commerce in the house with the property that had belonged to her husband, and there were bills of sale and other documents circulating with her name appearing on them as the owner, and she said: The money and property are mine alone, as they fell to me as an inheritance from the house of the father of my father or from the house of the father of my mother, and did not belong to my husband, it is upon her to bring proof. Rav Naḥman consequently holds in accordance with the opinion of Rav.

426 Having quoted the baraita, the Gemara seeks to clarify it, and asks: What is the purpose of the clause of the baraita that begins: And similarly, where the halakha appears to be identical to that of the first clause? Lest you say that in the case of the woman, since the matter is laudable for her, in that people say: She is toiling on behalf of orphans; she would not steal from the orphans, and is therefore deemed credible if she says that the property in the documents that bear her name is her own, the baraita teaches us that this assumption cannot be relied upon, and she must bring proof of ownership.

427 § The mishna teaches: In what case is this statement, that one establishes the presumption of ownership after profiting from the property for a certain duration, said? It is said in a case of one who has mere possession of the property, which does in some cases serve as proof of ownership. But in a case of one who gives a gift, or brothers who divided their inheritance, or one who takes possession of the property of a convert who died without heirs and his property is now ownerless, as soon as one locked the door of the property, or fenced it or breached its fence even a bit, this is considered taking possession of the property, and effects acquisition. The Gemara asks: Is that to say that all of these

whom we previously said possessed the field for three years are not subject to the halakhot of taking possession of property in this manner?

428 The Gemara responds that the mishna is incomplete and this is what it is teaching: In what case is this statement said? It is said with regard to possession that is accompanied by a claim, i.e., when the possessor has a claim to counter that of the claimant, such as where the seller, i.e., the claimant, says: I did not sell, and the buyer, i.e., the possessor, says: I purchased. In that case, working and profiting from the land for three years establishes the presumption of ownership.

429 But with regard to possession that does not need to be accompanied by a claim, as the prior owner concedes that the one in possession is the owner, such as a case where another person gives one a gift, or there are brothers who divided their property, or there is one who takes possession of the property of a convert who died without heirs, where the function of possessing the item is only to acquire it and not to establish the presumption of ownership, if one locked the door of the property, or fenced it or breached its fence even a bit, this is considered taking possession of the property.

430 Rav Hoshaya teaches in the baraita of tractate Kiddushin that was taught in the school of Levi: If one locked the door of the property, or fenced it or breached its fence even a bit, if this was done in the presence of the seller, this is considered taking possession of the property. The Gemara asks: One could infer that in his presence, yes, he acquires it; but not in his presence, no, he does not acquire it. Why not? In any event he has taken possession. Rava said that this is what Rav Hoshaya is saying: If the act was performed in the seller’s presence, the seller need not say to him: Go, take possession, and thereby acquire the property. Since the buyer is performing the act in the seller’s presence, there is no need for the seller to specify that he consents to the buyer’s acquiring it.

431 But if the act was performed not in the seller’s presence, the seller must say to him: Go, take possession and thereby acquire the property for him to acquire it.

432 Rav raises a dilemma: How does one acquire a gift, i.e., is it necessary for the giver to say: Go, take possession and thereby acquire? Shmuel said: What dilemma is raised to Abba, i.e., Rav? Now one could say the following: And what is the halakha with regard to a sale, where the buyer is giving money to the seller? If the seller says to the buyer: Go, take possession and thereby acquire the property, the acquisition does take effect, but if he did not say this, it does not. Therefore, with regard to a gift, where no money is given to the seller, is it not all the more so reasonable that the acquisition not take effect without a clear directive from the seller? The Gemara answers: And Rav holds that it is possible to say that one who gives a gift gives it generously, and would allow the acquisition even absent a clear directive.

433 § The mishna teaches that taking possession can be performed by building a fence or breaching a fence even a bit. The Gemara clarifies: And how much is the measure of a bit? It is in accordance with the statement of Shmuel, as Shmuel says: If one had previously built a fence, and now completed it to a height of ten handbreadths, which is the height of a halakhically significant barrier; or similarly, if one had previously breached a breach, and now expanded it in order that it be large enough that a person can enter and exit through it, this is considered taking possession.

434 The Gemara asks: What are the circumstances of this fence? If we say that initially one could not climb over it to enter the field, and now too one still could not climb over it, what did he accomplish? Nothing has changed through his completing the height of the fence. And alternatively, if it was such that initially one could climb over it to enter the field, and now one could not climb over it, he has

accomplished a great deal, and the mishna should not have referred to this addition as: A bit. The Gemara answers: No, it is necessary to state this ruling if the height of the fence was such that initially one could climb over it with ease, and now one could climb over it only with effort.

[435] The Gemara similarly asks: What are the circumstances of this breach? If we say that initially, one could enter the field through it, and now too one could enter the field through it, what did he accomplish? Nothing has changed through his expanding the breach? And alternatively, if it was such that initially one could not enter the field through it, and now one could enter the field through it, he has accomplished a great deal, and the mishna should not have referred to this as: A bit. The Gemara answers: No, it is necessary to state this ruling if the size of the breach was such that initially one could enter the field through it with effort, and now one could enter the field through it with ease.

[436] Rav Asi says that Rabbi Yoḥanan says: If one placed a stone and it helps to serve some objective, or if one removed a stone and it helps to serve some objective, this act is considered taking possession. The Gemara asks: What is the meaning of placed, and what is the meaning of removed?

[437] If we say that he placed a stone in the fence and stopped the water from flooding the field, or he removed a stone from the fence and thereby fashioned an opening that released water that had been flooding the field, this is analogous to one who chases away a lion from another's property. In other words, these acts prevent damage to the field, which one is obligated to prevent even in the case of the property of another, and accordingly, they do not constitute a demonstration of ownership. Rather, it means that he placed a stone that connected water to the field and irrigated it, or he removed a stone and enhanced the flow of water to it.

[438] § The Gemara cites another statement of the same amora with regard to taking possession. And Rav Asi says that Rabbi Yoḥanan says: If there were two fields with one boundary between them, and one took possession of one of the fields in order to acquire it, he has acquired it.

[439] If his intention was to acquire it and also acquire the other field, he has acquired the first field, but has not acquired the other field, since the fields are separated by a boundary. If he took possession of one field in order to acquire only the other field, he has not acquired even that field of which he took possession, since his intention when taking possession was to acquire the other field, and one does not acquire an item without the intention to do so.

[440] Rabbi Zeira raises a dilemma: What is the halakha if one took possession of one of the fields in order to acquire it, and the boundary, and the other field, all together? Do we say that the boundary of the land is one, i.e., these two fields are joined by means of their common boundary, and therefore he has acquired all of them? Or perhaps this field stands alone and that field stands alone. The Gemara notes that the dilemma shall stand unresolved.

[441] Rabbi Elazar raises a dilemma: What is the halakha if one took possession of the boundary between the two fields in order to acquire both of the fields? Do we say that the legal status of this boundary is that of the halter of the land and he acquires the fields, just as one acquires an animal through the acquisition of its halter? Or perhaps this field stands alone and that field stands alone, as the boundary is not connected to the field in the same manner that a halter is connected to an animal. The Gemara notes that the dilemma shall stand unresolved.

[442] Similarly, Rav Naḥman says that Rabba bar Avuh says: If there were two houses in a courtyard, this one situated within the courtyard relative to that one, and one took possession of the outer house

in order to acquire it, he has acquired it. If his intention was to acquire it and also acquire the inner house, he has acquired the outer house, but has not acquired the inner house. If he took possession of the outer house in order to acquire the inner house alone, he has not acquired even the outer house.

443 If he took possession of the inner house in order to acquire it, he has acquired it. If his intention was to acquire it and also acquire the outer house, he has acquired both of them. Since the residents of the inner house possess the right to pass through the outer house in order to enter and exit the courtyard, the outer house is viewed as an extension of the inner house. If he took possession of the inner house in order to acquire only the outer house, he has not acquired even the inner house, since he did not take possession of the property that he intended to acquire.

444 § The Gemara continues its discussion of taking possession of ownerless property. Rav Naḥman says that Rabba bar Avuh says: With regard to one who builds large palaces [palterin] on the property of a convert who died without heirs, and another came and placed doors upon them, the latter has acquired the property. The Gemara explains: What is the reason for this? The first, i.e., the one who built the palaces, merely turned over bricks, i.e., building an incomplete house is not sufficient to take possession of the property.

445 Rav Dimi bar Yosef says that Rabbi Elazar says: One who finds palaces built on the property of a convert who died without heirs and plastered them with one application of plaster or tiled them with one tile, has acquired them. The Gemara asks: And how much, i.e., what is the minimum area that must be plastered or tiled? Rav Yosef said: A square cubit. Rav Ḥisda said: And he acquires it in this manner only if it was plastered or tiled opposite the entrance, where it can be easily seen.

446 Rav Amram said: Rav Sheshet said this statement to us, and he enlightened our eyes from a baraita that alludes to the same matter. He said: One who spreads out mattresses on the property of a convert who died without heirs has acquired it. And that which I said, that he enlightened our eyes from a baraita, what is it? As it is taught in a baraita (Tosefta, Kiddushin 1:5): How does one acquire a Canaanite slave through taking possession? If the slave placed one’s shoe for him, or untied his shoe for him, or if it occurred that he carried his garments after him to the bathhouse, or undresses him, or bathes him, or anoints him, or scrubs the oil off him, or dresses him, or puts on his shoes, or lifts him, one acquires the slave. Rabbi Shimon said: The acquisition generated by taking possession should not be considered greater than the acquisition generated by lifting, as lifting acquires property in any situation.

447 With regard to this last statement, the Gemara asks: What is Rabbi Shimon saying here, as the first tanna also said that a slave can be acquired by lifting? The Gemara explains: This is what he is saying: The first tanna holds that if he lifted his master, the master acquires him, as he is performing labor for the master, but if his master lifted him, the master does not acquire him, as the slave has not performed labor on his behalf. With regard to this halakha, Rabbi Shimon said: Acquisition generated through taking possession should not be greater than acquisition generated through lifting, as lifting acquires property in any situation. Consequently, one can acquire a slave even by lifting him.

448 Rav Yirmeya Bira’a says that Rav Yehuda says: With regard to this one

449 who threw turnip seeds in the crevices [filei] of the land of a convert who died without heirs, it is not sufficient to take possession. What is the reason for this? As at the time that he threw the seeds there was no enhancement to the value of the field. Now that the turnips have grown and the value of the field is enhanced, it is enhanced by itself.

450 The Gemara records a series of rulings with regard to taking possession of land. Shmuel says: With regard to this one who cuts the branches of a palm tree, if he had in mind the acquisition of the palm tree, he has acquired it; but if he had in mind the benefit of the animals, to feed his animals the branches, he has not acquired it. The Gemara asks: What are the circumstances in which it can be known what he had in mind? The Gemara answers: If he took branches from this side and from that side, he had in mind the acquisition of the palm tree, as this assists the growth of the tree; but if the branches that he took were all from one side, he had in mind the benefit of the animals.

451 And Shmuel says with regard to this one who clears [dezakkei zikheya] a field of trees, if he had in mind the improvement of the field, to prepare it for plowing, he has acquired it; but if he had in mind the collection of the wood, he has not acquired it. The Gemara asks: What are the circumstances in which it can be known what he had in mind? The Gemara answers: If he took large and small pieces of wood, he had in mind the improvement of the field; however, if he took the large pieces of wood but left the small ones, he had in mind the collection of the wood.

452 And Shmuel says with regard to this one who removes protuberances and levels the ground, if he had in mind the improvement of the field, to prepare it for plowing, he has acquired it; but if he had in mind the conversion of the field into a threshing floor, he has not acquired it. The Gemara asks: What are the circumstances in which it can be known what he had in mind? The Gemara answers: If he took a mound and threw it in a ditch, thereby leveling both areas, he had in mind the improvement of the field; but if he leveled the ground with a mound in the place of a mound and a ditch in the place of a ditch, expanding each area but leaving the field as a whole uneven, he had in mind the conversion of the field into a threshing floor.

453 And Shmuel says with regard to this one who opened a blockage and enabled water to enter into a section of land, if he had in mind the improvement of the field, to irrigate it, he has acquired it; but if he had in mind the catching of the fish, i.e., to enable the water to flow in so that he could catch the fish therein, he has not acquired it. The Gemara asks: What are the circumstances in which it can be known what he had in mind? The Gemara answers: If he opened two gates, one bringing in the water and one taking out the water, this indicates that he had in mind the catching of the fish, as the water will flow out of the field, giving him the means to catch the fish; but if he opened only one gate, this indicates that he had in mind the improvement of the field.

454 The Gemara relates: There was a certain woman who profited from an ownerless palm tree by cutting its branches for thirteen years. Another then came and plowed beneath it a bit. The case came before Levi, and some say that it came before Mar Ukva, who established the property in the possession of the one who plowed. The woman came and shouted before him, protesting the perceived injustice of his ruling. Mar Ukva said to her: What can I do for you, as you did not take possession of the property in the manner that people take possession?

455 Rav says: One who draws an image, e.g., he paints an image on the wall, on the property of a convert who died without heirs has acquired it, as Rav himself acquired the garden of the house of Rav, which had been ownerless property, only by drawing an image.

456 § It was stated: With regard to a field that is defined by its boundaries, i.e., it has clearly demarcated boundaries on all sides, Rav Huna says that Rav says: Once he struck the land with a hoe one time, he acquired the entire property. And Shmuel says that he has acquired only the place that he struck with the hoe.

[457] And if it is not defined by its boundaries, up to how much of the field is acquired by one strike of the hoe? Rav Pappa said: He acquires as far as an ox driver goes and returns, i.e., the size of a standard furrow, beginning where the hoe entered the ground.

[458] § Rav Yehuda says that Shmuel says: With regard to the property of a gentile that was sold to a Jew for money, it is ownerless like a desert until the purchaser performs an act of acquisition; anyone who takes possession of it in the interim has acquired it. What is the reason for this? The gentile relinquishes ownership of it from the moment when the money reaches his hand, while the Jew who purchased it does not acquire it until the deed reaches his hand. Therefore, in the period of time between the giving of the money and the receiving of the deed, the property is like a desert, and anyone who takes possession of it has acquired it.

[459] Abaye said to Rav Yosef: Did Shmuel actually say this? But doesn't Shmuel say that the law of the kingdom is the law, i.e., the halakha obligates Jews to observe the laws of the locale in which they reside, and the king said that land may not be acquired without a document? Therefore, taking possession should not be effective for acquisition. Rav Yosef said to him: I do not know how to reconcile this contradiction, but there was an incident in the village of Dura that was founded by shepherds, where there was a Jew who purchased land from a gentile by giving money, and in the interim another Jew came and plowed it a bit. The two Jews came before Rav Yehuda for a ruling, and he established the property in the possession of the second individual. This accords with the ruling of Shmuel that the property is ownerless until a Jew performs an act of acquisition.

[460] Abaye said to him: Are you saying that the incident occurred in Dura that was founded by shepherds? Proof cannot be brought from that case, as there the fields were concealed, since the owners of fields would not pay the land tax [taska] to the king, and the king says that one who pays land tax may profit from the field. Therefore, in that case, the gentile who sold the property did not actually own it, and consequently by the laws of the kingdom could not sell it. The one who took possession of the property acquired it in accordance with the law of the kingdom, as he committed to pay the land tax. Elsewhere, one would not acquire the field until he received a deed of sale from the gentile.

[461] The Gemara relates: Rav Huna purchased land from a gentile. Another Jew came and plowed it slightly. Rav Huna and that Jew came before Rav Naḥman, who established the property in the possession of the latter. Rav Huna said to Rav Naḥman: What are you thinking in issuing this ruling? Is it because Shmuel says that the property of a gentile is like a desert, and anyone who takes possession of it has acquired it?

[462] If so, the Master should do for me in accordance with another statement of Shmuel, as Shmuel says that one who hoes ownerless property has acquired only the place that he struck with the hoe. Rav Naḥman said to him: In this matter I hold in accordance with our halakha, as Rav Huna says that Rav says: Once he struck the land with a hoe one time, he acquired the entire property.

[463] The Gemara relates that Rav Huna bar Avin sent a ruling: In the case of a Jew who purchased a field from a gentile, and then another Jew came and took possession of it, it is not removed from the possession of the second Jew. And so too, Rabbi Avin, and Rabbi Ile'a, and all of our Rabbis agree with regard to this matter.

[464] § Rabba said: These three statements were told to me by Ukvan bar Neḥemya the Exilarch in the name of Shmuel: The law of the kingdom is the law; and the term of Persian sharecropping [arisuta]

is for up to forty years, since according to Persian laws the presumption of ownership is established after forty years of use; and in the case of these tax officials [zaharurei] who sold land in order to pay the land tax, the sale is valid, as the tax officials were justified in seizing it, and one may purchase the land from them.

[465] The Gemara notes: And this statement applies to land seized to pay the land tax, but not to land seized to pay the head tax. What is the reason for this? The head tax is placed on a man's head, i.e., the obligation of this tax is on the individual and is unrelated to his property. It is therefore theft for the tax officials to sell land for this purpose. Rav Huna, son of Rav Yehoshua, said: Everything, even the barley in the pitcher, is mortgaged for the payment of the head tax.

[466] Rav Ashi said: Huna bar Natan said to me that Ameimar raised a difficulty with regard to this statement of Rav Huna, son of Rav Yehoshua: If so, you have abolished the inheritance of the firstborn son of one who owes taxes to the kingdom. If everything can be seized by the tax collectors to pay the father's debt, any property that he left behind is only a potential inheritance, not actually property of the heirs, and the halakha is that the firstborn does not take a double share in a potential inheritance as he does in property that the deceased possessed.

[467] The Gemara continues the statement of Huna bar Natan: And I said to Ameimar: If it is so that this presents a difficulty, then even if the property can be seized as payment for the land tax this difficulty would present itself as well, as the sons would not inherit their father's estate in the event that it is seized to pay the land tax. Rather, what have you to say to deflect this question? That the firstborn son's right is not negated in a case where the father gave the land tax and then died, so that he is no longer indebted to the government and the field is completely his. Here too, the firstborn son maintains his rights in a case where the father gave the head tax and then died.

[468] Rav Ashi said: Huna bar Natan said to me: I asked the scribes who wrote documents and recorded halakhic rulings in the court of Rava, and they said to me that the halakha is in accordance with the opinion of Rav Huna, son of Rav Yehoshua, who states that one's possessions are all mortgaged for the payment of the head tax. The Gemara notes: But that is not so, as there, Huna bar Natan said that in order to buttress his previous statement.

[469] And Rav Ashi said: An idler [pardakht] must assist the town by paying taxes even though he has no income in that town. And this matter applies in a case where the town saved him from his obligation by asking for a reduction on his behalf. But if the tax collectors [andisekei] do not seek to collect his debt this is regarded as heavenly assistance, and he is not obligated to volunteer to pay his share.

[470] § Rav Asi says that Rabbi Yoḥanan says: The boundary between fields and the sea squill that was planted to demarcate the border between fields serve as a barrier between fields with regard to the property of a convert who died without heirs, so that one who takes possession of the property acquires land only until the boundary or the sea squill, but not other land the convert had possessed beyond that point. But they do not serve as a barrier between fields with regard to the matter of produce in the corner of the field, which is given to the poor [pe'a], and ritual impurity, and even the area beyond it is considered to be part of the same field. When Ravin came to Babylonia from Eretz Yisrael, he said in the name of Rabbi Yoḥanan: They serve as a barrier between the fields even with regard to the halakhot of pe'a and ritual impurity.

[471] The Gemara explains: What is the halakha of pe’a that is affected by determining whether it is one or two fields? As we learned in a mishna (Pe’a 2:1): And these serve as a barrier for the purpose of pe’a, i.e., the presence of any of these divides a field so that each section constitutes a distinct field from which pe’a must be given independently: A stream that passes through the field; and a canal;

[472] and a public road that is at least sixteen cubits wide; and a private road that is four cubits wide; and a public trail; and a permanent private trail that is used whether in the summer or in the rainy season, i.e., winter. Rav Asi and Ravin disagree with regard to whether Rabbi Yoḥanan held that a boundary or sea squill also serves to subdivide a field for the purpose of pe’a.

[473] The Gemara further clarifies: What is the halakha of ritual impurity that is affected by determining whether an area is one or two fields? As we learned in a mishna (Teharot 6:5): With regard to one who enters into a valley during the rainy season, i.e., winter, when people generally do not enter this area, and therefore for the purpose of this halakha it is considered a private domain, and there is a principle that in a case of uncertainty concerning whether one contracted ritual impurity in a private domain he is ritually impure; and there was ritual impurity in such and such a field, and he said: I know I walked to that place, i.e., I walked in the valley, but I do not know whether I entered that place where the ritual impurity was or whether I did not enter, Rabbi Eliezer deems him pure and the Rabbis deem him impure.

[474] Rabbi Eliezer deems him pure, as Rabbi Eliezer would say: Concerning uncertainty with regard to entry, i.e., it is uncertain whether he entered the area where the ritual impurity is located, he is ritually pure. But if he certainly entered the area where the ritual impurity is located and the uncertainty is with regard to contact with ritual impurity, he is ritually impure. It is with regard to this halakha that Ravin said in the name of Rabbi Yoḥanan that a boundary or sea squill defines these fields as distinct areas.

[475] The Gemara infers, though, that even Ravin holds that a boundary or sea squill serves as a barrier only with regard to pe’a and ritual impurity, but with regard to the halakhot of Shabbat, they do not serve as a barrier between fields.

[476] Rava says: They serve as a barrier between fields even with regard to the matter of Shabbat, as it is taught in a baraita: With regard to one who carried out half of a dried fig from a private domain into the public domain and placed it there, and then returned and carried out another half of a dried fig, if it was done within one lapse of awareness, i.e., he did not remember in the interim that this act is prohibited or that it was Shabbat, the two acts are considered as one, and since the two items together equal the size of a dried fig, he is liable to bring a sin-offering. But if it was done within two lapses of awareness, i.e., after he carried out the first half of a dried fig he remembered that this act is prohibited or that it was Shabbat, but subsequently forgot again and carried out the second half of a dried fig, he is exempt.

[477] The baraita continues. Rabbi Yosei says: If it was done within one lapse of awareness,

[478] and in one domain, i.e., he carried half the dried fig into the same public domain each time, he is liable, but if it was in two domains, i.e., he carried the item into two separate public domains, he is exempt.

[479] And Rabba says in explanation of Rabbi Yosei’s opinion: And this division of the public domain applies only where there is a property where one would incur liability to bring a sin-offering if one

unintentionally carried out of it or into it, i.e., a private domain, between the two sections. But if there was only a karmelit, i.e., an area that is not defined as either a private domain or public domain and to and from which the prohibition against carrying is only of rabbinic origin, it does not divide the public domain. Abaye says: Even a karmelit divides the public domain into separate sections, but a beam [pisela] does not. Rava says: Even a beam divides the public domain, since it is no less than a boundary or sea squill, which do serve as a barrier between fields.

480 The Gemara notes: And Rava follows his own line of reasoning, as Rava says: The definition of a domain for the purpose of Shabbat is like the definition of a domain for the purpose of bills of divorce: Just as a beam is defined as a distinct domain for the purpose of bills of divorce, so too it is considered a distinct domain for the purpose of Shabbat.

481 The Gemara returns to discuss the acquisition of a field that belonged to a convert who died without heirs. The Gemara asks: If there was no boundary and there was no sea squill, what are the limits to the acquisition? Rabbi Marinus explains in the name of Rabbi Yoḥanan: Any area that is called by his name. The Gemara asks: What are the circumstances where it is called by his name? Rav Pappa said: Where it is called: The place that is irrigated by so-and-so's well. The entire area referred to as such would be considered one section with regard to acquisition.

482 Rav Aḥa bar Avya sat before Rabbi Asi, and he sat and was saying the following in the name of Rabbi Asi bar Ḥanina: A row of sea squill serves as a barrier with regard to the property of a convert who died without heirs, so that each section is considered a distinct field.

483 The Gemara asks: What is sea squill? Rav Yehuda says that Rav says: It is the growth by which Joshua established the boundaries of Eretz Yisrael for the Jews.

484 The Gemara teaches a related statement. And Rav Yehuda says that Rav says: In his book, Joshua enumerated only the towns that stand upon the borders, but not the towns that were within the portions of each tribe.

485 On the subject of the boundaries of Eretz Yisrael, Rav Yehuda says that Shmuel says: Any area that the Holy One, Blessed be He, showed to Moses before his death, as it is written: "And the Lord showed him all the land, Gilead…as far as Zoar" (Deuteronomy 34:1–3), is within the boundaries of Eretz Yisrael, and therefore produce that grows there is obligated in tithe.

486 The Gemara asks: To exclude what area? The Gemara answers: To exclude the lands of the Kenite, Kenizzite, and Kadmonite, as God had promised to Abraham at the Covenant between the Pieces: "To your offspring have I given this land…to…the Kenite, and the Kenizzite, and the Kadmonite" (Genesis 15:18–19). These areas are not obligated in tithe. What are these three areas? It is taught in a baraita that Rabbi Meir says: They are Naftuḥa, Arva'a, and Shalma'a. Rabbi Yehuda says: They are Mount Seir, Ammon, and Moab. Rabbi Shimon says: They are Ardisekis, Asya, and Aspamya.

487 MISHNA: If there were two witnesses testifying on his behalf that he, the possessor of the land, worked and profited from a field for three years, and therefore has presumptive ownership, and they were found to be conspiring witnesses, as it was proven that they were not present to witness the matter about which they had testified, they must pay the true owner of the field the full value of the field that they attempted, through their testimony, to remove from his possession, as it is written in the Torah: "Then shall you do to him, as he had planned to do to his brother" (Deuteronomy 19:19).

If two witnesses testify that he worked and profited from the field during the first year, another two testify that he worked and profited from it during the second year, and another two testify that he worked and profited from it during the third, and all were found to be conspiring witnesses,

[488] payment of the value of the field to the owner is divided among them.

[489] If the testimony was given by three brothers, each of whom testify about one year, and another unrelated individual joined with each of the brothers as the second witness, these are three distinct testimonies and they are accepted by the court. If they were to be considered one testimony, it would not be accepted, as brothers may not testify together. But they are one testimony for the purpose of rendering them as conspiring witnesses, and the payment is divided among them.

[490] GEMARA: The Gemara notes: The mishna is not in accordance with the opinion of Rabbi Akiva, as it is taught in a baraita (Tosefta, 2:10) that Rabbi Yosei said: When Abba Ḥalafta, Rabbi Yosei's father, went to Rabbi Yoḥanan ben Nuri to study Torah, and some say: When Rabbi Yoḥanan ben Nuri went to Abba Ḥalafta to study Torah, he said to him: What is the halakha if there is one who worked and profited from a field in the presence of two witnesses during the first year, then in the presence of two other witnesses during the second year, and finally in the presence of two other witnesses during the third year? He said to him: This is sufficient for establishing the presumption of ownership.

[491] The latter said to him: I say this as well, but Rabbi Akiva disagrees with regard to this matter, as Rabbi Akiva would say that since the verse states: "At the mouth of two witnesses, or at the mouth of three witnesses, shall a matter be established" (Deuteronomy 19:15), one can derive that testimony is accepted only with regard to a complete matter, and not with regard to half of a matter. In this mishna, although presumptive ownership requires testimony that the property had been worked and profited from for three years, testimony is accepted from each pair of witnesses with regard to one year. Consequently, the ruling of the mishna does not accord with the opinion of Rabbi Akiva.

[492] The Gemara asks: And with regard to the Rabbis, who accept the testimony of each of the three pairs of witnesses, what do they do with this derivation of: A complete matter, and not half of a matter, i.e., what type of testimony is disqualified based on this derivation? If we say that it serves to exclude a case where two witnesses testify that a young woman has two pubic hairs and has therefore reached maturity, where one says she has one hair on her back and one says she has one hair on her lower abdomen, i.e., they are testifying to two different pubic hairs, and in this case the Rabbis say this testimony is not accepted, since they each testify with regard to only half of the matter, that is difficult. But this is both half of a matter and half of a testimony, as there is only one witness with regard to each pubic hair. This testimony would not be valid even without the derivation.

[493] Rather, in the opinion of the Rabbis the derivation serves to exclude a case where two witnesses say she has one hair on her back and two witnesses say she has one hair on her lower abdomen. In this case, each group of witnesses gives full testimony with regard to half of a matter, i.e., one pubic hair, as both hairs must be present concurrently in order for her to assume the status of an adult. By contrast, in the case of the mishna, the years are by definition not concurrent. Therefore, the Rabbis rule that testimony with regard to one year is accepted.

[494] § In a related matter, Rav Yehuda says: If two witnesses testify that one had worked and profited from a field for three years, where one witness says he consumed wheat from the field, and one says he consumed barley from it, this is sufficient for establishing the presumption of ownership. Rav

Naḥman objects to this ruling: If that is so, then if one witness says he worked and profited from the field during the first, third, and fifth years; and one witness says he worked and profited from it during the second, fourth, and sixth years, would you also say that this is sufficient for establishing the presumption of ownership? What is the difference between testifying about different crops and testifying about different years?

[495] Rav Yehuda said to him: How can these cases be compared? There, i.e., in your example, with regard to the year about which one Master, i.e., witness, is testifying, the other Master is not testifying about it, while here, both are testifying with regard to one year. What is there to say, that there is a contradiction in their testimonies between wheat and barley? It does not enter people's minds to note this distinction. Two witnesses did, however, testify that he worked and profited from the field for three years.

[496] § The mishna teaches that if the testimony was given by three brothers, each of whom testified about one year, and another, unrelated individual joined with each of the brothers as the second witness, these are three distinct testimonies and they are accepted by the court. But they are one testimony for the purpose of rendering them as conspiring witnesses.

[497] The Gemara relates: There was a certain document that had the signatures of two individuals on it. One of the signatory witnesses died, and when the court sought to ratify the document, which requires either that the witnesses personally attest to the validity of their signatures or that two other witnesses attest to the validity of the signatures, the brother of the witness who remained alive and one other individual came to testify with regard to the signature of the other, deceased, witness, while the living witness attested to his own signature.

[498] Ravina thought to say that this case is the same as the halakha in the mishna, which states that if testimony was given by three brothers, each of whom testify about one year, and another, unrelated individual joined with each of the brothers as the second witness, these are considered to be three distinct testimonies. Similarly, in this case, one brother attests to his own signature, while the other brother attests to the signature of the deceased witness.

[499] Rav Ashi said to him: Are these cases comparable? There, the property less one-quarter, i.e., three-quarters of the property in question, is not removed from the possession of the prior owner based upon the mouth, i.e., the testimony, of brothers. Each brother provides only half of the testimony for each year about which he testifies. Here, the property less one-quarter is removed from the possession of the debtor detailed in the document based upon the mouth of brothers. One brother attests to his own signature, which constitutes half of the testimony, while the other signature is authenticated by the testimony of the other brother and another individual. It follows that three-quarters of the testimony is given by brothers, and it is therefore invalid.

[500] MISHNA: These are uses of property that have the means to establish the presumption of ownership, and these are uses of property that do not have the means to establish the presumption of ownership: If one would stand an animal in a courtyard; or if one would place an oven, a millstone, or a stove there; or if one raises chickens in a courtyard, or places his fertilizer in a courtyard, these actions are not sufficient to establish the presumption of ownership. But if one constructed a partition ten handbreadths high to contain his animal, and similarly if he constructed a partition for his oven, and similarly if he constructed a partition for his stove, and similarly if he constructed a partition for his millstone; or if one brought chickens into the house, or if he fashioned a place in the ground for

his fertilizer that is three handbreadths deep or three handbreadths high, these actions are sufficient to establish the presumption of ownership.

[501] GEMARA: The Gemara asks: What is different in the first clause, where having an animal stand in a courtyard is insufficient to establish the presumption of ownership, and what is different in the latter clause, where constructing a partition is sufficient to establish the presumption of ownership?

[502] Ulla says: With regard to any act which, if one were to perform it on ownerless property such as the property of a convert who dies without heirs he would acquire that property, that same act is sufficient for him to acquire the property of another if he performed it over the course of three years, provided it is accompanied by the claim that the property had been purchased. Conversely, any act that if one were to perform it on the property of a convert who died without heirs he would not acquire that property, that same act is not sufficient for him to acquire the property of another. Taking possession of ownerless property requires an act to be done with regard to the property itself, such as constructing a partition, but merely having an animal stand there is not sufficient. Therefore, it does not establish the presumption of ownership.

[503] Rav Sheshet objects to this explanation: And is this an established principle? But there is plowing, which, if performed on the property of a convert who died without heirs one acquires it, but if performed on the property of another one does not acquire it. And additionally, there is consumption of produce for the duration of three years, which, if performed on the property of another one acquires it by establishing the presumption of ownership, but if performed on the property of a convert who died without heirs one does not acquire it. These cases contradict Ulla's claim that the modes of acquisition are analogous.

[504] Rather, Rav Naḥman said that Rabba bar Avuh said:

[505] Here we are dealing with a courtyard belonging to partners, where they are not particular with regard to the mere placing of items in the courtyard, but are particular with regard to the construction of a partition. The presumption of ownership is established only where the lack of a protest indicates that the prior owner concedes that the property is no longer his. The co-owner's silence in the face of his partner using the courtyard for a temporary purpose does not indicate a concession, but silence in the face of one who constructed a partition is a concession.

[506] The Gemara asks: And are they not particular with regard to the mere placing of items? But didn't we learn in a mishna (Nedarim 45b): Partners who through vows prohibited themselves from deriving benefit from one another are forbidden to enter into a courtyard jointly owned by them, since each one has a portion in it, and it would be considered a violation of one's vow if one were to benefit from any part of the other's property? This indicates that partners are particular even with regard to passage through the field; all the more so are they particular with regard to placing animals or vessels in the field.

[507] Rather, Rav Naḥman said that Rabba bar Avuh said: Here we are dealing with a fenced-in yard located behind a group of houses that is used to store items not in regular use, where they are not particular with regard to the mere placing of items but are particular with regard to the construction of a partition.

[508] Rav Pappa said: This and that, i.e., the rulings of the mishna in tractate Nedarim as well as the rulings of the mishna here, are stated with regard to a courtyard belonging to partners, and the reason

for the difference in the rulings is that there are those who are particular with regard to the other partner placing items in or passing through the courtyard, and there are those who are not particular. Therefore, in the mishna here, which issues a ruling concerning monetary matters, the halakha is to be lenient, and it is assumed that the partner is not particular about placing items in the courtyard, and the presumption of ownership is established. In the mishna in tractate Nedarim, which issues a ruling concerning ritual matters, the halakha is to be stringent, to prevent one from violating a vow.

509 Ravina said: Actually, partners are not particular about placing items in the courtyard, and in accordance with whose opinion is this mishna in tractate Nedarim? It is in accordance with the opinion of Rabbi Eliezer, as it is taught in a baraita that Rabbi Eliezer says: Even negligible benefits ordinarily waived are forbidden in the case of one prohibited by a vow from deriving benefit from another. In other words, one prohibited by a vow may not derive any benefit from the other, even a benefit that people commonly are not particular about and allow others to enjoy without first receiving permission. Therefore, although people are ordinarily not particular about others passing through their property, according to the opinion of Rabbi Eliezer, one who is prohibited by a vow from deriving benefit from his partner is prohibited from walking on the property.

510 Rabbi Yoḥanan says in the name of Rabbi Bena’a: Partners may prevent each other from using their courtyard for any purpose except for washing laundry. This is because it is not the way of Jewish women to be degraded over washing laundry by laundering their clothing in a public area. Therefore, they must be allowed to launder in the courtyard.

511 In connection with the matter of laundry being washed in public, the Gemara quotes the homiletic interpretation of a verse: “He that walks righteously, and speaks uprightly; he that despises the gain of oppressions, that shakes his hands from holding of bribes, that stops his ears from hearing of blood, and shuts his eyes from looking upon evil” (Isaiah 33:15). Rabbi Ḥiyya bar Abba says: This is referring to one who does not gaze at women while they are standing over the laundry, as it was common for them to stand in the water and raise the hems of their garments while laundering their clothing.

512 The Gemara clarifies: What are the circumstances? If it is referring to a case where there is another way by which the one walking could reach his destination, then one who walks past the women, consequently placing himself in a situation where he will be tempted to gaze at them, is wicked. Alternatively, if it is referring to a case where there is no other way by which he can reach his destination, then he is a victim of circumstance, so why is he required to shut his eyes? The Gemara explains: Actually, it is referring to a case where there is no other way by which he can reach his destination, and even so, he is required to compel himself to avoid gazing at the women.

513 § The Gemara quotes additional matters that Rabbi Yoḥanan learned from Rabbi Bena’a. Rabbi Yoḥanan asked Rabbi Bena’a: How should the garment of a Torah scholar worn under his clothes be fashioned? He replied: He can wear any garment long enough that his flesh is not visible from beneath it. Rabbi Yoḥanan asked: How should the cloak of a Torah scholar be fashioned? He replied: He can wear any garment long enough that a handbreadth of his garment worn under his clothes is not visible from beneath it. Rabbi Yoḥanan asked: How should the table of a Torah scholar appear? He replied: Two-thirds of the table is covered with a cloth, and one-third is uncovered, and upon that third are dishes and vegetables. And its ring, used to hang the table, should be positioned on the outside, not on the side that faces the one who is eating.

[514] The Gemara asks: But isn’t it taught in a baraita that its ring should be positioned on the inside? The Gemara answers: This is not difficult. This baraita, which states that its ring should be positioned on the outside, is referring to a case where there is a child who may play with the ring and overturn the table, while that baraita, which states that its ring should be positioned on the inside, is referring to a case where there is no child present.

[515] And if you wish, say instead that both this and that refer to a case where there is no child present, and this is not difficult: This baraita, which states that its ring should be positioned on the inside, is referring to a case where there is an attendant who may bump into the ring, while that baraita, which states that its ring should be positioned on the outside, is referring to a case where there is no attendant.

[516] And if you wish, say instead that both this and that refer to a case where there is an attendant, and this is not difficult: This baraita, which states that its ring should be positioned on the outside, is referring to when the meal is eaten during the day, when the attendant can see the ring and avoid it, while that baraita, which states that its ring should be positioned on the inside, is referring to when the meal is eaten during the night.

[517] The Gemara continues: All of the above is referring to the table of a Torah scholar, but the table of an ignoramus is similar

[518] to a bonfire, where the fire is in the center and pots surround it. Similarly, the table of an ignoramus is arranged with the food in the center and is surrounded by plates.

[519] Rabbi Yoḥanan asked: How should the bed of Torah scholars be kept? He replied: It is acceptable as long as there is nothing except sandals beneath it during the summer, and shoes beneath it during the rainy season, i.e., winter. And the bed of an ignoramus is similar to a cluttered [balus] storehouse, as he keeps a wide array of items beneath it.

[520] § Having mentioned Rabbi Bena’a, the Gemara relates an incident in which he was involved. Rabbi Bena’a was marking burial caves for the purpose of helping to prevent the contracting of ritual impurity. When he arrived at the cave of Abraham, i.e., the Cave of Machpelah, he encountered Eliezer, the servant of Abraham, who was standing before the entrance. Rabbi Bena’a said to him: What is Abraham doing at this moment? Eliezer said to him: He is lying in the arms of Sarah, and she is examining his head.

[521] Rabbi Bena’a said to him: Go tell him that Bena’a is standing at the entrance, so that he should assume an appropriate position to receive a visitor. Eliezer said to him: Let him, i.e., Rabbi Bena’a, enter, since it is known that there is no evil inclination in this higher world, so it is not inappropriate for Rabbi Bena’a to see Abraham and Sarah in this position. He entered, examined the cave in order to measure it, and exited.

[522] When he arrived at the cave of Adam the first man, who is buried in the same area, a Divine Voice emerged and said: You gazed upon the likeness of My image, i.e., Abraham, who is similar to the image of Adam the first man. Do not gaze upon My image itself, i.e., Adam the first man, about whom the verse states that he was formed in the image of God (see Genesis 1:27). Rabbi Bena’a said: But I need to mark the cave. The voice said to him: As the measurements of the dimensions of the outer cave where Abraham is buried, so are the measurements of the dimensions of the inner cave, where Adam is buried. The Gemara notes: And according to the one who says that the Cave of

Machpelah consists of two chambers, this one above that one, not two adjacent chambers, the voice said: As the measurements of the dimensions of the upper cave where Abraham is buried, so are the measurements of the dimensions of the lower cave. Therefore, there is no need to measure it.

523 Rabbi Bena'a says: I gazed at his, Adam's, two heels, and they shone so brightly that they are similar to two suns. Along these lines, the Gemara states that all people compared to Sarah are like a monkey compared to a human, as Sarah was exceedingly beautiful; Sarah compared to Eve is like a monkey compared to a human; Eve compared to Adam is like a monkey compared to a human; and Adam compared to the Divine Presence is like a monkey compared to a human.

524 It was also stated that the beauty of Rav Kahana is a semblance of the beauty of Rav. The beauty of Rav is a semblance of the beauty of Rabbi Abbahu. The beauty of Rabbi Abbahu is a semblance of the beauty of Jacob our forefather. The beauty of Jacob our forefather is a semblance of the beauty of Adam the first man.

525 On the topic of burial caves, the Gemara relates that there was a certain magus [amgusha] who was rummaging through the graves of the dead. When he arrived at the burial cave of Rav Tovi bar Mattana, Rav Tovi grabbed him by his beard and would not release him. Abaye came and said to Rav Tovi: I beg of you to release him. The magus came again in another year, and Rav Tovi grabbed him by his beard. Abaye came and requested that he release him, but Rav Tovi did not release him, until Abaye brought a scissors and cut his beard.

526 § The Gemara relates additional incidents involving Rabbi Bena'a: There was a certain individual who said to his family before he died: A barrel of earth to one of my sons, a barrel of bones to one of my sons, and a barrel of wads of wool to one of my sons. They did not know what he was saying to them. They came before Rabbi Bena'a for guidance. Rabbi Bena'a said to them: Do you have land that your father left as an inheritance? They said to him: Yes. He asked: Do you have livestock that your father left as an inheritance? They said: Yes. He asked: Do you have quilts [bistarkei] that your father left as an inheritance? They said: Yes. He said to them: If so, this is what he said to you, i.e., he meant that he is bequeathing land to one son, livestock to the second, and quilts to the third.

527 There was a certain man who heard his wife saying to her daughter: Why do you not act clandestinely when you engage in forbidden sexual intercourse? That woman has, i.e., I have, ten sons, and I have only one from your father, and no one knows. So too, you must be careful so that no one will discover your illicit behavior. Having overheard that only one son was his, when that man was dying he said to his family: All of my property is left to one son.

528 They did not know to which of them he intended to leave his property. They came before Rabbi Bena'a for guidance, and he said to the sons: Go strike your father's grave, until he rises and reveals to you to which of you he left his property. They all went, but that one who was his son did not go. Rabbi Bena'a said to them: All of the property belongs to this son who did not go. The other brothers were angry. They went and slandered [akhlu kuretza] Rabbi Bena'a in the king's house. They said: There is one man among the Jews who removes money from people without witnesses and without any evidence. The king's guards brought Rabbi Bena'a and imprisoned him.

529 The wife of Rabbi Bena'a went and said to the guards: I had one servant. They cut off his head, and skinned him and ate his flesh, and they fill him with water and give their friends to drink from him, and they have not paid me his value nor have they rented him.

530 They did not know what she was saying to them. They said: Let us bring the wise man of the Jews, and let him say what she meant. They called Rabbi Bena’a, and he said to them: She spoke to you of a water skin [zarnuka]. In other words, she was referring to a goat she owned that was slaughtered, its meat eaten, and its skin made into a water skin that could be filled with drinking water. They said: Since he is so wise, let him sit at the gate where the judges congregate and render judgment.

531 Rabbi Bena’a saw that it was written upon the gate [be’abbula]: Any judge who is summoned to judgment is not considered a judge, as judges must be above reproach. He said to them: If that is so, then if a person comes from elsewhere

532 and summons a judge to judgment, has he disqualified the judge even if he were later to be exonerated? Rather, it should say: Any judge who is summoned to judgment and money is lawfully taken from him, i.e., he was ordered to return someone’s property, is not considered a judge. When they heard this, they wrote this addendum to the original inscription: But the elders of the Jews say that any judge who is summoned to judgment and money is lawfully taken from him is not considered a judge.

533 Rabbi Bena’a also saw that it was written there: At the head of all death am I, blood, i.e., people die from an excess of blood; at the head of all life am I, wine, i.e., wine is what gives life. He said to them: If that is so, in the case of someone who falls from a roof and dies, or someone who falls from a palm tree and dies, was it blood that killed him? And furthermore, concerning someone who is on the way to death, can they give him a drink of wine and he will live? Rather, this is what should be written: At the head of all illness am I, blood; at the head of all healing am I, wine. When they heard this, they wrote this addendum to the original inscription: But the elders of the Jews say: At the head of all illness am I, blood; at the head of all healing am I, wine. In a place where there is no wine, herbs are required there as medicines.

534 Having related that incident, the Gemara notes that at the entrance of Kapotekiyya it was written: Anpak, anbag, antal, which are all names for the same measurement. And what is antal? It is the quarter-log of the Torah.

535 MISHNA: With regard to a spout protruding from one’s roof gutter draining water into another’s property, its owner has no means to establish an acquired privilege for its use, but he does have the means to establish an acquired privilege with regard to its place, as the Gemara will explain. With regard to a gutter pipe that traverses the length of the roof, one does have the means to establish an acquired privilege for its use.

536 With regard to an Egyptian ladder, which is small and portable, one has no means to establish an acquired privilege for its use. But with regard to a Tyrian ladder, which is large and fixed in place, one does have the means to establish an acquired privilege for its use.

537 With regard to an Egyptian window, one has no means to establish an acquired privilege for its use; but with regard to a Tyrian window, one does have the means to establish an acquired privilege for its use. What is the defining feature of an Egyptian window? It is any window that is so small that a person’s head is not able to fit inside it. Rabbi Yehuda says: If a window has a frame, even though a person’s head is not able to fit inside it, one does have the means to establish an acquired privilege for its use.

[538] GEMARA: The Gemara asks: What is the meaning of the mishna's statement: With regard to a spout, its owner has no means to establish an acquired privilege for its use, but he does have the means to establish an acquired privilege with regard to its place? Rav Yehuda said that Shmuel said: This is what it is saying: Concerning a spout, its owner has no means to establish an acquired privilege for its use with regard to one side, i.e., the owner of the field below has the right to move the spout from one place to another on one side of the roof, but he does have the means to establish an acquired privilege concerning its place with regard to two sides, i.e., the owner of the field below does not have the right to move it to another side of the roof.

[539] Rabbi Ḥanina said there is a different explanation: With regard to a spout, its owner has no means to establish an acquired privilege for its size, as if it was long, the owner of the field below may shorten it, but one does have the means to establish an acquired privilege with regard to its place, as if the owner of the field below comes to remove it entirely, he may not remove it.

[540] Rav Yirmeya bar Abba said there is a different explanation: With regard to a spout, its owner has no means to establish an acquired privilege for its use, as if the owner of the field below wishes to build beneath it, he may build, and the owner of the spout may not prevent him from doing so; but one does have the means to establish an acquired privilege with regard to its place, as if the owner of the field below comes to remove it entirely, he may not remove it.

[541] We learned in the mishna: With regard to a gutter pipe, one does have the means to establish an acquired privilege for its use. Granted, according to the one who says those first two explanations, i.e., Shmuel and Rabbi Ḥanina, it is well. The distinction between the halakha with regard to a spout and that of a gutter pipe is clear: Since the gutter pipe is fixed in place, there is an acquired privilege, and it may not be moved or shortened.

[542] But according to Rav Yirmeya bar Abba, the one who says that the mishna means: If the owner of the field wishes to build beneath it he may build, what difference does it make to the owner of the gutter pipe if the owner of the field builds beneath it? Why would he have the right to prevent it?

[543] The Gemara answers: Here we are dealing with a gutter pipe that is made of stone and is built into the walls of the building, in a case where the owner of the gutter pipe said to the owner of the field: It is not amenable to me that you build beneath my gutter pipe, as my walls will weaken as a result.

[544] Rav Yehuda says that Shmuel says: With regard to a pipe from which water is draining into another's courtyard and the owner of the roof comes to seal his drainage pipe, the owner of the courtyard can prevent him from doing so. As the owner of the field can say to him: Just as you have acquired my courtyard for the purpose of throwing your water into it, I have also acquired the water of your roof, and since I wish to use it, you may not seal the pipe.

[545] It was stated that there is a dispute with regard to this issue, as Rabbi Oshaya says: The owner of the courtyard can prevent the owner of the roof from sealing the pipe, while Rabbi Ḥama, Rabbi Oshaya's father, says: He cannot prevent it. Rabbi Oshaya went and asked Rabbi Ḥama's father, Rabbi Bisa. Rabbi Bisa said to them: He can prevent it. Rami bar Ḥama read the verse about him: "And if a man prevail against him that is alone, two shall withstand him; and a threefold cord is not quickly broken" (Ecclesiastes 4:12), saying that this applies to Rabbi Oshaya, son of Rabbi Ḥama, son of Rabbi Bisa, three generations of Torah scholars in one family who knew one another and conversed with each other with regard to matters of halakha.

546 § The mishna teaches that with regard to an Egyptian ladder, which is small and portable, one has no means to establish an acquired privilege for its use. The Gemara asks: What is an Egyptian ladder like? The members of the school of Rabbi Yannai say: It is any ladder that does not have four rungs.

547 The mishna teaches that with regard to an Egyptian window, one has no means to establish an acquired privilege for its use. The Gemara asks: What is different with regard to an Egyptian ladder, that the mishna does not explain what it is, and what is different with regard to an Egyptian window, that the mishna does explain what it is? The Gemara answers: It was necessary for the mishna to state the definition of an Egyptian window according to the unattributed opinion of the mishna because it wants to cite the dissenting opinion of Rabbi Yehuda in the latter clause.

548 With regard to windows, Rabbi Zeira says: If one built a large window at a height that is lower than four cubits from the ground, he has the means to establish an acquired privilege for its use, and therefore, his neighbor can protest the initial construction of the window. If one built a large window at a height that is above four cubits from the ground, he has no means to establish an acquired privilege for its use, and therefore his neighbor cannot protest its construction. And Rabbi Ile’a says: Even if it is built at a height that is above four cubits from the ground, he has no means to establish an acquired privilege for its use, but nevertheless, his neighbor can protest its construction.

549 The Gemara asks: Shall we say that they disagree with regard to whether there is coercion concerning conduct characteristic of Sodom? Perhaps their dispute is with regard to a circumstance where one will not suffer any loss while another gains some benefit, and the former desires to prevent the latter from gaining the benefit, if the former is coerced into not being evil without reason and consequently allows the latter to derive the benefit, counter to the behavior of the residents of Sodom. One Sage, Rabbi Zeira, holds that there is coercion, and therefore the neighbor who does not suffer any damage from a high window cannot protest, and one Sage, Rabbi Ile’a, holds that there is no coercion.

550 The Gemara rejects this: No, everyone agrees that there is coercion concerning conduct characteristic of Sodom, and it is different here, as according to the opinion of Rabbi Ile’a this is not conduct characteristic of Sodom, as the neighbor can say to the one who constructed the window: There are times when you place a bench beneath yourself, and you stand and see into my home. Therefore, I can protest. The Gemara relates that there was a certain individual who came before Rabbi Ami and presented this precise scenario. Rabbi Ami sent him before Rabbi Abba bar Memel to ask for a ruling. Rabbi Abba bar Memel said to him: Act in accordance with the opinion of Rabbi Ile’a.

551 Since the mishna cited a dispute with regard to the conditions under which an owner has acquired the privilege to use a window, the Gemara teaches that Shmuel says: And if a window was built for the purpose of enabling light to enter a dark room, then the owner of the window has the means to establish an acquired privilege for its use, whatever size it is, not only if it is a large window. And if the neighbor did not protest its construction, he cannot subsequently force the owner of the window to seal it.

552 MISHNA: With regard to a projection emerging from the wall of one’s house, overhanging a courtyard, one has the means to establish an acquired privilege for its use if it protrudes at least as far as a handbreadth,

553 and the owner of the courtyard can protest its construction. If it protrudes less than a handbreadth, the owner of the house has no means to establish an acquired privilege for its use, and the owner of the courtyard cannot protest its construction.

554 GEMARA: Rabbi Asi says that Rabbi Mani says, and some say that Rabbi Ya’akov says that Rabbi Mani says: If one established an acquired privilege with regard to a projection of a handbreadth, he has established an acquired privilege with regard to four handbreadths. The Gemara asks: What is he saying? Abaye said that this is what he is saying: If one established an acquired privilege with regard to a projection that measures one handbreadth wide by four handbreadths long, he has established an acquired privilege with regard to extending the projection to a width of four handbreadths.

555 The mishna teaches that if the projection protrudes less than a handbreadth the owner of the house has no means to establish an acquired privilege for its use, and the owner of the courtyard cannot protest. Rav Huna says: They taught only that the owner of the roof cannot protest the actions of the owner of the courtyard, i.e., he may not demand that the owner of the courtyard refrain from construction that interferes with the former’s use of the projection. But the owner of the courtyard can protest the actions of the owner of the roof, and demand that the latter not build a projection of any size, even less than a handbreadth. He can also demand that the owner of the roof not use an existing projection, since it leads to damage caused by sight. And Rav Yehuda says: Even the owner of the courtyard cannot protest the actions of the owner of the roof.

556 The Gemara suggests: Shall we say that they disagree with regard to damage caused by sight? As one Sage, Rav Huna, holds that it is considered to be damage, and therefore the owner of the courtyard can protest, since the owner of the roof has the means to see into the other’s courtyard when using this projection, and one Sage, Rav Yehuda, holds that it is not considered to be damage.

557 The Gemara rejects this: No, everyone agrees that damage caused by sight is considered to be damage. And Rav Yehuda holds it is different here, as the owner of the roof can say to the owner of the courtyard: The projection is not suitable for use, since it is too small for me to stand upon and look into the courtyard. For what purpose is it suitable? To hang items on it, and nothing more. I will turn my face away and hang items on it without looking into your courtyard.

558 And the other amora, Rav Huna, holds that the owner of the courtyard can say to the owner of the roof: There may be times when you are frightened due to the height of the projection, and you will look into my courtyard while using it.

559 MISHNA: A person may not open his windows, i.e., build an opening in a wall to use as a window, into a courtyard belonging to partners, i.e., a courtyard in which he is a partner. If he purchased a house in another, adjacent courtyard, he may not open the house into a courtyard belonging to partners. If he built a loft on top of his house, he may not open it into a courtyard belonging to partners. Rather, if he desired to build a loft, he may build a room within his house, or he may build a loft on top of his house, and open it into his house, not directly into the courtyard.

560 GEMARA: With regard to the mishna’s ruling that one may not open a window into a courtyard that he co-owns, the Gemara asks: Why did the mishna specifically render it prohibited for one to open a window into a courtyard belonging to partners? One may not open a window into another’s courtyard either, as it will lead to damage caused by sight.

[561] The Gemara replies that the mishna is speaking utilizing the style of: It is not necessary, as follows: It is not necessary to say that it is not permitted for one to open a window into another's courtyard, where he is certainly not allowed to look; but where one wants to open a window into a courtyard belonging to partners, where the owner of the window can say to the other partner: Ultimately, since you need to conceal yourself from me and conduct yourself modestly in the courtyard where I too am a partner and have the right to be present, why does it bother you if I open a window into there? Therefore, the mishna teaches us that the partner may say to him: Until now I needed to conceal myself from you only when we were both in the courtyard. Now I will need to conceal myself from you even in the house, as you can see into my house from your window.

[562] The Sages taught in a baraita: There was an incident involving a person who opened his windows into a courtyard belonging to partners and came before Rabbi Yishmael bar Rabbi Yosei, who said to him: You have established an acquired privilege, my son; you have established an acquired privilege, and you may not be prevented from using the windows. And he came before Rabbi Ḥiyya, who said to him: You toiled and opened the windows; you must toil and seal them, as the partners have the right to prevent you from using these windows.

[563] Rav Naḥman said:

[564] And to seal, i.e., if one sealed another's window in his presence, there is an acquired privilege established immediately to keep the window sealed, as it is not common behavior for a person to have his source of light sealed in his presence and remain silent. The fact that he did not immediately protest indicates that the one who sealed the window had the legal right to do so unilaterally, or that the owner of the window agreed.

[565] § The mishna teaches that if one purchased a house in another, adjacent courtyard, he may not open the house into a courtyard belonging to partners. The Gemara explains: What is the reason for this? Because by adding residents to the courtyard it increases their traffic, and the residents of the courtyard do not wish to be disturbed by additional people passing through.

[566] The Gemara questions this. But say the last clause of the mishna: Rather, if he desired to build a loft, he may build a room within his house, or he may build a loft above his house, and have it open into his house, not directly into the courtyard. But if he does so, isn't there still a concern that it increases the traffic? Rav Huna said as an explanation: What does the mishna mean when it says that he may build a room? It means that he may divide an existing room in two. And what is the loft to which the mishna is referring? It is an internal story created by dividing an existing space into two stories.

[567] MISHNA: A person may not open an entrance opposite another entrance or a window opposite another window toward a courtyard belonging to partners, so as to ensure that the residents will enjoy a measure of privacy. If there was a small entrance he may not enlarge it. If there was one entrance he may not fashion it into two. But one may open an entrance opposite another entrance or a window opposite another window toward the public domain. Similarly, if there was a small entrance he may enlarge it, and if there was one entrance he may fashion it into two.

[568] GEMARA: The Gemara asks: From where are these matters, i.e., that one may not open an entrance opposite another entrance, or a window opposite another window, derived? Rabbi Yoḥanan says that the verse states: "And Balaam lifted up his eyes, and he saw Israel dwelling tribe by tribe; and the spirit of God came upon him" (Numbers 24:2). The Gemara explains: What was it that

Balaam saw that so inspired him? He saw that the entrances of their tents were not aligned with each other, ensuring that each family enjoyed a measure of privacy. And he said: If this is the case, these people are worthy of having the Divine Presence rest on them.

[569] The mishna teaches that if there was a small entrance he may not enlarge it. Rami bar Ḥama thought to say this means that if the entrance was the width of four cubits, one may not fashion it to the width of eight cubits, as he would then be allowed to take eight corresponding cubits in the courtyard. The halakha is that one is entitled to utilize the area of the courtyard up to a depth of four cubits along the width of the opening. But if the entrance was the width of two cubits and one wishes to fashion it to the width of four cubits, one may well do so, as in any event he already had the right to use an area of four cubits by four cubits in front of the entrance. Rava said to him: This is not so, as his neighbor can say to him: I can conceal myself from you with there being a small entrance, but I cannot conceal myself from you with there being a large entrance.

[570] The mishna teaches that if there was one entrance he may not fashion it into two. In this case as well, Rami bar Ḥama thought to say that this means if the entrance was the width of four cubits he may not make it into two openings, each the width of two cubits, as he would then be allowed to take eight corresponding cubits in the courtyard, four for each entrance. But if it was the width of eight cubits and he wishes to make it into two openings, each the width of four cubits, he may well do so, as in any event he already had the right to use an area of eight cubits by four cubits in front of his entrance. Rava said to him: This is not so, as his neighbor can say to him: I can conceal myself from you with there being one entrance, but I cannot conceal myself from you with there being two entrances.

[571] The mishna teaches: But one may open an entrance opposite another entrance or a window opposite another window toward the public domain. Why is this so? Because he can say to the one who wishes to protest: Ultimately, you must conceal yourself from the people of the public domain. Since you cannot stop them from passing by and therefore cannot engage in behavior that requires privacy with your entrance open, it is of no consequence to you if I open an entrance as well.

[572] MISHNA: One may not form an empty space beneath the public domain by digging pits, ditches, or caves. Rabbi Eliezer deems it permitted for one to do so, provided that he places a covering strong enough that a wagon laden with stones would be able to tread on it without breaking it, therefore ensuring that the empty space will not cause any damage to those in the public domain. One may not extend projections or balconies [ugzuztraot] into the public domain. Rather, if he desired to build one he may draw back into his property by moving his wall, and extend the projection to the end of his property line. If one purchased a courtyard in which there are projections and balconies extending into the public domain, this courtyard retains its presumptive status, i.e., the owner has the acquired privilege of their use, and the court does not demand their removal.

[573] GEMARA: The Gemara asks: Rabbi Eliezer’s opinion that if the covering of the space is strong enough to support a wagon laden with stones then it is permitted to dig out the empty space, is eminently reasonable; but what do the Rabbis hold? The Gemara answers: There are times when the cover erodes over time, and he is not aware, thereby potentially causing damage to those in the public domain.

[574] The mishna teaches that one may not extend projections or balconies into the public domain. The Gemara relates: Rabbi Ami had a projection that protruded into an alleyway, and a certain man also

had a projection that protruded into the public domain, and the general public was preventing the man from leaving it there, as it interfered with traffic. He came before Rabbi Ami, who said to him: Go sever your projection.

575 The man said to him: But the Master also has a similar projection. Rabbi Ami said to him: It is different, as mine protrudes into an alleyway, where a limited number of people live, and the residents of the alleyway waive their right to protest to me. Yours protrudes into the public domain, which does not belong to any specific individuals. Who can waive their right to protest to you?

576 The Gemara relates: Rabbi Yannai had a tree that was leaning into the public domain. There was a certain man who also had a tree that was leaning into the public domain, and the general public was preventing him from leaving it there, insisting he cut it down, as required by the mishna (27b). He came before Rabbi Yannai, who said to him:

577 Go now, and come tomorrow. At night, Rabbi Yannai sent and had someone cut down that tree that belonged to him.

578 The next day, that man came before Rabbi Yannai, who said to him: Go, cut down your tree. The man said to him: But the Master also has a tree that leans into the public domain. Rabbi Yannai said to him: Go and see: If mine is cut down, then cut yours down. If mine is not cut down, you do not have to cut yours down, either.

579 The Gemara asks: At the outset what did Rabbi Yannai hold, and ultimately, what did he hold? The Gemara replies: At the outset, he held that the general public is amenable to having the tree there, as they sit in its shade. Once he saw that they were preventing someone else who owned a tree from keeping his, he understood that it was only out of respect that they did not object to his tree being there. He therefore sent someone to cut it down. The Gemara asks: But why did he tell the man to return the next day? Let him say to him: Go cut down your tree, and then I will cut mine down. The Gemara answers: Because of the statement of Reish Lakish, who said: The verse states: “Gather yourselves together and gather [hitkosheshu vakoshu]” (Zephaniah 2:1), and this can be explained homiletically to mean: Adorn [keshot] yourself and afterward adorn others, i.e., act properly before requiring others to do so.

580 § The mishna teaches that one may not extend projections or balconies into the public domain. Rather, if he desired to build one he may draw back into his property by moving his wall, and extend the projection to the end of his property line. A dilemma was raised before the Sages: If one drew back into his property but did not extend the projection at that time, what is the halakha concerning whether he may return and extend it at a later date? Rabbi Yoḥanan says: If one drew back into his property, he may extend it even later, and Reish Lakish says: If one drew back into his property but did not build the projection at that time, he may not extend it later.

581 The Gemara presents an alternative version of the dispute: Rabbi Ya’akov said to Rabbi Yirmeya bar Taḥlisa: I will explain the matter to you. To later extend a projection, everyone agrees that he may extend it, since he is adding within his own property. Where they disagree is with regard to whether he may return the walls to their prior place. And with regard to this disagreement the opposite was stated: Rabbi Yoḥanan says he may not return the walls to their prior place, and Reish Lakish says he may return them.

[582] Rabbi Ya’akov explains their reasoning: Rabbi Yoḥanan says that he may not return the walls to their prior place because of the statement of Rav Yehuda, as Rav Yehuda says: With regard to a path that the public has established as a public thoroughfare, it is prohibited to ruin it, i.e., to prevent people from using it. Once the public has become accustomed to using the place where his wall had stood, he may not repossess that space. And Reish Lakish says that he may return the walls to their prior place, because that matter applies in a case where there is no space, i.e., if he were to move back the wall there would be no space for the public to walk, but here there is space, since they can still walk through the public domain.

[583] The mishna teaches that if one purchased a courtyard in which there are projections and balconies extending into the public domain, this courtyard retains its presumptive status, allowing the owner to use the projections. Rav Huna says: If the wall of the courtyard fell, he may return and build it as it was, including the projections or balconies.

[584] The Gemara raises an objection based on that which is taught in a baraita (Tosefta 9:17): One may not plaster, and one may not tile, and one may not paint [mefayyeḥin] images in the present, as a sign of mourning for the destruction of the Temple. But if one purchased a courtyard that was plastered, tiled, or painted with images, this courtyard retains its presumptive status, and it is assumed that it was done in a permitted manner. If it then fell, he may not return and build it in its previous form. This indicates that one may not rebuild a building in a manner that is prohibited, even if there was an acquired privilege to maintain it in that manner.

[585] The Gemara answers: A case of forbidden matters is different, i.e., in the case of the baraita, he may not rebuild it because it is prohibited for him to do so. In this mishna, the issue is encroachment upon the rights of others, and once he had an acquired privilege to use the projections or balconies, he maintains that right.

[586] § With regard to the ruling of the above-quoted baraita, the Sages taught (Tosefta, Sota 15:9): A person may not plaster his house with plaster, but if he mixed sand or straw into the plaster, which dulls its luster, it is permitted. Rabbi Yehuda says: If he mixed sand into it, it is white cement [terakesid], which is of a higher quality than standard plaster, and it is prohibited, but if he mixed in straw, it is permitted.

[587] § Having mentioned the prohibition against plastering, which is a sign of mourning over the destruction of the Temple, the Gemara discusses related matters. The Sages taught in a baraita (Tosefta, Sota 15:11): When the Temple was destroyed a second time, there was an increase in the number of ascetics among the Jews, whose practice was to not eat meat and to not drink wine. Rabbi Yehoshua joined them to discuss their practice. He said to them: My children, for what reason do you not eat meat and do you not drink wine? They said to him: Shall we eat meat, from which offerings are sacrificed upon the altar, and now the altar has ceased to exist? Shall we drink wine, which is poured as a libation upon the altar, and now the altar has ceased to exist?

[588] Rabbi Yehoshua said to them: If so, we will not eat bread either, since the meal-offerings that were offered upon the altar have ceased. They replied: You are correct. It is possible to subsist with produce. He said to them: We will not eat produce either, since the bringing of the first fruits have ceased. They replied: You are correct. We will no longer eat the produce of the seven species from which the first fruits were brought, as it is possible to subsist with other produce. He said to them: If

so, we will not drink water, since the water libation has ceased. They were silent, as they realized that they could not survive without water.

589 Rabbi Yehoshua said to them: My children, come, and I will tell you how we should act. To not mourn at all is impossible, as the decree was already issued and the Temple has been destroyed. But to mourn excessively as you are doing is also impossible, as the Sages do not issue a decree upon the public unless a majority of the public is able to abide by it, as it is written: “You are cursed with the curse, yet you rob Me, even this whole nation” (Malachi 3:9), indicating that the prophet rebukes the people for neglecting observances only if they were accepted by the whole nation.

590 Rabbi Yehoshua continues: Rather, this is what the Sages said: A person may plaster his house with plaster, but he must leave over a small amount in it without plaster to remember the destruction of the Temple. The Gemara interjects: And how much is a small amount? Rav Yosef said: One cubit by one cubit. Rav Ḥisda said: This should be opposite the entrance, so that it is visible to all.

591 Rabbi Yehoshua continues: The Sages said that a person may prepare all that he needs for a meal, but he must leave out a small item to remember the destruction of the Temple. The Gemara interjects: What is this small item? Rav Pappa said: Something akin to small, fried fish.

592 Rabbi Yehoshua continues: The Sages said that a woman may engage in all of her cosmetic treatments, but she must leave out a small matter to remember the destruction of the Temple. The Gemara interjects: What is this small matter? Rav said: She does not remove hair from the place on the temple from which women would remove hair. The source for these practices is a verse, as it is stated: “If I forget you, Jerusalem, let my right hand forget its cunning. Let my tongue cleave to the roof of my mouth, if I remember you not; if I set not Jerusalem above my highest joy” (Psalms 137:5–6).

593 The Gemara asks: What is the meaning of: Above my highest [rosh] joy? Rav Yitzḥak says: This is referring to the burnt ashes that are customarily placed on the head [rosh] of bridegrooms at the time of their wedding celebrations, to remember the destruction of the Temple. Rav Pappa said to Abaye: Where are they placed? Abaye replied: On the place where phylacteries are placed, as it is stated: “To appoint to them that mourn in Zion, to give to them a garland in place of ashes” (Isaiah 61:3). Since phylacteries are referred to as a garland (see Ezekiel 24:17), it may be inferred from this verse that the ashes were placed in the same place as the phylacteries.

594 The baraita continues: And anyone who mourns for the destruction of Jerusalem will merit and see its joy, as it is stated: “Rejoice with Jerusalem, and be glad with her, all that love her; rejoice for joy with her, all that mourn for her” (Isaiah 66:10).

595 It is taught in a baraita (Tosefta, Sota 15:10) that Rabbi Yishmael ben Elisha said: From the day that the Temple was destroyed, by right, we should decree upon ourselves not to eat meat and not to drink wine, but the Sages do not issue a decree upon the public unless a majority of the public is able to abide by it.

596 And from the day that the wicked kingdom, i.e., Rome, spread, who decree evil and harsh decrees upon us, and nullify Torah study and the performance of mitzvot for us, and do not allow us to enter the celebration of the first week of a son, i.e., circumcision, and some say: To enter the celebration of the salvation of a firstborn son; by right we should each decree upon ourselves not to marry a woman and not to produce offspring, and it will turn out that the descendants of Abraham our forefather will

cease to exist on their own, rather than being forced into a situation where there are sons who are not circumcised.

597 But concerning a situation such as this, the following principle is applied: Leave the Jews alone and do not impose decrees by which they cannot abide. It is better that they be unwitting sinners, who do not know that what they are doing is improper considering the circumstances, and not be intentional wrongdoers, who marry and procreate despite knowing that they should not.

Chapter 4

1 MISHNA: One who sells a house without specifying what is included in the sale has not sold the gallery, an extension built above or alongside the main building, and this is so even if the gallery is attached to the house and opens into it. Nor has he sold the room behind the house, even if it is accessible only from inside the house. He has also not sold the roof when it has a parapet ten handbreadths high, as such a roof is considered a separate entity and is therefore not included in the sale of the house. Rabbi Yehuda says: If the parapet has the form of a doorway, that is, if it consists of two upright posts with a beam crossing over them, then even if the parapet is not ten handbreadths high, the roof is not sold together with the house, unless it is specifically included in the sale.

2 GEMARA: What is a gallery? Here in Babylonia they interpreted this as referring to an attic [apta]. Rav Yosef said: It means a windowed structure [bidka ḥalila] attached to the main building. The Gemara notes that according to the one who says that an attic is not sold together with a house, all the more so is a windowed structure attached to the house not sold together with a house, as it is certainly considered a separate entity and not part of the main building. But according to the one who says that a gallery is a windowed structure attached to the house, it is only such a structure that is not included in the sale of the house, but an attic is sold together with a house.

3 Rav Yosef taught: A small structure attached to a building has three names in the Bible: Gallery [yatzia], side chamber [tzela], and cell [ta]. Such a structure is called a gallery, as it is written: “The bottommost gallery [hayyatzia] was five cubits wide” (I Kings 6:6). It is also called a side chamber, as it is written: “And the side chambers [vehatzelaot] were one over another, thirty-three times” (Ezekiel 41:6). Additionally, it is called a cell, as it is written: “And the cell [vehata] was one reed long, and one reed wide; and the space between the cells was five cubits” (Ezekiel 40:7). And if you wish, say instead that it can be seen that a small structure attached to a building is called a cell from here, as was taught in the mishna (Middot 4:7): The wall of the Sanctuary was six cubits wide, and the cell [vehata] in back of it was six cubits wide, and the wall of the cell was five cubits wide.

4 § Relating to the mishna’s statement that a gallery is not included in the sale of a house, Mar Zutra said: And that is the halakha only when the gallery has an area of at least four by four cubits.

5 Ravina said to Mar Zutra: According to your opinion, that you say a gallery is not excluded from the sale of a house unless it is at least four by four cubits in size, there is a difficulty. As if that is so, then with regard to the exclusion of a pit or a cistern from the sale of a house, about which we learned in a mishna (64a): One who sells a house has sold neither the pit nor the cistern, even if he writes for the buyer in the bill of sale that he is selling him the depth and the height of the house; so too, should we say that only if they have an area of at least four by four cubits, yes, they are excluded

from the sale of the house, but if not, no, they are not excluded? This is difficult, as a pit is not four cubits wide, and consequently, it would never be excluded.

[6] Mar Zutra responded: How can these cases be compared? There, in that mishna, this, the excavations, have a discrete use, to store water, and they cannot possibly be used as living quarters, and that, the house, has a discrete use, to serve as living quarters, and so they are considered separate entities even if the excavation is not four cubits wide. But here, in the case of a gallery, both this, the gallery, and that, the house, have the same use, and so if the gallery is at least four by four cubits it is deemed significant and considered a separate entity, but if it is not four by four cubits, it is not deemed significant in its own right, but simply another part of the house.

[7] The mishna teaches that one who sells a house without specifying what is included in the sale has not sold the gallery, nor has he sold the room behind the house, even if it is accessible only from it. The Gemara asks: Now that the mishna taught that a gallery is not sold along with the house, is it necessary to teach that a room behind the house is not included in such a sale?

[8] No, this ruling is necessary to teach that the room behind the house is excluded from the sale of the house even if the seller delineated the boundaries of the house for the buyer in the bill of sale by listing places outside the room, e.g., noting the houses that border the property being sold. Even though this might suggest that the room is included in the sale, the mishna teaches that it is not.

[9] This is in accordance with the opinion of Rav Naḥman, as Rav Naḥman says that Rabba bar Avuh says: With regard to one who sells a residence to another in a large building [bira] containing several residences, even if he delineates for him the external boundaries of the large building, he did not sell him the entire building, but rather he enlarged upon the boundaries for him. That is, the seller did not mean to delineate the precise borders of what he was selling; rather, he delineated the boundaries in a broad manner, giving the general location of the specific residence subject to the transaction.

[10] With regard to Rav Naḥman’s statement, the Gemara inquires: What are the circumstances of the case? If we say that this is referring to a place where they call a residence a residence, and a building a building, and they always differentiate between the two terms, it is obvious that he did not intend to sell him the entire building but merely enlarged upon the boundaries for him, as he sold him a residence and did not sell him a large building. Rather, explain that this is referring to a place where they also call a building a residence. But in that case, why not say that the seller sold him the entire building, since he delineated the external boundaries of the large building?

[11] The Gemara answers: No, Rav Naḥman’s ruling is necessary in a place where most of the people call a residence a residence, and a building they call a building, but there are also some people who call a building a residence. Lest you say that since the seller delineated the building’s external boundaries, this indicates that he meant to sell him the entire building, Rav Naḥman teaches us that this is not so. As, if the seller intended to sell him the entire building, he would have written in the bill of sale: And I have not withheld anything for myself in this sale, but if he did not write this clause, conclude from it that the seller withheld something for himself and did not mean to sell everything located within the delineated boundaries.

[12] And in a similar fashion, Rav Naḥman says that Rabba bar Avuh says: With regard to one who sells a field to another in a large expanse of fields, even if he delineates for him the external boundaries of the large expanse of fields he did not sell him the entire expanse of fields; rather, he enlarged upon the boundaries for him. That is, the seller did not mean to delineate the precise borders

of what was being sold; rather, he delineated the boundaries in a broad manner, giving the general location of the particular field he was selling.

13 The Gemara inquires: What are the circumstances of the case? If we say that this is referring to a place where they call a field a field, and an expanse of fields an expanse of fields, and always differentiate between the two terms, it is obvious the he did not intend to sell him the entire expanse of fields, as he sold him a field and did not sell him an expanse of fields. Rather, explain that this is referring to a place where they also call an expanse of fields a field. But in that case, why not say that the seller sold him the entire expanse of fields, since he delineated the external boundaries of the expanse of fields?

14 The Gemara answers: No, Rav Naḥman's ruling is necessary in a place where there are some people who call a field a field, and an expanse of fields they call an expanse of fields, but there are also some people who call an expanse of fields a field. Lest you say that since the seller delineated the expanse's external boundaries, this indicates that he meant to sell him the entire expanse, Rav Naḥman teaches us that this is not so. As, if the seller intended to sell him the entire expanse, he would have written for him in the bill of sale: And I have not withheld anything for myself in this sale, but since he did not write this clause for him, conclude from it that the seller withheld something for himself and did not mean to sell everything located within the delineated boundaries.

15 The Gemara notes: And it was necessary for Rav Naḥman to teach the halakha in both cases, even though the two rulings appear to be the same. As had he taught us the halakha only in the case of the residence, that he did not sell him the entire building even if he delineated the building's external boundaries, I might have said that this is due to the fact that this, the residence, has a discrete use, separate from that of the rest of the building, and that, the building, has a discrete use. But as for an expanse of fields, all of which has a single use, since it can be sown with grain in its entirety, say that the seller sold him the entire expanse.

16 And had Rav Naḥman taught us the halakha only in the case of an expanse of fields, that he did not sell him the entire expanse even if he delineated its external boundaries, I might have said that this is due to the fact that the seller had no way to delineate the particular field's boundaries, since all of the fields are similar, and they all belong to the seller. But as for a residence, with regard to which the seller had a way to delineate its borders, through the use of descriptive terms that would isolate it from the rest of the building, but he did not delineate them, I might say that he sold him the entire building. Therefore, it was necessary to mention both cases explicitly.

17 The Gemara asks: In accordance with whose opinion is that which Rav Mari, son of the daughter of Shmuel, said in the name of Abaye: One who sells something to another must write for him in the bill of sale: I have not withheld anything for myself in this sale. In accordance with whose opinion is that? It is in accordance with the opinion of Rav Naḥman, who says that Rabba bar Avuh says that even when the seller delineates the boundaries of what he is selling, he does not necessarily mean to sell everything included within those boundaries. Inserting this clause in the bill of sale removes uncertainties that could lead to conflict.

18 The Gemara relates: There was a certain man who said to another: I am selling you land of the house of Ḥiyya, but there were two plots of land that were called that of the house of Ḥiyya, and the Sages deliberated as to whether both were included in this sale or only one. Rav Ashi said: He said to

him that he was selling him one plot of land, and he did not say to him that he was selling him two plots of land, as he employed a singular term. Therefore, only one is included in the sale.

19 And if he said to him: I am selling you fields, without specifying how many, the minimum number of fields that would justify being called fields in the plural is two, and therefore the seller has to give the buyer only two of his fields, even if he owns many fields. And if he said to him: I am selling you all of my fields, what he means is that he is selling him all the fields that he owns, excluding his orchards [bustanei] and vineyards. And if he said to him: I am selling you my landed property, what he means is that he is selling him even his orchards and vineyards, but excluding his houses and Canaanite slaves.

20 And if he said to him: I am selling you my property, it means that he is selling him even his houses and his Canaanite slaves.

21 § The Gemara continues its examination of the concept of delineating boundaries in a wide manner, and considers the following case: If in the bill of sale the seller delineated one boundary line on one side of the field long, and the other boundary line on the opposite side of the field he delineated short, Rav said: The buyer acquires only a width of land corresponding to the short border, as it is assumed that the short boundary line delineates the actual size of the field that was sold to him, while the long boundary line was merely intended to point to the field under discussion. That is to say, the seller delineated the boundaries in a broad manner, but did not intend to include everything found within those boundaries in the sale.

22 Rav Kahana and Rav Asi said to Rav: But let him also acquire the triangular plot [rosh tor] bounded by the diagonal line connecting the end of the short border and the end of the long border. Rav was silent and did not respond.

23 And Rav concedes that where there is a boundary line defined by the fields of Reuven and Shimon on one side of the field being sold, and a boundary line defined by the fields of Levi and Yehuda on the other side, and in the bill of sale the seller describes the field being sold as bordered by the fields of Reuven and Shimon on one side but mentions only the field of Levi on the other side, since had he intended to sell only half the field he should have written for the buyer in the bill of sale that the field is bordered by the field of Reuven on the one side, which is opposite that of Levi on the other, or by the field of Shimon on the one side, which is opposite that of Yehuda on the other, but he did not write that for him, one can conclude from it that he is telling him that he is selling him not only the area between the fields of Reuven and Levi, but also the triangular plot bounded by the diagonal line connecting the end of Shimon’s field to the end of Levi’s field.

24 The Gemara continues: If the field being sold is bounded by the fields of Reuven on the east and the west, and it is bounded by the fields of Shimon on the north and the south, it is not enough to designate the field for the buyer as the field between the fields of Reuven and Shimon, but it is necessary to write for him in the bill of sale that the field is bounded by the fields of Reuven on two sides, and it is bounded by the fields of Shimon on two sides. Otherwise, all that the buyer acquires is a triangular plot bounded by one of Reuven’s fields and one of Shimon’s fields, and the boundary is the diagonal line connecting the end of Reuven’s field to the end of Shimon’s field.

25 A dilemma was raised before the Sages: If the seller defined for the buyer only the corners of the field being sold, what is the halakha? Does this mean that he is selling him only the corners of the field or the entire field marked by those corners? A second dilemma was also raised: If he defined the

boundaries of the field in a shape resembling the Greek letter gamma [gam], or the English letter L, noting the boundaries on two adjacent sides that meet at a right angle, what is the halakha? Does this mean that he is selling him the entire field, or only the triangular plot marked by those boundaries and the diagonal line running from the end of one to the end of the other?

[26] A third dilemma was also raised before the Sages: If the seller defined the boundaries of the property he is selling in an alternating fashion, mentioning only some of the fields bordering each side of the field being sold, while omitting others, what is the halakha? No resolution was found for these questions, and these dilemmas shall stand unresolved.

[27] § The Gemara raises a similar dilemma. If, in the bill of sale, the seller delineated for the buyer the field's first boundary, its second boundary, and its third boundary, but he did not delineate its fourth boundary at all, Rav says: The buyer acquires the entire field, except for the one furrow along which the fourth boundary runs, which is usually differentiated in some way from the field itself. And Shmuel says: The buyer acquires even the furrow along which the fourth boundary runs. And Rav Asi says: He acquires only the width of one furrow along the entire perimeter of the three boundaries specified by the seller.

[28] The Gemara explains Rav Asi's opinion: He holds in accordance with the opinion of Rav, who said that by failing to delineate the fourth boundary, the seller withheld some part of the field, i.e., one furrow, for himself. But Rav Asi takes this further and says that since he withheld some part of the field for himself at the fourth boundary, he withheld also some portion of the entire field, and therefore the buyer acquires only that which is adjacent to the specified boundaries.

[29] Rava said: The halakha is that the buyer acquires the entire field except for the one furrow along which the fourth boundary runs, in accordance with the opinion of Rav. And we said this only in a case where the fourth boundary is not included within the space between two adjacent boundaries, but rather juts out beyond them. But when it is included within the space delineated by the other boundaries, the buyer acquires it as well.

[30] Rava adds: And even when it is not included in that space, we said that the buyer does not acquire it only in a case where there is a row of trees on it, or it is an area fit for sowing nine kav of seed. But where there is no row of trees on it, and it is not an area fit for sowing nine kav of seed, the buyer acquires it along with the rest of the field. By inference one derives from here that when the fourth border is included within the space delineated by the two adjacent boundaries, even if there is a row of trees on it and it is an area fit for sowing nine kav, the buyer acquires it.

[31] There are those who say that Rava's ruling and the conclusion drawn from it are as follows: Rava said: The halakha is that the buyer acquires the entire field, and he acquires even the furrow along which the fourth boundary runs, in accordance with the opinion of Shmuel. And we said this only in a case where the fourth boundary is included within the space delineated by the two adjacent boundaries. But when it is not included within those boundaries, the buyer does not acquire it.

[32] Rava adds: And even when it is included within the adjoining boundaries, we said that the buyer acquires it only in a case where there is no row of trees on it, and it is not an area fit for sowing nine kav of seed. But where there is a row of trees on it, or it is an area fit for sowing nine kav of seed, the buyer does not acquire it. By inference one derives from here that when the fourth boundary is not included within the two adjacent boundaries, even if there is no row of trees on it and it is not an area fit for sowing nine kav of seed, the buyer does not acquire it.

[33] We conclude according to both versions of the statement of Rava that even if the seller withheld something for himself along the fourth boundary, he did not withhold anything at all in the field itself. And we also conclude according to both versions that where the fourth boundary is included within the space defined by the two adjacent boundaries, and there is no row of trees on it and it is not an area fit for sowing nine kav of seed, the buyer acquires it. And furthermore, we conclude according to both versions that if the fourth boundary is not included within the two adjacent boundaries, and there is a row of trees on it, or it is an area fit for sowing nine kav of seed, the buyer does not acquire it.

[34] If the fourth boundary is included within the two adjacent boundaries, and there is a row of trees on it or it is fit for sowing nine kav of seed, or if the fourth boundary is not included within the two adjacent boundaries, and there is no row of trees on it nor is it fit for sowing nine kav, the ruling in these cases was stated in this direction, that the land adjacent to the fourth boundary is acquired by the buyer, and it was stated in that direction, that this land is not acquired by the buyer, depending upon which version of Rava's statement is accepted. Since there is no clear ruling in these cases, the decision is left to the discretion of the judges, who must rule in accordance with what appears to them to be the intention of the seller.

[35] § Rabba said: If one owns a field in partnership with another, and he says to a third person: I am selling you the half that I have in this land, he means to sell him half of that field, i.e., his entire share. If he says to the buyer: I am selling you half of the land that I have, he means to sell him one-quarter of that field, i.e., half of his share. Abaye said to him: What is different about this wording and what is different about that wording, that you rule differently in the two cases? Rabba was silent, offering no reply.

[36] Abaye said: I had assumed that since he was silent, he must have accepted my opinion and retracted his statement; but that is not so. As on another occasion I saw certain bills of sale that issued from my Master's house, that is, they were issued under the auspices of my master Rabba, in which it was written: The half that I have in this land, and it was clear from another clause in the bill that half of the field was being sold. And there was another bill of sale in which it was written: Half of the land that I have, and it was clear from another clause in the bill that one-quarter of the field was being sold.

[37] And Rabba also said: If one sold land to another and delineated boundaries on three sides of the field, and with regard to the fourth side he wrote in the bill of sale: The boundary of the field is the land through which the field is halved, he has sold him half of the field. If he writes with regard to the fourth boundary: The boundary of the field is the land from which a plot can be set apart, he has sold him only an area fit for sowing nine kav of seed, as that is the minimum size of a plot of land defined as a field.

[38] Abaye said to him: What is different about this wording, and what is different about that wording, that you rule differently in the two cases? Rabba was silent, and did not respond. The Sages understood from this silence that Abaye understood that Rabba retracted his ruling and conceded that in both this case and that case, the buyer acquires half of the field.

[39] But that is not so, as Rav Yeimar bar Shelemya said: The matter was explained to me by Abaye, as follows: Whether the seller writes with regard to the fourth boundary: The boundary of the field is the land through which the field is halved, or he writes: The boundary of the field is the land through

which a plot can be set apart, if he said to the buyer: These are its boundaries, he has sold him half of the field. But if he did not say to the buyer: These are its boundaries, he has sold him only an area fit for sowing nine kav of seed.

40 § The Gemara raises a question about a similar case: It is obvious that if one said: So-and-so should share in my property, he means to give him half of the property. If he said: Give so-and-so a portion of my property, what is the halakha? What portion of the property must he give him?

41 Ravina bar Kisi said: Come and hear a proof concerning the halakha in this case, as it is taught in a baraita: With regard to one who says: Give so-and-so a portion of my cistern for his water needs, Sumakhos says: He must give him not less than one-quarter of the water in the cistern. If he qualifies his words and says: Give so-and-so a portion of my cistern's water for his barrel, he must give him not less than one-eighth of the water. If he says: Give him a portion for his pot, he must give him not less than one-twelfth of the water. And if he says: Give him for his cup, he must give him not less than one-sixteenth of the water. In any event, this baraita indicates that the unqualified phrase: Give so-and-so a portion, should be understood to mean: Give him one-quarter.

42 The Gemara now considers another case in which the seller withholds something for himself in a sale. The Sages taught in a baraita: With regard to a Levite who sold a field to an Israelite and said to him: I am selling you this field on the condition that the first tithe from the produce growing in the field, which must be given to a Levite, is mine, and it will be given to me every year and not to any other Levite, the first tithe is his. And if he said: I am selling you the field on the condition that the tithe will be given to me and to my sons, then if he dies, the buyer must give the tithe to his sons.

43 But if the seller said to the buyer: This stipulation will remain in force as long as this field is in your possession, then if the buyer sold it and afterward bought it back again, the seller has no claim on him. Since the field left the buyer's possession in the interim, the seller no longer has a claim to the tithe.

44 The Gemara challenges the halakha taught in the baraita: Why should the seller ever have a right to the tithe after he has sold the field? After all, a person cannot transfer ownership of an object that has not yet come into the world. How, then, can the seller acquire a portion of the produce that does not yet exist? The Gemara answers that since the seller said to the buyer: I am selling you this field on the condition that the first tithe is mine, it is as if he withheld the site where the tithe is grown for himself when he sold the field, and that site already exists.

45 Reish Lakish said: That is to say that with regard to one who sells a house to another and says to him: I am selling you this house on the condition that the upper story [deyota] is mine, the upper story is his.

46 With regard to what halakha did Reish Lakish say this? In any case the upper story is his, as when he sold the house, it was only the lower story that he sold to the buyer. Rav Zevid says: He said this to teach the halakha that if the seller wishes to extend from the upper story projections over the courtyard, which was included in the sale, he may extend them. Rav Pappa says: He said this to teach the halakha that if this upper story collapses and the seller wishes to build an upper story on top of it to replace it, he may build it.

47 The Gemara asks: Granted, according to Rav Zevid, this explanation is consistent with that which Reish Lakish teaches, which begins with: That is to say. As according to Rav Zevid, Reish Lakish

infers from the ruling of the baraita about tithes that even though the seller of the house did not explicitly withhold anything for himself, the court interprets his use of his superfluous stipulation as an indication that he wished to withhold for himself the space over the courtyard for the projections. But according to Rav Pappa, what did Reish Lakish mean when he said his statement that begins with the phrase: That is to say? The seller's right to rebuild the upper story after it collapses is not derived from the superfluous stipulation that he attached to the transaction, and it is not inferred from the baraita. The Gemara concludes: Indeed, Rav Pappa's interpretation is difficult, as it does not account for the wording of Reish Lakish's statement.

[48] § The Gemara discusses what is included in the wordings of various contracts. Rav Dimi from Neharde'a said: Concerning this one who sells a house to another and wants the sale to include the entire property, even if he writes for the buyer in the bill of sale: I am selling you the depth and the height of the house, he must also write for him: Acquire for yourself the property from the depth of the earth up to the height of the sky. What is the reason for this addition? The reason is that the buyer does not acquire the depth and the height of the property without explicit specification, and therefore, unless the matter has been explicitly stipulated, the buyer may not dig under the house or build above it. The words: The depth and the height, effect the acquisition of the depth and the height of the house for the buyer, allowing him to dig below or build above the house. And the additional phrase: From the depth of the earth up to the height of the sky, effects the acquisition of the pit and the cistern and the tunnels associated with the house.

[49] The Gemara proposes: Let us say that the mishna (64a) supports Rav Dimi's opinion: One who sells a house has sold neither the pit nor the cistern, even if he writes for the buyer in the bill of sale that he is selling him the depth and the height of the house. As if it enters your mind to say that the buyer acquires the depth and the height of the house even without the specification that the depth and the height of the house are included in the sale, let the phrase the depth and the height effect the acquisition of the pit and the cistern and the tunnels, as he attached an additional stipulation to the transaction. The Gemara rejects this opinion: The mishna is referring to a case where the seller did not write these words for him.

[50] The Gemara asks: But this line of reasoning is difficult, as the mishna explicitly teaches that the pit and the cistern are not sold even if the seller writes for the buyer that he is selling him the depth and the height of the house. The Gemara answers that this is what the mishna is saying: Even though the seller did not write these words for him in the bill of sale, for the purpose of acquiring the depth and the height of the house, it is considered as if he wrote them, as it is assumed that they were omitted by accident. By contrast, for the purpose of acquiring the pit and the cistern and the tunnels, if the seller explicitly wrote for him the words the depth and the height, the buyer acquires them, but if he did not write that phrase in the bill of sale, the buyer does not acquire them. No proof can be derived from this mishna.

[51] § The Gemara now considers a different mishna. Come and hear what was taught in the mishna (61a): One who sells his house without explicitly stating what is included in the sale has not sold the roof along with the house when it has a parapet ten handbreadths high, as such a roof is considered a separate entity and is not included in the sale of the house.

[52] And if it enters your mind to say that when a house is sold without specification, the buyer acquires the depth and the height of the house, then even when it has a parapet ten handbreadths

high, what of it? Why shouldn't the buyer acquire the roof? The Gemara answers: Since the parapet is ten handbreadths high, the roof is significant in its own right, and therefore, unless it is specifically included in the sale, the buyer does not acquire such a roof along with the house.

[53] Ravina said to Rav Ashi: Come and hear another proof, as Reish Lakish says: That is to say that with regard to one who sells a house to another and says to him: I am selling you this house on the condition that the upper story is mine, the upper story is his. And in the Gemara's examination of Reish Lakish's statement, we said: With regard to what halakha did Reish Lakish say this? In any case the upper story is his, as when he sold the house it was only the lower story that he sold to the buyer. Rav Zevid says: He said this to teach the halakha that if the seller wishes to extend from the upper story projections over the courtyard, which was included in the sale, he may extend them. Rav Pappa says: He said this to teach the halakha that if this upper story collapses and the seller wishes to build an upper story on top of it to replace it, he may build it.

[54] And if it enters your mind to say that when a house is sold without specification, the buyer does not acquire the depth and the height of a house, Rav Pappa's statement is puzzling. As why do I need the seller to stipulate that he is selling the house on the condition that the upper story is his when in any event the space above the house remains in the seller's possession? The Gemara answers: Stipulating that he is selling the house on the condition that the upper story is his benefits him in that if the upper story collapses, he may rebuild it. Without this stipulation the seller could not rebuild it, even if the sale did not include the depth and the height of the house.

[55] MISHNA: One who sells a house without specification has sold neither the pit nor the cistern [dut], even if he writes for the buyer in the bill of sale that he is selling him the depth and the height of the house, as anything that is not part of the house, like pits and cisterns, must be explicitly mentioned in the contract or else they remain in the seller's possession. And therefore the seller must purchase for himself a path through the buyer's domain to reach whatever remains his, because he has sold the area of the house along with the house itself, and he no longer has permission to walk there. This is the statement of Rabbi Akiva. And the Rabbis say: The seller need not purchase for himself a path through the buyer's domain, as this is certainly included in what he has withheld for himself from the sale.

[56] And Rabbi Akiva concedes that when the seller says to the buyer in the bill of sale: I am selling you this house apart from the pit and the cistern, he need not purchase for himself a path through the buyer's domain. Since the seller unnecessarily emphasized that the pit and the cistern are not included in the sale, he presumably intended to reserve for himself the right of access to them.

[57] If the seller kept the house, but sold the pit and the cistern to another, Rabbi Akiva says: The buyer need not purchase for himself a path through the seller's domain to reach what he has bought. But the Rabbis say: He must purchase for himself a path through the seller's domain.

[58] GEMARA: It is related that Ravina once sat and examined the matter and posed a difficulty: A pit is the same as a cistern. Why, then, was it necessary to mention both of them? Rava Tosfa'a said to Ravina: Come and hear a solution to this question, as it is taught in a baraita: Both a pit and a cistern are dug out in the ground; the difference is only that a pit is constructed through digging alone, while a cistern is subsequently finished on the inside by building masonry walls. It is similarly related that Rav Ashi once sat and posed a difficulty: A pit is the same as a cistern. Mar Kashisha, son of Rav Ḥisda, said to Rav Ashi: Come and hear a solution to this question, as it is taught in a baraita: Both a

pit and a cistern are dug in the ground, the difference is only that a pit is constructed through digging alone, while a cistern is subsequently finished on the inside by building masonry walls.

[59] § The mishna teaches: And the seller must purchase for himself a path through the buyer’s domain; this is the statement of Rabbi Akiva. And the Rabbis say: The seller need not purchase such a path. What, is it not about this issue, which will immediately be explained, that Rabbi Akiva and the Rabbis disagree?

[60] As Rabbi Akiva holds that one who sells, sells generously, so that whatever is not explicitly excluded from the sale is assumed to be sold, while the Rabbis hold that one who sells, sells sparingly, so that whatever is not explicitly included in the sale is assumed to be unsold. And perhaps that which is also stated generally: Rabbi Akiva conforms to his standard line of reasoning, as he says that one who sells, sells generously, is derived from here.

[61] The Gemara rejects this opinion and asks: From where do you arrive at such a conclusion? Perhaps Rabbi Akiva and the Rabbis do not disagree whether, in principle, a person who sells, sells generously or sparingly, but rather their disagreement is limited to this specific case. As Rabbi Akiva holds that a person does not want to spend his money on the purchase of a house and then have others tread upon his property, and therefore he says that the seller must purchase for himself a path through the buyer’s domain to reach his pit. And the Rabbis hold that a person does not want to receive money for the sale of his house and then have to fly through the air in order to reach his pit, and therefore they say that the seller presumably withheld for himself a path to his pit.

[62] Rather, the proof is from the last clause of the mishna, which states: If the seller kept the house but sold the pit and the cistern to another, Rabbi Akiva says: The buyer need not purchase for himself a path through the seller’s domain. But the Rabbis say: He must purchase for himself a path through the seller’s domain. The tanna’im seem to disagree as to whether a person who sells, sells generously or sparingly.

[63] The Gemara rejects this proof as well: Perhaps they disagree about the following: Rabbi Akiva holds that we follow the intention of the buyer, as we assume that he would not have bought the pit if he would have to fly through the air to get there. And the Rabbis hold that we follow the intention of the seller, as presumably he would not have sold the pit if the buyer had the right to tread upon the seller’s property to reach it.

[64] Rather, the proof that these tanna’im disagree whether one who sells, sells generously or sparingly is from this mishna (71a), which teaches: One who sells a field, even if he states that he is selling everything in it to the buyer, has sold neither the cistern, nor the winepress, nor the dovecote, whether it is abandoned or utilized, as these items are not part of the field itself. And the seller must purchase for himself a path through the buyer’s domain to reach whatever remains his. This is the statement of Rabbi Akiva. And the Rabbis say: The seller need not purchase a path through the buyer’s domain.

[65] The Gemara explains the proof: Why do I need this ruling as well, seeing that this case involving the sale of a field appears to be identical to that involving the sale of a house? Rather, is it not teaching us that Rabbi Akiva holds that one who sells, sells generously, and therefore the seller must purchase for himself a path to his property, while the Rabbis hold that one who sells, sells sparingly, and therefore the purchase of such a path is not necessary?

[66] The Gemara rejects this opinion: Perhaps the first mishna taught us this dispute with regard to a house, and the later mishna teaches us this dispute with regard to a field. And while this may seem redundant, both rulings are necessary, as had the mishna taught us this halakha only with regard to a house, I would have said that the buyer is particular about people passing through his house, because he desires privacy there. And it is for this reason that Rabbi Akiva says that in the absence of an explicit stipulation, the seller must purchase for himself a path to the pit. But in the case of a field, which is exposed to all, say that the buyer is not concerned about privacy.

[67] And, conversely, had the mishna taught us this halakha only with regard to a field, I would have said that the buyer is particular about people passing through his field, because treading upon the field is detrimental to it. And it is for this reason that Rabbi Akiva says that the seller must purchase for himself a path to the pit. But in the case of a house, which is not adversely affected by treading through it, say that the buyer is not opposed to the seller passing through.

[68] Rather, the proof that Rabbi Akiva and the Rabbis disagree whether one who sells, sells generously or sparingly is from the latter clause of that mishna (71a), which teaches: But if the seller kept the field but sold the cistern and winepress to another person, Rabbi Akiva says: The buyer need not purchase for himself a path through the seller's domain to reach what he has bought, since a seller sells generously. But the Rabbis say: He must purchase for himself a path through the seller's domain.

[69] The Gemara explains the proof: Why do I also need this, seeing as this case involving the sale of a pit or a winepress in a field is identical to that involving the sale of a pit or a cistern in a house? Rather, is it not teaching us that Rabbi Akiva holds that one who sells, sells generously, while the Rabbis hold that one who sells, sells sparingly? The Gemara affirms: Conclude from the latter clauses of these mishnayot that this is so.

[70] It was stated that the amora'im disagree about how the halakha should be decided with regard to this issue. Rav Huna says that Rav says:

[71] The halakha is in accordance with the statement of the Rabbis, while Rav Yirmeya bar Abba says that Shmuel says: The halakha is in accordance with the opinion of Rabbi Akiva. Rav Yirmeya bar Abba said to Rav Huna: But many times I said before Rav that the halakha is in accordance with the opinion of Rabbi Akiva, and never did he say anything to me, which indicates that he holds that the halakha is in accordance with the opinion of Rabbi Akiva and not that of the Rabbis. Rav Huna said to him: How did you teach the mishna before Rav? Rav Yirmeya bar Abba said to him: I taught it with the opposite attributions, that is to say, the opinion that is attributed in the mishna to Rabbi Akiva, I would teach in the name of the Rabbis. Rav Huna said to him: Due to that reason, he never said anything to you, as Rav agreed with the version that you attributed to Rabbi Akiva.

[72] With regard to the opinions of Rav and Shmuel, Ravina said to Rav Ashi: Shall we say that Rav and Shmuel, in their opinions stated with regard to this matter, each follow their general lines of reasoning, as they appear to have disagreed about this same issue in another context as well?

[73] As Rav Naḥman says that Shmuel says: With regard to brothers who divided their father's estate between them, they do not have a right of way against each other, i.e., to walk through the other's property to reach his own, even though this is how the place was used in their father's lifetime; nor do they have the right of ladders against each other, i.e., the right to set up a ladder in the other's property in order to get to his own; nor do they have the right of windows against each other, i.e., the

right to prevent the other from building a wall facing his windows; nor do they have the right of a water channel against each other, i.e., the right to pass a water channel through the other's property.

[74] Rav Naḥman continues: And be careful with these rulings, since they are established halakhot. And Rav says: They do retain all of these privileges. Consequently, Rav and Shmuel appear to be following their general lines of reasoning here, as Shmuel holds that when the brothers, who are like sellers, divide their father's estate, they transfer property to each other generously without retaining privileges in each other's property, while Rav holds that they transfer the property sparingly.

[75] The Gemara comments: Nevertheless, it was necessary to teach this disagreement in both cases, as the halakha in the one case cannot be derived from the halakha in the other. As had we been taught this dispute only in that case, of the brothers who divided their father's estate, I would have said that only in that case does Rav say that they retain all of the earlier privileges, because one brother can say to the other: I wish to live in this house just as my ancestors, who had all of those privileges, lived in it. Know that there is substance to this claim, as it is written: "Instead of your fathers shall be your sons" (Psalms 45:17). But in this case of an ordinary house sale, say that he concedes to Shmuel that a seller sells generously.

[76] And if the dispute was stated only in this case of an ordinary house sale, I would have said that only in this case does Shmuel say that a seller sells generously and does not withhold a path for himself, but in that case, of the brothers who divided their father's estate, say that he concedes to Rav that the desire to live there just as his ancestors did supersedes the seller's general tendency to sell generously. Therefore, it was necessary to teach this dispute in both cases.

[77] As for the ruling itself, Rav Naḥman, who was a disciple of Shmuel, said to Rav Huna: Is the halakha in accordance with our opinion, or is the halakha in accordance with your opinion? Rav Huna said to him: The halakha is in accordance with your opinion, as you are near the gate of the Exilarch, where the judges are frequently found, and therefore you are more proficient in monetary law.

[78] § It was stated: If there are two residences, one situated behind the other, and the owner transferred ownership of the two of them, each one to a different person, by means of a sale, or if he transferred ownership of the two of them, each to a different person, as a gift, they do not have a right of way against each other. That is, the one who acquired the inner residence may not pass through the outer residence, since each of them received equal privileges from the previous owner. And all the more so is this the halakha if the outer residence was transferred by means of a gift, and the inner residence was transferred by means of a sale, as it may be assumed that a gift is made in a more generous manner than is a sale.

[79] As for the case where the outer residence was transferred by means of a sale, and the inner residence was transferred by means of a gift, some Sages at first understood from here that they do not have a right of way against each other, that is, that the recipient of the inner residence may not pass through the outer residence.

[80] But that is not so, as didn't we learn in a mishna (71a): In what case is this statement, that these items are excluded, said? It is said with regard to one who sells a field, but with regard to one who gives it away as a gift, it is assumed that he gives all of it, including everything found in the field. Apparently, one who gives property as a gift gives it more generously than does one who sells it, as gifts are generally given to friends to whom one wishes to transfer as many privileges as possible.

Here too, then, one who gives property as a gift gives it more generously than does one who sells it, and so the recipient of the inner residence acquires a right of way through the outer apartment.

[81] MISHNA: One who sells a house has, as part of the sale, sold also the door, but not the key. He has sold the mortar that is fixed in the ground, but not the portable one. He has sold the immovable lower millstone [ha'itzterobil], but not the portable upper stone [hakelet], the funnel into which one pours the grain to be ground. And he has sold neither the oven nor the double stove, as they are deemed movable. When the seller says to the buyer: I am selling you it, and everything that is in it,

[82] all these components are sold as part of the sale of the house.

[83] GEMARA: The Gemara suggests: Let us say that the mishna that distinguishes between different types of household items is not in accordance with the opinion of Rabbi Meir. As if it is in accordance with the opinion of Rabbi Meir, doesn't he say in a baraita (78b): If one sold a vineyard, he has sold all of the utensils of the vineyard, including the movable ones? The same should be true for the sale of a house.

[84] The Gemara answers: You may even say that the mishna was taught in accordance with the opinion of Rabbi Meir, as a distinction can be made between the two cases. There, in the case of a vineyard, the reference is to utensils that are fixed in the vineyard and never removed from it, and therefore they are included in the sale, while here, in the case of a house, the mishna is referring to utensils that are not fixed in the house, and therefore they are not part of the sale. The Gemara objects: But doesn't the mishna teach the halakha governing a key in similar fashion to the halakha governing the door, indicating that just as a door is fixed in the house, so too, a key is fixed in the house? Rather, it is clear that the mishna is not in accordance with the opinion of Rabbi Meir.

[85] The Sages taught in a baraita (Tosefta 3:1): One who sells a house has sold the door and the door bolt and the lock, but he has not sold the key. He has sold the mortar that was hollowed out of the ground but not the mortar that was fixed to the ground after its construction. He has sold the immovable lower millstone but not the portable upper stone. And he has sold neither the oven, nor the double stove, nor the hand mill. Rabbi Eliezer says: The principle is that any item attached to the ground is considered like the ground and included in the sale.

[86] When the seller says to the buyer: I am selling you it and everything that is in it, all these components are sold along with the house. Both in this case and in that case he did not sell the pit or the cistern or the gallery, as they are considered separate entities that are not at all part of the house.

[87] § The Sages taught in a baraita: A duct that one hollowed out and afterward attached to the ground or to a building invalidates a ritual bath through the water it channels to the bath. The water in a ritual bath must be gathered directly from rain or a stream, not drawn with vessels. If one hollowed out a log and used it to channel water into the bath, this is considered drawn water, as he used a vessel. By contrast, if one attached it first and afterward hollowed it out, it does not invalidate the ritual bath. Before the log was hollowed out, it was already attached to and considered part of the ground, and therefore the act of hollowing it out does not turn it into a vessel. The Gemara asks: Whose opinion is this? It appears to be neither the opinion of Rabbi Eliezer, nor that of the Rabbis.

[88] The Gemara clarifies the question: To which opinion of Rabbi Eliezer is this referring? If we say it is referring to the opinion of Rabbi Eliezer in the aforementioned baraita with regard to the sale of a house, that any item attached to the ground is considered part of the house and is sold along with it,

there is a difficulty. As perhaps this is the reasoning employed in the dispute with regard to the sale of a house, that Rabbi Eliezer holds that one who sells, sells generously anything that is attached to the ground, while the Rabbis hold that one who sells, sells sparingly, selling only utensils that serve an intrinsic function in the house and nothing else, even if they are attached to the ground. But this teaches us nothing about the opinions of Rabbi Eliezer and the Rabbis with respect to a ritual bath.

89 But rather, the reference must be to the opinion of Rabbi Eliezer concerning a beehive. As we learned in a mishna (Shevi'it 10:7): With regard to a beehive attached to the ground by clay, Rabbi Eliezer says: It is like land, and therefore one may write a document that prevents the Sabbatical Year from canceling an outstanding debt [prosbol] based upon it. Such a document cannot be written unless the borrower owns some land, and a beehive is considered like land for this purpose.

90 And such a beehive is not susceptible to ritual impurity as long as it is fixed in its place. And one who removes honey from it on Shabbat is liable to bring a sin-offering, as he is likened to one who harvests produce attached to the ground.

91 But the Rabbis say: Such a beehive is not like land, and therefore one may not write a prosbol based upon it, and it is susceptible to ritual impurity even when it is fixed in its place, and one who removes honey from it on Shabbat is exempt from bringing a sin-offering. This mishna suggests that Rabbi Eliezer holds that a vessel that was affixed to the ground is considered like land for all purposes. This contradicts the baraita that states that if one hollowed out a pipe and then affixed it to the ground, it is still considered a vessel, and water flowing through it is considered drawn water that invalidates a ritual bath. This indicates that the baraita was not taught in accordance with the opinion of Rabbi Eliezer.

92 The Gemara rejects this opinion, stating that there, in the mishna, Rabbi Eliezer treats the beehive like land for the reason that Rabbi Elazar stated, and not because he holds that all vessels that are affixed to the ground are considered like land. As Rabbi Elazar stated: What is the reasoning for the statement of Rabbi Eliezer with regard to one who removes honey from a beehive? His rationale is as it is written: "And he put forth the end of the rod that was in his hand and dipped it in the honeycomb [ya'arat hadevash]" (I Samuel 14:27).

93 Rabbi Eliezer understands that since the Hebrew words used here for honeycomb can also mean honey forest, the verse comes to teach that just as with regard to a forest, one who picks anything from a tree on Shabbat is liable to bring a sin-offering, so too, with regard to a beehive containing honey, one who removes honey from it on Shabbat is liable to bring a sin-offering, as the beehive is treated like land. Consequently, Rabbi Eliezer relies here on a special derivation, which does not necessarily apply to other vessels. Therefore, nothing can be learned from this about Rabbi Eliezer's opinion with regard to the pipe in the baraita.

94 Rather, the reference with regard to the hollowed-out duct must be to the opinion of Rabbi Eliezer concerning a baker's board on which he kneads the dough, as we learned in a mishna (Kelim 15:2): With regard to a baker's board [daf shel naḥtomin] that was affixed to the wall, Rabbi Eliezer renders it not susceptible to ritual impurity, while the Rabbis render it susceptible to ritual impurity. This seems to indicate that, according to Rabbi Eliezer, anything that is affixed to the ground or to something else that is affixed to the ground is treated like land, and therefore it cannot become ritually impure.

95 Having concluded that this is the dispute between Rabbi Eliezer and the Rabbis that was referred to previously, the Gemara repeats the question raised earlier about the ruling in the baraita with regard to a duct: Whose opinion is it? It appears to be neither that of Rabbi Eliezer nor that of the Rabbis. As if it is the opinion of Rabbi Eliezer, then even if one hollowed out a duct and afterward he fixed it to the ground, water flowing through it should not be considered drawn water that invalidates a ritual bath, as according to Rabbi Eliezer, a baker's board that was first a vessel, but then became fixed in a wall, is treated like land. And if it is the opinion of the Rabbis, then even if he first fixed the duct to the ground and only afterward he hollowed it out, the duct should also be treated like a vessel, and the water flowing through it should be considered drawn water, as the Rabbis do not differentiate with regard to the stage at which the baker's board was affixed to the wall.

96 The Gemara responds: Actually, one can explain that the baraita is in accordance with the opinion of Rabbi Eliezer, but the halakha governing flat wooden vessels without a receptacle, such as a baker's board, is different, as they are vessels susceptible to ritual impurity only by rabbinic law, but by Torah law they are not vessels susceptible to ritual impurity. Therefore, Rabbi Eliezer agrees that when the baker's board is affixed to the wall, it is no longer subject to the rabbinic decree. A hollowed-out duct, however, is a vessel susceptible to ritual impurity by Torah law, and it remains so even if afterward it was affixed to the ground. Therefore, the water flowing through it invalidates a ritual bath.

97 The Gemara asks: By inference, from the fact that Rabbi Eliezer is more stringent in the case of the duct and distinguishes between a duct that was first hollowed out and only afterward affixed to the ground, and one that was first affixed to the ground and only afterward hollowed out, does it not follow that the halakha governing drawn water, i.e., that drawn water added to a ritual bath that does not already contain the necessary quantity of water invalidates it, applies by Torah law?

98 But this is difficult, as we maintain that the halakha that drawn water invalidates a ritual bath applies only by rabbinic decree. And furthermore, doesn't Rabbi Yosei ben Rabbi Ḥanina say that the dispute between Rabbi Eliezer and the Rabbis is with regard to a board of metal, and a metal vessel, even if it is flat and lacks a receptacle, is susceptible to ritual impurity by Torah law? This means that, according to Rabbi Eliezer, even a vessel that is susceptible to ritual impurity by Torah law loses its status as a vessel when it is affixed to the ground. Consequently, the question returns: Whose opinion is cited in the baraita that states that if one first hollowed out a duct and afterward fixed it to the ground, it is still considered a vessel and water flowing through it invalidates a ritual bath, but if he first fixed it to the ground and afterward hollowed it out, the water flowing through it does not invalidate a ritual bath?

99 The Gemara answers: Actually, one can explain that the baraita is in accordance with the opinion of the Rabbis, who deem the baker's metal board susceptible to ritual impurity even when it is fixed to a wall, but the halakha governing drawn water added to a deficient ritual bath is different, because drawn water invalidates a deficient ritual bath only by rabbinic law, and therefore the Rabbis were lenient.

100 The Gemara asks: If so, then even if one first hollowed out the duct and only afterward fixed it to the ground, water flowing through it should not invalidate the ritual bath as well. The Gemara answers: It is different there, where the duct was hollowed out before being affixed to the ground, as the duct had the status of a vessel when it was still detached from the ground, and therefore the

Rabbis were not willing to be lenient to such an extent and rule that water flowing through the duct does not invalidate a ritual bath.

101 § Rav Yosef raises a dilemma: With regard to rainwater that was falling and the owner consciously desired that it should fall so that it would wash his immovable lower millstones, what is the halakha with regard to the seeds in the millstones? The verse “But if any water be put upon the seed…it shall be unclean to you” (Leviticus 11:38) teaches that seeds and other food become susceptible to ritual purity only after they have been detached from the ground, and water, or another of the seven liquids specified in the mishna (Makhshirin 6:4), has been put on them. The food must be exposed to the liquid willfully by the owner; that is, he must desire or at least be pleased that the food should become wet. Rav Yosef asks about a case where the owner wants the rain to fall on the millstones: Does that water make the seeds upon which it falls susceptible to ritual impurity?

102 The Gemara clarifies Rav Yosef’s question: Do not raise this dilemma according to the opinion of Rabbi Eliezer, who says: Anything attached to the ground has the same legal status as the ground. Since the lower millstones are attached to the ground, they therefore have the same legal status as the ground, and water that falls on the ground, even if it is pleasing to the owner, does not make food susceptible to ritual impurity. When should you raise this dilemma? Raise it according to the opinion of the Rabbis, who say: It does not have the same legal status as the ground. What is the halakha with respect to imparting susceptibility to ritual impurity? The Gemara concludes: An answer to this question was not found; therefore, the dilemma shall stand unresolved.

103 § Rav Neḥemya, son of Rav Yosef, sent a message to Rabba son of Rav Huna the Short at Neharde’a: When this woman bearing this letter comes before you,

104 collect for her one-tenth of her father’s estate, in keeping with the rabbinic ordinance that states that if a man dies, his sons are obligated to give his daughter a tenth of his landed properties as a dowry, and collect it even from his immovable lower millstones, as they too are considered landed property. Rav Ashi said: When we were students in Rav Kahana’s house we would collect for this purpose even from the rent of houses; since this money is earned from real estate, it too has the status of landed property and is included in the dowry calculations.

105 MISHNA: One who sells a courtyard without specifying what is included in the sale has sold with it the houses, pits, ditches, and caves found in the courtyard, but he has not sold the movable property. When the seller says to the buyer: I am selling you it and everything that is in it, all these components are sold along with the courtyard, even the movable property. Both in this case, where he executes the sale without specification, and in that case, where he adds the phrase that includes the movable property, he has not sold the bathhouse, nor has he sold the olive press that is in the courtyard, as each is an entity with a discrete purpose and not an integral part of the courtyard. Rabbi Eliezer says: One who sells a courtyard without specifying what is included in the sale has sold only the airspace, i.e., the open space, of the courtyard, but nothing found in the courtyard, not even the houses.

106 GEMARA: The Sages taught in a baraita (Tosefta, 3:1): One who sells a courtyard has sold with it the outer houses that can be accessed directly from the courtyard, and the inner houses that can be entered only via the outer houses, and the area of the sand fields [uveit haḥolsaot]. As for the stores, those that open into the courtyard are sold along with it; those that do not open into it, but rather open into the public domain, even if they are located in the courtyard, are not sold along with it; and those

that open both into this courtyard and into that other public domain are grouped together with those that open into this courtyard alone, and both these and those are sold with it. Rabbi Eliezer says: One who sells a courtyard without specifying what is included in the sale has sold only the open space of the courtyard.

[107] The Master said in the baraita: Stores that open both into this courtyard and into that public domain are sold along with the courtyard. The Gemara raises an objection: But didn't Rabbi Ḥiyya teach a baraita that states that such stores are not sold with the courtyard? The Gemara answers that this is not difficult: This baraita, that teaches that the stores are sold along with the courtyard, is referring to a case where the majority of their use is from within, i.e., the stores are mainly accessed from within the courtyard, while that baraita of Rabbi Ḥiyya, that teaches that the stores are not sold along with the courtyard, is referring to a case where the majority of their use is from without, i.e., the stores are accessed mainly from the public domain.

[108] The mishna teaches, and it was similarly taught in the baraita, that Rabbi Eliezer says: One who sells a courtyard has sold only the airspace of the courtyard, and he has sold nothing found in the courtyard, not even the houses. To clarify the disagreement between the unattributed opinion in the mishna and Rabbi Eliezer, Rabba said: If the seller said to the buyer that he is selling him dirata, i.e., the place of residence, everyone agrees that he means to sell the houses and that they are also included in the sale. When they disagree, it is where he said to him that he is selling him darta, i.e., the courtyard. One Sage, Rabbi Eliezer, holds that he means to sell only the garden, i.e., the space between the houses, and one Sage, the unattributed first opinion in the mishna, holds that he means to sell also the houses.

[109] Some state a different version of this discussion, according to which Rabba says: If the seller says to the buyer that he is selling him darta, everyone agrees that he means to sell also the houses and that they are included in the sale. When they disagree, it is where he said to him that he is selling him the ḥatzer, the Hebrew term for courtyard. One Sage, Rabbi Eliezer, holds that when he says ḥatzer, he means to sell him only the airspace, i.e., the open space of the courtyard itself, and one Sage, the unattributed first opinion in the mishna, holds that houses are also included in the sale, just as the courtyard of the Tabernacle included the Tabernacle itself.

[110] § And Rabba says that Rav Naḥman says: If one sold another a sand field for glass making, and a pond for fishing or some other purpose, if the buyer took possession of the sand field in order to finalize the transaction, he has not acquired the pond and must therefore perform a separate act of acquisition for it. Conversely, if he took possession of the pond, he has not acquired the sand field. The Gemara asks: Is that so? But doesn't Shmuel say: If one sold another ten fields in ten different regions, all in a single bill of sale, once he takes possession of one of them, he has acquired them all; and the two cases seem to be analogous.

[111] The Gemara rejects the parallel: There, in the case of the ten fields, the land is all located in one geographic block, and it all has one use, i.e., to be farmed. The buyer, therefore, acquires all of the fields when he takes possession of one of them, even if they are not adjacent. But here, in the case of the sand field and the pond, this, the sand field, has a distinct use, i.e., to supply sand for glass making, and that, the pond, has a distinct use, i.e., for fishing. Therefore, taking possession of one of them does not effect a transfer of the other.

[112] And some state a different version of the previous discussion.

113 Rabba actually said that Rav Naḥman said: If one sold another a sand field and a pond, and the buyer took possession of the sand field, he has also acquired the pond. The Gemara asks: This is obvious, as Shmuel says: If one sold ten fields to another in ten different regions, once he takes possession of one of them, he has acquired them all. The Gemara explains why Rav Naḥman's statement was nevertheless necessary: It is necessary lest you say that there, in the case of the ten fields, the land is all located in one geographic block with a single use, and therefore all the fields are acquired together. But here, in the case of the sand field and the pond, this, the sand field, has a distinct use, and that, the pond, has a distinct use, and therefore taking possession of one of them should not effect acquisition of the other. Therefore, Rav Naḥman teaches us that if the buyer took possession of the sand field, he has acquired the pond as well.

114 MISHNA: One who sells an olive press without specifying what is included in the sale has sold with it the yam and the memel and the betulot, the immovable elements of the olive press. But he has not sold with it the avirim and the galgal and the kora, the movable utensils of the olive press. When the seller says to the buyer: I am selling you it and everything that is in it, all these components are sold along with the olive press, even the movable utensils. Rabbi Eliezer says: One who sells an olive press has sold the kora as well, as it is the most fundamental element of the olive press.

115 GEMARA: The Gemara explains the terms used in the mishna. The yam is the lentil, the round stationary container into which the olives are placed before being crushed. As for the memel, Rabbi Abba bar Memel said: This is the crusher, the utensil used to pound and crush the olives. As for the betulot, Rabbi Yoḥanan said: These are the cedar posts [klonsot] that support the beam of the olive press. The avirim are the pressers, wooden boards that are placed on top of the crushed olives, and upon which the beam is lowered in order to press the olives. The galgal is the ḥumrata, a round stone that is placed on the beam to weigh it down. The kora is the heavy wooden beam used to press down upon the olives and thereby extract the oil.

116 The Sages taught in a baraita (Tosefta, 3:2): One who sells an olive press without specifying what is included in the sale has sold with it the boards that are fixed in place to hold the olives; and the vats for collecting the oil, and the crushers, used to pound and crush the olives before pressing them, and the lower millstone, i.e., the stationary millstone base; but not the upper millstone. But when the seller says to the buyer: I am selling you it and everything that is in it, all these components are sold. Both in this case, where he executes the sale without specification, and in that case, where he adds the phrase that he is selling everything that is in the olive press, he has not sold the wooden boards that are placed on top of the crushed olives when they are being pressed, nor has he sold the sacks, nor has he sold the leather bags for carrying the olives, as these are all movable goods that are not specifically part of the olive press.

117 Rabbi Eliezer says: One who sells an olive press has sold the heavy wooden beam used to press down upon the olives, as it is called an olive press [beit habad] only due to this beam, the most essential part of the press, and this beam is otherwise known as a bad.

118 MISHNA: One who sells a bathhouse without specifying what is included in the sale has not sold with it the boards that are placed on the floor, nor has he sold the basins or the curtains [habilaniyot]. When the seller says to the buyer: I am selling you it and everything that is in it, all these components are sold along with the bathhouse. Both in this case, where he executes the sale without specification, and in that case, where he adds the phrase that he is selling everything that is in the

bathhouse, he has not sold the tanks of water, nor has he sold the storerooms for wood, as an explicit sales agreement is required for these matters.

119 GEMARA: The Sages taught in a baraita (Tosefta, 3:3): One who sells a bathhouse without specifying what is included in the sale has sold with it the storeroom for the boards, and the storeroom for the implements called yekamin, and the storeroom for the basins, and the storeroom for the curtains [vilaot], but he has not sold the boards themselves, nor the yekamin themselves, nor the basins themselves, nor the curtains themselves. When the seller says to the buyer: I am selling you it and everything that is in it, all these components are sold along with the bathhouse. Both in this case, where he executes the sale without specification, and in that case, where he adds the phrase that he is selling everything that is in the bathhouse, he has not sold him the pools that supply him with water, whether

120 in the summer season or in the rainy season, nor has he sold him the storeroom for the wood. But if the seller says to the buyer: I am selling you the bathhouse and all of its accompaniments, all these components are sold.

121 The Gemara relates: There was a certain person who said to another: I am selling you this olive press and all of its accompaniments. There were certain stores outside of the olive press, where, in addition to the ordinary services that these stores provided, sesame seeds would also be spread out to dry before they would be pressed for their oil. The seller and the buyer disagreed about whether these stores were included in the sale, and the buyer came before Rav Yosef, presenting him with his claim to ownership of the stores.

122 Rav Yosef said to him: We learned in the previously cited baraita that if the seller says to the buyer: I am selling you the bathhouse and all of its accompaniments, all these components are sold. Rav Yosef held that in this case too, the disputed stores were sold. Abaye said to Rav Yosef: But didn’t Rabbi Ḥiyya teach in a baraita: They are not all sold? Rather, the issue should be resolved as Rav Ashi said: We consider the seller’s statement, and if he said to the buyer: I am selling you the olive press and all of its accompaniments, and these are its boundaries, and he included the area of the stores within those boundaries, the buyer has acquired those stores, but if the seller does not say this, he has not acquired them, as they are not actually part of the olive press.

123 MISHNA: One who sells a city without specifying what is included in the sale has sold with it the houses, the pits, the ditches and caves, the bathhouses and the dovecotes, and the olive presses and beit hashelaḥin, as will be explained in the Gemara, but he has not sold the movable property in the city. But when the seller says to the buyer: I am selling you it and everything that is in it, even if there were cattle and Canaanite slaves in the city, all these entities are sold. Rabban Shimon ben Gamliel says: One who sells a city has sold with it the santar, the meaning of which will be explained in the Gemara.

124 GEMARA: Rav Aḥa, son of Rav Avya, said to Rav Ashi: Learn from the mishna that the legal status of a Canaanite slave is like that of movable property, as if it is like that of land, the slave should be sold along with the city. Rav Ashi responded: Rather, what do you claim, that the legal status of a Canaanite slave is like that of movable property? If that is the case, what is the meaning of the mishna’s statement that even if there were cattle and Canaanite slaves in the city, they are all sold? This is obvious, as the slaves should be treated no differently than the rest of the city’s movable property.

[125] Rather, what have you to say? You must explain that there is a difference between movable property that moves about by itself, such as slaves, and movable property that does not move about by itself, i.e., inanimate objects. In exactly the same manner, one can claim that even if you say that the legal status of a Canaanite slave is like that of land, there is a difference between land that moves about by itself, i.e., slaves, and land that does not move about by itself.

[126] § The mishna teaches: Rabban Shimon ben Gamliel says: One who sells a city has sold with it the santar. The Gemara asks: What is the meaning of the term santar? Here in Babylonia they interpreted it to mean the land registrar [bar maḥavanita] in charge of keeping track of property boundaries. Shimon ben Avtolemos disagrees and says that it is referring to the fields that surround the city. The Gemara comments: The one who says that santar means the land registrar understands that according to Rabban Shimon ben Gamliel, when one sells a city, all the more so are the fields that surround the city included in the sale. But the one who says that it means the fields that surround the city holds that the land registrar is not sold with the city.

[127] The Gemara attempts to adduce proof in support of one of the opinions: We learned in the mishna here that the olive presses and beit hashelaḥin are sold along with the city. The Sages initially maintained: What is meant by shelaḥin? This is referring to irrigated fields, fields that require additional irrigation to supplement the rain that they receive. As it is written: “Who gives rain upon the earth and sends [shole’aḥ] water upon the fields” (Job 5:10). Granted, according to the one who says that santar means the land registrar, the first tanna of the mishna said that the fields that surround the city are sold with the city, but the land registrar is not sold, and Rabban Shimon ben Gamliel comes to say that even the land registrar is sold. But according to the one who says that santar means fields, this is what the first tanna is saying as well. In what way, then, does Rabban Shimon ben Gamliel disagree with the first tanna?

[128] The Gemara rejects this proof: Do you maintain that what is meant by shelaḥin is irrigated fields? This is not the case. Rather, what is meant by shelaḥin? This is referring to gardens found within the city, as it is stated: “Your shoots [shelaḥayikh] are an orchard of pomegranates” (Song of Songs 4:13). But the fields that surround the city are not sold. And Rabban Shimon ben Gamliel comes to say that even the fields are sold as well. This is one version of the discussion.

[129] Some say that the discussion took place as follows: The Sages initially assumed that what is meant by shelaḥin? This is referring to gardens found within the city. Granted, according to the one who said that santar means the fields that surround the city, the first tanna of the mishna said that the gardens found within the city are sold along with the city, but the fields that surround the city are not sold, and Rabban Shimon ben Gamliel comes to say that even the fields that surround the city are sold.

[130] But according to the one who says that santar means the land registrar, is it reasonable that the first tanna of the mishna said that the gardens within the city are included in the sale of the city, and Rabban Shimon ben Gamliel responded to him that the land registrar is included? How are the two connected? The Gemara answers: Do you maintain that what is meant by shelaḥin is gardens? This is not the case. Rather, what is meant by shelaḥin? This is referring to the fields that surround the city, as it is written: “Who gives rain upon the earth and sends [sholeaḥ] waters upon the fields” (Job 5:10). According to the first tanna, it is specifically the fields that are sold with the city, but the land

registrar is not sold. And Rabban Shimon ben Gamliel comes to say that even the land registrar is also sold.

131 The Gemara suggests: Come and hear a proof from the following baraita: Rabbi Yehuda says: The santar is not sold with the city, but the city scribe [ankolemus] is sold with it. What, is it not clear from the fact that the city scribe is a man that the santar is also a man? The Gemara rejects this proof: Are the cases comparable? This case is as it is, and that case is as it is, and santar means fields, and not the land registrar.

132 The Gemara asks: How can you say that according to Rabbi Yehuda the fields surrounding the city are not sold along with it? But isn't it taught in the latter clause of this baraita: But when one sells a city he has not sold its remnants, and not its daughters, i.e., the nearby rural villages, and not the woods that are set aside and designated for the city, and not the enclosures [beivarin] for animals, for birds, and for fish. And we said in explanation: What is meant by its remnants? Bizlei. The Gemara asks: What is the meaning of bizlei? Rabbi Abba said: The strips of the fields that are separated from the main fields by a stretch that cannot be cultivated. From here, it may be inferred that it is the strips of the fields that are not sold with the city, but the fields themselves are sold with it.

133 The Gemara suggests: Reverse the statement found in the baraita so that Rabbi Yehuda says that the santar, now understood to mean fields, is sold with the city, but the city scribe is not sold with it.

134 The Gemara asks: How can you say that Rabbi Yehuda holds in accordance with the opinion of Rabban Shimon ben Gamliel, to the point that you adduce proof from the words of Rabbi Yehuda with regard to the opinion of Rabban Shimon ben Gamliel? But doesn't Rabbi Yehuda hold in accordance with the opinion of the Rabbis? As it is taught in the latter clause of that same baraita: But when one sells a city he does not sell its remnants, and he does not sell its daughters, i.e., the nearby rural villages. Whereas with regard to Rabban Shimon ben Gamliel, doesn't he say that one who sold a city sold its daughters along with it, i.e., the nearby rural villages, as it is taught in a baraita: One who sells a city has not sold its daughters; Rabban Shimon ben Gamliel disagrees and says: One who sells a city has sold its daughters.

135 The Gemara answers: This does not prove that Rabbi Yehuda disagrees with Rabban Shimon ben Gamliel, as it may be suggested that Rabbi Yehuda holds in accordance with the opinion of Rabban Shimon ben Gamliel with regard to one issue, that the fields that surround the city are included in the sale, and disagrees with him with regard to another issue, as according to Rabbi Yehuda the nearby villages are not sold along with the city.

136 § The baraita teaches: When one sells a city he has not sold, among other things, the enclosures for animals, for birds, and for fish. And the Gemara raises a contradiction from another baraita: If the city has daughters, i.e., nearby villages, they are not sold along with it. If it has one part on the sea and one part on dry land, or if it has enclosures for animals, for birds, or for fish, these are all sold along with the city.

137 The Gemara answers that this is not difficult, as a distinction can be made between different cases: Here, the one baraita addresses animal enclosures whose openings face inward, i.e., toward the city, and they are therefore considered a part of the city, whereas there, the other baraita addresses animal enclosures whose openings face outward, i.e., away from the city, and therefore they are not included in its sale. The Gemara raises a difficulty: But doesn't the baraita teach: And he has not sold

the woods that are set aside for the city, indicating that they face the city, and nevertheless they are not sold along with the city? The Gemara answers: Say that the baraita should be emended so that it reads instead: And he has not sold the woods that are set apart from the city, i.e., that are at a distance and do not face the city.

138 MISHNA: One who sells a field without specifying what is included in the sale has sold the stones in the field that are for its use, and the reeds in the vineyard that are for its use, and the produce that is still attached to the ground, and the cluster of reeds that occupy less than the area required for sowing a quarter-kav of seed [beit rova], and the watch station that is not plastered with clay, and the young carob tree that has not yet been grafted, and the untrimmed sycamore that is still young.

139 But he has not sold along with the field the stones that are not designated for use in the field, and not the reeds in the vineyard that are not designated for its use, and not the produce that is already detached from the ground. When the seller says to the buyer: I am selling you it and everything that is in it, all these components are sold along with the field. Both in this case, where he executes the sale without specification, and in that case, where he adds the phrase that he is selling everything that is in the field, he has not sold the cluster of reeds that occupy a beit rova or more, as they are considered a separate field, and he has not sold the watch station that is plastered with clay, and not the carob tree that has been grafted, and not the sycamore trunk. All of these entities are significant in their own right and have a status independent from that of the fields, and they are therefore not included in the sale of the field.

140 GEMARA: The mishna teaches that one who sells a field has sold the stones in the field that are for its use. The Gemara clarifies: What is meant by stones that are for its use? Here in Babylonia they interpreted it as follows: Stones placed on the sheaves in the field to protect them from being scattered by the wind. Ulla says: The mishna is referring to stones that are arranged for the future building of a fence for the field. The Gemara asks: But didn’t Rabbi Ḥiyya teach in a baraita that they are stones that are piled up for the future building of a fence, and not necessarily arranged? The Gemara answers: Teach that Rabbi Ḥiyya said: They are stones that are arranged for the future building of a fence.

141 The Gemara elaborates on the two explanations: It was stated that here in Babylonia they interpreted the mishna as referring to stones that are placed on the sheaves. According to Rabbi Meir this should be understood as referring to stones that are ready to be used to protect the sheaves, even though they are not yet placed on them. This is in keeping with Rabbi Meir’s opinion that whenever a place is sold, all the accompaniments that are necessary for its proper utilization are included in the sale (see 78b). According to the Rabbis, the mishna is referring specifically to stones that are already placed on the sheaves.

142 And according to Ulla, who says that the mishna is referring to stones that are arranged for the future building of a fence for the field, according to Rabbi Meir, stones that are ready to be used for building a fence are also included in the sale, even though they are not yet arranged for that purpose. According to the Rabbis, the mishna is referring specifically to stones that are already arranged for building a fence.

143 The Gemara continues with its clarification of the mishna, which teaches that one who sells a field has also sold the reeds in the vineyard that are for its use. The Gemara asks: With regard to the

reeds, what is their purpose in the vineyard? The Sages of the school of Rabbi Yannai said: These are reeds that are split on top and placed under the vines so that the boughs of the vines can rest on them. According to Rabbi Meir, this is referring to reeds that have been smoothed and made ready for this purpose, even though they are not yet set in their place. According to the Rabbis, the mishna refers specifically to reeds that are already set in their place.

144 The Gemara continues expounding the mishna, which includes among the components that are sold with a field the produce that is still attached to the ground. The Gemara comments: Even though the time has already come for the produce to be cut down, it is included in the sale since it is still attached to the ground. The mishna also includes among the things that are sold with a field the cluster of reeds that occupy less than a beit rova. The Gemara notes: Even though these reeds are thick, they are still classified as part of the field.

145 The mishna teaches that one who sells a field sells with it the watch station that is not plastered with clay. The Gemara comments: Even though it is not fixed in the ground and can still be moved, since it is not plastered, it is not significant enough to be considered an independent entity, and it is considered part of the field. The mishna also includes the following among the components that are sold with a field: And the carob tree that has not been grafted, and the untrimmed sycamore. The Gemara notes: Even though they are big and thick, since they have not yet reached the stage of grafting, in the case of the carob, or trimming, in the case of the sycamore, they are considered part of the field.

146 The Gemara proceeds to explain the second half of the mishna, which teaches: But he has not sold along with the field the stones that are not designated for use in the field. On the assumption that the mishna speaks of stones that are placed on the sheaves to prevent them from being scattered, according to Rabbi Meir, the mishna is referring to stones that are not ready to be used for this purpose, whereas according to the Rabbis, even if the stones are ready to be used to protect the sheaves, they are not included in the sale if they are not yet placed on them.

147 And according to Ulla, who says that the mishna is referring to stones that are arranged for the future building of a fence for the field, according to Rabbi Meir, this clause addresses a case where the stones were not ready to be used for this purpose, whereas according to the Rabbis, it addresses a case where the stones were not yet arranged for building a fence, even though they were ready to be used for that purpose.

148 The mishna teaches that one who sells a field has not sold the reeds in the vineyard that are not designated for its use. The Gemara explains: According to Rabbi Meir, this is referring to a case where the reeds are not smoothed, whereas according to the Rabbis, the reference is to reeds that are not yet set in their place, even if they are smoothed. The mishna further teaches: One who sells a field has also not sold the produce that is detached from the ground. The Gemara comments: The produce is not included in the sale even though it still requires the ground, that is, it needs to be left in the field in order to dry out completely.

149 The mishna teaches that one who sells a field has not sold the cluster of reeds that occupy a beit rova. The Gemara comments: And this is so even though they are thin, as since they occupy the area of a beit rova they are considered a separate entity and are not part of the field. Concerning this ruling, Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: It is not only a cluster of reeds that is considered a separate entity, and therefore not included in the sale; rather, even a small garden bed of

spices that does not occupy the area of a beit rova but has a distinct name is not sold along with the field. Rav Pappa said: What this means is that people call it the roses [vardda] of so-and-so, thereby establishing for it a name of its own.

150 The mishna teaches that the sale does not include the watch station that is plastered with clay. The Gemara comments: And this is the halakha even though it is attached to the ground, as it is still considered a separate entity and not part of the field. The mishna teaches: He has also not sold the carob tree that has been grafted, and he has not sold the sycamore trunk. The Gemara notes: Even though they are small, they are considered their own entity.

151 Apropos the discussion of a watch station that is attached to the ground, the Gemara cites a discussion about the sale of a house: Rabbi Elazar raised the dilemma: With regard to wooden door frames, what is the halakha? Are they sold together with the house, or not? The Gemara explains the question: Do not raise the dilemma in a case where the frames are attached to the house with clay, as they are certainly attached to the house and sold along with it. When you can raise this dilemma is where they are connected only with small wooden pegs. What is the ruling in that case? No resolution was found for this question, and so the dilemma shall stand [teiku] unresolved.

152 Rabbi Zeira raises a similar dilemma about what is included in the sale of a house: With regard to window frames, what is the halakha? Are they sold together with the house, or not? Do we say that they serve merely as an ornament, and are not included in the sale, and the seller can remove them from the house and keep them for himself? Or perhaps, since they are attached to the window, they are attached. The dilemma shall stand unresolved.

153 And similarly, Rabbi Yirmeya raised a dilemma: With regard to stands for the legs of a bed that are placed under the legs to prevent them from being damaged by moisture, what is the halakha? The Gemara explains the question: Do not raise the dilemma wherever the stands move along with the bed, as they move along with it and are therefore not considered part of the house. Where you can raise this dilemma is where they do not move along with the bed. What is the ruling in that case? No resolution was found for this question either, and therefore the dilemma shall stand unresolved.

154 The mishna teaches: One who sells a field has not sold the carob tree that has been grafted, and he has not sold the sycamore trunk.

155 The Gemara asks: From where are these matters, i.e., that a grafted carob and a sycamore trunk are not included in the sale of a field, derived? Rav Yehuda said that Rav said: As the verse states: “So the field of Ephron, which was in Machpelah, which was before Mamre, the field, and the cave that was within it, and all the trees that were in the field, that were in all the boundaries around, were established for Abraham as a possession” (Genesis 23:17–18). This teaches that anything that requires a boundary around it, as it does not have natural demarcations, is included in the sale of a field. This excludes these trees, i.e., the grafted carob and the sycamore trunk, which do not require a boundary around them, as they stand out individually on their own. Rav Mesharshiyya says: From here there is a source that the acquisition of the actual boundaries in a sale is from the Torah.

156 § Rabbi Yehuda said: One who sells land to another must write for him the following in the bill of sale: Acquire for yourself the palm trees and the dates and the branches and the seedlings. And even if he did not write this for him the buyer would still acquire all of these entities, as demonstrated by the mishna that it is only a grafted carob and a sycamore trunk that are excluded from the sale of a

field. Even so, it is an enhancement of the bill of sale that he write all of the details of the transaction so that there be no possible room for disagreement.

157 If the seller said to the buyer: I am selling you the land and palm trees, we consider the situation. If he has palm trees, he must give him two palm trees as two is the minimum number of trees that would justify being called: Trees, in the plural. And if he has no palm trees, he must buy two palm trees for him somewhere else. And if he has palm trees, but they are mortgaged to another person, he must redeem two palm trees and give them to the buyer.

158 If the seller said to the buyer: I am selling you land with palm trees, we consider the situation. If there are palm trees on the land, he must give him the land, and if not, this is a mistaken transaction and the sale is void. If the seller said to the buyer: I am selling you land of palm trees, the buyer has no claim to receive palm trees. Therefore, if the land has no palm trees, this is not a mistaken transaction, as the seller meant to say to him that the land was fit for palm trees, and not that it already contained them. Furthermore, if the seller said to the buyer that he is selling the land except for such and such a palm tree, we consider the situation. If it is a good palm tree, we assume that he retained only that one for himself and did not include it in the sale, but if it is a bad palm tree, we assume that all the more so did he retain for himself the other ones that are of higher quality.

159 If the seller said to the buyer that he is selling him the entire field except for the trees, we consider the situation. If he has different types of trees in the field, for example, olive and fig trees, he has sold the entire field except for the trees. If he has only palm trees in the field, we assume that he meant to sell the entire field except for the palm trees, even though one does not ordinarily refer to palm trees by the more general term: Trees. Similarly, if he has only grapevines in the field, the buyer acquires everything except for the grapevines.

160 If the field has both trees and grapevines, he has sold everything except for the trees; therefore, the buyer does not acquire the trees, which the seller excluded from the sale, but he does acquire the grapevines. Similarly, if in the field there are both trees and palm trees, he has sold everything except for the trees. If there are no other trees in the field, but only grapevines and palm trees, everything, including the palm trees, is sold except for the grapevines, which we assume the seller reserved for himself.

161 Rav says: If the seller specified that he is selling a field but not the trees, any tree that is so tall that one must climb it by rope in order to harvest its fruit is retained and is not included in the sale, and any tree that one need not climb by rope is not retained and is sold along with the field.

162 But the judges of the exile, Shmuel and Karna, say: Any tree that is bent back by the yoke of oxen as the animals plow the ground under the tree, and in this way the tree does not impede the plowing, is not retained by the seller, as it is not a significant tree. Any tree that is not bent back by the yoke of the oxen is retained by the seller and not included in the sale. The Gemara comments: And these amora’im do not disagree with regard to the halakha: That which Rav said, that the only trees that the seller retains for himself and excludes from the sale are those that must be climbed by means of a rope, was said with regard to palm trees, while that which the judges of the exile said, that the only trees that are retained are those that are not bent back by the yoke of the oxen, was said with regard to other types of trees.

163 § The Gemara cites a discussion related to the mishna’s ruling that a grafted carob tree and a sycamore trunk are not included in the sale of the field: Rav Aḥa bar Huna raised a dilemma before

Rav Sheshet: If one selling a field said to the buyer: I am selling you the entire field except for such and such grafted carob tree, or except for such and such sycamore trunk, and there were other grafted carob trees or sycamore trunks in the field, what is the halakha? The Gemara explains the two sides of the question: Does the seller mean to say that it is this carob tree that the buyer does not acquire, but he does acquire the other carob trees, or perhaps he means that he also does not acquire the rest of the carob trees? Rav Sheshet said to him in response: The buyer does not acquire any of them.

164 Rav Aḥa raised an objection to Rav Sheshet from a baraita that states: If the seller said to the buyer: I am selling you this field except for such and such carob tree, or except for such and such sycamore trunk, the buyer does not acquire it. What, is it not that it is this carob tree that he does not acquire, but he does acquire the other carob trees?

165 Rav Sheshet said to him: No, what this means is that he does not acquire even the other carob trees. Know that this is correct, as if a person selling a field said to the buyer: My field is sold to you except for such and such field that is adjacent to it, would you say that it is only that adjacent field that he does not acquire, but he acquires all the other fields owned by the seller? This is clearly not the case, as the seller explicitly stated that he is selling a certain field, not all of his fields. Rather, everyone would agree that the buyer does not acquire the other fields. Therefore, here too, the buyer does not acquire the other carob trees.

166 And there are those who say that the discussion took place as follows: Rav Aḥa bar Huna raised a dilemma before Rav Sheshet: If one selling a field said to the buyer: I am selling you the entire field except for half of such and such carob tree, or except for half of such and such sycamore trunk, what is the halakha? The Gemara explains the two sides of the question: Do we say that the buyer certainly does not acquire the other carob trees, but he does acquire what remains from that carob tree that was mentioned, that is, the half of the carob tree that the seller did not specifically retain for himself? Or perhaps he does not acquire even what remains from that carob tree? Rav Sheshet said to him: Even what remains from that carob tree the buyer does not acquire.

167 Rav Aḥa raised an objection to Rav Sheshet from a baraita that states: If the seller said to the buyer: I am selling you the entire field except for half of such and such carob tree, or except for half of such and such sycamore trunk, the buyer does not acquire the other carob trees. What, is it not that it is the other carob trees that he does not acquire, but what remains of that carob tree he does acquire?

168 Rav Sheshet said to him: No, what this means is that he does not acquire even what remains of that carob tree. Know that this is correct, as if a person selling a field said to the buyer: My field is sold to you except for half of such and such field that is adjacent to it, would you say that it is only that half of the field that he does not acquire, but he acquires the other half of the field? This is clearly not the case, as the seller explicitly stated that he is selling a certain field and nothing else. Rather, everyone would agree that the buyer does not acquire the other half of the field. Therefore, here too, the buyer does not acquire what remains of the carob tree.

169 § Rav Amram raised a dilemma before Rav Ḥisda: If one deposits certain items with another and receives a document signed by witnesses testifying that he deposited these items with this individual, and the bailee later says to him: I returned the items to you, but the document is still in the hands of the depositor, what is the halakha? Do we say that since if the bailee wanted to lie he could have said that the items were taken from him under circumstances beyond his control, and he would have been

deemed credible; therefore now too, when he claims that he returned the items, he is deemed credible as well? Or perhaps, the one who deposited the items can say to him: If you returned the items, what is your document doing in my possession? Upon return of the deposit, you should have retrieved the document. Rav Ḥisda said to him: The bailee is deemed credible.

[170] Rav Amram asked: But let the depositor say to the bailee: If you returned the items, what is your document doing in my possession? Rav Ḥisda said to him: And according to your reasoning, if the bailee had said to him that the items were taken from him under circumstances beyond his control, would he be able to say to him: What is your document doing in my possession? Since this claim could not have been stated had the bailee stated the alternative claim, it can also not be stated when the bailee claims that the items were returned. Rav Amram said to him:

[171] Ultimately, even when the bailee says to the depositor that the items were taken from him under circumstances beyond his control, is he not required to take an oath? How, then, can you assert that he is deemed credible to claim that he returned the items without taking an oath? Rav Ḥisda said to him: Here too, what did I mean when I said that he is deemed credible? It means that he is deemed credible when he takes an oath.

[172] The Gemara suggests: Let us say that Rav Amram and Rav Ḥisda disagree with regard to the issue that is the subject of the dispute between these tanna’im, as a halakha is taught in a baraita with regard to a purse document, i.e., a document that records an arrangement whereby one gives another money as an investment in a joint venture on condition that the profits will be divided equally between the two parties. If the person who received the money died, and this document was presented by the lender against the orphans, the judges of the exile say that the lender takes an oath that the money had never been returned to him, and he collects the entire sum. And the judges of Eretz Yisrael say that he takes an oath and collects only half of the sum.

[173] And it is understood that everyone agrees with the opinion of the Sages of Neharde’a, as the Sages of Neharde’a say: With regard to this joint venture, whereby one person gives money to another on condition that it will be used for business purposes and that the profits will be divided equally between the two parties, half of the invested money is considered a loan, for which the borrower is exclusively liable, and half is considered a deposit, so that if it is lost under circumstances beyond his control, the borrower is exempt from the liability to return it.

[174] According to this assumption, everyone agrees that the claimant can recover from the orphans by means of an oath the half of the money that is considered a loan, just as he would have been able to demand that money from their father. Concerning the half that is considered a deposit, what, is it not with regard to this point that they disagree, as one Sage, the judges of the exile, holds like Rav Amram that the depositor can say to the bailee: What is your document doing in my possession? Therefore, neither the father nor his children are deemed credible to claim that they had returned the half that is considered a deposit, and the investor can collect that half as well. And one Sage, the judges of Eretz Yisrael, holds like Rav Ḥisda, that one cannot assert this claim, and therefore the investor can collect only the half that is considered a loan. But as for the half that is considered a deposit, the father would have been deemed credible in his claim that he had already returned it.

[175] The Gemara rejects this opinion: No, everyone, i.e., both the judges of the exile and the judges of Eretz Yisrael, agrees with the opinion of Rav Ḥisda, that the father can claim that he returned the money. And here, they disagree about the following issue, as one Sage, the judges of the exile, holds

that if it is so that he had in fact repaid the money, he would have told his children that he repaid it. Since he did not tell them, it may be assumed that he never repaid the money. And one Sage, the judges of Eretz Yisrael, holds that you can say that it was the Angel of Death that prevented him from doing so, meaning he died before he had the opportunity to give his children a detailed report concerning his financial affairs.

176 Apropos this discussion, it is related that Rav Huna bar Avin sent the following ruling: If one deposits an item with another and receives a document attesting to the deposit, and the bailee later says to him: I returned the item to you, the bailee is deemed credible even if the document is still in the hands of the depositor. And with regard to a purse document attesting to a joint venture that was presented by the lender to support his claim against the borrower's orphans, the lender takes an oath that the money had never been returned to him and collects the entire sum from the orphans.

177 The Gemara asks: Don't these two halakhot contradict each other? If the father is deemed credible when he claims that he repaid a loan, the court should present this claim on behalf of his orphans. The Gemara answers: It is different there, as if it is so that the father had, in fact, repaid the money, he would have told his children that he repaid it. Since he did not tell them anything about it, it may be assumed that he never repaid the money.

178 Rava said: With regard to the case of a purse document that was presented to support a claim against orphans, the halakha is that the claimant takes an oath that the money had never been returned to him and then collects half of the sum recorded in the document, in accordance with the judges of Eretz Yisrael. The Gemara relates that two generations later, Mar Zutra said: The halakha is in accordance with the opinion of the judges of the exile. Ravina said to Mar Zutra: Didn't Rava say that the claimant takes an oath and collects half of the sum? Mar Zutra said to him: With regard to the opinion of the judges of the exile, we

179 learned the reverse, that is to say, according to our version of the baraita, it is the judges of the exile who maintain that the claimant collects only half the sum, which corresponds to the halakha taught by Rava.

180 MISHNA: In continuation of the previous mishna (68b) discussing one who sells a field, the mishna teaches that even if he says that he is selling it and everything that is in it, has sold neither the cistern, nor the winepress, nor the dovecote, whether it is abandoned or utilized, as these items are not part of the field itself. And the seller must purchase for himself a path through the buyer's domain to reach whatever remains his. This is the statement of Rabbi Akiva, who holds that one who sells, sells generously; therefore, whatever is not explicitly excluded from the sale is assumed to be sold, and it is presumed that the seller did not retain for himself the right to the path that he requires to access his property. And the Rabbis say: The seller need not purchase a path through the buyer's domain, as it is assumed that since the seller withholds these items for himself, he also reserves a path to reach them.

181 And Rabbi Akiva concedes that when the seller says to the buyer in the bill of sale that he is selling the field apart from these things, i.e., the cistern and the winepress, he need not purchase for himself a path through the buyer's domain. Since these items would have been excluded from the sale even if he had said nothing, it is assumed that he also meant to reserve for himself the right to access them. But if the seller kept the field but sold the cistern and winepress to another person, Rabbi Akiva says: The buyer need not purchase for himself a path through the seller's domain to

reach what he has bought, since a seller sells generously. But the Rabbis say: He must purchase for himself a path through the seller’s domain.

[182] In what case is this statement, that these items are excluded, said? It is said with regard to one who sells a field, but with regard to one who gives it away as a gift, it is assumed that he gives all of it, including everything found in the field. Similarly, with regard to brothers who divide their father’s estate among themselves, when they each acquire a field as part of their inheritance, they acquire all of it, including the items that would be excluded from a sale. So too, with regard to one who takes possession of the property of a convert, when he takes possession of a field, he takes possession of all of it.

[183] One who consecrates a field has consecrated all of it. Rabbi Shimon says: One who consecrates a field has not consecrated any of the items that are ordinarily excluded from a sale except for the grafted carob tree and the sycamore trunk.

[184] GEMARA: The Gemara asks: In what way is a sale different from a gift, and in what way is a gift different from a sale? Why does the mishna distinguish between the two with regard to what is retained by the prior owner? Yehuda ben Nekosa explained before Rabbi Yehuda HaNasi: The difference between the cases is that this one, the seller, specified that certain items were not included in the sale, and that one, the donor, did not specify.

[185] The Gemara asks: How can it be suggested that this one specified and that one did not specify, when in fact this one did not specify, and that one did not specify, as in neither case did the prior owner specify what items he was reserving for himself? Rather, the difference is that this one, the buyer, should have specified that those items that are not integral parts of the field are nevertheless included in the sale, and since he neglected to do so, he suffers the loss. But in the case of a gift, that one, the recipient, should not have specified what was included in the gift, as it would have been inappropriate for him to act in this manner.

[186] It is related that there was a certain person who said to others: Give to so-and-so my house containing 100 barrels [gulfei] as a gift. It was found that there was a house in his possession that contained 120 barrels. Mar Zutra said: The owner said to him that he was giving him a house containing 100 barrels, and he did not say to him that he was giving him a house containing 120 barrels. Therefore, the recipient receives only the portion of the house that holds 100 barrels, and not the rest of the house.

[187] Rav Ashi said: Didn’t we learn in the mishna here: In what case is this statement said? It is said with regard to one who sells a field, but with regard to one who gives it away as a gift, it is assumed that he gives all of it. Apparently, one who gives a gift gives generously. Here too, then, say that one who gives a gift gives generously, even if he is not always precise in his wording. Therefore, it should be assumed that the donor intended to give the recipient the entire house, which contains more than 100 barrels.

[188] § The mishna teaches: One who consecrates a field, has consecrated all of it. Rav Huna said: Even though the Rabbis said: If one buys two trees in the field of another, he does not acquire any of the land but acquires only the trees, and if he sells land to another, and he retains two trees for himself, he also retains the land around those trees, that does not always apply. Rav Huna elaborates: And even according to Rabbi Akiva, who says that one who sells, sells generously and does not retain anything for himself, this does not always apply, as this statement applies only with regard to a

pit and a cistern, which do not weaken the land, and therefore the seller feels no need to protect himself from the potential claims of the buyer. But with regard to trees, which do weaken the land, as they draw water and nutrients from the soil,

189 if it is so that the prior owner did not retain some of the land for himself, let the buyer say to him: Uproot your trees, take them, and go, as the trees draw water and nutrients from the soil, causing damage to the buyer's land. Therefore, the seller must have retained for himself the land needed for these trees.

190 The Gemara raises an objection: We learned in the mishna here that Rabbi Shimon says: One who consecrates a field has not consecrated any of the items that are ordinarily excluded from a sale except for the grafted carob tree and the sycamore trunk. And it is taught with regard to this in a baraita: Rabbi Shimon said: What is the reason that it is specifically the carob tree and the sycamore trunk that are consecrated? Since they draw their nutrients from a consecrated field, the owner must have had in mind to consecrate them as well, as otherwise his trees would be nurtured from consecrated property.

191 And if it enters your mind, as Rav Huna claims, that when the seller retains certain trees for himself, he also retains the land around them so that they will be nurtured from soil that belongs to him, what is the reason for Rabbi Shimon's ruling? When these trees draw their nutrients, they draw their nutrients from the ground that the consecrator had retained for himself that still belongs to him, not from consecrated property.

192 The Gemara answers: The assumption that Rav Huna's statement is true according to everyone must be reconsidered. Rather, Rabbi Shimon, who says that one who consecrates his field does not retain for himself the land around the trees, holds in accordance with the opinion of his teacher, Rabbi Akiva. According to Rabbi Akiva, one who sells, sells generously, and there is no presumption that he retained some item or right for himself unless this was stated explicitly. Therefore, Rabbi Shimon rules that one who consecrates his field has also consecrated the carob trees, as otherwise they would draw nutrients from consecrated land. And Rav Huna, who says that when a seller retains trees for himself he also retains the land around them, holds in accordance with the opinion of the Rabbis, who say that one who sells, sells sparingly.

193 The Gemara asks: If Rav Huna's statement is only in accordance with the opinion of the Rabbis, then isn't his statement obvious? What novel idea is he adding? The Gemara answers: The practical difference is that while one might have thought that the prior owner retains a right to the land only for the sake of trees that were there, this is not the case. Rather, he retains absolute ownership of the land, and therefore, if the trees fall or die he can plant them again.

194 The Gemara asks: But can you establish that the opinion of Rabbi Shimon is in accordance with the opinion of Rabbi Akiva, that one who sells or consecrates property does so generously? But isn't it taught in a baraita: If one consecrates three trees in a field where ten trees are planted in an area required for sowing one se'a of seed [beit se'a], he has consecrated not only those trees, but also the land and the young trees between them? Therefore, if this is an ancestral field of his, when he redeems them, he redeems the land and everything contained within it according to the standard rate established by the Torah, whereby an area fit for the sowing of a ḥomer, i.e., a kor, of barley seed is redeemed for fifty silver shekels.

[195] The baraita continues: If the ratio of land to trees was less than this, and the trees were planted more densely, or if the ratio of land to trees was more than this, and the trees were planted less densely, or if he consecrated each of the trees separately, one after the other, this person has consecrated neither the land nor the young trees between them. Therefore, when he redeems them, he redeems the trees in accordance with their worth. And moreover, even if one consecrates the trees where they are planted more densely, less densely, or one after the other, and then afterward he consecrates the land, so that everything belongs to the Temple treasury, when he redeems them, he redeems the trees separately in accordance with their worth, and then he redeems the land according to the standard rate, where an area fit for the sowing of a ḥomer of barley seed is redeemed for fifty silver shekels.

[196] The Gemara clarifies: Whose opinion is expressed in the baraita? If it is the opinion of Rabbi Akiva, doesn't he say that one who sells, sells generously, and all the more so one who consecrates does so generously? This being the case, even if the trees were consecrated one after the other, some of the land should be consecrated along with them. And if the baraita reflects the opinion of the Rabbis, don't they say in the mishna that it is specifically the seller who sells sparingly, but one who consecrates, consecrates generously, and therefore the pit and the winepress are consecrated along with the field? Therefore, the halakha stated here is not in accordance with their opinion either. Rather, it is obvious that the baraita is in accordance with the opinion of Rabbi Shimon in the mishna here, that even one who consecrates a field does not consecrate the cistern and the winepress along with it.

[197] And the opinion of Rabbi Shimon is in accordance with the opinion of whom? If it is in accordance with the opinion of Rabbi Akiva, doesn't he say that one who sells, sells generously, and all the more so one who consecrates does so generously? Rather, it is obvious that his opinion is in accordance with the opinion of the Rabbis, who disagree with Rabbi Akiva and say that one who sells, sells sparingly. And Rabbi Shimon disagrees with the Rabbis insofar as he himself holds that just as one who sells, sells sparingly, one who consecrates also consecrates sparingly and retains the land around the trees for himself.

[198] The Gemara concludes stating the difficulty: But this is difficult, as Rabbi Shimon himself said that the grafted carob tree and the sycamore trunk are consecrated along with the field since they draw their nutrients from a consecrated field, indicating that one who consecrates acts generously and does not retain the land around the trees for himself.

[199] The Gemara explains: Rather, it must be understood that when Rabbi Shimon stated his ruling in the mishna, he was not expressing his own opinion. Rather, he was speaking to the Rabbis in accordance with their statement, and he meant to say: According to my opinion, just as one who sells, sells sparingly, so too, one who consecrates, consecrates sparingly and retains for himself land to nurture the trees. Therefore, when one consecrates a field, even the sycamore and carob tree are not consecrated along with it. But according to your opinion, that one who consecrates does so generously, agree with me at least that one who consecrates a field has consecrated only the grafted carob and the sycamore trunk, because they draw nutrients from consecrated ground, but he has not consecrated the other items that are not integral parts of the field. And the Rabbis said to him: There is no difference between the two in this regard. Since one who consecrates an item does so generously, everything found in the field is consecrated.

[200] The Gemara returns to the baraita that it had concluded was taught according to the opinion of Rabbi Shimon, and asks: In accordance with which opinion did you interpret the baraita discussing consecrated property? It was interpreted in accordance with the opinion of Rabbi Shimon. But say the last clause: And moreover, even if one consecrates the trees and then afterward he consecrates the land, when he redeems them, he redeems the trees separately in accordance with their worth, and then he redeems the land according to the standard rate, where an area fit for the sowing of a ḥomer of barley seed is redeemed for fifty silver shekels.

[201] And if the baraita is in accordance with the opinion of Rabbi Shimon, let him follow the character of the field at the time of its redemption, and so the trees should be redeemed along with their land, as at the time of the redemption both the trees and the land are consecrated. As we have already heard that Rabbi Shimon follows the time of the redemption, i.e., he determines the price at which a field is redeemed based on the time it is being redeemed.

[202] As it is taught in a baraita: From where is it derived that with regard to one who purchases a field from his father and consecrates it, and afterward his father dies, so the field would now be considered his as an inheritance, from where is it derived that with regard to its redemption it should be considered before him as an ancestral field and not a field that he purchased? The verse states about a field that was purchased: “And if he sanctifies to the Lord a field that he has bought, which is not of his ancestral fields” (Leviticus 27:22). The verse speaks specifically of a field that is not fit at the time of its consecration to be an ancestral field, meaning that he never could have inherited it in the future. This specification excludes this field that was fit to be an ancestral field from this halakha, since eventually it would have become his through inheritance, even had he not purchased it. This is the statement of Rabbi Yehuda and Rabbi Shimon.

[203] The baraita continues: Rabbi Meir learns a different halakha from this verse, and he says: From where is it derived that in the case of one who purchases a field from his father, and his father dies, and afterward he consecrates the field, from where is it derived that it should be considered before him like an ancestral field? The verse states: “And if he sanctifies to the Lord a field that he has bought, which is not of his ancestral fields.” The verse refers specifically to a field that is not now an ancestral field at the time of its consecration. This specification excludes this field, as after the death of the father, it is an ancestral field.

[204] But according to Rabbi Yehuda and Rabbi Shimon, a verse is not required to teach that, in a case where his father dies and afterward he consecrates the field, it is considered to be an ancestral field, as this is obvious. A verse is required only to teach the halakha in a case where he consecrates the field after having bought it, and afterward his father dies.

[205] The Gemara asks: From where do Rabbi Yehuda and Rabbi Shimon arrive at this conclusion? If they derive it only from this verse, you can say that the verse came to be interpreted in accordance with the opinion of Rabbi Meir, as opposed to the opinions of Rabbi Yehuda and Rabbi Shimon, as there is no clear proof from the verse to support either opinion. Rather, is it not due to the fact that they follow the time of the redemption, and at the time of the redemption the father is dead, and the field is the son’s ancestral field that is currently in the possession of the Temple treasury?

[206] Rav Naḥman bar Yitzḥak says: Actually, I can say to you that generally speaking, Rabbi Yehuda and Rabbi Shimon do not follow the time of the redemption, and therefore their ruling here is not based on this premise. But here they found a verse and interpreted it, as, if the verse is to be

understood as it was explained by Rabbi Meir, then let the verse write: And if he sanctifies to the Lord a field that he has bought, which is not his ancestral estate, or let it write: Which is not his ancestral field. What is meant by the expression: “Which is not of his ancestral fields” (Leviticus 27:22)? It means that a field that is not fit to ever be an ancestral field is considered a purchased field. That excludes this field, as it is fit to be an ancestral field. Based on this explanation, the baraita that addresses one who consecrates trees can, in fact, be understood to be in accordance with the opinion of Rabbi Shimon.

[207] § Rav Huna says: A grafted carob and a sycamore trunk have both the status of a tree and the status of land. Each of these has the status of a tree, so if one consecrates or buys two trees and this carob or sycamore, he has also consecrated or bought the land between them, as the sycamore or carob joins with the other two trees to form a unit of three trees that take their land with them. And each has the status of land, as it is not sold along with land, as explained in the mishna, that one who sells a field has not sold a grafted carob or a sycamore trunk that is in the field.

[208] And Rav Huna says in a similar fashion: A large sheaf of grain that contains two se’a has both the status of a sheaf and the status of a heap with regard to the halakhot of forgotten sheaves that must be left for the poor. It has the status of a sheaf, as the principle is that two sheaves that were inadvertently left in the field are considered forgotten sheaves that must be left for the poor, whereas three sheaves need not be left for the poor, but rather the owner of the field may go back and take them for himself. In this regard a two-se’a sheaf is considered one sheaf, so if one forgot two sheaves and also this sheave that contains two se’a, the three together are three sheaves and are not considered forgotten sheaves that must be left for the poor.

[209] And it has the status of a heap, as we learned in a mishna (Pe’a 6:6): In the case of a sheaf that contains two se’a, if one forgets it in a field, it is not considered a forgotten sheaf that must be left for the poor, as its size and importance grant it the status of a heap, rather than a sheaf.

[210] § Rabba bar bar Ḥana says that Reish Lakish says: With regard to whether a grafted carob and a sycamore trunk are consecrated along with a field that one has consecrated, we have arrived at the dispute between Rabbi Menaḥem bar Yosei and the Rabbis, as Rabbi Menaḥem bar Yosei rules that they are not consecrated, whereas the Rabbis rule that they are.

[211] The Gemara asks: But let us say that this is the dispute between Rabbi Shimon and the Rabbis, as it was concluded previously that according to Rabbi Shimon himself, even the carob and sycamore trees are not consecrated. The Gemara answers: Reish Lakish teaches us this, that Rabbi Menaḥem, son of Rabbi Yosei, holds in accordance with the opinion of Rabbi Shimon, and therefore Rabbi Shimon is not the only Sage who holds this opinion.

Chapter 5

[1] MISHNA: One who sells a ship has sold along with it the toren, and the nes, and the ogin, and all of the equipment that is used for directing it. But he has not sold the slaves who serve as oarsmen, nor the packing bags that are used for transporting goods, nor the antikei on the ship. And when one said to the buyer: You are purchasing it, the ship, and all that it contains, all of these latter elements are also sold.

[2] GEMARA: The toren is the mast [iskarya]. And in this regard it states: “They have taken cedars from Lebanon to make masts [toren] for you” (Ezekiel 27:5). The nes is the sail, and in this regard it states: “Of fine linen with richly woven work from Egypt was your sail, that it might be to you for an ensign [nes]” (Ezekiel 27:7). With regard to the meaning of ogin, Rabbi Ḥiyya teaches: These are the ship’s anchors, and so it states: “Would you tarry for them until they were grown? Would you shut yourselves off for them [te’agena] and have no husbands?” (Ruth 1:13). This demonstrates that the root ayin, gimmel, nun, means being shut up and held firmly in one place.

[3] The mishna teaches that the buyer acquires all the equipment used for directing the ship. Rabbi Abba says: These are the ship’s oars. And this is as it states: “Of the oaks of Bashan they have made your oars” (Ezekiel 27:6). Since a verse discussing ships focuses on its oars, evidently the oars are an integral part of the ship. And if you wish, say instead that it is demonstrated from here: “And all that handle the oar, the mariners, and all the pilots of the sea, shall come down from their ships” (Ezekiel 27:29).

[4] The Sages taught: One who sells a ship has also sold the gangway [iskala] used for boarding the ship, and the water tank it contains. Rabbi Natan says: One who sells a ship has sold the ship’s boat [bitzit], which is used as a lifeboat or for fishing in shallow waters. Sumakhos says: One who sells a ship has sold the dugit, as explained below.

[5] Rava said: The bitzit is the same as the dugit. Rabbi Natan was a Babylonian, and therefore he called small boats butzit, as people say: The botziata, small boats, of Miashan. Sumakhos, who was from Eretz Yisrael, called these boats dugit, as it is written: “You shall be taken away with hooks, and your residue in fishing boats [duga]” (Amos 4:2).

[6] § The Gemara cites several incidents that involve ships and the conversation of seafarers. Rabba said: Seafarers related to me that when this wave that sinks a ship appears with a ray of white fire at its head, we strike it with clubs that are inscribed with the names of God: I am that I am, Yah, the Lord of Hosts, amen amen, Selah. And the wave then abates.

[7] Rabba said: Seafarers related to me that in a certain place between one wave and the next wave there are three hundred parasangs, and the height of a wave is three hundred parasangs. Once, seafarers recounted, we were traveling along the route and a wave lifted us up until we saw the resting place of a small star, and it appeared to me the size of the area needed for scattering forty se’a of mustard seeds. And if it had lifted us higher, we would have been scorched by the heat of the star.

[8] And the wave raised its voice and shouted to another wave: My friend, did you leave anything in the world that you did not wash away, that I may come and destroy it? The second wave said to it: Go out and see the greatness of your Master, God, as even when there is as much as a string of sand on the land I cannot pass, as it is stated: “Will you not fear Me, said the Lord; will you not tremble at My presence? Who has placed the sand for the bound of the sea, an everlasting ordinance, which it cannot pass?” (Jeremiah 5:22).

[9] § Rabba said: I have seen the one called Hurmin, son of Lilith, when he was running on the pinnacles of the wall of the city of Meḥoza, and a horseman was riding an animal below him but was unable to catch up to him. Once, they saddled for him two mules and they stood

[10] on the two bridges of the river Rognag, and he jumped from this one to that one, and from that one to this one. And he was holding two cups of wine in his hands and was pouring from this one to that

one, and from that one to this one, and not one drop fell to the ground. And that day was stormy, similar to the description in a verse dealing with seafarers: “They mounted up to the heavens, they went down to the deeps; their soul melted away because of trouble” (Psalms 107:26). He continued in this manner until word of his behavior was heard in the house of the king, and they killed him.

[11] Rabba said: I have seen a day-old antelope [urzila] that was as large as Mount Tabor. And how large is Mount Tabor? It is four parasangs. And the length of its neck was three parasangs, and the place where his head rests was a parasang and a half. It cast feces [kufta] and thereby dammed up the Jordan.

[12] And Rabba bar bar Ḥana said: I have seen a certain frog [akrokta] that was as large as the fort [akra] of Hagronya. And how large is the fort of Hagronya? It is as large as sixty houses. A snake came and swallowed the frog. A raven came and swallowed the snake, and flew up and sat in a tree. Come and see how great is the strength of the tree, which could bear the weight of that raven. Rav Pappa bar Shmuel said: If I had not been there and seen this, I would not believe it.

[13] § And Rabba bar bar Ḥana said: Once we were traveling in a ship and we saw a certain fish in whose nostril [be’usyeih] a mud eater [akhla tina], i.e., a type of insect, had sat and killed him. And the waters thrust the fish and threw it upon the shore. And sixty districts were destroyed by the fish, and sixty districts ate from it, and another sixty districts salted its meat to preserve it. And they filled from one of its eyeballs three hundred flasks of oil. And when we returned there after the twelve months of the year had passed, we saw that they were cutting beams from its bones, and they had set out to build those districts that had been destroyed.

[14] And Rabba bar bar Ḥana said: Once we were traveling on a ship and we saw a certain fish upon which sand had settled, and grass grew on it. We assumed that it was dry land and went up and baked and cooked on the back of the fish, but when its back grew hot it turned over. And were it not for the fact that the ship was close by, we would have drowned.

[15] And Rabba bar bar Ḥana said: Once we were traveling in a ship and the ship traveled between one fin [shitza] and the other fin of a fish for three days and three nights. The fish was swimming in the opposite direction of the ship, so that it was swimming upward against the wind and the waves, and we were sailing downward. And if you would say that the ship did not travel very fast, when Rav Dimi came from Eretz Yisrael to Babylonia he said: In the short amount of time required to heat a kettle of water, that ship can travel sixty parasangs. And another demonstration of its speed is that a horseman shot an arrow, and yet the ship was traveling so swiftly that it outraced it. And Rav Ashi said: That fish was a sea gildana, which has two sets of fins.

[16] And Rabba bar bar Ḥana said: Once we were traveling in a ship and we saw a certain bird that was standing with water up to its ankles [kartzuleih] and its head was in the sky. And we said to ourselves that there is no deep water here, and we wanted to go down to cool ourselves off. And a Divine Voice emerged and said to us: Do not go down here, as the ax of a carpenter fell into it seven years ago and it has still not reached the bottom. And this is not because the water is so large and deep. Rather, it is because the water is turbulent. Rav Ashi said: And that bird is called ziz sadai, wild beast, as it is written: “I know all the fowls of the mountains; and the ziz sadai is Mine” (Psalms 50:11).

[17] And Rabba bar bar Ḥana said: Once we were traveling in the desert and we saw these geese whose wings were sloping because they were so fat, and streams of oil flowed beneath them. I said to them: Shall we have a portion of you in the World-to-Come? One raised a wing, and one raised a leg,

signaling an affirmative response. When I came before Rabbi Elazar, he said to me: The Jewish people will eventually be held accountable for the suffering of the geese. Since the Jews do not repent, the geese are forced to continue to grow fat as they wait to be given to the Jewish people as a reward.

18 § The Gemara provides a mnemonic for the items shown by an Arab man to Rabba bar bar Ḥana in the following stories: Like the dust of the sky-blue; the scorpion stung the basket.

19 And Rabba bar bar Ḥana said: Once we were traveling in the desert and we were accompanied by a certain Arab who would take dust and smell it and say: This is the road to such and such a place, and that is the road to such and such a place. We said to him: How far are we from water? And he said to us: Bring me dust. We brought it to him, and he said: Eight parasangs. Later, we said this a second time, and gave him dust, and he said to us that we are at a distance of three parasangs. I switched the type of dust to test him, but I could not confuse him, as he was an expert in this matter.

20 That Arab said to me: Come, I will show you the dead of the wilderness, i.e., the Jewish people who left Egypt and died in the wilderness. I went and saw them; and they had the appearance of one who is intoxicated,

21 and they were lying on their backs. And the knee of one of them was elevated, and he was so enormous that the Arab entered under his knee while riding a camel and with his spear upright, and he did not touch him. I cut one corner of the sky-blue garment that contains ritual fringes of one of them, and we were unable to walk. The Arab said to me: Perhaps you took something from them? Return it, as we know by tradition that one who takes something from them cannot walk. I then returned the corner of the garment, and then we were able to walk.

22 When I came before the Sages, they said to me in rebuke: Every Abba is a donkey, and every bar bar Ḥana is an idiot. For the purpose of clarifying what halakha did you do that? If you wanted to know whether the halakha is in accordance with the opinion of Beit Shammai or in accordance with the opinion of Beit Hillel, as to whether there are four or three threads and joints in ritual fringes, in that case there was no need to take anything with you, as you should have simply counted the threads and counted the joints.

23 Rabba bar bar Ḥana continues his account. That Arab also said to me: Come, I will show you Mount Sinai. I went and saw that scorpions were encircling it, and they were standing as high as white donkeys. I heard a Divine Voice saying: Woe is Me that I took an oath; and now that I took the oath, who will nullify it for me?

24 When I came before the Sages, they said to me in rebuke: Every Abba is a donkey, and every bar bar Ḥana is an idiot. You should have said: Your oath is nullified. The Gemara explains: And Rabba bar bar Ḥana did not nullify the oath because he reasoned: Perhaps God is referring to the oath that He will not flood the earth again. But the Sages would argue that if that were so, why say: Woe is Me? Rather, this must be referring to God’s oath of exile upon the Jewish people.

25 Rabba bar bar Ḥana continues his account. The Arab also said to me: Come, I will show you those who were swallowed by the earth due to the sin of Korah. I saw two rifts in the ground that were issuing smoke. The Arab took a shearing of wool, and dipped it in water, and inserted it on the head of a spear, and placed it in there. And when he removed the wool, it was scorched. He said to me: Listen to what you hear; and I heard that they were saying: Moses and his Torah are true, and they,

i.e., we in the earth, are liars. The Arab further said to me: Every thirty days Gehenna returns them to here, like meat in a pot that is moved around by the boiling water as it cooks. And every time they say this: Moses and his Torah are true, and they, i.e., we in the earth, are liars.

[26] This Arab also said to me: Come, I will show you the place where the earth and the heavens touch each other. I took my basket and placed it in a window of the heavens. After I finished praying, I searched for it but did not find it. I said to him: Are there thieves here? He said to me: This is the heavenly sphere that is turning around; wait here until tomorrow and you will find it.

[27] § Rabbi Yoḥanan relates: Once we were traveling on a ship and we saw a certain fish that took its head out of the sea, and its eyes had the appearance of two moons, and water scattered from its two gills like the two rivers of Sura. Rav Safra relates: Once we were traveling on a ship and we saw a certain fish that took its head out of the sea, and it had horns, and the following was inscribed on them: I am a lowly creature of the sea and I am three hundred parasangs long, and I am going into the mouth of the leviathan. Rav Ashi said: That is the goat of the sea, which searches through the sea and has horns.

[28] Rabbi Yoḥanan relates: Once we were traveling on a ship and we saw a certain crate [kartalita] in which precious stones and pearls were set, and a species of fish called sharks encircled it. He descended,

[29] i.e., a diver [bar amoraei] went into the water to bring up this chest, and the fish became angry and sought to sever his thigh, but the diver threw upon it a flask of vinegar and they descended and swam away. A Divine Voice emerged and said to us: What right do you have to touch the crate of the wife of Rabbi Ḥanina ben Dosa, as she is destined to insert sky-blue wool in it to be used in the ritual fringes of the righteous in the World-to-Come?

[30] Rav Yehuda from India relates: Once we were traveling in a ship and we saw a certain precious stone that was encircled by a snake. A diver descended to bring it up, and the snake came and sought to swallow the ship. A raven came and cut off its head, and the water turned into blood due to the enormousness of the snake. Another snake came, took the precious stone, and hung it on the dead snake, and it recovered. It returned and again sought to swallow the ship, and yet again a bird came and cut off its head, took that precious stone, and threw it onto the ship. We had with us these salted birds; we placed the stone on them, and they took the stone and flew away with it.

[31] § Apropos the stories of large sea creatures, the Gemara discusses the large sea creatures mentioned in the Bible. The Sages taught: There was an incident involving Rabbi Eliezer and Rabbi Yehoshua, who were traveling on a ship, and Rabbi Eliezer was sleeping and Rabbi Yehoshua was awake. Rabbi Yehoshua trembled, and Rabbi Eliezer awoke. Rabbi Eliezer said to him: What is this, Yehoshua; for what reason did you tremble? Rabbi Yehoshua said to him: I saw a great light in the sea. Rabbi Eliezer said to him: Perhaps you saw the eyes of the leviathan, as it is written: “And his eyes are like the eyelids of the morning” (Job 41:10).

[32] Rav Ashi said: Huna bar Natan said to me: Once we were traveling in the desert, and we had a thigh of meat with us. We cut open the thigh and tore off the sciatic nerve and the forbidden fat and put it on the grass. By the time that we brought wood, the thigh had repaired itself, and we roasted it. When we returned to that place after twelve months of the year had passed, we saw that those coals were still glowing. When I came before Ameimar, he said to me: That grass was a drug of life [samterei], while those coals were of broom.

[33] The verse states: “And God created the great sea monsters” (Genesis 1:21). Here, in Babylonia, they interpreted this as a reference to the sea oryx. Rabbi Yoḥanan says: This is leviathan the slant serpent, and leviathan the tortuous serpent, as it is stated: “In that day the Lord with His sore and great and strong sword will punish leviathan the slant serpent, and leviathan the tortuous serpent” (Isaiah 27:1).

[34] § The Gemara provides a mnemonic for the following statements of Rav Yehuda citing Rav: Everything; time; Jordan. Rav Yehuda says that Rav says: Everything that the Holy One, Blessed be He, created in His world, He created male and female. Even leviathan the slant serpent and leviathan the tortuous serpent He created male and female. And if they would have coupled and produced offspring, they would have destroyed the entire world. What did the Holy One, Blessed be He, do? He castrated the male and killed the female, and salted the female to preserve it for the banquet for the righteous in the future. As it is stated: “And He will slay the serpent that is in the sea” (Isaiah 27:1).

[35] And He created even the beasts on the thousand hills (see Psalms 50:10) male and female. And they were so enormous that if they would have coupled and produced offspring, they would have destroyed the entire world. What did the Holy One, Blessed be He, do? He castrated the male and cooled the sexual desire of the female and preserved it for the righteous in the future. As it is stated about the beasts: “Lo now, his strength is in his loins” (Job 40:16); this is referring to the male. The continuation of the verse: “And his force is in the stays of his body”; this is the female, alluding to the idea that they did not use their genitals for the purpose of procreation.

[36] The Gemara asks: There too, with regard to the leviathan, let Him castrate the male and cool the female; why was it necessary to kill the female? The Gemara answers: Fish are unrestrained, and therefore even if the female was cooled, the female would still procreate. The Gemara suggests: And let Him do the opposite, and kill and preserve the male leviathan. The Gemara responds: If you wish, say that the salted female is better; if you wish, say instead that since it is written: “There is leviathan, whom You have formed to sport with” (Psalms 104:26), the male must be left alive for sport, because it is not proper conduct to sport with a female. The Gemara asks: Here too, with regard to the beasts, let Him preserve the female in salt, instead of cooling it. The Gemara answers: Salted fish is good, but salted meat is not good.

[37] And Rav Yehuda says that Rav says: At the time when the Holy One, Blessed be He, sought to create the world, He said to the minister of the sea: Open your mouth and swallow all the waters of the world, so that there will be room for land. The minister of the sea said before Him: Master of the Universe, it is enough that I will stay within my own waters. God immediately struck him and killed him; as it is stated: “He stirs up the sea with His power, and by His understanding He smites through Rahab” (Job 26:12).

[38] Rabbi Yitzḥak said: Conclude from here that the name of the minister of the sea is Rahab, and were it not for waters of the sea that cover him, no creature could withstand his smell, as his corpse emits a terrible stench. As it is stated: “They shall not hurt nor destroy in all My holy mountain; for the earth shall be full of the knowledge of the Lord, as the waters cover the sea” (Isaiah 11:9). Do not read this phrase as “cover the sea”; rather read it as: Cover the minister of the sea, i.e., the term sea is referring to the minister of the sea, not to the sea itself.

39 And Rav Yehuda says that Rav says: The Jordan issues forth from the cave of Pamyas. That is also taught in a baraita: The Jordan issues forth from the cave of Pamyas, and travels in the Sea of Sivkhi, i.e., the Hula Lake, and in the Sea of Tiberias, the Sea of Galilee, and rolls down to the Great Sea, and rolls down until it reaches the mouth of the leviathan. As it is stated: “He is confident, though the Jordan rush forth to his mouth” (Job 40:23). Rava bar Ulla strongly objects to this explanation of the verse, stating: But this verse is written about the beasts on the thousand hills. Rather, Rava bar Ulla said that this is the meaning of the verse: When are the beasts on the thousand hills confident? When the Jordan rushes forth into the mouth of the leviathan.

40 § The Gemara provides a mnemonic for the upcoming statements of Rav Dimi: Seas; Gabriel; hungry. When Rav Dimi came from Eretz Yisrael to Babylonia, he said that Rabbi Yoḥanan said: What is the meaning of that which is written: “For He has founded it upon the seas, and established it upon the floods” (Psalms 24:2)? These are the seven seas and four rivers that surround Eretz Yisrael. And these are the seven seas: The Sea of Tiberias, the Sea of Sodom, i.e., the Dead Sea, the Sea of Ḥeilat, the Sea of Ḥeilata, the Sea of Sivkhi, the Sea of Aspamya, and the Great Sea, i.e., the Mediterranean. And these are the four rivers: The Jordan, the Jarmuth, and the Keiromyon, and the Piga, which are the rivers of Damascus.

41 When Rav Dimi came from Eretz Yisrael to Babylonia he said that Rabbi Yonatan says: In the future, Gabriel will perform

42 a hunt of the leviathan, as it is stated: “Can you draw out leviathan with a fish hook? Or press down his tongue with a cord?” (Job 40:25). And were the Holy One, Blessed be He, not assisting Gabriel, he would not be able to hunt it, as it is stated: “Only He Who made him can use His sword to approach him” (Job 40:19).

43 When Rav Dimi came from Eretz Yisrael to Babylonia, he said that Rabbi Yoḥanan said: When the leviathan is hungry, he produces breath from his mouth and thereby boils all of the waters in the depths of the sea. As it is stated: “He makes the deep boil like a pot” (Job 41:23). And if the leviathan did not place its head in the Garden of Eden, no creature could withstand his foul smell, as it is stated: “He makes the sea like a seething mixture [merkaḥa]” (Job 41:23), and the term merkaḥa is also used to describe something with a smell (see Exodus 30:25).

44 And when he is thirsty, he makes many furrows in the sea, as it is stated: “He makes a path to shine after him” (Job 41:24). Rav Aḥa bar Yaakov says: After the leviathan drinks from the sea, the depth of the sea does not return to its normal condition until seventy years have passed, as it is stated: “One would think the deep to be hoary” (Job 41:24), and hoary indicates a person who is no less than seventy years old.

45 Rabba says that Rabbi Yoḥanan says: In the future, the Holy One, Blessed be He, will make a feast for the righteous from the flesh of the leviathan, as it is stated: “The ḥabbarim will make a feast [yikhru] of him” (Job 40:30). And kera means nothing other than a feast, as it is stated: “And he prepared [va’yikhreh] for them a great feast [kera]; and they ate and drank” (II Kings 6:23). And ḥabbarim means nothing other than Torah scholars, as it is stated: “You that dwell in the gardens, the companions [ḥaverim] hearken for your voice: Cause me to hear it” (Song of Songs 8:13). This verse is interpreted as referring to Torah scholars, who listen to God’s voice.

46 And with regard to the remainder of the leviathan, they will divide it and use it for commerce in the markets of Jerusalem, as it is stated: “They will part him among the kena’anim” (Job 40:30). And

kena’anim means nothing other than merchants, as it is stated: “As for the merchant [kena’an], the balances of deceit are in his hand. He loves to oppress” (Hosea 12:8). And if you wish, say that the proof is from here: “Whose merchants are princes, whose traffickers [kinaneha] are the honorable of the earth” (Isaiah 23:8).

47 And Rabba says that Rabbi Yoḥanan says: In the future, the Holy One, Blessed be He, will prepare a sukka for the righteous from the skin of the leviathan, as it is stated: “Can you fill his skin with barbed irons [besukkot]” (Job 40:31). If one is deserving of being called righteous, an entire sukka is prepared for him from the skin of the leviathan; if one is not deserving of this honor, a covering is prepared for his head, as it is stated: “Or his head with fish-spears” (Job 40:31).

48 If one is deserving at least of this reward, a covering is prepared for him, and if one is not deserving, a necklace is prepared for him, as it is stated: “And necklaces about your neck” (Proverbs 1:9). If one is somewhat deserving, a necklace is prepared for him, and if one is not deserving even of this, only an amulet is prepared for him from the skin of the leviathan, as it is stated: “Or will you bind him for your maidens” (Job 40:29), i.e., a small amulet is prepared for him, like the amulets tied on children’s necks.

49 And with regard to the remaining part of the skin of the leviathan, the Holy One, Blessed be He, spreads it on the walls of Jerusalem, and its glory radiates from one end of the world until the other end. As it is stated: “And nations shall walk in your light, and kings at the brightness of your rising” (Isaiah 60:3).

50 § With regard to the future glory of Jerusalem, the Gemara interprets the verse: “And I will make your pinnacles of kadkhod” (Isaiah 54:12). Rabbi Shmuel bar Naḥmani said: Two angels in heaven, Gabriel and Michael, disagree with regard to the material that will be used to form the walls of Jerusalem. And some say that this dispute is between two amora’im in the West, i.e., Eretz Yisrael. And who are they? They are Yehuda and Ḥizkiyya, the sons of Rabbi Ḥiyya. One said they will be made of onyx, and one said of jasper. The Holy One, Blessed be He, said to them: Let it be like this [kedein] and like that [ukhedein], i.e., let them be formed from both together. This compromise is indicated by the word kadkhod, a combination of this [kedein] and that [ukhedein].

51 The Gemara analyzes the rest of that verse: “And your gates of precious stones” (Isaiah 54:12). This should be understood in light of that incident where Rabbi Yoḥanan sat and taught: In the future, the Holy One, Blessed be He, will bring precious stones and pearls that are thirty by thirty cubits, and He will hollow out in them a hole of ten by twenty cubits and set them in the gates of Jerusalem. A certain unnamed student sneered at him, saying: Now we do not find precious stones even of the size of an egg of a dove, and yet all of this we will find?

52 After a period of time that student’s ship went to sea, where he saw ministering angels sitting and sawing precious stones and pearls that were thirty by thirty cubits, and hollowed out in them were holes of ten by twenty cubits. He said to the angels: For whom are these? They said to him that in the future, the Holy One, Blessed be He, will place them in the gates of Jerusalem. Later, the student came before Rabbi Yoḥanan and said to him: Continue to interpret, my teacher, it is fitting for you to interpret, as I saw just as you said. Rabbi Yoḥanan said to him: Worthless man, if you had not seen, you would not have believed; clearly, you are mocking the statement of the Sages. Rabbi Yoḥanan set his eyes upon him, and the student was instantly killed and turned into a pile of bones.

[53] The Gemara raises an objection against Rabbi Yoḥanan’s statement, based on a baraita. The verse states: “And I will make you go upright [komemiyyut]” (Leviticus 26:13). Rabbi Meir says: In the future, the Jewish people will have the stature of two hundred cubits, equivalent to two times the height [komot] of Adam the first man, whose height was one hundred cubits. Rabbi Meir interprets the word komemiyyut as two komot.

[54] Rabbi Yehuda says: They will have the stature of one hundred cubits, corresponding to the Sanctuary and its walls, as it is stated: “We whose sons are as plants grown up in their youth; whose daughters are as corner-pillars carved after the fashion of the Sanctuary” (Psalms 144:12). But if they are each one hundred cubits tall, how could the Jews enter the gates of Jerusalem, whose entrance gate will be ten by twenty cubits, as claimed by Rabbi Yoḥanan? The Gemara answers: When Rabbi Yoḥanan stated that idea, he was not referring to the gates themselves but to the windows that allow wind to enter.

[55] § And Rabba says that Rabbi Yoḥanan says: In the future, the Holy One, Blessed be He, will fashion seven canopies for each and every righteous individual, as it is stated: “And the Lord will create over the whole habitation of Mount Zion, and over those who are invited to it, a cloud and smoke by day, and the shining of a flaming fire by night; for over all the glory shall be a canopy” (Isaiah 4:5). This teaches that for each and every righteous individual, the Holy One, Blessed be He, fashions for him a canopy seven times over, in accordance with his honor, i.e., greater individuals receive grander and larger canopies.

[56] The Gemara asks a question with regard to the above verse: Why should there be smoke in a canopy? Rabbi Ḥanina said: It is because anyone whose eyes are narrow, i.e., is stingy, toward Torah scholars in this world, his eyes fill with smoke in the World-to-Come. And why should there be fire in a canopy? Rabbi Ḥanina said: This teaches that each and every one is burned from embarrassment at the size of the canopy of the other, and says: Woe for this embarrassment, woe for this disgrace, that I did not merit a canopy as large as his.

[57] In a similar manner, you can say that God said to Moses about Joshua: “And you shall put of your honor upon him” (Numbers 27:20), which indicates that you should put some of your honor, but not all of your honor. The elders of that generation said: The face of Moses was as bright as the face of the sun; the face of Joshua was like the face of the moon. Woe for this embarrassment, woe for this disgrace, that we did not merit another leader of the stature of Moses.

[58] Rabbi Ḥama bar Ḥanina says: The Holy One, Blessed be He, fashioned ten canopies for Adam the first man, in the Garden of Eden; as it is stated to Hiram, king of Tyre: “You were in Eden the garden of God; every precious stone was your covering, the carnelian, the topaz, and the emerald, the beryl, the onyx, and the jasper, the sapphire, the carbuncle, and the smaragd, and gold; the workmanship of your drums and of your holes was in you; they were prepared on the day that you were created” (Ezekiel 28:13). This verse mentions ten items, from carnelian to gold. Mar Zutra said: There were eleven canopies, as it states: “Every precious stone,” which is also part of the tally. Rabbi Yoḥanan said: And the worst of all of them was gold, as it is counted last, which indicates that the other items are more valuable.

[59] The Gemara asks: What is the meaning of the phrase: “The workmanship of your drums and of your holes [nekavekha]” (Ezekiel 28:13)? Rav Yehuda says that Rav says: The Holy One, Blessed be He, said to Hiram, king of Tyre: Were you in the Garden of Eden when I created all of this for you? I

looked at you, saw that you would one day claim divinity for yourself, and created many orifices [nekavim] in man, i.e., the excretory system, so that you would know that you are human and not a god. And there are those who say that this is what God said to Hiram: I looked at you

60 and I decreed death on Adam the first man, to demonstrate that he was human and not a god.

61 § The Gemara returns to the aforementioned verse: “And the Lord will create over the whole habitation of Mount Zion, and over those who are invited to it, a cloud and smoke by day” (Isaiah 4:5). What is the meaning of the phrase: “And over those who are invited to it”? Rabba says that Rabbi Yoḥanan says: Jerusalem of the World-to-Come is not like Jerusalem of this world. With regard to Jerusalem of this world, anyone who wants to ascend there can ascend. With regard to Jerusalem of the World-to-Come, only those who are invited to it can ascend.

62 And Rabba says that Rabbi Yoḥanan says: In the future, the righteous will be called by the name of the Holy One, Blessed be He; as it is stated: “Every one that is called by My name, and whom I have created for My glory, I have formed him, yea, I have made him” (Isaiah 43:7). This indicates that one who was created by God and causes Him glory is called by His name. And Rabbi Shmuel bar Naḥmani says that Rabbi Yoḥanan says: Three were called by the name of the Holy One, Blessed be He, and they are: The righteous, and the Messiah, and Jerusalem.

63 With regard to the righteous, this is as we have just said. With regard to the Messiah, this is as it is written: “And this is his name whereby he shall be called, the Lord is our righteousness” (Jeremiah 23:6). With regard to Jerusalem, this is as it is written: “It shall be eighteen thousand reeds round about. And the name of the city from that day shall be, the Lord is there [shamma]” (Ezekiel 48:35). Do not read the word as “there” [shamma]; rather, read it as: The Lord is its name [shemah]. Rabbi Elazar says: In the future, the righteous will have the name: Holy, recited before them, as one recites before the Holy One, Blessed be He; as it is stated: “And it shall come to pass, that he who is left in Zion, and he who remains in Jerusalem, shall be called holy” (Isaiah 4:3).

64 And Rabba says that Rabbi Yoḥanan says: In the future, the Holy One, Blessed be He, will raise Jerusalem three parasangs upward; as it is stated: “And it shall be lifted up and inhabited in its place” (Zechariah 14:10). What is the meaning of the phrase “in its place”? It means equivalent to its place, i.e., Jerusalem will be raised to a height whose measure in parasangs corresponds to the measure of its area in square parasangs. The Gemara asks: And from where is it derived that the place of Jerusalem was an area of three square parasangs? Rabba said that a certain elder said to me: I saw the initial Jerusalem, when it was still extant, and its area was three square parasangs.

65 The Gemara continues to discuss the statement of Rabbi Yoḥanan: And lest you say that there is discomfort in ascending to a place so high, the verse states in a prophecy depicting the return of the Jewish people to Jerusalem: “Who are these that fly as a cloud, and as the doves to their cotes” (Isaiah 60:8). This indicates that they can easily ascend to Jerusalem, as though they were clouds or doves. Rav Pappa said: Incidentally, one can learn from that statement that this cloud mentioned in the verse is three parasangs high, as it reaches Jerusalem, which will be raised three parasangs.

66 Rabbi Ḥanina bar Pappa says: The Holy One, Blessed be He, wished to give a set measure for Jerusalem, as it is stated in a prophecy of Zechariah: “And I lifted up my eyes and saw, and behold a man with a measuring line in his hand. Then I said: Where are you going? And he said to me: To measure Jerusalem, to see what is its breadth, and what is its length” (Zechariah 2:5–6).

[67] The ministering angels said before the Holy One, Blessed be He: Master of the Universe, You have created many cities in Your world for the nations of the world, and You did not give the measure of their length or the measure of their width, i.e., they are not limited by any set measure, but expand as they develop. With regard to Jerusalem, which has Your name in it, and Your Temple in it, and righteous people in it, will You give it a measure? Immediately: "And, behold, the angel that spoke with me went forth, and another angel went out to meet him, and said to him: Run, speak to this young man, saying: Jerusalem shall be inhabited without walls for the multitude of men and cattle within it" (Zechariah 2:7–8).

[68] Reish Lakish says: In the future, the Holy One, Blessed be He, will add to Jerusalem one thousand times the numerical value of tefaf of gardens; one thousand times the numerical value of kefel of towers; one thousand times the value of litzoy of fortifications; and one thousand and two times the value of shilo of small houses [totpera'ot]. And each and every one of these additions will be like the great city of Tzippori in its prosperity.

[69] The Gemara clarifies the size of the city of Tzippori. It is taught in a baraita that Rabbi Yosei said: I saw Tzippori in its prosperity, and there were one hundred and eighty thousand markets of sellers of meat sauces in it. On this basis, one can estimate the future size of Jerusalem.

[70] In a similar manner, the Gemara interprets the verse: "And the side-chambers were one over another, three and thirty times" (Ezekiel 41:6). What is the meaning of: "Three and thirty times"? Rabbi Levi says that Rav Pappi says in the name of Rabbi Yehoshua of Sikhnei: If in the future Jerusalem will triple in size, so that it occupies three times its former area, then each and every dwelling will contain thirty stories upward. If the area of Jerusalem will be multiplied by thirty, each and every dwelling will contain three stories above every house.

[71] § The Gemara returns to discuss the mishna, which discusses the acquisition of a ship. It was stated that there was a dispute among amora'im with regard to the manner in which a ship is acquired. Rav says: Once the buyer has pulled the ship and moved it by any amount, he has acquired it. And Shmuel says: He does not acquire it until he pulls the entire ship to the extent that the end of the ship has at least reached the place previously occupied by its front.

[72] The Gemara suggests: Let us say that this dispute is parallel to a dispute between tanna'im, as it is taught in a baraita: How is an animal acquired through passing? If the buyer grasped it by its hoof, or by its hair, or by the saddle that is on it, or by the load that is on it, or by the bit [perumbiyya] in its mouth, or by the bell on its neck, he has acquired it. How is an animal acquired through pulling? If he calls it and it comes, or if he hits it with a stick and it runs before him, once it lifts a foreleg and a hind leg from where it was standing, he has acquired it. Rabbi Aḥai, and some say Rabbi Aḥa, says: It is not enough if the animal lifts its hooves. Rather, one does not acquire it until it walks its full length, i.e., it moves both of its forelegs and both of its hindlegs.

[73] Shall we say that Rav, who holds that a buyer can acquire the ship even by moving it only a minimal distance, states his ruling in accordance with the opinion of the first tanna that it is enough for the animal to lift two legs; and Shmuel, who holds that the entire ship must be moved, states his ruling in accordance with the opinion of Rabbi Aḥa that the animal must move its full length? The Gemara rejects this suggestion: Rav could have said to you: I state my ruling even in accordance with the opinion of Rabbi Aḥa, since Rabbi Aḥa states his opinion only with regard to animals, as

although it lifted a foreleg and a hind leg, it stands in its place. But in the case of a ship, once a bit of it moves, all of it moves, and therefore the buyer acquires it.

[74] And Shmuel could say: I stated my ruling even in accordance with the opinion of the first tanna. The first tanna states his opinion only with regard to animals, as once an animal has lifted a foreleg and a hind leg, the other legs stand ready to be lifted. But with regard to a ship, if he pulls the entire ship, yes, he acquires it, but if he does not pull the whole ship, he does not acquire it.

[75] The Gemara offers another suggestion: Let us say that the dispute of Rav and Shmuel is parallel to the dispute between these tanna'im, as it is taught in a baraita: A ship is acquired by pulling. Rabbi Natan says: A ship and letters, i.e., the content of a promissory note, are acquired by pulling the document

[76] and by means of a bill of sale.

[77] The Gemara clarifies the baraita: Letters in promissory notes, who mentioned anything about them? Why would Rabbi Natan speak about promissory notes, which are not discussed by the first tanna? The Gemara answers: The baraita is incomplete, and this is what it is teaching: A ship is acquired by pulling, and letters, i.e., the content of a promissory note, are acquired by merely transferring the document, not through pulling. Rabbi Natan says: A ship and letters are acquired by pulling and also by means of a bill of sale.

[78] The Gemara asks: Why do I need a bill of sale for a ship? A ship is movable property, which is acquired not by means of giving a bill of sale, but through other acts of acquisition. Rather, is it not correct to say that this is what the baraita is teaching: A ship is acquired by pulling, and letters of credit by passing. Rabbi Natan says: A ship is acquired by pulling, and letters, i.e. the contents of a promissory note, are acquired either through pulling or by means of a bill of sale.

[79] The Gemara asks: If Rabbi Natan holds that a ship is acquired by pulling, his opinion is apparently identical to the opinion of the first tanna. Rather, the practical difference between the two opinions is the dispute of Rav and Shmuel. According to the opinion of one tanna the buyer must move the entire ship out of its current location, while the other tanna maintains that one must move the ship only a minimal amount. The Gemara rejects this suggestion: No, everyone, Rabbi Natan and the first tanna, holds either in accordance with the opinion of Rav, or in accordance with the opinion of Shmuel. And with regard to a ship, everyone agrees that it is acquired through pulling.

[80] When they disagree, it is with regard to acquiring letters, i.e. the contents of a promissory note. And this is what Rabbi Natan is saying to the first tanna: With regard to a ship, I certainly concede to you that it is acquired by pulling. But with regard to letters, whereas you maintain that passing suffices to acquire them, I hold that if in addition there is a bill of sale, yes, the acquisition is valid, but if not, the act of passing is not effective.

[81] And according to this interpretation, the first tanna and Rabbi Natan disagree with regard to the dispute between these tanna'im. As it is taught in a baraita: Letters, i.e., the contents of a promissory note, are acquired by merely transferring the document; this is the statement of Rabbi Yehuda HaNasi. And the Rabbis say: Whether one wrote a bill of sale but did not transfer the promissory note to the buyer, or whether he transferred the promissory note but did not write a bill of sale, the buyer does not acquire the documents until the seller both writes a bill of sale and transfers the promissory note.

[82] The Gemara asks: In accordance with which opinion did you interpret the opinion of the first tanna of the aforementioned baraita? If it is in accordance with the opinion of Rabbi Yehuda HaNasi, then let a ship be acquired also by passing, not only through pulling, as stated in the following baraita. As it is taught in a baraita: A ship is acquired by passing; this is the statement of Rabbi Yehuda HaNasi. And the Rabbis say: The buyer does not acquire it

[83] until he pulls it, or until he rents its place. How, then, can the opinion of the first tanna of the baraita be ascribed to Rabbi Yehuda HaNasi?

[84] The Gemara answers: This is not difficult; here, where Rabbi Yehuda HaNasi states that a ship is acquired through passing, he is referring to a ship situated in the public domain. Since a ship in the public domain cannot be acquired through pulling, which must be performed in a domain that is in one's possession, it is acquired through passing. By contrast, there, in the first baraita, the ship is situated in an alleyway [simta], which is not the public domain, as both parties have the right to keep their possessions there. A ship in this location must be acquired through pulling.

[85] The Gemara asks: To what case did you interpret that last baraita to be referring? It was interpreted as referring to the public domain. If so, say the latter clause of the baraita: And the Rabbis say that the buyer does not acquire it until he pulls it or until he rents its place. The Gemara asks: But if the ship is situated in the public domain, from whom can he rent the place? And furthermore, does pulling in the public domain effect acquisition? But don't Abaye and Rava both say with regard to the different methods of acquisition: Passing effects acquisition in the public domain or in a courtyard that does not belong to either of the parties; pulling effects acquisition in an alleyway or in a courtyard that belongs to both of the parties; and lifting effects acquisition in every place, even in the seller's domain.

[86] The Gemara answers: What does the baraita mean when it says: Until he pulls it, and what does it mean when it says: Until he rents its place? This is what it is saying: The buyer does not acquire the ship until he pulls it from the public domain into an alleyway. And if the ship is located in the domain of some other owner, the buyer does not acquire it until he rents its place from the owner.

[87] The Gemara asks: Shall we say that Abaye and Rava state their opinion in accordance with the opinion of Rabbi Yehuda HaNasi, not that of the Rabbis? The baraita indicates that only Rabbi Yehuda HaNasi maintains that one can acquire ownership by means of passing in the public domain.

[88] Rav Ashi said: The Rabbis agree that it is possible to effect acquisition in the public domain through the act of passing. Therefore, if it is a case where the seller says to him: Go take possession and thereby effect acquisition, so too he can effect acquisition through the act of passing, and does not need to pull it. Here the Rabbis disagree with Rabbi Yehuda HaNasi, as we are dealing with a case where the seller says to him: Go pull and thereby effect acquisition of it.

[89] Rav Ashi elaborates: One Sage, the Rabbis, holds that the seller is particular about the method by which the item is acquired, and therefore it can be acquired only through pulling. And one Sage, Rabbi Yehuda HaNasi, holds that the seller is merely indicating the manner to him, i.e., he advises him to use this act of acquisition but he does not mind if the buyer prefers to perform a different act of acquisition.

[90] § The Gemara returns to the issues of acquiring promissory notes. Rav Pappa says: One who sells a promissory note to another must write to him: Acquire it and all liens on property that are contained

within it. Rav Ashi said: I stated this halakha before Rav Kahana, and I said to him the following analysis: The reason the buyer acquires it is that the seller wrote this for him. This indicates that if he did not write this for him, the buyer does not acquire the monetary rights recorded in the promissory note.

[91] Rav Ashi asks: Why, then, did he purchase the promissory note? But does he require it to tie around the mouth of his flask as a stopper? Clearly, he purchased the document for the purpose of collecting the debt recorded in it. Rav Pappa said to me: Yes, it is possible that he purchased the promissory note in order to tie it around his flask. Since the owner did not transfer ownership of the obligation recorded in the promissory note, the buyer acquires only the paper itself.

[92] Ameimar says: The halakha is that letters are acquired by merely transferring the document to the buyer, in accordance with the opinion of Rabbi Yehuda HaNasi. Rav Ashi said to Ameimar: Is your ruling based on a tradition or on your own logical reasoning? Ameimar said to him: It is based on a tradition. Rav Ashi said: It also stands to reason that the contents of a promissory note are acquired through transferring, as letters, i.e., the contents of a promissory note, are words, i.e., the buyer is acquiring the right to a monetary obligation, not a physical item, and words cannot be acquired through other words.

[93] The Gemara asks: And is it true that documents cannot be acquired through words? But doesn't Rabba bar Yitzḥak say that Rav says: There are two types of documents. The first type is where one says to others: Take possession of this field for so-and-so and write the document for him as proof of the sale of the field. In this case, he may renege with regard to the document, i.e., he may change his mind and tell them not to write it. But he may not renege with regard to the field, as the buyer has already acquired it.

[94] The second type of document is where he said: Take possession of this field for so-and-so on the condition that you write him a document. If the document has not yet been delivered he can retract his instruction both with regard to the document and with regard to the field, as the transfer of the field is dependent on the writing of the document.

[95] And Rav Ḥiyya bar Avin says that Rav Huna says: There are actually three types of documents. Two are those that we stated above, and the other is if the seller wrote the document in advance.

[96] This is like that which we learned in a mishna (167b): A scribe may write a bill of sale for the seller even if the buyer is not with him when the seller presents his request. In a case of this kind, once this buyer takes possession of the land the deed is acquired wherever it is. And this is that which we learned in another mishna (Kiddushin 26a): Property that does not serve as a guarantee, i.e., movable property, can be acquired together with property that serves as a guarantee, i.e., land, when the land is acquired by means of giving money, or by means of giving a document, or by means of taking possession. This shows that a bill of sale can be transferred without any act of acquisition performed for the document, and certainly through words, which presents a difficulty to Rav Ashi's opinion.

[97] The Gemara answers: Acquiring a bill of sale by means of acquisition of land is different, as it is similar to acquisition through an item, not by means of words. The reason is that money, which cannot be acquired through symbolic exchange, a pro forma act of acquisition effecting the transfer of ownership of an item, nevertheless can be acquired by means of land.

98 This is like that incident where Rav Pappa had deposited twelve thousand dinars with bailees in Bei Ḥozai. He transferred ownership of the money in Bei Ḥozai to his agent Rav Shmuel bar Aḥa by means of the threshold of his house. The Gemara adds: When Rav Shmuel bar Aḥa came from Bei Ḥozai with the money, Rav Pappa was so happy that he was bringing him his money that he went out all the way until Tavakh to greet him.

99 § The mishna teaches that when one sells a ship he has sold various other items; but he has not sold the slaves, nor the packing bags, nor the antikei. But when one said to the buyer: You are purchasing the ship and all that it contains, all of these are sold as well. The Gemara asks: What is the meaning of antikei? Rav Pappa said: It means the merchandise that is on the ship. This merchandise is not sold together with the ship.

100 MISHNA: One who sold a wagon [hakkaron] has not sold the mules that pull the wagon. Similarly, if one sold the mules, he has not sold the wagon. One who sold a yoke [hatzemed] has not sold the oxen, and one who sold the oxen has not sold the yoke. Rabbi Yehuda says: The sum of money indicates what one has sold. How so? If the buyer said to the seller: Sell me your yoke for two hundred dinars, since it is a known matter that a yoke is not sold for two hundred dinars he clearly intended to purchase the oxen as well. And the Rabbis say: The sum of money is not proof.

101 GEMARA: Rav Taḥlisa, from the West, i.e., Eretz Yisrael, taught a baraita before Rabbi Abbahu. If one sold a wagon, he has sold the mules together with it. Rabbi Abbahu asked: But didn’t we learn in the mishna that he has not sold the mules? Rav Taḥlisa said to him: Should I erase this baraita, as it is incorrect? Rabbi Abbahu said to him: No, do not erase it; you should explain that your baraita is referring to a case where the mules are fastened to the wagon. In that situation, one who purchases the wagon receives the mules as well.

102 The mishna teaches: One who sold a yoke has not sold the oxen; and the Rabbis and Rabbi Yehuda disagree over whether the sum of money proves exactly what was sold. The Gemara analyzes their disagreement: What are the circumstances? If we say that the mishna is referring to a place where they call a yoke: Tzimda, and they call oxen: Bakar, it is obvious that he sold him a yoke and did not sell him the oxen. But if the mishna is referring to a place where they also call oxen: Tzimda, then the seller sold him everything.

103 The Gemara explains: No, their dispute is necessary in a place where they call a yoke: Tzimda, and call oxen: Bakar, but there are also those who call oxen: Tzimda. Since it is unclear what is meant by the term: Tzimda, Rabbi Yehuda holds that the sum of money indicates whether he purchased a yoke or oxen, and the Rabbis hold that the amount of money does not serve as proof. The Gemara asks: But if the amount of money does not serve as proof, then in a case where the buyer paid two hundred dinars and received only a yoke, let the transaction be nullified.

104 And if you would say that the Rabbis do not hold that in a case of exploitation of less than one-sixth one must return the money and that if it was more than one-sixth there is nullification of the transaction, can it be maintained that they do not accept these halakhot? But didn’t we learn in a mishna (Bava Metzia 56b) that Rabbi Yehuda says: Even in the case of one who sells a Torah scroll, an animal, or a pearl, these items are not subject to the halakhot of exploitation, as they have no fixed price. The Rabbis said to him: The early Sages stated that only these items listed earlier in the mishna, i.e., land, slaves, and documents, are not subject to the halakhot of exploitation. Therefore, the Rabbis should agree that the sale of the yoke is nullified.

[105] The Gemara answers: What is the meaning of the mishna that teaches that according to the opinion of the Rabbis the sum of money is not proof? This means that the transaction is nullified. And if you wish, say instead that the sale of the yoke is not nullified, because when the Sages spoke of exploitation and the nullification of a transaction, they meant that these halakhot apply only in a case where the difference in price is an amount about which one could be mistaken and believe that this is the correct price. But when the difference in price is so great a sum that one could not be mistaken, this sale is not subject to the halakhot of exploitation. In that case, one must say that the buyer gave the extra money to the seller as a gift; he could not have thought that this was the actual price of the object.

[106] MISHNA: One who sells a donkey has not sold its vessels, i.e., its equipment, with it. Naḥum the Mede says: He has sold its vessels. Rabbi Yehuda says: There are times when the vessels are sold, and there are times when they are not sold. How so? If the donkey was before him and its vessels were on it, and the buyer said to him: Sell me this donkey of yours, its vessels are sold. If the buyer said to him: Is the donkey yours; I wish to purchase it, its vessels are not sold.

[107] GEMARA: Ulla says: The dispute in the mishna is referring to the donkey's sack and the saddlebag [disakkaya] and the kumni, a term explained later in the Gemara. As the first tanna holds: An ordinary donkey is used primarily for riding, and therefore these articles, which are not used for riding but for carrying burdens, are not included in the sale. And Naḥum the Mede holds: An ordinary donkey is used for carrying burdens, and therefore the items that serve this purpose are sold along with the donkey. But with regard to the saddle and the saddlecloth, the harness and the saddle band, everyone agrees that they are sold, as they are used both for riding and for carrying burdens.

[108] The Gemara raises an objection from a baraita. If a seller says: I am selling you a donkey and its vessels, this one has sold the saddle, and the saddlecloth, and the harness, and the saddle band. But he has not sold the sack, and the saddlebag, and the kumni. And when the seller said to the buyer: I am selling it and everything that is on it, to you; the donkey and all of these items are sold. It can be inferred from here that the reason that the buyer acquires the saddle and the saddlecloth is that the seller said to him: I am selling you a donkey and its vessels. By inference, if the seller did not say this, the buyer does not acquire them.

[109] The Gemara answers: The same is true even if the seller did not say to him: I am selling you a donkey and its vessels. In that case as well, the saddle and the saddlecloth are sold. And this is what the baraita teaches us: That even though the seller said to him: I am selling you a donkey and its vessels, the buyer still does not acquire the sack and the saddlebag and the kumni.

[110] The Gemara inquires: What is the meaning of: And the kumni? Rav Pappa bar Shmuel said: This is the saddle used by women.

[111] A dilemma was raised before the Sages: Does this dispute apply only to a case where the vessels are on the donkey, but when the vessels are not on the donkey, Naḥum the Mede concedes to the Rabbis that they are not sold? Or perhaps the dispute applies to a case where the vessels are not on the donkey, but when the vessels are on the donkey the Rabbis concede to Naḥum that the vessels are sold. The Gemara suggests: Come and hear a proof from the aforementioned baraita: And when the seller said to the buyer: I am selling it and everything that is on it, the donkey and all of these items are sold. In this case, the vessels are on the donkey, and everything is sold.

[112] Granted, if you say that the dispute applies when the vessels are on the donkey, in accordance with whose opinion is this ruling? It is the opinion of the Rabbis that although in general one does not acquire the vessels, if the seller explicitly says that he is selling the donkey and everything on it, the buyer acquires it all. But if you say that the dispute applies when the vessels are not on the donkey, but when the vessels are on the donkey everyone agrees that they are sold, in accordance with whose opinion is this ruling? Even according to the opinion of the Rabbis there is no need to say explicitly that he is selling everything.

[113] The Gemara answers: Actually, the dispute applies when the vessels are not on the donkey, and the baraita is in accordance with the opinion of the Rabbis, and the language of the baraita should be emended to say: And when he said to him: I am selling it and everything that is fit to be on it, i.e., those items usually found on a donkey, everything is sold.

[114] The Gemara suggests another proof: Come and hear a solution from the mishna. Rabbi Yehuda says: There are times when the vessels are sold, and there are times when they are not sold. What, is it not the case that Rabbi Yehuda is referring to that which the first tanna said? If so, the dispute between the Rabbis and Naḥum the Mede must be referring to a case where the vessels are on the donkey, as Rabbi Yehuda addresses the same set of circumstances. The Gemara rejects this proof: No, Rabbi Yehuda

[115] was speaking of a different matter and was not necessarily addressing the same case discussed in the beginning of the mishna.

[116] Ravina said to Rav Ashi: Come and hear a resolution of the dilemma, as it was taught in the previous mishna: If one sold a wagon he has not sold the mules that pull the wagon. And Rav Taḥlisa, from the West, i.e., Eretz Yisrael, taught a baraita before Rabbi Abbahu: If one sold a wagon, he has sold the mules along with it. And Rabbi Abbahu said to him: But didn’t we learn in the mishna that he has not sold the mules? And Rav Taḥlisa said to him: Should I erase this baraita? And Rabbi Abbahu said to him: No, you should explain that your baraita is referring to a case where the mules are fastened to the wagon.

[117] One can learn by inference from Rabbi Abbahu’s statement that the mishna is referring to a situation where the mules are not fastened to the wagon. And since the first clause, i.e., the previous mishna, is referring to a case corresponding to where the vessels are not on the donkey, i.e., the mules are not fastened to the wagon, the latter clause, the mishna here, must also be referring to a situation where the vessels are not on the donkey.

[118] The Gemara rejects this proof: On the contrary, say the first clause, i.e., the preceding mishna: One who sells a ship sells the mast along with it, but he has not sold either the slaves or the antikei. And we said: What is the meaning of antikei? Rav Pappa said: It means the merchandise that is in the ship. But according to your logic, since the first clause, i.e., the mishna concerning the ship, is referring to a case where the merchandise is on the ship, the latter clause, the mishna here, must also be referring to a case where the vessels are on the donkey. Rather, the tanna teaches each statement individually, and the circumstances of one ruling do not prove that another ruling is referring to a parallel case.

[119] The Gemara provides a mnemonic based on the letters of the names of the tanna’im who appear here: Zayin, gimmel, mem; nun, samekh, nun. Abaye said: Rabbi Eliezer, and Rabban Shimon ben

Gamliel, and Rabbi Meir, and Rabbi Natan, and Sumakhos, and Naḥum the Mede all hold that when a person sells an item, he sells it and all of its accoutrements.

120 Rabbi Eliezer holds this, as we learned in a mishna (67b) that Rabbi Eliezer says: One who sells an olive press has sold the beam used for pressing the olives, despite the fact that the beam can be removed from the press. Rabban Shimon ben Gamliel holds this, as we learned in a mishna (68b) that Rabban Shimon ben Gamliel says: One who sells a city has sold the city's guardsman. Rabbi Meir holds this, as it is taught in a baraita that Rabbi Meir says: If one sold a vineyard, he has sold the accoutrements of the vineyard. Rabbi Natan and Sumakhos hold this, as they state with regard to the bitzit and the dugit, i.e., the light-going boats of the ship, which they claim are sold when the ship is sold (73a). Naḥum the Mede holds this, as is evident from that which we said in the mishna here.

121 § The mishna teaches that Rabbi Yehuda says: There are times when the vessels are sold, and there are times when they are not sold. How so? If the donkey was before him and its vessels were on it, and the buyer said to him: Sell me this donkey of yours, its vessels are sold. If the buyer said: Is the donkey yours? I wish to purchase it, its vessels are not sold. The Gemara asks: What is different in a case where the buyer said: Sell me this donkey of yours, and what is different in a case where he said: Is the donkey yours?

122 Rava said that when the buyer says: Sell me this donkey of yours, he knows that the donkey belongs to the seller, and as for that which he said to him: This, he said that to him due to its vessels. By contrast, when the buyer says: Is the donkey yours, this indicates that the buyer does not know that the donkey belongs to the seller, and this is what he is saying to him: Is the donkey yours that you can sell it to me? In this case, he is interested only in the donkey and not its vessels.

123 MISHNA: One who sells a female donkey has sold its foal along with it. But one who sold a cow has not sold its young. One who sold a dunghill has sold its manure. One who sold a cistern has sold its water. One who sold a beehive has sold the bees in it, and likewise one who sold a dovecote has sold the doves.

124 GEMARA: The mishna teaches that if one sells a donkey he has sold its foal, but if one sells a cow he has not sold its calf. The Gemara asks: What are the circumstances? If this is a case where the seller says to the buyer that he is selling it and its young, even the cow and its young should be sold as well. If this is a case where he does not say to him that he is selling it and its young, even the donkey should not be sold with its foal.

125 Rav Pappa said: This is referring to a case where the seller said to the buyer: I am selling you a nursing donkey, or: I am selling you a nursing cow. Granted, with regard to the cow, one could say that he needs it for its milk, and the suckling calf would not necessarily be included in the sale. But with regard to the donkey, for what reason is he saying to him that the donkey is nursing? Since he does not need the milk of a donkey, learn from here that he is saying to him that he is selling it and its young. The Gemara adds tangentially: And why does the mishna call a donkey foal a seyaḥ? It is because it follows after and obeys pleasant talk [siḥa], whereas an old donkey must be led forcibly.

126 The Gemara cites a related discussion. Rabbi Shmuel bar Naḥman says that Rabbi Yoḥanan says: What is the meaning of that which is written: "Therefore they that speak in parables [hamoshlim] say: Come to Heshbon! Let the city [ir] of Sihon be built and established! For a fire is gone out of Heshbon, a flame from the city of Sihon; it has devoured Ar of Moab, the lords of the high places of Arnon" (Numbers 21:27–28)?

[127] The Gemara interprets these verses homiletically. “Hamoshlim”; these are the people who rule over [hamoshlim] their evil inclination. They will say: “Come to Heshbon,” meaning: Come and let us calculate the account of [ḥeshbono] the world, i.e., the financial loss incurred by the fulfillment of a mitzva in contrast to its reward, and the reward for committing a transgression, i.e., the pleasure and gain received, in contrast to the loss it entails.

[128] “Let it be built and established” means that if you make this calculation, you will be built in this world and you will be established in the World-to-Come. The phrase “city [ir] of Sihon” means that if a person fashions himself like this young donkey [ayir] that follows after pleasant talk [siḥa], i.e., if one is easily tempted to listen to his inclination, what is written after it? “For a fire is gone out of Heshbon…it has devoured,” i.e., a fire will go out from those who calculate the effect of their deeds in the world, and will consume those who do not calculate and examine their ways but instead do as they please.

[129] A similar interpretation applies to the continuation of the verse: “A flame from the city of Sihon”; this means that a flame will come from the city of righteous people, who are called trees [siḥin]. “It has devoured Ar of Moab”; this is referring to one who follows after his inclination like this young donkey [ayir] that follows after pleasant talk. “The lords of the high places of Arnon”; this is referring to the arrogant. As the Master says: Every person who has arrogance in him will fall into Gehenna.

[130] The Gemara interprets a subsequent verse: “We have shot at them [vanniram], Heshbon is perished, even until Dibon, and we have laid waste even until Nophah, which reaches until Medeba” (Numbers 21:30). “Vanniram”; this indicates that the wicked person says: There is no higher [ein ram] power governing the world. “Heshbon is perished” means: The account [ḥeshbon] of the world has perished, i.e., they claim there is no accountability for one’s actions. “Even until Dibon [divon]”; the Holy One, Blessed be He, says: Wait until judgment comes [yavo din]. “And we have laid waste

[131] even until Nophah,” meaning until the fire comes that does not require fanning [nippuaḥ], i.e., the fire of Gehenna, which will consume them. “Until Medeba [Medeva]”; this means until their souls are pained [tadiv]. And some say an alternative explanation: It means until God does what He wishes [mai deva’ei] with them and punishes them as they deserve.

[132] Rav Yehuda says that Rav says: With regard to anyone who separates himself from matters of Torah, a fire consumes him, as it is stated: “And I will set My face against them; out of the fire they come forth, and the fire shall devour them” (Ezekiel 15:7). The Torah is likened to fire in the verse: “Is not My word like fire?” (Jeremiah 23:29). The verse in Ezekiel teaches: “Out of the fire they come forth,” referring to those who separate themselves from the fire of Torah; “and the fire shall devour them,” i.e., they are consumed by the fire of Gehenna.

[133] When Rav Dimi came from Eretz Yisrael to Babylonia, he said that Rabbi Yonatan says: Anyone who separates himself from the matters of Torah falls into Gehenna. As it is stated: “The man who strays out of the way of understanding shall rest in the congregation of the spirits” (Proverbs 21:16). “The way of understanding” is the way of the Torah. And one who departs from the Torah arrives in the place of the spirits, which is nothing other than Gehenna, as it is stated: “But he does not know that the spirits are there; that those whom she has called are in the depths of the netherworld” (Proverbs 9:18).

134 § The mishna teaches: One who sold a dunghill has sold its manure, and one who sold a cistern has sold its water. We learned in a mishna elsewhere (Me’ila 12b): With regard to any item that is fit to be sacrificed on the altar but is not fit for Temple maintenance, or is fit for Temple maintenance but not for the altar, or items that are fit neither for the altar nor for Temple maintenance in their current state and are slated to be sold with the profit used for the Temple, in all these cases if one consecrates these items and then derives benefit from them or their contents for a non-sacred purpose, he thereby is liable for misuse of consecrated property and is obligated to bring an offering as atonement.

135 How so? One who consecrated a cistern filled with water, dunghills filled with manure, a dovecote filled with doves, a field filled with plants, or a tree bearing fruit, and subsequently derived benefit from them or their contents is liable for misuse of consecrated property.

136 But with regard to one who consecrated a cistern and it was later filled with water, a dunghill and it was later filled with manure, a dovecote and it later was filled with doves, a tree and it later bore fruit, or a field and it was later filled with plants, if he derives benefit from them he is liable for misuse of consecrated property but he is not liable for misuse of consecrated property by deriving benefit from its contents. This is the statement of Rabbi Yehuda. Rabbi Yosei says: With regard to one who consecrated a field or a tree, he is liable for misuse of consecrated property if he derives benefit from them or that which grows from them, because they are growths of consecrated property.

137 It is taught in a baraita that Rabbi Yehuda HaNasi said: The statement of Rabbi Yehuda appears to be correct in the cases of a cistern and a dovecote, i.e., if one consecrated an empty cistern or dovecote, the water or doves that later fill it do not become consecrated. And the statement of Rabbi Yosei appears to be correct in the cases of a field and a tree. The Gemara asks: What is the meaning of this statement of Rabbi Yehuda HaNasi? Granted, when he says that the statement of Rabbi Yehuda appears to be correct in the cases of a cistern and a dovecote, by inference this means that Rabbi Yehuda disagrees with Rabbi Yosei in the cases of a field and a tree, and Rabbi Yehuda does explicitly disagree in those cases.

138 But when Rabbi Yehuda HaNasi says that the statement of Rabbi Yosei appears to be correct in the cases of a field and a tree, this indicates by inference that Rabbi Yosei disagrees with Rabbi Yehuda in the cases of a cistern and a dovecote. But Rabbi Yosei stated his opinion solely in the cases of a field and a tree, as only plants and fruit grow directly from consecrated property, and this reasoning is not relevant in the case of a cistern or dovecote.

139 And if you would say that Rabbi Yosei stated his opinion in accordance with the statement of Rabbi Yehuda, whereas he himself holds that even the items found in a dovecote or a cistern are consecrated, this is difficult: But isn’t it taught in a baraita that Rabbi Yosei said: I do not see the statement of Rabbi Yehuda as correct in the cases of a field and a tree, because the plants and the fruit are the growths of consecrated property? Infer from here that it is in the cases of a field and a tree that Rabbi Yosei does not see and accept the opinion of Rabbi Yehuda. But in the cases of a cistern and a dovecote, he does see and accept his opinion.

140 The Gemara answers that this is what Rabbi Yehuda HaNasi is saying: The statement of Rabbi Yehuda appears to Rabbi Yosei to be correct in the cases of a cistern and a dovecote. In other words, Rabbi Yehuda HaNasi is saying that even Rabbi Yosei disagrees with Rabbi Yehuda only in the cases of a field and a tree. But in the cases of a cistern and a dovecote, he concedes to him that the

prohibition against misuse of consecrated property does not apply to items that were added afterward and were not present at the time of the consecration.

141 The Sages taught: In the case of cisterns, with regard to one who consecrated them when they were empty and they were later filled, if one derives benefit from them he is liable for misuse of consecrated property, but he is not liable for misuse of consecrated property if he derives benefit from their contents. This ruling will be clarified below. Rabbi Elazar, son of Rabbi Shimon, says: One is liable for misuse of consecrated property even by deriving benefit from their contents.

142 Rabba says: This dispute in the baraita applies only in the cases of a field and a tree, as the first tanna holds in accordance with the opinion of Rabbi Yehuda, and Rabbi Elazar, son of Rabbi Shimon, holds in accordance with the opinion of Rabbi Yosei. But in the cases of a cistern and a dovecote, everyone agrees that if one derives benefit from them he is liable for misuse of consecrated property but he is not liable for misuse of consecrated property if he derives benefit from their contents.

143 Abaye said to him: But consider that which is taught in the continuation of the baraita: If one consecrated them when they were full and then derives benefit from them or from their contents, he is liable for misuse of consecrated property. And Rabbi Elazar, son of Rabbi Shimon, reverses his previous ruling in this case and holds that if the items were consecrated when full their contents are not subject to the prohibition against misuse of consecrated property.

144 And if their dispute is referring to a field and a tree, why does Rabbi Elazar, son of Rabbi Shimon, reverse his opinion? Rather, Rabba's statement must be adjusted, and this is what Rabba said: This dispute between the first tanna and Rabbi Elazar, son of Rabbi Shimon, applies only in the cases of a cistern and a dovecote. But in the cases of a field and a tree, everyone agrees that one is liable for misuse of consecrated property if one derives benefit from them or their contents.

145 The Gemara asks: And in the cases of a cistern and a dovecote, where the cistern and the dovecote are empty, with regard to what matter do they disagree? And similarly, where the cistern and the dovecote are full, with regard to what do they disagree? The Gemara answers: In the cases of a cistern and a dovecote that are empty, they disagree with regard to the matter that is the subject of the dispute between Rabbi Meir and the Rabbis.

146 The first tanna and Rabbi Elazar, son of Rabbi Shimon, disagree because the first tanna holds in accordance with the opinion of the Rabbis, who say: A person cannot transfer ownership of an object that has not yet come into the world, i.e., that one does not currently own. Therefore, one cannot consecrate water or doves that will enter the cistern or dovecote only in the future. And Rabbi Elazar, son of Rabbi Shimon, holds in accordance with the opinion of Rabbi Meir, who says: A person can transfer ownership of an object that has not yet come into the world.

147 The Gemara raises a difficulty with regard to this answer: You can say that you heard Rabbi Meir express this opinion in a case such as the fruit of palm trees, which are likely to come into existence, as the trees naturally produce fruit. But with regard to these doves and water, who can say that they will come? Rava said: You can find cases where one consecrates water or doves that are likely to arrive, e.g., in the case of water that comes by way of his courtyard into the cistern when it rains, so that he does not need to fill the cistern. And similarly with regard to doves that come by way of his other, full dovecote into this empty dovecote.

148 The Gemara asks: And in cases where the cistern and the dovecote are full, with regard to what matter do they disagree? Rava said: This dispute concerns a case where he consecrated a cistern without specification. And Rabbi Elazar, son of Rabbi Shimon, holds in accordance with the opinion of his father, who says: One infers the halakha of consecration to the Most High from the halakha of transactions between one ordinary person [hedyot] and another.

149 The Gemara elaborates: Just as the halakha with regard to transactions between one ordinary person and another is that one can say: I sold you the cistern but I did not sell you the water it contains, so too, the halakha in the case of consecration to the Most High is that one can say: I consecrated the cistern but I did not consecrate the water within it. And the first tanna holds that one does not infer the halakha of consecration to the Most High from the halakha of transactions between one ordinary person and another. Rather, one who consecrates property does so generously, i.e., the most expansive meaning is assumed for his vow of consecration, and therefore even if he did not say so explicitly, he consecrated the water together with the cistern.

150 The Gemara asks: And does the halakha concerning a transaction with an ordinary person say that one does not sell the water along with the cistern? But didn't we learn in the mishna (78b) that one who sold a cistern has sold its water? Rava said: The ruling in the mishna is an individual opinion, as it is taught in a baraita: One who sold a cistern has not sold its water. Rabbi Natan says: One who sold a cistern has sold its water.

151 MISHNA: One who buys the produce of a dovecote from another, i.e., the doves that will hatch over the course of the year in a dovecote, must leave [mafriaḥ] the first pair of doves from the brood for the seller. If one buys the produce of a beehive, i.e., all the bees produced from a beehive over the course of the year, the buyer takes three swarms and then the seller renders the bees impotent, so that they will stop producing offspring and instead produce only honey. One who buys honeycombs must leave two combs. If one buys olive trees for felling, he must leave two shoots for the seller.

152 GEMARA: The mishna teaches that one who buys the brood of a dovecote must leave the first pair of the brood for the seller. The Gemara asks: But isn't it taught in a baraita that one must leave the first and the second pairs of a brood for the seller? Rav Kahana said: This is not difficult. This statement in the mishna is referring to the pair left for the first pair of the brood itself, i.e., an extra pair of doves must be left behind to ensure that the first brood will not fly away. That statement of the baraita is referring to a pair left for the mother of the pair discussed in the mishna. In other words, the baraita is saying that one must leave a pair of doves for the mother, and later a second pair from the brood of her children, which is the pair mentioned by the mishna.

153 The Gemara asks: What is different about the mother that there is no concern that she will escape from the dovecote? If the reason is that she is attached to her daughter and the mate which one leaves for her, this should also be true with regard to the daughter, i.e., she too will become attached to her mother and the mate which one leaves for her. Why, then, is it necessary to leave behind a pair of the daughter's own brood to ensure that the daughter will not leave? The Gemara answers: A mother is attached to her daughter, whereas a daughter is not attached to her mother. Therefore, in order for the daughter to remain in the dovecote it is necessary to leave the daughter's brood with her.

154 § The mishna teaches that one who buys the produce of a beehive takes three swarms and then the seller renders the bees impotent [mesares]. The Gemara asks: By what means does he render them impotent? Rav Yehuda said that Shmuel said: He renders them impotent by feeding them

mustard. They say in the West, Eretz Yisrael, in the name of Rabbi Yosei bar Ḥanina: It is not the mustard itself that renders them impotent. Rather, since their mouths sting from the bitterness of the mustard, they return and eat their own honey. Due to their excessive eating of honey, they cease to form new swarms and instead produce honey for the seller.

155 Rabbi Yoḥanan says: This is not the meaning of mesares. Rather, the mishna should be understood as follows: One takes three swarms by skipping [beseirus] every other swarm, so that the buyer receives the first, third, and fifth swarms, while the others remain with the seller. It is taught in a baraita: The buyer takes the first three swarms one after the other, and from this point forward he takes one and leaves one.

156 § The mishna teaches that one who buys honeycombs must leave two combs and one who buys olive trees for felling must leave two shoots. Rav Kahana says: As long as honey remains in the beehive it never leaves its status as food, i.e., it is always considered fit for human consumption. The Gemara notes: Apparently, Rav Kahana holds that honey does not require that one have intention to eat it for it to be susceptible to ritual impurity.

157 The Gemara raises an objection from a baraita: Honey in a beehive is not considered to have the status of either food or liquid with regard to ritual impurity. Abaye said: This halakha, that honey is considered neither food nor liquid, is necessary only with regard to those two combs mentioned in the mishna, which are designated for the sustenance of the bees and are not for human consumption. Rava said: The baraita is in accordance with the opinion of Rabbi Eliezer.

158 As we learned in a mishna (Shevi’it 10:7): Concerning a beehive, Rabbi Eliezer says: It is considered like land with regard to the manner in which one purchases it and with regard to other matters, and therefore one writes a document that prevents the Sabbatical Year from canceling an outstanding debt [prosbol] based on it, as a prosbol can be written only if the debtor possesses land of some sort.

159 And a beehive is not susceptible to ritual impurity, provided that it is in its place and attached to the ground, as it is considered equivalent to the ground itself, which is not susceptible to impurity. And one who takes honey out of it on Shabbat is liable to bring a sin-offering, like one who uproots something from the ground. According to this opinion, honey in a beehive is not considered to have the status of either food or liquid with regard to ritual impurity, as it is attached to the ground.

160 The mishna continues: And the Rabbis say: A beehive has the status of movable property; one may not write a prosbol based on it, and it is not considered like land with regard to its sale but is instead sold in the manner of movable property. And it is susceptible to ritual impurity even when it is in its place, and one who takes honey out of it on Shabbat is exempt from bringing a sin-offering. According to this opinion, the honey contained within the beehive is considered detached from the ground and is therefore susceptible to ritual impurity, as stated by Rav Kahana.

161 Rabbi Elazar said: What is the reasoning of Rabbi Eliezer? As it is written with regard to Jonathan: “He put forth the end of the rod that was in his hand, and dipped it in the honeycomb [ya’arat hadevash]” (I Samuel 14:27). Now, what does a forest [ya’ar] have to do with honey [devash]? Why is the honeycomb called a forest of honey [ya’arat hadevash]? Rather, this serves to tell you: Just as with regard to a forest, one who picks fruit from a tree on Shabbat is liable to bring a sin-offering, so too, with regard to honey, one who removes honey from a beehive on Shabbat is liable to bring a sin-offering.

[162] The Gemara raises an objection from a baraita: Honey that flows from one’s beehive is not considered either food or liquid. Granted, according to the reasoning of Abaye this works out well, since he would explain here, as in the previous case, that this is referring to the two combs in the beehive designated for the sustenance of the bees, and is not intended for human consumption.

[163] But according to the opinion of Rava, who says that the baraita is in accordance with the ruling of Rabbi Eliezer, this presents a difficulty, as even according to Rabbi Eliezer the honey is not considered attached to the ground once it leaves the beehive. Rav Zevid said: The baraita is referring to a case where the honey flowed onto a repulsive vessel and therefore is unfit for human consumption. Rav Aḥa bar Yaakov said: It is referring to a case where it flowed onto straw [kashkashin] and weeds, which renders it inedible.

[164] The Gemara raises another objection from a baraita: Honey in one’s beehive is not considered either food or liquid. If one intended to use it as food, it is susceptible to ritual impurity as food, and if one intended to use it as liquid, it is susceptible to ritual impurity as liquid. Granted, according to the reasoning of Abaye, this works out well, as he can explain that this too is referring to the two combs of honey left for the bees, and that if one reconsidered and decided to eat the honey, it is once again considered fit for human consumption.

[165] But according to Rava, who said that the ruling of the baraita that honey in a beehive does not have the status of food or liquid is in accordance with the opinion of Rabbi Eliezer, this poses a difficulty. This baraita does not accord with the reasoning of Rabbi Eliezer, as he maintains that one’s intention is not enough for honey attached to the ground to be considered as though it were detached. Therefore, the baraita must be in accordance with the opinion of the Rabbis, and yet it contradicts Rav Kahana’s statement that intention is not required for honey to be susceptible to ritual impurity.

[166] The Gemara answers: Rava could have said to you that the baraita is in fact in accordance with the opinion of Rabbi Eliezer, and you should resolve the difficulty and answer like this: If one intended to use the honey as food, it is not susceptible to ritual impurity as food, and if one intended to use it as liquid, it is not susceptible to ritual impurity as liquid. The Gemara notes: It is taught in a baraita in accordance with the opinion of Rav Kahana: Honey in one’s beehive is susceptible to ritual impurity as food even if there was no intention to use it as food, as it has an innate status of food.

[167] § The mishna teaches: If one buys olive trees for felling, he must leave two shoots from the tree. The Sages taught: One who buys a tree from another for felling must cut the tree one handbreadth above the ground, to allow the tree to grow again. In the case of an untrimmed sycamore, he must cut the tree a minimum of three handbreadths above the ground, and with regard to a large sycamore, which has strong roots because the sycamore has been cut down once already, he must cut the tree a minimum of two handbreadths above the ground. In the case of reeds or of vines, he may cut only from the knot and above, so that they will grow back. In the cases of palm and of cedar trees, he may dig down and uproot them, because their trunks do not replenish themselves after they are cut down, and therefore there is no reason to leave anything behind.

[168] The Gemara asks: And do we require an untrimmed sycamore to be cut a minimum of three handbreadths above the ground for it to grow back? And the Gemara raises a contradiction from a mishna (Shevi’it 4:5): One may not fell an untrimmed sycamore during the Sabbatical Year because it is considered work, as it promotes the growth of the tree.

169 The mishna continues. Rabbi Yehuda says: It is prohibited for one to fell the tree during the Sabbatical Year in its usual manner; rather, he must cut the tree ten handbreadths above the ground, or raze the tree until it is even with the ground. Neither of these methods promote the growth of the tree; in fact, they damage it. It can be inferred from here that it is only cutting the sycamore until it is even with the ground that is harmful for it, and it does not grow again. Cutting in another manner is beneficial for it, even if it is cut less than three handbreadths from the ground.

170 Abaye said that the mishna should be understood as follows: Cutting down a sycamore from a height of three handbreadths is beneficial for it, whereas cutting it so that it is even with the ground is certainly harmful for it and is permitted during the Sabbatical Year. Cutting it down from this point onward, i.e., between the ground and three handbreadths, is neither very harmful for it nor particularly beneficial for it. With regard to the Sabbatical Year, we perform only a matter that is certainly harmful to it, so as to avoid enhancing it. With regard to buying and selling, we perform only a matter that is certainly beneficial for it, as the seller intended to sell the sycamore in such a manner that the tree would grow again.

171 The baraita teaches: In the case of palm and cedar trees, a buyer may dig down and uproot them, because their trunks do not replenish themselves after being cut down. The Gemara asks: And is it correct with regard to a cedar that its trunk does not replenish itself? But didn’t Rabbi Ḥiyya bar Lulyani teach: What is the meaning of that which is written: “The righteous shall flourish like the palm tree; he shall grow like a cedar in Lebanon” (Psalms 92:13)? If “palm tree” is stated, why is “cedar” stated? And if “cedar” is stated, why is “palm tree” stated? What is added by this double comparison?

172 Rabbi Ḥiyya bar Lulyani explains: Had the verse stated only “cedar” and had not stated “palm tree,” I would have said that just as a cedar does not produce fruit, so too, a righteous person does not produce fruit, i.e., he will have no reward in the World-to-Come. Therefore, it is stated: “Palm tree,” which is a fruit-bearing tree.

173 And had the verse stated only “palm tree” and had not stated “cedar,” I would have said that just as with regard to a palm tree its trunk does not replenish itself after being cut down, so too, in the case of a righteous person, his trunk does not replenish itself, i.e., he will be unable to recover from misfortune. Therefore, it is stated: “Cedar,” to indicate that just as the trunk of the cedar replenishes itself, so too, the righteous will thrive again. This demonstrates that the trunk of a cedar does grow again.

174 The Gemara answers: Rather, with what are we are dealing here? We are dealing with other types of cedars, as the trunks of certain species do not grow back after the tree is felled. This is in accordance with the opinion of Rabba bar Rav Huna. As Rabba bar Rav Huna says that they say in the school of Rav: There are ten types of cedars; as it is stated: “I will place in the wilderness the cedar [erez], the acacia tree [shitta], and the myrtle [hadas] and the pine tree [etz shemen]; I will set in the desert the juniper [berosh], the teak [tidhar], and the cypress [te’ashur] all together” (Isaiah 41:19). The Gemara elaborates: Erez means cedar; shitta means acacia tree [tornita]; hadas is the myrtle; etz shemen is the balsam tree; berosh means juniper [berati]; tidhar is the teak [shaga]; and te’ashur is the cypress [shurbina].

[175] The Gemara asks: But these are seven species of cedar, not ten. When Rav Dimi came from Eretz Yisrael to Babylonia he said: They added to the list of cedars allonim, almonim, and almugim. Allonim refers to pistachio trees [butnei], almonim are oaks [balutei], and almugim

[176] refers to coral trees [kasita]. There are those who say that the other three are as follows: Aronim, armonim, and almugim. Aronim refers to laurel trees [arei], armonim to plane trees [dulevei], and almugim to coral trees [kasita].

[177] MISHNA: With regard to one who buys two trees in the field of another, this one has not acquired any ground, but only the trees. Rabbi Meir says: He has acquired the ground under them. The mishna states a halakha in accordance with the opinion of the first tanna: If the trees grew, the owner of the field may not cut down their branches, despite the fact that their shade damages his field. And that which grows out of the trunk is his, i.e., it belongs to the owner of the tree, but that which grows out of the roots belongs to the owner of the ground. And if the trees died, their owner has no rights to the ground where the trees had stood.

[178] If one bought three trees, he has acquired the ground along with them. If they grew, the owner of the field may cut down their branches, as he sold a specific piece of land along with the trees, not his entire field. And that which grows out of the trunk and out of the roots is his, i.e., it belongs to the owner of the trees. And if the trees died, the owner of the trees still has possession of the ground, as it was sold along with the trees.

[179] GEMARA: We learned in a mishna elsewhere (Bikkurim 1:6): With regard to one who buys two trees in the field of another, he brings the first fruits but does not recite the passages of thanks to God that appear in the Torah (Deuteronomy 26:1–11), as the land does not belong to him and therefore he cannot state: “I have brought the first of the fruit of the land, which You, Lord, have given me” (Deuteronomy 26:10). Rabbi Meir says: He brings the first fruits and also recites the passage.

[180] Rav Yehuda says that Shmuel says: Rabbi Meir would obligate even one who buys fruit from the marketplace to bring first fruits, not only one who grew the fruits on his own tree. From where did he derive this halakha? From the fact that the tanna teaches an apparently superfluous mishna. Since Rabbi Meir already taught in the mishna here that the owner of two trees has possession of the ground, isn’t it obvious that he brings first fruits and recites the passage? What is added by his statement in the mishna in Bikkurim?

[181] Rather, learn from the mishna in Bikkurim that Rabbi Meir would obligate even one who buys fruit from the marketplace to bring first fruits to the Temple. Rabbi Meir is saying that even if the halakha is in accordance with the opinion of the Rabbis that one who buys two trees does not own the ground between them, he still must bring the first fruits and recite the passage of thanks.

[182] The Gemara asks: But isn’t it written: “Which you shall bring in from your land” (Deuteronomy 26:2)? This verse indicates that the fruit must be the produce of your land, not land that belongs to another. The Gemara answers: That verse serves to exclude land that is outside of Eretz Yisrael, which is not the land of the Jewish people. It does not exclude land that does not belong to that specific individual.

[183] The Gemara asks: But isn’t it written: “The choicest first fruits of your land you shall bring” (Exodus 23:19)? The Gemara answers: This serves to exclude fruit bought by a Jew that was grown on the land of a gentile in Eretz Yisrael. The Gemara asks: But isn’t it written: “I have brought the

first of the fruit of the land, which You, Lord, have given me” (Deuteronomy 26:10)? If he purchased the fruit, then the land on which it grew was not given to him by God. The Gemara answers that the phrase “which You have given me” can mean that You have given me money, and with that money I bought this fruit.

184 Rabba raises an objection to the opinion of Shmuel from a baraita: One who buys one tree in the field of another brings first fruits but does not recite the passage, as he did not acquire any land; this is the statement of Rabbi Meir. This is a conclusive refutation of Shmuel’s opinion, as he said that according to Rabbi Meir even one who simply purchases fruit is obligated to bring first fruits to the Temple.

185 Apropos the discussion of the obligation to bring first fruits of one who buys a tree in the field of another, Rabbi Shimon ben Elyakim said to Rabbi Elazar:

186 What is the rationale of Rabbi Meir that in the case of one tree, an individual is obligated to bring first fruits but does not recite the passage, and what is the rationale of the Rabbis that in the case of two trees, an individual is obligated to bring the first fruits but does not recite the passage? If one owns the ground and is obligated to bring the first fruits to the Temple, he should also recite the passage of thanks. If he does not own the ground and therefore is not obligated to recite the passage, why does he bring the first fruits to the Temple? Rabbi Elazar said to Rabbi Shimon ben Elyakim: Do you ask me publicly, in the study hall, about a matter for which the early Sages did not give a reason, in order to embarrass me? In other words, I do not know the reason, as not even the early Sages explained this matter.

187 Rabba said: What is the difficulty? Perhaps Rabbi Meir is uncertain, in the case of an individual who purchases one tree, whether or not the buyer owns the ground, and the Rabbis are uncertain, in the case of an individual who purchases two trees, whether or not the buyer owns the ground. Due to this uncertainty, the owner of the tree must bring the first fruits to the Temple, as he might be obligated in this mitzva. He does not recite the passage of thanks because it is not definitely established that he is obligated to bring the fruits.

188 The Gemara asks: And is Rabbi Meir really uncertain whether the buyer owns the ground? But it teaches: Since he did not acquire any land; this is the statement of Rabbi Meir. Rabbi Meir states definitively that the owner of the tree does not own the ground. The Gemara answers: Say that the baraita should be emended as follows: Perhaps he did not acquire any land.

189 The Gemara asks: But let us be concerned that perhaps these fruits are not first fruits, and he is bringing non-sacred fruit to the Temple courtyard, which is prohibited. The Gemara answers: The case is where he consecrates them. The Gemara asks: But the priest is required to eat first fruits, and he cannot do so if they are consecrated. The Gemara answers: The case is where the priest redeems them. The Gemara asks: But perhaps they are not first fruits, and thereby he removes them from the obligation of teruma and tithes, as one does not separate teruma and tithes from first fruits. The Gemara answers: The case is where he separates teruma and tithes from the fruits, due to the uncertainty over their status.

190 The Gemara asks: Granted, the teruma gedola that he separates from these fruits he gives to a priest, and the priest may partake of it, as it has the halakhic status of either first fruits or teruma gedola, both of which are eaten by a priest. It is understood with regard to the second tithe as well; he gives it to a priest, who eats it in Jerusalem, either as first fruits or as second tithe. If it is the third or

the sixth year of the Sabbatical cycle, when instead of second tithe one is obligated to give the poor man’s tithe, here too, he gives it to a poor priest, who eats it as either first fruits or poor man’s tithe. But with regard to first tithe, which is given to a Levite, to whom can he give it? A Levite may not eat first fruits.

[191] The Gemara answers: The case is where he gives it to a priest, in accordance with the opinion of Rabbi Elazar ben Azarya. As it is taught in a baraita: Teruma gedola is given only to a priest, and first tithe is given only to a Levite; this is the statement of Rabbi Akiva. Rabbi Elazar ben Azarya says: First tithe may also be given to a priest. The Gemara asks: But perhaps they are in fact first fruits and require recitation of the passage of thanks, and yet the owner does not recite it due to the uncertainty. The Gemara answers: The recitation is not indispensable, i.e., one can perform the mitzva of bringing first fruits without the recitation.

[192] The Gemara asks: And is the recitation not indispensable? But doesn’t Rabbi Zeira say in the context of offerings: For any measure of flour that is suitable for mixing with oil in a meal-offering, the lack of mixing does not invalidate the meal-offering. Even though there is a mitzva to mix the oil and the flour ab initio, the meal-offering is fit for sacrifice even if the oil and the flour are not mixed. And for any measure of flour that is not suitable for mixing with oil in a meal-offering, the lack of mixing invalidates the meal-offering. The principle is: Ab initio requirements prevent the fulfillment of a mitzva in situations where they are not merely absent but impossible. Accordingly, first fruits that are unfit for recitation should not be brought to the Temple.

[193] The Gemara answers: The case is where he renders them exempt from the obligation of recitation, in accordance with the opinion of Rabbi Yosei bar Ḥanina, who says: If one harvested the fruits and sent them in the possession of an agent, and the agent died on the way, the owner or any other person brings the first fruits but does not recite the passage of thanks. What is the reason? As it is written: And you shall take, and you shall bring. The Gemara is citing from the following verse with a slight variation: “And you shall take of the first of all the fruit of the ground, which you shall bring in from your land that the Lord your God gives you” (Deuteronomy 26:2).

[194] The passage is not recited until the taking and the bringing of the first fruits are performed by one person, and that is not the case here. Rav Aḥa, son of Rav Avya, said to Rav Ashi: Since the passage is composed of verses, let him read them. What is objectionable about reciting verses from the Torah?

[195] Rav Ashi said to him: The problem is due to the fact that this practice has the appearance of falsehood, because he issues a declaration before God that is possibly untrue, as he might not own the ground. Rav Mesharshiyya, son of Rav Ḥiyya, said: The declaration is not recited lest he come to remove the fruits from their obligation of teruma and tithes, if they are treated entirely as first fruits. For this reason one does not recite the passage, to ensure that their unique status is maintained.

[196] § The mishna teaches: With regard to one who buys two trees in the field of another, if the trees grew, the owner of the field may not cut down their branches. The mishna further teaches: That which grows out of the trunk belongs to the owner of the tree, but that which grows out of the roots belongs to the owner of the ground. The Gemara asks: What are the circumstances in which something is considered to be growing out of the trunk, and what are the circumstances in which it is considered to be growing out of the roots?

[197] Rabbi Yoḥanan said: With regard to anything that sees the face of the sun, i.e., which is visible and aboveground, this is considered to be growing out of the trunk. And with regard to that which does not see the face of the sun but is concealed in the earth, this is considered to be growing out of the roots.

[198] The Gemara asks: But if everything that is visible belongs to the owner of the tree, no matter how close it is to the ground, let us be concerned that perhaps the land is covered with sediment from flowing water, and some of the tree's trunk will be covered, in which case the branches that grow from the trunk will appear as though they are separate trees; and the owner of the trees will say to the owner of the field: You actually sold me three trees and I therefore have ownership over the ground. Rather, Rav Naḥman said: That which grows from the trunk belongs to the owner of the tree, but he must cut it down. And Rabbi Yoḥanan himself likewise said: The owner of the tree must cut it down.

[199] Rav Naḥman said: We hold by tradition that a palm tree bought from another has no trunk. Rav Zevid thought to say this means that the owner of the palm tree has no right to that which grows from the trunk. The reason is that since it stands ready to be dug up and uprooted, as when the tree dies its owner is not entitled to plant another in its place, he diverts his mind from that which grows from the trunk.

[200] Rav Pappa objects to this: But this is comparable to one who buys two trees in a field belonging to another, as the trees stand ready to be dug up and uprooted because their owner has no right to plant new trees in their place when they die; and yet it is taught in the mishna that he has the right to that which grows from the trunk. Rather, Rav Pappa said: The statement of Rav Naḥman means that the owner of a palm tree, in contrast to owners of other types of trees, has no right to that which grows from the trunk, since a palm tree does not produce branches from its trunk.

[201] The Gemara asks: But according to the opinion of Rav Zevid, who maintains that Rav Naḥman is referring to all types of trees, the mishna is difficult. The Gemara answers: Rav Zevid interprets the mishna as referring to a situation where the owner of the trees bought the trees for five years and stipulated that he may plant new trees in place of the original trees in the event the original ones are cut down.

[202] § The mishna teaches: If one bought three trees he has acquired the ground along with them. The Gemara asks: And how much of the field does he acquire? Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: This buyer has acquired the ground that is located underneath the trees, and the area between them, and with regard to the space outside of the trees and their branches,

[203] he has acquired an area sufficient for a gatherer of figs and his basket in hand to stand close to the tree. Rabbi Elazar objects to this: Now that the halakha is that the buyer has no path and must purchase a path through the field to access his trees; if so, does he have possession of an area for the gatherer and his basket? The Gemara elaborates: He has no path, even though he has no other means of gaining access to the trees, as the ground he acquired along with the trees is considered another land and is not part of the rest of the field. Why, then, would he have possession of an area for a gatherer and his basket?

[204] Rabbi Zeira says: From the statement, i.e., the objection, of our teacher, we learn that it is in the case of three trees that the owner of the trees has no path, as the buyer acquired a separate piece of land along with the trees. But in the case of two trees the buyer has a path, as he says to the owner of

the field: My trees are standing on your land, and as I am allowed to use your field to tend to my trees I have the right to walk through your land to reach them.

[205] Rav Naḥman bar Yitzḥak said to Rava: Shall we say that Rabbi Elazar does not accept the opinion of Shmuel, who was his teacher? As Shmuel says: The halakha is in accordance with the opinion of Rabbi Akiva, who says: One who sells, sells generously. According to Rabbi Akiva, one sells in a manner that is advantageous for the buyer, and is presumed to have included in the sale even items that were not explicitly specified. In this case, as he has sold a tree that remains on his property, the seller grants the buyer the right to access his tree.

[206] Rava said to him: Even if Rabbi Elazar himself agrees with Rabbi Akiva, the mishna cannot be explained in accordance with the opinion of Rabbi Akiva. Rather, the mishna must be in accordance with the opinion of the Rabbis, who hold that one who sells does so sparingly, and the difficulty that Rabbi Elazar raised against Rabbi Yoḥanan is predicated on the fact that the mishna is in accordance with the opinion of the Rabbis.

[207] From where does Rava derive that the mishna is not in accordance with the opinion of Rabbi Akiva? From the fact that the mishna teaches: If the three trees grew, the owner of the land may cut down the branches that extend into his field. And if it enters your mind that the mishna is in accordance with the opinion of Rabbi Akiva, why may he cut them down? Doesn’t Rabbi Akiva say that one who sells, sells generously?

[208] Rav Naḥman bar Yitzḥak said to him: This does not prove that the mishna is not in accordance with the opinion of Rabbi Akiva. You can say that Rabbi Akiva stated his ruling in the case of a pit and a cistern that are situated in a field belonging to another, which one sells in a generous manner, as they do not weaken the land. But did you hear him say that the seller is generous toward the buyer with regard to a tree, which can weaken the land?

[209] Doesn’t Rabbi Akiva concede in the case of a tree that leans out into the field of another, in which the owner of the other field cuts down the branches until the full height of an ox-goad, the handle that protrudes over a plow? Since the extending branches impede his efforts to plow his field, it is permitted for him to cut them down. This indicates that even according to Rabbi Akiva one does not grant privileges that are detrimental to his own interests. If so, the mishna can be explained even in accordance with the opinion of Rabbi Akiva, which indicates that Rabbi Elazar does not accept his ruling.

[210] The Gemara points out: It is taught in a baraita in accordance with the statement of Rabbi Ḥiyya bar Abba: If one buys three trees in a field belonging to another, this buyer has acquired the ground that is found underneath the trees, and the area between them, and outside of the trees and their branches an area sufficient for a gatherer of figs and his basket.

[211] Abaye said to Rav Yosef: Those areas around the trees that are designated for a gatherer of figs and his basket are used for this purpose only at specific times. Who sows that land during the rest of the year, the owner of the trees or the owner of the field? Rav Yosef said to him: You learned the answer in a mishna (99b): If one owns a garden that is surrounded by the garden of another, the owner of the inner garden has a right to a path through the outer garden. Even so, the owner of the outer garden may sow the path.

[212] Abaye said to him: Are the cases comparable? There, in the case of the outer and inner gardens, there is no loss suffered by the buyer when the owner of the outer garden sows the path, as he can still pass through it. But here, there is a loss for the buyer, as the one who bought the trees says to the owner of the field: The fruits that fall from the trees will become soiled by the plants.

[213] This case is similar only to the last clause of that mishna, which states: If the owner of the inner garden is given a side path, so that he suffers a loss of some kind because he cannot take the shortest path to reach his garden, both this owner of the inner garden and that owner of the outer garden are not permitted to sow the path. Similarly, here too, neither the owner of the trees nor the owner of the field are permitted to sow the place designated for the gatherer of figs and his basket.

[214] The Gemara comments: It is taught in a baraita in accordance with the opinion of Abaye: This buyer has acquired the ground that is found underneath the trees, and the area between them, and outside of the trees and their branches an area sufficient for a gatherer of figs and his basket. And both this owner of the field and that owner of the trees are not permitted to sow it.

[215] The Gemara inquires: And how much space must there be between the three trees for them to be considered one unit, which means that the land is acquired by the owner of the trees? Rav Yosef says that Rav Yehuda says that Shmuel says: The distance between the trees must be from four cubits to eight cubits. Rava says that Rav Naḥman says that Shmuel says: It must be from eight cubits to sixteen cubits. Abaye said to Rav Yosef: Do not disagree with Rav Naḥman, as we learned in a mishna in accordance with his opinion.

[216] As we learned in a mishna (Kilayim 4:9): One who plants his vineyard sixteen cubits by sixteen cubits, i.e., he leaves sixteen cubits between each row of vines, is permitted to bring other species of seeds to the empty spaces between the rows and sow them there. This is not considered a violation of the biblical prohibition with regard to sowing diverse crops in a vineyard, which is one of the prohibitions of diverse kinds.

[217] Rabbi Yehuda said: There was an incident in the city of Tzalmon, where one individual planted his vineyard sixteen by sixteen cubits. And he would turn the branches of two rows that were facing each other to one side, so that there was a space of sixteen cubits between the two rows, and sow the clearing. The following year he would turn the branches to the place that was sown the year before, and would sow the land that had been left uncultivated the previous year, as it had been filled with the branches from the vines. And the incident came before the Sages and they permitted it. This demonstrates that sixteen cubits between plants is required for them to be considered separate units.

[218] Rav Yosef said to him: I do not know about this, but there was a similar incident

[219] involving the sale of trees in a village of shepherds, and they came before Rav Yehuda, and he said to the seller: Go and give to the one who bought the trees sufficient land for an ox and its vessels. But I did not know how much was sufficient land for an ox and its vessels. When I heard that which we learned in a mishna (26a), I came to a conclusion with regard to this case. The mishna teaches as follows: A person may not plant a tree close by the field of another, unless he places it at a distance of four cubits from the other field.

[220] Rav Yosef continues: And it is taught in a baraita with regard to this mishna: The four cubits that the Sages stated are for the work of the vineyard, so that he does not take oxen and a plow into his neighbor’s field while tending to his vineyard. I studied this mishna and baraita and said: Learn from

it that the phrase: Sufficient for the ox and its vessels, means four cubits. At this stage, the Gemara has demonstrated that Rav Naḥman's opinion is supported by a mishna, whereas Rav Yosef's ruling is supported by the incident involving Rav Yehuda.

221 The Gemara asks: But didn't we also learn a ruling in a mishna (Kilayim 4:9) in accordance with the opinion of Rav Yosef? That mishna teaches: Rabbi Meir and Rabbi Shimon say: In a case of one who plants his vineyard eight cubits by eight cubits, i.e., he leaves eight cubits between each row of vines, it is permitted for him to bring seeds to the empty spaces between the rows. This ruling can be cited in support of the opinion of Rav Yosef that if there is a space of eight cubits between trees or vines they are not considered one unit. Why, then, is this mishna not brought as proof?

222 The Gemara answers: Even so, it is preferable to cite the incident in Tzalmon as proof. Whenever possible, it is preferable to provide support for an opinion by means of a practical ruling, as it demonstrates that the Sages took action in accordance with that opinion and did not merely teach it as halakha in theory.

223 The Gemara comments: Granted, according to the analysis of Rav Yosef stated in accordance with the opinion of Rabbi Shimon, we hear about the maximum distance that the trees can be scattered, and we hear about the minimum distance that they can be planted close together. The distance that the trees can be scattered is that which we said, i.e., eight cubits. The minimum distance that they can be planted close together is as we learned in a mishna (Kilayim 5:2): A vineyard that is planted in consecutive rows with less than four cubits between the rows is not classified as a vineyard, because the rows are planted too close together. This is the statement of Rabbi Shimon. And the Rabbis say: It is considered a vineyard, and one views the middle vines as if they are not there, as they are slated to be uprooted.

224 But according to the analysis of Rav Naḥman stated in accordance with the opinion of the Rabbis, we hear the maximum distance that the trees can be scattered, i.e., sixteen cubits, as in the incident in Tzalmon. Concerning the minimum distance that they can be planted close together, did we hear this distance? The Gemara answers: This is based on logical reasoning; from the fact that according to Rabbi Shimon the minimum distance is half of the maximum distance, according to the Rabbis as well, the minimum distance is half of the maximum, i.e., eight cubits.

225 Rava says: The halakha is that one who buys three trees acquires the land if the distance between the trees is anywhere from four cubits to sixteen cubits. This ruling is a combination of the two opinions, which is favorable to the buyer. It is taught in a baraita in accordance with the opinion of Rava: How close may they be? Four cubits. And how far apart may they be? Sixteen cubits.

226 If one bought three trees planted in this manner, this one has acquired the land and the small trees that are between them. Therefore, if the tree dried up or was cut down he has ownership of the land. If the distance between the trees was less than this or more than this, or if he bought the trees one after the other, this buyer has not acquired either the land or the trees that are between them. Therefore, if the tree dried up or was cut down he has no ownership over the land.

227 § Rabbi Yirmeya raises a dilemma: When one measures the distance between the trees, does he measure from the narrow place on the trunk of the tree or does he measure from the wide place? Rav Geviha of Bei Khatil said to Rav Ashi: Come and hear a proof, as we learned in a mishna (Kilayim 7:1): When one comes to measure from the layered branch of the vine he measures only from the second root, as this is the average, not the widest part of the vine.

[228] Rabbi Yirmeya raises a dilemma: If the owner of the field sold to someone three branches that grew from one tree, and its trunk was covered with earth so that the branches appeared to be three separate trees, what is the halakha? Are they considered three trees, which would mean that their owner acquires the ground between them?

[229] Rav Geviha of Bei Khatil said to Rav Ashi: Come and hear a proof, as we learned in a mishna (Kilayim 7:2): With regard to one who layers the branches of three vines into the ground so that they take root while still attached to the base of the vine, and their roots that rise above the ground are visible, Rabbi Elazar, son of Rabbi Tzadok, says: If there is a distance between them of four cubits to eight cubits, they combine to form one vineyard composed of six grapevines. And if not, they do not combine. It can be inferred from this mishna that the different branches of a tree are considered separate entities when the trunk is covered by earth, provided the required distance between them is maintained.

[230] Rav Pappa raises a dilemma: If the owner of a field sold to someone two trees in his field and one situated on its border, what is the halakha? Similarly, if one bought two trees in the field of one person and one in the field of another, what is the halakha? Do the trees combine to form one unit of three trees, or not? The Gemara states that this dilemma shall stand unresolved.

[231] Rav Ashi raises a dilemma: In the case of a pit situated between the trees, what is the halakha with regard to the possibility that it divides between the trees, and therefore the owner of the trees does not acquire the ground? Similarly, in the case of a stream of water, what is the halakha with regard to the possibility that it divides between the trees? With regard to the public thoroughfare that divides between trees, what is the halakha? Finally, in the case of a line of palm trees, what is the halakha? No answer is found for these problems, and the Gemara states that the dilemmas shall stand unresolved.

[232] Hillel raises a dilemma before Rabbi Yehuda HaNasi: If a cedar grew between the three trees that one bought, what is the halakha? The Gemara asks: If it grew, then it emerged in his domain, as he already owns the ground, and therefore it is obvious that the cedar belongs to him. Rather, the dilemma is as follows: If, when one bought three trees, there already was a cedar between them, what is the halakha? Is it considered a division between the three trees? Rabbi Yehuda HaNasi said to him: Since he bought the trees, he has thereby acquired the cedar and acquired the land between them.

[233] The Gemara asks: In what manner must the three trees be positioned for the buyer to acquire the ground between them? Rav says: They may be planted in a straight line, and Shmuel says: They must be planted in the form of a tripod. The Gemara notes: According to the one who says that the trees may be positioned in a straight line, all the more so one acquires the ground when the trees are planted in the form of a tripod. But according to the one who says they must be positioned in a tripod, the buyer acquires the ground only in this case; but if the trees were planted in a straight line, he does not acquire the ground. What is the reason? It is because when the trees are planted in the form of a straight line one can sow between them, and therefore the seller would not relinquish his right to the ground between the trees.

[234] Rav Hamnuna objects to this: And according to the one who says that the trees must be planted in the form of a tripod, what is the reason that one who buys the trees acquires the ground? Is it that one cannot sow between the trees? But if that is so, in a case where he sold him three Roman thorny shrubs, where one cannot sow between them, so too would he say that the purchaser has ownership

of the ground? The other Sage said to Rav Hamnuna: Those Roman shrubs are not significant, as they are merely shrubs and not trees, and therefore the ground is not acquired when one purchases them. By contrast, these trees are important.

235 MISHNA: One who sells the head of a large domesticated animal has not sold along with it the forelegs, as each part is considered important in its own right. All the more so, if one sold the forelegs he has not sold the head. Similarly, if one sold the windpipe and the lungs he has not sold the liver, despite the fact that they are sometimes attached, and if he sold the liver he has not sold the windpipe and lungs. But in the case of small domesticated animals, if one sold the head he has sold the forelegs, although if one sold the legs he has not sold the head. Likewise, if one sold the windpipe and lungs he has sold the liver, but if he sold the liver he has not sold the windpipe and lungs.

236 There are four basic cases with regard to sellers and buyers. If the seller sold him wheat and said that the wheat was good, and it is found to be bad, the buyer, but not the seller, can renege on the sale. If the seller sold him what he thought was bad wheat and it is found to be good, the seller can renege on the sale but the buyer cannot. If he sold bad wheat and it is found to be bad, or good wheat and it is found to be good, neither one of them can renege on the sale, as the condition of the sale was met.

237 If the seller sold reddish-brown wheat and it is found to be white, or white wheat and it is found to be reddish-brown, and similarly, if he sold olive wood and it is found to be wood of a sycamore, or he sold wood of a sycamore and it is found to be wood of an olive tree, or if the seller sold him wine and it is found to be vinegar, or vinegar and it is found to be wine, in all of these cases both the seller and the buyer can renege on the sale. Since the sale was for a different item than that which was delivered, the transaction can be nullified even if there was no mistake with regard to the price.

238 GEMARA: Rav Ḥisda says: If the seller sold him an item that was worth five dinars for six dinars, and the item became more expensive and its value stood at eight dinars, and the seller wished to return the money and cancel the sale because the item’s value had increased, who was exploited here? The buyer; therefore, the buyer, but not the seller, can renege on the sale, despite the fact that in such a situation the seller loses out. This is because

239 the buyer can say to the seller: If you had not exploited me, you would not be able to renege on the sale, and I would receive the profit. Now that you have exploited me, can you renege on the sale and benefit? And similarly, the tanna of the mishna also taught: If the seller sold him wheat while claiming that the wheat was good, and it is found to be bad, the buyer can renege on the sale. This implies that the buyer can renege but not the seller, even in a situation where the seller would want to renege on the sale, e.g., if the item became more expensive.

240 And similarly, Rav Ḥisda says: If he sold him an item that was worth six dinars for five dinars, and its price was reduced and its value now stood at three dinars, who was exploited in this case? The seller; therefore, the seller, but not the buyer, can renege on the sale. The reason is that the seller can say to him: If you had not exploited me, you would not be able to renege on the sale. Now that you have exploited me, can you renege on the sale? And similarly, the tanna of the mishna also taught: If the seller sold him bad wheat and it is found to be good, the seller can renege on the sale, but not the buyer.

241 The Gemara asks: What is Rav Ḥisda teaching us? It is all already taught in the mishna. The Gemara answers: If the halakha were derived from the mishna alone, I would say that perhaps in the cases brought by Rav Ḥisda, both the buyer and the seller are able to renege on the sale. The reason is that this is a case of exploitation, as the item was sold for more than its value, and therefore as long the buyer can renege on the sale, the sale is not complete. Consequently, as the seller lost out as well, he can also renege on the sale. And as for the mishna, it comes to teach us that if the seller said that he is selling good wheat and it is found to be bad, the buyer can renege on the sale, as this is considered a case of exploitation.

242 It is necessary to teach this, as it might enter your mind to say that this is not a case of exploitation because it is written: “It is bad, it is bad, says the buyer; but when he is gone his way, then he boasts” (Proverbs 20:14). In other words, it is the usual manner of sellers to praise their merchandise, while buyers disparage it. Therefore, the mishna teaches that the buyer can renege on the sale if the item was found to be bad, and the seller can change his mind if it was found to be good.

243 § The mishna teaches that if the seller said that he was selling reddish-brown [sheḥamtit] wheat and it is found to be white, both the seller and the buyer can renege on the sale. The Gemara assumes that sheḥamtit means the color of the sun [ḥama]. Therefore, Rav Pappa said: From the fact that the mishna teaches: White, in contrast to sheḥamtit, and there are two types of wheat, one white and the other red, conclude from the mishna that this sun is red, not white. Know that this is the case, as it reddens in the morning and evening. And the reason that we do not see the red color all day is because our eyesight is not strong and we cannot discern the redness of the sun.

244 The Gemara raises an objection to this claim: With regard to a verse that speaks of leprosy: “And, behold, if its appearance is deeper than the skin” (Leviticus 13:30), the Sages explain: This means that it is like the appearance of the sun, which is deeper than the shadow. But there, leprosy is white and yet it is likened to the sun. The Gemara answers: There, it means that it has an appearance like the sun in certain respects, but it is not like the appearance of the sun in all respects. It is like the appearance of the sun in that it is deeper than the shadow, and it is not entirely like the appearance of the sun, as there the leprous spot is white, and here the sun is red.

245 The Gemara asks: And according to that which entered our mind initially, that the sun is white, doesn’t it redden in the morning and evening? The Gemara answers: In the morning it becomes red as it passes over the site of the roses of the Garden of Eden, whose reflections give the light a red hue. In the evening the sun turns red because it passes over the entrance of Gehenna, whose fires redden the light. And there are those who say the opposite in explaining why the sun is red in the morning and the evening, i.e., in the morning it passes over the entrance of Gehenna, while in the evening it passes over the site of the roses of the Garden of Eden.

246 § The mishna teaches: If the seller sold wine and it is found to be vinegar, both the seller and the buyer can renege on the sale. The Gemara suggests: Shall we say that the mishna is in accordance with the opinion of Rabbi Yehuda HaNasi and not in accordance with the opinion of the Rabbis? As it is taught in a baraita:

247 Wine and vinegar are one type of food, which means that if, for example, one separated teruma from one of these with the intention that it should exempt the other, his action is effective. Rabbi Yehuda HaNasi says: They are two types of food. Apparently, the mishna is not in accordance with

the opinion of the Rabbis in the baraita. The Gemara rejects this claim: You may even say that the mishna is in accordance with the opinion of the Rabbis, as the Rabbis disagree with Rabbi Yehuda HaNasi only with regard to the issue of whether one can separate tithe and teruma from wine to redeem vinegar and vice versa. And the Rabbis hold in accordance with the opinion of Rabbi Ela.

[248] As Rabbi Ela says: From where is it derived with regard to one who separates teruma from poor-quality produce for superior-quality produce, i.e., in order to fulfill the obligation of separating teruma from the high-quality produce, that his teruma is valid teruma? As it is stated: “And you shall bear no sin by reason of it, seeing as you have set apart from it its best” (Numbers 18:32).

[249] The verse is understood as indicating that one who sets aside inferior produce has sinned. It also demonstrates that if one did, in fact, set aside teruma from poor-quality produce in order to render permitted superior-quality produce, his action is effective and the inferior produce is sanctified as teruma. The reason is that if the inferior produce is not consecrated, why would one bear a sin? It should be considered as though he did nothing. From here it is derived with regard to one who separates teruma from poor-quality produce for superior-quality produce that his teruma is valid teruma. The Rabbis agree and hold that in the case of one who separates vinegar in order to redeem wine, his teruma is valid despite the difference in quality, as wine and vinegar are considered a single type of food.

[250] But with regard to buying and selling, everyone, including the Rabbis, agrees that wine and vinegar are two types of food, as they have different uses. There are those for whom wine is preferable and vinegar is not preferable, and there are those for whom vinegar is preferable and wine is not preferable.

[251] MISHNA: This mishna discusses several methods of acquiring movable property. With regard to one who sells produce to another, if the buyer pulled the produce but did not measure it, he has acquired the produce through the act of acquisition of pulling. If he measured the produce but did not pull it, he has not acquired it, and either the seller or the buyer can decide to rescind the sale. If the buyer is perspicacious and wants to acquire the produce without having to pull it, and he wishes to do so before the seller could change his mind and decide not to sell, he rents its place, where the produce is located, and his property immediately effects acquisition of the produce on his behalf.

[252] With regard to one who buys flax from another, because flax is usually carried around this purchaser has not acquired it until he carries it from place to place and acquires it by means of the act of acquisition of lifting. Pulling the flax is ineffective. And if it was attached to the ground, and he detached any amount, he has acquired it, as the Gemara will explain.

[253] GEMARA: The mishna mentions several modes of acquisition without elaboration. It does not explain in which domain the act takes place, whether on the property of the seller or in the public domain. Likewise, it does not specify who performs these actions. The Gemara clarifies these details. Rabbi Asi says that Rabbi Yoḥanan says: If the seller measured the produce and placed it in an alleyway, which is not the public domain but a location where people can keep their belongings, then even if the buyer did not pull the produce, he acquires it.

[254] Rabbi Zeira said to Rabbi Asi: Perhaps my teacher heard this halakha from Rabbi Yoḥanan only with regard to one who measures into his basket, i.e., that of the buyer, in which case his possessions effect acquisition of the produce for him. But if the produce is placed on the floor of the alleyway, the buyer does not acquire the produce. Rabbi Asi said to him: This one of the Sages, i.e., Rabbi Zeira,

seems like one who has not studied halakha. If he measured it into the basket of the buyer, is it necessary to say that he acquires it? If an item is placed in the buyer's basket it is clearly acquired by him, regardless of the location of the basket. Rather, Rabbi Yoḥanan's statement with regard to an alleyway must be referring to items placed on the floor of the alleyway.

255 The Gemara asks: Did Rabbi Zeira accept this claim from Rabbi Asi, or did he not accept it from him? The Gemara suggests: Come and hear a proof, as Rabbi Yannai says that Rabbi Yehuda HaNasi says: With regard to a courtyard belonging to partners, which is similar in status to an alleyway, the partners acquire from one another. What, is it not correct to say that there is no difference between placing items on the ground and in their basket, as a partner acquires an item even when it is placed upon the ground, in accordance with the statement of Rabbi Asi? The Gemara rejects this suggestion: No, this is referring to a case where the item is measured into the basket of the buyer.

256 The Gemara points out: So, too, Rabbi Zeira's statement is reasonable, as Rabbi Ya'akov says that Rabbi Yoḥanan says: If one measured and placed an item in an alleyway, the buyer has not acquired it. Apparently, these two halakhot cited in the name of Rabbi Yoḥanan are difficult, as they contradict each other, since earlier it was stated that according to Rabbi Yoḥanan the buyer can acquire an item in this manner. Rather, isn't it correct to conclude from this apparent contradiction that here, i.e., in the statement cited by Rabbi Asi, he is referring to one who measures into the basket of the buyer, which effects acquisition; and there, i.e., in the statement of Rabbi Yaakov, he is referring to one who measures onto the ground, which does not effect acquisition. The Gemara affirms: Learn from it that this is the case.

257 The Gemara suggests: Come and hear a proof from the mishna: If he measured the produce but did not pull it, he does not acquire it. What, is it not referring to one who did so in an alleyway, which indicates that placing produce on the ground of an alleyway does not effect acquisition, in accordance with the statement of Rabbi Zeira? The Gemara rejects this proof: No, the mishna is referring to one who did so in the public domain. The Gemara asks: If that is so, say the first clause: If the buyer pulled the produce but did not measure it, he has acquired the produce. But does pulling in the public domain effect acquisition?

258 But don't Abaye and Rava both say that passing effects acquisition in the public domain and in a courtyard that does not belong to either of them; pulling effects acquisition only in an alleyway or in a courtyard that belongs to both of them, but not in the public domain; and lifting effects acquisition in every place, even in the seller's domain? This demonstrates that pulling in the public domain does not effect acquisition.

259 The Gemara answers: What is the meaning of the phrase: If he pulled it, that is taught in the mishna? It means that he pulled it from the public domain into an alleyway. The Gemara asks: If that is so, say the latter clause: If the buyer is perspicacious he rents its place, i.e., where the produce is located. The Gemara explains the difficulty: But if the mishna is referring to a spot in the public domain, from whom can he rent the place where the produce is located? The Gemara answers: The latter clause is referring to a separate halakha, and this is what the mishna is saying: And if the produce is in a domain that has an owner, if he is perspicacious he rents the place where the produce is located from the owner.

260 § The Gemara continues to discuss the manner in which an acquisition takes place. Rav and Shmuel both say:

[261] A person’s vessels effect acquisition of any item placed inside them for him, in any place in which they are situated, except for the public domain. And Rabbi Yoḥanan and Rabbi Shimon ben Lakish both say: Even in the public domain, one’s vessels effect acquisition of items placed in them.

[262] Rav Pappa said: These amora’im do not disagree: Here, when Rav and Shmuel state that one’s vessel does not effect acquisition for him, they are speaking of a vessel placed in the public domain; there, when Rabbi Yoḥanan and Reish Lakish state that his vessel effects acquisition on his behalf, they are referring to a vessel located in an alleyway. And why do they call an alleyway the public domain? The reason is that an alleyway is not a private domain.

[263] The Gemara points out: So, too, it is reasonable to interpret Rabbi Yoḥanan’s statement in this manner, as Rabbi Abbahu says that Rabbi Yoḥanan says: A person’s vessels effect acquisition for him in any place where he has permission to keep them. It can be inferred from here: In a location where he has permission to keep them, yes, his vessels effect acquisition for him. But in a place where he does not have permission to keep his vessels, they do not effect acquisition for him, and one has permission to keep his vessels in an alleyway but not in the public domain. The Gemara affirms: Conclude from this statement that when Rabbi Yoḥanan referred to the public domain he meant an alleyway.

[264] The Gemara suggests: Come and hear a difficulty from a baraita: There are four cases with regard to sellers, i.e., four methods through which merchandise is acquired. When the seller measures merchandise for the buyer, before the measuring vessel has been filled the merchandise in the vessel still belongs to the seller and he can change his mind and cancel the sale. Once the measuring vessel has been filled the merchandise belongs to the buyer. In what case is this statement said? It is said when the seller measures with a measuring vessel that does not belong to either of them. But if the measuring vessel belonged to one of them, the buyer acquires the items of sale one by one as they are placed in the measuring vessel.

[265] In what case is this statement said? It is said when the seller measures the items in the public domain or in a courtyard that does not belong to either of them. But if it happens in the domain of the seller, the buyer does not acquire the merchandise until he lifts the measuring vessel or until he moves it out of the domain of the seller. If it is in the domain of the buyer, once the seller accepts upon himself to sell, the buyer acquires it. If the merchandise is located in the domain of this individual with whom it had been deposited, the buyer does not acquire it until the bailee accepts upon himself to designate a place where the merchandise is to be stored for the buyer, or until the buyer rents from the bailee the place where the merchandise is situated.

[266] In any event, this baraita teaches with regard to a transaction in the public domain or in a courtyard that does not belong to either of them that if the measuring vessel belonged to one of them, the buyer acquires the items of sale one by one as they are placed in the vessel.

[267] What, is it not stating that a buyer’s vessels effect acquisition of items on his behalf even in the actual public domain, which contradicts Rav Pappa’s explanation? The Gemara answers: No, the baraita is referring to an alleyway, not the actual public domain. The Gemara asks: How can this be what the baraita means? But the baraita teaches that it is similar to a courtyard that does not belong to either of them, i.e., a location to which neither of them have any rights, whereas they both have some rights in an alleyway. Consequently, this must be referring to the actual public domain, not an alleyway.

[268] The Gemara answers: What is the meaning of the phrase: A courtyard that does not belong to either of them? It also refers to shared property, specifically a courtyard shared by partners, which does not belong to this one entirely and does not belong to that one entirely, but rather it is the property of both of them. Consequently, this courtyard is comparable to an alleyway.

[269] Rav Sheshet raises a dilemma before Rav Huna: If the vessels of the buyer are in the domain of the seller, does the buyer acquire the merchandise once it is placed in his vessels or not? Rav Huna said to him: You learned the answer already in a mishna (Gittin 77a): A wife is divorced when her husband hands her a bill of divorce or places it in a manner that is considered equivalent to handing it to her, e.g., placing in her courtyard. Accordingly, if the husband threw the bill of divorce to her into her lap or into her basket [kaltah], this woman is divorced even if she was in her husband's domain at that time. By the same token, even if the buyer's vessels are in the domain of the seller, they effect acquisition of the sold items on his behalf.

[270] Rav Naḥman said to Rav Huna: What is the reason that you resolved Rav Sheshet's dilemma from that mishna, which has already been struck with one hundred strikes of a hammer [uklei be'ukela]? In their analysis of this mishna, the Sages have already inserted so many qualifications that it cannot be understood in a straightforward manner.

[271] As Rav Yehuda says that Shmuel says: This halakha of the mishna in Gittin applies only if her basket was hanging from her body, so that it is considered on her or in her hand. And Reish Lakish says: It is sufficient if it was tied to her, even though it is not hanging from her, but resting on the ground. Rav Adda bar Ahava says: The mishna is referring to a case where her basket was placed between her thighs. Although it is not hanging from her, since it is placed on her body it serves to acquire the bill of divorce on her behalf. Rav Mesharshiyya, son of Rabbi Ami, says: This is referring to a case where her husband was a basket seller. Since he is not particular about the place where the basket into which he placed the bill of divorce is located, as his entire courtyard is full of baskets, it is considered as though he expressly granted her the right to make use of its location.

[272] Rabbi Yoḥanan says: The place of her lap, i.e., the place within her husband's property where she stands or sits, belongs to her, and the place of her basket is acquired to her. Rava said: What is the reason behind the statement of Rabbi Yoḥanan? It is because a person, including a husband, is not particular neither about the place of her lap nor about the place of her basket, as she requires these areas and they do not take up much space. It is evident from all of these qualifications that one cannot infer a halakhic principle from here with regard to a buyer's vessels in a seller's domain.

[273] Rather, resolve the dilemma from that which was taught in a baraita: If the merchandise was in the domain of a seller, the buyer does not acquire the merchandise until he lifts it or until he removes it from the domain of the seller. What, is it not referring to merchandise placed in the vessels of the buyer, which proves that the buyer's vessels do not effect acquisition of the merchandise on his behalf when they are in the seller's domain? The Gemara answers: No, this does not serve as proof, as it is referring to merchandise placed in the vessels of the seller. That is why the buyer must lift or pull the merchandise to acquire it.

[274] The Gemara asks: But from the fact that the first clause is referring to the vessels of the seller, as currently understood, the latter clause must also be referring to the vessels of the seller. Say the latter clause: If the merchandise was in the domain of the buyer, once the seller accepts upon himself to sell an item, the buyer acquires it. And if this is referring to merchandise in the vessels of the seller,

as in the earlier clause, why does the buyer acquire it? The Gemara answers: In the latter clause, we come to a different scenario, which involves the vessels of the buyer.

275 The Gemara asks: But if the clauses of the baraita are addressing different cases, why was it stated without qualification? The Gemara answers: The normal way of things is that in the house of the seller the vessels of the seller are commonly found, and in the house of the buyer the vessels of the buyer are commonly found. In sum, the dilemma cannot be resolved from the baraita.

276 Rava said: Come and hear a resolution from a baraita: If one pulled his donkey drivers, thereby dragging along with them the donkeys laden with goods, and likewise, if he pulled his laborers, who were carrying merchandise he wished to purchase, and he brought them into his house, whether he fixed a price before he measured the merchandise or whether he measured before fixing a price, both parties can renege on the sale, provided that the merchandise has not been unloaded from the laborers or the donkeys.

277 But in a case where he unloaded the merchandise from them and brought it into his house, if he fixed a price before he measured the merchandise, both parties are no longer able to renege on the sale. If he measured the merchandise before fixing a price, both of them are able to renege on the sale. The Gemara comments: And from the fact that the vessels of the seller when in the domain of the buyer do not effect acquisition of the merchandise for the seller, i.e., they do not prevent the buyer from acquiring the merchandise, one can derive that the vessels of the buyer in the domain of the seller do not effect acquisition of the merchandise on his behalf as well.

278 Rav Naḥman bar Yitzḥak said: The merchandise was not placed in the domain of the buyer in vessels belonging to the seller. Rather, the baraita is referring to a case where he emptied the vessels onto the ground. Conversely, if the merchandise remains in the seller’s vessels, the buyer does not acquire it. Rava became angry with Rav Naḥman bar Yitzḥak at his rejection of Rava’s proof, and retorted: Does the baraita teach: He emptied them? No; it teaches: He unloaded them, i.e., he kept the goods in vessels belonging to the seller. Rather, Mar bar Rav Ashi says: This proof can be rejected by means of a different interpretation, as the halakha of the baraita does not refer to vessels full of goods but is stated with regard to bundles of garlic that were tied together. Therefore, they are unloaded straight onto the floor in the buyer’s domain.

279 With regard to the matter itself, Huna, son of Mar Zutra, said to Ravina: Since the baraita teaches: He unloaded them, which indicates that unloading the merchandise constitutes the act of acquisition, what difference is there to me if he fixed a price, and what difference is there to me if he did not fix a price? Ravina said to him: If he fixed a price he has made up his mind to sell, and therefore the transaction can take place. If he did not fix a price, he has not made up his mind to sell and the transaction does not occur. In any event, no convincing proof has been found with regard to the halakha in a case where the vessels of the buyer are in the domain of the seller.

280 Ravina said to Rav Ashi: Come and hear a resolution, as Rav and Shmuel both say: A person’s vessel effects acquisition for him of any item placed inside it, in any place that it is situated. What is added by the phrase: In any place? Does it not serve to add the domain of the seller? Rav Ashi answered: There, it is referring to a specific case, where the seller said to him: Go and acquire it. In that situation, the buyer does acquire the merchandise. This does not refer to a standard case where the buyer’s vessels are located in the domain of the seller.

[281] § We learned in a mishna elsewhere (Kiddushin 26a): Property that is guaranteed, i.e., land, is acquired by means of money, or by means of a bill, or by taking possession of it. And property that does not have a guarantee, i.e., movable property, can be acquired only by means of pulling. In Sura they taught this following halakha in the name of Rav Ḥisda, while in Pumbedita they taught it in the name of Rav Kahana, and some say in the name of Rava: They taught that movable property is acquired by means of pulling only with regard to items that are not typically lifted due to their weight or for some other reason. But in the case of items that are typically lifted, then yes, they are acquired by means of lifting, but they are not acquired by means of pulling.

[282] Abaye sat and related this halakha. Rav Adda bar Mattana raised an objection to Abaye from a baraita: One who steals a purse on Shabbat is liable for theft. Based on the principle that one who is liable to receive two punishments receives only the greater of the two, in this case one might think that he should be exempt from paying for the theft, as the performance of a prohibited labor on Shabbat is punishable by death. The reason he is liable in this case, in apparent contradiction to that principle, is that he already became liable for the theft as soon as he lifted the purse. This occurred before he came to violate the prohibition of performing prohibited labor on Shabbat by carrying the purse into the public domain.

[283] The baraita continues: If he did not lift the purse but was dragging it on the ground and exiting the private domain, continuously dragging and exiting, he is exempt, as the prohibition of performing labor on Shabbat and the prohibition of theft are violated simultaneously the moment he drags the purse out of the owner’s property into the public domain. Therefore, he receives only the greater punishment, death, for carrying on Shabbat.

[284] Rav Adda bar Mattana explains his objection: But a purse is an item that can be lifted, and even so it is apparent from the baraita that one acquires it by means of pulling. How then can it be stated that items that are typically lifted are not acquired by pulling? Abaye said to him: The baraita is referring to a case where the thief pulled the purse with a rope. Rav Adda bar Mattana thought that Abaye meant that the thief happened to drag it with a rope, and he responded: I also state my question even in a case where he pulled the purse with a rope, as it is still evident that one can acquire the purse by means of pulling instead of lifting. Abaye said to him: I meant that the baraita is referring to an item that requires a rope. It is a purse that is so large that it cannot be lifted and must be pulled, therefore it is acquired by means of pulling.

[285] The Gemara raises another objection. Come and hear: If the merchandise is in the domain of the seller, the buyer does not acquire the merchandise until he lifts it or until he removes it from the domain of the seller. Apparently, with regard to an item that can be lifted, if he so desires he acquires it by lifting, and if he so desires he acquires it by pulling. Rav Naḥman bar Yitzḥak said: This is not a proof, as it can be explained that the tanna teaches it disjunctively, i.e., the two options are referring to two different cases: In the case of an item that can be lifted, he acquires it by lifting, whereas with regard to regard to an item that can be pulled, he acquires it by pulling.

[286] The Gemara suggests: Come and hear a proof from the mishna (84b) that even items that are usually lifted can be acquired by means of pulling: With regard to one who sells produce to another, if the buyer pulled the produce but did not measure it, he has acquired it. The Gemara explains the proof: But produce can be lifted, and yet the mishna teaches that it is acquired by means of pulling.

[287] The Gemara rejects this proof: With what are we dealing here? We are dealing with large bundles that are pulled from place to place and are not carried, due to their size. The Gemara asks: If that is so, say the latter clause of the mishna: One who buys flax from another has not acquired it until he carries it from this place to another place, i.e., it is acquired only though lifting and not through pulling. Is that to say that flax is not prepared in large bundles? The Gemara answers: Yes, flax is different. Unlike other produce, flax is not packed in large bundles, as it would slip from its place. Rather, it is packed in small bundles, and therefore flax is acquired specifically through lifting.

[288] Ravina said to Rav Ashi: Come and hear a proof from a mishna (Kiddushin 25b): Large domesticated animals are acquired through passing the animal's leash to the buyer, and small domesticated animals are acquired through lifting; this is the statement of Rabbi Meir and Rabbi Shimon ben Elazar. And the Rabbis say: Small domesticated animals are acquired through pulling. Ravina explains the proof: But small domesticated animals are creatures that can be lifted, and yet the mishna teaches that one acquires them through pulling. Rav Ashi rejected this proof: Domesticated animals are different, as they cling to the ground and it is difficult to lift them. Therefore, the usual manner of moving animals is to pull them.

[289] § The Gemara cites another case with regard to sales. Rav and Shmuel both say: If a seller said to a buyer: I am selling you one kor, a measure equivalent to thirty se'a, of grain for the price of thirty sela, the seller can renege on the sale as long as the measuring vessel is not filled, even when only the last se'a has yet to be measured, because he had agreed to sell only a complete kor. By contrast, if the seller said: I am selling you one kor for thirty sela and each se'a is sold for one sela, he cannot completely renege on the sale in the middle of the transaction. This is because the buyer acquires each se'a one by one as it is measured, since the seller sold each se'a individually.

[290] The Gemara raises a difficulty from the baraita cited on 85a. Come and hear: If the measuring vessel belonged to one of them, the buyer acquires the items of sale one by one. And since this halakha is stated in general terms, it indicates that the buyer acquires each item as it is placed in the measuring vessel, even though the measuring vessel was not filled.

[291] The Gemara answers: The baraita is referring to a case where the seller said to him: I am selling you one hin, a liquid measure equivalent to twelve log, for twelve sela, each log for one sela. And this is in accordance with an observation that Rav Kahana says: In the Temple there were markings on the vessel that measured hin, with which one could measure the different libations. Here too, there were markings on the measuring vessels, and since the measuring vessel indicates at which point each log had been filled, the buyer acquires it. This is comparable to the case of one who sells each se'a individually.

[292] The Gemara raises another difficulty. Come and hear: One who hires a laborer in the winter or the spring to work for him in the harvest, for one dinar a day,

[293] and a day of a laborer's work during the harvest is worth a sela, the equivalent of four silver dinars, for each day, it is prohibited to derive benefit from him, i.e., one may not employ the laborer under these conditions. The reason is that this is akin to taking interest, as the laborer works and receives less than he is entitled to in exchange for early payment. But if one hires him already from now to work for one dinar a day for an extended period of time, including the harvest season, and the work of a laborer during the harvest is worth a sela, this is permitted.

294 And if it enters your mind, as Rav and Shmuel claim, that if a seller said: I am selling you one kor for thirty sela, each se’a for one sela, he cannot fully renege on the sale in the middle of the transaction, as the buyer acquires each se’a one by one as it is measured, then the halakha in this case should be different. Here too, as he does not agree to one large sum but fixes a price for each day, one by one, it is akin to taking interest, as the laborer works and receives less than he is entitled to in exchange for early payment. And therefore, it should be prohibited to derive benefit from him. Whereas the baraita states: If one hires him from now to work for one dinar a day over an extended period of time, including the harvest, and one day of a laborer’s work during the harvest is worth one sela, this is permitted. Why is it permitted? But isn’t it payment for waiting, i.e., for advancing the money to the laborer?

295 Rava said: And how can you understand the baraita in that manner? Is it prohibited for one to lower his hiring price and receive lower wages in order to ensure that he is employed? This arrangement is not a form of interest and violates no prohibition. The Gemara asks: If this is not considered taking interest, then what is different in the first clause, where the laborer is not employed immediately and this arrangement is prohibited, and what is different in the latter clause, where it is permitted?

296 The Gemara explains: In the first clause, as the laborer does not work with him from now, it has the appearance of payment for waiting, i.e., advancing the money to the laborer. In the latter clause, as the laborer works with him from now, it does not have the appearance of payment for waiting.

297 § The mishna teaches: And if the flax was attached to the ground and he detached any amount, he has acquired it. The Gemara asks: Is it correct to say that due to the fact that he detached any amount, he acquired it? If he does not perform an act of acquisition with all of the flax, how can he acquire all of it? Rav Sheshet said: Here we are dealing with a case where the seller said to him: Go and clear for yourself any amount of land, and thereby acquire everything that is on it. When the buyer clears the land by detaching the flax from the ground, he is considered to be renting the land and thereby acquires all the flax that grows on it.

298 MISHNA: With regard to one who sells food or drink that has an established price, such as wine and oil, to another, and the price rises or falls and the buyer or the seller wishes to renege on the sale, if the price changed before the measuring vessel is filled, the merchandise still belongs to the seller and he can cancel the sale. Once the measuring vessel is filled the merchandise belongs to the buyer, and the seller can no longer cancel the sale. And if there was a middleman [sarsur] between them and the barrel belonging to the middleman, being used to measure the merchandise, broke during the transaction and the merchandise is ruined, it broke for the middleman, i.e., he is responsible for the ruined merchandise.

299 The mishna teaches an additional halakha with regard to sales: And anyone who sells wine, oil, or similar liquids is obligated, after he transfers the liquid into the buyer’s vessel, to drip for him three extra drops from the measure. After he drips those three drops, if he turned the barrel on its side and drained out the last bits of liquid that it contained, this belongs to the seller and he is not required to give these last drops to the buyer. And a storekeeper is not obligated to drip three drops, because he is too busy to do this constantly. Rabbi Yehuda says: If the sale occurs on Shabbat eve as nightfall arrives, one is exempt from dripping these three drops, as there is a need to complete the transaction before Shabbat begins.

300 GEMARA: The Gemara clarifies the mishna’s statement that the sale occurs once the measuring vessel is filled. This measuring vessel, to whom does it belong? If we say that the measuring vessel belongs to the buyer, why does the mishna teach that before the measuring vessel is filled the merchandise still belongs to the seller? Since it is the measuring vessel of the buyer, he should acquire everything that is placed in his vessel, whether or not it is filled. But if we say that the measuring vessel belongs to the seller, why does the mishna teach that once the measuring vessel is filled the merchandise belongs to the buyer? Since it is the measuring vessel of the seller, the merchandise has yet to enter the possession of the buyer.

301 Rabbi Ela says: The mishna is referring to a case where the measuring vessel belongs to the middleman. The middleman lends it to the seller, and once it is filled it is loaned to the buyer so that he can transfer its contents into his vessels. The Gemara asks: But from the fact that the latter clause teaches: And if there was a middleman between them and the barrel broke, it broke for the middleman, it may be inferred that in the first clause we are not dealing with a middleman. The Gemara answers: The first clause addresses a measuring vessel belonging to a middleman without the presence of the middleman at the transaction, whereas the latter clause is concerned with a middleman himself, who is present at the sale and therefore accepts responsibility for the barrel and its contents.

302 § The mishna teaches that if he turned the barrel on its side and drained out the last bits of liquid within it, this liquid belongs to the seller. The Gemara relates: When Rabbi Elazar ascended from Babylonia to Eretz Yisrael, he found Ze’eiri and said to him: Who here is the tanna to whom Rav taught this halakha with regard to measures? Ze’eiri showed him Rav Yitzḥak bar Avdimi. Rav Yitzḥak bar Avdimi said to Rabbi Elazar: What is it about this halakha that poses a difficulty for you? Rabbi Elazar said to him that the problem is that we learned in the mishna: If he turned the barrel on its side and drained out the last bits of liquid within it, that liquid belongs to the seller.

303 But didn’t we learn in a mishna (Terumot 11:8): If one poured oil or wine of teruma from one vessel to another and turned the vessel on its side and drained out the last bits of liquid inside, this is teruma and must be given to the priest? This indicates that the last remnants of the liquid in the vessel belong to the one who receives the oil or wine, not the owner, i.e., the seller. Why, then, does the mishna here teach that the last remnants belong to the seller?

304 Rav Yitzḥak bar Avdimi said to Rabbi Elazar: But wasn’t it stated with regard to that mishna that Rabbi Abbahu says: Due to of the despair of the owner, who relinquishes his right to such a small amount of wine or oil, the Sages touched upon it and ruled that any remnants extracted from the vessel belong to the seller? By contrast, with regard to teruma, which is forbidden to non-priests, the despair of the buyer is irrelevant, and therefore anything that remains in the vessels is teruma.

305 § The mishna teaches: And a storekeeper is not obligated to drip three drops. Rabbi Yehuda says: If the sale occurs on Shabbat eve as nightfall arrives, one is exempt from dripping these three drops. A dilemma was raised before the Sages: Is Rabbi Yehuda referring to the first clause of the mishna, and if so his ruling is lenient, as the mishna states that one must drip three drops and he states that on Shabbat eve one is exempt from doing so? Or perhaps he is referring to the latter clause and is stringent, as the mishna teaches that a storekeeper is always exempt, whereas Rabbi Yehuda rules that this is the halakha only on Shabbat eve?

306 The Gemara answers: Come and hear a resolution of this dilemma, as it is taught in a baraita that Rabbi Yehuda says: On Shabbat eve at nightfall a storekeeper is exempt because the storekeeper is busy. This proves that Rabbi Yehuda was referring to the latter clause of the mishna, i.e., he exempts the storekeeper from dripping the drops only on Shabbat eve.

307 MISHNA: With regard to one who sends his son to a storekeeper with a pundeyon, a coin worth two issar, in his hand, and the storekeeper measured oil for him for one issar and gave him the second issar as change, and the son broke the jug and lost the issar, the storekeeper must compensate the father, as he gave the jug and coin to one who is not halakhically competent. Rabbi Yehuda exempts him from liability, as he holds that the father sent his son in order to do this, i.e., to bring back the jug and coin. And the Rabbis concede to Rabbi Yehuda with regard to a case when the jug is in the hand of the child and the storekeeper measured the oil into it that the storekeeper is exempt if the child breaks the jug.

308 GEMARA: Granted, with regard to the issar and the oil, one can explain that they disagree over this matter: As the Rabbis hold that the father sent his son to inform the storekeeper that he needed oil but did not intend for the storekeeper to send the oil with the boy. For this reason, if the storekeeper gave the child the oil he is liable for its loss. And Rabbi Yehuda holds that he sent his son so that the storekeeper would send him back with the oil, and therefore the storekeeper is exempt from liability. But if the child broke the jug, why do the Rabbis hold that the storekeeper is responsible for it? It is a deliberate loss on the part of the father, as he entrusted the jug to his young son, who is not responsible enough to care for it.

309 Rav Hoshaya said: Here we are dealing with a proprietor who sells jugs, and the father sent his son with a jug in case the store owner might want to buy it. And this is a case where the storekeeper took the jug in order to examine it, and the ruling is in accordance with a statement of Shmuel. As Shmuel says: With regard to one who takes a vessel from a craftsman in order to examine it and buy it if he chooses, and an accident occurred while it was in his possession and it broke, he is liable to pay restitution for the vessel. He has the halakhic status of a borrower, and therefore he bears financial responsibility for the loss.

310 The Gemara asks: Shall we say that the opinion of Shmuel is subject to a dispute between tanna’im? Since Rabbi Yehuda disagrees with the Rabbis, his opinion evidently differs from that of Shmuel. Rather, Rabba and Rav Yosef both say that the disagreement in the mishna should be explained as follows: Here, we are dealing with a storekeeper who sells jugs, and the father sent his son to buy from him a jug filled with oil. And Rabbi Yehuda follows his line of reasoning, as explained above, that the father sent his son to bring back the merchandise, and the Rabbis follow their line of reasoning, that the father sent the son to inform the storekeeper what he needed, but not to carry it back.

311 The Gemara asks: If that is so, say the last clause: The Rabbis concede to Rabbi Yehuda in a case when the jug was in the hand of the child, and the storekeeper measured the oil into it, that the storekeeper is exempt. Why would the Rabbis rule that the storekeeper is exempt? But you said that the father sent his son only to inform the storekeeper of his order, but he did not intend for the storekeeper to give anything to his son. Rather, Abaye bar Avin and Rabbi Ḥanina bar Avin both say that the disagreement in the mishna should be explained as follows: With what are we dealing here?

[312] The mishna is referring to a case where the storekeeper took the jug from the child in order to measure with it for him, and because he took it in his hands, he is liable in the event of an accident, in accordance with the opinion of Rabba. As Rabba says: With regard to the obligation to return lost animals, even in a case where the finder is exempt from caring for the animal and returning it to its owner, e.g., if he is an elderly person and it is beneath his dignity, if he struck the animal in order to lead it, then he becomes obligated to return it. Likewise, the Rabbis here maintain that the storekeeper's action renders him liable for the jug.

[313] The Gemara asks: You can say that Rabba says his statement with regard to animals, as the finder taught them to take steps away, i.e., he worsened the situation, as he causes them to stray even further from their owner. Nevertheless, in a case like this, where the storekeeper took the jug from the child, did Rabba say that the storekeeper is liable? The storekeeper's action does not make it any more likely that the jug will break.

[314] Rather, Rava said: I and the lion of the group explained it. And who is this great Sage, referred to as a lion? It is Rabbi Zeira, and the explanation is as follows: Here we are dealing with a case where the storekeeper took the jug from the child in order to measure with it for others, without the knowledge of the father.

[315] And the Rabbis and Rabbi Yehuda disagree with regard to a borrower who takes an item without the owner's knowledge. One Sage, Rabbi Yehuda, holds that the storekeeper is considered like any other borrower and once he returns the jug to the child, he is no longer responsible for it. And one Sage, i.e., the Rabbis, holds that someone who borrows without the owner's knowledge is a robber and is obligated to return the item to its owner. Therefore, the storekeeper must pay for the jug that the child broke before it reached the father.

[316] The Gemara returns to the matter itself. Shmuel says: With regard to one who takes a vessel from a craftsman in order to examine it, and an accident occurred while it was in his possession and it broke, he is liable to pay restitution for the vessel. The Gemara explains: And this statement applies only in a case where the monetary value of the vessel is fixed, because he examines the vessel merely to ensure there is nothing wrong with it, and it is assumed that if he finds no defect he will buy it.

[317] The Gemara relates: There was a certain man who entered a butcher shop and lifted a thigh of meat to examine it. While he was lifting it, a horseman came and seized it from him. The buyer came before Rav Yeimar, who deemed him liable to pay its monetary value to the seller, because it was seized from him after he had lifted it. The Gemara again notes: And this matter, i.e., halakha, applies only in a place where the monetary value of the item is fixed, and therefore lifting it is equivalent to finalizing the sale.

[318] The Gemara relates a similar incident: There was a certain man who brought pumpkins to the city of Pum Nahara. Everyone came and took a pumpkin with the intention of buying it, but had yet to pay for it. The seller was angry, and since he did not know from whom to demand payment, he said to them: The pumpkins are hereby consecrated to Heaven.

[319] They came before Rav Kahana to inquire about the halakhic status of the pumpkins. Rav Kahana said to them: This statement has no effect, as a person cannot consecrate an item that is not his, and since the buyers had lifted the pumpkins, they no longer belonged to the seller. Once again the Gemara points out: And this matter, i.e., halakha, applies only in a place where the item's monetary value is fixed, and therefore lifting it is akin to finalizing the sale. But if the item's monetary value is

not fixed, it remains in the jurisdiction of its owner, and the seller did well, i.e., was successful, in that he consecrated it.

320 § The Sages taught: In the case of one who wishes to buy vegetables from the market and the seller is an am ha’aretz, i.e., one who is unreliable with regard to tithes, in which case the buyer is required to separate tithes after his purchase, and he selected superior-quality vegetables from inferior-quality vegetables and placed them to the side, as he was considering purchasing them, even if he did this all day, if he does not decide to buy the vegetables he does not acquire them and does not become obligated in separating tithes.

321 If he had determined to buy the vegetables he selected, he acquires them and becomes obligated in separating tithes. In such a case, it is not possible for him to decide to not buy the vegetables and to return them to the seller in their present state, as they have already became obligated in tithes, and, likewise, it is not possible to tithe them and return them to the seller, as he would then lower their monetary value. How should he proceed? He should tithe the produce, give the tithes to an appropriate recipient, and give the seller money in exchange for the tithes that he separated from it.

322 The Gemara asks: Is that to say that because one determined to buy the produce, even though he says nothing and performs no act of acquisition, he acquires the produce and becomes obligated in tithes? Rav Hoshaya said: Here, we are dealing with a buyer who is God-fearing, such as Rav Safra, who himself fulfilled the verse: “And speaks truth in his heart” (Psalms 15:2). With regard to business matters Rav Safra considered himself bound by his thoughts at the time of negotiations, even if he did not express them verbally or perform any action (see Makkot 24a). A person on the ethical level of Rav Safra acquires the produce and becomes obligated to separate tithes from the moment that he decides to buy it.

323 MISHNA: A wholesaler [hassiton] must clean his measuring vessels, which are used for measuring liquids such as oil and wine, once every thirty days, because the residue of the liquids sticks to the measure and reduces its capacity. And a homeowner who sells his goods must clean his measuring vessels only once every twelve months. Rabban Shimon ben Gamliel says: The matters are reversed. In the case of one who is constantly using his vessels for selling merchandise the residue does not adhere to the measuring vessel, and therefore a wholesaler must clean his measures only once a year. But in the case of a homeowner, who does not sell as often, the residue adheres to the measuring vessel; therefore, he must clean them every thirty days.

324 A storekeeper, who constantly sells merchandise in small quantities, cleans his measuring vessels twice a week and cleans his weights once a week; and he cleans the pans of his scales after each and every weighing, to ensure that no merchandise has adhered to the pans, thereby increasing their weight. Rabban Shimon ben Gamliel said: In what case is this statement, that it is necessary to clean a measuring vessel, said? With regard to moist items, which are likely to adhere to the measuring vessels. But with regard to dry goods, which do not adhere to the measuring vessels, one does not need to clean his measuring vessels.

325 And before adding the weights and merchandise the seller is obligated to let the pans of the scale that will hold the merchandise tilt an extra handbreadth for the buyer by adding a weight to that side. If the seller weighed for him exactly, i.e., with the scales equally balanced initially, instead of allowing the scales to tilt an extra handbreadth, he must give the buyer additional amounts

[geirumin], an additional one-tenth in the case of liquids sold by weight, and an additional one-twentieth in the case of dry goods.

326 The mishna continues to discuss the correct method of weighing: In a place where they were accustomed to measure merchandise in several stages with a small measuring vessel, one may not measure all the items at once with a single large measuring vessel. In a place where they measure with one large measuring vessel, one may not measure with several small measuring vessels. In a place where the custom is to level the top of the measuring vessel to remove substances heaped above its edges, one may not heap it, and where the custom is to heap it, one may not level it.

327 GEMARA: The Gemara asks: From where are these matters, that the seller must initially let the scales tilt an extra handbreadth, derived? Reish Lakish said: The source is that the verse states that one should have: “A perfect and just [tzedek] weight” (Deuteronomy 25:15), which is interpreted as an instruction to the seller: Be righteous [tzaddek] with that which is yours and give it to the buyer. The Gemara asks: If that is so, say the latter clause: If the seller weighed for him exactly, he gives the buyer additional amounts. But if letting the scales tilt is obligatory by Torah law, how can he originally give him by weighing exactly?

328 Rather, it is not obligatory to let the scales tilt, and the first clause is referring to a place where they are accustomed to let the scales tilt an extra handbreadth. And if the statement of Reish Lakish was stated, it was stated with regard to the latter clause: If the seller weighed for him exactly, he gives the buyer additional amounts. From where is this matter derived? Reish Lakish said that this is as the verse states: “And just [tzedek],” which indicates: Be righteous [tzaddek] with that which is yours and give it to the buyer. The Gemara asks: And how much are the additional amounts that are given? Rabbi Abba bar Memel says that Rav says: In the case of liquids, one-tenth of a litra for every ten litra, i.e., one-hundredth.

329 The mishna teaches that the seller adds one-tenth in the case of liquids, and one-twentieth for dry goods. A dilemma was raised before the Sages: With regard to what case is the tanna of the mishna speaking? Does he mean one-tenth in the case of liquids for every ten units of liquid, and similarly one-twentieth in the case of dry goods for every twenty units of dry goods, i.e., one four-hundredth? Or perhaps, he means one-tenth for every ten units of liquid, and similarly one-tenth for every twenty units of dry goods, i.e., one two-hundredth? The Gemara states that the dilemma shall stand unresolved.

330 § Rabbi Levi says: The punishment for using false measures is more severe than the punishment for transgressing the prohibition of forbidden sexual relations. As in that case, forbidden relations, it is stated with regard to them a shortened term for the word “these”: “El,” in the verse: “For all these [el] abominations” (Leviticus 18:27). And in this case, false measures, it is stated an expanded term for the word “these”: “Elleh,” in the verse: “For all that do these [elleh] things, even all that do unrighteously, are an abomination unto the Lord your God” (Deuteronomy 25:16). And from where may it be inferred that this expression “el” indicates that the prohibition is severe, based on which it is understood that the form this word takes indicates a level of severity? As it is written: “And the mighty [eilei] of the land he took away” (Ezekiel 17:13).

331 The Gemara asks: But with regard to forbidden relations isn’t it also written: “For whosoever shall do any of these [elleh] abominations” (Leviticus 18:29)? If so, why is the punishment for using false measures considered harsher? The Gemara answers: That expression of “elleh” (Leviticus

18:29) in the context of forbidden relations does not serve to emphasize its severity. Rather, it serves to exclude one who uses deception in measures from the penalty of excision from the World-to-Come [karet].

[332] The Gemara asks: But if the punishment is in fact less severe, what is the advantage, i.e., the greater severity, in the case of false measures? The Gemara answers that there, in the case of one who engages in forbidden relations, he has the possibility of repentance. But here, in the case of one who uses false measures, there is no possibility of repentance because he has no way of knowing whom he cheated, and is therefore unable to return the stolen money.

[333] And Rabbi Levi says: Robbing an ordinary person is more severe than robbing the Most High, i.e., taking consecrated property. As with regard to this regular robber, the verse states "sin" before "me'ila": "If any one sin, and commit a trespass [me'ila] against the Lord, and deal falsely with his neighbor in a matter of deposit, or of pledge, or of robbery, or have oppressed his neighbor" (Leviticus 5:21). And with regard to that one who misuses consecrated items, the verse states me'ila before sin: "If any one engages in misuse [timol ma'al] and sins unwittingly" (Leviticus 5:15).

[334] And Rabbi Levi says: Come and see that the attribute of flesh and blood is unlike the attribute of the Holy One, Blessed be He. The Holy One, Blessed be He, blessed the Jewish people with twenty-two, and cursed them with only eight. Rabbi Levi explains: He blessed them with the twenty-two letters of the Hebrew alphabet, from the first letter, ales, that begins the verse: "If [im] you walk in My statutes" (Leviticus 26:3), until "upright [komemiyyut]" (Leviticus 26:13), which ends with the letter tav, the last letter of the Hebrew alphabet.

[335] And He cursed them with eight letters, from the letter vav that begins the verse: "And if [ve'im] you shall reject My statutes" (Leviticus 26:15), until: "And My statutes were abhorred by their soul [nafsham]" (Leviticus 26:43), which ends with the letter mem. There are eight letters in the Hebrew alphabet from the letter vav to the letter mem, inclusive.

[336] And yet Moses, our teacher, who is flesh and blood, blessed them with eight letters, and cursed them with twenty-two. He blessed them with eight letters,

[337] from the letter vav that begins the verse: "And it shall come to pass [vehaya], if you shall hearken diligently" (Deuteronomy 28:1), until: "To serve them [le'ovdam]" (Deuteronomy 28:14), which ends with the letter mem. And he cursed them with twenty-two letters, from the letter vav that begins the verse: "But it shall come to pass [vehaya], if you will not hearken to the voice of the Lord" (Deuteronomy 28:15), until: "And no man shall buy [koneh]" (Deuteronomy 28:68). This verse ends with a letter heh, which comes just before vav in the alphabet. Starting with a vav and ending with a heh encompasses the twenty-two letters of the alphabet.

[338] § The mishna teaches that in a place where they were accustomed to measure with one large measuring vessel, one may not measure with several small measuring vessels. In a place where the custom is to level the top of the measuring vessel to remove substances heaped above its edges, one may not heap it; and where they are accustomed to heap it, one may not level it. The Gemara provides a mnemonic for the ensuing halakhot: One may not balance with precision; and one may not heap it; with market inspectors [ba'agardamin]; and with a litra; three; and ten; fulcrum; weights; a thick leveler; you may not do; one may not do.

339 The Sages taught: From where is it derived that one may not level a measuring vessel in a place where they are accustomed to heap it and that one may not heap it in a place where they are accustomed to level it? The verse states: “A perfect weight” (Deuteronomy 25:15), which indicates that one must use whatever is considered a perfect measuring vessel in that locale, as this ensures that there is no deception or trickery.

340 And from where is it derived that if the seller said in a place where they heap: I am hereby leveling and am willing in exchange to reduce the price for you, or said, in a place where they level: I am hereby heaping and am willing to increase the price for you, that the court does not listen to him? The verse states: “A perfect and just weight you shall have” (Deuteronomy 25:15). The addition of the term “just,” beyond the requirement that the weight be “perfect,” teaches that one must keep his weights in a just manner, i.e., that employed by the people of that locale.

341 The Sages taught: From where is it derived that one may not balance a scale so that it will balance with precision [me’ayyenin] in a place where they are accustomed to let the scales tilt a handbreadth for the benefit of the buyer, and that one may not let the scales tilt a handbreadth in a place where they are accustomed to balance with precision? The verse states: “A perfect weight” (Deuteronomy 25:15), which teaches that the weight must be considered perfect in that locale.

342 And from where is it derived that if a seller said, in a place where it is the custom to let the scales tilt a handbreadth: I am hereby balancing with precision and am willing to reduce the price for the buyer; or, in a place where it is the custom to balance with precision: I am hereby letting the scales tilt a handbreadth and am willing to increase the price for the buyer, that the court does not listen to him? The verse states: “A perfect and just weight” (Deuteronomy 25:15), which teaches that the just way of acting is to weigh in accordance with the practice in that locale.

343 Rav Yehuda of Sura says a homiletic interpretation of the phrase: “You shall not have in your house diverse measures” (Deuteronomy 25:14): “You shall not have in your house” means that you will become a pauper, who has nothing in his house. What is the reason for this? It is due to the fact that you used diverse measures, buying with a large vessel and selling with a small one.

344 The phrase: “You shall not have in your purse diverse weights” (Deuteronomy 25:13), is interpreted in a similar fashion: “You shall not have in your purse,” i.e., you will become a pauper, who has nothing in his purse. What is the reason for this? It is due to the fact that you used diverse weights. But if you possess only “a perfect and just weight,” then “you shall have” wealth. Likewise, if you possess only “a perfect and just measure,” then “you shall have” wealth.

345 § The Sages taught that the phrase: “You shall not have,” teaches that the court appoints market inspectors to supervise the accuracy of measures. The Gemara infers: But the court does not appoint market inspectors for supervising market prices. The Gemara relates: The house of the Nasi appointed market inspectors for supervising both measures and prices. Shmuel said to his student, the Sage Karna: Go out and teach them that one appoints market inspectors for supervising measures but one does not appoint market inspectors for prices.

346 Karna went out and taught them that one appoints market inspectors for supervising both measures and prices. Shmuel, hearing what he had done, said to him: What is your name? He replied: Karna. Shmuel said: Let a horn [karna] emerge in his eye. A horn, i.e., a growth of flesh, emerged in his eye. The Gemara asks: And Karna, in accordance with whose opinion did he hold, which led him to disregard his teacher’s statement? He held in accordance with that which Rami bar Ḥama says that

Rabbi Yitzḥak says: One appoints market inspectors for supervising both measures and prices, due to swindlers, to prevent people from using smaller measures or from selling at a steep price while falsely claiming that they are selling superior-quality merchandise.

[347] The Gemara discusses several halakhot related to the cases of the mishna. The Sages taught: If the buyer requested from the seller a litra of a specific item, he weighs for him using a litra weight. If he asks for half a litra, he weighs for him using a half-litra weight. If he wants one-quarter of a litra, he weighs for him using a quarter-litra weight. The Gemara asks: Isn't this obvious? What is this baraita teaching us? The Gemara explains: It teaches that one sets weights until this amount, one-quarter of a litra, but not less. If a buyer asks the seller to weigh a smaller amount for him, his request is not granted.

[348] Furthermore, the Sages taught: If the buyer requested from him three-quarters of a litra, and there is no weight equal to this amount, the buyer may not say to him: Weigh for me three units using a quarter-litra weight, one by one, so that the seller lets the scales tilt by a handbreadth as he measures each quarter-litra weight. Rather, he weighs the merchandise all at once, as he places a litra weight on one pan of the scale, and places on the other pan of the scale a quarter-litra weight together with the meat that is being sold.

[349] The Sages likewise taught: In a case where the buyer requested from the seller ten litra of merchandise, the buyer may not say to him: Weigh for me each litra one by one, and let the scales tilt each time, as on every occasion that the seller does this the buyer receives more than that for which he paid. Rather, he weighs all the merchandise at the same time and lets the scales tilt once for all the merchandise.

[350] § The Sages taught: The fulcrum of a scale must be suspended in the air so that the point the lever goes through it is at a distance of three handbreadths from the ceiling, and the pans of the scale must be three handbreadths above the ground. And the scale's lever and cord, from which each pan is suspended, must be twelve handbreadths long. And the fulcrum of a scale of wool-weavers and glassmakers must be suspended in the air at a distance of two handbreadths from the ceiling, and the pans of the scale must be two handbreadths above the ground. And its lever and cord must be nine handbreadths long.

[351] And the fulcrum of a scale of a storekeeper and of a homeowner must be suspended in the air at a distance of one handbreadth from the ceiling, and the pans of the scale must be one handbreadth above the ground. And its lever and cord must be six handbreadths long. And the fulcrums of small scales [turtanei] used for weighing gold and silver must be suspended in the air at a distance of three fingerbreadths from the ceiling, and the pans of the scales must be three fingerbreadths above the ground. The tanna continues: But with regard to its lever and cord, I do not know their required length.

[352] Since the function of each type of balance scale is mentioned with the exception of the first type, the Gemara asks: And that large balance scale, which is mentioned first, for what is it used?

[353] Rav Pappa says: It is a balance scale for blacksmiths, who weigh heavy pieces of metal.

[354] Rabbi Mani Bar Pattish says: Just as the Sages said with regard to the prohibition of the scales that one may not use a scale that does not meet the criteria listed in the baraita, so too they said that

this applies with regard to their ritual impurity. In other words, if the cords and pole are not attached in the proper manner, they are not susceptible to ritual impurity as part of the scale.

355 The Gemara asks: What is this statement teaching us? We learned in a mishna (Kelim 29:5): With regard to the rope from which the scales are suspended, if the balance scale belongs to a storekeeper or to homeowners it must be one handbreadth in length for it to be susceptible to ritual impurity. Why, then, is the statement of Rabbi Mani Bar Pattish necessary? The Gemara answers: Although the mishna in tractate Kelim discusses the rope from which the scales are suspended, it was still necessary for Rabbi Mani Bar Pattish to mention the halakha with regard to the scale's lever and cord, which we did not learn about in that mishna.

356 § The Sages taught: One may not prepare weights of tin [ba'atz], nor of lead, nor of a metal alloy [gisteron], nor of any other types of metal, because all of these deteriorate over time and the buyer will ultimately pay for more merchandise than he receives. But one may prepare weights of hard rock and of glass.

357 The Sages further taught: One may not prepare the leveler, used to remove the excess from the mouth of a vessel, from a gourd, because it is a light material and does not level effectively, thereby causing a loss for the seller. And it may not be made of metal, because it weighs down and removes too much of the merchandise, leading to a loss for the buyer. But one may prepare it from the wood of an olive tree, or of a nut tree, or of a sycamore tree, or of a boxwood tree, which are of medium weight.

358 The Sages taught: One may not prepare the leveler in such a manner that one of its sides is thick and one other side is thin, because in such a case the two sides will not level equally. Furthermore, one may not level all at once, by a single quick movement, as one who levels all at once acts in a manner that is bad for the seller and good for the buyer, because he removes less of the excess than one who levels in the regular fashion. And conversely one may not level little by little, i.e., with several slow movements, as this is bad for the buyer and good for the seller.

359 Rabban Yoḥanan ben Zakkai said with regard to all these halakhot: Woe to me if I say them, and woe unto me if I do not say them. If I say them, perhaps swindlers will learn new methods of cheating of which they were previously unaware. And if I do not say them, perhaps swindlers will say: Torah scholars are not well versed in our handiwork. A dilemma was raised before the Sages: Did Rabban Yoḥanan ben Zakkai decide to say these halakhot in public or did he not say them? Rav Shmuel bar Rav Yitzḥak says: He said them, and he said them on the basis of this verse: "For the ways of the Lord are right, and the just walk in them; but transgressors stumble over them" (Hosea 14:10).

360 § The Gemara further discusses weights and measures. The Sages taught: "You shall do no unrighteousness in judgment, in measure [bammidda], in weight, or in measure [uvamesura]" (Leviticus 19:35). The baraita defines these terms: "In measure [bammidda]," this is referring to measuring land, teaching that in order to measure land in a just manner one may not measure for one person in the summer when the measuring rope has become dry and short, and for one other individual in the rainy season, when the measuring rope is wet and limp, and therefore stretches more. "In weight" means that one may not cover his weights in salt, as salt erodes the weights, causing a loss for the buyer. "Or in measure [bamesura]" means that one may not cause liquid he is

measuring to foam by pouring it speedily, as this results in a loss for the buyer, who receives less of the liquid than the amount for which he paid.

361 The Gemara notes: And it can be inferred by means of an a fortiori inference that if in the case of a mesura, which is a measure equivalent to merely one thirty-sixth of a log, the Torah was particular that one must measure honestly, so too, a fortiori, one must be careful in the case of one hin, and a half-hin, and a third-hin, and a quarter-hin, which is twelve log, and one log, and a half-log, and a quarter-log, and a half-tomen, i.e., one-sixteenth of a kav, and even an ukla, a smaller unit, as defined below.

362 Rav Yehuda says that Rav says: It is prohibited for a person to keep in his house a measure that is too small or too large relative to its supposed volume or weight, and this is the case even if he does not measure with it but simply uses it as a chamber pot for urine. Rav Pappa said: We said this prohibition only with regard to a place where measures are not stamped with the government's seal, which confirms that the measure is accurate. But in a place where the measures are stamped, if the buyer does not see the seal he would not take the merchandise. Since they could not be used dishonestly, one is permitted to utilize these measures for other purposes. And in a place where measures are not stamped as well, we said that it is prohibited to keep these measures in one's house only in a place where they do not inspect measures to see if they are fit for use. But if they do inspect measures, we have no problem with it.

363 The Gemara comments: And that is not so; one is never permitted to keep incorrect measures in his house, as sometimes it happens that one measures at twilight, when people are hurried, and consequently it happens that the buyer takes the merchandise despite the fact that it was measured with an incorrect measure. This is also taught in a baraita: A person may not keep in his house a measure that is too small or too large, even if it is used as a chamber pot for urine. But he may prepare measures in accordance with the established format: Measurements of a se'a; a tarkav, which is three kav or one-half of a se'a; and a half-tarkav, which is one and one-half kav; and a kav; and a half-kav; and a quarter-kav; and a tomen, which is one-eighth of a kav; and a half-tomen;

364 and an ukla. And how much is an ukla? It is one-fifth of a quarter of a kav. And in the case of liquid measures, one may prepare a hin, which is twelve log; and a half-hin, or six log; and a third-hin, or four log; and a quarter-hin, three log; and a log; and a half-log; and a quarter-log; and an eighth-log; and an eighth of an eighth-log, and this, the last mentioned, is a kortov.

365 The Gemara asks: And let one also prepare a measure equal to two kav. The Gemara answers that this measure is not used, lest people come to mistake it for a tarkav, which is three kav. The Gemara observes: Apparently, people err by one-third of a measure. If that is so, one should also not prepare a measure equal to a kav, as people may come to mistake it for a half-tarkav, which is equal to one and one-half kav. Rather, this is the reason that one may not prepare a two-kav measure: That people might come to mistake it for a half-tarkav, which is equal to one and one-half kav.

366 The Gemara again suggests: Apparently, people err by one-quarter of a measure. If that is so, one should also not prepare measures of a half-tomen, which is one-sixteenth of a kav, and an ukla, which is one-twentieth of a kav. Since they differ by only one-fifth, there is a concern that people might mistake one measure for the other. Rav Pappa said: People are well-versed in small measures and can distinguish between them.

[367] The Gemara continues: If people err by one-quarter of a measure, then since one may prepare a measure equal to four log, one-third of a hin, let one not prepare a measure equal to three log, one-quarter of a hin. The Gemara answers: Since these measures were used in the Temple, the Sages did not decree that they not be used. The Gemara asks: In the Temple as well, let the Sages decree that they should not be used, in case the two measures are mistaken for each other. The Gemara answers: The priests who serve in the Temple are vigilant and would not commit this error.

[368] § Shmuel says: If the residents of a certain place want to change the standard of their measures and augment them by a certain fraction, they may not increase the measures by more than one-sixth, and they may not increase the value of a coin by more than one-sixth of its previous value. And one who profits from his sales may not profit by more than one-sixth. The Gemara analyzes these statements. When Shmuel said: They may not increase the measures by more than one-sixth, what is the reason for this? If we say it is because doing so causes market prices to rise, the same concern should apply to raising the prices by one-sixth, and therefore this should also not be allowed.

[369] Rather, you will say that the prohibition is due to concern for exploitation; and they may increase the measures only by up to one-sixth, so that there will not be nullification of the transaction, as the transaction is nullified only when the disparity is more than one-sixth of the value of the item. The Gemara raises an objection: But doesn't Rava say: With regard to any item that is otherwise subject to the halakhot of exploitation, and it is sold by measure, or by weight, or by number, even if the disparity was less than the measure of exploitation in the transaction, the transaction is reversed. A disparity of one-sixth between the value of an item and its price constitutes exploitation only in cases where there is room for error in assessing the value of an item. In a case where the details of the item are easily quantifiable, any deviation from the designated quantity results in a nullification of the transaction.

[370] Rather, the prohibition is so that there will not be a loss suffered by the merchant, who might not realize that a new standard was issued, and sell in accordance with the old standard. Since a merchant usually enjoys a profit of one-sixth of the value of an item, if the standard is not increased by more than this amount he will not suffer a loss, as at worst he will forfeit his profit margin.

[371] This Gemara notes: This explanation is also difficult, since even if the aim is to ensure that there will not be a loss for the merchant, does he not need to earn a profit? There is a well-known adage in this regard: If you buy and sell without making any profit, will you be called a merchant? A merchant must profit from his sales; therefore, if this decree was instituted for the protection of merchants, the Sages should have ensured that they earn a profit.

[372] Rather, Rav Ḥisda said: The prohibition is not based on logical reasoning. Instead, Shmuel found a verse and interpreted it homiletically: "And the shekel shall be twenty gera; twenty shekels, five and twenty shekels, ten, and five shekels, shall be your maneh" (Ezekiel 45:12). According to this verse, the combination of all of these numbers, sixty shekels, is equivalent to a maneh.

[373] This is problematic: How can a maneh consist of sixty shekels? Since each biblical shekel is equivalent to four dinars, if a maneh is equal to sixty shekels, a maneh is two hundred and forty dinars. But a maneh is actually equal to twenty-five shekels, which is one hundred dinars. Rather, one can learn from the verse three matters: Learn from it that the sacred maneh was doubled, so that it equaled fifty dinars, not twenty-five. And furthermore, as Ezekiel stated that the maneh will be sixty dinars, not fifty, learn from it that a community may increase measures, but they may not

increase them by more than one-sixth. And learn from it that the one-sixth is calculated from the outside, i.e., it is one-sixth of the final sum, which is one-fifth of the previous sum.

374 The Gemara relates: Rav Pappa bar Shmuel instituted a new measure of three kefiza, which is equal to three log. The Sages said to him: But doesn't Shmuel say that one may not increase the measures by more than one-sixth? You have added one-third, as there already exists a measure of a half-kav, which is the equivalent of two log. Rav Pappa bar Shmuel said to them: I instituted a new measure. He sent the measure to Pumbedita, and they did not accept it; he sent it to the city of Paphunya, and they accepted it and called it the measure of Pappa.

375 § The Gemara provides a mnemonic for the ensuing discussions: Hoarders of produce; one may not hoard; and one may not export; and one may not earn a profit; twice from the sale of eggs; they sound the alarm; and one may not leave.

376 The Sages taught: Hoarders of produce, who drive up prices by causing a shortage of available goods, and usurers, and those sellers who falsely reduce their measures, and those who raise market prices by selling for more than the accepted price, about them the verse states: "You that would swallow the needy and destroy the poor of the land, saying: When will the new moon be gone, that we may sell produce? And the Shabbat, that we may set forth grain? Making the measure small, and the shekel great, and falsifying the balances of deceit" (Amos 8:4–5). And it is written: "The Lord has sworn by the pride of Jacob: Surely I will never forget any of their works" (Amos 8:7).

377 The Gemara asks: Hoarders of produce, such as whom? Rabbi Yoḥanan said: Such as Shabbtai, the hoarder of produce, who would buy and hoard large amounts of produce and later sell it at a high price.

378 The Gemara relates: Shmuel's father would sell produce during the period of the early market price, when produce is cheap, for the early market price. His son Shmuel acted differently, and would keep the produce and sell it during the period of the late market price, when produce is expensive, for the early market price. They sent a message from there, Eretz Yisrael: The practice of the father is better than that of the son. What is the reason for this? A market price that has been eased and starts out low will remain eased, with little increase over the course of the year. Therefore, one who makes produce available at the beginning of the season, like Shmuel's father, aids people during the entire year. By contrast, a market price that starts out high, because people are not making their produce available at the market, is not easily lowered.

379 Rav says: A person may turn his own kav into a storeroom, i.e., he may hoard the produce of his own field and sell it only at a later stage, without violating the prohibition of hoarding produce. This is also taught in a baraita: One may not hoard produce of items that contain an element of basic sustenance, such as wines, oils, and flours, but in the case of spices, such as cumin and pepper, it is permitted. In what case is this statement said? It is with regard to one who buys that produce from the market to resell later; but with regard to one who brings in produce from his own field, it is permitted for any type of produce.

380 The baraita continues: And it is permitted for a person to hoard produce in Eretz Yisrael for these three years: The year preceding the Sabbatical Year, the Sabbatical Year, and the year that follows the Sabbatical Year, because the land lies fallow during the seventh year, the Sabbatical Year, and the produce of the sixth year must last through these three years, until near the end of the eighth year.

[381] And in years of drought one may not hoard even a kav of carobs, because he thereby brings a curse on market prices, as everyone is fearful of selling and even a small fluctuation in supply can cause a significant rise in prices. Rabbi Yosei, son of Rabbi Ḥanina, who was living in Eretz Yisrael, said to his servant Fuga: Go and hoard produce for me for the coming three years: The year preceding the Sabbatical Year, the Sabbatical Year, and the year that follows the Sabbatical Year.

[382] § The Sages taught: One may not export produce from Eretz Yisrael if it consists of items that contain an element of basic sustenance, such as wines, oils, and flours, because this causes them to become more expensive in Eretz Yisrael. Rabbi Yehuda ben Beteira permits export in the case of wine, because this lessens licentiousness in Eretz Yisrael. And just as one may not export these types of produce from Eretz Yisrael to outside of Eretz Yisrael, so too one may not export them from Eretz Yisrael to Syria, as Syria is not considered part of Eretz Yisrael in this context. And Rabbi Yehuda HaNasi permits the export of produce

[383] from the northernmost province [mehiparkheya] of Eretz Yisrael to the southernmost province of Syria.

[384] The Sages taught: One may not earn a profit in Eretz Yisrael by buying and reselling items that contain an element of basic sustenance, such as wines, oils, and flours, because this causes their price to rise. Rather, those who grow the produce should sell them in the markets, without recourse to a middleman.

[385] The Sages said of Rabbi Elazar ben Azarya that he would earn a profit through the sale of wine and oil. With regard to wine, he holds in accordance with the opinion of Rabbi Yehuda ben Beteira, who says that it is permitted to export wine from Eretz Yisrael despite the fact that this causes it to become more expensive, as drinking wine leads to licentiousness. With regard to oil, in Rabbi Elazar ben Azarya's locale oil was common; consequently, there was no concern that its price would rise if it were not sold directly to the consumer.

[386] The Sages taught: One may not earn a profit twice from the sale of eggs. Mari bar Mari said: Rav and Shmuel disagree about the meaning of that statement. One said it means that the seller may not charge double the price he paid for the eggs. And one said that one merchant may not sell to another merchant; rather, the merchant who buys from the owner of the eggs must sell directly to the consumer.

[387] § Apropos price fluctuations, the Gemara cites a baraita. The Sages taught: A community sounds the alarm and gathers in public prayer for merchandise [perakmatya] whose price has dropped. And even on Shabbat it is permitted to cry and plead, even though one may not pray for his personal needs on Shabbat, as this hardship affects the entire public.

[388] Rabbi Yoḥanan said: The baraita is referring specifically to merchandise that serves as the basis of the local economy, such as linen garments in Babylonia, and wine and oil in Eretz Yisrael. Rav Yosef said: And that halakha, that public prayer is recited even on Shabbat, applies only when the merchandise was reduced in price and stood at such prices that goods that had been worth ten are currently selling for six.

[389] The Sages taught: One may not leave Eretz Yisrael to live outside of Eretz Yisrael unless the price of two se'a of grain stood at a sela, which is double its usual price. Rabbi Shimon said: When does this exception, permitting one to leave Eretz Yisrael under certain circumstances, apply? It

applies when one is unable to find produce to buy, as he has no money. But when one has money and is able to find produce to buy, even if the price of a se’a of grain stood at a sela, he may not leave.

390 And Rabbi Shimon ben Yoḥai would likewise say: Elimelech and his sons Mahlon and Chilion were prominent members of their generation and were leaders of their generation. And for what reason were they punished? They were punished because they left Eretz Yisrael to go outside of Eretz Yisrael, as it is stated concerning Naomi and Ruth: “And all the city was astir concerning them, and the women said: Is this Naomi?” (Ruth 1:19). The Gemara asks: What is the meaning of the phrase: “Is this Naomi”? How does this indicate that her husband and sons were punished for leaving Eretz Yisrael? Rabbi Yitzḥak says that the women said: Have you seen what befell Naomi, who left Eretz Yisrael for outside of Eretz Yisrael? Not only did she not escape tribulations there, but she lost her status entirely.

391 And Rabbi Yitzḥak also says with regard to this passage: That very day when Ruth the Moabite came to Eretz Yisrael, the wife of Boaz died, i.e., from the moment of their arrival the possibility was created for Ruth’s eventual marriage to Boaz. This explains the adage that people say: Before the deceased dies, the person who will next be in charge of his house arises, as in this case Boaz’s new wife, Ruth, arrived as his previous wife died.

392 Apropos the story of Ruth the Gemara adds: Rabba bar Rav Huna says that Rav says: The judge Ibzan of Bethlehem (see Judges 12:8–10) is Boaz. The Gemara asks: What is he teaching us? The Gemara explains that this comment is in accordance with the other statement of Rabba bar Rav Huna, as Rabba bar Rav Huna says that Rav says: Boaz prepared one hundred and twenty feasts for his children at their weddings. As it is stated, concerning Ibzan: “And he had thirty sons, and thirty daughters he sent abroad, and thirty daughters he brought in from abroad for his sons. And he judged Israel seven years” (Judges 12:9). The verse indicates that he had sixty children.

393 And at each and every wedding he prepared for his children, he made two feasts, one in the house of the father of the groom and one in the house of the father-in-law of the groom. And he did not invite Manoah, the future father of Samson, whose wife was barren (see Judges 13:2) to any of them, as he said: It is not worth inviting him; he is a sterile mule, how will he pay me back? Manoah will never invite me in return, as he has no children.

394 A Sage taught: And all of the children of Ibzan died during his lifetime. And this explains the adage that people say: Why do you need the sixty, the sixty children that you beget during your lifetime? Go to the trouble and beget one who will be more diligent than sixty. This adage refers to Boaz, who had sixty children who died, and yet his last child, born from Ruth, is his glory, as King David was born from this line.

395 The Gemara provides a mnemonic for the ensuing statements that Rav Ḥanan bar Rava said that Rav said: Melech; Abraham; ten years; when he died; and He alone was exalted. Rav Ḥanan bar Rava says that Rav says: With regard to Elimelech, and Boaz’s father, Salmon, and So-and-so, the unnamed relative who was a closer relative to Elimelech than Boaz (Ruth 4:1), and Naomi’s father, all of these are descendants of Nahshon, son of Amminadab, the head of the tribe of Judah (see Ruth 4:20–21 and Numbers 2:3). The Gemara asks: What is he teaching us by this statement? He is teaching that even in the case of one who has the merit of his ancestors to protect him, this merit does not stand for him when he leaves Eretz Yisrael to go outside of Eretz Yisrael, as Elimelech died on account of this sin.

[396] And Rav Ḥanan bar Rava says that Rav says: The mother of Abraham was called Amatlai bat Karnevo. The mother of Haman was called Amatlai bat Orevati. And your mnemonic, to ensure that the two are not confused for one another, is that a raven [orev] is impure, and in this manner one remembers that Orevati is the grandmother of the impure Haman, while a sheep [kar] is pure, which indicates that Karnevo is the grandmother of the pure Abraham.

[397] Rav Ḥanan bar Rava continues: The mother of David was named Natzvat bat Ada'el. The mother of Samson was named Tzelelponit, and his sister was called Nashyan. The Gemara asks: What is the practical difference as to what their names were? The Gemara answers: It is important with regard to an answer for heretics who inquire into the names of these women, which are not stated in the Bible. One can reply that there is a tradition handed down concerning their names.

[398] And Rav Ḥanan bar Rava says that Rav says: Our forefather Abraham was imprisoned for ten years, because he rejected the idol worship that was accepted in his land. He was imprisoned for three years in the city of Khuta, and seven years in Karddu. And Rav Dimi of Neharde'a teaches the opposite, that he was imprisoned seven years in Khuta and three in Karddu. Rav Ḥisda said: The small passage of Khuta, this is Ur of the Chaldeans (see Genesis 11:31).

[399] And Rav Ḥanan bar Rava says that Rav says: On that day when our forefather Abraham left the world, the leaders of the nations of the world stood in a line, in the manner of mourners, and said: Woe to the world that has lost

[400] its leader, and woe to the ship that has lost its captain.

[401] With regard to leaders, the Gemara adds that it is stated in praise of God: "And You are exalted as head above all" (I Chronicles 29:11). Rav Ḥanan bar Rava says that Rav says: Even one with the most insignificant position of authority, e.g., an appointee over irrigation, is appointed by Heaven.

[402] The Gemara returns to its discussion of the punishment of Elimelech and his sons, which Rabbi Shimon ben Yoḥai says they received because they left Eretz Yisrael. Rav Ḥiyya bar Avin says that Rabbi Yehoshua ben Korḥa says: Heaven forfend that they sinned in this manner, as if Elimelech and his sons had found even bran they would not have left Eretz Yisrael. But rather, for what reason were they punished? They were punished because they should have requested mercy of God for their generation, and they did not request this, as it is stated: "When you cry, let those you have gathered deliver you" (Isaiah 57:13).

[403] Rabba bar bar Ḥana says that Rabbi Yoḥanan says: They taught that it is prohibited to leave Eretz Yisrael only if money is cheap, i.e., not excessively difficult to obtain, and produce is expensive, similar to the case in the baraita where two se'a of wheat are sold for a sela. But when money is expensive, i.e., it is difficult to earn money for sustenance, even if the price of four se'a of grain stood at a sela, one may leave Eretz Yisrael in order to survive.

[404] The Gemara provides a mnemonic for the following list of Rabbi Yoḥanan's recollections: Sela; laborer; carob; boy; they would say. The first statement is that Rabbi Yoḥanan said: I remember when four se'a of produce were sold for one sela, and yet there were many swollen from hunger in Tiberias, as they did not have even one issar coin with which to purchase food. And Rabbi Yoḥanan further said: I remember when laborers would not agree to work on the east side of the city, because they would die from the smell of the bread that would waft over them from the city's west side.

405 The Gemara continues to relate other, more salutary, memories: And Rabbi Yoḥanan said: I remember when a child would break a carob, and a line of honey would extend over his two arms. And Rabbi Elazar said: I remember when a raven would take a piece of meat, and a line of fat would extend from the top of the wall upon which it was standing to the ground. And Rabbi Yoḥanan said: I remember when a boy and girl, of sixteen and seventeen years of age, would walk together in the market, and they would not sin. And Rabbi Yoḥanan said: I remember when they would say in the study hall that one who agrees with the gentiles falls into their hands, and that one who relies on them sees that which is his become theirs.

406 The Gemara returns to its discussion of the story of Ruth. It is written: “Mahlon and Chilion” (Ruth 1:2), and it is written elsewhere: “Joash and Saraph, who had dominion in Moab” (I Chronicles 4:22). Apparently, both names refer to the same individuals who married Moabite wives. Rav and Shmuel disagreed with regard to their true names. One says: Their given names were Mahlon and Chilion, and why were they called by the names Saraph and Joash? One was called Joash [yoash] because they despaired [nitya’ashu] of the redemption of Eretz Yisrael, as they established themselves in Moab and lived there for many years. The other was called Saraph, because they were liable to receive the punishment of burning [sereifa] for their sins against God, because they left their community.

407 And one of them says: Their given names were Joash and Saraph, and why were they called by the names Mahlon and Chilion? One was called Mahlon [maḥlon] because they made their bodies profane [ḥullin], and the other was called Chilion [khilyon] because they were liable to receive the punishment of destruction [kelaya] for their sins against God.

408 The Gemara notes: It is taught in a baraita in accordance with the one who says that their given names were Mahlon and Chilion. As it is taught in a baraita: What is the meaning of that which is written: “And Jokim, and the men of Cozeba, and Joash, and Saraph, who had dominion in Moab, and Jashubi Lehem. And the matters are ancient” (I Chronicles 4:22)? “And Jokim,” this refers to Joshua, who established [shehekim] and kept the oath with people of Gibeon (see Joshua, chapter 9). “And the men of Cozeba,” these are the men of Gibeon, who lied [shekizevu] to Joshua by saying that they came from a distant land. “And Joash, and Saraph,” these are Mahlon and Chilion. And why were they called by the names Joash and Saraph? One was called Joash because they despaired [shenitya’ashu] of the redemption; the other was called Saraph because they were liable to receive the punishment of burning [sereifa] for their sins against God.

409 “Who had dominion in Moab,” this means that they married Moabite women. “And Jashubi Lehem,” this is referring to Ruth the Moabite, who returned [sheshava] and attached herself to Bethlehem of Judea. “And the matters are ancient,” this means that these matters were said by the Ancient of Days, i.e., they occurred through God’s will, as it is written: “I have found David My servant” (Psalms 89:21); and the same term “found” also appears with regard to the daughters of Lot, as it is written: “Your two daughters that are found here” (Genesis 19:15). This teaches that David’s ancestry can be traced this far back, as he was destined to be born from Moab, who was the son of Lot’s daughter and Lot himself.

410 The Gemara cites a baraita that analyzes the next verse: “These were the potters, and those who dwelt among plantations and hedges; there they dwelt occupied in the king’s work” (I Chronicles

4:23). “These were the potters [yotzerim],” these are the sons of Jonadab, son of Rechab, who kept [natzeru] their father’s oath.

411 “Those who dwelt among plantations,” this is referring to Solomon, who in his kingship was similar to a plant. “And hedges [ugdera],” this is the Sanhedrin, which fenced [gaderu] in the breaches of the Jewish people by means of ordinances. “There they dwelt occupied in the king’s work,” this is referring to Ruth the Moabite, who saw the kingship of Solomon, the grandson of her grandson. As it is stated about Solomon: “And he caused a throne to be set for the king’s mother” (I Kings 2:19), and Rabbi Elazar says: This means for the mother of the dynasty of kingship, i.e., Ruth.

412 § Since the Gemara has discussed times of famine in Eretz Yisrael, it concludes the chapter with a blessing of times of prosperity: The Sages taught: When the verse states: “And you shall eat of the produce of the old store” (Leviticus 25:22), referring to the produce grown in the sixth year of the Sabbatical cycle, this means without salmanton. The Gemara asks: What is the meaning of: Without salmanton? Rav Naḥman said: Without worms [retzinta] that consume the produce, and Rav Sheshet said: Without blight, which destroys the taste of the produce.

413 The Gemara notes: It is taught in a baraita in accordance with the opinion of Rav Sheshet, and it is taught in another baraita in accordance with the opinion of Rav Naḥman. It is taught in a baraita in accordance with the opinion of Rav Naḥman: From the verse: “And you shall sow the eighth year, and you shall eat of the produce of the old store, until the ninth year” (Leviticus 25:22), one might have thought that the Jewish people will wait for the new produce because the old store has been destroyed. Therefore the same verse states: “Until its produce comes in,” to indicate that they will not stop eating the old produce until the new produce comes of itself, i.e., until it is fully ripe and they do not need the old produce. The old produce will last until then and will not become worm infested, as stated by Rav Naḥman.

414 It is taught in a baraita in accordance with the opinion of Rav Sheshet: From the verse: “And you shall eat of the produce of the old store,” one might have thought that the Jewish people will wait for the new produce due to the old store because the old store will have gone bad, since blight will ruin the taste of the produce. Therefore, the verse states: “Until its produce comes in,” which indicates that they will not stop eating the old produce until the new produce comes of itself, as the stored produce will not suffer from blight.

415 The Sages taught with regard to a verse in the chapter of the blessings stated to the Jewish people: “And you shall eat old store long kept” (Leviticus 26:10). This teaches that any produce that is older than other produce of that same type will be better than that other produce. And I have derived that this is the case only with regard to items for which it is the normal manner to age them. From where do I derive in the case of items for which it is not the normal manner to age them, e.g., fruit, that they too will improve with age? The verse states: “Old store long kept,” a general expression that indicates that in any case the land will keep its produce from spoiling, as all types of produce will improve with age.

416 The continuation of the verse: “You shall bring forth the old from before the new,” teaches that there will be storehouses full of old produce and threshing floors full of new produce, and the Jewish people will say: How will we manage to take out this produce from the storehouse before that produce is brought in? Rav Pappa said: Everything that is old is superior in quality to the new, except for dates, liquor, and small fish, which are better when they are fresh.

Chapter 6

[1] MISHNA: With regard to one who sells produce to another that is sometimes purchased for consumption and sometimes for planting, and the buyer planted it and it did not sprout, and even if he had sold flaxseeds, which are only occasionally eaten, the seller does not bear financial responsibility for them, i.e., he is not required to compensate the buyer. Since the buyer did not specify that he purchased the produce in order to plant it, the seller can claim that he assumed the buyer intended to eat it. Rabban Shimon ben Gamliel says: If he had sold seeds for garden plants, which are not eaten at all, then the seller bears financial responsibility for them, as they were certainly purchased for planting.

[2] GEMARA: An amoraic dispute was stated with regard to one who sells an ox to another and the ox is found to be one that habitually gores. Rav says: This is a mistaken transaction, since the buyer can claim that he bought the ox specifically for labor, and an ox that gores is not suitable for this function. Therefore, the seller must take back the ox and reimburse the buyer. And Shmuel says: The sale is not voided, as the seller can say to him: I sold it to you for slaughter, and the fact that it gores is immaterial.

[3] The Gemara suggests: But let us see if the buyer is a man who generally purchases oxen for slaughter, in which case it can be presumed that he also purchased this ox for slaughter, or if he is a man who generally purchases oxen for plowing, in which case it can be presumed that he also purchased this ox for plowing. The Gemara answers: The dispute concerns a man who sometimes purchases oxen for this purpose and sometimes for that purpose, and so it is uncertain for which purpose he purchased this ox.

[4] The Gemara persists: But let us see the payment he made; how much was it? Since an ox fit for plowing costs more than one fit only for slaughter, the purpose for which the ox was purchased will be apparent from the price paid.

[5] The Gemara answers: No, it is necessary to discuss the case where the price of an ox to be slaughtered for its meat appreciated and reached the value of an ox for plowing. But if the price disparity is significant, there is no dispute. The Gemara asks: If so, for the sake of what practical difference did they discuss the case? Even if the ox was not suitable for the buyer’s purposes, he could sell it for the same price of the ox he needs. The Gemara answers: The practical difference is with regard to the effort of selling the ox in order to recover its value; who must go to the effort of doing so?

[6] The Gemara clarifies: What are the circumstances of the case under discussion?

[7] If this is a case where the seller does not have sufficient funds for the buyer to be reimbursed by him, then let the buyer retain the ox itself in lieu of his money, as people say: If you wish to ensure that you will get paid, collect even bran, an inferior commodity, from one who is in your debt. Consequently, even according to the opinion of Rav, the buyer will be likely to retain the ox. What, then, is the practical difference between the opinions of Rav and Shmuel?

[8] The Gemara answers: No, it is necessary to discuss the case where the seller does have sufficient funds for the buyer to be reimbursed by him.

[9] The Gemara explains the logic of each opinion: Rav says: This is a mistaken transaction, as in cases of uncertainty we follow the majority, and since the majority of people purchase oxen for plowing, it is presumed that this buyer also purchased the ox for plowing. Accordingly, since the ox he received was not suitable for plowing, the sale is void. And Shmuel could have said to you: When we follow the majority, that is only with regard to ritual matters, but with regard to monetary matters, such as this, we do not follow the majority. Accordingly, there is no basis for voiding the sale.

[10] The Gemara cites a mnemonic that indicates the topics of the cases it will reference to challenge either Rav's or Shmuel's opinion: Woman, and slave, ox, oxen, and produce.

[11] The Gemara raises an objection to Rav's opinion from a mishna (Ketubot 15b): With regard to a woman who was widowed or divorced, and is in dispute with her husband or his heirs over the value of the payment she should receive for her marriage contract, and she says: When you married me I was a virgin, and so I am entitled to two hundred dinars, and he says: That is not the case; rather, when I married you, you were a widow, and so you are entitled to only one hundred dinars, then if there are witnesses that she went out of her father's house to her wedding with a veil [hinnuma] or with the hair of her head loose, in the typical manner of virgin brides, that is considered sufficient evidence in support of her claim, and so the payment of her marriage contract is two hundred dinars.

[12] The Gemara infers: The reason that she receives two hundred dinars is that there are witnesses to her claim. Therefore, if there were no witnesses, her claim would not be successful. The Gemara asks: But why? Let us say that since there is an uncertainty, one should follow the majority of women, and since the majority of women marry as virgins, it should be presumed that this woman also married as a virgin. Accordingly she should be entitled to two hundred dinars. Since this is not the case, it is apparent that the majority is not followed in monetary matters.

[13] Ravina said: In this case, one cannot decide the case based on the majority of women because there is room to say that it is so that the majority of women marry as virgins and only a minority marry as widows or non-virgins. But it is also so that there is an additional presumption: The marriage of anyone who marries as a virgin generates publicity of that fact. And with regard to this woman, who is in a dispute over the value of her marriage contract, because her marriage did not generate publicity of her marrying as a virgin, the ability to apply what is true of the majority of women to her case is undermined. Accordingly, there is no proof that the majority is not followed in monetary matters.

[14] The Gemara questions this: If it is really true that the marriage of anyone who marries as a virgin generates publicity of that fact, then even when there are witnesses that she was a virgin bride, what of it? From the fact that her marriage did not generate publicity of her marrying as a virgin, perforce they are false witnesses.

[15] Rather, one must modify the above argument to say that the majority of marriages of women who marry as virgins generate publicity of that fact, and with regard to this woman, since her marriage did not generate publicity of her having been married as a virgin, the ability to apply what is true of the majority of women to her case is undermined.

[16] Come and hear a challenge to Shmuel's opinion from a baraita: In the case of one who sells a slave to another, and the slave is found to be a thief or a gambler [kuvyustus], and the buyer does not wish to have such a slave, nevertheless it has come to him, i.e., the slave is acquired by the one who purchased him and the transaction is nonrefundable. By contrast, if the slave is found to be an armed

bandit [listim] or has been judged and written to be executed by the government, then the buyer can return the slave to the seller and say to him: That which is yours is before you; return the money I paid for him, as the sale is void.

[17] The Gemara explains the proof from the baraita: In the first clause of the baraita,

[18] what is the reason that the sale is not considered to be a mistaken transaction? Is it not because a majority of slaves are like this, i.e., either thieves or gamblers? Apparently, the majority is followed in monetary matters.

[19] The Gemara rejects the proof: No, it is because all slaves are like this. Accordingly, no proof can be drawn as to whether we follow the majority in monetary matters.

[20] Come and hear another challenge to Rav's opinion from a mishna (Bava Kamma 46a): In the case of an innocuous ox that gored and killed a cow, and the cow's fetus was found dead at its side, and it is not known whether the cow calved before the ox gored it and the fetus' death was unrelated to the goring, or whether it calved after the ox gored it and the fetus died on account of the goring, the ox's owner pays half the cost of the damage for the cow, as is the halakha for an innocuous ox (see Exodus 21:35), and one-quarter of the cost of the damage for the offspring. Since it is uncertain whether the ox caused the death of the fetus, its owner pays for half of the standard liability of half the cost of the damage.

[21] The Gemara explains the proof from the baraita: But why, according to Rav, should he only pay for one-quarter of the damage to the fetus? Since there is an uncertainty, let us say: Follow the majority of cows, and since the majority of cows become pregnant and calve live offspring, one should conclude that this cow, which did not, certainly miscarried due to the ox goring it, and the ox's owner should be liable for half the cost of the fetus. Since that line of reasoning is not applied here, it is apparent that the majority is not followed in monetary matters.

[22] The Gemara rejects the proof: There, the reason that the ox's owner pays for only one-quarter of the damage for the fetus is due to the fact that we are uncertain about how it died, as it is possible to say that the ox approached the cow from its front and it was due to the cow's fright, not due to the goring, that it miscarried, meaning that the ox's owner would not be liable; and it is also possible to say that the ox approached the cow from behind it and gored it, and that is why the cow miscarried. Accordingly, the payment for such damage constitutes property of uncertain ownership, and the halakha is that all property of uncertain ownership is divided equally between the two parties.

[23] The Gemara suggests: Let us say that this dispute between Rav and Shmuel is parallel to a dispute between tanna'im, as it is taught in a baraita: In the case of an ox that was grazing and another ox that was found killed at its side, even though this dead ox has been gored and that grazing ox is forewarned with regard to goring, or this dead ox has been bitten and that grazing ox is forewarned with regard to biting, nevertheless one does not say that it is evident that this grazing ox gored the dead ox or that grazing ox bit it, despite the fact such behavior is typical for the ox; rather, one cannot draw any definite conclusions. Rabbi Aḥa says that in the case of a rutting male camel that is rampaging among other camels and another camel that was found killed at its side, it is evident that this rampaging camel killed it, as such behavior is typical for a rutting camel. Therefore, the owner of that camel is liable.

[24] Those who suggested the parallel between the tannaitic dispute and the dispute between Rav and Shmuel assumed that a majority and a logical presumption about whether an event will happen are equivalent in their capacity to determine the facts of a case. Consequently, let us say that Rav, who says that one follows the majority in monetary matters, holds in accordance with the opinion of Rabbi Aḥa, who follows a presumption to determine the facts of a case, and that Shmuel, who says that one does not follow the majority in monetary matters, holds in accordance with the opinion of the first tanna, who does not follow a presumption.

[25] The Gemara rejects this: Rav could have said to you: I am stating my ruling even in accordance with the opinion of the first tanna, as the first tanna says that one cannot draw a definite conclusion only there, in the case of the grazing ox, as we do not follow a presumption in monetary matters, but he concedes that we follow the majority in monetary matters.

[26] And Shmuel could have said to you: I am stating my ruling even in accordance with the opinion of Rabbi Aḥa, as Rabbi Aḥa says that one can draw a definite conclusion only there, in the case of the camels, since we follow a presumption in monetary matters, as this camel itself is presumed, based on its behavior, to be the killer. But he concedes that we do not follow the majority in deciding monetary matters.

[27] The Gemara suggests: Come and hear another challenge to Rav's opinion from the mishna: With regard to one who sells produce to another that is sometimes purchased for consumption and sometimes for planting, and the buyer planted it and it did not sprout, and even if he had sold flaxseeds, which are rarely sold as food, the seller does not bear financial responsibility for them.

[28] The Gemara explains the proof: What novelty is indicated by saying: Even if he had sold flaxseeds? Is it not that even where he sold flaxseeds, of which the majority is purchased for planting, and they were not suitable for that purpose, nevertheless the sale stands because we do not follow the majority in monetary matters?

[29] The Gemara concedes that the mishna cannot be reconciled with Rav's opinion, but suggests that there are other tanna'im who hold in accordance with his opinion. It is a dispute between tanna'im, as it is taught in a baraita: With regard to one who sells produce to another, and the buyer planted it and it did not sprout, if the produce was seeds for garden plants, which are not eaten at all, then the seller bears financial responsibility for them. If the produce was flaxseeds, which are only occasionally eaten, then the seller does not bear financial responsibility for them. Rabbi Yosei says:

[30] The seller gives back to the buyer the value of the seeds. Since the majority of flaxseeds are sold are for planting, it is a mistaken transaction. They said to him, i.e., to Rabbi Yosei: Many, i.e., a majority of people, purchase flaxseeds for purposes other than planting. Consequently, the sale stands.

[31] The Gemara asks: Who are the tanna'im in this baraita who have a dispute that parallels the dispute between Rav and Shmuel? If we say that they are Rabbi Yosei and the opinion cited as: They said to him, that is incorrect, as both of them hold that one follows the majority in monetary matters. Their dispute concerns only which majority to follow: One Sage, i.e., the opinion cited as: They said to him, follows the majority of people making purchases, and one Sage, i.e., Rabbi Yosei, follows the majority of the volume of seeds that are sold overall. The disparity arises because the majority of sales are each made with a relatively small quantity of seeds that are purchased for purposes other than planting. The minority of sales involve large quantities of seeds that are purchased for planting.

This means that the majority of the seeds sold overall are purchased for planting, but the majority of people purchasing seeds do so for purposes other than planting.

[32] Rather, the dispute that parallels the dispute between Rav and Shmuel is either the dispute between the first tanna and Rabbi Yosei, or the dispute between the first tanna and the opinion cited as: They said to him.

[33] § The Sages taught in a baraita: When the seller bears financial responsibility for selling seeds that did not sprout, what is he liable to give to the buyer? He is liable to give him only the value of the seeds themselves, but not the expenses that the buyer incurred in planting them, e.g., the hire of laborers. And some say: He is liable to give him even the expenses that the buyer incurred.

[34] The Gemara asks: Who is the tanna whose opinion is cited as: Some say? Rav Ḥisda said that it is Rabban Shimon ben Gamliel.

[35] The Gemara clarifies: From which statement of Rabban Shimon ben Gamliel is it apparent that he holds the seller is liable for the buyer's expenses? One possibility is if we say that the statement in question is that of Rabban Shimon ben Gamliel in the mishna, as we learned in the mishna: One who sells to another produce that is sometimes purchased for consumption and sometimes for planting, and the buyer planted it and it did not sprout, and even if he had sold flaxseeds, which are only occasionally eaten, the seller does not bear financial responsibility for them. The Gemara extrapolates: By inference, if this tanna holds that he had sold seeds for garden plants, which are not eaten at all, then the seller bears financial responsibility to compensate the buyer for them.

[36] The Gemara continues: But accordingly, say the latter clause: Rabban Shimon ben Gamliel says: If he had sold seeds for garden plants, which are not eaten at all, then the seller bears financial responsibility for them. The Gemara asks: But according to the inference made from the first clause, the first tanna is also saying this, as he holds that it is only for the sale of flaxseeds that the seller does not bear financial responsibility to compensate the buyer for them, but with regard to the sale of seeds for garden plants, which are not eaten at all, the seller bears financial responsibility for them. What, then, is the dispute between the first tanna and Rabban Shimon ben Gamliel?

[37] The Gemara therefore suggests: Rather, is it not that the difference between them is whether the seller is liable for the buyer's expenses? One Sage, i.e., the first tanna, holds that the seller is liable only for the value of the seeds, and the other Sage, i.e., Rabban Shimon ben Gamliel, holds that the seller is liable even for the buyer's expenses.

[38] The Gemara asks: From where is it apparent that it is Rabban Shimon ben Gamliel who holds that the seller is liable for the expenses? Perhaps it is the opposite, i.e., it is the first tanna who holds that the seller is liable for the expenses, and Rabban Shimon ben Gamliel holds that he is liable only for the value of the seeds. The Gemara rejects this suggestion: This is not difficult, because the last tanna cited always comes to add something to the ruling of the first tanna, not to detract from it.

[39] The Gemara suggests: But perhaps all of the mishna is stating the opinion of Rabban Shimon ben Gamliel, and the mishna is incomplete, and this is what it is teaching: With regard to one who sells produce to another that is sometimes purchased for eating and sometimes for planting, and the buyer planted it and it did not sprout, and even if he had sold flaxseeds, which are only occasionally eaten, the seller does not bear financial responsibility for them. But if he sold seeds for garden plants, which are not eaten at all, the seller bears financial responsibility for them. This is the statement of Rabban

Shimon ben Gamliel, as Rabban Shimon ben Gamliel says that it is only for the sale of flaxseeds that the seller does not bear financial responsibility to compensate the buyer for them, but by inference, for the sale of seeds for garden plants, which are not eaten at all, the seller bears financial responsibility for them. Interpreted in this way, there is no evidence from the mishna that Rabban Shimon ben Gamliel holds that the seller is liable for the expenses.

40 Rather, the statement in question is this statement of Rabban Shimon ben Gamliel, as it is taught in a baraita (Tosefta, Bava Kamma 10:9) In a case of one who brought wheat to a miller to grind, and the miller did not wet the grains sufficiently for the grinding to be performed effectively, and as a result he converted the grain into bran or coarse bran [mursan], or in a case of one who gave flour to the baker and the baker made it into bread that is underbaked and tends to crumble, or if one gave an animal to a butcher and the butcher killed it in a way that rendered it an unslaughtered animal carcass, in all these cases the worker is liable, because he is like a paid bailee.

41 The baraita continues: Rabban Shimon ben Gamliel says: If the owner had invited guests to eat the food and due to the worker's actions he was unable to serve them, then the worker must give him compensation for his humiliation and compensation for the humiliation of his guests. And similarly, Rabban Shimon ben Gamliel would say: There was a great custom in Jerusalem that if one gives raw materials for a meal to another to prepare the meal for him, and that person spoils it, that person gives the former compensation for his humiliation and compensation for the humiliation of his guests.

42 The baraita continues: Another great custom that was followed in Jerusalem was that when one made a feast, there would be a cloth [mappa] spread over the entrance to the hall. As long as the cloth was spread, the guests would enter, as the presence of the cloth indicated that there was food for more guests. When the cloth was removed, the guests would not enter any more.

43 MISHNA: When selling a significant quantity of produce or a number of items, there is a possibility that there will be a certain proportion of impurities in it or that some of the product will be of substandard quality. The mishna delineates what proportion is considered acceptable, for which a buyer may not demand compensation. With regard to one who sells produce, i.e., grain, to another, this buyer accepts upon himself that up to a quarter-kav of impurities may be present in each se'a of produce purchased. When purchasing figs, he accepts upon himself that up to ten infested figs may be present in each hundred figs purchased. When purchasing a cellar containing barrels of wine, he accepts upon himself that up to ten barrels of souring wine may be present in each hundred barrels purchased. When purchasing jugs of wine in the Sharon region, he accepts upon himself that up to ten inferior-quality jugs [pitasot] of wine may be present in each hundred jugs purchased.

44 GEMARA: Rav Ketina taught: When the mishna states that a buyer accepts upon himself that a quarter-kav of impurities per se'a may be present, that means only that he accepts upon himself the presence of a quarter-kav of legumes, but he does not accept upon himself the presence of a quarter-kav of dirt. The Gemara asks: And is it so that the buyer does not also accept upon himself that some quantity of dirt might be present in the produce? But doesn't Rabba bar Ḥiyya Ketosfa'a say in the name of Rabba: One who picks out a pebble from the wheat on another's threshing floor

45 must give him the value of wheat of equal volume to the pebble that he removed. Had he not removed the pebble, the owner would have sold his wheat together with the pebble, all for the price of wheat. Accordingly, the removal of the pebble effectively caused the owner a small loss. It is

apparent from this ruling that when selling produce, a buyer accepts upon himself that a quantity of dirt may be mixed in.

[46] The Gemara answers: With regard to legumes, one accepts a quarter-kav per se’a, but with regard to dirt, he accepts less than a quarter-kav.

[47] And is it so that he does not accept a quarter-kav of dirt? But isn’t it taught in a baraita: With regard to one who sells produce to another, if he sells him wheat, the buyer accepts upon himself that a quarter-kav of legumes may be present in each se’a of wheat purchased. When purchasing barley, he accepts upon himself that a quarter-kav of chaff may be present in each se’a purchased. When purchasing lentils, he accepts upon himself that a quarter-kav of dirt may be present in each se’a purchased.

[48] The Gemara asks: What, is it not that just as the baraita rules with regard to lentils, the same is true for wheat and for barley? The Gemara answers: No, lentils are different, because they are dug up from the ground and dirt can easily get mixed in. Lentils often contain a higher percentage of dirt than do wheat and barley, which are harvested rather than dug up.

[49] The Gemara suggests: But according to this, the only reason that a buyer accepts that dirt may be present in lentils but not in wheat and barley is that lentils are dug up from the ground, whereas wheat and barley are not. If so, resolve the dilemma from this baraita and conclude that when purchasing wheat and barley, a buyer does not accept that a quarter-kav of dirt may be present in each se’a.

[50] The Gemara rejects this: Actually, perhaps when purchasing wheat and barley as well, a buyer accepts that a quarter-kav of dirt may be present in each se’a, but it was necessary for the baraita to state the halakha specifically with regard to lentils. This is because it might enter your mind to say that since lentils are dug up from the ground, the buyer would also accept even more than a quarter-kav of dirt. Therefore, the baraita teaches us that this is not the case.

[51] § Rav Huna says: If the buyer comes to sift the produce to check if there is more than the acceptable proportion of impurities and he finds that there is too much, he sifts all of it and returns all the impurities to the seller, not just the amount in excess of a quarter-kav per se’a. The seller must instead provide produce that is free of any impurities. Some say that this is the strict halakha, and some say that it is a penalty.

[52] The Gemara elaborates: Some say that this is the strict halakha, as one who gives money for produce gives it for good-quality produce containing no impurities at all. Even so, where there is just a quarter-kav of impurities per se’a, a person will not take the trouble to sift the grain to remove the impurities; instead, he accepts the small quantity of impurities that are present. By contrast, where there is more than a quarter-kav of impurities per se’a, a person will take the trouble to sift the grain to remove the impurities, and once he takes the trouble to sift the grain, he does not stop once he reduces the proportion of impurities to a quarter-kav per se’a; rather, he takes the trouble to sift all of it. Accordingly, once he has sifted out the impurities, he never agrees to accept any quantity of impurities, and so the seller must take back all the impurities.

[53] And some say it is a penalty. They understand that it is usual for a quarter-kav of impurities to be present in each se’a of produce, and so it is presumed that a buyer accepts that quantity. More than a quarter-kav is unusual, and consequently the seller is suspected of having deceitfully mixed

additional impurities into the produce that he sold. And since the seller deceitfully mixed in impurities, the Sages penalized him by requiring him to pay for all of the impurities present, even those which he did not add.

[54] The Gemara presents a mnemonic for the cases it will cite: All two documents of Ravin bar Rav Naḥman are exploitation and a contract.

[55] The Gemara raises an objection to Rav Huna's ruling from a mishna (Kilayim 2:1): With regard to any se'a of seeds that contains a quarter-kav or more of seeds of a different kind, before sowing such seeds one must reduce the quantity of the other kind of seeds in the mixture so as not to violate the prohibition against growing a mixture of diverse kinds (see Leviticus 19:19). The Gemara explains: It can be assumed that the presence of a quarter-kav of seeds of a different kind per se'a with regard to the prohibition of diverse kinds is as problematic as more than a quarter-kav of impurities per se'a with regard to a sale, as discussed here, and therefore, since the mishna teaches with regard to diverse kinds only that one must reduce the additional amount, but not that one is required to remove all the seeds of a different kind, it follows that the same is true in the case of a sale, and the seller should not have to take back all of the impurities. This contradicts Rav Huna's ruling.

[56] The Gemara deflects the challenge: No, this assumption is not necessarily correct; perhaps the presence of a quarter-kav of seeds of a different kind per se'a with regard to diverse kinds is comparable to a quarter-kav of impurities per se'a with regard to a sale, as discussed here, and both are considered acceptable levels of admixture.

[57] The Gemara asks: If it is so that a quarter-kav of seeds of a different kind per se'a is acceptable, why does the mishna teach that one must reduce the quantity of seeds of a different kind? The Gemara answers: The requirement is a rabbinic decree due to the severity of the prohibition of diverse kinds.

[58] The Gemara challenges this answer: If so,

[59] say the latter clause of the mishna: Rabbi Yosei says: It is insufficient to merely reduce the quantity of seeds of a different kind; rather, one must pick out all the seeds of a different kind.

[60] The Gemara explains the difficulty: Granted, if you say that a quarter-kav of seeds of a different kind per se'a with regard to diverse kinds is comparable to more than a quarter-kav of impurities per se'a with regard to a sale, then it is about this that they disagree: The first tanna holds that we do not penalize one by requiring him to remove that which is permitted due to that which is prohibited, and consequently it is sufficient to merely reduce the quantity of seeds of a different kind to an acceptable level, whereas Rabbi Yosei holds that we do penalize one by requiring him to remove that which is permitted due to that which is prohibited. But if you say that a quarter-kav of seeds of a different kind per se'a with regard to diverse kinds is comparable to a quarter-kav of impurities per se'a with regard to a sale, then why does Rabbi Yosei rule that one must pick out all the seeds of a different kind?

[61] The Gemara answers: There, with regard to diverse kinds, this is the reasoning of Rabbi Yosei: One must pick out all the seeds, because once he is purifying the admixture of seeds, if he deliberately leaves a quantity of seeds of a different kind mixed in, it appears as though he is intentionally planting and maintaining diverse kinds in his field.

[62] The Gemara suggests: Come and hear another challenge to Rav Huna’s ruling from a mishna (Bava Metzia 37a): In the case of two people who deposited money with one person, and this one deposited one hundred dinars and that one deposited two hundred dinars, and when they return to collect their deposits, this one says: My deposit was two hundred dinars, and that one says: My deposit was two hundred dinars, the bailee gives one hundred dinars to this one and one hundred dinars to that one, and the rest of the money, i.e., the contested one hundred dinars, will be placed in a safe place until Elijah comes and prophetically determines the truth. In this case, one of the parties is certainly lying, but nevertheless, the Sages did not penalize the parties by placing all of the money in a safe place. Similarly, in the case of a sale, where a seller deceitfully mixed additional impurities into the produce he sold, he should not be penalized and required to take back all of the impurities.

[63] The Gemara rejects this challenge: How can these cases be compared? There, in the case of the deposits, it is certain that at least one hundred dinars belongs to this Master and one hundred dinars belongs to that Master. Here, in the case of a sale where there is an unacceptable proportion of impurities mixed in, who can say that the seller did not mix in the entire amount intentionally? Accordingly, no proof can be drawn from the mishna.

[64] The Gemara suggests: Come and hear a support for Rav Huna’s ruling from the latter clause of that mishna: Rabbi Yosei says: If so, what did the swindler lose? He lost nothing by claiming the one hundred dinars that belongs to another, and he has no incentive to admit the truth. Rather, the entire deposit will be placed in a safe place until Elijah comes. Since through his lie the swindler risks losing even the one hundred dinars that he deposited, perhaps that will induce him to admit his deceit. According to Rabbi Yosei, the Sages did penalize one who acts deceitfully, which accords with Rav Huna’s ruling.

[65] The Gemara rejects the proof: How can these cases be compared? There, in the case of the deposits, there is certainly a swindler, and it is reasonable to penalize both parties in order to induce the swindler to admit his deceit. Here, in the case of a sale where there is an unacceptable level of impurities mixed in with the produce, who can say that the seller intentionally mixed in anything? Perhaps the impurities were inadvertently mixed in during the processing. Accordingly, no proof can be drawn from the mishna.

[66] The Gemara suggests: Come and hear another support for Rav Huna’s ruling from a baraita: In the case of a promissory note in which the details of a loan with interest were written, the court penalizes the creditor, and he may collect neither the principal nor the interest; this is the statement of Rabbi Meir. According to Rabbi Meir, the Sages did penalize one who acts improperly, which accords with Rav Huna’s ruling.

[67] The Gemara rejects the proof: How can these cases be compared? There, in the case of a loan with interest, it is already at the time of the writing of the bill that the lender performed the transgression of placing interest upon the borrower. Since he certainly committed a transgression, it is reasonable that the Sages penalized him. But here, in the case of a sale where there is an unacceptable proportion of impurities mixed in with the produce, who can say that the seller intentionally mixed in anything? Perhaps the impurities were inadvertently mixed in during the processing. Accordingly, no proof can be drawn from the baraita.

[68] The Gemara suggests: Come and hear a challenge to Rav Huna’s ruling from the latter clause of the baraita: But the Rabbis say: He may collect the principal but may not collect the interest.

According to Rabbi Meir, the Sages did not penalize one who acts improperly, contrary to Rav Huna’s ruling.

[69] The Gemara rejects this challenge: How can these cases be compared? There, in the case of a loan with interest, according to strict halakha it is certainly permitted to collect the principal, so the Sages did not penalize him with regard to it. But here, in the case of a sale where there is an unacceptable proportion of impurities mixed in, who can say that the seller did not mix in the entire amount intentionally? Accordingly, no proof can be drawn from the mishna.

[70] Come and hear further support for Rav Huna’s ruling from that which Ravin bar Rav Naḥman teaches (104b). Ravin bar Rav Naḥman’s statement is with regard to a situation when land that was sold is later found to be larger than stated at the time of the sale. If the deviation is not more than an area required to sow a quarter-kav of seed per beit se’a of land, then the buyer need not return any land to the seller. If the proportion of extra land is larger than this, not only must the buyer return the extra land that is beyond the limit of a quarter-kav area per beit se’a, but he must also return to him every one of the extra quarter-kav areas of land that he received beyond the stated area of a beit kor. The Gemara infers: Apparently, when one is required to return part of a sale because of a discrepancy that is beyond the acceptable limit of deviation, then one is required to return the entire discrepancy and not just the amount that is beyond the acceptable limit. This supports Rav Huna’s ruling.

[71] The Gemara rejects this: How can these cases be compared?

[72] There, in the case of the sale of land, the reason the buyer may keep the extra land when it is less than the acceptable limit is that the seller said to him: I am selling you this piece of land whether it is slightly less or slightly more than a beit kor, i.e., he agrees to accept a small deviation from the stated area. But while an extra quarter-kav area per beit se’a is not significant, and therefore the seller is willing to forgo it, more than a quarter-kav area per beit se’a is significant, and the seller is not willing to forgo any of it. Consequently, all of the extra land must be returned. By contrast, in the case of Rav Huna’s ruling, the buyer is aware that it is normal to have a certain proportion of impurities mixed in and accepts this possibility from the outset. Accordingly, even if the proportion of impurities is greater than the acceptable limit, it might be sufficient if the seller takes back only the quantity of impurities above the acceptable limit.

[73] The Gemara explains why more than an area required to sow a quarter-kav of seed per beit se’a of land is significant: The reason is that since all those extra areas of land are fit to combine together to form an area in which one could sow nine kav of seed, the extra land is a significant plot of land in its own right, and therefore it must all be returned. The land that was sold was stated to be a beit kor, which is thirty beit se’a. If the area of the extra land was of a proportion somewhat more than an area required to sow a quarter-kav of seed per beit se’a of land, then thirty such areas would collectively be about equal to an area required to sow nine kav.

[74] The Gemara suggests: Come and hear a support for Rav Huna’s ruling from a baraita: The halakha of price exploitation is that if the disparity is less than one-sixth of the value of the merchandise, the merchandise is acquired immediately and the sum of the exploitation need not be returned. If the disparity is greater than one-sixth, then the transaction is nullified. If the disparity is precisely one-sixth, the buyer has acquired the merchandise, and the one who benefited from the exploitation returns the entire sum of the exploitation.

[75] The Gemara explains the proof: Why, in the case where the disparity is precisely one-sixth, is the entire sum of the exploitation returned? Instead, let him return only a small amount of the exploitation until the difference is less than one-sixth. The Gemara concludes: Learn from the fact that he must return the entire sum that when one is required to return part of a sale because of a discrepancy that is beyond the acceptable limit of deviation, one is required to return the entire discrepancy and not just the amount that is beyond the acceptable limit. This supports Rav Huna's ruling.

[76] The Gemara rejects this: How can these cases be compared? There, in the case of exploitation, the seller initially said to the buyer that he would sell the merchandise for a sum equal to its value. Any price difference should be unacceptable. But a disparity of less than one-sixth is not recognizable in a sale worth one hundred dinars, and a person will forgo it. By contrast, a disparity of one-sixth is considered significant, and a person will not forgo it. Consequently, the entire sum of the exploitation must be returned. If the disparity is greater than one-sixth, it is a mistaken transaction and the transaction is nullified. By contrast, in the case of Rav Huna's ruling, the buyer is aware that it is normal to have a certain proportion of impurities mixed in and accepted that possibility from the outset. Accordingly, even if the proportion of impurities was greater than the acceptable limit, it might be sufficient if the seller takes back only the quantity of impurities above the acceptable limit.

[77] The Gemara suggests: Come and hear a support for Rav Huna's ruling from a baraita: When one receives a field from another under a contract to plant trees in it, then this field owner accepts upon himself that there may be ten deficient trees per every hundred trees planted, as he is aware that not every tree planted will necessarily flourish. If the number of deficient trees is more than this, the court imposes upon him the responsibility to replace all of those trees, and not only the number of trees above the acceptable limit. This supports Rav Huna's ruling.

[78] Rav Huna, son of Rav Yehoshua, said: There is no proof from this case, because any time there are more than this number of deficient trees, the overall area that contains the deficient trees is of a size equivalent to a whole field. Therefore, the contractor is comparable to one who comes to plant a whole field from the outset, who has not fulfilled his remit if he plants only a few trees; rather, he must plant the entire area. But in the case of Rav Huna's ruling, the impurities never constitute an independent unit; consequently, it might be sufficient if the seller takes back only the quantity of impurities that is above the acceptable limit.

[79] § The mishna teaches: When purchasing a cellar containing barrels of wine, one accepts upon himself that up to ten barrels of souring wine may be present in each hundred barrels purchased. The Gemara asks: What are the circumstances of the sale? If one said to the buyer: I am selling to you a wine cellar, without specification of which cellar he meant, it is difficult, as the Gemara will soon explain. And if he said to him: I am selling to you this particular wine cellar, it is difficult.

[80] The Gemara elaborates: If he said to him: I am selling to you this particular wine cellar, it is difficult, as it is taught in a baraita: If one said to a buyer: I am selling to you a wine cellar, then he is required to give him wine that is all of good quality, i.e., the buyer does not have to accept any quantity of souring wine. If he said: I am selling to you this particular wine cellar, then he may give him the wine that is in his possession, even if it is of the quality that is sold in the shops, i.e., it is beginning to sour. If he said: I am selling to you this particular cellar, without mentioning the word: Wine, then even if everything he gives him is wine that had turned into vinegar, it has come to the

buyer and the sale is valid. The mishna's ruling that the buyer must accept that up to ten percent of the wine might be souring does not accord with any of the rulings of the baraita.

[81] The Gemara answers: Actually, the mishna concerns a case when he said to the buyer: I am selling to you a wine cellar, without specification of which cellar he was selling. And emend the baraita and teach the following qualification in the first clause of the baraita: And the buyer accepts upon himself that up to ten barrels of souring wine may be present in each hundred barrels purchased.

[82] The Gemara challenges this addition: But if he sold the buyer a wine cellar without specification of which one he was selling, does the buyer accept upon himself any souring wine at all? Didn't Rabbi Ḥiyya teach: One who sells a barrel of wine to another must give him wine that is all of good quality? The Gemara answers: A barrel is different, because the wine inside is all one body of wine of the same quality.

[83] The Gemara once again challenges the addition: But didn't Rav Zevid teach a baraita of the school of Rabbi Oshaya: If one says to a buyer: I am selling to you a wine cellar, then he is required to give him wine that is all of good quality? Similarly, if he said: I am selling to you this particular wine cellar, then he is required to give him wine that is all of good quality, but the buyer accepts upon himself ten souring barrels per hundred barrels.

[84] Rav Zevid concludes: And this is the case of the storeroom, i.e., the cellar, that the Sages taught in the mishna. It is clear from this baraita both that it contradicts the suggested addition to the previous baraita, and that the mishna concerns a case where one specified which wine cellar he was selling.

[85] Rather, as indicated by the baraita, the mishna also concerns a case where one says to the buyer: I am selling you this particular cellar, and because he specified a particular cellar the buyer accepts upon himself the possibility that up to ten barrels per hundred might be sour.

[86] Having retracted the addition to the first baraita, the Gemara asks: If so, it is difficult to reconcile the first baraita, which rules that if the seller specified that he was selling this cellar, he must provide wine that is all of good quality, with the second baraita, that of Rav Zevid, which rules with regard to the same case, in which the seller specified he was selling this cellar, that the buyer accepts that up to ten barrels per hundred may contain souring wine.

[87] The Gemara answers: This is not difficult. This baraita is referring to a case where the buyer said to him that he needs the wine for cooking, and therefore he requires good-quality wine, whereas that baraita is referring to a case where the buyer did not say to him that he needs the wine for cooking. The Gemara elaborates: The second baraita, taught by Rav Zevid, is referring to a case where the buyer said that he needs the wine for cooking, whereas the first baraita is referring to a case where the buyer did not say to him that he requires it for cooking.

[88] The Gemara concludes: Therefore, the halakha is that if one said that he is selling: A wine cellar, and the buyer said to him: I need the wine for cooking, then the seller is obligated to give him wine that is all of good quality. If one said that he is selling: This particular wine cellar, and the buyer said to him: I need the wine for cooking, then the seller is obligated to give him wine that is all of good quality, but the buyer accepts upon himself ten barrels of souring wine in each hundred barrels purchased. If one said that he is selling: This particular wine cellar, and the buyer did not say to him: I need the wine for cooking, then the seller may give to him the wine that is in his possession, even if it is of a quality that is sold in the shops, i.e., it is beginning to sour.

[89] A dilemma was raised before the Sages: If one said that he is selling: A wine cellar, and the buyer did not say to him: I need the wine for cooking, what is the halakha? Rav Aḥa and Ravina disagree about this. One says: The buyer must accept ten barrels of souring wine per hundred, and the other one says: The buyer need not accept any barrels of souring wine.

[90] The Gemara explains their reasoning. The one who says that the buyer must accept ten barrels of souring wine per hundred infers this through a precise reading of the baraita of Rav Zevid, as it teaches: If one says: I am selling to you a wine cellar, then he is required to give him wine that is all of good quality. And we interpreted this baraita as referring to a case where the buyer said to him: I need the wine for cooking. The Gemara explains the inference: The only reason that he must provide him with wine that is all of good quality is that the buyer said to him that he needed it for cooking. By inference, where the buyer does not say to him: I need it for cooking, the buyer must accept ten barrels of souring wine per hundred.

[91] And the one who says that the buyer need not accept any barrels of souring wine infers this through a precise reading of the first baraita, as it teaches: If one says: I am selling to you a wine cellar, then he is required to give him wine that is all of good quality. And we interpreted this baraita as referring to a case where he did not say to him: I need the wine for cooking, and even so, the buyer need not accept any barrels of souring wine.

[92] The Gemara asks: But then, according to the one who infers his opinion through a precise reading of the baraita of Rav Zevid, the first baraita poses a difficulty. The Gemara answers that according to his opinion, the baraita is incomplete and this is what it is teaching: If one says: I am selling to you a cellar of wine, then he is required to give him wine that is all of good quality. In what case is this statement said? It is said in a case where the buyer said to him: I need the wine for cooking. By inference, where the buyer did not say to him: I need the wine for cooking, the buyer must accept ten barrels of souring wine per hundred. And if one said that he is selling: This particular wine cellar, and the buyer did not say to him: I need the wine for cooking, then one may give to him the wine that is in his possession, even if it is of a quality that is sold in the shops, i.e., it is beginning to sour.

[93] The Gemara asks: And according to the one who infers his opinion through a precise reading of the first baraita, the baraita of Rav Zevid poses a difficulty, as we interpreted it as referring to a case where the buyer said to him: I need the wine for cooking. And this opinion inferred that if the buyer did not say to him: I need it for cooking, then the buyer must accept ten barrels of souring wine per hundred.

[94] The Gemara answers: The same is true according to both baraitot, that even where the buyer did not say to him: I need the wine for cooking, the buyer need not accept ten barrels of souring wine. And there is no proof from the fact that we interpreted the baraita as referring to a case where he said to him: I need it for cooking, since we did so only due to the difficulty of the contradiction between the ruling of the first baraita in the case where the seller specified that he was selling this cellar and the ruling of the baraita of Rav Zevid in the same case where the seller specified he was selling this cellar. Due to that difficulty, the entire baraita was interpreted as referring to a case where the buyer said: I need the wine for cooking, despite the fact that in the case where he did not mention a specific cellar it makes no difference whether or not he said so.

[95] § Apropos wine that is sold in the shops, the Gemara considers additional halakhot pertaining to such wine: Rav Yehuda says: Over wine of the same quality as that which is sold in the shops, one

recites the standard blessing for wine: Who creates fruit of the vine. Despite the fact that such wine is not of the highest quality, it is still regarded as wine. And Rav Ḥisda said: Over wine that has formed a film as it begins to sour, why do I need to recite the blessing for wine? Since it has begun to sour, it is no longer regarded as wine. Instead, one should recite the generic blessing recited over foods of lower importance: By Whose word all things came to be.

96 The Gemara raises an objection to Rav Yehuda's opinion. It is taught in a baraita: Over bread that has become moldy, and over wine that has formed a film, and over a cooked dish that has spoiled, one recites the blessing: By Whose word all things came to be. Since these foods have partially spoiled, it is inappropriate to recite the specific blessings designated for such foods in their fresh state.

97 Rav Zevid said: Rav Yehuda concedes that one does not recite the blessing of: Who creates fruit of the vine, on wine made from grape seeds that is sold on the street corners. It is to such significantly inferior wine that the baraita refers. Wine sold in the shops still has the taste and appearance of wine, so one should recite the standard blessing for wine.

98 Abaye said to Rav Yosef: This is the opinion of Rav Yehuda, and this is the opinion of Rav Ḥisda. In accordance with whose opinion does the Master hold? Rav Yosef said to him: I know a baraita from which it is possible to derive the halakha.

99 As it is taught in a baraita (Tosefta, Terumot 2:8): With regard to one who inspects a barrel to see if it still contains enough wine to continually mentally separate teruma from it to exempt other untithed wine he has, until all the wine in that barrel would be teruma and would be given to a priest, and afterward the contents of the barrel were found to have turned to vinegar, which cannot be set aside as teruma for untithed wine, then all three days after he had last inspected it, it is definitely viewed as having been wine, and any wine for which teruma was separated during those days is tithed. From that point onward, more than three days after the previous inspection, it is uncertain as to whether it had already turned to vinegar, and any wine for which teruma was separated during those days is not tithed.

100 The Gemara clarifies: What is the baraita saying? Rabbi Yoḥanan says that this is what it is saying: For all of the first three days following the inspection, it is definitely viewed as having been wine that had not yet turned to vinegar. From that point onward, it is uncertain as to whether it had already turned to vinegar. Accordingly, any wine for which teruma was separated after those three days by means of designating the contents of that barrel as teruma has an uncertain status.

101 What is the reason? The process in which wine turns sour and becomes vinegar starts with the wine at the top of the barrel; and it is that wine which he tasted when he inspected it, and at that time it had not yet soured. And even if you say that immediately after he tasted it the wine began to sour, during the following three days it would have the odor of vinegar and its taste would be of wine, and anything that has an odor of vinegar but its taste is of wine is regarded as wine.

102 And Rabbi Yehoshua ben Levi says that there is a different interpretation of the baraita: For all of the last three days preceding the discovery that the wine had turned into vinegar, it is definitely viewed as having been vinegar. From that point and earlier, until the time it had been inspected, it is uncertain whether or not it was wine or vinegar.

[103] What is the reason? The process in which wine turns sour and becomes vinegar starts with the wine at the bottom of the barrel, and therefore, since the inspection was limited to the wine at the top of the barrel, it is possible to say that wine at the bottom had already started to sour and one was unaware of it. Consequently, it is possible that on the day he tasted it the wine turned entirely into vinegar. And even if you say that the process in which wine turns sour and becomes vinegar starts with the wine at the top of the barrel, and it is that wine that he tasted when he inspected it and at that time it had not yet soured, perhaps immediately after he tasted it the wine began to sour, in which case its odor would be of vinegar and its taste of wine, and anything that has an odor of vinegar but its taste is of wine is regarded as vinegar.

[104] The Sages of the South taught another interpretation of the baraita in the name of Rabbi Yehoshua ben Levi: For the first three days it is definitely viewed as having been wine. For the last three days it is definitely viewed as having been vinegar. The status of the wine during the intervening period is uncertain.

[105] The Gemara asks: This matter itself is difficult, as, since you said that for the first three days it is definitely viewed as having been wine; apparently, if it has the odor of vinegar but its taste is of wine it is regarded as wine. But then you said that for the last three days it is definitely viewed as having been vinegar; apparently, if it has the odor of vinegar but its taste is of wine it is regarded as vinegar, as it can be established only that the odor had changed three days ago.

[106] The Gemara resolves the difficulty: The Sages of the South hold that as long as the wine still tastes like wine, it is regarded as wine. When they said that when a barrel is found to contain vinegar it is certain that the wine had already turned into vinegar three days previously, they were referring to a case where the barrel was found to contain strong vinegar, as, had it not already soured three days previously, the barrel would not have been found to contain strong vinegar; rather, it would contain only mild vinegar.

[107] Rav Yosef claimed that this baraita can serve as proof with regard to which blessing is recited over wine that has the odor of vinegar but tastes like wine. Having cited three different interpretations of the baraita, the Gemara asks: In accordance with whose interpretation did Rav Yosef resolve the question of which blessing to recite? Rav Mari and Rav Zevid disagree about it. One said that Rav Yosef resolved it in accordance with the interpretation of Rabbi Yoḥanan, that this liquid is regarded as wine and the blessing for wine should be recited over it. And one said that Rav Yosef resolved it in accordance with the interpretation of Rabbi Yehoshua ben Levi, that the liquid is regarded as vinegar and the generic blessing: By Whose word all things came to be, should be recited over it. There is no definitive resolution of the dispute.

[108] § An amoraic dispute was stated with regard to one who sells a barrel of wine to another, and following the sale it turned to vinegar. Rav said: If it soured during any of the first three days following the sale, it is presumed that it had already began to sour in the domain of the seller, and he bears financial responsibility for it; from that point onward, it is presumed that the wine soured in the domain of the buyer, and it is his loss.

[109] And Shmuel said: Even if the wine sours shortly after the purchase, the seller does not bear responsibility, as the wine is agitated as it is carried upon the shoulders of its new owner, causing it to sour quickly.

[110] Rav Yosef ruled in an actual case in accordance with the opinion of Rav, in which beer spoiled shortly after it was sold, and in accordance with the opinion of Shmuel in a similar case involving wine. And the halakha is in accordance with the opinion of Shmuel.

[111] § The Sages taught in a baraita: Whether one drinks date beer, or barley beer, or a beverage made from soaking pomace from the production of wine in water, known as tamad, one recites over them the blessing: By Whose word all things came to be. Aḥerim say: Over wine made from pomace that has the taste of wine one recites the blessing: Who creates fruit of the vine. Rabba and Rav Yosef both say: The halakha is not in accordance with the opinion of Aḥerim.

[112] Rava said: According to the opinions of everyone mentioned in the baraita, if one poured three jugs of water over grape pomace and then, after removing the pomace, the volume of the resulting beverage came to four jugs, then that beverage is regarded as wine. Evidently, a quarter of the resulting beverage is from juice that was contained in the pomace, which is pure wine, and that is a sufficient ratio for the beverage as a whole to be regarded as wine. The Gemara interjects Rava's comments: With this statement, Rava conforms to his standard line of reasoning, as Rava said: Any wine that does not contain three parts water to one part pure wine is not regarded as wine, as it is excessively strong.

[113] Rava continues: If one poured three jugs of water over pomace, and the volume of the resulting beverage still came to three jugs, then it is nothing, i.e., it is not regarded as wine. When the tanna'im in the baraita disagree is in a case where one poured three jugs of water over pomace and the volume of the resulting beverage came to three and a half jugs, as the Rabbis, i.e., the first tanna, hold that three jugs of water were absorbed into the pomace and then the same three jugs of water seeped out of the pomace; therefore, there remains half a jug of the resulting beverage that was originally pure wine contained in the pomace. But half a jug of pure wine mixed into six half-jugs of water is nothing, i.e., the mixture is too weak to be regarded as wine.

[114] And Aḥerim hold that three jugs of water were absorbed into the pomace but only two and a half jugs of water seeped out of the pomace, as one jug of water replaced the one jug of pure wine contained in the pomace. Therefore, there remains one jug of the resulting beverage that is pure wine that was previously contained in the pomace. And one jug of pure wine mixed into two and a half jugs of water is regarded as full-fledged wine.

[115] The Gemara asks: And where the volume of the resulting beverage is greater than the amount of water that was poured over the pomace, do the Sages ever disagree? But didn't we learn in a mishna (Ma'asrot 5:6):

[116] In the case of one who produces tamad, a beverage made by steeping grape pomace in water, and he placed a measured amount of water into a container together with the pomace, and after removing the pomace he found that the volume of the tamad produced was equivalent to the amount of water used, one is exempt from the requirement to tithe the tamad, even though the pomace came from grapes that had not been tithed. And Rabbi Yehuda deems one liable to tithe the tamad. The Gemara explains the difficulty posed by this mishna: It would appear that they disagree only with regard to a case where the volume of the tamad produced was equivalent to the amount of water used, but in a case where the volume of the tamad produced was greater than the amount of water used, they do not disagree; rather, they all agree that it must be tithed because it is regarded as wine. This would appear to contradict Rava's explanation.

[117] The Gemara resolves the difficulty: Actually, the same is true in that they would disagree even where the volume of the tamad produced was greater than the amount of water used. And the reason that the mishna records only that they disagree about a case where the volume of the tamad produced was equivalent to the amount of water used is in order to convey to you the far-reaching nature of the opinion of Rabbi Yehuda, who holds that one is liable to tithe the tamad even in this case.

[118] Rav Naḥman bar Yitzḥak asked Rav Ḥiyya bar Avin: If one steeps pomace and produces tamad that has the taste of wine, what is the blessing that one should recite before drinking it? Rav Ḥiyya bar Avin said to him: Do you hold that such a beverage is wine? It is merely a sharp-flavored beverage, not wine.

[119] § The Sages taught in a baraita concerning the production of successive batches of tamad of decreasing strengths by reusing the pomace after each time a tamad is produced: With regard to pomace of teruma wine, the first and second products are considered to be teruma, and it is prohibited for a non-priest to drink it. But with regard to the third product, a non-priest is permitted to drink it. Rabbi Meir says: Even with regard to the third product, if the wine that seeps out of the pomace imparts the flavor of wine to the water, it is forbidden to a non-priest.

[120] The baraita continues: And with regard to water added to pomace of second-tithe wine, the first product is also considered to be second tithe, and it is prohibited to drink it outside Jerusalem. But with regard to the second product, it is permitted to drink it anywhere. Rabbi Meir says: Even with regard to the second product, if the wine that seeps out of the pomace imparts the flavor of wine to the water, it may be consumed only in Jerusalem. And with regard to water added to pomace of wine that was consecrated to the Temple, up to the third product it is prohibited to derive any benefit from it, as it is considered to be consecrated, but from the fourth product, it is permitted. Rabbi Meir says: Even with regard to the fourth product, if the wine that seeps out of the pomace imparts the flavor of wine to the water, it is prohibited.

[121] And the Gemara raises a contradiction from a different baraita: Tamad produced from the pomace of wine that was consecrated to the Temple is always forbidden, even after having steeped them many times, and the beverage produced from pomace of second tithe is always permitted, even from the first such product. The Gemara explains: The ruling concerning consecrated pomace is difficult, as it is contradicted by the ruling of the first baraita concerning consecrated pomace. And the ruling concerning second-tithe pomace is difficult, as it is contradicted by the ruling of the first baraita concerning second-tithe pomace.

[122] The Gemara answers: The contradiction between the ruling of one baraita concerning consecrated pomace and the ruling of the other baraita concerning consecrated pomace is not difficult, as one can explain that here, the second baraita is referring to pomace with inherent sanctity, and there, the first baraita is referring to pomace with sanctity that inheres in its value. Also, the contradiction between the ruling of one baraita concerning pomace of second tithe and the ruling of the other baraita concerning pomace of second tithe is not difficult, as one can explain that here, the first baraita is referring to pomace whose status as second tithe is certain and there, the second baraita is referring to pomace of second tithe of doubtfully tithed produce [demai].

[123] Rabbi Yoḥanan says in the name of Rabbi Shimon ben Yehotzadak: In the same way in which the Sages said concerning differing strengths of tamad that with regard to their prohibition, after a certain

number of times the tamad produced is not considered to be wine, so too they said the same rulings with regard to their capacity to render foods susceptible to ritual impurity.

124 The Gemara asks: When the baraita is referring to their capacity to render other foods susceptible to ritual impurity, why does it matter which kind of beverage the tamad is considered to be? Whether the tamad is regarded as water it can render food susceptible to impurity, or whether it is regarded as wine it can render food susceptible to impurity. The Gemara clarifies: No, it is necessary in a case in which one produced tamad with rainwater that he had not previously intended to use. Rainwater does not render food susceptible to ritual impurity, so the tamad will do so only if it is regarded as wine.

125 The Gemara challenges this: But since he took the rainwater and poured it into a container holding the grape pomace, he has thereby intended it for a use. Even if the resulting tamad is regarded as water, such rainwater renders food susceptible to ritual impurity. The Gemara answers: No, it is necessary in a case where the pomace produced tamad by itself, having been steeped in water that happened to fall upon it.

126 The Gemara persists: The baraita above states that from the third product, the tamad is regarded as water, which the Gemara has explained is referring to rainwater that one did not intend to use and that consequently cannot render food susceptible to impurity. The Gemara asks: But since he draws off each subsequent lot of tamad that is produced, one by one, in order to allow more rainwater to fall onto the pomace and produce more tamad, he thereby demonstrates his intent to use the rainwater. Therefore, even if the tamad is regarded as water, it should render food susceptible to impurity. The Gemara answers: Rav Pappa says that this is a case of a cow that drank the lots of tamad, one by one, and some inadvertently dripped from the cow’s mouth onto food. Since no person intended to use the tamad, if it is regarded as water it will not render food susceptible to impurity.

127 § Rav Zutra bar Toviyya says that Rav says: One may recite the sanctification of the Shabbat day only over wine of a quality that is fit to be poured as a libation upon the altar.

128 The Gemara asks: This statement is said to exclude what? If we say it is to exclude the use of wine fresh from one’s press, i.e., grape juice, which has not yet fermented, that is difficult. But didn’t Rabbi Ḥiyya teach: One may not bring wine fresh from his press as a libation ab initio, but if one brought it as a libation, it is valid after the fact. And since if one brought it as a libation it is valid after the fact, we should also be able to use it for the sanctification of the Shabbat day, even ab initio.

129 As Rava says: A person may squeeze the juice from a cluster of grapes and then recite the sanctification of the Shabbat day over it.

130 Rather, Rav’s statement is to exclude wine that is taken from the mouth of the barrel, which has scum floating in it, and wine taken from the bottom of the barrel, which contains the pomace. The Gemara challenges this: But didn’t Rabbi Ḥiyya teach: One may not bring wine that is taken from the mouth of the barrel or from the bottom of the barrel as a libation ab initio, but if one brought it as a libation it is valid after the fact? Accordingly, it should be fit for use for the sanctification of the Shabbat day.

131 Rather, Rav’s statement is to exclude black wine, borek wine, sweet wine [heiliston], wine from the cellar, and wine made from raisins. The Gemara challenges: But isn’t it taught in a baraita: With regard to all of these types of wine, one may not bring them as a libation ab initio, but if one brought

one of them as a libation it is valid after the fact. Accordingly, it should be fit for use for the sanctification of the Shabbat day.

[132] Rather, Rav's statement serves to exclude souring wine, diluted wine, wine that has been left uncovered, as there is a concern that a snake may have injected its venom into it, and wine made from grape pomace, and wine that has a foul odor. As it is taught in a baraita: With regard to all of these types of wine, one may not bring them as a libation, and if one brought one of them as a libation, it is disqualified.

[133] The Gemara asks again: Rav's statement serves to exclude which of these types of wine? If one suggests Rav intended to exclude souring wine, that cannot be, as the status of wine that tastes like wine but has the odor of vinegar is the subject of a dispute between Rabbi Yoḥanan and Rabbi Yehoshua ben Levi (96a).

[134] If one suggests that Rav's statement serves to exclude diluted wine, why would such wine be disqualified for the sanctification of the Shabbat day? Diluting wine is an improvement of it, as Rabbi Yosei, son of Rabbi Ḥanina, says: Even though the Rabbis disagree with Rabbi Eliezer and hold that over undiluted wine one recites the blessing: Who created the fruit of the vine, nevertheless the Rabbis concede to Rabbi Eliezer with regard to a cup used for a blessing, such as the cup of wine over which Grace after Meals is recited, that one does not recite the blessing over it until he adds water to it to make it palatable.

[135] If one suggests that Rav's statement serves to exclude wine that has been left uncovered, it would be unnecessary for Rav to teach this, because such wine, which is dangerous to drink, as a snake may have injected its venom into it, is already forbidden.

[136] If one suggests that Rav's statement serves to exclude wine made from pomace, what are the circumstances? If it is referring to a case where one poured three jugs of water over the pomace and the volume of the resulting beverage came to four jugs, that is considered full-fledged wine, which may certainly be used for the sanctification of the Shabbat day. If it is referring to where one poured three jugs of water over the pomace, and the resulting beverage came to three and a half jugs, this is the subject of a dispute between the Rabbis and Aḥerim, and the halakha is in accordance with the opinion of the Rabbis, who rule that it is not regarded as wine.

[137] Rather, Rav's statement serves to exclude wine that has a foul odor. And if you wish, say that actually his statement serves to exclude wine that has been left uncovered, and it teaches the novelty that even though one passes it through a sieve, in accordance with the opinion of Rabbi Neḥemya (see Terumot 8:7), nevertheless, it still may not be used for the sanctification of the Shabbat day. This is because it is disrespectful to use inferior wine for a mitzva, as derived from the verse in which God rebukes the Jewish people for offering lame animals as offerings: "Present it now unto your governor; will he be pleased with you or will he accept your person? says the Lord of hosts" (Malachi 1:8).

[138] Rav Kahana, father-in-law of Rav Mesharshiyya, asked Rava: With regard to using white wine for libations and for the sanctification of the Shabbat day, what is the halakha? He said to him in response that the verse states: "Do not look upon the wine when it is red, when it gives its color in the cup, when it glides down smoothly" (Proverbs 23:31), which indicates that red wine is considered to be of a superior quality.

[139] § The mishna teaches: When purchasing jugs of wine in the Sharon region, he accepts upon himself that up to ten inferior-quality jugs may be present in each hundred jugs purchased. It was taught in a baraita: The buyer must accept ten inferior-quality jugs in one hundred only when even those ten inferior-quality jugs are beautiful and sealed with pitch to strengthen them.

[140] MISHNA: If one sells wine to another and then it sours, the seller does not bear financial responsibility for its loss. But if it is known of this seller that his wine always sours, then this sale is a mistaken transaction, i.e., one based upon false assumptions, as the buyer intended to purchase wine that would maintain its quality; therefore, the seller must reimburse the buyer. And if the seller said to the buyer: It is wine

[141] that is spiced, which is preserved and of lasting quality, that I am selling to you, then he bears financial responsibility to provide him with wine that will keep until the festival of Shavuot. And if the seller said: I am selling you old wine, he is responsible to provide wine from the previous year. And if he said: I am selling you aged wine, he is responsible to provide wine that is from three years earlier.

[142] GEMARA: Rabbi Yosei, son of Rabbi Ḥanina, says: When they taught that the seller does not bear responsibility if the wine sours, that was only if it soured while in the jugs of the buyer; but if it soured in the jugs of the seller, then the buyer could say to him: This is your wine and this is your jug; take it and reimburse me. Since it soured while still in the original jugs, it was clearly flawed from the outset.

[143] The Gemara asks: But even if the wine soured while in the jugs of the seller, what of it? Let the seller say to the buyer: You should not have left it for so long after purchasing it; I should not be responsible just because you chose to do so. The Gemara answers: No, this ruling is necessary in a case where the buyer had said to him that he was purchasing the wine for cooking, in which case it is understood that he needs it to maintain its quality over a longer period of time, as only a small amount is used each time.

[144] The Gemara asks: And what impelled Rabbi Yosei, son of Rabbi Ḥanina, to interpret the mishna as referring to a case where the wine soured while in the jugs of the buyer, and where he had said to him that he wanted the wine for cooking? Instead, let him interpret it as referring to a case where the wine soured while in the jugs of the seller, and to where he had not said to him that he wanted the wine for cooking.

[145] In explanation, Rava said: The mishna was difficult for him, as it teaches in the following clause: But if it is known of this seller that his wine always sours, then this sale is a mistaken transaction. With regard to this clause one could ask: Why is that so? Let the seller say to him: You should not have left it for so long after purchasing it. Rather, isn’t it correct to conclude from that clause that the mishna is referring to a case where the buyer had said to him that he wants the wine for cooking? The Gemara concludes: Yes, one can conclude from it that this is so.

[146] And Rabbi Yosei, son of Rabbi Ḥanina, disagrees with the opinion of Rav Ḥiyya bar Yosef, as Rav Ḥiyya bar Yosef says: With regard to wine, it is the owner’s poor fortune that causes the wine to go sour, as it is stated: “And moreover, wine is a treacherous dealer; the haughty man abides not” (Habakkuk 2:5), which is interpreted to mean that the wine of a haughty man will betray him, as it will sour as a punishment for his arrogance. Accordingly, since the wine soured after the buyer purchased it, he cannot place the blame upon the seller.

147 The Gemara offers additional homiletic interpretations of the verse just cited. Rav Mari said: One who is haughty is not accepted even by the members of his household, as it is stated: “The haughty man abides not” (Habakkuk 2:5). What does the phrase “abides [yinveh] not” mean? It means that even in his abode [naveh], he is not accepted.

148 Rav Yehuda says that Rav says: With regard to anyone who glorifies himself by wearing a garment of the style worn by a Torah scholar, but in reality he is not a Torah scholar, he will not be brought within the boundary of the Holy One, Blessed be He, in the World-to-Come. This is alluded to by the fact that it is written in the verse here: “Abides [yinveh] not,” and the meaning of the word yinveh may be derived from that which is written in a verse there: “To Your holy habitation [neveh]” (Exodus 15:13).

149 Rava says: In the case of one who sells a barrel of wine to a shopkeeper with the understanding that the wine will be for serving to the shopkeeper’s customers and that he will be liable to pay the seller only once the barrel is finished, and the wine spoiled when one-half or one-third of the wine still remained, the halakha is that the seller must accept back the remaining wine from the shopkeeper, as the shopkeeper is liable to pay only for the wine that he sells. And we stated this halakha only in a case where the shopkeeper had not switched the tap of the barrel; but if he had switched the tap, the seller does not have to take the wine back and the shopkeeper must pay for it all. And furthermore, we stated this halakha only where the wine soured before the market day arrived and the shopkeeper did not have the opportunity to sell the entire barrel; but if the wine was still of good quality when the market day arrived, then the seller does not have to take the wine back.

150 And Rava says: In the case of a vintner who enters a business venture with another person who will sell the wine for him and afterward they will split the profits, then if this middleman who receives the wine to sell does so with the understanding that he will bring it to the port of the city of Vol Shefat and sell it only there, and before he arrives there the price of the wine drops, the halakha is that the vintner must accept the loss.

151 With regard to the previous case, a dilemma was raised before the Sages: If the wine becomes vinegar before he reaches Vol Shefat, what is the halakha? Rav Hillel said to Rav Ashi: When we were in the study hall of Rav Kahana, he said to us: If the wine becomes vinegar, the vintner does not have to accept the loss; and this is not in accordance with the opinion of Rabbi Yosei, son of Rabbi Ḥanina, who holds that as long as the wine is in the jug of the seller he is able to return it to the seller. The reason for this is that it is possible that the poor fortune of the middleman caused it to sour.

152 And there are those who say that even if the wine turns into vinegar, the vintner must also accept the loss. In accordance with whose opinion is this? It is in accordance with the opinion of Rabbi Yosei, son of Rabbi Ḥanina.

153 The mishna teaches: If the seller said: I am selling you old wine, he is responsible to provide wine from the previous year. And if he said: I am selling you aged wine, he is responsible to provide wine that is from three years earlier.

154 It is taught in a baraita: And where he sold him aged wine, he is responsible to provide wine that will continue to age, i.e., maintain its quality, until the festival of Sukkot.

155 MISHNA: With regard to one who sells a plot of land to another, with the buyer intending to build a bridal house for his son or a widowhood home for his daughter on that plot, and similarly, with regard to a contractor who receives a plot of land from another under a commission to build for the owner on that land a bridal house for his son, or a widowhood home for his daughter, the terms of the transaction are a matter of dispute. The mishna presents the dispute: In the latter case, the contractor must build a building that is at least four cubits by six cubits in size, and similarly, in the case of the sale, the seller must provide a plot of land that can accommodate a building of that size; this is the statement of Rabbi Akiva. Rabbi Yishmael says: A structure of this size is a cowshed, and a bridal house or a widowhood home is larger than that.

156 One who wants to construct a cowshed builds a structure at least four cubits by six cubits in size.

157 The mishna delineates the standard dimensions for various other structures. A small house is six by eight cubits. A large house is eight by ten cubits. A banquet hall [teraklin] is ten by ten cubits. The standard height for each of these structures is equal to the sum of half its length and half its width. There is a proof of the matter; Rabban Shimon ben Gamliel says: The proportions are like the building of the Sanctuary; it was forty cubits wide and twenty cubits long and its height was thirty cubits, which is the sum of half the width and half the length.

158 GEMARA: Why do I need the mishna to teach specifically: A bridal house for his son, and: A widowhood home for his daughter? Instead, let it teach: A bridal house for his son or his daughter, and a widowhood home for his son or his daughter. The Gemara answers: It teaches us a matter in passing, that it is not the proper manner of conduct for a son-in-law to live in his father-in-law's home. Therefore, it is the father of the groom who generally provides a bridal home for the couple and the bride will return to live near her parents' house only if she is widowed or divorced.

159 Support for this is as it is written in the book of ben Sira: I have weighed everything in the pan of a balance scale and I have not found anything inferior to bran; but inferior to bran is a son-in-law who lives in his father-in-law's house; and inferior to a son-in-law is a guest who brings in a guest; and inferior to a guest is one who answers a matter before he listens. As it is stated: "He that gives an answer before he listens, it is folly for him and a disgrace" (Proverbs 18:13).

160 § The mishna teaches: Rabbi Yishmael says: A structure of this size is a cowshed. And then the mishna continues: One who wants to construct a cowshed builds a structure at least four cubits by six cubits in size. The Gemara asks: Who teaches this subsequent clause about a cowshed? There is a Sage who says that Rabbi Yishmael teaches it and it is an elaboration of his statement. And there is a Sage who says that Rabbi Akiva teaches it in response to Rabbi Yishmael's statement.

161 The Gemara elaborates: There is a Sage who says that Rabbi Akiva teaches it, and this is what Rabbi Akiva is saying: Even though this structure is of the same dimensions as a cowshed, nevertheless, since there are times when a person constructs his home as small as a cowshed, a contractor has fulfilled his commission if he builds a house to such dimensions. And there is a Sage who says that Rabbi Yishmael teaches it, and this is what Rabbi Yishmael is saying to Rabbi Akiva: The dimensions that you stated are clearly not the correct dimensions for a bridal house or widowhood home, as one who wants to construct a cowshed constructs a structure of four cubits by six cubits. A house for human dwelling is certainly larger than that.

162 § The mishna teaches: A banquet hall is ten by ten cubits. The Gemara clarifies: What is a banquet hall? A pavilion of roses.

[163] It is taught in a baraita: The standard size of a kanteir is twelve by twelve cubits. The Gemara clarifies: What is a kanteir? It is a decorative courtyard of a mansion.

[164] The mishna teaches: The standard height for each of these structures is equal to the sum of half its length and half its width. There is a proof of the matter; Rabban Shimon ben Gamliel says: The proportions are like the building of the Sanctuary. The Gemara asks: Who teaches the phrase: Proof of the matter? There is a Sage who says that Rabban Shimon ben Gamliel teaches it, and this is what he is saying: From where can a proof of the matter be derived? The mishna then cites that Rabban Shimon ben Gamliel said that everything is like the building of the Sanctuary.

[165] And there is a Sage who says that the first tanna teaches it, and, understanding that the proof the tanna wished to cite was from the example of the Sanctuary, Rabban Shimon ben Gamliel interjected and expressed astonishment at the idea. And this is what Rabban Shimon ben Gamliel is saying to the first tanna: From where do you derive a proof? Do you derive it from the building of the Sanctuary? Is that to say that everyone constructs their buildings like the building of the Sanctuary? Why should they do so?

[166] It is taught in a baraita: Aḥerim say: The standard height of each of these structures is equal to the length of its crossbeams. The Gemara suggests: And let us say more simply that its height is equal to its width. The Gemara answers: If you wish, say that formulating the ruling in this way is necessary, because the space inside a house widens at the top, as the walls get thinner toward the top and the crossbeams are actually longer than the width of the floor of the building. And if you wish, say instead that formulating it in this way is necessary because there are indentations in the wall into which the crossbeams are inserted. The crossbeams are consequently longer than the space inside the house.

[167] § Apropos the building of the Sanctuary, the Gemara relates the following incident: Rabbi Ḥanina once went out to the villages to teach Torah there, and he raised a contradiction between two verses that detail the dimensions of the Sanctuary: It is written: “And the house that King Solomon built for the Lord, was sixty cubits in length, and twenty cubits in width, and its height was thirty cubits” (I Kings 6:2). But it is also written: “And before the partition was twenty cubits in length, and twenty cubits in width, and its height was twenty cubits” (I Kings 6:20). The first verse states that its height was thirty cubits, whereas the second verse states that its height was only twenty cubits. He said to the villagers that the reason for the difference is that when the latter verse calculated the height, it did so from the upper edge of the cherubs and upward, as the cherubs themselves stood ten cubits high.

[168] The Gemara asks: What is the verse teaching us by considering only the area above the cherubs?

[169] The verse teaches us this: The area below the cherubs is like the area above them; just as the area above the cherubs’ wings, which were spread out in the air, was not used for anything, i.e., it was empty space, so too the area below them was not used for anything and was empty.

[170] This supports the opinion of Rabbi Levi, as Rabbi Levi said, and some say it was Rabbi Yoḥanan who said: This matter is a tradition handed down to us by our ancestors: The space occupied by the Ark of the Covenant and the cherubs is not included in the measurement of the Holy of Holies in which it rested, as miraculously it did not occupy any space at all. The Gemara comments: This is also taught in a baraita: When they brought the Ark that Moses crafted into the Holy of Holies in the Temple of King Solomon, even though the total width of the Holy of Holies was only twenty cubits,

nevertheless the Ark had ten cubits of empty space between it and the wall in each and every direction.

171 Rabbenai says that Shmuel says: The cherubs stood miraculously and did not occupy any physical space, as it is stated: “And five cubits was one wing of the cherub, and five cubits was the second wing of the cherub; ten cubits from the tip of its wings until the tip of its wings” (I Kings 6:24). Accordingly, the wings of two cherubs, standing side by side, would occupy the entire twenty cubits width of the Sanctuary. But if so, where, in what space, were their bodies standing? Since their wings alone, which protruded from the sides of cherubs’ bodies, occupied twenty cubits, there was no room left in which their bodies could stand. Rather, one must conclude from the verse that the cherubs stood miraculously and did not occupy any physical space.

172 Abaye objects to this proof: But perhaps they stood with their bodies emerging beneath their wings, like chickens, with their wings protruding above them from the same point in the center of their backs. If so, their bodies would stand beneath their wings and would not occupy any additional space. Rava also objects to this proof: But perhaps they stood so that this one was not next to that one and the wings of the two cherubs overlapped, thereby allowing for the additional space occupied by their bodies. Rav Aḥa bar Yaakov also objects to this proof: But perhaps they were standing in a diagonal [ba’alakhsona] alignment from one corner of the Holy of Holies to the diagonally opposite corner. In this way there would be enough space for their bodies and their wings.

173 Rav Huna son of Rav Yehoshua also objects to this proof: But perhaps the width of twenty cubits stated in the verse refers only to the width at ground level, whereas the room widened at the top and was therefore able to accommodate both their wings and the width of the bodies. Rav Pappa also objects to this proof: But perhaps they were folding their wings somewhat; since their wings were not fully extended they did not actually fill the full twenty cubits of the Sanctuary. Rav Ashi also objects to this proof: But perhaps their wings crossed over one another, so that they did not occupy so much space.

174 § Continuing its focus on the cherubs, the Gemara asks: How were the cherubs standing? Rabbi Yoḥanan and Rabbi Elazar disagree about this. One says: Their faces were turned one toward the other. And one says: Their faces were turned toward the House, i.e., the Sanctuary. The Gemara asks: But according to the one who says that their faces were turned one toward the other, isn’t it written: “And their faces were toward the House” (II Chronicles 3:13)? How does he explain the meaning of this verse? The Gemara answers: This is not difficult, as their faces miraculously changed directions in reflection of the Jewish people’s relationship to God. Here, when it states that the cherubs faced each other, it was when the Jewish people do the will of God. There, the verse that describes that the cherubs faced the Sanctuary and not toward each other, was when the Jewish people do not do the will of God.

175 The Gemara asks: And according to the one who says they stood as described in the verse: “And their faces were toward the House,” isn’t it written: “With their faces one toward the other” (Exodus 25:20). How does he explain the meaning of this verse? The Gemara answers: They were angled sideways so that they turned both to each other and toward the Sanctuary, as it is taught in a baraita: Onkelos the Convert said that the cherubs were of the form of children, as the verse states: “And in the Holy of Holies he made two cherubim of the form of children; and they overlaid them with gold”

(II Chronicles 3:10), and their faces were angled sideways toward the Ark of the Covenant, like a student taking leave of his teacher.

176 MISHNA: One who has ownership of a cistern located beyond the house of another, i.e., the cistern can be accessed only by entering the property of the other, and also has access rights to that cistern, may enter the house to access his cistern only at a time when it is usual for people to enter, and may leave only at a time when it is usual for people to leave. And in addition, he may not bring his animal into the house and water it from his cistern; rather, he must fill a pail with water from the cistern and water his animal outside. And this one, the owner of the cistern, constructs for himself a lock on the entrance to the cistern to prevent the homeowner from drawing water from it, and that one, the homeowner, constructs for himself a lock.

177 GEMARA: The mishna states that the owner of the cistern and the homeowner each construct a lock. The Gemara asks: A lock to where? Rabbi Yoḥanan says: Both of them construct a lock on the opening to the cistern to prevent the other from accessing it unilaterally. The Gemara asks: Granted, the owner of the cistern constructs a lock, as he wants to protect the water of his well. But why does the homeowner construct a lock? Rabbi Elazar said:

178 He does so due to a suspicion that the owner of the cistern might enter the house at a time when the owner of the house is not present, and thereby be secluded together in the house with the homeowner’s wife.

179 MISHNA: One who has ownership of a garden located beyond the garden of another, and also has access rights to it, may enter his garden only at a time when it is usual for people to enter, and may leave only at a time when it is usual for people to leave. Furthermore, he may not bring merchants into his garden, and he may not enter the garden solely in order to use it as a passageway, to enter from it into another field. And the owner of the outer garden may sow the path leading to the inner garden.

180 If the court gave him an access path from the side of the outer garden, with the agreement of both of them, he may enter at any time he wants, and leave at any time he wants, and may bring merchants into the inner garden. But he may still not enter the garden solely in order to enter from it into another field. In such a case, neither this one, the owner of the inner garden, nor that one, the owner of the outer garden, is permitted to plant that side path.

181 GEMARA: Rav Yehuda says that Shmuel says: If a field owner says to another: I am selling you from my land a water channel fit for bringing water to an irrigated field, he is required to give him land two cubits wide for the inside of the channel, and one cubit on this side and one cubit on that side for its banks. If he said to him: I am selling you a shadoof [kilon] channel, he is required to give him land one cubit wide for the inside of the channel and half a cubit on this side and half a cubit on that side for its banks.

182 The Gemara asks: And with regard to those banks, who has permission to sow them? Rav Yehuda says that Shmuel says: The field owner may sow them with vegetables or crops. Rav Naḥman says that Shmuel says: The field owner may plant them with trees. The Gemara elaborates: The one who says that the field owner may sow them holds that all the more so he may plant them with trees. And the one who says that he may plant them with trees holds that he may only plant trees, but sowing them with other plants is not permitted. This is because the roots perforate the ground, which weakens it and can cause damage to the water channel.

183 § And Rav Yehuda says that Shmuel says: With regard to a water channel whose banks collapsed, the owner of the channel may repair it with earth from that field through which the channel runs, even though the field does not belong to him. It is permitted because it is known that when its banks collapsed the earth that the banks were made from spread only into that surrounding field.

184 Rav Pappa objects to this: But let the field owner say to the owner of the channel: Your water in your channel carried away your earth from your banks, so you have no right to take earth from my field. Rather, Rav Pappa said he may repair the banks with earth from the field because when the field owner sold the rights to the channel he accepted that condition upon himself.

185 MISHNA: In the case of one who had a public thoroughfare passing through his field, and he appropriated it and instead gave the public an alternative thoroughfare on the side of his property, the halakha is that the thoroughfare that he gave them, he gave them, and they may use it. But the original thoroughfare that he took for himself has not reached him, i.e., he cannot appropriate it for his personal use.

186 The standard width of a private path is four cubits. If a field owner sells the right to pass through his field to an individual, without specifying the width of the path, he must provide him with a path four cubits wide. The standard width of a public thoroughfare is sixteen cubits. The width of a king's thoroughfare has no maximum measure, as the king may appropriate whatever width thoroughfare he wishes. The width of the path for the burial procession to a grave has no maximum measure. With regard to the practice of standing and comforting the mourners following a funeral, the judges of Tzippori said that the standard requisite size is the area required for sowing four kav of seed.

187 GEMARA: The Gemara asks: Why does the mishna rule that the public thoroughfare that the landowner took for himself has not reached him? If by making the exchange the original thoroughfare now belongs to him, let him take a stick [pazra] and sit on the thoroughfare and physically prevent anyone from passing through. Apparently, the Sages did not permit him to do so. The Gemara suggests: Does it follow that one can conclude from the mishna's ruling that a person may not execute judgment for himself even in circumstances where refraining from acting will cause him a loss? This would contradict the accepted halakha that one may do so.

188 Rav Zevid said in the name of Rava: Although generally one may do so, in this case the Sages issued a decree prohibiting it, lest he give them a circuitous route that will lengthen the distance the public will have to travel. Rav Mesharshiyya said in the name of Rava that the ruling of the mishna applies only where he actually gives them a circuitous route instead of the original straight thoroughfare. But one may exchange a public thoroughfare for an equally straight thoroughfare, appropriating the original for his personal use.

189 Rav Ashi said: Any alternative path on the side of the original path is considered a circuitous route, as it is close for this person and it is far for that person. While some will benefit from the change, it will be detrimental to others. Therefore, one may never exchange a public path for an alternative path.

190 § The mishna teaches that if a field owner provides an alternative thoroughfare through his field for the public to use, the public may use both thoroughfares. The Gemara suggests: But let him say to them: Take your original thoroughfare back and give me my thoroughfare that I provided you. The Gemara answers: In accordance with whose opinion is this mishna? It is in accordance with the opinion of Rabbi Eliezer, as it is taught in a baraita that Rabbi Yehuda says in the name of Rabbi

Eliezer: If the public selected a thoroughfare through a privately owned field for themselves even without gaining the permission of the field owner, that which they selected, they selected, and they have the right to use it.

191 The Gemara asks: According to the opinion of Rabbi Eliezer, are the members of the public entitled to be robbers? Why should they be permitted to appropriate land from a private owner? Rav Giddel said that Rav said: Rabbi Eliezer refers only to a case where the public lost a thoroughfare in that field, e.g., the field was plowed over and the original course of the thoroughfare is not known. In such a case, the public has the right to determine the course anew.

192 The Gemara asks: If so, why does Rabba bar Rav Huna say that Rav says that the halakha is not in accordance with the opinion of Rabbi Eliezer? His reasoning seems valid. The Gemara answers: The one who teaches this, i.e., that Rabbi Eliezer is referring to a case where a thoroughfare was lost, does not teach that, i.e., that Rav rules against Rabbi Eliezer. There is a dispute as to what Rav said.

193 The Gemara asks: And according to Rabba bar Rav Huna, what is the reason the field owner cannot reclaim the alternative thoroughfare that he gave to the public? The Gemara answers: It is due to the statement of Rav Yehuda, as Rav Yehuda says: With regard to a strip of land that serves as a border between two strips of land that the public took possession of as a public thoroughfare, it is prohibited to destroy it for them, i.e., prevent people from using it. Accordingly, in the case of the mishna, where the field owner actually provided the public with a thoroughfare, he may certainly not take it back.

194 The Gemara asks: And according to Rabbi Eliezer, through what means does the public acquire the thoroughfare they choose? The Gemara answers: By means of walking on the thoroughfare, as it is taught in a baraita: If one walked along a field’s length and its breadth, he has acquired the area inside where he walked, as walking is an effective act of acquisition; this is the statement of Rabbi Eliezer. And the Rabbis say that by itself, walking is not effective at all to acquire a field, and it is not acquired until he takes possession of it using a legal act of acquisition.

195 Rabbi Elazar said: What is the reasoning of Rabbi Eliezer? As it is written that after God promised Abraham Eretz Yisrael, He instructed him: “Arise, walk through the land, its length and its breadth; for I will give it to you” (Genesis 13:17), in order that Abraham should thereby acquire the land. And the Rabbis, how do they interpret this verse? They hold that there, in Genesis, it was due to God’s love of Abraham that he said to him to do this, in order that it would be easy for his descendants to conquer the land. His walking was to demonstrate the divine promise and thereby emphasize his descendants’ claim to the land, but it did not effect acquisition of it.

196 Rabbi Yosei, son of Rabbi Ḥanina, says: The Rabbis concede to Rabbi Eliezer with regard to a path that passes through vineyards that since the path is made only for walking on it, it can be acquired by means of walking on it.

197 The Gemara relates an incident involving the allocation of a path through a vineyard: When people came before Rav Yitzḥak bar Ami for judgment with regard to the width of a path through a vineyard that someone had purchased, he said to them: Give him a path wide enough so that one can carry a load [tuna] of vine branches [dishvishta] along it and is able to turn around while holding them. The Gemara comments: And we said this only in a case where the sides of the path are bounded by a fence, which would physically prevent a person from carrying a load of vine branches that are wider than the path, and therefore, if necessary, the path must be widened by breaking down

the fence. But where the sides are not bound by a fence, a person carrying a load of vine branches will not be prevented from passing along it. Consequently, he needs only to be given a path wide enough so that he can lift up one foot and place it in front of the other foot.

198 § The mishna teaches: The standard width of a private path is four cubits. It is taught in a baraita: Aḥerim say: A private path is wide enough so that a donkey can pass on it with his load. Rav Huna says: The halakha is in accordance with the opinion of Aḥerim. And it is taught in another baraita: The judges of the exile say that the standard width is two and a half cubits. And Rav Huna says: The halakha is in accordance with the opinion of the judges of the exile. The Gemara asks: But doesn't Rav Huna say: The halakha is in accordance with the opinion of Aḥerim? The Gemara resolves the contradiction: This definition and that definition are one and the same measure.

199 The mishna teaches: The standard width of a public thoroughfare is sixteen cubits. The Sages taught in a baraita: The standard width of a private path is four cubits. The standard width of a road that goes from city to city is eight cubits.

200 The standard width of a public thoroughfare is sixteen cubits. A road leading to one of the cities of refuge must be at least thirty-two cubits wide. Rav Huna said: What is the verse from which this is derived? As it is written with regard to the cities of refuge: "You shall prepare for yourself the way, and divide the borders of your land that the Lord, your God, caused you to inherit, into three parts, so that every manslayer may flee there" (Deuteronomy 19:3). Instead of simply stating: A way, the verse states: "The way," to indicate that the road must be twice as wide as a standard public thoroughfare.

201 The mishna teaches: A king's thoroughfare has no maximum measure. The Gemara explains: This is because the halakha is that a king may breach the fence of an individual in order to create a thoroughfare for himself, and none may protest his actions.

202 The mishna teaches: The path for those accompanying a deceased person to a grave has no maximum measure. The Gemara explains: This is due to the honor of the deceased.

203 § The mishna teaches: With regard to the practice of standing and comforting the mourners following a funeral, the judges of Tzippori said that the standard requisite size is the area required for sowing four kav of seed. The Sages taught in a baraita: With regard to a family burial plot, even if one of the family sells the land designated for his own grave to another, or sells the path that will be used by the burial procession to his grave, or sells the place that will be used for standing and comforting his mourners, or sells the site that will be used for his eulogy, his family members may come and bury him in his grave even against the will of the buyer, due to the need to avoid a family flaw, i.e., harm to the family name that would arise if one of the family members was not buried with the rest of his family.

204 The Sages taught in a baraita: On their return from the burial, the mourners would stop after traveling a short distance and would sit to bewail the loss of the deceased. They would then stand and continue journeying for a short while and then repeat the procedure. The mourners perform no fewer than seven standings and sittings in honor of the deceased. These seven correspond to the seven references to "vanity" in the verse: "Vanity of vanities, says Kohelet; vanity of vanities, all is vanity" (Ecclesiastes 1:2), counting the plural term "vanities" as two references.

205 Rav Aḥa, son of Rava, said to Rav Ashi: How do they perform this ceremony? Rav Ashi said to him that it is done as it is taught in a baraita: Rabbi Yehuda said that in Judea, initially they would

perform no fewer than seven standings and sittings in honor of the deceased. One of the procession would make a statement such as: Stand, dear friends, stand, after which the mourners would continue on their journey to their home, and then he would say: Sit down, dear friends, sit down, at which point they would sit. The Rabbis said to him: If so, that this is all that the practice entails, then it should be permitted to do so even on Shabbat, since there is no explicit eulogy or mourning, whereas the custom is not to do so.

206 The Gemara relates: The sister of Rami bar Pappa was married to Rav Avya. When she died Rav Avya performed the practice of standing and sitting for her. Rav Yosef said: He erred in two matters. He erred, as the ceremony is to be performed only with the participation of close family members, and he performed it even with a distant relative. And he erred again, as mourners should perform this ceremony only on the first day of mourning, the day of the burial, and he performed it on the second day.

207 Abaye said: He also erred in this, as mourners should perform the ceremony only in the cemetery, but he performed it in the city. Rava said: He also erred in this, as mourners should perform it only in a locale where people are accustomed do so, but there, where he performed it, it was not the custom to do so.

208 The Gemara raises an objection to the claims of Rav Yosef and Abaye from the baraita cited above: The Rabbis said to him: If so, that this is all that the practice entails, then it should be permitted to do so even on Shabbat. The Gemara explains the objection: And if you say, as Abaye did, that the ceremony should be performed only in the cemetery, or, as Rav Yosef did, on the first day, then how could it occur that the ceremony would be performed on Shabbat; what would anyone want to be doing in a cemetery on Shabbat, when it is prohibited to perform a burial? The Gemara explains: It could happen in a city that is close to the cemetery, and this is a case where they brought the deceased for burial at twilight just before Shabbat began, so that the return journey took place on Shabbat itself.

209 MISHNA: There is the case of one who sells a plot of land to another in order for him to construct for himself an underground catacomb, and similarly the case of a contractor who receives a plot of land from another under a commission to construct for him a catacomb. If the size of the catacomb was not specified, then he should make the inside of each burial chamber four cubits wide by six cubits long and open up into the chamber, by digging into its walls, eight burial niches [kukhin] in which the coffins will rest. Three niches should be opened up from the wall here, along the length of the chamber, and three from there, along the other side, and two niches from the wall facing the entrance. And these niches should be formed so that their length is four cubits and their height is seven handbreadths,

210 and their width is six handbreadths.

211 Rabbi Shimon says: He should construct the inside of each burial chamber six cubits wide by eight cubits long and open up into the chamber, by digging into its walls, thirteen burial niches. Four niches should be opened up from the wall here, along the length of the chamber, and four from there, along the other side, and three niches from the wall facing the entrance, and one from the right of the entrance and another one from the left.

212 The mishna describes the general structure of the catacomb: And he must fashion a courtyard at the entrance of the burial chamber that should be six cubits by six cubits, which is equal to the

combined length of the bier of the deceased and those who bury him, to ensure adequate room for the burial to take place.

213 And he should open up two burial chambers into the courtyard, one from here and one from there, i.e., on opposite sides of the courtyard. Rabbi Shimon says: He should open up four burial chambers, one on each of the courtyard's four sides.

214 Rabban Shimon ben Gamliel says: Everything is dependent on the nature of the bedrock. If the bedrock is hard and strong it will be able to accommodate more niches, which will be more closely packed together, with less bedrock between them. If the bedrock is softer, fewer and more sparsely spaced niches should be formed.

215 GEMARA: In Rabbi Shimon's depiction of a burial chamber, he states that two niches should be opened up, one from the right of the entrance and one from the left. The Gemara asks: These two niches, in which direction does he set them? If they are directed toward the outside of the chamber, i.e., under the floor of the courtyard, won't people trample over them when they enter the courtyard, which is improper? And furthermore, didn't we learn in the mishna (Oholot 15:8): With regard to the courtyard of a catacomb, one who stands inside it is ritually pure because it can be presumed that he did not stand over a dead body? Clearly, these niches are not to be dug underneath the courtyard.

216 Rabbi Yosei, son of Rabbi Ḥanina, said: He makes these two niches at the side of the entrance, vertically, like a door bolt.

217 The Gemara challenges this explanation: But doesn't Rabbi Yoḥanan say with regard to the burial of people in a vertical position:

218 This is like a burial of donkeys and is disrespectful.

219 The Gemara answers: According to the opinion of Rabbi Yoḥanan, each of these two niches is formed in a different corner of the chamber, aligned diagonally away from the chamber's cavity.

220 The Gemara challenges: But if so, won't the niches located around the corners touch one another? According to Rabbi Yoḥanan's suggestion, there are, in fact, three niches located at each of the two back corners. One is recessed into the wall of the length of the chamber, at right angles to it, another is recessed into the back wall of the chamber, also at right angles to it, and a third that extends diagonally away from the chamber. The ends of these three niches will overlap, causing there to be too little space in them to fulfill the minimum required measurement.

221 Rav Ashi said: It is possible to do this where, when constructing the niches that extend diagonally away from the chamber, one deepens them, i.e., forms them lower down in the wall than the other niches adjacent to them. As, if you do not say that this is a solution, then how could the four chambers depicted by Rabbi Shimon be constructed? Won't the niches touch one another? The niches of one chamber will overlap those of the chamber adjacent to it. Rather, it is possible to arrange the niches only where, when constructing the niches of two chambers at opposite ends of the courtyard, one deepens them, i.e., forms them lower down in the wall than the niches of the other two chambers that are adjacent to them. Here too, it is a case in which one deepens them.

222 Rav Huna, son of Rav Yehoshua, said that there is an alternative explanation: It is possible to fashion the four chambers depicted by Rabbi Shimon where one constructs them so that all the niches extend diagonally away from the cavity of the chamber like the leaves of a palm branch, which have

spread out from its spine. If formed in this way, the niches of adjacent chambers will not overlap, even if they are at the same depth in the ground.

223 The Gemara notes: And this statement of Rav Huna, son of Rav Yehoshua, is an error, because it is not possible to form all the niches in this way, since the length of the diagonal of every square whose side is one cubit is one and two-fifths cubits. Each chamber is eight cubits long, which means that between two adjacent chambers, placed at right angles to each other, there is a square area of eight cubits by eight cubits into which the niches of those two chambers must be formed. How much is the diagonal of that area? Eleven and one-fifth cubits. How many niches have to fit in that space? Eight. How can you find that eight niches can possibly fit into eleven and one-fifth cubits? Each of the niches is a cubit wide, and there must be a cubit wall of bedrock between each niche. To accommodate this once would need an area of at least fifteen cubits. Rather, this statement of Rav Huna, son of Rav Yehoshua, is in error.

224 The Gemara provides an alternative solution to the problem of the niches at the corners overlapping. Or if you wish, say as Rav Sheisha, son of Rav Idi, said in answer to a similar question: It is referring to non-viable newborns, which require only very small burial niches. Similarly, here also, the niches at the corners of the chambers were used for non-viable newborns.

225 § The Gemara considers another mishna that relates to the structure of a catacomb: We learned in a mishna there (Nazir 64b): With regard to one who finds a corpse while inspecting a place that was not previously established as a cemetery, to ensure that it is free of ritual impurity, and the corpse is lying in the usual manner of Jewish burial, he removes it from there and also removes its surrounding earth. And similarly, if he finds two corpses buried in the usual manner, he removes them and their surrounding earth. Since only one or two corpses were found, it may be assumed that the area is not a cemetery; therefore, the corpses may be removed.

226 If he found three corpses lying parallel to each other, then if there is between them, i.e., the outer two corpses, a distance of four to eight cubits, then this is presumed to be a graveyard and the corpses may not be removed, and he must examine from that spot outward twenty cubits to discover whether there are other corpses buried there. If he finds even one corpse up to the distance of twenty cubits, he must continue to examine from the place he finds that corpse outward another twenty cubits. He continues to search for additional corpses, even if only one corpse was found within the twenty cubits, as there is a basis for anticipating the matter; it is probable that he has stumbled upon an ancient cemetery. He is not permitted to relocate the corpses, despite that fact that if he had found the single corpse by itself at first, without being aware of the gravesite, he would have been permitted to remove it and its surrounding earth.

227 The Gemara analyzes that mishna. The Master said: If there is between them a distance of four to eight cubits, then it is presumed to be a graveyard. The reason is that corpses buried in this manner are indicative of the standard layout of a burial chamber. The fact that this is said only when the distance between the corpses is between four and eight cubits assumes that the size of a burial chamber is four cubits by eight cubits. Based on this, the Gemara asks: Whose opinion is this? If it is the opinion of the Rabbis in the mishna above (100b), didn’t they say that the size of a burial chamber is four cubits by six cubits? If it is the opinion of Rabbi Shimon, didn’t he say that a burial cave is six cubits by eight cubits?

[228] The Gemara answers: Actually this mishna is in accordance with the opinion of Rabbi Shimon, and it is in accordance with another version of Rabbi Shimon's opinion, which is cited by this tanna, as it is taught in a baraita: If one found three corpses lying in close succession, and there is not a distance of four cubits to eight cubits between them, i.e., they are lying closer together, they have the halakha of the requirement to move their surrounding earth in which they are buried. But they are not considered to be part of a graveyard, since permanent graves are not placed so closely together. Perforce, their corpses were originally buried there on a temporary basis, but then they were never reinterred. Rabbi Shimon ben Yehuda says in the name of Rabbi Shimon: The corpses in the middle are viewed as if they are not there, i.e., as if they were buried there incidentally, and the other corpses thereby combine to form a graveyard in which corpses are found with a distance of four cubits to eight cubits between them.

[229] The Gemara asks: In accordance with which opinion did you interpret the mishna? If it is in accordance with the opinion of Rabbi Shimon, then say the latter clause of that mishna: If he finds an area of graves, he must examine from there outward twenty cubits to discover whether there are other corpses buried there. Since the burial formation is indicative of burial within a burial chamber of a catacomb, he should continue to investigate the whole area that would be occupied by a catacomb. The Gemara asks: Whose opinion is this? If it is the opinion of Rabbi Shimon, the distance one should be required to examine would be twenty-two cubits, which is the total length of a catacomb, i.e., two chambers of eight cubits with a courtyard of six cubits between them. If it is the opinion of the Rabbis, the distance one should be required to examine would be eighteen cubits, as each catacomb consists of two chambers of six cubits long with a chamber of six cubits between them.

[230] The Gemara answers: Actually, the mishna is in accordance with the opinion of the Rabbis, and it is necessary to examine twenty cubits in a case where he examined along the diagonal of the catacomb, which is longer than its length.

[231] The Gemara asks: But since he examined this chamber along the diagonal, this second chamber on the other side of the courtyard should also be examined along the diagonal. If so, that would be twenty-two cubits. The Gemara answers: We say he should examine one chamber along the diagonal, but we do not say he should examine two chambers along the diagonal.

[232] Rav Sheisha, son of Rav Idi, said: Actually, the mishna is in accordance with the opinion of Rabbi Shimon, and here we are dealing with a case where the corpses found were of non-viable newborns buried in a smaller chamber only six cubits long. Adding a courtyard of six cubits and another regular-sized chamber of eight cubits yields a total length of the catacomb of twenty cubits.

[233] The Gemara asks: But since this is dealing with a chamber that was created for burying non-viable newborns, there too, with regard to that chamber, on the other side of the courtyard, we are dealing with a chamber created for non-viable newborns as well. Therefore, the total length of the catacomb would be eighteen cubits. The Gemara answers: We say that perhaps one of the chambers is for non-viable newborns, but we do not say that two chambers might have been constructed for non-viable newborns.

[234] § Above, the Gemara cited a baraita that relates a dispute between Rabbi Shimon and the Rabbis with regard to three corpses buried close together. The Rabbis hold that this is not considered a graveyard, whereas Rabbi Shimon maintains that it can be. And the Gemara raises a contradiction

from another ruling of the Rabbis against this ruling of the Rabbis, and it also raises a contradiction from another ruling of Rabbi Shimon against this ruling of Rabbi Shimon.

[235] As it is taught in a mishna (Kilayim 5:2): With regard to a vineyard that is planted on an area where there is less than four cubits of open space between the vines, Rabbi Shimon says: It is not considered to be a vineyard with regard to the prohibition of diverse kinds and other halakhot, as it is overcrowded. And the Rabbis say: This is considered to be a vineyard, and the reason for this is that the middle vines are viewed as if they are not there, and the outer vines meet the requirements for a vineyard. Therefore, it is prohibited to plant other crops anywhere in that area.

[236] The ruling of the Rabbis in this mishna is difficult, as it is contradicted by the ruling of the Rabbis in the baraita, as there the Rabbis did not say: The middle ones are viewed as if they are not there. And the ruling of Rabbi Shimon in this mishna is difficult, as it is contradicted by the ruling of Rabbi Shimon in the baraita, as there he did say: The corpses in the middle are viewed as if they are not there.

[237] The Gemara answers: The fact that one ruling of Rabbi Shimon is contradicted by the other ruling of Rabbi Shimon is not difficult. There, with regard to vineyards, Rabbi Shimon holds that middle vines cannot be disregarded, as people do not plant vines with the intention of uprooting them. But here, with regard to burial, sometimes it happens that one has to bury a corpse at twilight just before the onset of Shabbat, and indiscriminately inters the body between other corpses with the intention of reburying it at a later date.

[238] Similarly, the fact that one ruling of the Rabbis is contradicted by the other ruling of the Rabbis is not difficult. Here, with regard to burial, since it is a disgrace to bury bodies so close together, it is not called an area of graves. But there, with regard to vineyards, the owner of the vineyard says to himself: Whichever of the vines will flourish, will flourish and I will leave them, and whichever ones do not flourish, I will uproot them and they will be for firewood.

Chapter 7

[1] MISHNA: If one says to another: I am selling you a plot of earth of the size required for sowing one kor of seed [beit kor], and there on that plot there were crevices [neka’im] ten handbreadths deep or rocks ten handbreadths high, they are not measured together with the rest of the field. Rather, the buyer must be provided with land measuring a beit kor exclusive of those crevices or rocks. If the crevices or rocks measured less than ten handbreadths, they are measured together with the rest of the field. But if the seller said to the buyer: I am selling you a plot of earth that is about the size of a beit kor, then even if there on that plot there were crevices deeper than ten handbreadths or rocks higher than ten handbreadths, they are measured together with the rest of the field.

[2] GEMARA: We learned in a mishna elsewhere (Arakhin 25a): With regard to one who consecrates his ancestral field during the time that the halakhot of the Jubilee Year are practiced, if he wishes to redeem the field he must give the Temple treasurer fifty silver shekels for every place that is fit for sowing a ḥomer of barley seed, which is the biblical equivalent of a kor, for all the years of the Jubilee cycle, as this is the sum fixed by the Torah for this purpose (see Leviticus 27:16). But if there were crevices ten handbreadths deep there, in the field, or rocks ten handbreadths high,

[3] they are not measured together with the rest of the field. If the crevices or rocks were less than ten handbreadths, they are measured together with the rest of the field.

[4] The Gemara asks: But why are the crevices that are deeper and the rocks that are higher than ten handbreadths not measured with the rest of the field? Let them at least be consecrated separately and require their own redemption. And if you would say that since they are not the size of a beit kor, they cannot be consecrated, there is a difficulty.

[5] But isn't it taught in a baraita concerning the verse: "And if he that sanctified the field will redeem it" (Leviticus 27:19): Why must the verse state the word "field"? Since the previous verses are all discussing a field, it would have sufficed for this verse to refer to the field with the pronoun: It. Rather, as it is stated in an earlier verse: "Then your valuation shall be according to the seed required for it; a ḥomer of barley seed shall be valued at fifty shekels of silver" (Leviticus 27:16), I have derived only the halakha in the case of one who consecrated in this manner, i.e., an area fit to sow a ḥomer of barley seed.

[6] The baraita continues: From where do I learn that this halakha is also meant to include the case of one who consecrated a smaller area, e.g., an area fit to sow a letekh, i.e., a half-kor, a half-letekh, a se'a, a tarkav, and a half-tarkav? From where is it derived that these smaller plots of land can also be consecrated and redeemed in accordance with the fixed values stated in the Torah? The verse states: "A field," teaching that this halakha applies in any case of a field, even to smaller plots.

[7] Rav Ukva bar Ḥama said: Here, in the mishna in Arakhin, we are dealing with crevices filled with water. Being that they are not fit for sowing, they cannot be consecrated, as the verse states: "Then your valuation shall be according to the seed required for it" (Leviticus 27:16). The Gemara comments: The language of the mishna is also precise according to this interpretation, as it teaches the halakha about crevices that are similar to rocks, which are certainly not fit for sowing. The Gemara affirms: Learn from this that this explanation is correct.

[8] The Gemara raises a difficulty: If this is so, that the crevices and rocks of the mishna are excluded from being consecrated because they are unfit for sowing, then even if they are less than ten handbreadths in depth or height, they also should not be consecrated. The Gemara answers: If the crevices or rocks are less than ten handbreadths deep or high, these crevices are called the cracks of the earth, and these rocks are called the spines [shidrei] of the earth. In other words, since they are considered standard features of the field and do not constitute separate areas, they are consecrated together with the rest of the field.

[9] The Gemara asks: The halakha stated above was taught with regard to consecrated property. Here, in the case of a sale of land, with regard to which the mishna teaches that crevices ten handbreadths deep are not measured along with the land, what is the halakha? Does that halakha apply only when the crevices are filled with water? Rav Pappa said: Even if they are not filled with water they are not considered part of the field. What is the reason that in the case of a sale crevices are not considered part of the field even if they are not filled with water? Because a person buying a field does not want to give his money for the purchase of one plot when it appears to him like two or three different plots due to differences in the height of the terrain. Therefore, those crevices that are ten handbreadths deep are not measured along with the rest of the field, regardless of whether or not they are filled with water.

[10] Ravina objects to this: But the mishna teaches the halakha about crevices in a manner indicating that they are similar to the rocks discussed in the mishna. Just as rocks are not fit for sowing, so too, these crevices are such that they are not fit for sowing. But if they are not filled with water, and are therefore fit for sowing, then even if they are lower than the rest of the field, they should be included in the sale. The Gemara replies: When the mishna teaches the halakha about crevices in a manner indicating that they are similar to the rocks discussed in the mishna, it teaches about crevices that are less than that, i.e., less than ten handbreadths deep. In such a case, even if they are not fit for sowing, they are measured along with the rest of the field.

[11] § The mishna teaches that if the crevices or rocks in the field measured less than ten handbreadths, they are measured together with the rest of the field. Rabbi Yitzḥak says: The rocks or crevices that measure less than ten handbreadths that the Sages said are measured together with the rest of the field must not measure more than an area required for sowing four kav of seed within an area required for sowing a kor. Rav Ukva bar Ḥama says: This applies specifically where the rocks are scattered throughout an area required for sowing five kav. Rav Ḥiyya bar Abba says that Rabbi Yoḥanan says: This applies specifically where the rocks are scattered throughout the greater part of the field.

[12] Rabbi Ḥiyya bar Abba raises a dilemma with regard to the halakha taught in the name of Rabbi Yoḥanan: If the majority of the rocks are scattered throughout the smaller part of the field, and the minority of the rocks are scattered throughout the greater part of the field, what is the halakha? The Gemara answers: The dilemma shall stand unresolved, as no answer was found.

[13] Rabbi Yirmeya raises another dilemma:

[14] If the rocks are scattered throughout the greater part of the field but are arranged like a ring, what is the halakha? If the rocks stand in a row, what is the halakha? If the rocks form an angle, what is the halakha? If they are arranged in the shape of a crooked path, what is the halakha? The Gemara states: All these dilemmas shall stand unresolved.

[15] A Sage taught in a baraita: If there is a solitary rock on the outskirts of the field, even if it is of a minimal size, it is not measured together with the rest of the field. And further, if that rock is adjacent to the field’s border, even if it is of a minimal size, it is not measured together with the rest of the field.

[16] Rav Pappa raises a dilemma: If earth intervenes between the rock and the border of the field, so that the rock does not actually touch the border, what is the halakha? The Gemara states: This dilemma as well shall stand unresolved. Rav Ashi raises another dilemma: If there was a layer of earth below and rock above, or earth above and rock below, what is the halakha? The Gemara states: This dilemma as well shall stand unresolved.

[17] MISHNA: If one says to another: I am selling you a plot of earth the size of a beit kor, measured precisely with a rope, and he gave him even the slightest amount less than what was stipulated, the seller must deduct the difference from the purchase price of the field and return money to the buyer. If he gave him even the slightest amount more than what was stipulated, the buyer must return the difference to the seller. And if the seller said to the buyer that he is selling him a beit kor of land more or less, then even if he gave him a quarter-kav per se’a less than what was stipulated, or he gave him a quarter-kav per se’a more that what was stipulated, i.e., he gave him one twenty-fourth more or less than what was required, it is his. The sale is valid, since the seller told the buyer in

advance that he was not committing himself to precise measurements. If the difference is greater than that amount, he must make a calculation, and the party that suffered a loss must be compensated.

[18] If the buyer received too much land, so that he must now compensate the seller, what does he return to him? He returns money, i.e., he pays the seller for the surplus land. And if the seller so wishes, the buyer returns the surplus land to him. Why then did the Sages say that he returns money to him? They said this in order to enhance the power of the seller, and enable him to demand payment for the surplus land, rather than accept its return. As, if the surplus in the field was an area required for sowing nine kav of seed, and in a garden an area required for sowing a half-kav of seed, or, according to the statement of Rabbi Akiva, an area required for sowing a quarter-kav of seed (see 11a), the buyer must return the land itself to the seller, and the seller cannot demand payment in money. And if the surplus is greater than a quarter-kav per se'a, it is not only the quarter-kav that he returns; rather, he returns all of the surplus. Since he is already required to make a refund, the refund must be made in the precise amount.

[19] GEMARA: The mishna considers two cases of selling a beit kor of land: First, where the seller said that he is selling a beit kor measured precisely with a rope, in which case a refund must be made no matter how small the deviation; and second, where the seller said that he is selling a beit kor more or less, in which case the sale is valid as long as the deviation is no more than a quarter-kav per se'a. In connection with these cases, a dilemma was raised before the Sages: If one says he is selling a beit kor of land, and he said this without any further specification, what is the halakha? The Gemara suggests: Come and hear a solution from what was taught in the mishna: If one says to another: I am selling you a plot of earth the size of a beit kor, measured precisely with a rope,

[20] and he gave him even the slightest amount less that what was stipulated, the seller must deduct the difference from the purchase price of the field and return money to the buyer. If he gave him even the slightest amount more than what was stipulated, the buyer must return the difference to the seller. The reason that even the slightest difference in value must be returned is that the seller specified that he was selling land measured precisely with a rope. But had he sold the land without further specification, it would be like he sold it saying that it is a beit kor more or less.

[21] The Gemara rejects this argument by proposing another, completely opposite proof: Say the latter clause of the mishna: And if the seller said to the buyer that he is selling him a beit kor of land more or less, then even if he gave him one-quarter of a kav per se'a less than what was stipulated, or he gave him one-quarter of a kav per se'a more than what was stipulated, it is his and the sale is valid. One can infer: The reason that the sale is valid is that he specified that he was selling a beit kor of land more or less. But had he sold the land without further specification, it would be like he sold it saying that he was selling the land measured precisely with a rope. Rather, since the mishna can be interpreted in two opposite ways, no inference is to be learned from the mishna.

[22] The Gemara tries to present another proof: Come and hear a proof from a baraita: If the seller said to the buyer: I am selling you a plot of earth the size of a beit kor; or he said to him: I am selling you a plot of earth about the size of a beit kor; or he said to him: I am selling you a beit kor more or less; then even if he gave him one-quarter of a kav per se'a less than what was stipulated, or he gave him one-quarter of a kav per se'a more than what was stipulated, it is his and the sale is valid. One can infer: Apparently, selling a beit kor of land without further specification is also like selling it more or less. The Gemara rejects this proof: There, the tanna is explaining his statement, which should be

understood as follows: When is the phrase a beit kor treated like the phrase about the size of a beit kor? In a case where the seller says to the buyer: I am selling you a beit kor more or less.

[23] Rav Ashi objects to this: If that is so, then why do I need to repeat the words: I am selling you, three times? The fact that the baraita repeats these words in each clause indicates that it is discussing three separate sale transactions, and not that the three clauses are all referring to one case. Rather, isn't it correct to conclude from the baraita that selling a beit kor of land without further specification is like selling it more or less? The Gemara affirms: Conclude from the baraita that this is so.

[24] § With regard to a buyer who received too much land and now must compensate the seller, the mishna teaches: What does he return to him? He pays him money, and if the seller so wishes, the buyer returns the surplus land to him, because the Sages said that the buyer pays money in order to enhance the power of the seller. In other words, the Sages allowed the seller to choose whether to take back the surplus land or to demand payment for it from the buyer, even though this effectively forces the buyer to purchase the surplus land from him. The Gemara asks: Is it correct that we say that the seller's power should be enhanced, and that we do not say that the buyer's power should be enhanced?

[25] But isn't it taught otherwise in a baraita: If the seller gave the buyer seven and a half kav per kor less than what was stipulated, which is the equivalent of a quarter-kav per se'a, as a kor is equal to thirty se'a, or he gave him seven and a half kav per kor more than what was stipulated, it is his and the sale is valid. If the difference is greater than that amount, the court compels the seller to sell and the buyer to buy the difference. This indicates that we also say that the buyer's power should be enhanced, since if the buyer so wishes, the seller is compelled to sell him land and accept payment for it.

[26] The Gemara replies: There, the baraita is not discussing a case where the buyer wishes to acquire the surplus land, but rather with a case where the land was initially, at the time of the sale, expensive, but now it is cheap, and the seller wants the buyer to pay him for the surplus land according to the initial higher rate. In this case, we say to the seller, in the name of the buyer: If you wish to give me land and receive money, give me the land according to the current, cheaper rate. This is what the baraita is referring to when it states that the seller is compelled to sell.

[27] The Gemara raises a difficulty: But isn't it taught in a baraita: When he gives him money in payment for the surplus land, he gives it to him according to the rate at which he had bought the rest of the land from him? The Gemara replies: There the baraita is referring to a case where the land was initially cheap but now it is expensive. If, in such a case, the seller wants the buyer to pay him for the surplus land, he is compelled to sell it to him according to the cheap rate from the time of the original sale.

[28] § The mishna teaches: As, if the surplus in the field was an area required for the sowing of nine kav of seed, and in a garden an area required for the sowing of a half-kav of seed, or, according to the Rabbi Akiva, an area required for the sowing of a quarter-kav of seed, the buyer can return the surplus land to the seller, and the seller cannot demand payment in money. Rav Huna says: The halakha that was stated in the mishna, that a surplus in the size of an area required for the sowing of nine kav of seed can be returned to the seller, applies even in a large valley which measures several kor. If the surplus is a significant plot of land equal in size to an area required for the sowing of nine

kav of seed, the buyer can return it to the seller, even if it is less than one-quarter of a kav per se’a, i.e., less than one twenty-fourth the size of the field that was sold.

[29] And Rav Naḥman says: He calculates seven and a half kav for each and every kor, which is equivalent to one-quarter of a kav per se’a. As long as the surplus does not exceed that ratio, he is not required to return it, even if the surplus is greater than the area required for the sowing of nine kav.

[30] And if after this calculation there is still a surplus in excess of a quarter-kav per se’a, equal in size to an area required for the sowing of nine kav of seed, the entire surplus must be returned.

[31] Rava raised an objection to Rav Naḥman: The mishna teaches that if the surplus in the field was an area required for the sowing of nine kav of seed, the buyer returns the land to the seller. Isn’t this the halakha even in a case where he sold him a field measuring two kor? This would seem to indicate that even if the surplus does not exceed a quarter-kav per se’a, as a quarter-kav per se’a in a field of two kor is fifteen kav, the sole determining factor is whether or not the surplus is equal in size to an area required for the sowing of nine kav. Rav Naḥman rejects this argument: No, the case in the mishna is specifically where he sold him a field measuring one kor.

[32] Rava raised a further objection to Rav Naḥman: We learned in the continuation of the mishna that if the surplus in a garden was an area required for the sowing of a half-kav of seed, the buyer returns the land to the seller. Isn’t this the halakha even in a case where he sold him a garden measuring two se’a? Once again, this would seem to indicate that the surplus is returned to the seller, provided that it is equal in size to the minimum measure of a garden, even if the surplus does not exceed one-half of a kav per two se’a, which is equivalent to one-quarter of a kav per se’a. Rav Naḥman rejects this argument as well: No, the case in the mishna is where he sold him a garden measuring a se’a, so that the surplus is proportionately twice as large.

[33] Rava raised yet another objection to Rav Naḥman from the next clause in the mishna, which states: Or, according to the statement of Rabbi Akiva, if the surplus in the garden was an area required for sowing a quarter-kav of seed, the buyer returns the land to the seller. What, isn’t this the halakha even in a case where he sold him a garden measuring a se’a? In that case, the surplus does not exceed one-quarter of a kav per se’a, and nevertheless the surplus is returned to the seller, provided that it is equal in size to the minimum measure of a garden. Rav Naḥman also rejects this argument: No, the case in the mishna is where he sold him a garden measuring a half-se’a, so that the surplus is proportionately twice as large.

[34] The mishna teaches that in the case of a field, the buyer can return the land itself if the surplus was an area required for the sowing of nine kav of seed, and in the case of a garden, if the surplus was an area required for the sowing of a half-kav of seed. Rav Ashi raises a dilemma: If one sold a field and it turned out that the plot was larger than had been stipulated, but before the buyer returned the surplus, the plot was turned into a garden, or if it was initially a garden and it was turned into a field (see 11a), what is the halakha? Is the surplus governed by the halakhot applying to a field or by those applying to a garden? The Gemara answers: The dilemma shall stand unresolved, as no answer has been found.

[35] A Sage taught in a baraita: If the field being sold was adjacent to another field belonging to the seller, then even if the surplus was of a minimal amount, the buyer can return the land itself to the seller, and the seller cannot demand payment in money. This is because the seller loses nothing when he receives a small tract of land, as he can cultivate it along with his adjoining field.

[36] Rav Ashi raises a set of dilemmas: With regard to a pit between the surplus in the sold field and the adjoining field belonging to the seller, what is the halakha: Should the pit be considered an interposition between the two fields? With regard to a water channel between the two fields, what is the halakha: Should the water channel be considered an interposition? With regard to the public thoroughfare, what is the halakha: Should the public thoroughfare be considered an interposition? With regard to a row of palm trees, what is the halakha: Should a row of palm trees be considered an interposition? The Gemara states: All these dilemmas shall stand unresolved.

[37] § The mishna teaches that if the surplus is greater than a quarter-kav per se'a, it is not only the quarter-kav that the buyer returns; rather, he returns all of the surplus. Since he is already required to make a refund, the refund must be made in the precise amount. The Gemara raises a question: Isn't it the opposite [kelappei layya]? The buyer is required to return the surplus even when the quarters of a kav remain in his possession. Ravin bar Rav Naḥman taught the mishna as follows: Not only must the buyer return the extra land that is beyond the limit of a quarter-kav area per beit se'a, but he must also return to him every one of the extra quarter-kav areas of land that he received beyond the stated area of a beit kor. When he is required to return the surplus, he returns not only the surplus, but also all the quarter-kav areas over and above what had originally been stipulated to be included in the sale.

[38] MISHNA: If the seller says to the buyer: I am selling you a plot of land of a certain size measured precisely with a rope more or less, thereby attaching to the sale two contradictory stipulations; in this case, the words: More or less, nullify the words: Measured precisely with a rope. Accordingly, if the surplus did not exceed a quarter-kav per se'a, the sale is valid as is. Similarly, if the seller says to the buyer: I am selling you a plot of land of a certain size more or less measured precisely with a rope,

[39] the words: Measured precisely with a rope, nullify the words: More or less, since the principle is that in all cases, one should attend to the final expression; this is the statement of ben Nanas.

[40] GEMARA: Rabbi Abba bar Memel says that Rav says: Ben Nanas's colleagues disagree with him with regard to his ruling that one should attend to the final expression. The Gemara asks: What new halakha is Rav teaching us? Don't we already learn that they disagree from a mishna (Bava Metzia 102a): There was once an incident in Tzippori involving one who rented a bathhouse from another, and it was stated that the rental fee would be twelve gold dinars [zehuvim] a year, one gold dinar per month, and the year was later intercalated, an extra month being added.

[41] The incident came before Rabban Shimon ben Gamliel and before Rabbi Yosei for a decision as to whether the intercalated month is included in the words: Twelve gold dinars a year, or whether an additional payment must be made for that month, as the agreement stipulated: One gold dinar per month. And they said: The landlord and the tenant should divide the intercalated month between them, and so the tenant should pay only half a gold dinar for it. This indicates that these Sages ruled that the meaning of an agreement containing two contradictory expressions is in doubt, and therefore the parties divide the disputed amount between them. From here it follows that they disagree with the opinion of ben Nanas, who says that in such a case one should attend to the final expression.

[42] The Gemara replies: If the Sages' opinion was derived only from there, I would not know that they disagree with the opinion of ben Nanas in all cases, as I would say that it is only there that the Sages say that the parties divide the disputed sum between them. As it is possible to say that the landlord retracted his first statement and set the rental fee at one gold dinar per month, but it is also

possible to say that he is explaining his earlier statement. That is to say, he did not mean to relate to the intercalated month; rather, he was clarifying that payment was to be made not with a lump sum at the end of the year, but in monthly installments. Since there is uncertainty with regard to his intention, the parties divide the contested sum between them. But here in the mishna, where the seller certainly retracted his first statement, one might say that the Sages do not disagree with ben Nanas. Therefore, the mishna teaches us that in all cases the Sages disagree with ben Nanas.

[43] Similar to what was cited above in the name of Rav, Rav Yehuda says that Shmuel says: This is the statement of ben Nanas, who says with regard to a case of contradictory expressions that one should attend to the final expression; but the Sages say: Follow the least inclusive expression, the one that is the least advantageous to the buyer, in keeping with the principle that in a case of uncertainty, the burden of proof rests upon the claimant.

[44] The Gemara asks: Did Shmuel mean to say that this is the statement of ben Nanas, but he, Shmuel, does not agree with him? But don't Rav and Shmuel both say: If the seller said to the buyer: I am selling you a kor of grain, an amount equivalent to thirty se'a, for the sum of thirty sela, he can renege on the entire sale even while measuring out the last se'a. Since the seller stipulated that he was selling a full kor of grain, as long as he has not yet measured out the full amount, he may still renege, as the sale is not yet complete.

[45] But if the seller said to the buyer: I am selling you a kor of grain for thirty sela, each se'a for a sela, the buyer acquires each se'a one by one as it is being measured out to him. Since the seller specified the price per sela, he has indicated that he is ready to sell each sela on its own. This seems to indicate that Shmuel maintains that in a case of contradictory expressions, one should attend to the final expression. Rather, Shmuel's formulation: This is the statement of ben Nanas, must be explained as follows: This is the statement of ben Nanas, and he, Shmuel, agrees with him that one should attend to the final expression.

[46] The Gemara asks: And does Shmuel actually agree with him? But doesn't Shmuel say: Concerning the ruling of the Sages that the landlord and the tenant should divide the intercalated month between them, we are dealing with a case where the landlord came to collect the rent in the middle of the month. Only in that case is the disputed rent divided between them. But in a case where he came to collect the rent at the beginning of the month, the entire sum goes to the landlord who is demanding payment, since he is in possession of the property. And if he came at the end of the month, the entire sum goes to the tenant who is refusing payment, since he is in possession of the money. This indicates that Shmuel maintains that in a case of contradictory expressions, one should not attend to the latter expression. Rather, the case is viewed as one of uncertainty, and the burden of proof rests upon the claimant.

[47] Rather, it must be that Shmuel actually meant to say that this is the statement of ben Nanas, but he, Shmuel, does not agree with him that one should attend to the latter expression. In fact, he is in agreement with the Sages who maintain that two contradictory expressions create a case of uncertainty. And there, in the case of the rent for the intercalated month, what is the reason for his ruling that if the landlord came to collect the rent at the beginning of the month, the entire sum goes to the landlord, whereas if he came at the end of the month, the money goes to the tenant? Because the party who is awarded the money was seen as already being in possession of it, and in a case of uncertainty, money is left in the hands of the party enjoying possession.

[48] Here too, in the case where the seller says that he is selling a kor of grain for thirty sela, each se’a for a sela, the buyer was seen as already being in possession of each se’a that was measured out to him, and therefore the seller cannot renege on the sale. It is for this reason that the buyer acquires the grain, and not because of the principle that in a case of contradictory expressions, one should attend to the latter expression.

[49] On a similar topic, Rav Huna says that they say in the school of Rav: If the seller said to the buyer: I am selling you this item for an istera, one hundred ma’a, an istera being a silver coin equal to ninety-six copper ma’a, it is assumed he meant one hundred ma’a. And if the seller reversed the order and said that he was selling the item for one hundred ma’a, an istera, it is assumed he meant an istera.

[50] The Gemara asks: What new halakha is Rav teaching us? Is it that with regard to a statement comprised of contradictory expressions one should attend only to the last statement? Didn’t Rav already say this on another occasion? As Rav says: Had I been there as a judge when the ruling was issued with regard to the rental fee for the intercalated month, I would have given the entire month’s rent to the landlord, based on the final expression in the rental agreement: One gold dinar per month.

[51] The Gemara answers: Nevertheless, it was necessary to state both rulings, as the one cannot necessarily be inferred from the other. If this halakha with regard to the istera was stated and that halakha with regard to the intercalated month was not stated, I would say that when the seller uttered the second expression: One hundred ma’a, he retracted his first expression: An istera, as the two expressions contradict one another, and for that reason Rav said that one should attend to the final expression. But here, in the case of the intercalated month, perhaps you would say that when the landlord utters the second expression: One gold dinar per month, he is explaining the original intent of his first expression: Twelve gold dinars a year, and one should view it as a clarification. Therefore Rav comes and teaches us that in all cases one should attend to the final expression.

[52] MISHNA: If one sells a field to another, telling him that he is selling him a field measuring a beit kor, with its particular demarcations and borders that the seller specifies for the buyer, the field’s measurement is not treated in as exacting a manner as in a standard sale. Therefore, if it later turns out that the field was not precisely a beit kor, but the difference is still less than one-sixth, the field is the buyer’s, and the sale is valid as is. But if the difference is greater, e.g., one-quarter or one-fifth, then, until it is calculated at one-sixth, the seller must deduct the difference from the purchase price and return money to the buyer.

[53] GEMARA: It was stated that the amora’im disagreed about the following issue: Rav Huna says: A difference that is precisely one-sixth is like one that is less than one-sixth, and the sale is valid. Rav Yehuda says: A difference that is precisely one-sixth is like one that is more than one-sixth, and the difference must be deducted from the purchase price.

[54] The Gemara explains the respective reasons of the two amora’im: Rav Huna says that a difference of one-sixth is like a difference of less than one-sixth, as this is what the mishna is saying: If the difference is less than one-sixth, and including a difference that is precisely one-sixth, it is the buyer’s, as the sale is valid, and if it is more than one-sixth, the seller must deduct the difference from the purchase price. Rav Yehuda says that a difference of one-sixth is like a difference of more than one-sixth, as this is what the mishna is saying: If the difference is less than one-sixth, it is the buyer’s, as the sale is valid, and if the difference is greater, until it is calculated at one-sixth, and

including a difference that is precisely one-sixth, the seller must deduct the difference from the purchase price.

[55] The Gemara raises an objection to Rav Huna's statement from a baraita: If one sells a field to another, telling him that he is selling him a field measuring a beit kor within its particular demarcations and borders, and he gave him a field that is one-sixth less than the measure stipulated, or, alternatively, he gave him a field that is one-sixth more than the measure stipulated, it is like a sale of orphans' property that is executed in accordance with the judges' assessment of the value of that property, and therefore it is the buyer's, as the sale is valid. The Gemara states the objection: But in the case of a sale executed in accordance with the judges' assessment, an error of precisely one-sixth is like an error of more than one-sixth, and the sale is void. This contradicts Rav Huna's opinion that an error of one-sixth is like an error of less than one-sixth.

[56] The Gemara answers: Rav Huna could have said to you in reply: Even according to your reasoning, there is still a difficulty, since the baraita teaches that it is the buyer's, i.e., the sale is final. Rather, the comparison drawn between this halakha and the judges' assessment is not a general comparison. It is like the judges' assessment, but it is not entirely like the judges' assessment. It is like the judges' assessment in that the limit is one-sixth, but it is not like the judges' assessment, as there, in the case of the judges' assessment, the sale is voided, while here, in the mishna, it is the buyer's, and the sale is final.

[57] It is related that Rav Pappa bought land from a certain man,

[58] who, after specifying its demarcations and boundaries, said to him: It is an area of twenty griv, meaning that it is fit for planting twenty se'a of grain. Rav Pappa later measured the field and found that it was fit for planting only fifteen se'a. Rav Pappa came before Abaye to sue the seller. Abaye said to him: You knew what you were buying and accepted the field as is.

[59] Rav Pappa raised an objection to Abaye's ruling from the mishna. But didn't we learn in the mishna that when the seller specifies the field's demarcations and borders, if the difference between the stated size of the field and its actual size is less than one-sixth, the field is the buyer's, and the sale is valid as is, but if the difference is greater, until it is calculated at one-sixth, the seller must deduct the difference from the purchase price? And here, in this case, the difference between what the seller promised and the actual size of the field is greater than one-sixth. Abaye replied: That statement applies in a case where the buyer is unfamiliar with the plot being sold to him, but in a case where he is familiar with it, he knew what he was buying and accepted it as is.

[60] Rav Pappa raised another objection to Abaye's ruling: But the seller said to me that the field is fit for planting twenty se'a, and it is not. Abaye said to him: What he meant was that the field is as good and as fruitful as one that is fit for planting twenty se'a.

[61] § It is taught in a baraita that Rabbi Yosei says: When brothers divide their father's estate between them by lottery, i.e., after dividing the property into equal shares they draw lots to determine which brother is to receive which portion, once the lot for one of them is drawn, they all acquire the remainder of the property, and they can no longer retract their decision to divide the estate in this manner. The Gemara asks: What is the reason for this? Drawing lots is not one of the recognized modes of acquisition. Rabbi Elazar said: The halakha that applies here is similar to the initial division of Eretz Yisrael among the tribes. Just as the initial division of Eretz Yisrael was carried out by drawing lots, so too here, the brothers can divide their father's estate by drawing lots.

[62] The Gemara challenges: If the brothers' division of their father's estate is comparable to the initial division of Eretz Yisrael, an additional comparison should apply: Just as there, the initial division of Eretz Israel was carried out through a receptacle [bekalpi] in which lots were placed and the Urim VeTummim, so too here, the division of the father's estate should be executed only through a receptacle and the Urim VeTummim. Rav Ashi said: With the satisfaction that each of the brothers receives from the fact that they listen to each other and agree to accept the results of the lottery, they fully transfer ownership to each other. Therefore, the division becomes final as soon as the first lot is drawn.

[63] § It was stated that the amora'im disagreed about a related issue: If two brothers divided their father's estate between them, and then later a third brother, of whose existence they had previously been unaware, arrived from a country overseas, Rav says: The original division of the property is void, and the brothers must now redivide the property among the three of them. And Shmuel says: The original division is still valid, but the two brothers must each take off a share from their portion and give it to the third brother.

[64] The Gemara clarifies the opinions of Rav and Shmuel: Rava said to Rav Naḥman: According to Rav, who says that the division is void, apparently the halakha is that if a division of property was found to have been performed in error, the original verdict is reconsidered and the entire division is void. Accordingly, in the case of the brother who arrived from overseas, the original division of the father's estate is void. But if that is so, then in the case of these three people who stand as partners, and two of them go and divide the property into three parts without consulting with the third partner, so too, the division should be void, and it should be necessary to divide the property a second time between the three partners. But elsewhere (Bava Metzia 31b), the Gemara indicates that in such a case, if the division of property took place in the presence of a court, it is valid.

[65] Rav Naḥman rejects this comparison: How can these cases be compared? There is a clear difference between them: There, in the case of the three partners, they entered the process of dividing the property from the outset with the knowledge that they were three, and it was necessary only to clarify the portion to be received by each partner. Here, in the case of the brother who arrived from overseas, they did not enter the process of dividing the property from the outset with the knowledge that they were three, as at the time of the original division, they thought that there were only two brothers.

[66] Rav Pappa said to Abaye: According to Shmuel, who says that the two brothers must each take off a share from their portion and give it to the third brother, is this to say that he is of the opinion that even if a division of property was found to have been made in error, the original verdict stands and the division is valid? But don't Rav and Shmuel both say that if the seller said to the buyer: I am selling you one kor of grain, an amount equivalent to thirty se'a, for the sum of thirty sela, he can renege on the entire sale even while measuring out the last se'a; but if he said: I am selling you one kor of grain for thirty sela, each se'a for a sela, the buyer acquires each se'a one by one as it is being measured out to him? If the original verdict stands, why in the first case may the seller renege even on that portion of the sale that already reached the buyer?

[67] The Gemara answers: The cases cannot be compared because there, in the case of the sale of grain, the Sages instituted a matter that is suitable for the seller and also suitable for the buyer. Since the price of grain fluctuates, neither party wants the sale to be considered complete until the last se'a

is measured out, so that they each are able to renege on the sale should the price rise or fall. This reasoning does not apply in cases of division of property.

[68] § It was stated that the amora’im disagreed about another related matter: If two brothers divided their father’s estate between them, and then their father’s creditor came and took the portion of one of them as repayment for the father’s debt, Rav says: The original division of the property is void, and the brothers must now redivide the remaining assets. Shmuel says: Each brother, upon receiving his portion, has foregone his right to be reimbursed if his portion is lost. Rav Asi says: The brother whose portion was seized is entitled to half the remaining inheritance: He takes one-quarter in land and one-quarter in money.

[69] The Gemara explains the rationale for each opinion: Rav says that the original division of the property is void. This is because he holds that brothers who divided property received as an inheritance are still considered to be heirs with regard to the inheritance as if they never divided the property, so that they continue to share joint responsibility for their father’s debts. Therefore, if a creditor seizes the portion received by one of them, it is as if he repaid the debt on behalf of all the heirs. Accordingly, they must once again divide the remaining property between them.

[70] And Shmuel says that each brother, upon receiving his portion, has foregone his right to be reimbursed if his portion is lost, as he holds that brothers who divided property received as an inheritance are considered as purchasers from each other. And each one is considered like a purchaser who bought his portion without a guarantee that if the field is seized in payment of a debt, the seller will compensate the buyer for his loss. Accordingly, the brother whose portion of the estate was seized by the creditor has no claim against the brother whose portion remained untouched.

[71] Rav Asi is uncertain whether brothers who divided property received as an inheritance are still considered to be heirs or are considered to be like purchasers who bought their property with a guarantee of compensation should the property be repossessed. Therefore, the brother whose portion was seized by the creditor is entitled to half the remaining inheritance, and he takes one-quarter in land like an heir and one-quarter he receives in money, like a purchaser with a guarantee, who is compensated with money for his loss.

[72] Rav Pappa says: The halakha in all the cases dealt with in these statements recording disagreements between Rav and Shmuel is that the brothers must each take off a share from their portion in accordance with the opinion of Shmuel. Rather, any brother currently in possession of his portion must give part of it to his brother who lacks a portion, so that in the end they have equal shares. Ameimar says: The halakha in all of these cases is that the original division of the property is void, in accordance with the opinion of Rav. The Gemara concludes: The halakha is in fact that the original division of the property is void, in accordance with the opinion of Rav.

[73] § The Sages taught in a baraita (Tosefta, Ketubot 11:2): In a case of three experts who went down to assess a certain property in order to determine the amount to be collected from it for repayment of a debt, and one says it is worth one hundred dinars, and the other two say it is worth two hundred, or one says it is worth two hundred dinars and the other two say it is worth one hundred, the assessment of the single expert is nullified, since his is the minority opinion, and the assessment of the two others is accepted.

[74] If one says the property is worth one hundred dinars, and another says it is worth twenty sela, which is equivalent to eighty dinars, since four dinars equal a sela, and yet another says it is worth

thirty sela, which is equivalent to one hundred and twenty dinars, it is assessed at one hundred dinars, which is the average of the assessments, as it is equivalent to twenty-five sela. Rabbi Eliezer, son of Rabbi Tzadok, says: It is assessed at ninety dinars, as will be explained below. Aḥerim say: An appraisal is performed of the sum between the two most extreme assessments and then divided by three. This sum is then added to the lowest assessment.

[75] The Gemara clarifies the various opinions: The one who says that the property is assessed at one hundred dinars holds that the middle of the two extreme assessments is followed. Rabbi Eliezer, son of Rabbi Tzadok, says that it is assessed at ninety dinars because he holds that this land

[76] is in fact worth ninety dinars, and the one who says it is worth twenty sela, which is equivalent to eighty dinars errs with an assessment that is ten dinars behind, i.e., too low, and the one who says it is worth one hundred dinars errs with an assessment that is ten dinars ahead, i.e., too high. Therefore, the average of these two assessments is followed.

[77] The Gemara raises a difficulty: On the contrary, say that this land is in fact worth one hundred and ten dinars, and the one who says it is worth one hundred dinars errs with an assessment that is ten dinars behind, and the one who says it is worth thirty sela, which is equivalent to one hundred and twenty dinars, errs with an assessment that is ten dinars ahead. If so, the average of these two assessments, one hundred and ten dinars, should be followed. The Gemara replies: In any event, grasp the first two assessments in your hand, as neither of them takes the assessment beyond the sum of one hundred dinars.

[78] The baraita teaches that Aḥerim say that an appraisal is performed of the sum between the two most extreme assessments and then divided by three. This sum is then added to the lowest assessment. The Gemara explains this opinion: Aḥerim hold that this land is in fact worth ninety-three and one-third dinars. The one who says it is worth twenty sela, the equivalent of eighty dinars, errs with an assessment that is thirteen dinars and one-third behind, and the one who says it is worth one hundred dinars errs with an assessment that is thirteen dinars and one-third ahead. By right, that assessor should have said more, i.e., quoted a higher sum, since according to this calculation, he should have said it is worth one hundred and six and two-thirds dinars. And the reason that he did not do so is that he thinks as follows: It is enough that I add this much above and beyond the assessment of my colleague who says it is worth eighty dinars. Therefore, he lowers the sum of his assessment to one hundred dinars.

[79] The Gemara raises a difficulty: On the contrary, say that this land is in fact worth one hundred and thirteen dinars and one-third, and the one who says it is worth one hundred dinars errs with an assessment that is thirteen dinars and one-third behind, and the one who says it is worth thirty sela, which is equal to one hundred and twenty dinars, errs with an assessment that is thirteen dinars and one-third ahead. By right, he should have said more, i.e., quoted a higher sum, since according to this calculation, he should have said it is worth one hundred and twenty-six dinars and two-thirds. And the reason he did not do so is that he thinks as follows: It is enough that I add this much above and beyond the assessment of my colleague who says it is worth one hundred dinars. The Gemara answers: In any event, grasp the first two assessments in your hand, as neither of them take the assessment beyond the sum of one hundred dinars.

[80] Rav Huna said: The halakha is in accordance with the opinion of Aḥerim, who say that the sum of the difference between the two most extreme assessments is calculated and then divided by three, and

this sum is then added to the lowest assessment. Rav Ashi said: We do not even understand the reason of Aḥerim; shall we then establish the halakha in accordance with their opinion? The judges of the Diaspora taught a baraita that accords with the opinion of Aḥerim in the previously cited baraita: An appraisal is performed to determine the sum of the difference between the two most extreme assessments and then that sum is divided by three and added to the lowest assessment. Rav Huna said: The halakha is in accordance with the judges of the Diaspora. Rav Ashi said: We do not even understand the reasoning of the judges of the Diaspora; shall we then establish the halakha in accordance with their opinion?

[81] MISHNA: If one says to another: I am selling you half a field, without specifying which half he is selling, an assessment is made of the field, which is then divided between them, and the buyer takes half of the seller’s field. If the seller says: I am selling you the half that is on the southern side of the field, an assessment is made of the northern and the southern sides of the field, which is then divided between them, and he takes the half on the southern side. And he accepts upon himself to provide the space for the fence between the two halves of the field out of his own property. He also accepts to provide out of his own property the space for the larger ditch and the smaller ditch, which are meant to keep animals out of the field. And how wide is the larger ditch? Six handbreadths. And how wide is the smaller ditch? Three handbreadths.

[82] GEMARA: Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: When one sells half of his field to another person, the buyer takes the leaner part of the field, the part that is of lower quality. Rabbi Ḥiyya bar Abba said to Rabbi Yoḥanan: But didn’t we learn in the mishna that in such a case an assessment is made of the field, which is then divided between them, which indicates that the buyer and the seller are given similar parcels of land? How then can you say that the buyer takes the leaner part? Rabbi Yoḥanan said to him in a sarcastic manner: While you were eating dates in Babylonia and neglecting your studies, we explained the matter based on the latter clause of the mishna, which proves that my understanding is correct.

[83] As the latter clause teaches: If the seller says: I am selling you the half that is on the southern side of the field, an assessment is made of the northern and the southern sides of the field, which is then divided between them, and he takes the half on the southern side. If taken literally, this passage gives rise to a difficulty: Why is an assessment made of the northern and the southern sides of the field, which is then divided between them? In any case, didn’t he say to him that he is selling him the southern half? Let the seller give the buyer the southern half of the field. Why is an assessment necessary? Rather, it must be that the matter is more complicated than it seems, and the mishna is referring to money. That is to say, the buyer takes the southern half, but the seller must reimburse him with money for the difference in value between the two halves of the field. Here too, in the first case, the mishna is referring to money: The buyer takes the leaner half, but the seller must reimburse him with money for the difference in value between the two halves of the field.

[84] § The mishna teaches that the buyer accepts upon himself to provide out of his own property the space for the fence between the two halves of the field and for the larger and smaller ditches. A Sage taught in a baraita: The larger ditch is dug on the outside, while the smaller ditch is dug on the inside, closer to the field. Both this and that are dug behind the fence,

[85] so that an animal will not jump over the fence, enter the field, and cause damage. The Gemara asks: Let him make only a larger ditch and not make a smaller ditch. The Gemara replies: Since the

ditch is wide, the animal can stand inside it and jump from there over the fence. The Gemara asks: If so, then let him make only a smaller ditch and not make a larger ditch? Since the ditch is small, the animal stands on its edge and jumps over the fence. The baraita explains the matter further: And how much space is there between the larger ditch and the smaller ditch? One handbreadth.

Chapter 8

[1] MISHNA: There are family members who both inherit from and bequeath to each other upon their respective deaths; and there are those who inherit from certain relatives but do not bequeath to them; and there are those who bequeath to certain relatives but do not inherit from them; and there are those who, despite being relatives, do not inherit from nor bequeath to one another.

[2] The mishna lists those referred to above. And these both inherit and bequeath: A father with regard to his sons, and sons with regard to their father, and paternal brothers; all inherit from one another and bequeath to each other. A man with regard to his mother, and a man with regard to his wife, and sons of sisters, i.e., nephews born to the sisters of the deceased, all inherit from their respective relatives but do not bequeath to them. A woman with regard to her sons, and a woman with regard to her husband, and maternal uncles, all bequeath to their respective relatives but do not inherit from them. And maternal brothers, despite being blood relatives, do not inherit from each other nor do they bequeath to one another, as they are not considered relatives for the purpose of inheritance.

[3] GEMARA: The Gemara begins by clarifying the order of the list in the mishna. What is different, i.e., what is the reason, that the mishna teaches: A father with regard to his sons, as the first example? Let it teach: Sons with regard to their father, as the first example. The Gemara explains why this would be preferable: One reason is that we do not want to begin with a calamity, as the death of a son during his father’s lifetime is a calamity; therefore, it would have been appropriate to begin with the example of sons inheriting from their father.

[4] And furthermore, the verse first states that a son inherits from his father, as it is written in the portion concerning inheritance: “If a man dies, and has no son, then you shall pass his inheritance to his daughter” (Numbers 27:8).

[5] The Gemara answers: And as for the tanna of the mishna who listed the father inheriting first, since the halakha that a father inherits from his son is learned through a derivation and is not explicitly mentioned in the verse, this halakha is dear to him; therefore, he listed it first.

[6] And what is the derivation? As it is taught in a baraita concerning the verse: “And if his father has no brothers, then you shall give his inheritance to his kinsman who is next to him of his family, and he shall inherit it” (Numbers 27:11): “His kinsman”; this is referring to the father, and the Torah teaches that the father precedes the brothers of the deceased in inheriting from him. One might have thought that the father of the deceased should precede the son of the deceased in inheriting from him; the verse therefore states: “Next [hakkarov] to him,” teaching that the closer [karov] one is to the deceased, the earlier one is in the order of inheritance, and a son of the deceased is considered to be a closer relative to the deceased than the father of the deceased.

[7] The Gemara asks: And what did you see to include the son as the closer relative than the father and to exclude the brother? The Gemara answers: I include the son, as he stands in place of his father to

designate a Hebrew maidservant as a wife for himself, which a brother cannot do. And similarly, he stands in place of his father with regard to an ancestral field. If a son redeems a field consecrated by his father, it is considered as though the father himself redeemed it and the field returns to the family in the Jubilee Year. By contrast, if the brother of the one who consecrated it redeems the field, it does not return to the family (see Leviticus 27:16–21).

[8] The Gemara asks: On the contrary, I should include the brother as the closer relative, as he stands in his brother's place with regard to levirate marriage, and a son does not. The Gemara answers: This is not a valid claim, as is there levirate marriage except in a case where there is no son? In a case where there is a son, there is no levirate marriage. This indicates that a son stands in place of the deceased before a brother even with regard to levirate marriage.

[9] The Gemara comments: The reason that a son is considered to be a closer relative than a brother is specifically due to this refutation, that where there is a son there is no levirate marriage. This indicates that without this refutation I would say that a brother is superior to a son in terms of how close a relative he is. The Gemara therefore asks: Why not derive that a son is closer to the deceased than a brother

[10] from the fact that here, there are two examples of the superiority of a son, designation and an ancestral field, and here, there is only one demonstration of the superiority of a brother, levirate marriage?

[11] The Gemara answers: With regard to an ancestral field itself, the tanna establishes his ruling from this same reason: Is there levirate marriage except in a case where there is no son? In a case where there is a son, there is no levirate marriage. The determination that the redemption of the ancestral field by a son is in place of the redemption of the field by the father, whereas the redemption of the field by a brother is not, is based on the reasoning that the halakha of levirate marriage is not an indication that a brother is a closer relative than a son. Therefore, the halakha of an ancestral field cannot be regarded as a second example of the son's superiority, as it stems from the first example, that of levirate marriage.

[12] The Gemara suggests an alternative derivation: Why should the father of the deceased inherit before only the brothers? Say that he should inherit before the daughter of the deceased as well by interpreting the verse as follows: "His kinsman" (Numbers 27:11), this is referring to the father, and the Torah teaches that the father precedes the daughter of the deceased in inheriting from him. One might have thought that the father of the deceased should precede the son of the deceased in inheriting from him. The verse therefore states: "Next [hakkarov] to him," teaching that the closer [karov] one is to the deceased, the earlier one is in the order of inheritance.

[13] This suggestion is rejected: Since with regard to the matter of levirate marriage a son and a daughter are equivalent, as levirate marriage is not performed if the deceased had either a son or a daughter, it stands to reason that with regard to the matter of inheritance as well, a son and a daughter are equivalent in that the father does not precede the daughter.

[14] The Gemara suggests an alternative derivation: Why should the father of the deceased inherit before the brothers of the deceased? Say that he should inherit only before his own brothers by interpreting the verse as follows: "His kinsman" (Numbers 27:11), this is referring to the father, and the Torah teaches that the father precedes the father's brothers in inheriting from the deceased. One might have thought that the father of the deceased should precede the brothers of the deceased in

inheriting from him. The verse states: “Next [hakkarov] to him,” teaching that the closer [karov] one is to the deceased, the earlier one is in the order of inheritance.

15 The Gemara responds: A verse is not necessary to teach that the father of the deceased inherits before the father’s brothers, for the following reason: By whose virtue do the father’s brothers come to inherit from the deceased? By virtue of the father, as their right to inherit is a result of their being brothers of the father of the deceased. Could it be that while the father is still alive, his brothers should inherit? The Gemara therefore concludes that the father precedes the brothers of the deceased.

16 The Gemara challenges: But the verses are not written that way, as it is written: “And if he has no brothers, then you shall give his inheritance to his father’s brothers” (Numbers 27:10), and only later is it written: “And if his father has no brothers, then you shall give his inheritance to his kinsman who is next to him” (Numbers 27:11), indicating that the father, whose right to inherit is derived from the term “kinsman,” inherits only after the brothers of the deceased and his own brothers. The Gemara explains: The verses are not written in order, since as explained earlier, it is not reasonable that the father’s brothers inherit before the father. Therefore, it must be that the inheritance of the father is not written in its proper place, and he may inherit even before the brothers of the deceased.

17 § The Gemara records an additional derivation for the halakha that the father precedes the brothers of the deceased. And this tanna cites it from here, as it is taught in a baraita: Rabbi Yishmael, son of Rabbi Yosei, taught this halakha: It is written: “If a man dies, and has no son, then you shall pass his inheritance to his daughter” (Numbers 27:8). In the rest of the passage the verse employs the phrase “and you shall give.” It is only in this verse that it employs the phrase “and you shall pass.” Based on this, Rabbi Yishmael teaches that in a case where there is a daughter, you pass an inheritance to her from one who appears to have precedence, namely, the father, and by inference, you do not pass the inheritance from the father in a case where there are brothers of the deceased.

18 The Gemara asks: But why not say that in a case where there is a daughter, you pass the inheritance to her from the brothers,

19 but you do not pass an inheritance from the father even in a case where there is a daughter, so that the father precedes the daughter in the order of inheritance? The Gemara answers: If so, the Merciful One would not write: “Then you shall pass the inheritance to his daughter” (Numbers 27:8). This indicates that the logical order of inheritance is being overridden, as the fact that the daughter precedes the brothers of the deceased is due to her being a closer relative of his. It is obvious that the Torah intends that she precede even the father.

20 Having quoted two derivations for the halakha that the father precedes the brothers, the Gemara proceeds to discuss them and asks: And according to the one who derives it from the term: “And you shall pass,” what does he do with this term: “His kinsman,” which was said to refer to the father? The Gemara answers: He requires it for that which is taught in a baraita: “His kinsman.” This is referring to his wife, and the Torah teaches that a husband inherits from his wife.

21 The Gemara asks: And according to the one who derives it from the term: “His kinsman,” what does he do with this term: “And you shall pass”? He requires it for that which is taught in a baraita, that Rabbi Yehuda HaNasi says: In the context of all of the relatives listed in the passage detailing the laws of inheritance, it is stated concerning them with the terminology of giving, and only here, in the context of daughters, it is stated concerning them with the terminology of passing. This teaches us

that you have no one who passes an inheritance of land in Eretz Yisrael from one tribe to another except for a daughter, since her son and husband inherit from her.

22 § The Gemara returns to discuss the interpretation of the term: “His kinsman” (Numbers 27:11). And from where does one know to derive that with regard to the term: “His kinsman [she’ero],” this is referring to the father, as it is written in the context of forbidden sexual relations: “She is your father’s kinswoman [she’er]” (Leviticus 18:12)? Perhaps one should say instead: “His kinswoman,” this is referring to the mother, as it is also written: “For she is your mother’s kinswoman [she’er]” (Leviticus 18:13).

23 Rava said in response that the verse states: “Then you shall give his inheritance to his kinsman who is next to him of his family, and he shall inherit it” (Numbers 27:11), emphasizing that “kinsman” is referring specifically to someone who is of his family, and it is the father’s family that is called one’s family, while one’s mother’s family is not called one’s family. Proof for this is found in another verse, as it is written: “By their families, by their fathers’ houses” (Numbers 1:2).

24 The Gemara raises a difficulty: And is one’s mother’s family indeed not called one’s family? But it is written in the episode of Micah forming an idol to be worshipped: “And there was a young man of Bethlehem in Judah of the family of Judah who was a Levite, and he sojourned there” (Judges 17:7). The Gemara explains the difficulty: This matter itself is difficult. You said: “Who was a Levite,” as apparently he came from the tribe of Levi, but the verse says: “Of the family of Judah,” so apparently he came from the tribe of Judah. Rather, is it not that his father was from the tribe of Levi and his mother was from the tribe of Judah, and yet the verse says that he was: “Of the family of Judah”? This appears to prove that one’s mother’s family is also called his family.

25 Rava bar Rav Ḥanan said in response: No, the verse speaks of a man whose name was Levi, but his father was of the tribe of Judah. The Gemara asks: If that is so, how is that which Micah said when that man agreed to serve as his priest: “Now I know that the Lord will do me good, seeing that I have a Levite as my priest” (Judges 17:13), understood? It is understood only if he was an actual Levite, not if he was from the tribe of Judah and named Levi. Rava bar Rav Ḥanan responded: Yes, it is understood. Micah understood the fact that a man whose name is Levi happened upon him as an auspicious sign.

26 The Gemara asks further: But is it so that his name was indeed Levi; but wasn’t Jonathan his name, as it is stated: “And Jonathan, the son of Gershom, the son of Manasseh, he and his sons were priests to the tribe of the Danites” (Judges 18:30)? Rava bar Rav Ḥanan said to him: And according to your reasoning, that his name was not Levi but he was from the tribe of Levi, there is also a difficulty from that same verse: But is it so that he was the son of Manasseh; but wasn’t he the son of Moses, as it is written: “The sons of Moses: Gershom and Eliezer” (I Chronicles 23:15)?

27 Rava bar Rav Ḥanan explains the verse: Rather, although he was the son of Moses, because he acted as Manasseh the king of Judah, who was notorious for idol worship, acted, the verse linked him to Manasseh by calling him “the son of Manasseh.” Here too, in the verse from which you seek to prove that one’s mother’s family is called one’s family, since he acted as Manasseh, who came from the tribe of Judah, acted, the verse linked him to Judah by stating that he was “of the family of Judah,” but he was, in fact, a Levite.

28 In connection with this, Rabbi Yoḥanan says in the name of Rabbi Shimon ben Yoḥai: From here it is learned that corruption is linked to one who is corrupt, as this man was linked to Manasseh and

Judah despite having no familial connection to them. Rabbi Yosei bar Ḥanina says: That concept can be seen from here, in the matter of Adonijah, the son of David: “And he was also a very handsome man; and she gave birth to him after Absalom,” (I Kings 1:6) but Adonijah wasn’t the son of Haggith and Absalom was the son of Maachah, so why does the verse state: “And she gave birth to him after Absalom,” as if they were sons of the same mother? Rather, since Adonijah acted in a manner fit for Absalom, who also rebelled against the monarchy, the verse linked him to Absalom, referring to him as his full brother. Here too, with regard to Jonathan, since he acted as Manasseh acted, the verse linked him to Manasseh.

[29] § In connection with the story of Jonathan, son of Manasseh, the Gemara cites a related statement. Rabbi Elazar says: A person should always cleave to good people, meaning one should marry a woman from a good family, as this is beneficial for the offspring of that marriage. As in the case of Moses, who married a daughter of Yitro, who was a priest of idolatry, Jonathan, who was also a priest of idolatry, descended from him, while in the case of Aaron, who married the daughter of Amminadab, who was of distinguished lineage in the tribe of Judah, Pinehas descended from him.

[30] The Gemara asks: And did Pinehas not also come from Yitro? But it is written: “And Elazar, Aaron’s son, took one of the daughters of Putiel as a wife; and she bore him Pinehas” (Exodus 6:25). What, is it not stating that Pinehas came from the family of Yitro, who was also called Putiel because he fattened [pittem] calves for idol worship? The Gemara answers: No, it is stating that he came from Joseph, who battled [shepitpet] with his desire by resisting the advances of Potiphar’s wife.

[31] The Gemara asks: But didn’t the tribes denigrate him after he killed Zimri (see Numbers, chapter 25), and say of him: Have you seen this son of Puti, the son of he whose mother’s father fattened calves for idol worship? Should such a man kill a prince of a tribe of Israel?

[32] Rather, this is how the matter should be resolved: If his mother’s father came from the family of Joseph, his mother’s mother came from the family of Yitro, and if his mother’s father came from the family of Yitro, his mother’s mother came from the family of Joseph, so while his mother was descended from Joseph on one side and from Yitro on the other, Pinehas was a more distant relative to Yitro than Jonathan was. Based on this conclusion, the language of the verse is also precise, as it is written: “And Elazar, Aaron’s son, took one of the daughters of Putiel” (Exodus 6:25). Conclude from the wording of the verse that Pinehas was descended from two men who were referred to as Puti: Yitro and Joseph.

[33] Rava says: One who marries a woman needs to first examine her brothers so that he will know in advance what character his children will have, as it is stated: “And Aaron took Elisheva, the daughter of Amminadav, the sister of Nahshon” (Exodus 6:23). By inference from that which is stated: “The daughter of Amminadav,” do I not know that she is the sister of Nahshon, as Nahshon was the son of Amminadav? What is the meaning when the verse states: “The sister of Nahshon”? From here one learns that one who marries a woman needs to examine her brothers. The reason is as the Sages taught: Most sons resemble the mother’s brothers.

[34] In connection with the Gemara’s mention of Jonathan, who served as a priest for Micah, the Gemara quotes additional statements of the Sages concerning that episode. Describing when the men from the tribe of Dan passed through Micah’s house, the verse states: “And they turned aside there and said to him: Who brought you here [halom], and what [ma] are you doing in this place, and what do you have here [po]?” (Judges 18:3). The Sages interpret their multiple questions. They said to

him: Do you not come from Moses, about whom it is written: “Do not draw close to here [halom]” (Exodus 3:5)? Do you not come from Moses, about whom it is written: “What [ma] is that in your hand” (Exodus 4:2)? Do you not come from Moses, about whom it is written: “But as for you, stand here [po] with me” (Deuteronomy 5:27)? Shall you, a descendant of our teacher Moses, become a priest for idol worship?

35 Jonathan said to them: This is the tradition that I received from the house of my father’s father: A person should always hire himself out to idol worship and not require the help of people by receiving charity, and I took this position in order to avoid having to take charity.

36 The Gemara comments: And he, Jonathan, thought that this referred to actual idol worship, but that is not so, that was not the intent of the tradition. Rather, here the term idol worship, literally: Strange service, is referring to service, i.e., labor, that is strange, i.e., unsuitable, for him. In other words, one should be willing to perform labor that is difficult and humiliating in his eyes rather than become a recipient of charity. As Rav said to Rav Kahana, his student: Skin a carcass in the market and take payment, but do not say: I am a great man and this matter is beneath me.

37 The Gemara continues its discussion of that episode. Later, when King David saw that money was excessively precious to Jonathan, he appointed him as director of the treasuries of the Temple, as it is stated: “And Shebuel, the son of Gershom, the son of Moses, was ruler over the treasuries” (I Chronicles 26:24). The Gemara asks: And was his name really Shebuel; but wasn’t his name Jonathan? Rabbi Yoḥanan says: He is called Shebuel in order to allude to the fact that he repented and returned to God [shav la’el] with all his heart.

38 § The mishna teaches in the list of those who inherit from and bequeath to each other: Sons with regard to their father. The Gemara asks: From where do we derive this halakha that sons inherit the entire estate and daughters do not receive a share along with them? As it is written: “If a man dies, and has no son, then you shall pass his inheritance to his daughter” (Numbers 27:8). The reason the inheritance would be passed to a daughter is that he has no son, but if he has a son, the son takes precedence. Rav Pappa said to Abaye: Why not say the following: If there is only a son, let the son inherit the father’s estate; if there is only a daughter, let the daughter inherit the father’s estate; and if there is both a son and a daughter, neither this one should inherit nor that one should inherit.

39 Abaye asked Rav Pappa: And rather,

40 who then should inherit? Is that to say that the ruler of the city should inherit? Rav Pappa said to him: This is what I meant to say: If there is a son and a daughter, this one should not inherit all of the estate, and that one should not inherit all of the estate, but they should inherit it in equal portions to one another.

41 Abaye said to him: But is the verse necessary in order to teach us that when he has only one child, that child should inherit all of his property? If you say that the right of the son and daughter to the inheritance is equal, then the verse: “If a man dies, and has no son” (Numbers 27:8), which teaches that when there is no son his daughter inherits, is superfluous. Rav Pappa responded: And perhaps this verse teaches us this: That a daughter is also subject to receiving inheritance. The Gemara replies: No, the verse does not need to teach us this, since that halakha is derived from the verse: “And every daughter who possesses an inheritance” (Numbers 36:8), which clearly states that a daughter is subject to receiving inheritance.

[42] Rav Aḥa bar Ya’akov said: The halakha that a son inherits his father’s estate and precedes a daughter is derived from here, in the passage in the Torah where the daughters of Zelophehad request their father’s inheritance in Eretz Yisrael. They said to Moses: “Why should the name of our father be done away from among his family, because he has no son?” (Numbers 27:4). Rabbi Aḥa ben Ya’akov infers: The reason they requested the inheritance is that, as they said: He has no son. One can infer: But if he has a son, the son takes precedence and the daughters would not have requested an inheritance.

[43] The Gemara raises a difficulty: But perhaps it was the daughters of Zelophehad who said this, i.e., that they were entitled to an inheritance only because their father had no son. They thought that this was the halakha based on the custom at that time, but after God spoke to Moses, the Torah was given and a halakha was initiated that a daughter’s right to inherit is equal to that of the son. The Gemara accepts this difficulty and states: Rather, it is clear that the source for this halakha is as we answered initially, i.e., as Abaya derived from the verse of: “If a man dies, and has no son, then you shall pass his inheritance to his daughter” (Numbers 27:8).

[44] Ravina said: The source for the halakha that a son precedes a daughter is from here: “Who is next to him [hakkarov elav]” (Numbers 27:11), teaching that the closer [karov] one is to the deceased, the earlier one is in the order of inheritance, and a son of the deceased is considered to be a closer relative to the deceased than the daughter.

[45] The Gemara asks: And what demonstrates the closeness of a son more than that of a daughter? That a son stands in place of his father to designate a Hebrew maidservant as a wife for himself and with regard to an ancestral field. The Gemara rejects this: This is not a valid proof, as designation cannot demonstrate that a son is a closer relative; a daughter is not subject to designation, because she obviously cannot marry the Hebrew maidservant. With regard to an ancestral field as well, the tanna establishes his ruling that a son is a closer relative than others from this same refutation: Is there levirate marriage except in a case where there is no son? And this applies also where there is no daughter. Rather, it is clear that the source for this halakha is as we answered initially.

[46] And if you wish, say instead that the halakha that a son precedes a daughter is derived from here, in the passage in the Torah addressing the inheritance of slaves, which states: “And you may make them an inheritance for your sons [livneikhem] after you” (Leviticus 25:46). One can infer: “Your sons,” but not your daughters. The Gemara asks: If that is so, then when the verse states: “That your days may be multiplied, and the days of your sons [beneikhem]” (Deuteronomy 11:21), should one infer that this too means: “Your sons,” but not your daughters? Is it not obvious that daughters are also worthy of receiving the blessing of longevity?

[47] The Gemara answers: A blessing is different. In a verse that speaks of blessings, the term beneikhem should be understood in its broader sense, as “your children.” In a verse that speaks of a halakha, it is to be understood in the narrower sense of “your sons.”

[48] § The mishna teaches: And paternal brothers inherit from one another and bequeath to each other. From where do we derive this halakha? Rabba said: It is derived from a verbal analogy between the word: Brothers, stated with regard to inheritance, and the word: Brothers, found in the verses concerning Jacob’s sons. When Jacob’s sons speak to Joseph, they state: “We, your servants, are twelve brothers, the sons of one man in the land of Canaan” (Genesis 42:13), and in the passage discussing inheritance the verse states: “And if he has no brothers, then you shall give his inheritance

to his father’s brothers” (Numbers 27:10). Just as there, in the verse concerning Jacob’s sons, the word brothers is referring to paternal brothers and not maternal brothers, as the twelve of them shared only the same father, so too here, where this term is used with regard to inheritance, the verse is referring to paternal brothers and not maternal brothers.

49 The Gemara asks: But why do I need this proof from the verse concerning Jacob’s sons? It is written in the passage concerning inheritance: “Then you shall give his inheritance to his kinsman who is next to him of his family, and he shall inherit it” (Numbers 27:11). When the term “family” is used in the Bible, one’s father’s family is called one’s family, while one’s mother’s family is not called one’s family, so that in all matters of inheritance, it is the patrilineal relatives who are taken into account.

50 The Gemara answers: Yes, it is indeed so that the verbal analogy is not needed to teach the halakha of inheritance, and when Rabba’s explanation was stated, it was stated with regard to the matter of levirate marriage, teaching that levirate marriage is performed only by a paternal brother but not by a maternal brother.

51 § The mishna teaches: And a man with regard to his mother inherits from her relatives but does not bequeath to her. The Gemara asks: From where are these matters derived? The Gemara answers: As the Sages taught:

52 The verse states: “And every daughter who possesses an inheritance from the tribes of the children of Israel” (Numbers 36:8). Noting the plural in the phrase “from the tribes of the children of Israel,” the baraita asks: How can a daughter inherit land from two tribes? Rather, this is referring to a daughter whose father is from one tribe but her mother is from another tribe, and they both died, and she inherited from both of them. Therefore, it can be seen in this verse that a daughter inherits from her mother.

53 The baraita continues: I have derived only that a daughter inherits from her mother; from where do I derive that a son inherits from his mother as well? You can say an a fortiori inference: And just as a daughter, whose power is diminished with regard to her father’s property in that she does not inherit it when there is a son, yet her power is enhanced with regard to her mother’s property in that she inherits it; with regard to a son, whose power is enhanced with regard to his father’s property in that he is first in the order of inheritance, is it not logical that his power is enhanced with regard to his mother’s property? The baraita continues: And from the place that you came, i.e., from the inference that was just stated, one can say the following: Just as there, with regard to a father’s property, a son precedes a daughter, so too here, with regard to a mother’s property, a son precedes a daughter. This is the opinion of the first tanna.

54 The baraita continues: Rabbi Yosei, son of Rabbi Yehuda, and Rabbi Elazar, son of Rabbi Yosei, said in the name of Rabbi Zekharya ben Hakatzav: Both the son and the daughter are equal with regard to the mother’s property. What is the reason for his ruling? It is sufficient for the conclusion that emerges from an a fortiori inference to be like its source. According to this principle, a halakha derived by means of an a fortiori inference cannot go beyond the halakhot of the source from which it is derived. Since the halakha that a son inherits from his mother was derived via an a fortiori inference from the halakha that a daughter inherits from her mother, it cannot be that this inference should lead to the conclusion that a son precedes a daughter in inheriting from their mother.

[55] The Gemara asks: And doesn't the first tanna also interpret verses employing the principle of: It is sufficient for the conclusion that emerges from an a fortiori inference to be like its source? But the principle of: It is sufficient, which limits the extent of a fortiori inference, is found in the Torah, so how could he disagree with it?

[56] As it is taught in a baraita that explains the hermeneutical principles: How does an a fortiori inference work? The verse states with regard to Miriam, after she spoke ill of her brother Moses: "And the Lord said to Moses: If her father had but spit in her face, should she not hide in shame seven days?" (Numbers 12:14). The verse is saying that if a father spits in the face of his daughter and reprimands her, she would feel shame for seven days. By an a fortiori inference it is derived that Miriam, who suffered the more severe reprimand of the Divine Presence, should be ostracized for fourteen days. Why then, was Miriam ostracized for only seven days?

[57] Rather, it is sufficient for the conclusion that emerges from an a fortiori inference to be like its source, so her punishment cannot be for longer than the punishment of one who is reprimanded by a father. In any event, the principle the begins with: It is sufficient, can be seen in this verse, so how does the first tanna rule that a son precedes a daughter with regard to a mother's property?

[58] The Gemara answers: Generally, the first tanna also interprets verses employing the principle that begins with: It is sufficient, but it is different here with regard to inheritance, as the verse states: "And every daughter who possesses an inheritance from the tribes of the children of Israel" (Numbers 36:8). The verse juxtaposes the tribe of the mother to the tribe of the father. Therefore, the first tanna holds that just as with regard to the tribe of the father, i.e., inheriting from one's father, a son precedes a daughter, so too, with regard to the tribe of the mother, i.e., inheriting from one's mother, a son precedes a daughter.

[59] The Gemara relates: Rav Nittai thought to perform an action, i.e., issue a ruling, in accordance with the opinion of Rabbi Zekharya ben HaKatzav, who taught that a son and daughter are equal with regard to inheriting from their mother. Shmuel said to him: In accordance with whose opinion do you wish to issue this ruling, in accordance with the opinion of Zekharya? Zekharya is nil [afes], i.e., his statement was not accepted as halakha. Rabbi Tavla performed an action, i.e., issued a ruling, in accordance with the opinion of Rabbi Zekharya ben HaKatzav. Rav Naḥman said to him: What is this? Rabbi Tavla said to him: As Rav Ḥinnana bar Shelamya says in the name of Rav: The halakha is in accordance with the opinion of Rabbi Zekharya ben HaKatzav. Rav Naḥman said to him: Go retract your ruling, and if you do not, I will take Rav Ḥinnana bar Shelamya out of your ear, i.e., I will punish you severely for ruling against the accepted halakha.

[60] The Gemara relates further: Rav Huna bar Ḥiyya thought to perform an action, i.e., issue a ruling, in accordance with the opinion of Rabbi Zekharya ben HaKatzav. Rav Naḥman said to him: What is this? Rav Huna bar Ḥiyya said to him: As Rav Huna says that Rav says: The halakha is in accordance with the opinion of Rabbi Zekharya ben HaKatzav. Rav Naḥman said to him: Shall I send a messenger to Rav Huna to ask him if that is indeed what he said? Rav Huna bar Ḥiyya was embarrassed, as he was not certain that Rav Huna actually said this ruling. Rav Naḥman said to him: Now, if Rav Huna were to have died, you would have been brazen enough to say before me that this is what he said, but since he is still alive, you cannot be so brazen.

[61] The Gemara asks: And he, Rav Naḥman, in accordance with whose opinion does he hold? As there were various sages who ruled in accordance with the opinion of Rabbi Zekharya ben HaKatzav,

why did Rav Naḥman not agree? The Gemara answers: He holds in accordance with this statement of Rav and Shmuel, who both say: The halakha is not in accordance with the opinion of Rabbi Zekharya ben HaKatzav.

62 The Gemara relates: Rabbi Yannai, who had already grown old and whose eyes were dim, would walk leaning on the shoulder of Rabbi Simlai, his attendant, and Rabbi Yehuda Nesia came toward them. Rabbi Simlai said to Rabbi Yannai: The person who is coming toward us is handsome and his cloak is handsome. When Rabbi Yehuda Nesia reached him, Rabbi Yannai felt his cloak and said to Rabbi Simlai: Concerning this cloak, its measurement with regard to the halakhot of ritual impurity is like the measurement of sackcloth, meaning it was a cloak of inferior quality, as it was thick and rough.

63 When Rabbi Yehuda Nesia met Rabbi Yannai he asked him: From where is it derived that a son precedes a daughter with regard to the mother's property? Rabbi Yannai said to him: As it is written: "And every daughter who possesses an inheritance from the tribes of the children of Israel" (Numbers 36:8). The verse juxtaposes the tribe of the mother to the tribe of the father. This teaches that just as with regard to the tribe of the father a son precedes a daughter, so too, with regard to the tribe of the mother, a son precedes a daughter. Rabbi Yehuda Nesia said to him: If so, if these two halakhot are in fact juxtaposed, the following should also be derived: Just as with regard to the inheritance of the father's tribe a firstborn takes a double portion, so too, with regard to inheritance from the mother's tribe, when he inherits from his mother a firstborn takes a double portion.

64 He said to his attendant: Take me away from here, as this man, Rabbi Yehuda Nesia, does not desire to learn but is instead raising difficulties that are easily resolved. And what is the reason he does not receive a double portion? Abaye said: The verse concerning the double portion received by a firstborn son states: "By giving him a double portion of all that he has" (Deuteronomy 21:17), indicating that he receives a double portion in all that he has, but not in all that she has.

65 The Gemara asks: And why not say that this statement applies in the case of a bachelor who married a widow, i.e., a man who marries a woman who already has children from another man, so that the firstborn son is his firstborn but not hers, but in the case of a bachelor who married a virgin, so too the halakha will be that their firstborn son will take a double portion of his mother's inheritance?

66 Rav Naḥman bar Yitzḥak said: There is a different derivation teaching that halakha, as the same verse states: "For he is the first fruits of his strength [ono]" (Deuteronomy 21:17), indicating that the halakha of the double portion is stated with regard to his strength, but not her strength, thereby excluding a son who is the firstborn of his mother alone.

67 The Gemara challenges: But that verse is required to derive the halakha of a child who came into the world after his mother gave birth to non-viable newborns who did not reach the full term of nine months. This verse teaches that such a firstborn son should be a firstborn with regard to inheritance, even though he is not a firstborn with regard to the mitzva to redeem one's firstborn son. How is this halakha derived from the verse? The term "his strength [ono]" is understood as referring to acute mourning [aninut], in the following manner: A firstborn son for the purpose of inheritance of land is only one whose father's heart is pained about him when he dies, i.e., a son who lives beyond birth, excluding this non-viable newborn whose father's heart is not pained about him when he dies. Therefore, the next viable son to be born after a non-viable newborn is considered the firstborn.

[68] The Gemara answers: If so, that the sole purpose of the term: “His strength” is to teach that halakha, let the verse say: For he is the first fruit of strength [on], omitting the possessive “his,” represented by the letter vav. What is derived from the more expanded term: “His strength [ono],” which indicates specifically the father’s strength? Conclude two conclusions from it, both with regard to mourning and with regard to the status of the firstborn as the father’s heir specifically.

[69] The Gemara raises a difficulty: But one can still say that this statement applies in a case of a widower who married a virgin, so that he already has a firstborn from his previous marriage who is the first fruit of his strength. And the son born to him and his second wife is not the first fruit of his strength, and it is this type of firstborn who does not inherit a double portion of his mother’s estate. But in a case of a bachelor who married a virgin, so too the halakha will be that their shared firstborn son will take a double portion of his mother’s inheritance.

[70] Rather, Rava said: There is a different derivation teaching that halakha, as the same verse states: “The right of the firstborn is his” (Deuteronomy 21:17). The emphasis on “his” indicates that the primogeniture applies specifically to a man, and the primogeniture does not apply to a woman, whether the woman is the one inheriting or is the legator.

[71] § The mishna teaches: And a man with regard to his wife inherits but does not bequeath. The Gemara asks: From where are these matters derived? The Gemara explains: As the Sages taught in a baraita: The verse concerning inheritance states: “And if his father has no brothers, then you shall give his inheritance to his kinsman [she’ero] who is next to him of his family, and he shall inherit it” (Numbers 27:11). This kinsman is one’s wife, and the Torah teaches that a husband inherits from his wife, as the Gemara will explain later. One might have thought that she would also inherit from him; therefore, the verse states: “And he shall inherit it,” with the word “it” written in the feminine “otah,” which can also be translated as: Her. This teaches that it is he who inherits from her, but she does not inherit from him.

[72] The Gemara questions this explanation: But the verses are not written like this. The verse states that “his kinsman” inherits from the deceased, so that if that term is referring to one’s wife, a wife should inherit from her husband. Abaye said: Answer like this, i.e., as if the verse were split into two parts. The first part is: Then you shall give his inheritance to he who is next to him, which is a general statement with regard to the inheritance of relatives. The second is: His kinsman, and he shall inherit it, meaning that a husband inherits from his kinsman, referring to his wife.

[73] Rava said: Does a sharp knife cut verses? How can you split the verse, rearrange it and omit letters from its words? Abaye’s derivation rearranges the words and omits the letter lamed from the term “to his kinsman [leshe’ero].” Rather, Rava said: This is what the verse is saying: And you shall give the inheritance of his kinsman [she’ero] to him. The letters should be arranged differently, removing the letter lamed from the word leshe’ero and the letter vav from the word naḥalato and combining them to form the word lo, meaning: To him. Accordingly, the verse teaches that a husband inherits from his wife. The Gemara explains that Rava holds that the Sages subtract and add and interpret homiletically, meaning that letters can be removed from words and appended to each other, and a halakha can be derived from the new word formed by the combination of letters.

[74] The Gemara comments: And this tanna cites the halakha that a husband inherits from his wife from here, as it is taught in a baraita: “And he shall inherit it,” with the word “it” written in the

feminine “otah,” which can also be translated as: Her. This teaches that a husband inherits from his wife; this is the statement of Rabbi Akiva, similar to the derivation cited in the baraita above.

[75] The baraita quotes another tanna. Rabbi Yishmael says: This derivation is not necessary, as the verse states: “And every daughter who possesses an inheritance from the tribes of the children of Israel shall be wife to one of the family of the tribe of her father” (Numbers 36:8). The purpose of this mitzva was so that the land she inherited from her father’s tribe will not be transferred to another tribe upon her death. The verse speaks of a transfer of inheritance from one tribe to another by means of the husband, i.e., she must not marry a man from another tribe so that the land will not be transferred to that tribe when her husband inherits from her upon her death. This indicates that a husband inherits from his wife.

[76] Rabbi Yishmael continues: And another verse states: “So shall no inheritance of the children of Israel transfer from tribe to tribe” (Numbers 36:7), and another verse states: “So shall no inheritance transfer from one tribe to another tribe” (Numbers 36:9), also indicating that a husband inherits from his wife.

[77] Rabbi Yishmael continues: And the verse in the Prophets states: “And Elazar, the son of Aaron, died; and they buried him in the Hill of Pinehas his son, which was given him in Mount Ephraim” (Joshua 24:33). And from where did Pinehas have land that his father, Elazar, did not have? Rather, this teaches that Pinehas married a woman who inherited her father’s land, and she died and he inherited from her so that he had his own land. This also indicates that a husband inherits from his wife.

[78] Rabbi Yishmael continues. And the verse in the Writings states: “And Seguv begot Yair, who had twenty-three cities in the land of Gilead” (I Chronicles 2:22).

[79] And from where did Yair have land that his father, Seguv, did not have? Rather, this teaches that Yair married a woman who inherited her father’s land, and she died and he inherited from her so that he had his own land. This also indicates that a husband inherits from his wife.

[80] The Gemara proceeds to explain this baraita. What is the meaning of: And it states? Why is it necessary to provide additional proofs beyond the first verse? The Gemara explains: The first verse seems to prove the halakha that a husband inherits from his wife. And if you would say that the verse that rules that a woman who inherited land from her father cannot marry a man from another tribe is not concerned that he will inherit from her, but rather the verse is concerned about a transfer of inheritance from one tribe to another by means of the son who will inherit from his mother, as he belongs to his father’s tribe, but a husband does not inherit from his wife; therefore, come and hear another verse that is seemingly superfluous: “So shall no inheritance of the children of Israel transfer from tribe to tribe” (Numbers 36:7). This teaches that a transfer of land could occur by means of the husband inheriting from her.

[81] And if you would say that this verse is also concerned with the transfer of the inheritance by means of the son, and that the seemingly superfluous verse is stated for another purpose, i.e., in order to establish that a woman who inherited land from her father and marries a man from another tribe will violate for that act a prohibition, namely: “So shall no inheritance of the children of Israel transfer,” and a positive mitzva, namely: “Shall be wife to one of the family of the tribe of her father”; therefore, come and hear another verse that is seemingly superfluous: “So shall no

inheritance transfer from one tribe to another tribe” (Numbers 36:9), which teaches that a transfer can occur by means of the husband inheriting from his wife.

[82] And if you would say that this verse is also concerned with the transfer of the inheritance by means of the son, and that the seemingly superfluous verse is stated for another purpose, i.e., in order to establish that a woman who inherited land from her father and marries a man from another tribe violates for that act two prohibitions and a positive mitzva; therefore, come and hear another proof that a husband inherits from his wife, from the verse: “And Elazar, the son of Aaron, died” (Joshua 24:33).

[83] And if you would say that Pinehas did not inherit this land from his wife, but from his mother, as it was Elazar, his father, who married a woman who inherited land, and she subsequently died, and her son Pinehas inherited from her so that this verse proves the inheritance of a son and not that of a husband; therefore, come and hear a proof from the verse: “And Seguv begot Yair” (I Chronicles 2:22).

[84] And if you would say: That is the case there as well, that it was Yair who inherited it from his deceased mother, if so, why do I need two verses to teach the same halakha? This concludes the Gemara’s explanation of the baraita.

[85] Rav Pappa said to Abaye: From where do you know that this is how the verse should be understood? Perhaps I could actually say to you: A husband does not inherit from his wife, and the verses are concerned about a transfer of inheritance from one tribe to another by means of the son, as we explained, teaching that one who does so violates two prohibitions and a positive mitzva. And with regard to Yair, one could say that he purchased it from a third party and did not inherit it. And with regard to Pinehas as well, one could say that he purchased it from a third party.

[86] Abaye said to him: You cannot say that Pinehas purchased the land where he buried his father, as if so, the field would return to its original owner in the Jubilee Year (see Leviticus, chapter 25), and it would be found that this righteous man, i.e., Elazar, is buried in a grave in land that is not his.

[87] Rav Pappa asked further: Rather, say that in his capacity as a priest he came into possession of this land as a dedicated field. Pinehas, as a priest, may have owned the land by that means. Therefore, one can still say that a husband does not inherit from his wife, and the verses are concerned about a transfer of inheritance from one tribe to another by means of the son.

[88] Abaye said: Even if you say that her son and not her husband inherits from her, ultimately the inheritance is uprooted from the tribe of the mother and is moved to the tribe of the father, and the prohibition against her marrying a man from another tribe is not effective in achieving its goal. The verse speaks of a woman who inherited the land from her mother who is of a different tribe from her father (see 111a). Even if she marries a man from her own tribe, the inheritance will be transferred from her mother’s tribe to that of her, the woman’s, husband, as even if the woman’s son inherits, he is of his father’s tribe.

[89] Rav Pappa rejects this: And from where do you raise your challenge? But perhaps it is different there, as the inheritance had already been transferred by the mother of the woman when she married the father, so that the Torah is no longer concerned with the continued transfer. When the parents of this now-deceased woman married, the land that her mother would eventually inherit was already thought of as being transferred away from the ownership of her mother’s tribe. Therefore, the fact

that even if this woman’s son inherits from her, the fact that the land will permanently belong to a member of her husband’s tribe is of no concern. Abaye said to him: We do not say, i.e., employ, the logic of: As it had already been transferred, since as long as this woman owned it, it still belonged to a person of the first tribe.

[90] Rav Yeimar said to Rav Ashi: Even according to Abaye, who holds the verses teach that the husband inherits, there is still a difficulty. Granted, if you say the logic of: As it has already been transferred, this is how it can be understood that the verse is established as referring to both scenarios: The verse can be understood either with regard to a transfer by means of the son or with regard to a transfer by means of the husband. In both of these scenarios, the daughter’s marriage to a man from her father’s tribe is effective in ensuring that land she will inherit will not leave the tribe, because if she inherited it from her father it remains within the same tribe, and if she inherited it from her mother it had already been transferred when her mother married her father.

[91] But if you say that we do not say the logic of: As it has already been transferred, then even when she gets married to one of the family of the tribe of her father, what of it? But an inheritance is uprooted from the tribe of her mother, who had inherited land from her, the mother’s, father, to the tribe of her father, as her husband is from her father’s tribe.

[92] Rav Ashi said to him: There is a way that the transfer to another tribe can be avoided: Where we marry her to a man whose father is from her father’s tribe and his mother is from her mother’s tribe, the transfer is avoided as the land retains the exact status as it had when it was in the woman’s possession.

[93] The Gemara asks: If so, if a daughter who inherits land from both of her parents must marry a man whose father is from her father’s tribe and whose mother is from her mother’s tribe, this verse: “Shall be a wife to one of the family of the tribe of her father” (Numbers 36:8), should have said: Shall be a wife to one of the family of the tribe of her father and her mother. The Gemara replies: If it were written like this, I would say that even the opposite is permitted, that she may marry a man whose mother is from her father’s tribe and whose father is from her mother’s tribe. As long as she marries someone who is connected to both tribes, it is permitted. The verse therefore teaches us that the opposite is not permitted.

[94] The Gemara comments: Concerning the marriage of a woman who inherited land, it is taught in a baraita with regard to the transfer of the inheritance by means of the son, and it is taught in a baraita with regard to the transfer of the inheritance by means of the husband. The Gemara presents the baraitot: A baraita is taught with regard to the transfer of the inheritance by means of the son, as follows: “So shall no inheritance of the children of Israel transfer from tribe to tribe” (Numbers 36:7); that verse speaks of the transfer of the inheritance by means of the son. The Torah prohibits the woman from marrying a man from a different tribe since her son will inherit from her and thereby the inheritance will transfer away from its original tribe.

[95] Do you say that this is with regard to the transfer of the inheritance by means of the son, or is it only with regard to the transfer of the inheritance by means of the husband? When it says: “So shall no inheritance transfer from one tribe to another tribe” (Numbers 36:9), the verse is speaking with regard to the transfer of the inheritance by means of the husband. How do I realize the meaning of the verse: “So shall no inheritance of the children of Israel transfer from tribe to tribe” (Numbers 36:7)? That verse speaks of the transfer of the inheritance by means of the son.

96 It is taught in another baraita: “So shall no inheritance transfer from one tribe to another tribe” (Numbers 36:9); the verse speaks of the transfer of the inheritance by means of the husband. The Torah prohibits the woman from marrying a man from a different tribe since her husband will inherit from her, thereby transferring her inheritance away from its original tribe.

97 Do you say that this is with regard to the transfer of the inheritance by means of the husband, or is it only with regard to the transfer of the inheritance by means of the son? When it says: “So shall no inheritance of the children of Israel transfer from tribe to tribe” (Numbers 36:7), the verse is speaking with regard to the transfer of the inheritance by means of the son. How do I realize the meaning of the verse: “So shall no inheritance transfer from one tribe to another tribe” (Numbers 36:9)? That verse speaks of the transfer of the inheritance by means of the husband.

98 The Gemara comments: In any event, according to everyone, i.e., according to both baraitot, the phrase in the verse “from one tribe to another tribe” speaks of the transfer of the inheritance by means of the husband. The Gemara asks: From where is this inferred? The Gemara supplies a mnemonic. Rabba bar Rav Sheila said that the latter part of the verse states: “So shall no inheritance transfer from one tribe to another tribe; for the tribes of the children of Israel shall cleave each one [ish] to its own inheritance,” alluding to the transfer by means of the husband, as the word “ish” means husband, in the context of: “Elimelech the husband [ish] of Naomi” (Ruth 1:3). The Gemara asks: But the word “ish” is written in both of the verses. Therefore, both verses should be interpreted with regard to the transfer of the inheritance by means of the husband.

99 Rather, Rav Naḥman bar Yitzḥak said a different explanation. The verse states: “Shall cleave,” and this term alludes to marriage, as in the context of: “And he shall cleave to his wife” (Genesis 2:24). The Gemara raises a difficulty: But the term “shall cleave” is written in both of the verses. Therefore, both verses should be interpreted with regard to the transfer of the inheritance by means of the husband.

100 Rather, Rava said a different explanation: The verse states: “The tribes of the children of Israel shall cleave,” and tribes cleave to one another through marriage. Rav Ashi said another explanation: The verse states: “From one tribe to another tribe,” and a son is not considered “another,” as he is an extension of his mother.

101 § Rabbi Abbahu says that Rabbi Yoḥanan says that Rabbi Yannai says that Rabbi Yehuda HaNasi says, and some determined it was in the name of Rabbi Yehoshua ben Korḥa: From where is it derived that a husband who inherits from his wife does not take in inheritance the property due to the deceased as he does the property she possessed? Instead of the husband inheriting the property that was due to her, that property is inherited by her other relatives, such as her son, or other relatives of her father. As it is stated: “And Seguv begot Yair, who had twenty three cities in the land of Gilead” (I Chronicles 2:22). The Gemara asks: From where did Yair have land that his father, Seguv, did not have? Rather, this teaches that Seguv married a woman and she died in the lifetime of her potential legators, and her legators then died, and Yair, her son, not Seguv, her husband, inherited these inheritances from her.

102 And it is stated: “And Elazar, the son of Aaron, died; and they buried him in the Hill of Pinehas his son” (Joshua 24:33). From where did Pinehas have land that his father, Elazar, did not have? Rather, this teaches that Elazar married a woman and she died in the lifetime of her potential

legators, and her legators then died, and Pinehas her son, not Elazar her husband, inherited the property from her.

[103] And what is the meaning of: And it is stated? Why is it necessary to provide an additional proof beyond the first verse? The Gemara explains. And if you would say: In the verse concerning Seguv and Yair, it is Yair, not Seguv, who married a woman and she died and he inherited from her, and he did not inherit from his mother, the verse states: “And Elazar, the son of Aaron, died; and they buried him in the Hill of Pinehas his son” (Joshua 24:33), teaching that Pinehas inherited the land of those from whom his mother inherited, and Elazar did not. And if you would say that this land came into the possession of Pinehas as a dedicated field, as he was a priest, and he did not inherit it from his mother, the verse states: “His son,” indicating that it was an inheritance that was fitting for him, i.e., Elazar, had his wife not predeceased her legators, and his son inherited it.

[104] § The mishna teaches: And sons of sisters, i.e., nephews born to the sisters of the deceased, inherit from their maternal uncles but do not bequeath to them. It is taught in a baraita: This halakha applies to sons of sisters but not to daughters of sisters.

[105] With regard to what halakha was this said? It is obvious that in principle daughters have the right to inherit from their maternal uncle, as the mother inherits from him. Rav Sheshet said: It is said to teach that where there are sons as well, they precede the daughters in inheriting from their maternal uncle.

[106] Rav Shmuel bar Rav Yitzḥak taught a baraita before Rav Huna: At the end of the passage discussing inheritance of land, the verse states: “Then you shall give his inheritance to his kinsman who is next to him of his family, and he shall inherit it” (Numbers 27:11). The verse juxtaposes a secondary inheritance, that of one inheriting from other relatives, to a primary inheritance, that of a child inheriting from a parent. This teaches that just as with regard to a primary inheritance a son precedes a daughter, so too, with regard to a secondary inheritance a son precedes a daughter.

[107] § Rabba bar Ḥanina taught a baraita before Rav Naḥman: A verse in the passage concerning the double portion inherited by a firstborn states: “Then it shall be on the day that he causes his sons to inherit that which he has” (Deuteronomy 21:16). The addition of the phrase “on the day” teaches that it is specifically during the day that you may distribute inheritances, but you may not distribute inheritances at night. Abaye said to him: That cannot be the halakha, as, if that is so, it ought to be that only one who dies during the day is the one from whom his children inherit, but with regard to one who dies at night, his children do not inherit from him, and this is not the case.

[108] Abaye suggests a different interpretation of Rabba bar Ḥanina’s statement: Perhaps you said a distinction between day and night with regard to the adjudication of inheritances, as judges are permitted to sit only during the day. A proof for this distinction is as it is taught in a baraita: A verse in the passage concerning inheritance states: “And it shall be for the children of Israel a statute of judgment” (Numbers 27:11), teaching that the entire portion was placed [ure’a] together to be considered a matter of judgment, subject to the procedural rules of a court matter.

[109] Abaye continues: And this is in accordance with the statement of Rav Yehuda, as Rav Yehuda says: In a case where there were three men who entered a room to visit a sick person and the sick person desired to write a will in order to distribute his property following his death, if the visitors wish to do so they may write his will and sign it as witnesses. And if they wish, they may act in judgment, i.e., they may act as a court in the matter, since there are three of them. Therefore, they can

determine that the will has the validity of an act of court and transfer the property to the heirs in their capacity as a court. But if only two came to visit the sick person, they may write the will and sign it as witnesses, but they may not act in judgment, since three are required to form a court. And Rav Ḥisda says: This halakha was taught only in a case where the three came to visit him during the day,

[110] but if they came at night, even if three men came to visit the sick person, they may write the will and sign it as witnesses but they may not act in judgment. What is the reason that they may not act in judgment the next day? It is because they are already witnesses to the will of the deceased, and there is a principle that a witness cannot become a judge, i.e., one who acts as a witness in a particular matter cannot become a judge with regard to that same matter? Rabba bar Ḥanina said to Abaye: Yes, it is indeed so; this is what I was saying.

[111] § After mentioning Rav Yehuda's ruling the Gemara cites a related dispute. It was stated: With regard to a transaction, until when may one of the parties renege on the transaction? Rabba says: As long as they are seated in the same location they may renege on the transaction. Rav Yosef says: As long as they are dealing with that matter, i.e., they are still discussing that transaction, they may renege on it.

[112] Rav Yosef said: It stands to reason in accordance with my opinion, as Rav Yehuda says: In a case where there were three men who entered a room to visit a sick person and the sick person desires to write a will in order to distribute his property following his death, if the visitors wish to do so they may write his will and sign it as witnesses. And if they wish, they may act in judgment. And if it enters your mind that one may renege on a deal as long as they are seated in the same location, then let us be concerned that perhaps he will renege on his decision. How can the visitors act in judgment in a case where the matter has not been resolved, as the sick person may still change his mind?

[113] Rav Ashi said: I stated this halakha before Rav Kahana and I asked him: And according to the opinion of Rav Yosef, does it work out well? But even according to his opinion there should be a concern that perhaps he will renege on his decision, as Rav Yosef holds that one may renege on a transaction as long as the two parties are still dealing with that matter. Rather, what have you to say? That according to Rav Yosef, Rav Yehuda's ruling applies where they withdrew

[114] from discussing that matter to discuss a different matter, so he can no longer renege on his decision. So too, according to Rabba, one can explain that Rav Yehuda was referring to a case where they arose and then sat down again. Although no support for Rav Yosef's opinion was adduced from Rav Yehuda's ruling, the Gemara nevertheless states: And the halakha is in accordance with the opinion of Rav Yosef in the disputes concerning the division of a field, discussed above (12b), reneging while they are discussing the same matter, discussed here, and a half of one's property, discussed below (143a).

[115] § The mishna teaches that a woman bequeaths to her son, her husband, and her maternal uncles, but she does not inherit from them. The Gemara asks: Why do I need this as well? But it is already taught in the former clause: A man inherits from his mother and a man inherits from his wife. The halakha stated in this clause seems to be the same as that of the other clause.

[116] The Gemara answers: This teaches us that the halakha of a woman who bequeaths to her son is similar to that of a woman who bequeaths to her husband: Just as with regard to a woman who bequeaths to her husband, the husband does not inherit property through his wife while he is in the grave, i.e., if a husband predeceases his wife, then his relatives, such as children from another

marriage, do not inherit the wife's property through him but rather the wife's own relatives inherit her property, so too, the same halakha applies with regard to a woman who bequeaths to her son, that the son does not inherit property through his mother while he is in the grave in order to bequeath to his paternal brothers. In both cases, the woman's own relatives inherit her property.

[117] § With regard to the halakha that a mother inherits from her son, the Gemara notes that Rabbi Yoḥanan says in the name of Rabbi Yehuda ben Rabbi Shimon: By Torah law a father inherits from his son, and a woman inherits from her son if the father is no longer alive, as it is stated with regard to a woman receiving inheritance: "And every daughter who possesses an inheritance from the tribes of the children of Israel" (Numbers 36:8). Since the plural term "tribes" includes both her father's tribe and her mother's tribe, the verse juxtaposes the tribe of the mother to the tribe of the father, in that just as with regard to the father's tribe a father inherits from his son, so too, with regard to the mother's tribe, a woman inherits from her son if the father is deceased.

[118] Rabbi Yoḥanan raised an objection to the opinion of Rabbi Yehuda ben Shimon from the mishna, which teaches: A woman with regard to her son, a woman with regard to her husband, and maternal uncles all bequeath to their respective relatives but do not inherit from them. The mishna states explicitly that a mother does not inherit her son's property. Rabbi Yehuda ben Shimon said to him: With regard to our mishna, I do not know who taught it, i.e., I am not aware of any tanna who concurs with its ruling and it is not the accepted halakha.

[119] The Gemara asks: But let Rabbi Yoḥanan say to Rabbi Yehuda ben Shimon that the mishna is written in accordance with the opinion of Rabbi Zekharya ben HaKatzav, who, as noted on page 111a, does not derive the halakha that sons precede daughters with regard to the inheritance of their mother from the word "tribes." Since Rabbi Yehuda ben Shimon's ruling is based on a derivation from the word "tribes," it stands to reason that Rabbi Zekharya disagrees with Rabbi Yehuda ben Shimon, and the ruling of the mishna is in accordance with Rabbi Zekharya's opinion.

[120] The Gemara answers: The mishna cannot be interpreted in accordance with the opinion of Rabbi Zekharya ben HaKatzav, as it teaches: And the sons of a sister inherit but do not bequeath, and a Sage taught that the mishna is referring only to sons of a sister and not to daughters of a sister, and we say: With regard to what halakha is there a distinction between the sons and daughters of a sister? And Rav Sheshet said: The distinction is meant to teach that where there are sons as well, they precede the daughters in inheriting from their maternal uncle.

[121] The Gemara continues: And if it enters your mind that the mishna is written in accordance with the opinion of Rabbi Zekharya ben HaKatzav, doesn't he say: Both the son and the daughter are equal with regard to the mother's property, as they inherit equally? The mishna stands in contraposition to Rabbi Zekharya's ruling, and therefore it cannot be written in accordance with his opinion.

[122] The Gemara asks: And the tanna of our mishna, whichever way you look at it, is inconsistent: If he interprets the word "tribes," then a woman also should inherit from her son, as noted above (114b). And if he does not interpret the word "tribes," then from where is it clear to him that a son precedes a daughter with regard to the property of the mother? Both halakhot are derived from the same source, so how can the tanna accept one and reject the other?

[123] The Gemara explains: Actually, the tanna of the mishna interprets the word "tribes," but it is different here, with regard to a woman inheriting from her son, as the verse states: "And every

daughter who possesses [yoreshet] an inheritance from the tribes” (Numbers 36:8), which teaches that a daughter inherits [yoreshet] from two tribes, but she does not bequeath to two tribes. She bequeaths only to her father’s tribe.

124 MISHNA: The order of precedence with regard to inheritances is this: The verse states: “If a man dies, and has no son, then you shall pass his inheritance to his daughter” (Numbers 27:8). This teaches that a son precedes a daughter. Additionally, all descendants of a son precede a daughter. A daughter precedes the brothers of the deceased. Additionally, the descendants of a daughter precede the brothers of the deceased. Brothers of the deceased precede the uncles of the deceased. Additionally, the descendants of the brothers precede the uncles.

125 This is the principle: Concerning anyone who precedes another with regard to inheritance, his descendants precede the other as well, and a father who inherits precedes all of his descendants.

126 GEMARA: The Sages taught: The verse states: “If a man dies, and has no son, then you shall pass his inheritance to his daughter” (Numbers 27:8). I have derived only that a son precedes others with regard to the inheritance of the deceased; from where do I derive that a son of a son, or a daughter of a son, or a son of a daughter of a son also precedes the deceased’s other relatives? The verse states: “If a man dies, and he has no [ein lo] son.” The word ein is written aleph, yod, nun. Therefore, the Sages read it as if it states: Investigate with regard to him [ayyein alav], to search for descendants of his son, and give the inheritance to them if they are found.

127 The next verse states: “And if he has no daughter, then you shall give his inheritance to his brothers” (Numbers 27:9). I have derived only that a daughter precedes others, except a son and his descendants, with regard to the inheritance of the deceased, from where then do I derive that a daughter’s daughter, or a son of a daughter, or a daughter of a son of a daughter also precede the deceased’s other relatives? The verse states: “And if he has no [ein lo] daughter.” The word ein is written aleph, yod, nun. Therefore, the Sages read it as if it states: Investigate with regard to him [ayyein alav], to search for descendants of his daughter, and give the inheritance to them if they are found.

128 The Gemara asks: How so, i.e., how is the investigation performed when he has no offspring at all? The Gemara answers: The family lineage that determines the inheritance is successively examined up to Reuben, son of Jacob, i.e., the heirs are determined by investigating the family genealogy, and that investigation can extend all the way to Reuben, son of our forefather Jacob. The Gemara asks: And let it say: Until Jacob himself, rather than until Reuben, since if none of Reuben’s descendants survive, one would have to examine Jacob’s descendants. Abaye said in reply: It is learned as a tradition that a tribe will not be eliminated entirely, and some descendants will always remain.

129 § Rav Huna says that Rav says: With regard to anyone who says that a daughter of the deceased should inherit the estate of her father along with the daughter of the son of the deceased, even if he is a prince of the Jewish people, one should not listen to him, as this is nothing other than an act of the Sadducees, and runs counter to the ruling of the mishna that the descendants of a son inherit before a daughter. As it is taught in a baraita in Megillat Ta’anit, which describes various minor holidays on which it is forbidden to fast or eulogize: On the twenty-fourth of Tevet, we returned to our law, i.e., the halakha was reestablished in accordance with the opinion of the Sages after having been dictated

by the Sadducees. As the Sadducees would say: A daughter should inherit the estate of her father along with the daughter of the son of the deceased.

[130] The baraita continues: Rabban Yoḥanan ben Zakkai joined them to discuss their ruling, and said to them: Imbeciles, from where do you derive this ruling? And there was no person that answered him anything, except for one old man who was chattering at him and saying that it is an a fortiori inference: And just as a daughter of the deceased's son, who comes to claim her inheritance from her grandfather by virtue of his son, inherits her grandfather's property, so too, with regard to the deceased's own daughter, who comes to inherit by virtue of the deceased, all the more so is it not clear that she should inherit his property?

[131] Rabban Yoḥanan ben Zakkai recited this verse about him: "These are the sons of Seir the Horite, the inhabitants of the land: Lotan and Shobal and Zibeon and Anah" (Genesis 36:20), and it is written: "And these are the children of Zibeon: Aiah and Anah" (Genesis 36:24). The first verse portrays Zibeon and Anah as brothers, while the second states that they are father and son. Rather, this teaches that Zibeon engaged in sexual intercourse with his mother and begot Anah, so that he was both Anah's father and his brother. From the fact that the first verse equates Zibeon and Anah by referring to both of them as Seir's sons despite Anah being a grandson of Seir, it is clear that grandchildren are equal to children, contrary to the Sadducees' assertion.

[132] The Gemara interrupts the recounting of the baraita and questions Rabban Yoḥanan ben Zakkai's inference: But perhaps there were two people named Anah, so that one Anah was Zibeon's son, and the other his brother? Rabba said: I will state a matter that even King Shapur did not state. And who is this King Shapur? This cannot be a reference to Shapur, king of Persia; rather, it must be a moniker for someone else. He is Shmuel, whose legal rulings were accepted by the public like the edicts of a king by his subjects. Some state a different version, that it was Rav Pappa who said: I will state a matter that even King Shapur did not state. And who is this King Shapur? He is Rabba. The verse goes on to state: "This is Anah" (Genesis 36:24), indicating that he is the same Anah mentioned initially, earlier in the verse. Accordingly, there was only one Anah, who was both Zibeon's brother and Zibeon's son.

[133] The baraita continues: The Sadducee said to Rabban Yoḥanan ben Zakkai: My teacher, you dismiss me with this retort? I agree that the son of a son precedes a daughter, as the verse you quoted suggests; I am asserting that a daughter inherits together with the daughter of a son, and the verse you quoted has no bearing on that claim. Rabban Yoḥanan ben Zakkai said to him: Imbecile,

[134] but will our perfect Torah not be as worthy as your frivolous speech, as your inference is fallacious: What is notable about the inheritance of a daughter of the deceased's son? It is notable in that her right is enhanced in that she inherits from her paternal grandfather together with the brothers of her father. Would you say that the same applies with regard to the deceased's daughter, whose right to inherit is diminished in that she does not inherit from her father together with her brothers? The Sadducee's a fortiori inference is thereby disproved. The Gemara concludes: And since the Sadducees had no counterargument, the Sages were victorious over them, and they established that day, the twenty-fourth of Tevet, as a minor festival to celebrate the establishment of the halakha in accordance with the opinion of the Sages.

[135] Having discussed the halakha of a son's daughter's right to inheritance, the Gemara cites a verse that relates to the matter. After the incident known as: The concubine in Gibeah, the men of the tribe

of Benjamin numbered only six hundred, and each of these men had inherited large plots of land from their deceased relatives. The verse states: “And they said: They that are escaped must be as an inheritance for Benjamin, that a tribe be not blotted out from Israel” (Judges 21:17).

136 Rabbi Yitzḥak of the house of Rabbi Ami says: This teaches that the elders of that generation stipulated with regard to the tribe of Benjamin that a daughter of a son shall not inherit with the brothers of her father. Since the daughter of a son who inherits her grandfather’s property may later bequeath it to her husband, who may be from another tribe, the elders instituted this temporary ordinance in order to ensure that other tribes would not inherit large quantities of land belonging to the tribe of Benjamin, lest the tribe of Benjamin be left with little land of its own.

137 § The Gemara presents a related statement. Rabbi Yoḥanan says in the name of Rabbi Shimon ben Yoḥai: Concerning anyone who does not leave behind a son to inherit from him, the Holy One, Blessed be He, is filled with wrath [evra] toward him, as it is written here: “If a man die, and he has no son, then you shall pass his inheritance [veha’avartem] to his daughter” (Numbers 27:8), and it is written there: “That day is a day of wrath [evra]” (Zephaniah 1:15). The words “veha’avartem” and “evra” share common root letters, whereby Rabbi Shimon ben Yoḥai interprets that God’s wrath may be the result of the inheritance passing to a daughter rather than a son.

138 The Gemara presents a related statement. Concerning the verse: “God shall hear, and humble them, even He that is enthroned of old, Selah; those that have no exchange, and fear not God” (Psalms 55:20), Rabbi Yoḥanan and Rabbi Yehoshua ben Levi each interpret the verse in a different manner. One says that this is a reference to anyone who does not leave behind a son to inherit from him, as he does not leave anyone to serve in exchange, i.e., as a replacement, for him; and one says that this is a reference to anyone who does not leave behind a student to serve in exchange for him.

139 The Gemara suggests: It may be concluded that it was Rabbi Yoḥanan who says that the verse is referring to one who does not leave behind a student, for Rabbi Yoḥanan, whose ten sons died in his lifetime, said to those he would console: This is the bone of my tenth son, to encourage them not to succumb to their sorrow. Since Rabbi Yoḥanan knew that he would not leave any sons to inherit his property, it is reasonable to assume that he interpreted the verse as meaning that God is full of wrath toward one who does not leave behind a student. The Gemara comments that it may be concluded that it was Rabbi Yoḥanan who says that the verse is referring to one who does not leave behind a student.

140 The Gemara notes: And from this, that Rabbi Yoḥanan is the one who says that the verse is referring to one who does not leave behind a student, it follows that Rabbi Yehoshua ben Levi says the verse is referring to one who does not leave behind a son.

141 The Gemara asks: But this cannot be, as Rabbi Yehoshua ben Levi would not go to a house of mourning [bei tamya] to console the bereaved so as not to interrupt his studies, except to the house of one who died without any sons, as it is written: “Weep not for the dead, neither bemoan him; but weep sore for him that goes away” (Jeremiah 22:10), and Rabbi Yehuda says that Rav says that the verse is referring to one who departs from this world without leaving behind a male child. From the fact that Rabbi Yehoshua ben Levi would console specifically one who died without leaving a son, it is apparent that he does not hold that God is full of wrath toward such an individual. Rather, it must be that Rabbi Yehoshua ben Levi is the Sage who says that the verse is referring to one who does not leave behind a student.

142 The Gemara notes: And from this that Rabbi Yehoshua ben Levi is the one who says that the verse is referring to one who does not leave behind a student, it follows that Rabbi Yoḥanan says it is referring to one who does not leave behind a son.

143 The Gemara asks: This poses a difficulty from one statement of Rabbi Yoḥanan, that the verse is referring to one who does not leave behind a son, to another statement of Rabbi Yoḥanan, as he would say: This is the bone of my tenth son. The Gemara answers: It is not difficult: This statement, with regard to the bone of his son, is his, while that statement, with regard to the verse, is his teacher's.

144 § The Gemara continues with three homiletic interpretations by Rabbi Pineḥas ben Ḥama, and provides a mnemonic to facilitate the memorization of these expositions: Hadad, poverty, and sage.

145 The Gemara presents the first homiletic interpretation: Rabbi Pineḥas ben Ḥama interpreted a verse homiletically: What is the meaning of that which is written: "And when Hadad heard in Egypt that David slept with his fathers, and that Joab the captain of the host was dead" (I Kings 11:21)? For what reason is it that in the case of King David, sleeping was stated with regard to his demise, and in the case of Joab, death was stated with regard to his demise? He answers: Concerning King David, who left a son behind, sleeping was stated with regard to his demise, as it was not a complete death, while concerning Joab, who did not leave a son behind, death was stated with regard to his demise, as he left no son to succeed him.

146 The Gemara asks: And is it so that Joab did not leave a son behind; but isn't it written: "Of the sons of Joab: Obadiah, son of Jehiel" (Ezra 8:9)? Rather, concerning King David, who left a son as great as himself, sleeping was stated with regard to his demise, but concerning Joab, who did not leave a son as great as himself, death was stated with regard to his demise.

147 The Gemara presents the second homiletic interpretation: Rabbi Pineḥas ben Ḥama interpreted a verse homiletically, and derived that poverty in a person's household is more difficult than fifty plagues, as it is stated: "Have pity upon me, have pity upon me, O you my friends; for the hand of God has touched me" (Job 19:21), and his friends were saying to him: "Take heed, regard not iniquity; for this have you chosen rather than poverty" (Job 36:21). Job, who suffered many plagues, was told by his friends that his suffering was preferable to poverty.

148 The Gemara presents the third homiletic interpretation: Rabbi Pineḥas bar Ḥama interpreted a verse homiletically: Anyone who has a sick person in his home should go to a sage, and the sage will ask for mercy on the sick person's behalf, as it is stated: "The wrath of a king is as messengers of death; but a wise man will pacify it" (Proverbs 16:14).

149 § The mishna teaches that this is the principle: Concerning anyone who precedes another with regard to inheritance, his descendants precede the other as well, and a father precedes all of his descendants. Rami bar Ḥama raises a dilemma: With regard to the claim of a father of the deceased's father and the claim of the brother of the deceased's father, such as the claims of Abraham and Ishmael to the property of Esau, who was Abraham's grandson and Ishmael's nephew, which of them precedes the other and inherits the property? Rava said: Come and hear a proof from the mishna: A father precedes all of his descendants, therefore, Abraham would inherit, as Ishmael was his descendant. The Gemara asks: And why did Rami bar Ḥama have a dilemma; was he not aware of the statement of the mishna?

150 The Gemara answers: Due to his keen mind, he did not analyze the mishna carefully.

151 Rami bar Ḥama raised a dilemma: With regard to the claim of a father of the deceased's father and the claim of the deceased's brother, such as the claims of Abraham and Jacob to the property of Esau, who was Abraham's grandson and Jacob's brother, which of them precedes the other and inherits the property? Rava said: Come and hear a proof from the mishna: A father precedes all of his descendants, therefore, Abraham would inherit, as Jacob was his descendant. The Gemara asks: And why did Rami bar Ḥama have a dilemma; presumably, he was aware of the statement of the mishna? The Gemara answers: Rami bar Ḥama understood that the mishna teaches that a father precedes only his own immediate descendants, but not the descendants of his son.

152 The Gemara notes that so too, it is reasonable to understand the mishna in that manner, as it teaches: This is the principle: Anyone who precedes another with regard to inheritance, his descendants precede the other as well. And if Isaac were alive, Isaac would precede Abraham and inherit Esau's property. Now, also, when Isaac is not alive, Jacob should precede Abraham, because of the principle that the descendants of one who precedes another with regard to inheritance also precede the other. The Gemara affirms: Conclude from this clause of the mishna that the brother of the deceased precedes the grandfather.

153 MISHNA: Zelophehad's daughters took three portions of land in the inheritance of Eretz Yisrael: Their father's portion that he received because he was among those who left Egypt; and his portion that he received with his brothers in the property of Hepher, their father; and an additional portion that he received from Hepher because he was a firstborn, and a firstborn takes two portions of inheritance from his father.

154 GEMARA: The Gemara comments: In the mishna that teaches that Zelophehad and Hepher were entitled to portions in Eretz Yisrael, we learned in accordance with the opinion of the one who says: Eretz Yisrael was divided among those who left Egypt.

155 The Gemara cites a baraita that presents three opinions as to how Eretz Yisrael was divided. As it is taught in a baraita that Rabbi Yoshiya says: Eretz Yisrael was divided among those who left Egypt, as it is stated: "According to the names of the tribes of their fathers they shall inherit" (Numbers 26:55), which teaches that the Jewish people would inherit Eretz Yisrael according to the names of their fathers, i.e., those who left Egypt. Rabbi Yoshiya continues: But how do I realize the meaning of the verse: "Unto these the land shall be divided for an inheritance" (Numbers 26:53), which indicates that the land was to be divided among those recently counted in the wilderness, i.e., those who would enter Eretz Yisrael? He answers: "Unto these" teaches that the land will be divided among those who are like these people who were counted, in that they were adults above the age of twenty, to exclude the children, who were not entitled to a portion in Eretz Yisrael, as they were not of age at the time of the Exodus.

156 The baraita presents a second opinion. Rabbi Yonatan says: Eretz Yisrael was divided among those who entered Eretz Yisrael, as it is stated: "Unto these the land shall be divided for an inheritance" (Numbers 26:53). But how do I realize the meaning of the verse: "According to the names of the tribes of their fathers they shall inherit" (Numbers 26:55)? This teaches that this inheritance is different from all other inheritances in the world, for in all other inheritances in the world, the living inherit from the dead, but here, the dead inherit from the living. In other words, the

portions of land received by those who entered Eretz Yisrael were transferred to their fathers who left Egypt, and then inherited by the current generation, as the Gemara will now explain.

157 Rabbi Yehuda HaNasi said: I will tell you a parable. To what is this matter comparable? To two brothers who were priests and who were in one town. One brother has one son, and one brother has two sons, and the sons all went to the threshing floor to collect teruma. This brother, who has one son, takes one portion of the teruma from his child, and that brother, who has two sons, takes two portions from his sons. And the brothers then return with the three portions to their father, and then redivide the portions among themselves equally, so that each brother receives one and one-half portions. When the brothers give their shares to their children, the son of the first brother will receive all that his father had received, while the sons of the other brother will divide what their father had received.

158 The baraita presents a third opinion. Rabbi Shimon ben Elazar says:

159 Eretz Yisrael was divided to these and to those, so as to uphold these two verses. How so? If one was from among those who left Egypt, he takes his portion along with those who left Egypt. If one was from among those who entered Eretz Yisrael, he takes his portion along with those who entered Eretz Yisrael. If one was from both here and there, i.e., he was among those who left Egypt and also entered Eretz Yisrael himself, he takes his portion from here and there, as he is entitled to two portions.

160 The baraita continues: With regard to the twelve spies sent to survey Eretz Yisrael prior to the Jewish people's entry into the land, Joshua and Caleb took all of the spies' portions of the land. Additionally, the protesters and the assembly of Korah did not have a portion of Eretz Yisrael. Nevertheless, their sons took portions of the land in the merit of their paternal grandfathers and in the merit of their maternal grandfathers if they were among those who left Egypt. This concludes the Gemara's citation of the baraita.

161 The Gemara asks: From where may it be inferred that this verse, which states: "According to the names of the tribes of their fathers they shall inherit" (Numbers 26:55), is written with regard to those who left Egypt; perhaps the verse was stated in reference to the progenitors of the tribes, and teaches that the land should be divided among the twelve tribes? The Gemara answers: The inference is from a verse, as it is written: "And I will bring you in to the land, concerning which I lifted up My hand to give it to Abraham, to Isaac, and to Jacob; and I will give it to you for a heritage: I am the Lord" (Exodus 6:8). This verse states that Eretz Yisrael is an inheritance for you from your forefathers, and this verse was told to those who left Egypt, indicating that those who left Egypt inherit the land.

162 The Gemara presents a mnemonic device for the following series of questions posed by Rav Pappa to Abaye relating to the division of Eretz Yisrael: To the more; Zelophehad; and Joseph; contested; Manasseh; will count.

163 The Gemara presents the first question. Rav Pappa said to Abaye: Granted, according to the one who says that Eretz Yisrael was divided among those who left Egypt, this is the meaning of that which is written: "To the more you shall give the more inheritance, and to the fewer you shall give the less inheritance" (Numbers 26:54). The verse may be understood as teaching the novelty that even though the number of Jewish people entering Eretz Yisrael differed from the number who left

Egypt, the land is nevertheless divided according to the numbers at the time of the Exodus, not according to the count at the time they received the land.

164 But according to the one who says that Eretz Yisrael was divided among those who entered Eretz Yisrael, what does the verse: “To the more you shall give the more inheritance” teach? It is obvious that larger families will receive more land due to their greater numbers. The Gemara concludes: This poses a difficulty to one who holds that opinion.

165 The Gemara presents the second question. And Rav Pappa said to Abaye: Granted, according to the one who says that Eretz Yisrael was divided among those who left Egypt, this is why the daughters of Zelophehad cried out in protest of the fact that they would be denied their father’s portion, to which he was entitled as one who left Egypt. But according to the one who says that Eretz Yisrael was divided among those who entered Eretz Yisrael, why did they cry out in protest; after all, Zelophehad was not there to take his portion, so his daughters should have no claim to the land?

166 Abaye answers: Rather, according to this opinion, the protest of Zelophehad’s daughters was in reference to the returning of the portions from the generation that entered Eretz Yisrael to the generation that left Egypt, as described in the baraita above. And accordingly, Zelophehad’s daughters demanded to take their portion in the property of their grandfather Hepher, who received land posthumously through his children, their uncles.

167 The Gemara presents Rav Pappa’s third question: Granted, according to the one who says that Eretz Yisrael was divided among those who left Egypt, this is why the descendants of Joseph cried out in protest of the fact that they would receive an inadequate portion of land due to the fact that they had proliferated greatly in the wilderness. As it is written: “And the children of Joseph spoke to Joshua, saying: Why have you given me but one lot and one part for an inheritance, seeing I am a great people, because the Lord has blessed me thus” (Joshua 17:14). But according to the one who says that Eretz Yisrael was divided among those who entered Eretz Yisrael, what is the reason they were crying out? They were all entitled to take their own portion of land and should have had no cause for complaint.

168 The Gemara answers: They protested due to the children, as they had many children who were not entitled to a portion of the land.

169 Abaye said: Learn from the fact that the Bible records the complaints of only the daughters of Zelophehad and the descendants of Joseph that there was not one other individual who did not take a portion of land; as if it enters your mind that there was even one other who did not take a portion of land, he should have cried out in protest. And if you would say: The verse wrote about one who cried out and his protest was effective, and the verse did not write about one who cried out and his protest was not effective, that is difficult. But there is the counterexample of the descendants of Joseph, who cried out and their protest was not effective, and the verse wrote about them.

170 The Gemara rejects Abaye’s inference: Generally, the verse would not record an instance where one cried out if his protest was not effective, and there, the verse includes the protest of Joseph’s descendants in order to teach us a measure of good advice: That a person should be wary of the evil eye. And this is what Joshua said to them, as it is written: “And Joshua said unto them: If you be a great people, go up to the forest, and cut down for yourself there in the land of the Perizzites and of the Rephaim” (Joshua 17:15). Joshua said to them: Go and conceal yourselves in the forests so that the evil eye will not have dominion over you.

171 Joseph’s descendants said to him: We are of the descendants of Joseph, upon whom the evil eye had no dominion, as it is written: “Joseph is a fruitful vine, a fruitful vine by a fountain [alei ayin]” (Genesis 49:22), and Rabbi Abbahu states a homiletic interpretation: Do not read it as “alei ayin,” rather read it as olei ayin, above the eye, i.e., he transcended the influence of the evil eye. Joseph’s descendants were saying that they also do not need to be wary.

172 Rabbi Yosei, son of Rabbi Ḥanina, said that a proof for the notion that the evil eye holds no sway over Joseph and his descendants, is from here, Jacob’s blessing of Joseph’s sons, Ephraim and Manasseh: “The angel who has redeemed me from all evil, bless the lads; and let my name be named in them, and the name of my fathers, Abraham and Isaac; and let them grow into a multitude [veyidgu] in the midst of the earth” (Genesis 48:16). Veyidgu is related etymologically to the word for fish [dag]. Just as with regard to the fish in the sea, water covers them and the evil eye has no dominion over them, so too, the seed of Joseph, the evil eye has no dominion over them.

173 § The Gemara analyzes the next section of the baraita, which states: With regard to the twelve spies sent to survey Eretz Yisrael prior to the Jewish people’s entry into the land, Joshua and Caleb took all of the spies’ portions of the land. The Gemara asks: From where is this matter derived? Ulla said: It is as the verse states: “But Joshua, son of Nun, and Caleb, son of Jephunneh, lived of those men that went to spy out the land” (Numbers 14:38). What does the term “lived” mean? If we say that it means literally that they lived, but there is another verse that states: “And there was not left a man of them, save Caleb, son of Jephunneh, and Joshua, son of Nun” (Numbers 26:65), so why would the Torah state it twice? Rather, what does the term “lived” mean? That Joshua and Caleb lived in the other spies’ portion of the land.

174 The baraita teaches that the protesters and the assembly of Korah did not possess a portion of Eretz Yisrael. The Gemara asks: But isn’t it taught otherwise in a baraita: With regard to the spies, the protesters, and the assembly of Korah, Joshua and Caleb took their portions of the land? Apparently, the protesters and the assembly of Korah were assigned portions in Eretz Yisrael, which were then given to Joshua and Caleb. The Gemara answers: It is not difficult: One Sage, the tanna of the baraita quoted earlier, juxtaposes the protesters to the spies, teaching that just as the spies were assigned a portion of Eretz Yisrael, so were the protesters. And one Sage, the tanna of the baraita quoted here, does not juxtapose the protesters to the spies. Although the spies were assigned a portion, the protesters were not.

175 The Gemara quotes a related baraita. As it is taught in a baraita that the verse quotes the daughters of Zelophehad: “Our father died in the wilderness, and he was not among the assembly of them that gathered themselves together against the Lord in the assembly of Korah, but he died in his own sin; and he had no sons” (Numbers 27:3), and the daughters of Zelophehad therefore claim they are entitled to his portion. “Our father died in the wilderness,” this is referring to Zelophehad. “And he was not among the assembly,” this is referring to the assembly of spies. “That gathered themselves together against the Lord,” these are the protesters. “In the assembly of Korah,” this is in accordance with its straightforward meaning. It is clear from this verse that those in these categories were not entitled to a portion in Eretz Yisrael.

176 The Gemara concludes: One Sage juxtaposes the protesters to the spies, so that Joshua and Caleb inherited the portions of both; and one Sage does not juxtapose the protesters to the spies.

177 The Gemara presents Rav Pappa's fourth question. And Rav Pappa said to Abaye: And according to the one who juxtaposes the protesters to the spies, is it reasonable that Joshua and Caleb contested the spies and inherited all of Eretz Yisrael? Many of the Jewish people protested in the wilderness at one point or another, and it cannot be that Joshua and Caleb received all of their portions by virtue of not participating in the sin of the spies. Abaye said to him: We are referring to the protesters who were among the assembly of Korah. This term is not referring to all those who protested, but rather to the 250 individuals who protested along with Korah, and it is their portions of land that Joshua and Caleb received.

178 The Gemara returns to the baraita and presents the fifth question. And Rav Pappa said to Abaye: Granted, according to the one who says that Eretz Yisrael was divided among those who left Egypt, this is as it is written with regard to the inheritance of the tribe of Manasseh: "And ten parts fell to Manasseh, beside the land of Gilead and Bashan, which is beyond the Jordan; because the daughters of Manasseh had an inheritance among his sons" (Joshua 17:5–6). Six were the portions of the six fathers' houses of Manasseh listed in a previous verse (Joshua 17:2), and four parts of the daughters of Zelophehad; that is ten parts.

179 But according to the one who says that Eretz Yisrael was divided among those who entered Eretz Yisrael, there were eight parts, as follows: Six were the portions of the six fathers' houses, and two of theirs, which they received from the estate of their grandfather Hepher, of whom Zelophehad was the firstborn; that is eight. Zelophehad himself, by contrast, was not entitled to a portion, as he did not enter Eretz Yisrael.

180 The Gemara objects: And according to your reasoning, but even according to the one who says that Eretz Yisrael was divided among those who left Egypt, there are only nine parts, as the mishna (116b) states that Zelophehad's daughters took three parts. Rather, what have you to say? How can the mishna be reconciled with the verse? One must say that according to the opinion that Eretz Yisrael was divided among those who left Egypt, they had one unmentioned paternal uncle who died without children, and Zelophehad's estate received a share of his portion. So too, according to the opinion that Eretz Yisrael was divided among those who entered Eretz Yisrael, it could be said that they had two unmentioned paternal uncles, so that they received two additional portions of land.

181 The fact that they received a portion from an uncle may be derived from a verse. As it is taught in a baraita that the verse states: "You shall give [naton titten] them a possession of an inheritance" (Numbers 27:7). This is referring to the inheritance of their father. The verse continues: "Among their father's brothers"; this is referring to the inheritance of their father's father. The verse continues: "And you shall pass the inheritance of their father to them"; this is referring to the portion of the firstborn to which Zelophehad was entitled.

182 The baraita continues. Rabbi Eliezer ben Ya'akov says: They also took a portion of their father's brother, as it is stated: "You shall give [naton titten]." The double expression indicates that they received an additional portion. The Gemara notes: And according to the one who says that they had two paternal uncles, that additional portion is derived from the phrase: "You shall give them a possession of an inheritance," which would be superfluous were it not to indicate an additional portion.

183 The Gemara presents the sixth question. And Rav Pappa said to Abaye: In the verse quoted above, what portions is it counting? If the verse is counting children, i.e., the portions of those who

inherited from their antecedents, as with the daughters of Zelophehad, there were many such portions, and the verse did not enumerate all portions inherited by all members of the tribe. And if the verse is counting fathers' houses, there are only six, as Hepher is included among the six enumerated in Joshua 17:2. Why, then, does the verse count the portions of the daughters of Zelophehad separately?

184 The Gemara answers: Actually, the verse is counting fathers' houses. And by also counting the inheritance of Zelophehad's daughters, the verse teaches us this: That the daughters of Zelophehad took the portion of the firstborn due their father. Evidently, Eretz Yisrael is considered already in possession of one who was entitled to his portion of the land, even before the land was assigned. Although a firstborn son does not take a double portion of the property due to his deceased father as he does the property his father possessed, it is considered that Hepher possessed the portion that would eventually be assigned to him, and that Zelophehad was entitled to a double portion.

185 § The Gemara continues its discussion of the baraita. The Master says: And the sons of the spies and of the protesters took portions of the land in the merit of their paternal grandfathers and in the merit of their maternal grandfathers if those grandfathers were among those who left Egypt. The Gemara asks: But isn't it taught in a baraita (Tosefta 7:10): The sons of the spies and of the protesters took portions in their own merit? The Gemara answers: This is not difficult: This baraita, which states they took portions in the merit of their grandfathers, is written in accordance with the opinion of the one who says that Eretz Yisrael was divided among those who left Egypt; and that baraita, which states that they took portions in their own merit, is written in accordance with the opinion of the one who says that Eretz Yisrael was divided among those who entered Eretz Yisrael.

186 The Gemara suggests another answer. And if you wish, say instead: This baraita and that baraita are written in accordance with the opinion that asserts that Eretz Yisrael was divided among those who entered Eretz Yisrael, and it is not difficult: This baraita is discussing one who was twenty years old when the Jewish people entered Eretz Yisrael, and therefore he took a portion in his own merit, and that baraita is discussing one who was not twenty years old.

187 § The mishna teaches: And Zelophehad took an additional portion that he received from Hepher, because he was a firstborn, and a firstborn takes two portions of inheritance from his father. The Gemara asks: But why was he entitled to the double portion of the firstborn? His portion of land is property merely due to Hepher, as Hepher never actually possessed the land, and the halakha is that a firstborn does not take a double portion of property due to the deceased as he does of property the deceased possessed. Rav Yehuda says that Shmuel says: This clause of the mishna is stated with regard to tent pegs and other assorted movable property that Hepher possessed.

188 Rabba raises an objection from a baraita: Rabbi Yehuda says: The daughters of Zelophehad took four parts, as it is stated: "And ten parts fell to Manasseh" (Joshua 17:5). Clearly, this is referring to portions of land, and not simply movable property. Rather, Rabba says: Eretz Yisrael is considered already in possession of one who was entitled to his portion of inheritance land, even before the land was assigned.

189 The Gemara raises an objection from a baraita. Rabbi Ḥideka said: Shimon HaShikmoni was my colleague among the students of Rabbi Akiva, and so would Rabbi Shimon HaShikmoni say: Even before turning to God for guidance, Moses our teacher knew that the daughters of Zelophehad were inheritors and that they were entitled to their father's portion, as well as his share in Hepher's

portion. But he did not know if they were entitled to take a portion of the firstborn of Hepher's portion or not.

190 Rabbi Ḥideka continues citing Rabbi Shimon HaShikmoni: And the Torah portion concerning the laws of inheritances was fit to have been written through God initiating a commandment to Moses, without mentioning Zelophehad's daughters. But by demonstrating their desire for land in Eretz Yisrael the daughters of Zelophehad merited that the portion was written through a response to them.

191 Rabbi Ḥideka continues citing Rabbi Shimon HaShikmoni: And Moses our teacher similarly knew that the wood gatherer, who gathered wood on Shabbat (see Numbers 15:32–36), was to be punished by death, as it is stated: "Every one that profanes it shall be put to death" (Exodus 31:14), but he did not know by which death penalty the wood gatherer must die. And the Torah portion concerning the punishment of the wood gatherer was fit to have been written through God initiating a commandment to Moses, to teach which form of court-imposed capital punishment is administered to one who violates Shabbat. But the wood gatherer was found guilty, and the portion was written through the incident involving him. This is to teach you

192 that merit is brought about by means of one who is meritorious and liability by means of one who is liable. Accordingly, the daughters of Zelophehad merited that the Torah portion concerning a positive matter be written through them, and the wood gatherer deserved that a portion concerning a negative matter be written through him. This concludes Rabbi Ḥideka's citation of Rabbi Shimon HaShikmoni.

193 The Gemara states its objection: And if it enters your mind to say that Eretz Yisrael was already in possession of the Jewish people even before the land was assigned, what was Moses uncertain about with regard to the right of Zelophehad's daughters to collect a double portion; after all, Hepher's portion in the land was in his possession, and Zelophehad was the firstborn?

194 The Gemara answers: This matter itself is what Moses was uncertain about, as it is written: "And I will give it to you for a heritage [morasha]: I am the Lord" (Exodus 6:8). Moses was unsure if the verse should be understood: It is an inheritance [yerusha] for you from your fathers, such that it is considered in the possession of those who left Egypt; or perhaps the verse indicates another matter, that the generation of those who left Egypt bequeath [morishin] the portions to others but they do not inherit [yoreshin] the portions themselves, because they are destined to die in the wilderness.

195 The Gemara continues: And God resolved the question for him: The verse teaches both of them. It is an inheritance for you from your fathers and is considered in your possession; and also the generation that left Egypt bequeath but they do not inherit. And this is the meaning of that which is written in the song that the Jewish people sang after the splitting of the Red Sea: "You will bring them in, and plant them in the mountain of Your inheritance" (Exodus 15:17). It is not stated: You will bring us in, rather: "You will bring them in," which teaches that in their song, the Jewish people were prophesying that their generation would never enter Eretz Yisrael, but they did not know what they were prophesying.

196 § The Gemara continues its discussion of the incident involving Zelophehad's daughters. The verse states: "And they stood before Moses, and before Eleazar the priest, and before the princes and all the congregation" (Numbers 27:2). The Gemara asks: Is it possible that Zelophehad's daughters stood before Moses and then Eleazar to ask their question, and they said nothing to them; and then

the daughters stood before the princes and all the congregation to ask them? How would the princes or the congregation know an answer if Moses and Eleazar did not?

197 The Gemara answers: Rather, transpose the verse and interpret it: First, the daughters went to the congregation and ultimately came to Moses, this is the statement of Rabbi Yoshiya. Abba Ḥanan says in the name of Rabbi Eliezer: Those enumerated in the verse were all sitting in the house of study, and Zelophehad's daughters went and stood before all of them at once. They were not asked separately; rather, the order of the verse reflects their stature.

198 The Gemara clarifies: With regard to what do they disagree? One Sage, Abba Ḥanan, holds that one may show honor to a student in the presence of the teacher, such that the verse would mention all the others even though they were in the presence of Moses; and one Sage, Rabbi Yoshiya, holds one may not show honor to a student in the presence of the teacher, such that only Moses would have been mentioned if they were all in the same place.

199 The Gemara concludes: And the halakha is that one may show honor to a student, and the halakha is that one may not show honor. The Gemara asks: This is difficult, as there is a contradiction between the one halakha and the other halakha. The Gemara answers: The contradiction between the one halakha and the other halakha is not difficult, as this ruling, that one may show honor, was stated where his teacher himself accords the student honor. In such a case, others also may show the student honor. And that ruling, that one may not show honor, was stated where his teacher does not accord him honor.

200 § The Sages taught: The daughters of Zelophehad are wise, they are interpreters of verses, and they are righteous.

201 The Gemara proves these assertions. That they are wise can be seen from the fact that they spoke in accordance with the moment, i.e., they presented their case at an auspicious time. As Rabbi Shmuel bar Rav Yitzḥak says: Tradition teaches that Moses our teacher was sitting and interpreting in the Torah portion about men whose married brothers had died childless, as it is stated: "If brothers dwell together, and one of them dies, and has no child, the wife of the dead shall not be married abroad to one not of his kin; her husband's brother shall come to her, and take her for him as a wife" (Deuteronomy 25:5). The daughters of Zelophehad said to Moses: If we are each considered like a son, give us each an inheritance like a son; and if not, our mother should enter into levirate marriage. Immediately upon hearing their claim, the verse records: "And Moses brought their cause before the Lord" (Numbers 27:5).

202 That they are interpreters of verses can be seen from the fact that they were saying: If our father had had a son, we would not have spoken; but because he had no son, we are filling the role of the heir. The Gemara asks: But isn't it taught in a baraita: They would say, if he had had a daughter, we would not have spoken? Rabbi Yirmeya said: Delete from the baraita here the word: Daughter. As they were themselves daughters, this cannot have been their claim. Abaye said that the baraita need not be emended, and should be understood as follows: Even if there was a daughter of a son of Zelophehad, we would not have spoken, for she would have been the heir.

203 That they are righteous can be seen from the fact that they did not rush to marry, but rather waited to marry those fit for them. Rabbi Eliezer ben Ya'akov teaches: Even the youngest to be married among them was not married at less than forty years of age.

[204] The Gemara asks: Is that so? But doesn't Rav Ḥisda say: If a woman marries when she is less than twenty years old, she is able to give birth until she reaches the age of sixty; if she marries when she is twenty years old or older, she is able to give birth until she reaches the age of forty; if she marries when she is forty years old or older, she is no longer able to give birth at all. If so, how could Zelophehad's daughters have waited until the age of forty to marry? Rather, since they are righteous women, a miracle was performed for them, like the one done for Jochebed. As it is written: "And a man of the house of Levi went, and took as a wife a daughter of Levi" (Exodus 2:1).

[205] The Gemara asks: Is it possible that this is Jochebed? Jochebed was then 130 years old and the verse called her a daughter, indicating one who is very young. Jochebed's age is established based on a tradition concerning the number of Jacob's descendants who came to Egypt, as follows: While the verse states that Leah had thirty-three descendants (Genesis 46:15), only thirty-two were enumerated. This was explained as Rabbi Ḥama bar Ḥanina says: This "daughter of Levi" is Jochebed, whose conception occurred on the journey as the family of Jacob descended to Egypt, and she was born within the walls, i.e., having entered Egypt, as it is written: "And the name of Amram's wife was Jochebed, the daughter of Levi, who was born to Levi in Egypt" (Numbers 26:59).

[206] One can infer from the verse: Her birth was in Egypt, but her conception was not in Egypt. Since the Jewish people were in Egypt for 210 years and Moses was eighty years old at the time of the Exodus, Jochebed must have been 130 years old when Moses was born. The Gemara therefore asks: And why does the verse call her "a daughter"? Rav Yehuda bar Zevida says: This teaches that her signs of youth miraculously came into being again. The flesh became smooth, the wrinkles were straightened out, and the youthful beauty returned to its place.

[207] The verse concerning Amram's marriage to Jochebed states: "And a man of the house of Levi went, and took as a wife a daughter of Levi" (Exodus 2:1). The Gemara asks: Since Jochebed had already been married to Amram for some years, as Miriam and Aaron were already born, the verse should have stated: And he took back as a wife. Rav Yehuda bar Zevida says: The wording of the verse teaches that Amram performed for her a formal act of marriage as though he were marrying her for the first time. He seated her in a bridal palanquin [be'appiryon], and Aaron and Miriam were singing before her, and the ministering angels were saying: "A joyful mother of children" (Psalms 113:9).

[208] § The Gemara returns to discuss Zelophehad's daughters: Later on, the verse lists them according to their age, stating: "For Mahlah, Tirzah, and Hoglah, and Milcah, and Noah, the daughters of Zelophehad, were married" (Numbers 36:11), and here the verse lists them in a different order, according to their wisdom: "And these are the names of his daughters: Mahlah, Noah, and Hoglah, and Milcah, and Tirzah" (Numbers 27:1). This supports the ruling of Rabbi Ami, as Rabbi Ami says: In the context of sitting in judgment or learning Torah, follow the participants' wisdom in determining the seating, so that the wisest is granted the highest honor, and in the context of reclining for a meal, follow the participants' age. Rav Ashi says: And this is so only when one is outstanding in wisdom, then wisdom trumps age; and this is so only when one of the participants is outstanding in age, i.e., particularly old, then age trumps wisdom.

[209] The Gemara cites an alternative opinion: The school of Rabbi Yishmael taught: The daughters of Zelophehad were equal in stature, as it is stated: "For Mahlah, Tirzah, and Hoglah, and Milcah, and

Noah, the daughters of Zelophehad, were [vatihyena] married.” The word “vatihyena” demonstrates: There was one uniform existence [havaya], i.e., spiritual level, for all of them.

210 § Rav Yehuda says that Shmuel says: The daughters of Zelophehad were permitted to marry members of any of the tribes, as it is stated: “Let them be married to whom they think best” (Numbers 36:6). But how do I realize the meaning of the continuation of the same verse: “Only into the family of the tribe of their father shall they be married” (Numbers 36:6), according to which they were permitted to marry only members of their own tribe? The verse offered them good advice, that they should be married only to those fit for them, who were often men from within the family.

211 Rabba raised an objection from a baraita taught concerning the prohibition against eating consecrated foods while in a state of ritual impurity. Moses was commanded: “Say to them: Whoever will be of all your descendants throughout your generations, who approaches to the holy things, which the children of Israel consecrate to the Lord, having his uncleanness upon him, that soul shall be cut off from before Me” (Leviticus 22:3). Which people are referred to in the phrase “say to them”? It is referring to those standing at Mount Sinai. Which people are referred to in the phrase “throughout your generations”? These are the coming generations. If the halakha is stated to the fathers, why is it stated to the sons; and if the halakha is stated to the sons, why is it stated to the fathers? This is because there are mitzvot for the fathers that are not for the sons, and there are mitzvot for the sons that are not for the fathers.

212 The baraita continues: For the fathers, the verse states: “And every daughter who possesses an inheritance from the tribes of the children of Israel, shall be wife to one of the family of the tribe of her father” (Numbers 36:8). This mitzva, that the woman should marry a member of her own tribe, applied only to the first generation that received tribal portions of Eretz Yisrael. And, by contrast, there were many mitzvot, e.g., all the mitzvot that applied only from the time that Eretz Yisrael was settled, which the sons were commanded to fulfill but which the fathers were not commanded to fulfill. Because there are mitzvot for the fathers that are not for the sons, and there are mitzvot for the sons that are not for the fathers, the verse needed to state, i.e., to address, the fathers, and it needed to state, i.e., to address, the sons.

213 Rabba states his objection: In any event, the baraita teaches: For the fathers, the verse states: “And every daughter who possesses an inheritance from the tribes of the children of Israel, shall be wife to one of the family of the tribe of her father.” This indicates that this was a mitzva for that entire generation, including Zelophehad’s daughters, in contrast to the statement of Shmuel. The Gemara explains: He, Rabba, raised the objection, and he resolved it: This mitzva applied to everyone except for the daughters of Zelophehad, who were explicitly permitted to marry members of any tribe.

214 The Master says in the baraita cited above: For the fathers, the verse states: “And every daughter who possesses an inheritance from the tribes of the children of Israel, shall be wife to one of the family of the tribe of her father.” For the fathers, yes, this is the mitzva, but for the sons, it is not so. The Gemara asks: From where may it be inferred? Rava said that the verse states there: “This is the matter that the Lord has commanded” (Numbers 36:6), meaning: This matter will not be practiced except in this generation.

215 Rabba Zuti said to Rav Ashi: If that is so, then concerning the phrase “this is the matter” written with regard to an offering slaughtered outside the Tabernacle (see Leviticus 17:2–3), so too, is it the

halakha that it will not be practiced except in this generation? Certainly that is not so, as that prohibition applies in all generations. What is the difference between the two passages? Rav Ashi answered: It is different there, with regard to offerings slaughtered outside the Tabernacle or Temple, as it is written: “Throughout their generations” (Leviticus 17:7), indicating that the prohibition is in effect in all generations.

216 Rabba Zuti asked Rav Ashi about another instance of the same phrase. In the case of “this is the matter” written with regard to the heads of the tribes, in the introductory verse to the halakhot of vows: “And Moses spoke to the heads of the tribes of the children of Israel, saying: This is the matter that the Lord has commanded” (Numbers 30:2), is it also the case that the halakhot of vows will not be practiced except in this generation? Rav Ashi said to him: The halakha in that case, that of vows, is derived through a verbal analogy between the word “this” stated here, in the verse discussing vows, and the word “this” stated there, in the verse discussing offerings slaughtered outside the Tabernacle or Temple, which is applicable in all generations.

217 The Gemara asks: This halakha, concerning the daughter inheriting her father’s portion, let it be derived through a verbal analogy between the word “this” stated here, with regard to inheritance, and the word “this” stated there, in the verse discussing offerings, as well. The Gemara rejects that comparison: What is this suggestion? Granted, there, i.e., with regard to offerings slaughtered outside the Tabernacle or Temple and with regard to vows, the phrase “this is the matter” was necessary for deriving other halakhot through a verbal analogy, as will be explained later. Therefore, the term may also be employed to teach that the halakha applies in all generations. But here, with regard to a daughter’s inheritance, for what other halakha was this phrase necessary? If the halakha truly applies for posterity, let the verse be silent and refrain from addressing when this halakha applies by not stating “this is the matter,” and I would know that it is for all generations, as is the case with all other mitzvot.

218 The Gemara explains: What is the verbal analogy for which the phrase was necessary? As it is taught in a baraita: It is stated here, with regard to vows: “This is the matter,” and it is stated there, with regard to offerings slaughtered outside the Tabernacle or Temple: “This is the matter.” Just as there the mitzva applies to Aaron and his sons and all Israel, so too here, with regard to vows, the mitzva applies to Aaron and his sons and all Israel. And just as here the mitzva applies to the heads of the tribes, as explicitly stated in the verse cited above, so too there, with regard to offerings slaughtered outside the Tabernacle or Temple, there is particular relevance to the heads of the tribes.

219 The Gemara analyzes the cited baraita. The Master says: Just as there, with regard to offerings, the mitzva applies to Aaron and his sons and all Israel, so too here, with regard to vows, the mitzva applies to Aaron and his sons and all Israel. The Gemara asks: With regard to what halakha is this verbal analogy stated? Rav Aḥa bar Ya’akov says: This is written to say that the dissolution of vows can be performed by three laymen with no particular expertise in the halakhot of vows, just as the prohibition of offerings slaughtered outside the Tabernacle or Temple applies to all of the Jewish people, including laymen.

220 The Gemara objects: But the phrase “the heads of the tribes” is written explicitly in the portion of the vows, indicating that the matter is not entrusted to laymen. The Gemara answers: It is as Rav Ḥisda says that Rabbi Yoḥanan says in a different context: The mention of the heads of tribes teaches

that vows may be dissolved by a single expert halakhic authority; so too here, this phrase teaches that vows can be nullified by a single expert halakhic authority.

221 The Gemara analyzes the next clause of the cited baraita: And just as here the mitzva applies to the heads of the tribes, so too there, with regard to offerings slaughtered outside the Tabernacle or Temple, there is particular relevance to the heads of the tribes. The Gemara asks: With regard to what halakha are the heads of the tribes linked to the prohibition of slaughtering offerings outside the Tabernacle or Temple? Rav Sheshet says: This is written to say that there is a concept of requesting dissolution of consecration of consecrated property, just as one can request dissolution of a vow.

222 The Gemara asks: And according to Beit Shammai, who say that there is no possibility of requesting that a halakhic authority dissolve a vow of consecrated property, this cannot explain the connection of the heads of the tribes to offerings slaughtered outside the Tabernacle or Temple. As we learned in a mishna (Nazir 30b): Beit Shammai say: Consecration that one performed in error is nevertheless effective as consecration, because one's mindset does not supersede his verbal declaration; and Beit Hillel say: This is not consecration. Accordingly, in the opinion of Beit Shammai, what do they do with this seemingly analogous usage of "this" and "this," in the portions of offerings slaughtered outside the Tabernacle or Temple and vows, respectively?

223 The Gemara answers: Beit Shammai require "this is the matter" written of offerings slaughtered outside the Tabernacle or Temple to teach that for the act of slaughtering, he is liable to receive excision from the World-to-Come [karet]; but he is not liable to receive karet for the act of pinching the neck of a consecrated bird outside the Tabernacle or Temple, which is excluded from the category of slaughtering in this mitzva. And Beit Shammai require "this is the matter" written of the heads of the tribes in the portion about vows to teach that only a halakhic authority can dissolve vows, but a husband cannot dissolve them. The halakhic authority can dissolve the vow for a petitioner, but a woman's husband or father cannot dissolve her vow. And, conversely, a husband can nullify his wife's or his daughter's vows on the day that he hears the vow, regardless of her mindset, but a halakhic authority cannot nullify vows in this manner.

224 The Gemara asks: But according to Beit Shammai, who do not have this verbal analogy, meaning that they do not recognize as authoritative the verbal analogy that links vows to offerings slaughtered outside the Tabernacle or Temple, from where do they derive that dissolution of vows can be performed by three laymen? The Gemara answers: Beit Shammai derive it from that which is taught in a baraita: The verse states at the end of a passage relating to the halakhot of the Festivals: "And Moses declared to the children of Israel the appointed seasons of the Lord" (Leviticus 23:44). In explaining the verse, Rabbi Yosei HaGelili says:

225 The Festivals of the Lord were stated, but Shabbat, which commemorates Creation, was not stated. Ben Azzai says: The Festivals of the Lord were stated, but the dissolution of vows was not stated. This concludes the baraita.

226 The Gemara recounts: Rabbi Yosei bar Natan learned this baraita and did not know how to explain it. He followed Rav Sheshet to Neharde'a in order to ask him about it, but he did not find him there. He followed him to Meḥoza and found him, and he said to him: What is meant by Rabbi Yosei HaGelili's statement: The Festivals of the Lord were stated, but Shabbat, which commemorates Creation, was not stated? What does he mean, as Shabbat of Creation is explicitly mentioned in that section of the Torah (Leviticus 23:3)?

227 Rav Sheshet said to him: The Festivals of the Lord require sanctification by the court. This means that the start of the month, which is dependent upon the appearance of the New Moon, which determines the Festivals, can be established only by a court composed of experts. Shabbat, which commemorates Creation, does not require sanctification by the court. Shabbat is sanctified every week independent of any court action. It may enter your mind to say: Since Shabbat is written adjacent to the Festivals, it should require sanctification by the court as do the Festivals. Rabbi Yosei HaGelili teaches us that Shabbat does not require this.

228 Rabbi Yosei bar Natan asked: What is meant by ben Azzai's statement: The Festivals of the Lord were stated, but the dissolution of vows was not stated? After all, the Torah writes explicitly about the dissolution of vows. Rav Sheshet answered him: The Festivals of the Lord require experts to determine when the months begin and when the Festivals will be observed, but the dissolution of vows does not require experts.

229 The Gemara questions this explanation. But it is written: "The heads of the tribes" (Numbers 30:2), in the portion discussing the halakhot of vows. How, then, can it be said that vows can be dissolved by laymen? Rav Ḥisda says that Rabbi Yoḥanan says: The phrase teaches that vows can be dissolved by a single expert authority. In any event, the Gemara has established that Beit Shammai can derive that dissolution of vows can be performed by laymen in the manner stated by ben Azzai, as explained by Rav Sheshet.

230 § The Gemara discusses a mishna that addresses the issue of inter-tribal marriages. We learned in a mishna there (Ta'anit 26b): Rabban Shimon ben Gamliel said: There were no days as joyous for the Jewish people as the fifteenth of Av and as Yom Kippur, as on these days the daughters of Jerusalem would emerge in white garments, which each woman borrowed from another. Why did they borrow garments? They did this so as not to embarrass one who did not have her own white garments. The Gemara analyzes the mishna: Granted that Yom Kippur is a day of joy, because it is a day of pardon and forgiveness, and moreover, it is the day on which the last Tablets of the Covenant were given. But what is the special joy of the fifteenth of Av?

231 Rav Yehuda says that Shmuel says: This was the day when the members of different tribes were permitted to marry into one another's tribe. Such marriages were restricted for the first generation to enter Eretz Yisrael, as discussed above (120a). What verse did the sages of that time interpret in support of their conclusion that this halakha was no longer in effect? The verse states: "This is the matter" (Numbers 36:6), meaning, this matter shall be practiced only in this generation, in which Eretz Yisrael is being divided among the tribes.

232 Rabba bar bar Ḥana says that Rabbi Yoḥanan offered another explanation: The fifteenth of Av was the day when the tribe of Benjamin was permitted to enter into the congregation of the other tribes of Israel through marriage, after the other tribes found a way to dissolve the vow that had prohibited them from marrying a member of the tribe of Benjamin in the aftermath of the episode of the concubine in Gibeah (Judges, chapters 19–20). As it is written: "And the men of Israel had taken an oath in Mizpah, saying: None of us shall give his daughter to Benjamin as a wife" (Judges 21:1). The Gemara asks: What verse did the sages of that time interpret that enabled them to dissolve this vow? The verse states: "None of us," and not: None of our children; therefore, the oath applied only to the generation that had taken the oath.

[233] Rav Dimi bar Yosef says that Rav Naḥman says: The fifteenth of Av was the day on which those designated to perish in the wilderness stopped dying, as the entire generation that had left Egypt had died due to the sin of the spies (Numbers 14:29–30). As the Master says: As long as those designated to perish in the wilderness had not stopped dying,

[234] God did not speak with Moses, as it is stated: “So it came to pass, when all the men of war were consumed and dead from among the people” (Deuteronomy 2:16), and juxtaposed to that verse it is written: “That the Lord spoke to me, saying” (Deuteronomy 2:17). Moses indicates: Only after the last of that generation had died, was the speech of God directed to me. When the Jewish people realized that the decree had been lifted, the day was established as a permanent day of rejoicing.

[235] The Gemara continues to cite explanations for the significance of the fifteenth of Av. Ulla says: The fifteenth of Av was the day when King Hoshea, son of Ela, removed the guards [pardesaot] that Jeroboam, son of Nevat, placed on the roads so that Israel would not ascend to Jerusalem for the pilgrimage Festival. By doing so, King Hoshea renewed the access to Jerusalem for pilgrims.

[236] Rav Mattana says: The fifteenth of Av was the day when the slain victims of Beitar were afforded burial, several years after they were killed and the Roman emperor Hadrian decreed that they were not to be buried (see Gittin 57a). As Rav Mattana says: On the day that the slain of Beitar were afforded burial, the Sages in Yavne instituted the blessing: Blessed is He Who is good and Who does good. The term: Who is good, is to give thanks that the corpses did not decompose despite the long delay; and the term: And Who does good, is to give thanks that the slain ones were ultimately afforded burial.

[237] Rabba and Rav Yosef both say: The fifteenth of Av is the day when they stop cutting wood for the arrangement of wood on the altar. It is taught in a baraita that Rabbi Eliezer the Great says: Once the fifteenth of Av came, the force of the sun would weaken, and from this date they would not cut additional wood for the arrangement, because wood cut from then on would not dry properly and would be unfit for use in the Temple. Rav Menashe said: And the people called the fifteenth of Av: The day of the breaking of the sickle [maggal], as they did not need the lumbering tools until the following year.

[238] The Gemara adds: From this point forward, when the nights lengthen, one who adds [demosif] to his nightly Torah study will add [yosif] to his life, and he who does not add, that person is yesif. The Gemara asks: What is the meaning of the term yesif ? Rav Yosef teaches: It means that his mother will bury him, as he will die during his mother’s lifetime.

[239] § After discussing the generation of those who died in the wilderness, the Gemara mentions a tradition that relates to that generation. The Sages taught: Seven people spanned in their lifetimes the whole world in its entirety, i.e., their lives have spanned all of human history. Methuselah saw Adam in his lifetime; Shem saw Methuselah; Jacob saw Shem; Amram saw Jacob; Ahijah the Shilonite saw Amram; Elijah saw Ahijah the Shilonite; and Elijah is still alive.

[240] The Gemara asks: And is it true that Ahijah the Shilonite saw Amram? But it is written: “And no man among them remained, save Caleb, son of Jephunneh, and Joshua, son of Nun” (Numbers 26:65). Since Amram died well before the Jewish people left Egypt, in order to have lived at the time of Amram, Ahijah would have had to be an adult at the time of the Exodus. How, then, could he have lived through the generation of those who died in the wilderness?

241 Rav Hamnuna says: The decree of death pronounced for the generation of the spies was not decreed upon the tribe of Levi, as it is written: “Your carcasses shall fall in this wilderness, and all those who were counted among you, according to your whole number, from twenty years old and upward” (Numbers 14:29). The verse is interpreted: The decree applies to one whose count in the census is from the age of twenty and up, excluding the tribe of Levi, whose count is from the age of thirty and up. Ahijah was a Levite, and he was not subject to the decree.

242 The Gemara asks: And is it true that no one from the other tribes entered Eretz Yisrael? But isn’t it taught in a baraita: Yair, son of Manasseh, and Machir, son of Manasseh, were born in the days of Jacob, and they did not die until the Jewish people entered Eretz Yisrael, as it is stated: “And the men of Ai killed of them about thirty-six men” (Joshua 7:5). And concerning this verse, it is taught: Literally thirty-six people were killed, this is the statement of Rabbi Yehuda.

243 Rabbi Neḥemya said to him: But is it stated that thirty-six were killed? Isn’t it stated nothing other than: “About thirty-six” were killed? Rather, this unusual term is referring to Yair, son of Manasseh, who was equivalent to the majority of the Sanhedrin, whose maximum number of judges is seventy-one, of which thirty-six is a slight majority. Evidently, then, Yair, son of Manasseh also survived the time in the wilderness.

244 Rather, Rav Aḥa bar Ya’akov said: The decree of death was not decreed either upon those less than twenty years old or upon those more than sixty years old at the time of the sin of the spies. The Gemara explains: Not upon those less than twenty years old, as it is written: “From twenty years old and upward” (Numbers 14:29). And not upon those more than sixty years old, because he learns that there is a verbal analogy between “and upward” in the verse cited, and “and upward” from the halakhot of valuations, in the phrase: “From sixty years old and upward” (Leviticus 27:7). Just as there, concerning valuations, more than sixty years old is comparable to less than twenty years old, as there is a distinct category of those between the ages of twenty and sixty, so too here, more than sixty years old is comparable to less than twenty years old insofar as those older were not subject to the sentence. Yair, son of Manasseh, who was already older, did not die in the wilderness.

245 § A dilemma was raised before the Sages: Was Eretz Yisrael divided according to the tribes, meaning that each of the twelve tribes received an equal portion, and the members of each tribe divided these tribal portions according to their numbers; or perhaps Eretz Yisrael was divided according to men’s skulls, meaning that a certain area of land was given to each individual, and the size of the tribal allotments was a function of the tribe’s population?

246 The Gemara suggests: Come and hear a proof. The verse states: “According to the lot shall their inheritance be divided between the more and the fewer” (Numbers 26:56). Evidently, whether the tribe had many or few people, the tribe as a whole received a portion equal to that of every other tribe, and each individual within the tribe received a different amount of land than those in other tribes.

247 And another proof can be seen from that which is taught in a baraita: Eretz Yisrael is destined to be divided among thirteen tribes during the messianic era, unlike the division in the time of Joshua. As, initially the land was divided only among twelve tribes, as the Torah does not allot a portion to the tribe of Levi. The baraita continues: And the land was divided only with money, such that each tribe that received a portion more valuable than average compensated another tribe that had received a portion less valuable than average, as it is stated: “Between the more and the fewer.” Rabbi Yehuda

said: The area of land whose yield is a se’a of grain in Judea is so valuable that it is equal in value to the area necessary to produce five se’a of grain in the Galilee.

248 The baraita continues: And the land was divided only by a lottery, as it is stated: “Only by lot shall the land be divided” (Numbers 26:55). And the land was divided only with the Urim VeTummim, as it is stated: “By the pronouncement of the lot” (Numbers 26:56).

249 The baraita asks: How can these texts be reconciled? One indicates that the land was divided by lottery and the other indicates that the land was divided with the Urim VeTummim. The baraita explains: Elazar the High Priest was dressed with the Urim VeTummim, and Joshua and all the Jewish people were standing before him, and a lottery receptacle containing the names of the tribes and another lottery receptacle containing the names of the boundaries of the twelve different regions of Eretz Yisrael were placed before him.

250 And Elazar would ascertain the assignments of land with the Divine Spirit and say, in accordance with the notification of the Urim VeTummim: The name of the tribe Zebulun now emerges from the receptacle in the lottery, and the region whose boundary is Akko emerges with it from the other receptacle. After stating this, he would mix the lots in the receptacle of the tribes and the lot of Zebulun would emerge in his hand. He would then mix the lots in the receptacle of the boundaries, and the boundary of Akko would emerge in his hand.

251 And Elazar would repeat the process and ascertain the assignments with the Divine Spirit and say: The name of the tribe Naftali now emerges, and the region whose boundary is Ginnosar emerges with it from the other receptacle. After stating this, he would mix the lots in the receptacle of the tribes and the lot of Naftali would emerge in his hand. He would then mix the lots in the receptacle of the boundaries, and the boundary of Ginnosar would emerge in his hand. And so he would proceed for each and every tribe.

252 The baraita continues: And unlike the division in this world, i.e., in the time of Joshua, will be the division of portions in the World-to-Come, i.e., in the messianic era. In this world, if a person has a field of grain, he does not have a field for an orchard; if he has a field for an orchard, he does not have a field of grain. This is so because each climate and variety of soil is suitable for a different type of produce. But in the World-to-Come, you do not have any person who does not have a portion in Eretz Yisrael in the mountain, and in the lowland, and in the valley, as it is stated: “The gate of Reuben, one; the gate of Judah, one; the gate of Levi, one” (Ezekiel 48:31), which is to say that everyone’s portion will be the same. And the Holy One, Blessed be He, will distribute it to them personally, as it is stated: “And these are their portions, says the Lord” (Ezekiel 48:29). This is the conclusion of the baraita.

253 The Gemara states its proof: In any event, the baraita teaches: As initially, the land was divided only among the twelve tribes. Conclude from the baraita that the land was divided according to the tribes, and not apportioned directly to each person. The Gemara affirms: Conclude from the baraita that this is the case.

254 § The Gemara returns to analyze the baraita just cited. The Master says above: Eretz Yisrael is destined to be divided among thirteen tribes. The Gemara asks: As to the other, thirteenth portion, for whom is it? Rav Ḥisda said: For the king, as it is written: “And they that serve the city, out of all the tribes of Israel, shall till it” (Ezekiel 48:19). The verse is understood as meaning that the nation will collectively allot a portion to the king, who serves the needs of the nation. Rav Pappa said to Abaye:

Why is the verse interpreted in this way? Say that the verse speaks of mere wages [rongar], so that the king has rights to collect taxes, but not an actual portion of land. The Gemara answers: That possibility should not enter your mind, as it is written: “And the residue shall be for the prince, on the one side and on the other of the sacred offering and of the possession of the city” (Ezekiel 48:21). Based on this latter verse, the former verse speaks of a specific tract of land.

255 The baraita also states: And the land was divided only with money, as it is stated: “Between the more and the fewer.” With regard to what is this said? If we say it is with regard to beauty and ugliness, i.e., that those who receive inferior-quality land received monetary compensation from the others, is that to say we are dealing with fools [beshufetanei] who would agree to take inferior-quality land in exchange for more money? Rather, it is said with regard to the difference between land that is close to Jerusalem and land that is far from Jerusalem. Those whose property was close to Jerusalem compensated those whose property was farther away.

256 The Gemara notes: There is a dispute between tanna’im with regard to the manner by which this compensation was given: Rabbi Eliezer says: The tribes compensated each other with money. Rabbi Yehoshua says: The tribes compensated each other with land by giving extra land to those whose portions were in less advantageous locations.

257 The baraita also states: And the land was divided only by a lottery, as it is stated: “Only by lot shall the land be divided” (Numbers 26:55). The Sages taught: In the phrase “only by lot,” the term “only” indicates that Joshua and Caleb are excluded from this proviso. The Gemara asks: With regard to what were they excluded? If we say that they did not take portions at all, now that it has already been taught that they took the portions of the spies (118b) that were not their own, is it necessary to teach that they took their own portions? It goes without saying that they did collect their portions. Rather, the exclusion teaches that they did not take portions by a lottery but according to explicit designation by the Lord. With regard to Joshua, this is as it is written: “According to the commandment of the Lord they gave him the city that he asked, even Timnath Serah in the hill-country of Ephraim” (Joshua 19:50).

258 The Gemara interjects: It is written concerning Joshua’s burial: “And they buried him in the border of his inheritance in Timnath Serah” (Joshua 24:30), and it is written: “And they buried him in the border of his inheritance in Timnath Heres” (Judges 2:9). Why is the name changed? Rabbi Elazar says: Initially, its fruits were as dry as clay [keḥeres], and ultimately, its fruits were so plump that they were spoiling [masriḥin]. And there are those who say the opposite: Initially, the fruits were spoiling prematurely, and ultimately, they lasted as long as clay without spoiling.

259 Caleb also received his portion directly from God and not through the lottery, as it is written: “And they gave Hebron to Caleb, as Moses had spoken; and he drove out from there the three sons of the giant” (Judges 1:20). The Gemara asks about this verse: But Hebron was a city of refuge that belonged to the priests, as described in the book of Joshua (21:13); how could it have been given to Caleb? Abaye said: Its outskirts [parvaraha], i.e., only the fields and vineyards lying beyond the city limits, were given to Caleb. As it is written: “But the fields of the city, and the villages thereof, they gave to Caleb the son of Jephunneh for his possession” (Joshua 21:12).

260 MISHNA: Both the son and the daughter of the deceased are included in the halakhot of inheritance. But the difference is that the firstborn son takes a double portion of the property of the father, and he does not take a double portion of the property of the mother. And another difference is

that the daughters are sustained from the property of the father after he dies, as it is a mandatory condition of their mother's marriage contract that they are to be sustained even before the estate is disbursed to the children, but the daughters are not sustained from the property of the mother, which is all inherited by the sons.

[261] GEMARA: The Gemara analyzes the mishna: What is meant by the first clause of the mishna: Both the son and the daughter of the deceased are included in the halakhot of inheritance? If we say that they inherit together, didn't we learn in a mishna (115a): A son precedes a daughter? Additionally, all descendants of a son precede a daughter. It is clear that a daughter does not inherit together with a son.

[262] Nafsham is a mnemonic for the names of the Sages cited in the following discussion: Naḥman; Pappa; Ashi; Mar. Rav Naḥman bar Yitzḥak says: This is what the mishna is saying: Both the son and the daughter take in inheritance the property due to their father as they would take in inheritance the property that he had in his possession.

[263] The Gemara questions this explanation: We already learn this as well in a mishna (116b): Zelophehad's daughters took three portions of land in the inheritance of Eretz Yisrael: Their father's portion that he received because he was among those who left Egypt; and his portion that he received with his brothers in the property of Hepher, their father, although Zelophehad predeceased his father and never was in possession of the inheritance from Hepher; and an additional portion that he received from Hepher because he was a firstborn. It is already taught in that mishna that property due to the deceased is inherited in the same manner as property possessed by the deceased.

[264] And furthermore, if the explanation of the mishna is as stated by Rav Naḥman, what is meant by the phrase: But the difference is that the firstborn son takes a double portion of the property of the father, and he does not take a double portion of the property of the mother? According to Rav Naḥman's explanation, what is the contrast between the two clauses in the mishna?

[265] Rather, Rav Pappa said: This is what the mishna is saying: Both the son and the daughter of the deceased take a portion of the firstborn.

[266] The Gemara questions this explanation: We already learn this in a mishna as well (116b), which explains the third portion taken by the daughters of Zelophehad: And they took an additional portion that he received from Hepher, as he was a firstborn, and a firstborn takes two portions of inheritance from his father. And furthermore, if the explanation of the mishna is as stated by Rav Pappa, what is meant by the phrase: But the difference is that the firstborn son takes a double portion of the property of the father, and he does not take a double portion of the property of the mother? According to this explanation as well, the first clause of the mishna has nothing to do with inheriting from the mother.

[267] Rather, Rav Ashi said: This is what the mishna is saying: With regard to both a son among the sons, and a daughter among the daughters, if the father says: This particular child shall inherit all my property, his statement stands. A father can do so for any one son, or, when there are no sons, for any one daughter.

[268] The Gemara asks: In accordance with whose opinion does Rav Ashi say this? Is it in accordance with the opinion of Rabbi Yoḥanan ben Beroka? The Gemara challenges: But the mishna teaches this later (130a), as Rabbi Yoḥanan ben Beroka says: If one said about another who is fit to inherit from him that the named individual should inherit all his property, his statement stands, but if one said it

about another who is unfit to inherit from him, his statement does not stand. It is not reasonable to say that this mishna is stating the same halakha that is recorded in the later mishna in the name of Rabbi Yoḥanan ben Beroka.

269 And if you would say that the tanna here taught us an unattributed mishna in accordance with the opinion of Rabbi Yoḥanan ben Beroka, in order to demonstrate that his opinion is accepted as halakha, this would not establish the halakha in accordance with his opinion. The reason is that this would be an instance of an unattributed mishna and thereafter a mishnaic dispute concerning the same matter, as in the later mishna there is a tanna who disagrees with the ruling of Rabbi Yoḥanan ben Beroka; and in an instance of an unattributed mishna and thereafter a mishnaic dispute, the halakha is not in accordance with the unattributed mishna.

270 And furthermore, if the explanation of the mishna is as stated by Rav Ashi, what is meant by the clause: But the difference is that the firstborn son takes a double portion of the property of the father, and he does not take a double portion of the property of the mother? According to this explanation as well, the first clause of the mishna has nothing to do with inheriting from the mother.

271 Rather, Mar bar Rav Ashi said: This is what the mishna is saying: Both the son and the daughter are equal in their rights both with regard to the property of the mother and with regard to the property of the father. Sons and daughters can inherit from either fathers or mothers. But the differences are that the firstborn son takes a double portion of the property of the father, and he does not take a double portion of the property of the mother, and that the daughters are sustained from their father’s estate before it is disbursed to the children, but they are not sustained from the property of their mother.

272 § The Sages taught in a baraita: When the verse states: “But he shall acknowledge the firstborn, the son of the hated, by giving him a double portion of all that he has” (Deuteronomy 21:17), this means the firstborn receives double the property received by any other one inheritor. The baraita analyzes this statement: Do you say the firstborn receives double the property received by any one inheritor, or rather, is it a double portion of all the property, such that the firstborn receives two-thirds of the entire estate, which is twice the portion left for the other inheritors to divide between themselves? The baraita suggests: And this question can be resolved through logical inference:

273 There may be times when a firstborn takes his portion of the inheritance, dividing the estate with one other brother, and there may be times when a firstborn takes his portion of the inheritance, dividing the estate with five brothers, and there is no indication that the Torah differentiates between the manner in which the respective firstborns collect in each scenario. Therefore, just as when a firstborn takes his portion, dividing the estate with one other brother, he receives double the property received by one inheritor, so too, when a firstborn takes his portion of the inheritance, dividing the estate with five brothers, he receives double the property received by one inheritor.

274 The baraita suggests the opposite logical derivation: Or perhaps go this way: There may be times when a firstborn takes his portion of the inheritance, dividing the estate with one other brother, and there may be times when a firstborn takes his portion of the inheritance, dividing the estate with five brothers. Therefore, just as when a firstborn takes his portion, dividing the estate with one other brother, he receives a double portion of all the property, so too when a firstborn takes his portion of the inheritance, dividing the estate with five brothers, he receives a double portion of all the property.

275 As the logical inference can lead to either conclusion, the halakha is determined by a derivation from a verse. The verse states: “Then it shall be, in the day that he causes his sons to inherit” (Deuteronomy 21:16). As the next verse spells out: “But he shall acknowledge the firstborn, the son of the hated, by giving him a double portion of all that he has” (Deuteronomy 21:17), the former verse is ostensibly redundant. The additional verse is therefore understood as an inclusion: The Torah increased inheritance with regard to the brothers, indicating that the more brothers there are, the greater the portion they collect from the entire estate. Therefore, you should not reason in accordance with the final formulation, in which the baraita suggests that the firstborn inherits twice as much as all the other brothers combined, but in accordance with the first formulation, according to which the firstborn inherits twice as much as each other brother.

276 The baraita reinforces this statement by citing additional verses: And the verse states: “And the sons of Reuben the firstborn of Israel, for he was the firstborn; but, inasmuch as he defiled his father’s couch, his birthright [bekhorato] was given to the sons of Joseph the son of Israel, yet not so that he was to be reckoned in the genealogy as firstborn” (I Chronicles 5:1). And the following verse states: “For Judah prevailed above his brothers, and the prince came of him; but the birthright [vehabekhora] was Joseph’s” (I Chronicles 5:2).

277 The baraita derives: Birthright, i.e., firstborn status, is stated here with regard to Joseph, and birthright is stated in another verse concerning the double portion with regard to the later generations: “By giving him a double portion of all that he has, for he is the first-fruits of his strength, the birthright [habekhora] is his” (Deuteronomy 21:17). Just as the birthright stated with regard to Joseph is double the property received by one inheritor, as the Gemara will explain, so too the birthright stated with regard to the later generations is double the property received by one inheritor.

278 The baraita cites additional related verses: And with regard to Jacob’s bequest to Joseph, the verse states: “Moreover I have given to you one portion above your brothers, which I took out of the hand of the Amorite with my sword and with my bow” (Genesis 48:22). The baraita explains the verse: But is it so that Jacob took the portion with his sword and with his bow? But isn’t it already stated: “Through You do we push down our adversaries; through Your name do we trample those that rise against us. For I trust not in my bow, neither can my sword save me” (Psalms 44:6–7)? Rather, what is the meaning of “with my sword”? This is referring to prayer. What is the meaning of “with my bow”? This is referring to petition. This concludes the baraita.

279 The Gemara analyzes the baraita: What is the reason the baraita cites additional proofs, introducing them with the term: And the verse states? The Gemara explains: And if you would say that the proof from the verse: “Then it shall be, in the day that he causes his sons to inherit” is not valid, as perhaps this verse comes to teach the halakha of Rabbi Yoḥanan ben Beroka that a father may designate property for whichever child he desires, then come and hear a separate proof: “And the sons of Reuben the firstborn of Israel…his birthright was given to the sons of Joseph the son of Israel.” As Joseph’s birthright was that his sons received two portions, evidently the birthright of the firstborn is that he receives double the amount received by one inheritor.

280 And if you would say that this is not a proof either, as we do not derive the meaning of the term: “Birthright [bekhora]” (see Deuteronomy 21:17) from the similar but not identical term of: “His

birthright [bekhorato],” come and hear a proof from the term employed in the following phrase from the verse: “But the birthright [vehabekhora] was Joseph’s.”

281 The Gemara continues to explicate the biblical citations in the baraita: And if you would say that this is not a proof either, as concerning Joseph himself, from where may it be learned that his birthright was double the property received by one inheritor? Come and hear a proof: “Moreover I have given to you one portion above your brothers,” indicating that Joseph received one more portion than each of the other sons of Jacob.

282 Rav Pappa said to Abaye: Why not say that the term “one portion” is referring to a mere palm tree or some other relatively small extra gift, instead of a full, equal share? Abaye said to him: For you, i.e., to answer your question, the verse states: “Ephraim and Manasseh, even as Reuben and Simeon, shall be mine” (Genesis 48:5). Evidently, Joseph’s children together received portions equal to that of Reuben and Simeon together, i.e., two full portions.

283 § Rabbi Ḥelbo asked Rabbi Shmuel bar Naḥmani: What did Jacob see that he took the status as firstborn from Reuben and gave it to Joseph? The Gemara wonders: What does he mean, what did he see? The matter is written explicitly: “But, inasmuch as he defiled his father’s couch, his birthright was given to the sons of Joseph” (I Chronicles 5:1). Rather, Rabbi Ḥelbo’s question was: What did he see that he gave it specifically to Joseph?

284 Rabbi Shmuel bar Naḥmani answered Rabbi Ḥelbo: I will tell you a parable. To what is this matter comparable? To a homeowner who raised an orphan in his home. Eventually, that orphan became wealthy and said: I will provide benefit to the homeowner from my property. Similarly, since Joseph sustained Jacob in Egypt for a number of years, Jacob saw fit to repay the kindness. Rabbi Ḥelbo said to him: And if Reuben did not sin, would Jacob not have provided any benefit to Joseph? It cannot be that Jacob repaid Joseph only as a result of Reuben’ sin.

285 Rather, doesn’t your teacher Rabbi Yonatan say like this: It was appropriate for the child receiving the status of firstborn to emerge from Rachel, as it is written: “These are the generations of Jacob, Joseph” (Genesis 37:2), indicating that Joseph was Jacob’s primary progeny. But Leah advanced ahead of Rachel with appeals for mercy, i.e., with prayer, and thereby earned the status as firstborn for her firstborn. But because of the modesty that Rachel possessed, the Holy One, Blessed be He, returned the status as firstborn to her. This is why Jacob gave the status as firstborn to Joseph.

286 The Gemara explains this answer: What does it mean that Leah advanced ahead of Rachel with mercy? As it is written: “And Leah’s eyes were weak [rakkot]” (Genesis 29:17). What is the meaning of “rakkot”? If we say that her eyes were literally weak, is it possible that the verse would say that? The verse there did not speak to the disparagement of even a non-kosher animal, as it is written: “From the pure animals and from the animals that are lacking purity” (Genesis 7:8). The verse states: “That are lacking purity” rather than stating explicitly and disparagingly: That are impure. If that is so with regard to animals, did the verse speak here to the disparagement of the righteous? Rather, Rabbi Elazar says: The term alludes to the fact that her gifts, i.e., the gifts given to her descendants, e.g., the priesthood and the monarchy, were long-lasting [arukkot], as they were passed down from generation to generation.

287 Rav says that there is a different explanation of the verse: Actually, the verse means that her eyes were literally weak, and this is not a denigration of her but a praise of her. As she would hear people at the crossroads, coming from the land of Canaan, who would say: Rebecca has two sons, and her

brother Laban has two daughters; the older daughter will be married to the older son, and the younger daughter will be married to the younger son.

[288] Rav continues: And she would sit at the crossroads and ask: What are the deeds of the older son? The passersby would answer: He is an evil man, and he robs people. She would ask: What are the deeds of the younger son? They would answer: He is "a quiet man, dwelling in tents" (Genesis 25:27). And because she was so distraught at the prospect of marrying the evil brother, she would cry and pray for mercy until her eyelashes fell out. Since the weakness of her eyes was due to this cause, characterizing her eyes as weak constitutes praise. This is Leah's prayer for mercy to which Rabbi Yonatan referred.

[289] The Gemara comments: And her desire not to marry Esau is the basis of that which is written: "And the Lord saw that Leah was hated, and He opened her womb" (Genesis 29:31). What is the meaning of "hated"? If we say that she was literally hated, is it possible? The verse there did not speak to the disparagement of even a non-kosher animal, so did the verse here speak to the disparagement of the righteous? Rather, the Holy One, Blessed be He, saw that the behavior of Esau was hated by her, and therefore: "And He opened her womb."

[290] The Gemara now explains the second part of Rabbi Yonatan's explanation: And what was a demonstration of the modesty that Rachel possessed? As it is written: "And Jacob told Rachel that he was her father's brother, and that he was Rebecca's son" (Genesis 29:12). The Gemara asks: But isn't he the son of her father's sister? Why did he say that he was her father's brother? Rather, Jacob and Rachel had the following exchange: Jacob said to Rachel: Will you marry me? Rachel said to him: Yes, but my father is a deceitful person, and you cannot defeat him.

[291] Jacob said to her: What is his method of deceit of which I need be aware? Rachel said to him: I have a sister who is older than me, and he will not marry me off before he marries her off, even if he promises that he will do so. Jacob said to her: I am his brother, i.e., equal, in deceit, and he will not be able to deceive me. That is why Jacob said that he was "her father's brother." Rachel said to him: But is it permitted for the righteous to act deceitfully? Jacob answered her: Yes, in certain circumstances. As the verse states concerning God: "With the pure You show Yourself pure; and with the crooked You show Yourself subtle" (II Samuel 22:27). Therefore, to counter Laban's deceit, Jacob gave Rachel secret signs to prove to him that she was the one marrying him.

[292] Laban did in fact attempt to have Jacob marry Leah instead of marrying Rachel. When Laban's associates were bringing Leah up to the wedding canopy to marry Jacob, Rachel thought: Now my sister will be humiliated when Jacob discovers that she is the one marrying him. Therefore, Rachel gave the signs to Leah. And this is as it is written: "And it came to pass in the morning that, behold, it was Leah" (Genesis 29:25). This verse is difficult, as by inference, should one derive that until now she was not Leah? Rather, through the signs that Jacob gave to Rachel and that she gave to Leah, he did not know it was she until that moment. This is the modesty of Rachel to which Rabbi Yonatan was referring.

[293] § The Gemara continues its discussion of Jacob's family. Abba Ḥalisa Karoya asked Rabbi Ḥiyya bar Abba: In the total tally of Jacob's family members who descended to Egypt, you find seventy, as stated in the verse: "All the souls of the house of Jacob, that came into Egypt, were seventy" (Genesis 46:27). By contrast, in their individual listing, when the family members of each of his sons are listed by name, you find seventy-less-one. How can this be resolved? Rabbi Ḥiyya bar Abba said

to him: A twin sister was born with Dinah, as it is written: “And [ve’et] his daughter Dinah” (Genesis 46:15). The term et implies an unspecified additional person. Abba Ḥalisa Karoya replied: If that is so, one would have to say that a twin sister was born with Benjamin, as it is written:

294 “And he lifted up his eyes, and saw et Benjamin his brother, his mother’s son” (Genesis 43:29), which would render the count of seventy incorrect. Rabbi Ḥiyya bar Abba said: There was a goodly pearl [margalit] in my hand, and you are trying to have me lose it. He continued: So said Rabbi Ḥama bar Ḥanina: This missing seventieth person is Jochebed, whose conception was on the journey, as the family of Jacob descended to Egypt, and she was born within the walls, i.e., in Egypt, as it is stated: “And the name of Amram’s wife was Jochebed, the daughter of Levi, who was born to Levi in Egypt” (Numbers 26:59). Her birth was in Egypt, but her conception was not in Egypt. Accordingly, the family had seventy persons upon arrival, but she could not have been listed as descending to Egypt.

295 § Rabbi Ḥelbo asked Rabbi Shmuel bar Naḥmani: It is written: “And it came to pass, when Rachel gave birth to Joseph, that Jacob said to Laban: Send me away, that I may go to my own place, and to my country” (Genesis 30:25). What was different when Joseph was born, that Jacob decided only then to return home? Rabbi Shmuel bar Naḥmani said to him: Jacob our patriarch saw prophetically that the descendants of Esau will be delivered only to the hand of the descendants of Joseph, as it is stated: “And the house of Jacob shall be a fire, and the house of Joseph a flame, and the house of Esau for straw, and they shall kindle in them, and devour them” (Obadiah 1:18). Jacob had left Eretz Yisrael to escape Esau, but he now felt confident that he could return without endangering his family.

296 Rabbi Ḥelbo raised an objection to Rabbi Shmuel bar Naḥmani: Concering a battle between the Jewish people and the nation of Amalek, who descend from Esau, the verse states: “And David smote them from the twilight even to the evening of the next day” (I Samuel 30:17). David was from the tribe of Judah, yet he was able to defeat the descendants of Esau. Rabbi Shmuel bar Naḥmani said to him: Whoever read and taught Prophets to you did not read and teach Writings to you, as it is written: “As he went to Ziklag, there fell to him of Manasseh, Adnah, and Jozabad, and Jediael, and Michael, and Jozabad, and Elihu, and Zillethai, captains of thousands that were of Manasseh, and they helped David against the troop” (I Chronicles 12:21–2). The verse in Writings teaches that David’s campaign against Esau was led by Joseph’s descendants, from the family of Manasseh.

297 Rav Yosef raises an objection: Another verse indicates that the descendants of Simeon also have the ability to defeat the descendants of Esau: “And some of them, even of the sons of Simeon, five hundred men, went to Mount Seir, having for their captains Pelatiah, and Ne’ariah, and Rephaiah, and Uzziel, the sons of Ishi. And they struck the remnant of the Amalekites that escaped, and dwelled there until this day” (I Chronicles 4:42–43). Rabba bar Sheila said in response: Ishi came from the children of Manasseh, as it is written: And the sons of Manasseh: Hepher and Ishi.

298 § The Sages taught (Tosefta 7:4–5): The firstborn priest takes a double portion of the foreleg, and of the jaw, and of the maw, which are given to a priest from all slaughtered non-sacred cattle, sheep, and goats (see Deuteronomy 18:3). And a firstborn, whether he is a priest or non-priest, takes a double portion of his father’s sacrificial animals and of the enhancement of the property that occurred after the death of their father.

[299] The baraita continues: How so? To what type of enhancement is this referring? If their father left them a cow that was leased or rented in the possession of others, or if it was grazing in the meadow, and it gave birth, then the firstborn takes a double portion of the rental income or of the calf. But if the inheritors built homes or planted vineyards after their father's death, thereby enhancing the property, the firstborn does not take a double portion. This is not considered enhancement of the father's property, but profit due to their actions.

[300] The Gemara analyzes the baraita: Concerning this right to collect a double portion of the foreleg, and the jaw, and the maw, what are the circumstances? If they came into the possession of their father, then it is obvious that the firstborn collects a double portion. And if they did not come into the possession of their father, then these items are merely property due to their father, and the firstborn does not take a double portion of property due to the deceased as he does the property his father possessed.

[301] The Gemara answers: Here, we are dealing with associates of the priesthood, i.e., people who have an arrangement with a specific priest to give him their priestly gifts. And it was a case where the animal was slaughtered while the father was alive, and the tanna of this baraita holds: Priestly gifts that were not yet separated are considered as though they have already been separated. Therefore, even though the gifts were not yet given, they were considered in the possession of the priest before his death.

[302] The Gemara continues to analyze the baraita: Why does the firstborn take a double portion of the father's sacrificial animals? Isn't it so that once the father consecrates them, they belong to Heaven and are not his?

[303] The Gemara answers: This is stated with regard to a case of offerings of lesser sanctity, such as peace offerings, and in accordance with the opinion of Rabbi Yosei HaGelili, who says: These sacrificial animals are considered the property of their owners, as opposed to property of Heaven. As it is taught in a baraita that concerning one who steals another's property and takes a false oath denying he has done so, incurring the obligation to bring a guilt-offering, the verse states: "And commits a trespass against the Lord, and deals falsely with his neighbor" (Leviticus 5:21). The verse serves to include offerings of lesser sanctity, which are the property of their owners; this is the statement of Rabbi Yosei HaGelili. Consequently, the firstborn collects a double portion of these as well.

[304] The baraita states: If their father left them a cow that was leased or rented in the possession of others, or if it was grazing in the meadow, and it gave birth, then the firstborn takes a double portion of the rental income or calf. The Gemara asks: Now that in a case where the cow was leased or rented to others, where the animals are not in their owner's possession, you say that the firstborn takes a double portion, in a case where it was grazing in the meadow, is it necessary for the baraita to state that he receives a double portion?

[305] The Gemara answers that this is what the baraita teaches us: It teaches that a case where the animal was leased or rented is similar to a case where it was grazing in the meadow, in that just as in a case where it was grazing in the meadow, the enhancement came by itself and the brothers did not lose money for its sustenance,

306 so too in the case of a cow that was leased or rented, the baraita is referring only to a case where the enhancement came by itself, as the brothers did not lose money for its sustenance, since it was stipulated that the one who rented or leased it would provide its feed.

307 § The Gemara continues its discussion of the baraita. In accordance with whose opinion is the baraita? It is in accordance with the opinion of Rabbi Yehuda HaNasi, as it is taught in a baraita (Tosefta 7:4): A firstborn does not take a double portion of the enhancement of the property that occurred after the death of the sons' father. Rabbi Yehuda HaNasi says: I say that a firstborn does take a double portion of the enhancement of the property that occurred by itself after their father's death, e.g., the birth of a calf, but not of the enhancement that the orphans caused after their father's death.

308 Rabbi Yehuda HaNasi continues: Therefore, if they inherited a promissory note indicating a debt owed to their father, the firstborn takes a double portion of the money when it is collected, as this is an enhancement to the estate that came by itself. The Gemara adds: In a case where a promissory note emerged against them for their father's debt, the firstborn gives, i.e., repays, a double portion of the debt. But if he says: I am not giving a double portion of the debt and I am not taking a double portion of the estate, he is permitted to do so, and he is exempt from paying a double portion.

309 The Gemara asks: What is the reason for the ruling of the Rabbis that the firstborn does not receive a double portion of any enhancements that occur after the death of the father? The verse states: "Giving him a double portion" (Deuteronomy 21:17); by employing the term "giving" the Merciful One calls the double portion a gift. Just as a recipient of a gift does not acquire a gift unless it first reaches the possession of the one giving the gift, so too the firstborn does not acquire the portion of the firstborn unless it has reached the possession of the father before he died.

310 And Rabbi Yehuda HaNasi says that the reason for his ruling that a firstborn receives a double portion of the enhancement is that the verse states: "A double portion" (Deuteronomy 21:17). It juxtaposes the portion of the firstborn to the portion of an ordinary son, in that just as the portion of an ordinary son is inherited even from property that did not reach the father's possession before he died, so too, the portion of the firstborn is inherited even from property that did not reach the father's possession before he died.

311 The Gemara asks: And according to the Rabbis as well, isn't the phrase "a double portion" written? The Gemara answers: That phrase can be said to teach a different halakha, requiring the brothers to give the firstborn both of his portions on one border, i.e., adjoining, and not in separate locations.

312 The Gemara asks: And according to Rabbi Yehuda HaNasi as well, isn't the phrase "giving him" written? The Gemara answers: That phrase can be said to teach a different halakha, that if the firstborn says: I am not taking a double portion of the estate and I am not giving a double portion of the debt, he is permitted to do so. Since the inheritance is referred to as a gift, he has the right to refuse it.

313 The Gemara discusses several types of enhancement. Rav Pappa says: With regard to a palm tree that became enhanced by growing broader after the father's death, or land that yielded silt and thereby became enhanced, everyone agrees that the firstborn takes a double portion of the enhancement. When they disagree is in a case when fodder [baḥafura], i.e., grain that has grown stalks but is not yet ripe, becomes full ears, of grain, and when date flowers [shelofafei] become fully

developed dates. As one Sage, Rabbi Yehuda HaNasi, holds that since this enhancement develops by itself, the firstborn is entitled to a double portion of it, and one Sage, the Rabbis, holds that since the item transformed, it is not considered the same item that was in the father's possession, and the firstborn is not entitled to a double portion of it.

[314] § Rabba bar Ḥana says that Rabbi Ḥiyya says: A judge who acted, i.e., ruled, in accordance with the statement of Rabbi Yehuda HaNasi has acted legally, and one who acted in accordance with the statement of the Rabbis has also acted legally. Either way, the decision stands.

[315] The Gemara explains: Rabbi Ḥiyya is uncertain as to whether the principle that the halakha is in accordance with the opinion of Rabbi Yehuda HaNasi in his disputes with his colleague applies specifically to a dispute with one other tanna but not to a dispute with several of his colleagues, or whether the principle that the halakha is in accordance with the opinion of Rabbi Yehuda HaNasi in his disputes with his colleague applies even to a dispute with several of his colleagues, as in this case, where the Rabbis disagree with Rabbi Yehuda HaNasi. Since he was uncertain, he left the decision to each individual judge.

[316] Rav Naḥman says that Rav says: It is prohibited to act in accordance with the statement of Rabbi Yehuda HaNasi. The Gemara explains: Rav holds that the halakha is in accordance with the opinion of Rabbi Yehuda HaNasi in his disputes with his single colleague, but not in his disputes with several of his colleagues.

[317] And Rav Naḥman says his own statement: It is permitted to act in accordance with the statement of Rabbi Yehuda HaNasi. The Gemara explains: He holds that the halakha is in accordance with the opinion of Rabbi Yehuda HaNasi not only in his disputes with his single colleague, but even in his disputes with several of his colleagues.

[318] Rava says: It is prohibited to act in accordance with the statement of Rabbi Yehuda HaNasi, but if a judge acted in accordance with the statement of Rabbi Yehuda HaNasi, what is done is done and the decision stands. The Gemara explains: He holds that it was stated that one is inclined to follow the opinion of the Rabbis ab initio, but if a judge rules in accordance with the opinion of Rabbi Yehuda HaNasi, his decision stands.

[319] The Gemara comments that there are conflicting opinions in halakhic midrash as to whether the halakha is in accordance with the opinion of Rabbi Yehuda HaNasi or in accordance with the opinion of the Rabbis, as each opinion is supported by a different version of the midrash. Rav Naḥman taught a baraita from the other books of the school of Rav [debei Rav], i.e., a volume of halakhic midrash other than Torat Kohanim, which is a halakhic midrash on the book of Leviticus. The phrase from the verse: "By giving him a double portion of all that he has" (Deuteronomy 21:17), excludes the enhancement that the heirs brought about after their father's death, of which the firstborn is not entitled to a double portion. The Gemara infers: But of the enhancement of the property that occurred by itself after their father's death, he does take a double portion. The Gemara comments: And whose opinion is this? It is the opinion of Rabbi Yehuda HaNasi.

[320] Rami bar Ḥama taught a different version of the baraita from the other books of the school of Rav: "Of all that he has" excludes the enhancement of the property that occurred by itself after their father's death, of which the firstborn is not entitled to a double portion. The Gemara infers: And all the more so, he does not take a double portion of the enhancement that the heirs brought about after their father's death. The Gemara comments: And whose opinion is this? It is the opinion of the

Rabbis. Accordingly, there is a discrepancy between the baraitot as to whether the halakha is in accordance with the opinion of the Rabbis or Rabbi Yehuda HaNasi.

321 § Rav Yehuda says that Shmuel says: A firstborn does not take a double portion of a loan, i.e., of a debt that is owed to the father. The Gemara asks: According to whom is this halakha stated? If we say it is in accordance with the opinion of the Rabbis, now that the Rabbis say that a firstborn does not take a double portion even with regard to the enhancement of property that is in the possession of the father, is it necessary to state that he is not entitled to a double portion of a loan? The debt is not in the father's possession at the time of his death; it is merely due to him.

322 Rather, it must be in accordance with the opinion of Rabbi Yehuda HaNasi. Although he holds that a firstborn is entitled to a double portion of the enhancement of the property itself, he concedes that he is not entitled to a double portion of the payment of a debt, as it was not in the possession of his father at the time of his death.

323 The Gemara asks: But if so, in accordance with whose opinion is that which is taught in a baraita: If the sons inherited a promissory note, the firstborn takes a double portion of the payment of both the value of the loan itself and the interest? It is neither in accordance with the opinion of Rabbi Yehuda HaNasi, nor the opinion of the Rabbis.

324 The Gemara answers: Actually, Shmuel's statement that the firstborn is not entitled to a double portion of the payment of a debt is in accordance with the opinion of the Rabbis, and it was necessary to state it. It might enter your mind to say that with regard to a loan, since the creditor holds a promissory note, it is considered as though it has already been collected and is in the creditor's possession, so too, the firstborn should be entitled to a double portion even according to the opinion of the Rabbis. Therefore, Shmuel teaches us that the loan is not considered to be in the creditor's possession, and the firstborn is not entitled to a double portion.

325 The Gemara relates: They sent the following ruling from there, Eretz Yisrael: If the father lent money to a gentile, the firstborn takes a double portion of the value of the loan itself, but not of the interest, as the interest is considered property due to the father.

326 The Gemara asks: According to whom is this halakha stated? If we say it is in accordance with the opinion of the Rabbis, now that the Rabbis say that a firstborn does not take a double portion even with regard to the enhancement of property, which is in the possession of the father, is it necessary to state that they would hold that he is not entitled to a double portion of a loan? Since the debt is not in the father's possession at the time of his death, as it is merely due to him, the rabbis would certainly not hold that the firstborn takes a double portion of it.

327 Rather, it must be in accordance with the opinion of Rabbi Yehuda HaNasi. The Gemara asks: And according to the opinion of Rabbi Yehuda HaNasi, is it so that the firstborn is not entitled to a double portion of the interest? But isn't it taught in a baraita that Rabbi Yehuda HaNasi says: A firstborn takes a double portion of both the value of the loan itself and the interest?

328 The Gemara answers: Actually, the halakha sent from the Sages of Eretz Yisrael is in accordance with the opinion of the Rabbis. And the Sages of Eretz Yisrael hold that the Rabbis concede that the firstborn receives a double portion of the value of the loan itself, because a loan is considered as though it has already been collected and is in the creditor's possession. By contrast, the interest on

the loan is not considered as though it is already in the creditor’s possession, and therefore the firstborn does not receive a double portion of its payment.

329 Rav Aḥa bar Rav said to Ravina: Ameimar arrived at our locale and taught that a firstborn takes a double portion of the value of a loan itself, but not of the interest. Ravina said to him: The Sages of Neharde’a conform to their standard line of reasoning. Ameimar followed the opinion of Rav Naḥman, who was one of the Sages of Naharde’a, as was Ameimar.

330 The Gemara explains: As Rabba says: If the sons collected land as payment of a debt owed to their father, the firstborn has a double portion of it, but if they collected money, he does not have a double portion. And Rav Naḥman says that if they collected money, he has a double portion, but if they collected land, he does not have a double portion.

331 Abaye said to Rabba: According to your opinion it is difficult, and according to the opinion of Rav Naḥman it is also difficult. According to your opinion it is difficult

332 because what is different about money, resulting in the halakha that the firstborn is not entitled to a double portion of it, is that their father did not leave them this specific money that was collected. With regard to land as well, their father did not leave them this specific parcel of land when he died, as the debtor could have repaid them with a different parcel of land, or with money.

333 And furthermore, aren’t you the one who said that the explanation of the people of the West, Eretz Yisrael, is reasonable? In a case where a married woman had been fit to inherit from her great-grandmother but then predeceased her great-grandmother, who then died, and her widower claims the inheritance in his late wife’s stead, the Sages of Eretz Yisrael ruled that he is not entitled to the inheritance, as it is merely property due to his wife, and a husband does not inherit property due to be inherited by his late wife. Rabba agreed that the inheritance is considered property due to the wife, and not property possessed by her, as if the great-grandmother would have sold it before she died, her sale would have been a valid sale. Here, too, the land should be considered property due to the father, of which a firstborn is not entitled to a double portion, since the debtor could have sold it. Therefore, Rabba’s opinion is difficult.

334 Abaya continues: According to the opinion of Rav Naḥman it is difficult; what is different about land, resulting in the halakha that the firstborn is not entitled to a double portion of it, is that their father did not leave them this specific parcel of land. With regard to money as well, their father did not leave them this specific money when he died.

335 And furthermore, doesn’t Rav Naḥman say that Rabba bar Avuh says: With regard to orphans who collected land for a debt owed to their father, their father’s creditor can come and seize this land from them, as any land owned by the father is liened against his debts. Evidently, Rav Naḥman holds that land liened against a debt has the legal status of land that is in the possession of the creditor. If so, why does Rav Naḥman hold that a firstborn is not entitled to a double portion of land that is collected as payment of a debt?

336 Rabba said to Abaye: According to my opinion it is not difficult, and according to the opinion of Rav Naḥman it is not difficult. We were merely saying, i.e., explaining, the reason for the opinion of the people of the West, Eretz Yisrael, introduced with the phrase: They sent the following ruling from there, that a firstborn is entitled to a double portion of the payment of a debt. But we ourselves do not

hold in accordance with that opinion. Therefore, one cannot raise a contradiction from our opinions stated elsewhere to what we said in explanation of the Sages of Eretz Yisrael.

[337] Having mentioned in passing the case of the great-grandmother, the Gemara discusses that case in depth. What is the case of the great-grandmother that was mentioned by Abaye? The Gemara explains: There was a certain moribund person who said to those present:

[338] All my property is given to my grandmother, and after she dies, it is given to my heirs, not inherited by her heirs. He then died. He had a married daughter, who died during the lifetime of her husband and during the lifetime of her father's grandmother. After her father's grandmother died, her husband came and claimed the inheritance, as his wife was the heir of her father, and he is his wife's heir.

[339] Rav Huna said: When her father said that his property is given: To my heirs, he meant: And even to the heirs of my heirs. Therefore, since his daughter's husband is the heir of his heir, he is entitled to the inheritance. And Rav Anan said that he meant: To my heirs, but not to the heirs of my heirs. Therefore, the husband is not entitled to the property.

[340] The Gemara relates: They sent a ruling from there, Eretz Yisrael: The halakha is in accordance with the opinion of Rav Anan, but not due to his reasoning. The Gemara explains: The halakha is in accordance with the opinion of Rav Anan that the husband does not inherit the property. But not due to his reasoning, as Rav Anan holds that even if his daughter had a son to inherit from her, he would not inherit the property, as her father bequeathed it only to his heirs, not to the heirs of his heirs. And that is not so, as if his daughter had a son, he would certainly inherit; and this is the reason the husband does not inherit: Because the inheritance is considered property due to the daughter, as she did not own it during her lifetime, and a husband does not take in inheritance property due to his wife as he does the property she possessed.

[341] The Gemara asks: By inference, does Rav Huna, who ruled that the husband is entitled to the inheritance, hold that a husband takes in inheritance property due to his wife as he does the property she possessed?

[342] Rabbi Elazar says: This matter was introduced by great Sages, namely Rav Huna, and concluded by lesser Sages, i.e., by me. Rabbi Elazar, humbly referring to himself as a lesser Sage, will now explain Rav Huna's statement. Anyone who says to another upon granting him an inheritance or a gift: After you die it is given to so-and-so, is considered like one who says: It is given to so-and-so from now. The first recipient merely has the right to use the property during his lifetime but did not actually become the owner. Accordingly, the inheritance was owned by the daughter in her lifetime, and the great-grandmother merely had usage rights. Therefore, it is inherited by the husband.

[343] Rabba said: The explanation of the people of the West, that the inheritance is considered property due to the daughter and not property possessed by her, is reasonable, as if the grandmother would have sold it before she died, her sale would have been a valid sale, and the daughter would not have received it at all.

[344] In conclusion, Rav Pappa said that the halakha is that the husband does not take in inheritance property due to his wife as he does the property she possessed; and a firstborn does not take a double portion of property due to his father as he does the property his father possessed; and a firstborn does

not take a double portion of payment for a loan, whether the brothers collected land or whether they collected money.

345 And as for a loan that is with the firstborn, i.e., he had borrowed money from his father, then his father died, it is uncertain whether the payment should be considered property due to the father or property possessed by him. Therefore, the firstborn and his brothers divide the additional portion.

346 § With regard to the halakha that the firstborn is not entitled to a double portion of the enhancement of the property resulting from the actions of the heirs, Rav Huna says that Rav Asi says: A firstborn who protested the efforts of enhancing the property before it is divided has protested, and if the brothers use resources from the estate to enhance it against his will, he is entitled to a double portion of the enhanced value.

347 Rabba said: Rav Asi's opinion is reasonable in a case where they inherited grapes on a grapevine and the brothers harvested them against the will of the firstborn, or if they inherited olives on olive trees and the brothers harvested them, as in these cases, the produce itself did not change. But if they treaded on them, converting them into wine or oil, even if the firstborn protested their doing so, he is not entitled to a double portion. And Rav Yosef said: Even if they treaded on them, the firstborn is entitled to a double portion.

348 The Gemara asks: Why is he entitled to a double portion, according to Rav Yosef, even if they treaded on them? Since the brothers transformed the produce, as initially it was in the form of grapes and now it is wine, they have acquired it in the same manner that a thief acquires an item he stole. Therefore, the firstborn should have no share of the enhancement.

349 The Gemara answers: Rav Yosef did not mean that the firstborn is entitled to a double portion of the enhanced value of the wine. Rather, his intention was the same as that which Rav Ukva bar Ḥama says in a different context, that the ruling is referring to a case where the wine spoiled, its value decreasing to below the initial value of the grapes, in which case the brothers must give the firstborn payment for the damage to his additional portion of the grapes. Here, too, Rav Yosef meant that the brothers must give the firstborn payment for the damage to his grapes.

350 The Gemara explains: Where, i.e., in what context, was the statement of Rav Ukva bar Ḥama stated? It was in reference to that which Rav Yehuda says that Shmuel says: With regard to a firstborn and an ordinary son whose father left them grapes and they harvested them, or if he left them olives and they harvested them, the firstborn takes a double portion. This is the halakha even if they treaded on them. The Gemara asks: Why is he entitled to a double portion if they treaded on them; initially they were grapes, and now it is wine? Mar Ukva bar Ḥama says: Shmuel did not mean that he is entitled to a double portion of the wine; rather, the reference is to a case where the wine spoiled, its value decreasing to below the initial value of the grapes, in which case the ordinary brother must give the firstborn payment for the damage to his grapes.

351 § Rav Asi says: A firstborn who took a portion of the property like that of an ordinary heir has relinquished his right to an additional portion. The Gemara asks: What does it mean that he has relinquished his additional portion? Rav Pappa says in the name of Rava that he has relinquished his additional portion only with regard to that field that was divided, since he did not exercise his right to an additional portion, but he has not relinquished his right to receive an additional portion of the rest of the estate. Rav Pappi says in the name of Rava that he has relinquished his additional portion with regard to all of the property.

352 The Gemara explains: Rav Pappa says in the name of Rava that he has relinquished his additional portion only with regard to that field that was divided, because he holds that a firstborn does not have a right to his additional portion before the division of the property. And therefore, he has waived his additional portion of what has already reached his possession, namely, the field that was divided, but he has not waived his portion of the other fields of the estate.

353 And Rav Pappi says in the name of Rava that he has relinquished his additional portion with regard to all of the property, as he holds that a firstborn has a right to his additional portion before the division of the property. And therefore, since he waived his additional portion in this field, he has waived his portion of all of the property.

354 The Gemara notes: And this dispute of Rav Pappi and Rav Pappa was not stated explicitly; rather, it was stated by inference. As there was a certain firstborn who went and sold his property and the property of his deceased ordinary brother, i.e., their respective portions of their father's property, before the property was divided. The orphan sons of the ordinary brother went to eat dates from the field that was now in the possession of those purchasers, due to their father's share in the field. The purchasers hit them, as though they were thieves. The relatives of the orphans said to the purchasers: Not only did you purchase their property illegally, but you now hit them as well? They came before Rava, who said to them: The firstborn has done nothing. His sale was not valid.

355 Rav Pappi and Rav Pappa disagree with regard to Rava's intention. One Sage, Rav Pappi, holds that he has done nothing with regard to his brother's portion, as he had no right to sell it; with regard to his own additional portion, the sale was valid, as it was in his possession even before the division of the property. And one Sage, Rav Pappa, holds that he has done nothing with regard to all of the property, as he does not possess the additional portion before the property is divided between the brothers.

356 The Gemara notes that they sent a ruling from there, Eretz Yisrael: A firstborn who sold his additional portion before the division of the property has done nothing. Apparently, the Sages of Eretz Yisrael hold that a firstborn does not have a right to his additional portion before the division. But the halakha is that a firstborn has a right to his additional portion before the division.

357 The Gemara relates: Mar Zutra of the house of Rishba, who was a firstborn, divided a basket of peppers from the estate of his father with his brothers equally. He came before Rav Ashi to claim a double portion of the rest of the estate. Rav Ashi said to him: Since you relinquished your additional portion with regard to some of the estate, you have relinquished your additional portion with regard to all of the property, as a firstborn has a right to his additional portion before the division.

358 MISHNA: In a case of one who says: So-and-so, my firstborn son, will not take a double portion of my estate; or one who says: So-and-so, my son, will not inherit my estate among his brothers, he has said nothing, as he has stipulated counter to that which is written in the Torah.

359 With regard to one on his deathbed who apportions his property orally, granting it to his sons as a gift, and he increased the portion given to one of his sons and reduced the portion given to one son, or equated the portion of the firstborn to the portions of the other sons, his statement stands. But if he said that they will receive the property not as a gift but as inheritance, he has said nothing. If he wrote in his will, whether at the beginning, or in the middle, or at the end, that he is granting them the property as a gift, his statement stands.

[360] GEMARA: The Gemara suggests: Let us say that the mishna is not in accordance with the opinion of Rabbi Yehuda, as if it is in accordance with the opinion of Rabbi Yehuda, doesn't he say elsewhere that if one stipulates counter to that which is written in the Torah with regard to monetary matters, his stipulation stands?

[361] As it is taught in a baraita (Tosefta, Kiddushin 3:7): If one says to a woman: You are hereby betrothed to me on the condition that you have no ability to claim from me food, clothing, and conjugal rights, she is betrothed and his stipulation is void; this is the statement of Rabbi Meir. Rabbi Yehuda says: With regard to monetary matters, such as food and clothing, his stipulation stands, despite being counter to that which is written in the Torah. According to the opinion of Rabbi Yehuda, one should be able to stipulate that his firstborn son not receive a double portion, or that one of his sons not inherit from him at all, as inheritance is a monetary matter.

[362] The Gemara rejects this suggestion: Even if you say that the mishna is in accordance with the opinion of Rabbi Yehuda, there, the woman knew of his stipulation and waived her rights. Therefore, the stipulation stands. Here, the son whose portion was reduced did not waive his portion. Therefore the stipulation is not valid.

[363] § Rav Yosef says that if a man says: So-and-so is my firstborn son, the son takes a double portion of his inheritance based on this testimony. If he says: So-and-so is a firstborn, the son does not take a double portion, as perhaps the man was saying that the son is his mother's firstborn but not his own firstborn.

[364] The Gemara relates: There was a certain man who came before Rabba bar bar Ḥana and said to him: I know that this man is a firstborn. Rabba bar bar Ḥana said to him: From where do you know? He answered: Because his father would call him a foolish firstborn. Rabba bar bar Ḥana replied: Perhaps he is his mother's firstborn, as any firstborn of a mother is also called a foolish firstborn.

[365] The Gemara relates: There was a certain man who came before Rabbi Ḥanina and said to him: I know that this man is a firstborn. Rabbi Ḥanina said to him: From where do you know? He said to Rabbi Ḥanina: Because when people would come before his father to obtain a cure for their ailing eyes, he would say to them: Go to my son Shikhḥat, as he is a firstborn and his saliva heals this ailment.

[366] The Gemara asks: But perhaps he is his mother's firstborn? The Gemara answers: It is learned as a tradition that the saliva of a father's firstborn heals this ailment but the saliva of a mother's firstborn does not heal this ailment.

[367] § Rabbi Ami says: In the case of one whose sexual organs are indeterminate [tumtum] and whose skin became perforated so that his genitals were exposed and he was found to be a male, he does not take a double portion of his father's estate. As the verse states: "And if the firstborn son was [vehaya] hers that was hated" (Deuteronomy 21:15), which is interpreted to mean that he is not considered a firstborn unless he is recognized as a son, i.e., male, from the moment of his coming into being [havaya], i.e., his birth.

[368] Rav Naḥman bar Yitzḥak says: A tumtum who was found to be male is also not judged as a stubborn and rebellious son, as the verse states: "If there will be [yihyeh] to a man a stubborn and rebellious son" (Deuteronomy 21:18), which is interpreted to mean that one is not judged in this manner unless he is recognized as a son from the moment of his coming into being.

[369] Ameimar says: A tumtum who was found to be male also does not reduce the additional portion of the firstborn. His portion is not taken into account in the calculation of the firstborn's additional portion. For example, if there are three brothers: A firstborn, an ordinary brother, and a tumtum, the firstborn receives one-third of the property as his additional portion, as he would if he and the ordinary brother were the only heirs, and the remaining two-thirds are divided among all three brothers. This is because it is stated with regard to the portion of the firstborn: "And they have borne him sons" (Deuteronomy 21:15), which is interpreted to mean that the brother of a firstborn does not affect his additional portion unless he is recognized as a son at the moment of his birth.

[370] Rav Sheizevi says: A tumtum who was found to be male is also not circumcised on the eighth day, if his eighth day occurs on Shabbat, although the mitzva of circumcision on the eighth day generally overrides Shabbat prohibtions. As the verse states: "If a woman bears seed and gives birth to a male then she shall be unclean seven days; as in the days of the impurity of her sickness shall she be unclean. And on the eighth day the flesh of his foreskin shall be circumcised" (Leviticus 12:2–3), which is interpreted to mean that he is not circumcised on the eighth day, in the event that it occurs on Shabbat, unless he is recognized as a male from the moment of his birth.

[371] Rav Sherevya says: His mother is also not rendered ritually impure due to his birth, as the verse states: "If a woman bears seed and gives birth to a male, then she shall be unclean seven days," which is interpreted to mean that she is not rendered impure unless he is recognized as a male from the moment of his birth.

[372] The Gemara raises an objection from a mishna (Nidda 28a): A woman who miscarries a tumtum or a hermaphrodite [ve'androginos] observes the strictures of a woman who gave birth to a male and to a female. Since it is uncertain whether the fetus is male or female, the woman must observe the halakhot of ritual impurity according to both possibilities. This appears to be a conclusive refutation of the statement of Rav Sherevya that a woman who gives birth to a tumtum is not rendered impure at all. The Gemara affirms: This is a conclusive refutation.

[373] The Gemara asks: Shall we say it is also a conclusive refutation of the statement of Rav Sheizevi with regard to circumcision, as the halakha of circumsicion is stated together with the halakha of ritual impurity?

[374] The Gemara answers: The tanna of the mishna in tractate Nidda is uncertain whether the birth discussed in the verse includes that of a tumtum, and therefore he rules stringently, that she should observe the halakhot of ritual impurity for both possibilities. Rav Sheizevi's ruling can follow the same logic: The infant should not be circumcised on Shabbat, as it is uncertain whether the mitzva of his circumcision overrides the prohibitions of Shabbat.

[375] The Gemara asks: If so, that the tanna of the mishna in tractate Nidda is uncertain whether the birth discussed in the verse includes that of a tumtum, the mishna should have stated that the woman observes the strictures of a woman who gave birth to both a male and to a female, and also as a menstruating woman. If it is uncertain whether the halakhot of ritual purity after birth pertain to a woman who gives birth to a tumtum at all, she should observe the halakhot of ritual impurity for any blood that emerges in the time period following the birth, as it should have the status of the blood of a menstruating woman. The Gemara concludes: This poses a difficulty.

[376] Rava says that it is taught in a baraita in accordance with the opinion of Rabbi Ami that a tumtum firstborn does not receive a double portion of the inheritance. The baraita states: From the phrase

“the firstborn son” (Deuteronomy 21:15) it is derived that only a son receives a double portion, but not a tumtum, and only a definite firstborn receives a double portion, but not one about whom it is uncertain if he is a firstborn.

377 The Gemara asks: Granted, the halakha that a son receives a double portion but a tumtum does not is understandable, as it is in accordance with the statement of Rabbi Ami, but what case does the halakha that only a definite firstborn receives a double portion but not one about whom it is uncertain if he is a firstborn serve to exclude? Why would one about whom it is uncertain if he is a firstborn receive a double portion?

378 The Gemara answers: It serves to exclude that which Rava taught, as Rava taught that if two wives of the same husband gave birth to two males in hiding, so that it is unknown which son was born first, and the husband subsequently had other sons, each of the two possible firstborns writes an authorization to the other. Since their brothers can claim against each of them individually that he is not the firstborn and does not deserve a double portion, each writes the other an authorization to collect his portion, so that they can jointly claim the additional portion in any event.

379 Rav Pappa subsequently said to Rava: But didn’t Ravin send a letter from Eretz Yisrael to Babylonia, stating: I asked all my teachers about this matter and they did not tell me anything; but this is what they said in the name of Rabbi Yannai: If the two sons were initially recognized, i.e., it was known which one of them was the firstborn, and they were ultimately mixed, and now the firstborn cannot be identified, each writes an authorization to the other. If they were not initially recognized, each does not write an authorization to the other.

380 Rava then established an amora to repeat his lesson to the masses aloud and taught: The statements that I said to you are a mistake on my part. But this is what they said in the name of Rabbi Yannai: If the two sons were initially recognized and were ultimately mixed, each writes an authorization to the other. If they were not initially recognized, each does not write an authorization to the other.

381 § The residents of Akra De’Agma sent the following inquiry to Shmuel: Teach us, our master: If the court had a presumption concerning this son, that he is a firstborn, and his father says concerning another son of his: He is his firstborn, what is the halakha? Shmuel sent to them in response: Both of these sons write an authorization,

382 each to the other.

383 The Gemara questions this ruling: Whichever way you look at it, Shmuel’s opinion is difficult. If he holds in accordance with the opinion of the Rabbis with regard to this issue, he should have sent them a response in accordance with the opinion of the Rabbis, and if he holds in accordance with the opinion of Rabbi Yehuda, he should have sent them a response in accordance with the opinion of Rabbi Yehuda. Shmuel’s response is not in accordance with either tannaitic opinion.

384 The Gemara answers: He is uncertain whether the halakha is in accordance with the opinion of Rabbi Yehuda or in accordance with the opinion of the Rabbis. Therefore he sent them a response that incorporates both opinions.

385 The Gemara explains: What is the dispute between Rabbi Yehuda and the Rabbis? As it is taught in a baraita: Expounding the verse: “He shall acknowledge the firstborn” (Deuteronomy 21:17), the

Sages said: He shall acknowledge him to others. In other words, a father is deemed credible to tell others that this is his firstborn.

386 From here, Rabbi Yehuda says that a man is deemed credible to say: This is my firstborn son, even if he has sons presumed to be older. And just as a man is deemed credible to say: This is my firstborn son, so too, a man who is a priest is deemed credible to say about his son: This is a son of a divorced woman, or: This is a son of a yevama who has performed ḥalitza [ḥalutza], in which cases he is disqualified from the priesthood due to his flawed lineage [ḥalal]. And the Rabbis say: He is not deemed credible.

387 Rav Naḥman bar Yitzḥak said to Rava: Granted, according to Rabbi Yehuda, this is the reason that it is written: "He shall acknowledge;" he derives from these words that a father is deemed credible to attest to the identity of his sons. But according to the Rabbis, why do I need the term "he shall acknowledge"?

388 The Gemara answers: It is necessary for a case when he requires identification, i.e., when there is no presumption as to the identity of the firstborn. In such a situation the verse teaches that the father is deemed credible. The Rabbis disagree with Rabbi Yehuda's opinion only in a case where another son is presumed to be the firstborn.

389 The Gemara asks: According to the Rabbis, with regard to what halakha is it necessary for the verse to teach that a father's identification of his firstborn is deemed credible? If it is with regard to giving him a double portion, it is superfluous. Let the son be only like another person, i.e., one who is not an heir; if the father wants to give him a double portion of his estate as a gift, can he not give it to him? Since the father can give a double portion to the firstborn without having to testify that he is his firstborn, it cannot be that the verse is teaching us that he is deemed credible with regard to the halakha that a firstborn receives a double portion.

390 The Gemara answers: No, it is necessary with regard to property that came into the father's possession afterward, after he testified that his son is his firstborn. He could not have given him this property as a gift, as at the time of his testimony, the property did not yet belong to him, and one cannot transfer ownership of an item that one does not own. Therefore, it is necessary for the verse to teach that the father's testimony is deemed credible so that the son can receive a double portion of the father's future property as well.

391 The Gemara asks: And according to Rabbi Meir, who says that a person can transfer an entity that has not yet come into the world, which would mean that one can give away his property even before it enters his possession, why do I need the term "he shall acknowledge"?

392 The Gemara answers: The term is necessary for a case where property came into the father's possession when he was moribund, at which point he cannot transfer ownership of any of his property to others. It is with regard to such property that the verse states: "He shall acknowledge," to teach that the son who the father states is the firstborn will receive a double portion even of that property.

393 The Sages taught in a baraita (Tosefta 7:3): If the court had a presumption concerning a son that he is a firstborn, and his father said concerning another son of his that he is his firstborn, the father's statement is deemed credible. If the court had a presumption concerning a son that he is not a firstborn, and his father said that he is his firstborn, the father's statement is not deemed credible.

394 The Gemara asserts that as the two halakhot of the baraita seem to contradict each other, it must be that the first clause represents the opinion of Rabbi Yehuda, and the latter clause represents the opinion of the Rabbis.

395 § Rabbi Yoḥanan says that if one says about another: He is my son, and then says: He is my slave, his latter statement is not deemed credible. It cannot disqualify him from marrying a Jewish woman or exclude him from his inheritance. Conversely, if he first says: He is my slave, and then says: He is my son, his latter statement is deemed credible, as in his first statement he presumably was saying: He serves me as a slave does.

396 And the opposite halakha applies to one at the tax house: If one is passing the customs house and says about a certain person: He is my son, and then later says: He is my slave, his latter statement is deemed credible, as he presumably says that the other is his son only to evade paying a tax for possessing a slave. Conversely, if he says at the customs house: He is my slave, and then later says: He is my son, his latter statement is not deemed credible, as one would not unnecessarily render himself liable to pay a tax.

397 The Gemara raises an objection from a baraita: If one was serving another person like a son serves his father, and the person being served came and said: He is my son, and then said: He is my slave, his latter statement is not deemed credible. Additionally, if one was serving another person like a slave serves his master, and the one being served came and said: He is my slave, and then said: He is my son, his latter statement is not deemed credible. This contradicts Rabbi Yoḥanan's statement that if he first says that he is his slave and then says that he is his son, his latter statement is deemed credible.

398 Rav Naḥman bar Yitzḥak said: There, in Rabbi Yoḥanan's statement, it is a case where he is presumed to be a slave because everyone calls him: A slave on whose border [metzar] are one hundred. Since everyone is referring to him in this manner, the person he served cannot call into question his status as a slave by saying that he is his son. The Gemara asks: What does it mean that on his border [metzar] are one hundred? The Gemara answers: One hundred dinars are adjacent to [metzar] this slave. In other words, he is worth one hundred dinars.

399 § Rabbi Abba sent several rulings from Eretz Yisrael to Rav Yosef bar Ḥama, including the following: In the case of one who says to another: You stole my slave, and he says in response: I did not steal him, and when the first inquires: If so, what is the nature of his presence in your possession, the latter responds: You sold him to me,

400 or: You gave him to me as a gift, if he then adds: Although I owe you nothing, as the slave is mine, if it is your desire, take an oath that he is yours and take him; and the claimant takes an oath that the slave is his, the one in possession of the slave cannot retract his offer, although he was not obligated to make the offer.

401 The Gemara asks: What is Rabbi Abba teaching us? We already learned in a mishna (Sanhedrin 24a) that if one of the litigants said to the other: My father is trusted to adjudicate for me, or: Your father is trusted to adjudicate for me, or: These three cattle herders who are not experts in halakha are trusted to adjudicate for me, and all of the individuals this litigant mentioned are legally disqualified from serving as judges, Rabbi Meir says that the one who stated this can retract his statement, and the Rabbis say that he cannot retract it, and he is obligated to have them serve as judges if the other

litigant so desires. Since this halakha is already stated in the mishna, what novel halakha did Rabbi Abba teach?

[402] The Gemara in tractate Sanhedrin records a dispute between amora'im as to the circumstances of the case of that mishna, with one amora holding that the dispute pertains only to a case where the one accepting the disqualified judge will need to forgive a debt if the judge rules in accordance with his opponent, while another amora holds that the dispute pertains even to a case where he will need to pay the other litigant if the judge rules in accordance with his opponent. By stating his ruling in a case where the litigant will have to give the slave to the other, Rabbi Abba teaches us this, that the dispute between Rabbi Meir and the Rabbis is even in a case where the litigant said: I will give you what you claim if that is the ruling of these judges, and the Rabbis hold that if he subsequently wishes to retract his suggestion, he cannot do so. And Rabbi Abba also teaches that the halakha is in accordance with the statement of the Rabbis.

[403] § Rabbi Abba also sent a ruling to Rav Yosef bar Ḥama that the halakha is that the creditors of one who died collect the debts from the Canaanite slaves the deceased left his heirs, i.e., they take the slaves, as slaves have the same status as land in this regard. And Rav Naḥman says that they do not collect the debt by taking the slaves.

[404] § Rabbi Abba also sent a ruling to Rav Yosef bar Ḥama that with regard to people with a common ancestor, the halakha is that the testimony of members of the third generation with regard to members of the second generation whose closest familial connection is through that ancestor is valid. For example, one can testify about his first cousin once removed, and is not disqualified as a relative. Rava says: Even the testimony of members of the third generation with regard to members of the first generation is valid; e.g., one can testify about his great-uncle.

[405] Mar bar Rav Ashi deemed one's testimony with regard to his father's father valid, as he considered it a case of testimony of a member of the third generation with regard to a member of the first generation, which Rava deemed valid. But the halakha is not in accordance with the opinion of Mar bar Rav Ashi.

[406] § Rabbi Abba also sent a ruling to Rav Yosef bar Ḥama concerning testimony: If one knew information that could serve as testimony about the boundary of another's land before he became blind, and then he became blind, he is disqualified from bearing witness in a dispute as to the boundaries of that person's properties.

[407] And Shmuel said: He is fit to bear witness, as it is possible for him to determine the boundaries of the fields despite his blindness. But he is not fit to identify a movable item, e.g., a cloak, as he cannot see it. And Rav Sheshet said: He can identify even a cloak, as it is possible for him to determine its length and its width. But he is not fit to identify a piece of silver. And Rav Pappa said: He can identify even a piece of silver, as it is possible for him to determine its weight.

[408] The Gemara raises an objection from a baraita (Tosefta, Sanhedrin 3:5): If one knew information that could serve as testimony about another before he became his son-in-law, and then he became his son-in-law, thereby becoming a relative who is disqualified from bearing witness concerning him; or if he was able to hear at the time he witnessed an incident and then he became deaf; or if he was able to see at the time he witnessed an incident and then became blind; or if he was halakhically competent and then became insane, in all these cases, he is disqualified from bearing witness.

409 The baraita continues: But if he knew information about him that could serve as testimony before he became his son-in-law, and then he became his son-in-law, and then his daughter died, so that they are no longer related; or if he was able to hear, and then became deaf, and then again became able to hear; or if he was able to see, and then became blind, and then again became able to see; or if he was halakhically competent, and then became insane, and then again became halakhically competent, in all these cases, he is fit to bear witness.

410 The baraita concludes: This is the principle: Anyone whose initial state or his ultimate state, i.e., his state at the time of the incident or at the time of his testimony in court, is one of disqualification for bearing witness is disqualified from bearing witness. But anyone whose initial state and his ultimate state is one of fitness to bear witness is fit to bear witness, even if he was disqualified in the interim. This baraita clearly states that one who is blind is disqualified from bearing witness.

411 The Gemara concludes: The refutation of the opinions of all the amora'im who held that a person who became blind after witnessing a matter can, in certain cases, testify about it, is indeed a conclusive refutation.

412 § Rabbi Abba sent another ruling to Rav Yosef bar Ḥama: One who says something concerning one child among his sons is deemed credible, and Rabbi Yoḥanan says that he is not deemed credible.

413 The Gemara asks: What is Rabbi Abba saying? Abaye said that this is what Rabbi Abba is saying: One who says concerning one child among his sons: He shall inherit all my property, is deemed credible, in accordance with the opinion of Rabbi Yoḥanan ben Beroka, who holds that one can bequeath all his property to one of his heirs (130a). And Rabbi Yoḥanan says that he is not deemed credible, in accordance with the opinion of the Rabbis, who disagree with Rabbi Yoḥanan ben Beroka.

414 Rava objects to this explanation: According to Abaye's explanation, this wording: Is deemed credible, and: He is not deemed credible, is not precise; he should have employed the terms: Shall inherit, and: Shall not inherit, as the issue is the ability of the father to specify who will inherit from him, not his credibility.

415 Rather, Rava said that this is what Rabbi Abba is saying: One who says about one child among his sons that he is his firstborn is deemed credible, in accordance with the opinion of Rabbi Yehuda (127b); and Rabbi Yoḥanan says that he is not deemed credible, in accordance with the opinion of the Rabbis, who disagree with Rabbi Yehuda.

416 § Rabbi Abba sent another ruling to Rav Yosef bar Ḥama: In a case of one who says: My wife will take a portion of my estate like one of the sons, she takes a portion like one of the sons, as it is considered a gift. Rava says: And this ruling is only with regard to the husband's current property, which he can give her as a gift. The husband cannot give her a portion of his future property. And furthermore, the calculation of her portion must take into account not only the number of sons the husband has at the time of his statement, but also the sons who come, i.e., who will be born, afterward.

417 § Rabbi Abba sent another ruling to Rav Yosef bar Ḥama: In the case of one who produces a promissory note against another, and the creditor says: I was not repaid anything, and the debtor says: I repaid half the debt, and the witnesses testify that the debtor repaid the entire debt, then this debtor takes an oath that he repaid half, as is the halakha with regard to one who admits to a part of a

claim, and he is exempt from paying that half. And the creditor collects the second half from unsold property; but not from liened property that was sold after the loan, as the buyers can say: We rely on the witnesses that the debt was repaid in its entirety.

418 The Gemara compares this halakha to the case of a promissory note that states that the debtor owes the creditor: Sela coins, without stating how many. The creditor claims that he lent the debtor five sela and the debtor claims that he borrowed only three. Rabbi Akiva holds that since the wording of the promissory note indicates a minimum debt of two sela, and the creditor could not have collected the third sela without the debtor's admission, the latter's admission to a part of the claim cannot render him liable to take an oath. The Gemara states: And even according to Rabbi Akiva, who says that the debtor is not liable to take an oath, as with regard to the third sela his legal status is similar to that of one who returns a lost item, this statement applies only in a case where there are no witnesses to the loan. But where there are witnesses, as is the case in Rabbi Abba's ruling, the debtor fears denying the entire debt. Therefore he is liable to take an oath that he repaid half, as one who admits to a part of the claim.

419 Mar bar Rav Ashi objects to this: On the contrary; even according to Rabbi Shimon ben Elazar, who disagrees with Rabbi Akiva and says that the debtor is considered one who admits to a part of the claim, this statement applies only in a case where there are no witnesses who support him. But here in the case of Rabbi Abba, where there are witnesses who support him, testifying that he repaid the entire debt, his legal status is certainly that of one who returns a lost item, and he does not need to take an oath that he repaid half.

420 § Mar Zutra taught in the name of Rav Shimi bar Ashi: The halakha in all these halakhot is as Rabbi Abba sent to Rav Yosef bar Ḥama. Ravina said to Rav Ashi: What about the statement with which Rav Naḥman disagreed, i.e., that a debt can be collected by taking the slaves the debtor left his heirs? Is the halakha in accordance with this ruling of Rabbi Abba as well, despite the principle that in monetary matters the halakha is in accordance with Rav Naḥman's opinion? Rav Ashi said to him: We teach a different tradition, that Rabbi Abba's statement rules that a creditor does not collect the debt from the slaves the debtor left his heirs, and that Rav Naḥman said the same.

421 The Gemara asks: But then what possibility does Mar Zutra exclude in ruling that the halakha is in accordance with Rabbi Abba's statement?

422 If his statement is said to exclude the statement of Rava that the testimony of members of the third generation concerning members of the first generation is valid, this is difficult, as Rava's statement is not in conflict with Rabbi Abba's statement that the testimony of members of the third generation with regard to members of the second generation is valid; it merely adds to it. If it is said to exclude the opinion of Mar bar Rav Ashi that a grandfather can testify concerning his grandchild, this is also difficult, as it has already been established that the halakha is not in accordance with the opinion of Mar bar Rav Ashi. If it is said to exclude the rulings of Shmuel and Rav Sheshet and Rav Pappa, that a person who became blind can testify about what he saw beforehand, this too is difficult, as their rulings were refuted based on a baraita.

423 The Gemara explains: Rather, Mar Zutra's statement is said to exclude the statement of Rabbi Yoḥanan that one cannot testify that a specific one of his sons is his firstborn, and to exclude the strong objection of Mar bar Rav Ashi to the statement of Rabbi Abba with regard to a case where a

debtor admitted to part of a claim and witnesses testified that he repaid the entire debt. Despite Mar bar Rav Ashi’s objection, the halakha is that the debtor is not liable to take an oath.

424 § The mishna teaches: With regard to one on his deathbed who apportions his property orally, granting it to his sons as a gift, and he increased the portion given to one of his sons and reduced the portion given to one other son, or equated the portion of the firstborn to the portions of the other sons, his statement stands. But if he said that they will receive the property not as a gift but as an inheritance, he has said nothing. If he wrote in his will, whether at the beginning, or in the middle, or at the end, that he is granting them the property as a gift, his statement stands. The Gemara asks: What are the circumstances where it is phrased as a gift at the beginning? What are the circumstances where it is phrased as a gift in the middle? What are the circumstances where it is phrased as a gift at the end?

425 When Rav Dimi came from Eretz Yisrael to Babylonia, he said that Rabbi Yoḥanan says that where one on his deathbed instructed: Such and such a field will be given to so-and-so and he will inherit it, this is a case where it is phrased as a gift at the beginning. Where he instructed: And he will inherit it and it will be given to him, this is a case where it is phrased as a gift at the end. Where he instructed: He will inherit it and it will be given to him and he will inherit it, this is a case where it is phrased as a gift in the middle.

426 And the halakha that his statement is valid pertains specifically to a case where the two terms, giving and inheritance, are employed with regard to one person and one field. But if they are employed with regard to one person and two fields, e.g., if he says: Reuven will inherit this field and will be given that field, or one field and two people, e.g., Reuven will inherit half of this field and Shimon will be given the other half, the part that was phrased as inheritance does not take effect. Only the part that is phrased as a gift takes effect.

427 Rabbi Elazar says: Even in a case where the two terms are employed with regard to one person and two fields, or one field and two people, his instruction takes effect, as both terms were employed with regard to the same person or the same field. But with regard to two fields and two people, it does not take effect, as the two instructions are not connected to one another.

428 When Ravin came from Eretz Yisrael to Babylonia, he said that if one on his deathbed said: Such and such a field will be given to so-and-so, and so-and-so, i.e., another person, will inherit such and such a field, i.e., another field, Rabbi Yoḥanan says that even the latter person, who was designated to inherit his field, has acquired it. Rabbi Elazar says: He has not acquired it.

429 Abaye said to Ravin: You have lightened our burden with one statement that you cited, but you have made it difficult for us with the other one. Granted, the contradiction between this statement of Rabbi Elazar that you cited and the previously cited statement of Rabbi Elazar is not difficult. There, in the previously cited statement, Rabbi Elazar said that the directive takes effect with regard to a case of one person and two fields, and here he said that the directive does not take effect with regard to a case of two people and two fields.

430 But the apparent contradiction between one statement of Rabbi Yoḥanan and the other statement of Rabbi Yoḥanan is difficult, as Rav Dimi cited in Rabbi Yoḥanan’s name that his directive takes effect only in a case of one person and one field, and according to your citation in the name of Rabbi Yoḥanan it takes effect even in a case of two people and two fields.

[431] Ravin answered him: Rav Dimi and I are amora’im, and we each have a different tradition with regard to the opinion of Rabbi Yoḥanan.

[432] Ravin continued: And Reish Lakish says that one has not acquired the field in the case of two people and two fields unless the giver says: So-and-so and so-and-so will inherit such and such a field and such and such a field that I have given them as a gift, and they will inherit it.

[433] This dispute between the amora’im of Eretz Yisrael is also the subject of a dispute between the amora’im of Babylonia. Rav Hamnuna says: The mishna taught that when both giving and inheritance are mentioned one can increase the portion of one of his sons only with regard to a case of one person and one field, but with regard to one person and two fields, or one field and two people, it is not effective. And Rav Naḥman says: Even in a case of one person and two fields, or one field and two people, it is effective, but in a case of two fields and two people, it is not. And Rav Sheshet says: Even in a case of two fields and two people, it is effective.

[434] Rav Sheshet said: From where do I say this? As it is taught in a baraita (Tosefta, Ketubot 6:10): If a person on his deathbed, or one who is going overseas, says to his children’s steward: Give a shekel to my children every week for their needs, and this is a situation where, based on their needs, they are fit for the steward to give them a sela, i.e., double the amount, he gives them a sela. When the father mentioned a shekel, he presumably meant that the children should be given a sum in accordance with their actual requirements, not that specific amount. But if he said: Give them only a shekel, the steward gives them only a shekel, and no more. And if he said: If my children die,

[435] others will inherit their portion in their stead, then regardless of whether he said: Give them a shekel, or whether he said: Do not give them more than a shekel, the court gives his children only a shekel per week, so as not to reduce the share of the others, as their father clearly stated that he wishes to give his children only a specific stipend, and that he intends to leave the bulk of his property to others.

[436] Rav Sheshet concludes: And isn’t the case here like a case of two fields and two people, as the father gave part of his property to his sons as a gift, and the rest to others as an inheritance? But it is taught that the others acquire the property, although he employed only the terminology of inheritance concerning them.

[437] Rav Sheshet raised the objection and he resolved it: The term others is referring to those who are fit to inherit from him; and the ruling of the baraita is in accordance with the opinion of Rabbi Yoḥanan ben Beroka, who holds that one can bequeath his property to anyone who is fit to inherit from him. Therefore it is unnecessary for the bequest to be phrased as a gift.

[438] Rav Ashi said: Come and hear a proof for the opinion of Rav Sheshet from a baraita (Tosefta 8:4): If one states: My property will go to you after my death for your use during your lifetime, and after you die, so-and-so will inherit the property, and after the one who inherits after you dies, so-and-so will inherit the property, then in this case, when the first recipient dies, the second acquires it, and when the second dies, the third acquires it. And if the second dies during the lifetime of the first, the property returns after his death to the heirs of the first, and does not go to the third designated recipient, as his right was to inherit it from the second one, who never received it.

[439] Rav Ashi states his proof: And here it is a case like that of two fields and two people, as the bequest to the first recipient was phrased as a gift, and to the second one it was phrased as

inheritance; and yet the baraita teaches that the second recipient acquires the property after the death of the first.

440 And if you would say that here, too, the baraita is referring to a case where the recipient is fit to inherit from him, and it is in accordance with the opinion of Rabbi Yoḥanan ben Beroka, if so, why does it state that when the second dies, the third acquires it?

441 Rav Ashi explains his previous comment: Didn’t Rav Aḥa, son of Rav Avya, send the following ruling in accordance with the statement of Rabbi Yoḥanan ben Beroka? If a person on his deathbed said: My property is given to you, and after you to so-and-so, and the first recipient was fit to inherit from him, the second gets nothing in place of the first, i.e., he does not receive the property after the first one dies, as this formulation employed by the owner was not one of a gift; rather, it was a formulation of inheritance, and inheritance has no end, i.e., it cannot be stopped. Therefore, since the first recipient acquired it as inheritance, his heirs inherit it from him, and it cannot be taken by the second one. Therefore, the baraita is irreconcilable with the opinion of Rabbi Yoḥanan ben Beroka.

442 The Gemara affirms: The refutation of the opinions of all the Sages who disagree with the opinion of Rav Sheshet that even if one uses the two terms with regard to two fields and two people his gift to both people is effective, is a conclusive refutation.

443 The Gemara suggests: Let us say that it is also a conclusive refutation of the opinion of Reish Lakish, who maintains that giving must be mentioned with regard to both recipients and both fields. The Gemara asks: And how can you understand this? But didn’t Rava say that the halakha is in accordance with the opinion of Reish Lakish with regard to these three issues: Acquisition of land for the rights to its produce, ḥalitza of a pregnant woman, and the matter of bequeathal phrased both as a gift and as inheritance?

444 The Gemara answers: This is not difficult. Here, in the case where giving can be mentioned concerning one of the recipients and inheritance with regard to the other, it is a case where the two bequests were stated within the time required for speaking a short phrase, i.e., the time it takes to greet one’s teacher. According to the halakha, within this time a speaker can retract his statement. Therefore both bequests are considered to be part of one statement. There, in the case where Reish Lakish maintains that giving must be mentioned with regard to both people for it to take effect, it is a case where the final part of the statement, where he said: And they will inherit it, was after the time required for speaking a short phrase.

445 And the halakha is that the legal status of any statement interrupted or retracted within the time required for speaking a short phrase is like that of continuous speech. This is the halakha in all cases, apart from idol worship, as one who accepts an idol as his god is liable to receive court-imposed capital punishment even if he retracts his statement within the time required for speaking a short phrase,

446 and betrothal, as if a man betroths a woman and retracts the betrothal within the time required for speaking, his retraction is not effective.

447 MISHNA: In a case of one who says: So-and-so will inherit from me, in a case where there is a daughter, or: My daughter will inherit from me, in a case where there is a son, he has said nothing, as he has stipulated counter to that which is written in the Torah concerning the order of inheritance. Rabbi Yoḥanan ben Beroka says: If he said this about one fit to inherit from him, his statement

stands, but if it was about one for whom it was not fit to inherit from him, his statement does not stand.

448 GEMARA: The Gemara infers from the mishna that the reason the first tanna rules that his bequeathal is invalid is that he bequeathed his estate to another in a case where he had a daughter, or to his daughter where he had a son, but if he bequeathed his entire estate to one son among his other sons, or to one daughter among his other daughters, his statement stands. The Gemara questions this inference: Say the latter clause of the mishna: Rabbi Yoḥanan ben Beroka says that if he said this about one fit to inherit from him, his statement stands. This is identical to the opinion of the first tanna. What information does this statement of Rabbi Yoḥanan ben Beroka add? With regard to what case do they disagree?

449 The Gemara continues: And if you would say that Rabbi Yoḥanan ben Beroka is saying that one's statement stands even in a case where he bequeathed his estate to another where he had a daughter or to a daughter where he had a son, as although he bequeathed it to one who is not currently his heir, the beneficiary would be fit to inherit from him if the current heirs die, and this would be contrary to the opinion of the first tanna, this is difficult. And isn't it taught in a baraita (Tosefta 7:18) that Rabbi Yishmael, son of Rabbi Yoḥanan ben Beroka, says: My father and the Rabbis did not disagree about a case where one bequeathed his estate to another where he had a daughter or to a daughter where he had a son; in a case such as this, my father concedes that he has said nothing.

450 Rabbi Yishmael continues: With regard to what case do they disagree? They disagree with regard to a case where he bequeathed his entire estate to one son among his other sons, or to one daughter among his other daughters, as my father says that the son or daughter inherits the entire estate, and the Rabbis say that he does not inherit it.

451 The Gemara explains: If you wish, say that from the fact that Rabbi Yishmael is saying that they did not disagree about a case where one bequeathed his estate to another where he had a daughter or to a daughter where he had a son, by inference, the first tanna of that baraita, to whom he was responding, holds that they did disagree in this case.

452 And if you wish, say instead that the entire mishna is stating the opinion of Rabbi Yoḥanan ben Beroka, and the mishna is incomplete, and this is what it is teaching: With regard to one who says: So-and-so will inherit from me, in a case where there is a daughter, or: My daughter will inherit from me, in a case where there is a son, he has said nothing, but if he bequeathed his property to one son among his other sons, or one daughter among his other daughters, then if he said that the son or daughter will inherit all his property, his statement stands, as Rabbi Yoḥanan ben Beroka says: If he said this about one fit to inherit him, that he should inherit all of his property, his statement stands.

453 § As for the halakhic ruling, Rav Yehuda says that Shmuel says: The halakha is in accordance with the opinion of Rabbi Yoḥanan ben Beroka. And Rava says as well that the halakha is in accordance with the opinion of Rabbi Yoḥanan ben Beroka.

454 Rava said: What is the reason for the opinion of Rabbi Yoḥanan ben Beroka? The verse states: "Then it shall be, in the day that he causes his sons to inherit" (Deuteronomy 21:16), which is interpreted to mean that the Torah gave the father permission to bequeath his estate to whomever he wishes among his sons.

[455] Abaye said to him: Isn’t this halakha derived from the continuation of the verse: “He may not make the son of the beloved the firstborn, before the son of the hated, who is the firstborn”? From the prohibition against depriving the firstborn of his double portion it can be inferred that one can change the apportionment of the inheritance of his other sons.

[456] The Gemara answers: That clause in the verse is necessary for that which is taught in a baraita: Abba Ḥanan says in the name of Rabbi Eliezer:

[457] Why must the verse state: “He may not make the son of the beloved the firstborn” (Deuteronomy 21:16)?

[458] Abba Ḥanan explains: It is necessary because it is stated previously in the verse: “Then it shall be, in the day that he causes his sons to inherit,” as one might have thought: Could this not be derived through an a fortiori inference, as follows: And if with regard to an ordinary son, one who is not a firstborn, whose power is enhanced in that he takes in inheritance the property due the deceased as he does the property the deceased possessed at the time he died, nevertheless, the Torah gave the father permission to bequeath his estate to whichever of his sons he wishes, depriving his other sons of their portions, then with regard to a firstborn, whose power is diminished in that he does not take a double portion of the property due his father as he takes of the property the deceased possessed at the time of his death, is it not clear all the more so that his father can deprive him of the double portion he receives as a firstborn? Therefore, the verse states: “He may not make the son of the beloved the firstborn.”

[459] Abba Ḥanan continues: And let the verse state only the prohibition of: “He may not make the son of the beloved the firstborn.” Why must the verse state: “Then it shall be, in the day that he causes his sons to inherit”?

[460] It is necessary because one might have thought: Could this not be derived through an a fortiori inference, as follows: And if with regard to a firstborn, whose power is diminished in that he does not take a double portion of the property due his father as he takes of the property the deceased possessed, nevertheless the Torah states: “He may not make the son of the beloved the firstborn,” i.e., the firstborn may not be deprived of his double portion, then with regard to an ordinary son, whose power is enhanced in that he takes in inheritance the property due the deceased as he does the property the deceased possessed, is it not clear all the more so that his father cannot deprive him of his portion of the inheritance?

[461] Therefore, the verse states: “Then it shall be, in the day that he causes his sons to inherit,” indicating that the Torah gave the father permission to bequeath his estate to whichever of his sons he wishes. Consequently, the prohibition “he may not make the son of the beloved the firstborn” is not available to prove that one may bequeath his estate to whichever of his sons he wishes.

[462] § The Gemara resumes discussion of the halakhic ruling: Rabbi Zerika says that Rabbi Ami says that Rabbi Ḥanina says that Rabbi Yehuda HaNasi says: The halakha is in accordance with the opinion of Rabbi Yoḥanan ben Beroka. Rabbi Abba said to Rabbi Zerika: It was stated that Rabbi Yehuda HaNasi ruled in an actual case in accordance with the opinion of Rabbi Yoḥanan ben Beroka.

[463] The Gemara asks: With regard to what principle do they disagree? Since both Rabbi Zerika and Rabbi Abba agree that the halakha is in accordance with the opinion of Rabbi Yoḥanan ben Beroka, why did Rabbi Abba state that Rabbi Yehuda HaNasi ruled as much in an actual case? The Gemara

answers: One Sage, Rabbi Zerika, holds that a ruling in principle is a preferable source for a halakha, rather than a ruling from an incident; and one Sage, Rabbi Abba, holds that a specific incident ruled upon by a Sage is a preferable source.

464 The Gemara examines which source is preferable. The Sages taught in a baraita: One may derive the halakha neither from a statement nor from an incident where one saw a ruling issued in a certain manner, unless the Sages explicitly tell him that it is the practical halakha. If he asked the Sages and they told him the practical halakha, he may go and act upon the ruling in those circumstances, provided that he does not compare between cases and apply the ruling to other circumstances.

465 The Gemara asks: What is the meaning of the statement: Provided that he does not compare? But don't we compare cases throughout the entire Torah? The main method of halakhic derivation is through comparing cases where the halakha was already established to cases where the halakha is unclear.

466 Rav Ashi said that this is what the baraita is saying: Provided that he does not compare between various cases of animals with wounds that will cause them to die within twelve months [tereifot], which are forbidden for consumption. In general, one may compare cases, but with regard to the definition of a tereifa, one may not compare.

467 This is as it is taught in a baraita: With regard to tereifot, one does not say: This wound is similar to that wound. Every type of wound has its own halakhot. And do not wonder about this principle, as there are organs with regard to which one cuts it from here, i.e., one side, and the animal dies within twelve months, but one cuts it from there, i.e., another side, and it lives.

468 Rabbi Asi said to Rabbi Yoḥanan: When the Master, i.e., Rabbi Yoḥanan, says to us: This is the halakha, should we act upon the ruling? Rabbi Yoḥanan said: Do not act upon the ruling unless I say that it is a practical halakha.

469 Rava said to Rav Pappa and to Rav Huna, son of Rav Yehoshua: When a legal ruling of mine comes before you and you perceive a refutation of it, do not tear it up until you come before me to discuss it. If I have a valid explanation, I will tell you, and if not, I will retract my ruling. If a ruling of mine comes before you after my death, when you can no longer discuss it with me, do not tear it up, but do not learn from it either, i.e., do not rule in accordance with it. Do not tear it up, as had I been there, perhaps I would have told you a valid explanation that you would have accepted;

470 but do not learn from it either, as a judge has only what his eyes see as the basis for his ruling. One must rule according to his own understanding.

471 § Rava raises a dilemma: In the case of a healthy person who bequeaths his estate to one of his sons, how should the court rule? Should it be reasoned that when Rabbi Yoḥanan ben Beroka says that the bequeathal is valid, he said so specifically with regard to the case of a person on his deathbed, since he is capable of bequeathal, as the verse: "In the day that he causes his sons to inherit" (Deuteronomy 21:16), from which the validity of this bequeathal is derived, is referring specifically to the time of one's death; but in the case of a healthy person, he did not say his ruling? Or perhaps he stated his ruling even in the case of a healthy person.

472 Rav Mesharshiyya said to Rava: Come and hear a resolution of your dilemma from a baraita, as Rabbi Natan said to Rabbi Yehuda HaNasi: You taught in your Mishna in accordance with the opinion of Rabbi Yoḥanan ben Beroka, as we learned in a mishna (Ketubot 52b): If the husband did

not write for her in her marriage contract: Any male children you will have from me will inherit the money of your marriage contract in addition to their portion of the inheritance that they receive together with their brothers, he is nevertheless obligated as though he had written it, as it is a stipulation of the court and consequently takes effect even if it is not explicitly stated. This mishna is in accordance with the opinion of Rabbi Yoḥanan ben Beroka that one may add to the share of some of his sons at the expense of the others.

473 And Rabbi Yehuda HaNasi said to him: We did not learn that the male children she has from him will inherit the money of the marriage contract; that version is not accurate. Rather, we learned that they will take the money of the marriage contract, as a gift. When a bequeathal is worded in this manner, it is valid in any event, as stated in the previous mishna (126b).

474 The baraita continues: And Rabbi Yehuda HaNasi later retracted his response, and said: My response was because of immaturity that I had in me, and I was insolent in the presence of Rabbi Natan the Babylonian by responding in a manner that is incorrect. It is incorrect for the following reason: But since we maintain that concerning an obligation detailed in a marriage document ensuring inheritance rights of a woman’s male children, the beneficiaries do not repossess liened property that has been sold, one can infer that they do not receive the money as a gift. As, if it enters your mind that we learned in the mishna that they will take the money as a gift, why don’t they repossess liened property? The gift was given to them before the property was sold to others. Rather, conclude from this claim that we learned in the mishna that they will inherit the money.

475 Rav Mesharshiyya concludes: Of whom have you heard that he holds this opinion that one can add to the inheritance of some of his sons at the expense of the others? It is the opinion of Rabbi Yoḥanan ben Beroka, and conclude from the mishna in Ketubot that his ruling applies even with regard to a healthy person, as one does not write a marriage contract on his deathbed. This resolves Rava’s dilemma.

476 Rav Pappa said to Abaye: How can one prove that the mishna in tractate Ketubot is in accordance with the opinion of Rabbi Yoḥanan ben Beroka? Whether according to the one who says that the correct version of the mishna is: They will take, and whether according to the one who says the correct version of the mishna is: They will inherit, the mishna is difficult, for the following reason: A person cannot transfer ownership of an entity that has not yet come into the world. How can the husband confer rights to his property to children that have yet to be born?

477 Rav Pappa explains: And even according to Rabbi Meir, who says that a person can transfer ownership of an entity that has not yet come into the world, this statement applies specifically in a case where he transfers the item to an entity, i.e., a person, that is in the world; but with regard to transferring ownership of an item to an entity that is not yet in the world, e.g., to his children that have yet to be born, this statement does not apply. Therefore, the ruling of the mishna is difficult according to all opinions.

478 Rav Pappa explains: Rather, evidently a stipulation of the court is different. Since this clause of the marriage contract was instituted by rabbinic ordinance, it is not subject to the standard halakhot of transferring property, and one can transfer ownership of an item to an entity that is not yet in the world. Accordingly, here too, with regard to the dispute between Rabbi Yoḥanan ben Beroka and the Rabbis, a stipulation of the court is different, and even according to the Rabbis, who disagree with the opinion of Rabbi Yoḥanan ben Beroka, one can bequeath the money of his wife’s marriage

contract to the male children she will have from him in any manner he chooses. Consequently, there is no proof that the mishna is in accordance with the opinion of Rabbi Yoḥanan ben Beroka.

[479] Abaye said to him: The assertion that the mishna is in accordance with the opinion of Rabbi Yoḥanan ben Beroka is due to the fact that it expresses this bequeathal with the wording: They will inherit, as opposed to: They will take. This indicates that a person can normally apportion his inheritance to his sons in any manner he wishes, in accordance with the opinion of Rabbi Yoḥanan ben Beroka.

[480] Abaye then said: That which I said is not correct. The expression: They will inherit, is appropriate even according to the Rabbis, who disagree with Rabbi Yoḥanan ben Beroka, as we learned in the continuation of that mishna that even if the husband did not write for his wife: Any female children you will have from me will sit in my house and be sustained from my property until they are taken by men, i.e., until they are married, he is nevertheless obligated as though he had written it, as it too is a stipulation of the court.

[481] And since these two clauses are written adjacent to each other in the marriage contract, it is effectively a case where one bequeaths his estate to two people: To this one, the daughters, as a gift, and to that one, the sons, as an inheritance. And in any case where one bequeaths his estate to this person as an inheritance and to that person as a gift, even the Rabbis concede that the bequest is valid even if it is to people who are not his heirs, as it is considered a gift with regard to both recipients.

[482] Rav Naḥumi, and some say it was Rav Ḥananya bar Minyumi, said to Abaye:

[483] From where do you conclude that both clauses, the one for the benefit of the sons and the one for the benefit of the daughters, were instituted by one court and are therefore each read in light of the other? Perhaps they were instituted by two different courts and are unrelated to each other. Accordingly, the wording of the gift and the wording of the inheritance are not part of the same statement.

[484] The Gemara answers: This possibility should not enter your mind, as the former clause of that mishna teaches (Ketubot 49a): A father is not obligated to provide his daughter’s sustenance. This interpretation was interpreted by Rabbi Elazar ben Azarya before the Sages of the vineyard in Yavne: Since the Sages instituted that after the father’s death, the sons inherit the sum of money specified in their mother’s marriage contract, and the daughters are sustained from their father’s estate, these two halakhot are equated: Just as the sons inherit only after their father’s death, not during his lifetime, so too, the daughters are sustained from their father’s property only after their father’s death.

[485] The Gemara explains: Granted, if you say that the two clauses were instituted by one court, this is the reason that we derive the halakhot of one ordinance from the halakhot of the other ordinance, under the assumption that a court institutes ordinances in a consistent manner. But if you say that they were instituted by two distinct courts operating in different periods, how can we derive the halakhot of one ordinance from the halakhot of the other ordinance?

[486] The Gemara rejects this explanation: From where is it assumed that they were instituted by one court? Actually, I will say to you that perhaps the two clauses were instituted by two separate courts, and nevertheless Rabbi Elazar ben Azarya derived the halakhot of one ordinance from the halakhot of the other ordinance, because the latter court presumably instituted its ordinance in accordance with the format of the former court, so that one should not ask about contradictions between one

ordinance and the other ordinance. With regard to the halakhot of inheritance, there is no reason to read the two clauses in light of the other.

487 § Rav Yehuda says that Shmuel says: A person on his deathbed who writes a document granting all his property to his wife has merely rendered her a steward. The assumption is that he did not intend to deprive his heirs of their entire inheritance. Rather, he intended to appoint her as a steward in charge of the property, so that the heirs will honor her.

488 The Gemara discusses similar cases: It is obvious that if one writes a document granting all his property to his adult son, he does not intend to give him the entire inheritance, but to have him distribute it among his brothers. Rather, he has merely rendered him a steward [apotropos]. If he writes it to his minor son, what is the halakha? Is it still assumed that his intention is to appoint him as a steward, or is that implausible since a minor boy is not yet capable of assuming this position and therefore the father apparently intended to bequeath to him the entire inheritance?

489 It was stated that Rav Ḥanilai bar Idi says that Shmuel says that even if one wrote a document granting all his property to his minor son who is lying in his crib, he does not receive the entire inheritance. Rather, the father presumably intended to appoint him as a steward when he reached adulthood, so that the other heirs would honor him.

490 The Gemara states: It is obvious that if one wrote a document granting all his property to his son and another person, he intended to give the other person half the property as a gift, and to appoint his son a steward to oversee the property of his brothers, with whom he shares the other half. Similarly, if he wrote a document granting all his property to his wife and another person, he intended to give the other person half the property as a gift, and to appoint his wife a steward to oversee the other half of the property for his sons.

491 Furthermore, it is obvious that if one wrote a document granting all his property to his betrothed wife, whom he did not yet wed, or to his former wife, whom he had divorced, he intended to give it to them as a gift, as he had no reason to have his heirs honor them.

492 A dilemma was raised before the Sages: If one wrote a document granting all his property to his daughter before his sons, in a case where he has sons who would inherit from him, or to his wife before his brothers, or to his wife before the husband’s sons who are not her sons, what is the halakha? Is it assumed that his intention was to appoint her as a steward or to give her the property as a gift?

493 Ravina said in the name of Rava that in all of these cases the recipient did not acquire the property. Rather, he or she was merely appointed a steward, except for the cases of his betrothed wife and his former wife whom he divorced. By contrast, Rav Avira said in the name of Rava that in all of these cases the recipient acquired the property, except for the cases of his wife before his brothers and his wife before the husband’s sons, where he clearly intended only to appoint her as a steward.

494 With regard to the halakha that a person on his deathbed who wrote a document granting all his property to his wife has appointed her as a steward, Rava raises a dilemma: In the case of a healthy person, what is the halakha? Should it be reasoned that specifically in the case of a person on his deathbed it is assumed that he intended to appoint his wife as a steward, as it is preferable for him that her word be heard and she is honored after his death, but in the case of a healthy person, he is still standing and can ensure that his wife is honored, so he apparently intended to actually give her

all of his property? Or perhaps should it be reasoned that in the case of a healthy person as well, it is preferable that his wife's word be heard and she be given honor from now?

[495] The Gemara suggests: Come and hear a resolution of the dilemma from a baraita: If one writes a document that the profits of his property should go to his wife in the event that he dies or divorces her, she collects payment of her marriage contract, which he wrote her at the time of their marriage, from the land itself. The profits are hers as a result of his gift. Similarly, if he wrote a document granting her one-half, one-third, or one-quarter of his property, she collects payment of her marriage contract from the rest of his property, which he did not give her as a separate gift.

[496] The baraita continues: If one wrote a document granting all his property to his wife, and subsequently a promissory note emerged against him for a loan he took while they were married but before he gave her this gift, Rabbi Eliezer says that she should tear up her deed of gift and remain with her marriage contract, so that the creditor will not be able to collect the property she received, as her marriage contract preceded the promissory note. And the Rabbis say: She must tear up her marriage contract and remain with her deed of gift, as by accepting the gift of all her husband's property she waived her right to receive payment of her marriage contract. Since the promissory note preceded the deed of gift, the creditor receives the property, and the wife is found to be bald from here and from there, i.e., she receives neither her gift nor her marriage contract.

[497] And Rabbi Yehuda the baker said: There was an incident where this matter occurred to my sister's daughter who is my daughter-in-law [kalla], that my son wrote such a document to her, and the incident came before the Sages. And they said that she must tear up her marriage contract and remain with her deed of gift, and she is found to be bald from here and from there.

[498] The Gemara infers: The reason she loses her gift is that a promissory note emerged against him, but if a promissory note did not emerge against him, she acquires the gift of his property. And with regard to what case is this stated? If we say it is with regard to a person on his deathbed, but didn't you say previously that in such a case he merely rendered her a steward? Rather, is it not with regard to a healthy person? Accordingly, Rava's dilemma is resolved: If a healthy person writes a document granting all his property to his wife, it is hers.

[499] The Gemara rejects this proof: Actually, the halakha of the baraita is stated with regard to a person on his deathbed; and Rav Avira would interpret the baraita as referring to all of the cases mentioned above in which, in his opinion, the wife acquires the property and is not appointed as a steward. And Ravina would interpret it specifically in reference to a case where one wrote a document granting all his property to his betrothed wife or his former wife, whom he divorced, where he concedes that she acquires the property.

[500] Rav Yosef bar Minyumi says that Rav Naḥman says: The halakha is in accordance with the opinion of the Rabbis. She must tear up her marriage contract and remain with her deed of gift, and she is found to be bald from here and from there.

[501] The Gemara asks: Is this to say that Rav Naḥman does not follow the principle of assessing intention, meaning that even if one did not state something explicitly, the court assesses what his intention was and decides the halakha based on that assessment? Clearly, upon accepting the gift the wife did not intend to waive payment of her marriage contract and thereby be left with nothing in the event that her husband's creditor produces a promissory note that predates her gift.

[502] But isn’t it taught in a baraita (Tosefta, Ketubot 5:9): In a case where one’s son went overseas and he heard that his son died, and then he arose and wrote a document granting all his property to others, and then his son came back, his gift to the other people is a valid gift. Rabbi Shimon ben Menasya says: His gift is not a valid gift, as had he known that his son was alive he would not have written a document granting them his property. And Rav Naḥman says that the halakha is in accordance with the opinion of Rabbi Shimon ben Menasya. Apparently, Rav Naḥman follows the principle of assessing intention.

[503] The Gemara answers: There, in the case of one who writes a document granting all his property to his wife, it is different, as it is beneficial to her that it be publicized that he wrote a document granting her all of that property, and she was willing to risk not receiving payment of her marriage contract to gain this benefit.

[504] § We learned in a mishna there (Pe’a 3:7): If a man writes a document granting his property to his sons, and he wrote a document granting any amount of land to his wife, she has lost her right to receive payment of her marriage contract. The Gemara questions this: Because he wrote a document granting her any amount of land, she has lost her right to receive payment of her marriage contract? Why should this be?

[505] Rav says: This mishna is referring to a case where the husband transfers ownership of his property to his sons through his wife’s participation in a formal act of acquisition. Not only did she not protest the transfer of property to the sons, but she facilitated the transaction. Clearly, she agreed to waive payment of her marriage contract. And Shmuel says: It is referring not only to a case where she actually participates in the act of acquisition, but also to a case where he distributes the property to his sons in her presence, and she is silent and does not ask about her marriage contract. Rabbi Yosei, son of Rabbi Ḥanina, says: It is referring to a case where he says to her: Take only this parcel of land for your marriage contract.

[506] And the Sages taught here one of the leniencies that apply to a marriage contract. This manner in which the wife loses her right to receive payment of her marriage contract is a leniency for the husband, as an ordinary creditor does not lose money he is owed in this fashion.

[507] The Gemara questions this statement: We learned in the same mishna that Rabbi Yosei says that if she accepted the distribution upon herself, even if he did not write a document granting her any amount of land, she has lost her right to receive payment of her marriage contract. By inference, it can be stated that the first tanna holds that both his writing a document granting her a piece of land and her acceptance of the distribution are necessary for her to lose her right, contrary to the interpretation of all three amora’im, i.e., Rav, Shmuel, and Rabbi Yosei, son of Rabbi Ḥanina, all of whom assumed that she need not affirmatively accept the distribution and that her silence is sufficient.

[508] And if you would say that the entire mishna is the opinion of Rabbi Yosei, who holds that either the husband’s writing a deed of gift or the wife’s acceptance of the distribution is sufficient, but isn’t it taught in a baraita that Rabbi Yehuda said: According to the first tanna, when does she lose her right to receive payment of her marriage contract? In a case where she was there at the time of the distribution and accepted it; but if she was there but did not accept it, or accepted it but was not there, she has not lost her right to receive payment of her marriage contract, as she can claim that her

acquiescence was only to please her husband and was not sincere. The Gemara concludes: The refutation of the opinions of all the interpretations of the amora'im is indeed a conclusive refutation.

509 Rava said to Rav Naḥman: This is the opinion of Rav; this is the opinion of Shmuel; and this is the opinion of Rabbi Yosei, son of Rabbi Ḥanina. What does the Master hold in this matter? Rav Naḥman said to him: As I say, that once he rendered her a partner in the property among the sons, she lost her right to receive payment of her marriage contract.

510 Rav Naḥman's opinion was also stated as a halakhic ruling: Rav Yosef bar Minyumi says that Rav Naḥman says that once he rendered her a partner in the property among the sons, she lost her right to receive payment of her marriage contract.

511 Rava raises a dilemma: In the case of a healthy person, what is the halakha? Do we say that the wife loses her right to receive payment of her marriage contract only in the case of a person on his deathbed, as she knew that he had no other property and nevertheless waived payment of the marriage contract, but in the case of a healthy person, she might have reasoned that he will then acquire other property from which she will be able to collect payment of her marriage contract, and that is why she accepted the distribution of the property? If so, she did not waive her right to receive payment of her marriage contract. Or perhaps, should it be reasoned that since in any event, now he has no other property, her acceptance should be interpreted as waiving her right? The Gemara concludes: The dilemma shall stand unresolved.

512 § There was a certain man on his deathbed who said to the people surrounding him: Give one-half of my estate to my daughter, and one-half to my other daughter, and one-third of the produce to my wife. Rav Naḥman happened to come to Sura. He entered the study hall to see Rav Ḥisda, who said to him: In a case like this, what is the halakha? Rav Naḥman said to him that this is what Shmuel says: Even if he transferred to her ownership only one palm tree for its produce, she has lost her right to receive payment of her marriage contract.

513 Rav Ḥisda said to him: Say that Shmuel said his statement that she loses her right there, in a case where he gave her a palm tree for its produce, because he transferred rights in the land itself to her ownership, as the palm tree is connected to the ground. But here, in this case, it is only produce that he gave her, without any share in the land itself. Perhaps she does not lose payment of her marriage contract. Rav Naḥman said to him: You say that he gave her only movable property? I certainly did not mean to say that she loses her right even if he gave her only movable property such as produce. Rather, she receives payment of her marriage contract.

514 There was a certain man on his deathbed who said to the people surrounding him: Give one-third of my property to my daughter, and one-third to my other daughter, and one-third to my wife. One of his daughters died before he did, and her portion consequently returned to his possession. Rav Pappi thought to say that the wife takes only one-third. She cannot receive payment of her marriage contract from the two-thirds bequeathed to the daughters, as by entering a partnership with the daughters in ownership of the property, she waived payment of her marriage contract.

515 Rav Kahana said to him: If the husband had then acquired other property, would she not have taken it as payment of her marriage contract? And since if he would have then acquired other property she would have taken it as payment of her marriage contract, now she also takes the deceased daughter's share as payment of her marriage contract.

[516] There was a certain person who divided his property between his wife and his son, leaving out a single palm tree. Ravina thought to say that the wife has only the single palm tree as future payment of her marriage contract, which was presumably left out of the distribution for this reason. Rav Yeimar said to Ravina: If she does not have the right to collect payment of her marriage contract from all of his property, as she presumably waived that right when he gave her the gift of some of his property, she does not have the right to collect it from the single palm tree either and it belongs to the heirs. Rav Yeimar presents a different ruling: Rather, since the halakha is that she does descend to collect the palm tree, she therefore descends to collect all of the property as well, i.e., she receives payment of her marriage contract from all the property.

[517] § Rav Huna says: With regard to a person on his deathbed who wrote a document granting all his property to another, the court investigates the legal status of the recipient: If he is fit to inherit from him, e.g., if he is one of his sons, he takes the property as an inheritance, and if not, he takes it as a gift.

[518] Rav Naḥman said to him: Why should you steal this halakha and not attribute it to its source? If you hold in accordance with the opinion of Rabbi Yoḥanan ben Beroka, say explicitly that the halakha is in accordance with the opinion of Rabbi Yoḥanan ben Beroka, as your halakhic statement follows the opinion of Rabbi Yoḥanan ben Beroka that a person can bequeath his property to any of his heirs.

[519] Perhaps this is what you meant to say: There was a certain childless person who was dying, and those around him said to him: To whom should his, i.e., your, property be given? Perhaps it should be given to so-and-so? And he said to them: Rather, to whom if not him? And you, Rav Huna, meant to say to us: If that person is fit to inherit from him, he takes it as an inheritance, and if not, he takes it as a gift. Rav Huna said to him: Yes, that is what I was saying.

[520] The Gemara asks: With regard to what halakha is there a difference whether he receives it as an inheritance or as a gift? Rav Adda bar Ahava, who was in the presence of Rava, thought that it would be correct to say: If he is fit to inherit from him, the giver’s widow is sustained from his property, as she has the right to be sustained from the inheritance; and if not, and the property was given as a gift, his widow is not sustained from his property.

[521] Rava said to him: Can the widow’s right be diminished by the gift? Now that you say with regard to inheritance, which is granted by Torah law, that his widow is sustained from his property, with regard to the gift of a person on his deathbed, which is effective without any formal act of acquisition by rabbinic law, all the more so is it not clear that the widow has sustenance rights?

[522] Rather, Rava said that the difference whether it is inheritance or a gift is in accordance with the ruling that Rav Aḥa bar Rav Avya sent: According to the statement of Rabbi Yoḥanan ben Beroka, in the case of one who said: My property is given to you, and after you to so-and-so, and the first recipient was fit to inherit from him, the second gets nothing in place of the first, i.e., he does not receive the property after the first one dies, as this formulation employed by the owner was not one of a gift. Rather, it was a formulation of inheritance, and inheritance has no end, i.e., it cannot be stopped. Therefore, since the first recipient acquired it as an inheritance, his heirs inherit it from him, and it cannot be taken by the second.

[523] Rava said to Rav Naḥman: But he ended it. The one who bequeathed it to him ended his inheritance in advance by stating that after the first dies, the property will be given to the second. The

Gemara answers: He thought that inheritance has an end; but the Merciful One states that it has no end.

524 There was a certain person who said to another: My property is given to you, and after you, to so-and-so, and the first one was fit to inherit from him. After the first died, the second came and claimed the property.

525 Rav Ilish, who was in the presence of Rava, thought to say that the second also takes a share of the property; he divides it with the heirs of the first. Rava said to him: Judges of compromise, who as a matter of course divide disputed property between the parties, rule in this manner. But isn't this identical to the case concerning which Rav Aḥa bar Rav Avya sent a ruling that the second receives nothing?

526 Rav Ilish was embarrassed by his mistake. To comfort him, Rav read the following verse about him: "I, the Lord, will hasten it in its time" (Isaiah 60:22), as if to say: It was due to Divine Providence that I was here to correct you before your mistaken ruling was implemented.

527 MISHNA: With regard to one who wrote a document granting his property to others as a gift and left his sons with nothing, what he did is done, i.e., it takes effect; but the Sages are displeased with him. Rabban Shimon ben Gamliel says: If he did so because his sons were not acting properly, he is remembered positively.

528 GEMARA: A dilemma was raised before the Sages: Do the Rabbis disagree with Rabban Shimon ben Gamliel, maintaining that depriving one's children of their inheritance is inappropriate in any event, or not?

529 The Gemara suggests: Come and hear, as Yosef ben Yo'ezer had a son who was not acting properly. Yosef ben Yo'ezer had a vessel [illiyyata] full of dinars, and he arose and consecrated it to the Temple treasury, depriving his son of his inheritance. His son went and married the daughter of King Yannai's crown weaver. After the son's wife gave birth, he bought her a fish [binita]. He tore its stomach open and found a pearl in it. He decided to sell it.

530 His wife said to him: Do not bring it to the treasury of the king to sell it, as they will take it from you for an insignificant sum of money. Rather, go bring it to the Temple treasurers. And do not appraise it yourself, as declaration to the Most High is equivalent to transfer to an ordinary person, and if you offer to sell it for an amount less than its worth, you will not be able to change your mind. Rather, let them appraise it.

531 He brought it to the Temple treasury, and they appraised it as having the value of thirteen vessels [illiyyata] full of dinars. The treasurers said to him: There are seven illiyyata of dinars at our disposal to pay you for the pearl, but there are not an additional six. He said to the treasurers: Give me the seven in exchange for the pearl, and as for the additional six that you owe me, they are hereby consecrated to Heaven.

532 The treasurers arose and wrote: Yosef ben Yo'ezer bestowed one illiyyata to the Temple treasury, and his son bestowed six. And there are those who say that they wrote: Yosef ben Yo'ezer bestowed one illiyyata to the Temple treasury, and his son removed seven, which he received for the pearl.

533 The Gemara infers: From the fact that they said approvingly that Yosef ben Yo'ezer's son bestowed six, by inference, he acted well when he left him out of his inheritance. The Gemara responds: On the contrary; from the fact that according to the second account, they said disparagingly

that he removed seven, by inference, Yosef ben Yo’ezer did not act well when he left him out of his inheritance, as he caused money to be removed from the Temple treasury. Rather, no inference is to be learned from this story with regard to the dilemma as to whether the Rabbis agree with the opinion of Rabban Shimon ben Gamliel, as the two accounts contradict each other on this matter.

[534] The Gemara asks: What halakhic conclusion was reached about this matter? Come and hear, as Shmuel said to Rav Yehuda: Shinnana, do not be in a house where inheritance is transferred away from its rightful heir, even if it is transferred from a wicked son to a good son, and all the more so if it is transferred from a son to a daughter. Evidently, the Rabbis hold that inheritance should not be transferred in any case.

[535] § The Sages taught: There was an incident involving one man whose children did not act properly. He arose and wrote a document transferring all his property to Yonatan ben Uzziel, one of the Sages, as a gift. What did Yonatan ben Uzziel do? He sold a third of the property for his needs, and consecrated a third of the property, and returned the remaining third to the man’s children.

[536] Shammai came to Yonatan ben Uzziel with his staff and traveling bag to protest his giving part of the property to the man’s children against the deceased’s wishes. Yonatan ben Uzziel said to him: Shammai, if you can repossess the property that I sold from the purchasers and the property that I consecrated from the Temple treasury, you can repossess what I returned to the man’s children as well;

[537] but if not, as the property is mine and I have the right to do with it whatever I want, you cannot repossess what I returned to the man’s children either. Shammai then said: Ben Uzziel reprimanded me; ben Uzziel reprimanded me, and I have no response.

[538] The Gemara asks: What did Shammai hold initially, causing him to protest Yonatan ben Uzziel’s behavior? The Gemara answers: He protested due to the incident that happened in the city of Beit Ḥoron.

[539] As we learned in a mishna (Nedarim 48a): An incident occurred involving someone in the city of Beit Ḥoron whose father had vowed not to derive benefit from him, and the son was marrying off his own son and wanted his father to be able to participate in the wedding meal. And he therefore said to another: The courtyard where the wedding will take place and the wedding meal are hereby given to you as a gift, but they are given to you only so that my father will come and eat with us at the meal. The son wanted to circumvent the prohibition imposed by the vow and enable his father to participate in the meal, so he transferred ownership to someone else for that purpose.

[540] The recipient said to him: If they are mine, they are all hereby consecrated to Heaven, i.e., the Temple, and are forbidden to everyone. The son said to him in anger: I did not give you my property so that you should consecrate them to Heaven. The recipient said to him: You gave me your property only so that you and your father would eat and drink and thereby appease each other, and the sin of transgressing the vow would be hung on his, i.e., my, head, as I enabled the transgression.

[541] The mishna continues: In reference to this incident, the Sages said: Any gift that is not so absolute that if the recipient were to consecrate it, the gift would be consecrated, is not a gift. In other words, in order for it to be a gift the recipient must have the ability to consecrate it. Similarly, Shammai had initially reasoned that the gift to Yonatan ben Uzziel was not a valid gift, as its sole purpose was so that the property should not fall into the possession of the man’s children. Once he

discovered that Yonatan ben Uzziel consecrated part of the gift, he realized that it was, in fact, a valid gift, with which the recipient could do whatever he pleased.

542 § Apropos Yonatan ben Uzziel, the Gemara cites that the Sages taught: Hillel the Elder had eighty students. Thirty of them were sufficiently worthy that the Divine Presence should rest upon them as it did upon Moses our teacher, thirty of them were sufficiently worthy that the sun should stand still for them as it did for Joshua bin Nun, and twenty were on an intermediate level between the other two. The greatest of all the students was Yonatan ben Uzziel, and the least of them was Rabban Yoḥanan ben Zakkai.

543 The Sages said about Rabban Yoḥanan ben Zakkai that he did not neglect Bible and Mishna; Talmud; halakhot and aggadot; minutiae of the Torah and minutiae of the scribes; and the hermeneutical principles of the Torah with regard to a fortiori inferences; and verbal analogies; and the calculation of the calendric seasons; and numerical values of Hebrew letters [gimatriyot]; and parables of launderers, which are folktales that can be used to explain the Torah, and parables of foxes. In addition, he did not neglect esoteric matters, including the conversation of demons, and the conversation of palm trees, and the conversation of ministering angels, and more generally, a great matter and a small matter.

544 The Gemara elaborates: A great matter is referring to the secrets of the Design of the Divine Chariot (see Ezekiel, chapter 1), the conduct of the transcendent universe, and a small matter is, for example, halakhot that were ultimately formulated in the framework of the discussions of Abaye and Rava. He did not neglect any of these disciplines, so as to fulfill that which is stated: “That I may cause those that love me to inherit substance and that I may fill their treasuries” (Proverbs 8:21), as Rabban Yoḥanan was filled with the disciplines of Torah and wisdom.

545 The Gemara adds: And if the least of them was so prolific, the greatest of them was all the more so prolific. The Gemara relates that the Sages said of Yonatan ben Uzziel, the greatest of Hillel’s students, that when he would sit and engage in Torah study, the sanctity that he generated was so intense that any bird that would fly over him would be incinerated.

546 MISHNA: One who says: This is my son, is deemed credible. One who says: This is my brother, is not deemed credible with regard to his other brothers’ obligation to share the inheritance with the subject of his statement. When one claims that this man is his brother, this claim is accepted with regard to the speaker’s own portion, and the man in question takes a share of their father’s inheritance with him, i.e., from his portion.

547 If the man in question dies, the property he received from the father’s inheritance shall return to its place, i.e., to the possession of the brother who testified on his behalf, from whose portion he received a share.

548 If property came into the man in question’s possession from somewhere else, other than from the father, and the man in question died, all of the brothers of the one who testified shall inherit with the one who testified, as according to his claim they too are the heirs of the deceased.

549 GEMARA: The mishna teaches that one who says: This is my son, is deemed credible. With regard to what halakha is this stated? Rav Yehuda says that Shmuel says: It is stated with regard to inheriting from him, i.e., the son inherits from the speaker, and with regard to rendering his wife

exempt from levirate marriage. Because he claims that the person in question is his son, his wife is not required to enter into levirate marriage after his death, as he has a child.

[550] The Gemara asks: Isn't it obvious that his claim is deemed credible with regard to someone inheriting from him? Since he could have given this person his property as a gift, it need not be stated that his claim is accepted with regard to his inheritance. The Gemara responds: It was necessary for the mishna to state that his claim is deemed credible with regard to rendering his wife exempt from levirate marriage despite the fact that it is not in his power to render her exempt, but the halakha of inheritance is not a novelty.

[551] The Gemara asks: We already learned this in a mishna (Kiddushin 64a) as well: One who said at the time of his death: I have children, is deemed credible, and his wife is thereby exempt from levirate marriage. If he said: I have brothers, and his wife therefore must enter levirate marriage, he is not deemed credible.

[552] The Gemara answers: There, in that mishna, it is a case where he is not presumed by us to have a brother. Therefore, his wife is already presumed to be exempt from levirate marriage, and his claim that he has a son merely substantiates this presumption. Here, the mishna adds a novelty that even if he is presumed to have a brother, his claim that he has a son is accepted, and his wife is thereby exempted from levirate marriage.

[553] Rav Yosef says that Rav Yehuda says that Shmuel says: For what reason did the Sages say that one who says: This is my son, is deemed credible? Since a husband who says: I divorced my wife, is deemed credible, and his wife is thereby exempt from levirate marriage, he is deemed credible with regard to this claim as well.

[554] As Rav Yosef forgot some of his Torah knowledge due to an illness, he questioned the accuracy of his citation of Rav Yehuda. Rav Yosef said: Master of Abraham! This reasoning makes that which is taught in the Mishna dependent upon that which is not taught, as the credibility of one who claims: This is my son, is stated in the mishna, while the halakha that a husband's claim that he divorced his wife is accepted is the statement of an amora.

[555] Rather, if this explanation was stated, it was stated like this: Rav Yehuda says that Shmuel says: For what reason did the Sages say that one who says: This is my son, is deemed credible with regard to rendering his wife exempt from levirate marriage? Since it is in his power to divorce her and thereby render her exempt from levirate marriage, he is deemed credible with regard to this claim as well.

[556] Rav Yosef said in addition: Now that you said that we say that the husband is deemed credible since he has the power to divorce her, a husband who says: I divorced my wife, is also deemed credible, since it is in his power to divorce her at any time.

[557] When Rav Yitzḥak bar Yosef came from Eretz Yisrael to Babylonia, he said that Rabbi Yoḥanan says: A husband who says: I have divorced my wife, is not deemed credible. Rav Sheshet waved his hand disparagingly, as if to say that Rav Yosef's statement that he is deemed credible since it is in his power to divorce her is gone due to Rabbi Yoḥanan's statement.

[558] The Gemara asks: Is that so? Did Rabbi Yoḥanan actually say that? But doesn't Rabbi Ḥiyya bar Avin say that Rabbi Yoḥanan says: A husband who says: I have divorced my wife, is deemed credible?

[559] The Gemara answers: That is not difficult. Here, in the statement that the husband is not deemed credible, Rabbi Yoḥanan was referring to a retroactive testimony. For example, in a case where he testified that he divorced her on a certain date, and it is discovered that she engaged in sexual intercourse with another man after that date, his testimony is not accepted concerning whether the woman is liable to receive punishment; she is not considered to have been divorced at the time. This is because it is not in the husband's power to divorce her retroactively.

[560] By contrast, the statement there, where Rabbi Yoḥanan said that the husband's testimony is deemed credible, refers to testimony for the future, e.g., where he says that he divorced her on that same day, or without specifying a date, in which case his statement is relevant only for the future. Since it was in his power to divorce her at that time, his testimony is deemed credible; if he dies, she is exempt from levirate marriage, and if she engages in sexual intercourse with another man, she is not considered to have committed adultery.

[561] A dilemma was raised before the Sages: If the husband said that he divorced his wife on a certain date, as a retroactive testimony, what is the halakha concerning his testimony being deemed credible and accepted with regard to the future, rendering her divorced from that time onward, despite the fact that his claim is not accepted with regard to the past?

[562] The dilemma is based on the following fundamental question: Do we divide the husband's statement, accepting that he divorced his wife inasmuch as she is considered divorced from that time onward, since it is in his power to divorce her now, even though his claim that he divorced her in the past is not accepted? Or do we not divide the statement, and say instead that his claim is rejected altogether, since his claim concerning the past cannot be accepted? Rav Mari and Rav Zevid engaged in a dispute with regard to this issue. One says that we divide the husband's statement, and one says that we do not divide it.

[563] The Gemara asks: In what way is this case different from Rava's statement? As Rava says that if a man says: So-and-so engaged in sexual intercourse with my wife, the husband and another witness combine to kill him, i.e., to have him sentenced to death for adultery. The Gemara infers: He combines with another witness to kill him, but not to kill her. The wife is not sentenced to death based on this testimony, even if they testified that she engaged in sexual intercourse willingly, as a husband is disqualified from bearing witness concerning his wife. Evidently, the husband's testimony is divided; his testimony concerning the man is accepted even though the testimony concerning his wife's part in the same action is rejected.

[564] The Gemara answers: With regard to two separate bodies we divide the statement. Therefore the husband's testimony is accepted with regard to the man but rejected with regard to his wife. With regard to one body we do not divide it. That is why one Sage holds that a husband's claim that he divorced his wife in the past cannot be divided, so that his claim that he divorced her would be accepted while his claim as to when he divorced her would be rejected.

[565] The Gemara relates: There was a certain man, who was presumed to have brothers but no children, who was dying. His wife was therefore presumed to be obligated in levirate marriage. Those with him said to him: To whom may his wife, i.e., your wife, be married? Is she required to enter into levirate marriage, or is she permitted to marry whomever she wishes? He said to them: She is fit to marry even a High Priest. She is not required to enter into levirate marriage.

[566] Rava said: With what possibility need we be concerned with regard to her? Doesn't Rabbi Ḥiyya bar Abba say that Rabbi Yoḥanan says: A husband who says: I have divorced my wife, is deemed credible, and she is exempt from levirate marriage? Therefore, this woman will be exempt as well. Abaye said to him: But when Rav Yitzḥak bar Yosef came from Eretz Yisrael, he said that Rabbi Yoḥanan says: A husband who says: I have divorced my wife, is not deemed credible. Rava said to him: But didn't we resolve the contradiction, concluding that here Rabbi Yoḥanan was referring to a retroactive testimony and there he was referring to testimony for the future? Therefore, according to both versions of Rabbi Yoḥanan's statement, the husband should be deemed credible in this case.

[567] Abaye responded: But shall we arise and rely on answers in a halakhic ruling? Although the contradiction can be resolved in this manner, there is no guarantee that this resolution is correct. Therefore Rav Yitzḥak bar Yosef's statement should still be taken into consideration. Rava subsequently said to Rav Natan bar Ami: Be concerned about it. There may be a dispute with regard to this issue, as the resolution cannot be relied upon.

[568] The Gemara relates: There was a certain man who was presumed by us, i.e., the court, to have no brothers, and he said at the time of his death that he has no brothers. Rav Yosef said: With what possibility need we be concerned with regard to his wife, in terms of her requiring levirate marriage? For one, he is presumed by us to have no brothers, and furthermore, he said at the time of his death that he has none. Abaye said to him: But don't people say that there are witnesses overseas who know that he has brothers? Therefore, we should be concerned that this report is accurate.

[569] Rav Yosef responded: In any event, now the witnesses are not present before us, so this possibility does not need to be taken into account. Isn't this the same as Rabbi Ḥanina's ruling in a case where women who were captured and subsequently liberated claimed that they were not raped in captivity (Ketubot 23a)? As although people said there were witnesses elsewhere who could testify that they were raped, Rabbi Ḥanina says that they were permitted to marry a priest, reasoning: Just because there may be witnesses in the north [istan], i.e., in a distant place, will the woman be forbidden?

[570] Abaye said to him: If we were lenient with regard to a captive woman, due to, among other reasons, the fact that she makes herself repulsive before the captor so that he will not want to rape her, and we assume that she was not raped, should we be lenient with regard to a married woman? Rava said to Rav Natan bar Ami: Be concerned about it. Do not permit this woman to remarry until the matter is clarified.

[571] § The mishna teaches that one who says: This is my brother, is not deemed credible with regard to his other brothers' share of their father's inheritance. Rather, the man in question receives a portion only from the portion of the one who testified concerning him. The Gemara clarifies: And what do the other brothers say? If they say: He is our brother, why does the man in question take a portion of the inheritance only with the one who testified, from his portion, and nothing more? If the other brothers admit that he is their brother, they should give him a share of their portions as well. Rather, they are saying: He is not our brother.

[572] The Gemara questions this: Say the last clause of the mishna: If property came into the possession of the man in question from somewhere else, and he died, the brothers of the one who testified shall inherit the man in question's property with him. Why should they inherit with him? Didn't they say to him: He is not our brother?

573 The Gemara answers: No, it is necessary to state this ruling only in a case where they say: We do not know if he is our brother. Therefore, they are not obligated to give him a portion of their inheritance, as he cannot prove to them that he is their brother. Nevertheless, they can claim a portion of his inheritance after his death, on the basis of their brother's testimony.

574 Rava says: That is to say that if one says to another: I have one hundred dinars in your possession, and the other person says: I do not know, he is exempt, similar to this case, where the brothers who claim that they do not know if this person is their brother are not obligated to share their inheritance with him.

575 Abaye said:

576 Actually, I will say to you that one who responds to a claim that he does not know if he owes the one hundred dinars is obligated to pay; but here, in the case of the brothers, it is different. The brothers are not obligated to share their portion with the man in question because the brother who testified is like one who claims: Another person has one hundred dinars in your possession. Since the claimant is not the one who is owed the money, the other party can reject his claim by merely answering that he does not know whether he owes him.

577 § The mishna teaches: If the man in question dies, the property he received from the father's inheritance shall return to its place, i.e., to the possession of the brother who testified on his behalf, and if the man in question received property from elsewhere, it is inherited by all the brothers equally. Rava raises a dilemma: With regard to the enhancement of the property received by the man in question from the portion of the brother who testified, where its enhanced value was the result of an enhancement that happened naturally, as opposed to one that resulted from exertion, what is the halakha? Who inherits it?

578 The Gemara elaborates: With regard to enhancement that reaches shoulders, i.e., ripe produce that needs only to be harvested from the field, do not raise the dilemma, as it is considered like property that came into his possession from elsewhere. It is not considered part of the land that was given to him by the brother who testified, and it is therefore divided among all the brothers. Rather, let the dilemma be raised with regard to enhancement that does not reach shoulders, and is not considered separate from the ground, such as a palm tree that thickened, or land that yielded silt. What is the halakha in this case? Is the enhancement included in the property itself, or is it considered separate property? The Gemara comments: The dilemma shall stand unresolved.

579 MISHNA: With regard to one who died, and a will written by a person on his deathbed [dayetikei] is found bound to his thigh, which clearly indicates that it was written by him and was not forged, this is nothing. The will is not valid, as he did not give it to anyone, and he may have reconsidered. If he transferred ownership of the will to the designated recipient through another person, whether one of the heirs or whether not one of the heirs, his statement stands.

580 GEMARA: The Sages taught (Tosefta 8:10): Which deed is considered a dayetikei, and is collected by the designated recipient after the death of the giver? Any deed in which it is written: This will be to stand and exist after my death. And which type is considered a deed of gift? Any deed in which it is written: From today and after my death.

581 The Gemara asks: Is it considered a deed of gift only if the expression: From today and after my death, is written, whereas if it is written only: From now, it is not considered a deed of gift? Abaye

said that this is what the baraita is saying: Which deed of gift of a healthy person is considered like the deed of gift of a person on his deathbed, in that the recipient acquires it only after the death of the giver? Any deed in which it is written: From today and after my death.

582 § Rabba bar Rav Huna was sitting in the balcony of Rav's study hall, and sat and said in the name of Rabbi Yoḥanan: If there is a person on his deathbed who says: Write a deed of transfer, granting property of mine to another, and give with it one hundred dinars to so-and-so, and he then died, one does not write and give it. This is because perhaps he resolved to transfer it to him only with a deed of transfer, and since the deed was not written in his lifetime it cannot be written after his death, as a deed of transfer is not effective after the death of the owner.

583 Rabba bar Rav Huna continued that when Rabbi Yoḥanan stated this halakha, Rabbi Elazar said to the other Sages: Heed this halakha; it is correct. Rav Sheizevi said: That is not what happened; Rabbi Elazar is the one who said this halakha, and it was Rabbi Yoḥanan who said to them: Heed this halakha.

584 Rav Naḥman bar Yitzḥak said: It is reasonable to say that the incident was in accordance with the version presented by Rav Sheizevi. Granted, if you say that Rabbi Elazar said the halakha, Rabbi Yoḥanan needed to affirm the ruling of Rabbi Elazar. But if you say that Rabbi Yoḥanan was the one who said it, did Rabbi Elazar need to affirm the ruling of Rabbi Yoḥanan, his teacher?

585 And furthermore, come and hear proof that Rabbi Elazar was the one who said this halakha, from another statement of his, as Ravin sent a message in the name of Rabbi Abbahu: Know that Rabbi Elazar sent a ruling to the exile in the name of our teacher, stating that if there is a person on his deathbed who says: Write a deed of transfer and give with it one hundred dinars to so-and-so, and he then died, one does not write and give it. This is because perhaps he resolved to transfer it only with a deed of transfer, and since the deed was not written in his lifetime it cannot be written after his death, as a deed of transfer is not effective after the death of the owner. And Rabbi Yoḥanan says: This ruling is correct; however, the wording of the deed should be examined.

586 The Gemara asks: What did Rabbi Yoḥanan mean by saying that the wording should be examined? The Gemara answers: When Rav Dimi came from Eretz Yisrael to Babylonia, he stated two halakhot. The first was that a dayetikei cancels a previous dayetikei. The second explains the examination to which Rabbi Yoḥanan was referring: If there is a person on his deathbed who said: Write a deed of transfer and give with it one hundred dinars to so-and-so, and he then died, the court must see what his intention was in instructing the other person to write a deed of transfer; if it was to enhance the recipient's power by writing a document proving that he was given the gift, one writes the document even after his death, as he intended to give the money anyway. But if not, rather it was the giver's intention to transfer the gift specifically through a deed of transfer, one does not write it and give the money, as a deed of transfer is not effective after the death of the owner.

587 Rabbi Abba bar Memel raises an objection from a baraita: If there is a healthy person who said: Write a deed of transfer and give with it one hundred dinars to so-and-so, and he then died, one does not write and give it. Rabbi Abba bar Memel inferred: But if a person on his deathbed states this request, one writes and gives it. He raises the objection and he resolves it: The ruling of that baraita is in a case where he was enhancing the recipient's legal power by writing him a document of proof.

588 The Gemara explains: What are the circumstances under which it is apparent that he was enhancing his legal power?

589 It is as Rav Ḥisda says that if it is written in the will: And we acquired it from him through an act of acquisition in addition to this gift, this formulation does not cancel the will's power to take effect after the person's death, as the intention of referring to it as a gift is merely to enhance the legal power of the recipient by confirming the transfer through an act of acquisition. Here too, in a case where he says: Write and sign a document as well, and give it to him, it is apparent that his request is to enhance the legal power of the recipient by writing a document in addition to transferring the gift itself.

590 It was stated that Rav Yehuda says that Shmuel says that the halakha is that one writes a document and gives the money in this case. And Rava says similarly that Rav Naḥman says that the halakha is that one writes a document and gives the money in this case.

591 MISHNA: A healthy person who writes a document granting his property to his sons in his lifetime, but wishes to continue to derive benefit from it until his death, must write: I give the property from today and after my death. This is the statement of Rabbi Yehuda. Rabbi Yosei says: He need not write: From today and after my death; it is sufficient for him to write that the transfer will take effect after he dies.

592 If one writes a document granting his property to his son from today and after his death, the father cannot sell the property because it is written as granted to the son, and the son cannot sell it because it is still in the possession of the father with regard to using the property and consuming its produce.

593 If the father sold the property, it is sold to the purchaser inasmuch as he may use it and consume its produce until the father dies, at which point it belongs to the son. If the son sold it during his father's lifetime, the purchaser has no right to use it until the father dies.

594 GEMARA: And if he wrote: I give the property from today and after my death, what of it? Didn't we learn in a mishna (Gittin 72a): If a husband said to his wife: This is your bill of divorce from today and after my death, it is a bill of divorce but not a complete bill of divorce, and therefore if he dies without children his wife performs the ritual through which a woman is freed of her levirate bonds [ḥalitza], as perhaps the bill of divorce is invalid and she is bound by the levirate bond and may not remarry without first performing ḥalitza. But she does not enter into levirate marriage, as perhaps the bill of divorce is valid, and it is forbidden for a divorcée to marry her former husband's brother.

595 The Gemara answers: There, we are uncertain if the expression: And after my death, is meant as a condition, i.e., if I die you will be divorced retroactively from today, or if it is a retraction of the statement: From today, meaning that the divorce would take effect only after his death, which would render it invalid. But here, in the case of a deed of gift, there is no contradiction in the statement, as this is what the father is presumably saying to him: Acquire the property itself today, and the produce after my death.

596 § The mishna teaches: Rabbi Yosei says that he need not write: From today and after my death. The Gemara relates: Rabba bar Avuh was sick, and Rav Huna and Rav Naḥman entered to visit him. Rav Huna said to Rav Naḥman: Ask him whether the halakha is in accordance with the opinion of Rabbi Yosei or the halakha is not in accordance with the opinion of Rabbi Yosei. Rav Naḥman said to Rav Huna: I do not know Rabbi Yosei's reasoning; can I ask him about the halakha? Rav Huna said

to Rav Naḥman: You ask him if the halakha is in accordance with his opinion or not, and I will tell you his reasoning afterward.

[597] Rav Naḥman asked Rabba bar Avuh. Rabba bar Avuh said to him that this is what Rav says: The halakha is in accordance with the opinion of Rabbi Yosei. After they left, Rav Huna said to Rav Naḥman that this is Rabbi Yosei's reasoning: He says that writing: From today and after my death, is unnecessary because the date written in a document proves when it takes effect. The Gemara adds: That is also taught in a baraita (Tosefta, Ketubot 8:4): Rabbi Yosei says that he need not write: From today and after my death, because the date written in a document proves when it takes effect.

[598] § Rava asked Rav Naḥman: In a case where the father performed an act of transfer, transferring his property to his son after his death, what is the halakha? Is it still necessary to write: From today and after my death? Rav Naḥman said to him: In a case where he performed an act of transfer, he need not write: From today and after my death.

[599] Rav Pappi said: There is a case of transfer where he needs to write: From today and after my death, and there is a case of transfer where he does not need to do so. If it is written in the deed that he transferred it to him and we, the witnesses, acquired it from him, he does not need to write: From today and after my death. But if the statement is written in the opposite order: We acquired it from him and he transferred it to him, he still needs to write: From today and after my death.

[600] Rav Ḥanina of Sura objects to this distinction: Is there anything that we, the Sages, do not know, and the scribes know? The distinction between the two opposite orderings of the above statement was unknown to the Sages. The Gemara relates that the Sages asked Abaye's scribes and they knew the distinction, and they asked Rava's scribes and they also knew the distinction.

[601] Rav Huna, son of Rav Yehoshua, said: Whether the wording is he transferred it to him and we acquired it from him, or whether it is we acquired it from him and he transferred it to him, he need not write: From today and after my death, as the act of transfer is mentioned in any event. And Rabbi Yehuda and Rabbi Yosei in the mishna disagree whether the phrase: From today and after my death, is necessary only with regard to a case where the deed merely states: This is a record of the proceedings that took place in our presence, without any mention of an act of transfer.

[602] Rav Kahana said: I stated this halakha in the presence of Rav Zevid of Neharde'a, and he said to me: You teach it like this, i.e., as a question and answer followed by a dispute; we teach it like this, i.e., as a single, unbroken statement: Rava says that Rav Naḥman says that in a case where transfer is mentioned in the deed, the owner need not write: From today and after my death. This is the halakha whether the wording is he transferred it to him and we acquired it from him, or whether the wording is we acquired it from him and he transferred it to him; he need not write: From today and after my death. They disagree only with regard to a case where the wording is: This is a record of the proceedings that took place in our presence.

[603] § The mishna teaches that if one writes a document granting his property to his son from today and after his death, neither he nor the son can sell the property. It was stated that in a case where the son sold the property during the father's lifetime, and then the son died during the father's lifetime, after which the father died as well,

[604] Rabbi Yoḥanan says: The purchaser did not acquire the property, and Reish Lakish says: The purchaser acquired the property.

[605] The Gemara explains their reasoning: Rabbi Yoḥanan says that the purchaser did not acquire the property because he holds that ownership of the rights to use an item and the profits it engenders is considered to be like ownership of the item itself. Even though the property itself did not belong to the father, it is as though the father owned the property, because all of the produce belonged to him in practice. Therefore, the son's sale can take effect only after the father's death. If the son dies first, since he never attained ownership, his sale can never come to fruition.

[606] And Reish Lakish says: The purchaser acquired the property, because he holds that ownership of the rights to use an item and the profits it engenders is not considered to be like ownership of the item itself. Therefore, the father's rights do not prevent the son, who owns the property itself, from selling it, and eventually the purchaser receives full rights to it.

[607] The Gemara asks: But didn't they already engage in a dispute concerning this issue one time? As it was stated: With regard to one who sells his field for just its produce, meaning that he retains ownership over the field itself and he sells the rights to all of its produce to someone else, Rabbi Yoḥanan says: The purchaser brings first fruits from this field to the Temple and recites the verses in the Torah associated with the bringing of the first fruits, in which he thanks God for: "The land that You, Lord, have given me" (Deuteronomy 26:10). And Reish Lakish says: The purchaser brings the first fruits, but he does not recite the verses, since it is not his field.

[608] The Gemara explains the reason behind the dispute: Rabbi Yoḥanan says he brings the first fruits and recites the verses because he maintains that ownership of the rights to use an item and the profits it engenders is considered to be like the ownership of the item itself. Even though the field itself does not belong to him, it is as if he acquired the field because all of the produce belongs to him in practice. And Reish Lakish says that he brings the first fruits and does not recite the verses because he holds that ownership of the rights to use an item and the profits it engenders is not considered to be like the ownership of the item itself. Why was it necessary for them to engage in a dispute concerning this issue twice?

[609] The Gemara answers: It was necessary for the dispute to be stated also in the context of one who sells his father's property and then dies. This is because Rabbi Yoḥanan could have said to you that although in general ownership of the rights to use an item and the profits it engenders is considered to be like the ownership of the item itself, here it was necessary to emphasize this principle, because it might enter your mind to say that with regard to a father and son, the father presumably waived his rights in the property itself. Rabbi Yoḥanan teaches us that even in this case, the father's ownership of the rights to use an item and the profits it engenders is considered to be like the ownership of the item itself.

[610] And Rabbi Shimon ben Lakish could have said that although in general ownership of the rights to use an item and the profits it engenders is not considered to be like the ownership of the item itself, as one who sells the produce of his field retains full ownership of the land itself, here it was necessary to emphasize this principle, as it might enter your mind to say that in any sale concerning oneself, even vis-à-vis his son, one grants preference to himself. Accordingly, if one grants the property itself to his son, reserving the rights to the produce for himself, he retains the rights to the property itself as well. Reish Lakish teaches us that he does not retain the rights to the property.

[611] Rabbi Yoḥanan raised an objection to the opinion of Reish Lakish from a baraita (Tosefta 8:4): If one states: My property will go to you after my death for your use during your lifetime, and after you

die, so-and-so will inherit the property, and after the one who inherits after you dies, so-and-so will inherit the property, in this case, when the first recipient dies, the second acquires it, and when the second dies, the third acquires it.

612 If the second dies during the lifetime of the first, the property returns after his death to the heirs of the first, and does not go to the third designated recipient, as his right was to inherit it from the second, who never received it.

613 And if it is so that ownership of the rights to use an item and the profits is not considered to be like ownership of the item itself, the baraita should have stated that the property returns to the heirs of the giver, as the first and second recipients received only the right to use the property and enjoy its profits during their lifetimes, after which it was designated to be transferred to others. Therefore, in a case where the transfer does not apply, the property should return to the possession of the one who owns the property itself, namely the giver and his heirs.

614 Reish Lakish said to him: Rav Hoshaya already interpreted in Babylonia that a case of after you, i.e., where the owner said to the recipient: After you die so-and-so will inherit the property, is different, as the giver intended to grant full ownership of the property to the first recipient as well, including both the rights to the produce and the property itself. And Rabba bar Rav Huna also raised this contradiction before Rav, and Rav said in response: After you, is different.

615 The Gemara asks: But isn’t it taught in another baraita that if the second designated recipient dies before the first, after the death of the first the property returns to the heirs of the giver?

616 The Gemara answers: The halakha in this case is a dispute between tanna’im; as it is taught in a baraita: With regard to one who said: My property is given to you, and after you, to so-and-so, and the first recipient entered the property and sold it and consumed the profits, the second recipient repossesses the property from the purchasers, as the property belongs to him after the death of the first recipient; this is the statement of Rabbi Yehuda HaNasi. Rabban Shimon ben Gamliel says: The second recipient receives only that which the first beneficiary left, since his sale is valid.

617 And the Gemara raises a contradiction from another baraita (Tosefta 8:4): If one says: My property is given to you, and after you, to so-and-so, the first one may enter the property and sell it and consume the profits; this is the statement of Rabbi Yehuda HaNasi. Rabban Shimon ben Gamliel says: The first one has only the right of consumption of the produce.

618 This statement of Rabbi Yehuda HaNasi is difficult as it is contradicted by the other statement of Rabbi Yehuda HaNasi, and this statement of Rabban Shimon ben Gamliel is difficult as it is contradicted by the other statement of Rabban Shimon ben Gamliel. Their opinions in the latter baraita seem to be the opposite of those in the former baraita.

619 The Gemara answers: The apparent contradiction between one statement of Rabbi Yehuda HaNasi and the other statement of Rabbi Yehuda HaNasi is not difficult; this ruling that the first one cannot sell it is referring to the property itself, and that ruling that he can sell it is referring to the produce. The apparent contradiction between one statement of Rabban Shimon ben Gamliel and the other statement of Rabban Shimon ben Gamliel is not difficult either; this statement, that the first has only the right to consume the produce, is referring to his rights ab initio, whereas that statement, that if he sold the property the second one gets nothing, is referring to the halakha after the fact.

[620] Abaye says: Who is a cunning wicked person? This is one who provides advice to sell property in accordance with the ruling of Rabban Shimon ben Gamliel. Although Rabban Shimon ben Gamliel holds that the sale is valid, he does not permit one to do so ab initio, as that would deprive the second designated recipient of the property. Therefore, one who advises the first recipient to do so is considered a cunning wicked person.

[621] Rabbi Yoḥanan says: The halakha is in accordance with the opinion of Rabban Shimon ben Gamliel; but Rabban Shimon ben Gamliel concedes that if the first recipient gave the property to another as the gift of a person on his deathbed, in which case no formal act of acquisition is required, he has done nothing; the second recipient can repossess the property from the one to whom it was given.

[622] What is the reason? Abaye says: The recipient of the gift of a person on his deathbed acquires it only after the person's death, and in this case, the acquisition of the recipient resulting from the statement of: After you, i.e., the second designated recipient, has already preceded the acquisition of the first one.

[623] The Gemara asks: But did Abaye actually say this, that the gift of a person on his deathbed takes effect only after his death? But wasn't it stated in an amoraic dispute concerning the matter: From when does the recipient of the gift of a person on his deathbed acquire it? Abaye says: With the completion of death, i.e., at the moment he dies; and Rava says: After the completion of death.

[624] The Gemara answers: Abaye retracted that latter statement. The Gemara asks: From where is it known that he retracted that statement? Perhaps he retracted this, i.e., the statement that the recipient acquires it only after the person's death, and his conclusion is that he acquires it at the moment of his death.

[625] The Gemara answers: That possibility should not enter your mind, as we learned in a mishna (Gittin 72b): If a man on his deathbed says to his wife: This is your bill of divorce if I die, or: This is your bill of divorce if I die from this illness, or: This is your bill of divorce after I die, he has said nothing. The divorce does not take effect after his death. Evidently, when one gives instructions on his deathbed, his intention is for them to be effective after he dies.

[626] Rabbi Zeira says that Rabbi Yoḥanan says: The halakha is in accordance with the opinion of Rabban Shimon ben Gamliel that if the first recipient sells the property, the sale is valid, and this is the halakha even if there were Canaanite slaves included in the property and the first recipient emancipated them.

[627] The Gemara asks: Isn't that obvious? The Gemara answers: Lest you say that the giver would have said to him: I did not give you my Canaanite slaves to transgress a prohibition, as it is prohibited to emancipate Canaanite slaves, Rabbi Yoḥanan teaches us that he has the legal right to do so.

[628] Rav Yosef says that Rabbi Yoḥanan says: The halakha is in accordance with the opinion of Rabban Shimon ben Gamliel even if he made the gift into shrouds for a corpse. The Gemara asks: Isn't that obvious? The Gemara answers: Lest you say that the giver would have said to him: I did not give you my possessions to render them into items from which deriving benefit is prohibited, but rather so that you may use and enjoy them, and Rabbi Yoḥanan teaches us that he may do so.

629 § Rav Naḥman bar Rav Ḥisda taught: If one said to another: This etrog is given to you as a gift, and after you die, to so-and-so, and the first recipient then took it and fulfilled his obligation of taking the four species on the first day of Sukkot with it, when one is obligated to take species that belong to him, in this case, we have arrived at the dispute between Rabbi Yehuda HaNasi and Rabban Shimon ben Gamliel as to the nature of the ownership of the first recipient. According to Rabbi Yehuda HaNasi's opinion that he cannot sell the etrog, it is not considered entirely his, and he does not fulfill his obligation by taking it. According to the opinion of Rabban Shimon ben Gamliel, who holds that he can sell it, he fulfills his obligation.

630 Rav Naḥman bar Yitzḥak objects to this statement, reasoning that Rabbi Yehuda HaNasi and Rabban Shimon ben Gamliel disagree only there, in the case of: After you, with regard to the nature of the recipient's ownership; as one Sage, Rabban Shimon ben Gamliel, holds that ownership of the rights to use an item and the profits it engenders is considered like ownership of the item itself, and the other Sage, Rabbi Yehuda HaNasi, holds that ownership of the rights to use an item and the profits it engenders is not considered like ownership of the item itself. But here, with regard to the etrog,

631 if he does not fulfill his obligation with it, for what purpose did the owner give it to him?

632 Rather, with regard to fulfilling his obligation, everyone agrees that he fulfills his obligation with it. It is only in a case where the first recipient sold it or consumed it, that we have arrived at the dispute between Rabbi Yehuda HaNasi and Rabban Shimon ben Gamliel. According to Rabbi Yehuda HaNasi, if he sold it, the second recipient can repossess the etrog from the purchaser, and if he consumed it he must pay the second recipient its value, whereas according to Rabban Shimon ben Gamliel, he owes nothing to the second recipient, as the etrog belongs to him.

633 Rabba bar Rav Huna says: In a case of brothers who acquired an etrog with money from the jointly held property of the estate, and one of them took it on Sukkot and attempted to fulfill his obligation with it, the halakha depends on the limits of his ownership of the etrog: If he may eat it, i.e., his brothers allow him to do so, he has fulfilled his obligation to perform the mitzva, and if not, he has not fulfilled his obligation.

634 And this is specifically in a case where there is an etrog for each and every one of the brothers; but if the other brothers get merely a quince or a pomegranate, he has not fulfilled his obligation even if he has the right to eat it.

635 Rava says: If one person said to another: This etrog is given to you as a gift on the condition that you return it to me, and the recipient took it on Sukkot and attempted to fulfill his obligation with it, if he ultimately returned it, he has fulfilled his obligation; if he did not return it, he has not fulfilled his obligation, as he did not fulfill the condition, thereby retroactively invalidating the gift. The Gemara explains that Rava teaches us that a gift given on the condition that it be returned is considered a valid gift.

636 § The Gemara relates: There was a certain woman who had a palm tree on the land of Rav Beivai bar Abaye. Whenever she would go to harvest the produce from it, he would get angry at her for trampling on his crops. Since she did not wish to anger him, she decided to temporarily waive her right to the tree's produce, and transferred ownership of it to him for all the years of his life, so that after his death she would once again be able to harvest the produce. He then went and transferred it to his minor son, so that it would remain in his family even following his death.

[637] Rav Huna, son of Rav Yehoshua, said to Rav Beivai bar Abaye: Is it because you descend from truncated [mula'ei] people, as Rav Beivai's family traced their lineage to Eli, all of whose descendants were condemned to premature death (see I Samuel 2:31), that you speak truncated [mulyata] and unsound matters? Even Rabban Shimon ben Gamliel, who holds that in a case where one says: My property is given to you, and after you, to so-and-so, if the first recipient sells the property the sale is valid, says so only in a case where it was to be given to another person; but if the giver said that it will return to himself, he did not say that the first recipient can sell it, as the giver clearly intended to maintain his ownership of the property. Accordingly, Rav Huna, son of Rav Yehoshua, held that Rav Beivai's sale did not take effect.

[638] § Rava says that Rav Naḥman says: If one said to another: This ox is given to you as a gift on the condition that you return it to me, and the recipient consecrated it and then returned it to him, it is consecrated and returned. The consecration takes effect, and although the owner may not use it, nevertheless it is considered returned and the condition is fulfilled.

[639] Rava said to Rav Naḥman: What did he return to him? The ox was not returned to the possession of the giver, as it is consecrated. Rav Naḥman said to him: And what did he cause him to lose? He returned the ox. Rather, Rav Ashi said: We must rule in this case based on what we see. If the giver said to the recipient: On the condition that you return it, it is considered returned, as he returned it. But if he said to him: On the condition that you return it to me, he was effectively saying to him that he must return something fit for him to use. Consequently, the consecration prevents the condition from being fulfilled, and both the gift and the consecration are retroactively nullified.

[640] § Rav Yehuda says that Shmuel says: If one writes a document granting his property to another, and the other person says: I do not want it, he acquires it, and this is the halakha even if he is standing and shouting in protest that he does not want it. And Rabbi Yoḥanan says that he does not acquire it.

[641] Rabbi Abba bar Memel said: And they do not disagree with each other:

[642] Here, in Rabbi Yoḥanan's statement, it is a case where he is shouting in protest at the outset. As soon as he is given the deed of gift he states that he does not want it. In this case, he does not receive the property. There, in Shmuel's statement, it is a case where he is initially silent when he receives the deed of gift, and is ultimately shouting in protest that he does not want it. In this case he acquires the gift before he protests, so it is his.

[643] Rav Naḥman bar Yitzḥak says that if the owner transfers ownership of the property to him through another person, who performs an act of acquisition for this other party in his presence, and he was initially silent, i.e., when the act of acquisition is performed, but ultimately shouted in protest when the property is actually given to him, we have arrived at the dispute between Rabban Shimon ben Gamliel and the Rabbis.

[644] This is as it is taught in a baraita (Tosefta 8:1): If one wrote a document granting his property to another, and there were slaves among his property, and the other person said: I do not want them, if their second master, i.e., the recipient, was a priest, they partake of teruma, the portion of the produce designated for the priest, as his protest is ignored. Rabban Shimon ben Gamliel says: Once the other person said: I do not want them, the giver or his heirs have already acquired them, and they are the slaves' owners.

[645] And we discussed the baraita: And does the first tanna hold that he acquires them even if he is standing and shouting in protest that he does not want them? That is not reasonable.

[646] Rava says, and some say it was Rabbi Yoḥanan who says: In a case where he is shouting in protest at the outset, when he is given the gift, everyone agrees that he did not acquire them. In a case where he was silent at the time and ultimately shouted in protest, everyone agrees that he acquired them.

[647] When they disagree it is in a case when he transfers ownership to him through another person, and the recipient was there and was silent, and ultimately, when he actually receives the slaves, he shouted in protest. As the first tanna holds that once he was initially silent, he acquired them, and the fact that he is shouting indicates that he is retracting his initial acceptance of the gift. His acquisition cannot be canceled in this manner. If he does not want to own the slaves, he can sell them, give them away, or emancipate them.

[648] And Rabban Shimon ben Gamliel holds that his ultimate actions prove the nature of his initial intent; he never intended to acquire the slaves. And the reason that he did not shout in protest until now is that he reasoned: As long as they did not enter my possession, to what end will I shout?

[649] § The Sages taught (Tosefta 9:6): If a person on his deathbed said: Give two hundred dinars to so-and-so, and three hundred to so-and-so, and four hundred to so-and-so, in this case one does not say that whoever appears first in the deed acquires his money first. Therefore, if a promissory note emerged against the one who gave the gifts, and it becomes clear that the money given was pledged to a creditor, then the creditor collects from all of them.

[650] But if a person on his deathbed said: Give two hundred dinars to so-and-so, and after him, to so-and-so, and after him, to so-and-so, then one says: Anyone who appears first in the deed gains. Therefore, if a promissory note emerged against the giver, the creditor first collects from the last one of the recipients. If he does not have enough to repay the debt, he collects from the previous recipient. If he does not have enough to repay the debt, he collects from the recipient listed before the previous recipient.

[651] The Sages taught in a baraita: If there was a person on his deathbed who said: Give two hundred dinars to so-and-so, my firstborn son, as is appropriate for him, the firstborn takes the two hundred dinars and takes his portion as a firstborn as well. If he said: Give my firstborn son two hundred dinars for his portion as a firstborn, he does not receive both, but he has the advantage; if he wants, he takes the two hundred dinars, and if he wants, he takes his portion as a firstborn.

[652] The baraita continues: And similarly, if there was a person on his deathbed who said: Give two hundred dinars to so-and-so, my wife, as is appropriate for her, she takes the two hundred dinars and takes payment of her marriage contract as well. If he said: Give her two hundred dinars as payment for her marriage contract,

[653] she has the advantage; if she wants, she takes the two hundred dinars, and if she wants, she takes payment of her marriage contract.

[654] The baraita continues: And if there was a person on his deathbed who said: Give two hundred dinars to so-and-so, my creditor, as is appropriate for him, the creditor takes the two hundred dinars and takes payment of the debt as well. But if he said: Give him two hundred dinars as payment for the debt, he takes the two hundred dinars as payment for the debt.

[655] The Gemara asks: Because he says: As is appropriate for him, he takes the two hundred dinars and takes payment of the debt as well? But perhaps he was saying: As is appropriate for him as payment for the debt, and meant only to specify the amount of the debt.

[656] Rav Naḥman said: Rav Huna said to me: In accordance with whose opinion is this? It is in accordance with the opinion of Rabbi Akiva, who expounds superfluous language. Rabbi Akiva holds that if one uses unnecessary words, he apparently intended to add a matter.

[657] As we learned in a mishna (64a): One who sells a house without specification has sold neither the pit nor the cistern [dut] with it, even if he writes for the buyer in the bill of sale: With its depth and its height. This is because anything that is not part of the house, like pits and cisterns, must be explicitly mentioned in the contract or else they remain in the seller's possession. And therefore the seller must purchase for himself a path through the buyer's domain to reach whatever remains his, because he has sold the area of the house along with the house itself, and he no longer has permission to walk there. This is the statement of Rabbi Akiva.

[658] And the Rabbis say: The seller need not purchase for himself a path through the buyer's domain, as this is certainly included in what he has withheld for himself from the sale. And Rabbi Akiva concedes that when the seller says to the buyer in the bill of sale: I am selling you this house apart from the pit and the cistern, he need not purchase for himself a path through the buyer's domain. Since the seller unnecessarily emphasized that the pit and the cistern are not included in the sale, he presumably intended to reserve for himself the right of access to them.

[659] Apparently, according to Rabbi Akiva, since he did not need to state: Apart from the pit and the cistern, and stated it anyway, the seemingly superfluous statement was coming to add a matter. Since the seller unnecessarily stressed that the pit and cistern are not included in the sale, he must have intended to thereby reserve for himself the right of access. Here too, with regard to the gift given by a person on his deathbed to his creditor, since he did not need to say: As is appropriate for him, and said it anyway, this phrase was coming to add a matter, i.e., that the two hundred dinars are in addition to the debt.

[660] § The Sages taught (Tosefta 8:18): If there was a person on his deathbed who said: I have one hundred dinars owed to me by so-and-so, the witnesses that hear this may write his statement in a document even if they do not know whether the statement is true. Therefore, when the person's heir collects the debt, he must bring proof of the debt, as the document written by these witnesses is not regarded as proof. This is the statement of Rabbi Meir. And the Rabbis say: The witnesses may not write the document unless they know for a fact that the statement is true. Therefore, when the heir collects the debt, he need not bring proof other than the document written by the witnesses, as it has the status of a promissory note.

[661] Rav Naḥman says: Rav Huna told me that the opposite is taught in another baraita: Rabbi Meir says that the witnesses may not write his statement in a document unless they know for a fact that the statement is true, and the Rabbis say that they may write it even if they do not know whether the statement is true; and even Rabbi Meir said that they may not write it only due to the concern that it might be presented before a court that errs and allows the heirs to collect without furnishing additional proof. Rav Dimi of Neharde'a says: The halakha is that there is no concern about the possibility of a court that errs.

[662] The Gemara asks: And in what way is this case different from Rava's statement? As Rava says: A court may not supervise ḥalitza unless the judges recognize the yavam and yevama. And a court may not supervise a declaration of the refusal of a girl upon her reaching majority to remain married to the man to whom her mother or brothers married her as a minor after the death of her father, unless they recognize the girl. Therefore, another court may write a document attesting to the performance of ḥalitza or a document stating that a declaration of refusal was made in a court elsewhere based on the testimony of witnesses even if the judges do not recognize these people, relying on the presumption the first court would not have allowed the act to be performed had they not been sure of the identities of the parties.

[663] What is the reason Rava said that the court must recognize the participants in these actions? Is it not due to the concern that a court that errs might write such a document based on the testimony of witnesses without verifying that the participating parties were recognized by the court where the ḥalitza or refusal took place?

[664] The Gemara answers: The two issues are not the same. A court does not normally examine the act of another court, so there is concern that the court where the document is written might assume that the court where the act took place recognized the participating parties. But a court does normally examine the statement of witnesses. Therefore, there is no concern that it will rely on a statement written by witnesses without their knowledge of its accuracy.

[665] MISHNA: In continuation of the case discussed in the previous mishna of a father who wrote a document granting his property to his son but reserved the rights to the produce during his lifetime, the mishna states that the father may detach produce from the land and feed the produce to whomever he wishes, and what he left detached at the time of his death belongs to all the father's heirs, not only to this son.

[666] GEMARA: The mishna indicates that what the father left detached, yes, it is inherited by all the heirs; but the produce that is connected to the ground at the time of his death, no, it is not inherited by them. Rather, it belongs to the son who received the property.

[667] But isn't it taught in a baraita (Tosefta, Ketubot 8:5) that in a similar case, the court appraises the produce still connected to the ground for the purchaser of the land, who must pay the seller's heirs for it? Accordingly, the connected produce also belongs to the heirs.

[668] Ulla said that this is not difficult; here, in the mishna, the halakha is stated with regard to his son, who receives the connected produce after the father's death. There, in the baraita, the halakha is stated with regard to another person who purchased the land from the son. Since a person's disposition is favorable toward his son, the father certainly intended to bequeath the connected produce to his son together with the property itself. When the son sold it to another person, there was no such intention.

[669] MISHNA: If a person died and left adult and minor sons, the adults are not provided for by using funds of the minors, and the minors are not sustained, i.e., they do not receive food, by using funds of the adults. Rather, they receive a share of the inheritance equally, and each son sees to his needs from his own share.

[670] If the adults married, the minors marry, as the Gemara will explain. But if the minors say: We are marrying in the same manner that you adults married during our father's lifetime, the court does not

listen to them. Rather, whatever their father gave the adults in his lifetime he gave them, and the minors do not have the right to receive more than their share of the inheritance.

671 Similarly, if the father left adult and minor daughters but no sons, in which case his daughters inherit the estate, the adults are not provided for by using funds of the minors, and the minors are not sustained by using funds of the adults. Rather, they receive a share of the inheritance equally, and each daughter sees to her needs from her share.

672 If the adult daughters married, the minor daughters marry, as the Gemara will explain. But if the minors say: We are marrying in the same manner that you adults married during our father's lifetime, the court does not listen to them.

673 This following halakha is a stringency with regard to daughters' inheritance vis-à-vis sons' inheritance: The halakha is that the daughters are sustained by using funds of the sons, as stipulated in their mother's marriage contract, but they are not sustained by using funds of the other daughters.

674 GEMARA: Rava says: With regard to this eldest of the brothers who wears garments and covers himself from the common property of the house, what he did is done, and the other brothers cannot subtract from his share of the inheritance as a result.

675 The Gemara asks: But didn't we learn in the mishna that the adults are not provided for by using funds of the minors? The Gemara answers: The mishna is referring to an unemployed person [bisherakha], whereas Rava was referring to the brother who handles the finances of the entire family. Therefore it is in the interest of all the brothers for him to wear appropriate attire.

676 The Gemara asks: If the mishna is referring to an unemployed person, isn't it obvious that he may not take from the common inheritance of all the brothers? The Gemara answers: Lest you say that it is preferable for them that he dress appropriately so that he will not be repulsive, thereby dishonoring the family name, the mishna teaches us that he does not have the right to take money for clothing from the common inheritance, and if he does so, the brothers can subtract from his share of the inheritance as a result.

677 § The mishna teaches that if the adults married, the minors marry. The Gemara asks: What is it saying? What does this mean?

678 Rav Yehuda says that this is what it is saying: If the adults married after their father's death and used the common inheritance to pay for their weddings, the minors that marry after their father's death may also pay for their weddings from the common inheritance. But if the adults married during their father's lifetime, and the minors said after their father's death: We will marry in the same manner that you married, the court does not listen to them. Rather, whatever sum their father gave the adults to pay for their weddings in his lifetime he gave them, and the minors do not have the right to demand that same sum from the inheritance.

679 § The mishna teaches that if the father left adult and minor daughters, and the adults married, the minors marry. Avuh bar Geneiva sent a question to Rava: Our teacher, instruct us: If a woman borrowed money and consumed it, and before repaying the debt she arose and married, bringing her property into the marriage, what is the halakha? Is the husband considered a purchaser of her property or is he considered an heir to her property?

680 The halakhic ramification of this dilemma is as follows: Is he considered a purchaser, and the creditor therefore cannot collect his wife's premarital debt from him, as one does not collect from the

purchasers a loan by oral agreement? Or perhaps he is considered her heir, and one collects from the heirs a loan by oral agreement.

[681] Rava said to him: We learned the answer to this question in the mishna: If the adult daughters married, the minor daughters marry. What, is it not teaching that if the adult daughters married, each one of them transferring money from the common inheritance to her husband to cover the wedding expenses, the minor daughters also marry, paying for the wedding from the money that each elder sister transferred to her husband? Clearly, although the money the elder daughters took from the inheritance for their weddings has the status of a loan by oral agreement, their husbands are liable to return it. This proves that the husbands are considered heirs.

[682] The Gemara answers: No, the mishna is teaching that if the adults married and each one transferred money to her husband, the minors also marry, and each one may transfer money from the common inheritance to her husband for the wedding expenses. They cannot collect money from what was already transferred by their sisters to their husbands.

[683] The Gemara asks: Is that so? But didn't Rabbi Ḥiyya teach that if the adults married and transferred money to the husband, the minors marry and collect money from the husband of each elder sister?

[684] The Gemara answers: Even according to this interpretation, there is no proof from the mishna with regard to the case of a loan by oral agreement. Perhaps the provision of wedding expenses for the daughters is different, as it generates publicity. Since it is well known that a specific portion of a person's estate is liened to the future wedding expenses of his single daughters, it has the status of a loan with a promissory note. Therefore, the younger daughters can collect from the husbands of the elder daughters even if the status of the husbands is that of purchasers.

[685] Rav Pappa said to Rava: Is this not identical to the halakha that Ravin sent in his letter from Eretz Yisrael? That halakha states that with regard to one who died and left a widow and a daughter, his widow is sustained from his property. If the daughter then married, the widow is still sustained from his property, although it is now in the possession of the daughter's husband, as she had inherited the property from her father. With regard to a case where the daughter then died and her husband inherited from her, Rav Yehuda, son of the sister of Rabbi Yosei ben Ḥanina, says: This incident occurred with me, and the Sages said that the late man's widow is still sustained from his property although it is fully owned by his daughter's husband.

[686] Rav Pappa explains: Granted, if you say the husband is considered an heir, it is due to that reason that his father-in-law's widow is sustained from his property; it is still liened to her sustenance. But if you say that a husband is considered a purchaser of his wife's property, why is his father-in-law's widow sustained from his property? The purchasers of inherited property are not obligated to sustain the widow.

[687] Abaye said: If Ravin had not sent this letter, would we not have known that the husband has the status of a purchaser? But didn't we learn in the mishna (Bekhorot 52b): These properties do not return to their original owners in the Jubilee Year (see Leviticus 25:13–24): The portion of the firstborn, i.e., it does not return to the common ownership of the brothers to be shared equally like the rest of the inheritance, but rather remains in the possession of the firstborn;

[688] and one who inherits the property of his wife after her death, i.e., the property is not returned to her family. Evidently, the husband does not have the status of a purchaser, as a purchaser must return the property to its original owner in the Jubilee Year.

[689] Rava said to him: And now that Ravin sent the letter, do we in fact know that the husband has the status of an heir? Doesn't Rabbi Yosei, son of Rabbi Ḥanina, say: In Usha they instituted an ordinance that in the case of a woman who sold her usufruct property, i.e., property that she alone owns and her husband benefits only from the profits, in her husband's lifetime and then died, the husband repossesses it from the purchasers? Apparently the husband's status is that of a purchaser, as a purchaser can appropriate his purchase from a later purchaser, whereas an heir does not inherit property that the person sold before he died.

[690] Rather, Rav Ashi says that the Sages equated the husband with an heir, and the Sages equated him with a purchaser. And they deemed him as whichever is better for him, based on the circumstances of the case. With regard to the Jubilee Year, the Sages equated him with an heir, due to his potential loss were he to be equated with a purchaser, as he would be obligated to return the property to his wife's heirs. With regard to the case of Rabbi Yosei, son of Rabbi Ḥanina, where the wife sold the property, the Sages equated him with a purchaser, due to his potential loss were he to be equated with an heir. With regard to Ravin's halakha, concerning the sustenance of the husband's father-in-law's widow, due to the potential loss of the widow, the Sages equated him with an heir.

[691] The Gemara asks: But with regard to the case of Rabbi Yosei, son of Rabbi Ḥanina, there is a loss to the purchasers, from whom the husband appropriates the property, and nevertheless, the Sages equated him with a purchaser.

[692] The Gemara answers: There, the purchasers caused their own loss. Since they knew that there is a husband, they should not have purchased property from a wife living under the authority of her husband, removing it from the husband and his heirs.

Chapter 9

[1] MISHNA: In the case of one who died and left behind both sons and daughters, when the estate is large the sons inherit the estate and the daughters are provided with sustenance from it according to the stipulations of the deceased's marriage contract with their mother. With regard to a small estate, which is insufficient to provide for both the sons and the daughters, the daughters are provided with sustenance. And if the sons, who receive in this case neither inheritance nor sustenance, have no other means with which to support themselves, they go and request charity at the doors. Admon says, rhetorically: I lost out just because I am male? Rather, he holds that the sons also receive sustenance. Rabban Gamliel said: I see as correct the statement of Admon.

[2] GEMARA: The Gemara asks: And how large must the estate be in order for the sons to inherit it? Rav Yehuda says that Rav says: Large enough to provide sustenance from it for both these, the sons, and those, the daughters, for twelve months. Rav Yehuda continues: When I said this ruling before Shmuel, he said: That is the statement of Rabban Gamliel bar Rabbi Yehuda HaNasi. But the Rabbis say: The estate must be large enough to provide sustenance from it for both these and those until the

time that the daughters reach their majority, at age twelve and six months, as indicated in the marriage contract.

[3] This was also stated by other amora’im: When Ravin came from Eretz Yisrael, he said that Rabbi Yoḥanan says, and some say it was Rabba bar bar Ḥana who says that Rabbi Yoḥanan says: Any estate that is large enough to provide sustenance from it for both these and those until the time that the daughters reach their majority is a large estate; less than that, this is a small estate.

[4] The Gemara asks: And if there is not enough to provide for these and those until the daughters reach their majority,

[5] shall the daughters take all of the estate, even if it is more than is required for their sustenance? Rather, Rava said: The court appropriates sustenance for the daughters until they reach their majority, and the remainder is given to the sons.

[6] § The Gemara comments: It is obvious that if the estate was large and became small, the heirs, i.e., the sons, already acquired it when it was large. It remains in their possession, and they must provide for the daughters from it. The Gemara asks: If the estate was small, and was therefore not inherited by the sons, and then it became large, what is the halakha? Does even a small estate remain in the possession of the heirs, while the court reserves it for the daughters’ sustenance, and therefore it appreciated in the possession of the heirs and they receive the appreciation in the estate’s value? Or perhaps the heirs are totally removed from possession of a small estate, and the appreciation in value is to the benefit of the daughters receiving sustenance.

[7] The Gemara answers: Come and hear a proof, as Rabbi Asi says that Rabbi Yoḥanan says: In the case of orphans who preemptively sold land from a small estate left to them by their father, before the court appropriated it for the daughters’ sustenance, concerning that which they sold, the sale is valid, even though they acted improperly. One can infer from this that a small estate remains in the possession of the heirs even when they are not authorized to derive benefit from it, and therefore the appreciation in its value belongs to them.

[8] § Rabbi Yirmeya was sitting before Rabbi Abbahu and raised the following dilemma before him: What is the halakha with regard to the sustenance to which the deceased’s widow is entitled? Does it reduce the value of the estate when evaluating whether the estate is categorized as a large estate or a small estate? Do we say that since she has a right to receive sustenance, it reduces the value of the estate? Or perhaps we say that since if she remarries she does not have a right to sustenance, now as well, for the purposes of determining the value of the estate, she is considered as if she does not have a right to sustenance, and therefore it does not reduce the value of the estate.

[9] Furthermore, if you say that since, if she remarries she does not have a right to sustenance, now as well she is considered as if she does not have a right to sustenance, and it is not taken into account when evaluating the estate, then another dilemma can be raised: What is the halakha with regard to the sustenance one pledged to give, for a certain number of years, to the daughter of his wife from a previous marriage, i.e., his step-daughter, which is an obligation not affected by his death or by her marriage? Does it reduce the value of the estate? Do we say that since, when she marries she also has a right to sustenance, it reduces the value of the estate? Or perhaps we say that since, if she dies she does not have a right to sustenance, it does not reduce the value of the estate.

[10] And if you say that since, if she dies she does not have a right to sustenance, therefore it does not reduce the value of the estate, what is the halakha with regard to a debt owed to the deceased's creditor? Does it reduce the value of the estate? Do we say that since, when the creditor dies he also has a right to the money owed him, and it is collected by his heirs, therefore it reduces the value of the estate? Or perhaps we say that since it has not yet been collected, it does not reduce the value of the estate.

[11] And there are those who say that Rabbi Yirmeya raised the dilemmas in the opposite direction, i.e., in the reverse order: What is the halakha with regard to a debt owed to a creditor? Does it reduce the value of the estate?

[12] What is the halakha with regard to sustenance the deceased pledged to give the daughter of his wife from a previous marriage? Does it reduce the value of the estate? What is the halakha with regard to the sustenance to which his widow is entitled? Does it reduce the value of the estate? Furthermore, with regard to his widow and daughter, which of them takes precedence if the estate is insufficient to provide sustenance for both?

[13] Rabbi Abbahu said to Rabbi Yirmeya: Go now and come back tomorrow. When he came back, Rabbi Abbahu said to him: Resolve at least one of your questions, as Rabbi Abba says that Rabbi Asi says: The Sages established the status of the widow in relation to the daughter as equivalent to the status of the daughter in relation to the brothers in the case of a small estate. Just as in the case of a daughter in relation to her brothers, the daughter is sustained and the brothers go and request charity at the doors, so too in the case of a widow in relation to the daughter, the widow is sustained and the daughter goes and requests charity at the doors.

[14] § The mishna teaches: Admon says, rhetorically: I lost out just because I am male? Rather, he holds that the sons also receive sustenance. The Gemara asks: What is he saying? Abaye said that this is what he is saying: Because I am male, and I am fit to engage in the study of the Torah, I lost out and must go begging instead of studying the Torah? Rava said to him: If that is so, should one conclude that it is only one who engages in the study of the Torah who inherits, whereas one who does not engage in the study of the Torah does not inherit? Rather, Rava said that this is what Admon is saying: Because I am male, and I am fit to inherit in the case of a large estate, should I lose my inheritance entirely in the case of a small estate?

[15] MISHNA: With regard to one who left behind sons and daughters and a tumtum, whose halakhic status as male or female is indeterminate, the halakha is as follows: When the estate is large the males direct the tumtum to the females and exclude him from the inheritance, claiming that perhaps the tumtum is female. When the estate is small, the females direct the tumtum to the males and exclude him from receiving sustenance, claiming that perhaps the tumtum is male.

[16] With regard to one who says: If my wife gives birth to a male the offspring shall receive a gift of one hundred dinars, if she in fact gave birth to a male, the offspring receives one hundred dinars. If he says: If my wife gives birth to a female the offspring shall receive a gift of two hundred dinars, if she in fact gave birth to a female, the offspring receives two hundred dinars.

[17] If he says: If my wife gives birth to a male the offspring shall receive a gift of one hundred dinars and if she gives birth to a female the offspring shall receive a gift of two hundred dinars, and in fact she gave birth to both a male and a female, the male offspring receives one hundred dinars and the female offspring receives two hundred dinars. If she gave birth to a tumtum, the tumtum does not

receive anything. If he said: Whatever offspring my wife gives birth to shall receive a gift of a certain sum, and she gave birth to a tumtum, the tumtum receives it. And if there is no heir other than the tumtum, the tumtum inherits all of the estate.

[18] GEMARA: The mishna states that the males direct the tumtum to the females. The Gemara asks: Does this mean that they direct him, and he takes sustenance like a daughter? Isn't it taught in the latter clause of the mishna that if one said that either his male or female child will receive a certain sum once his wife gives birth, and she gave birth to a tumtum, the tumtum does not receive anything? This indicates that the tumtum does not have the rights of a female. Abaye says: The mishna means that they direct him to the females, but he has no rights to sustenance.

[19] And Rava says: They direct him to the females and he has a right to sustenance. And with regard to the latter clause of the mishna, which grants the tumtum nothing at all, there we arrive at the opinion of Rabban Shimon ben Gamliel, as it is taught in a mishna (Temura 24b): If one consecrates a firstborn animal while it is still a fetus, stating that if it is male it shall be a burnt-offering and if it is female it shall be a peace-offering, and the mother gave birth to a tumtum or a hermaphrodite [androginos], Rabban Shimon ben Gamliel says: It is not imbued with sanctity, as it is neither male nor female. So too, in the case discussed in the mishna here, Rabban Shimon ben Gamliel maintains that the tumtum receives nothing, as he is considered to be a distinct entity of indeterminate sex, neither male nor female.

[20] The Gemara raises an objection from a baraita: A tumtum inherits as a son and is sustained as a daughter. Granted, according to Rava, the baraita can be explained to mean that the clause: Inherits as a son, is in the case of a small estate, as the daughters direct the tumtum to the sons, and just as there is no inheritance for the sons, there is none for the tumtum either. And the clause: And is sustained as a daughter, is in the case of a large estate, as the sons direct the tumtum to the daughters, and the tumtum receives sustenance along with them.

[21] But according to the opinion of Abaye, what does it mean that the tumtum is sustained as a daughter, since Abaye maintains that the tumtum does not have the rights of a daughter? The Gemara responds: And according to your reasoning, even according to Rava, what does it mean that a tumtum inherits as a son, since Rava concedes that the tumtum and sons do not actually inherit anything? Rather, the baraita means that it is fitting for the tumtum to inherit but he does not actually inherit. Here too, with regard to sustenance, according to Abaye, the baraita means that it is fitting for the tumtum to be sustained, but he is not actually sustained.

[22] § The mishna teaches: With regard to one who says: If my wife gives birth to a male the offspring shall receive one hundred dinars, if she in fact gave birth to a male, the offspring receives one hundred dinars. If he says: If my wife gives birth to a female the offspring shall receive two hundred dinars, if she in fact gave birth to a female, the offspring receives two hundred dinars. The Gemara asks: Is this to say that for him a daughter is preferable to a son? But this seems to contradict what Rabbi Yoḥanan says in the name of Rabbi Shimon ben Yoḥai: With regard to anyone who does not leave behind a son to inherit from him, the Holy One, Blessed be He, is filled with wrath upon him, as it is stated: "If a man dies, and has no son, then you shall cause his inheritance to pass [veha'avartem] to his daughter" (Numbers 27:8). The term ha'avara means nothing other than wrath, as it is stated: "That day is a day of wrath [evra]" (Zephaniah 1:15).

[23] The Gemara resolves the contradiction: With regard to the matter of inheritance, for him a son is preferable to a daughter, as a son bears his name and retains his ancestral heritage within his father's tribe, but with regard to the matter of providing for his offspring's comfort, for him his daughter is preferable to his son, as a son is more capable of coping for himself and the daughter needs more support.

[24] And Shmuel said: Here we are dealing with a mother who is giving birth for the first time, and this is in accordance with the statement of Rav Ḥisda, as Rav Ḥisda says: If one gives birth to a daughter first, it is a good sign for sons. There are those who say that this is because she raises her brothers, i.e., helps in their upbringing, and there are those who say that this is because the evil eye does not have dominion over the father. Rav Ḥisda said: And as for myself, I prefer daughters to sons.

[25] The Gemara adds: And if you wish, say: In accordance with whose statement is this mishna in which preference is given to the daughter? It is in accordance with the statement of Rabbi Yehuda.

[26] The Gemara asks: Which statement of Rabbi Yehuda is this referring to? If we say it is referring to the statement of Rabbi Yehuda with regard to the term "with everything [bakkol]," that is difficult. The Gemara cites Rabbi Yehuda's statement. As it is taught in a baraita: "And Abraham was old, well stricken in age; and the Lord had blessed Abraham with everything [bakkol]" (Genesis 24:1). Rabbi Meir says: The blessing was that he did not have a daughter. Rabbi Yehuda says: The blessing was that he had a daughter, and her name was Bakkol. Evidently, Rabbi Yehuda understands the birth of a daughter to be a blessing. The Gemara explains the difficulty: Say that you heard Rabbi Yehuda explain that the blessing was that the Merciful One did not even deprive Abraham of a daughter, in addition to his sons. Did you hear him say that a daughter is preferable to a son?

[27] The Gemara proposes another of Rabbi Yehuda's statements: Rather, it is referring to this other statement of Rabbi Yehuda, as it is taught in a baraita: One is not halakhically obligated to provide sustenance for his children beyond the age of six. Nevertheless, it is a mitzva to provide sustenance for the daughters. And one can infer a fortiori that it is certainly a mitzva to provide for sons, who are engaged in the study of the Torah; this is the statement of Rabbi Meir. Rabbi Yehuda says: It is a mitzva to provide sustenance for the sons. And one can infer a fortiori that it is certainly a mitzva to provide for daughters, so that they not be disgraced by having to beg for their livelihood. This indicates that with regard to providing sustenance for one's children, Rabbi Yehuda gives preference to the daughters.

[28] § The mishna discusses a case where one stipulated that if his wife gives birth to a male the offspring shall receive one hundred dinars, and if she gives birth to a female the offspring shall receive two hundred dinars. The mishna states that if she gave birth to both a male and a female, the male receives one hundred dinars and the female receives two hundred. The Gemara asks: But with regard to that which is taught in a baraita (Tosefta 9:4): If she gave birth to a male and a female, the male receives six dinars of gold, which are equivalent to one hundred fifty dinars of silver, and the female receives two dinars of gold, equivalent to fifty dinars of silver, with what situation is this baraita dealing?

[29] Rav Ashi said: I said this halakha before Rav Kahana, and he explained it as teaching about one who inverted the stipulations of his gift. The baraita is referring to one who said: If a male is born first he will receive two hundred dinars, and if a female is born after him she will receive nothing. And if a female is born first she will receive one hundred dinars, and if a male is born after her he

will receive one hundred dinars. And the mother gave birth to a male and a female, but we do not know which of them emerged from the womb first. In this case, the male takes one hundred dinars, as whichever way you look at it, this sum is due to him. The other one hundred dinars are property of uncertain ownership and are divided equally between the male and female.

[30] The Gemara asks: And with regard to that which is taught in another baraita: If she gave birth to a male and a female, he receives only one hundred dinars, how can you find these circumstances? Ravina said: This is referring to one who said: I shall give a certain sum to whoever informs me.

[31] This is as it is taught in a baraita (Tosefta 9:5): In a case where one said: Whoever informs me as to what opened my wife's womb, i.e., what the sex of her child is, if it is a male, the one who informs me shall receive one hundred dinars. Therefore, if the wife gave birth to a male, the one who informed him receives one hundred dinars. If he also said: If it is a female he shall receive one hundred dinars, if she gave birth to a female, he receives one hundred dinars. If she gave birth to a male and a female, he receives only one hundred dinars.

[32] The Gemara challenges: But since he did not say anything about a male and a female, if she gave birth to a male and a female, he should not receive anything. Why does the baraita state that he receives one hundred dinars? The Gemara answers: This is referring to where he also said: If she gives birth to a male and a female he shall also receive one hundred dinars. The Gemara asks: But if he stated all of the possibilities, what did his stipulations serve to exclude? The Gemara answers: They serve to exclude a case where she gives birth to a non-viable newborn, in which case he receives nothing.

[33] § The Gemara relates: There was a certain man who said to his wife: My property is given to the one with whom you are pregnant. Rav Huna said: This is a case of one who transfers ownership of an item to a fetus, and in the case of one who transfers ownership of an item to a fetus, the fetus does not acquire the item.

[34] Rav Naḥman raised an objection to the opinion of Rav Huna from the mishna, which states: With regard to one who says: If my wife gives birth to a male the offspring shall receive one hundred dinars, if she in fact gave birth to a male, the offspring receives one hundred dinars. This indicates that the fetus did acquire the money. Rav Huna said to him: I do not know who taught our mishna. It is not identifiable with a known opinion, and presumably the text has been corrupted.

[35] The Gemara asks why Rav Huna replied in this manner: But let him say to Rav Naḥman: It is in accordance with the opinion of Rabbi Meir, who says: A person can transfer ownership of an entity that has not yet come into the world, e.g., produce that has not yet grown. Just as he maintains that one can transfer ownership of an entity that has not yet come into the world, so too, he maintains that one can transfer ownership of an item to a fetus, who has not yet been born.

[36] The Gemara rejects this explanation: Say that you heard Rabbi Meir express this opinion with regard to transferring ownership of an entity that has not yet come into the world to an entity that is in the world. Did you hear him speak of transferring ownership to an entity that has not yet come into the world, e.g., a fetus?

[37] The Gemara proposes another resolution to Rav Naḥman's objection: But let Rav Huna say to Rav Naḥman: It is in accordance with the opinion of Rabbi Yosei, who says: A fetus acquires ownership, as we learned in a mishna (Yevamot 67a): With regard to an Israelite woman who married a priest

and he died and left her pregnant, the fetus disqualifies its father’s Canaanite slaves from partaking of teruma, because until it is born the fetus is not considered a priest, and the slaves, who are part of its inheritance, are not the slaves of a priest. And the fetus does not enable its mother to partake of teruma, even though it is the child of a priest. This is the statement of Rabbi Yosei. It is evident from this mishna that Rabbi Yosei holds that a fetus inherits its father’s property.

[38] The Gemara rejects this explanation: Inheritance is different, since, unlike a gift, it comes into the possession of the heir by itself, without a formal act of acquisition. Therefore, a fetus can acquire an inheritance, but not a gift.

[39] The Gemara proposes another resolution to Rav Naḥman’s objection: But let Rav Huna say to Rav Naḥman: It is in accordance with the opinion of Rabbi Yoḥanan ben Beroka, who says: The case of an inheritance is not different, and the case of a gift one gives to his heir is not different, i.e., the same halakhot apply to both. As we learned in a mishna (130a): Rabbi Yoḥanan ben Beroka says: If one said about a person who is fit to inherit from him, e.g., one of his sons: This person will inherit all of my property, his statement stands.

[40] The Gemara rejects this explanation: Say that you heard Rabbi Yoḥanan ben Beroka express this opinion with regard to a gift given to an entity that already exists in the world, but does he say anything with regard to a gift given to an entity that has not yet come into the world?

[41] The Gemara proposes another resolution to Rav Naḥman’s objection: But let Rav Huna say to Rav Naḥman: It is in accordance with the opinion of Rabbi Yoḥanan ben Beroka, who compares a gift to an inheritance, and he holds in accordance with the opinion of Rabbi Yosei, that a fetus is fit to inherit. The Gemara rejects this explanation: Who says that Rabbi Yoḥanan ben Beroka holds in accordance with the opinion of Rabbi Yosei?

[42] The Gemara proposes another resolution to Rav Naḥman’s objection: But let Rav Huna say to Rav Naḥman that the mishna is referring not to one who gave a gift to the fetus, but to one who said: I shall give a certain sum to whoever informs me. This person is in the world. The Gemara rejects this explanation as well: If that is so, then concerning that which the last clause of the mishna teaches: And if there is no heir other than the tumtum, the tumtum inherits all of the estate, if the mishna is referring to one who said: I shall give a certain sum to whoever informs me, what is the purpose of mentioning an heir, since the mishna is not discussing a gift to the heir at all?

[43] The Gemara proposes another resolution to Rav Naḥman’s objection: But let Rav Huna say to Rav Naḥman: The mishna is referring to a case where the gift was made after his wife had already given birth but he did not yet know the sex of the baby. The Gemara rejects this explanation as well: If that is so, then concerning that which the latter clause of the mishna teaches: Whatever offspring my wife gives birth to shall receive a certain sum, and she gave birth to a tumtum, the tumtum receives it, there is a difficulty. According to this explanation, the phrase: Whatever offspring my wife gives birth to, is incorrect. The mishna should have said: Whatever offspring my wife gave birth to.

[44] The Gemara proposes another resolution to Rav Naḥman’s objection: But let Rav Huna say to Rav Naḥman that the mishna is referring to one who says that the transfer of ownership should take effect when she gives birth, at which point the child already exists. The Gemara rejects this resolution: Rav Huna does not interpret the mishna in this way, because Rav Huna conforms to his line of reasoning, as Rav Huna says: Even if one says that the transfer of ownership should take effect when she gives birth, the fetus does not acquire it.

[45] The Gemara clarifies: As Rav Naḥman says: With regard to one who transfers ownership of an item to a fetus, the fetus does not acquire it. But if he says that the transfer of ownership of the item should take effect when she gives birth, the fetus acquires it. And Rav Huna says: Even if he says that the transfer of ownership of the item should take effect when she gives birth, the fetus does not acquire it, because the fetus did not exist in the world when he transferred ownership. And Rav Sheshet says: In both this case and that case, the fetus acquires the item.

[46] Rav Sheshet said: From where do I say that the fetus acquires the item? As it is taught in a baraita: With regard to a convert who died, apparently without offspring, and Jews plundered [uvizbezu] his property, assuming that he had no heirs and his property was therefore ownerless, and subsequently they heard that he had a son or that his wife was pregnant, they are obligated to return the property. If they returned it all, and then they heard that his son died or that his wife miscarried, if one took possession at the second time, after hearing about the death or the miscarriage, he acquired the property, but if one took possession only at the first time, before it was known there was an heir at all, he did not acquire the property.

[47] Rav Sheshet explains: And if it enters your mind that a fetus does not acquire property, why do they need to take possession again the second time? Didn't they already take possession one time? Evidently, the miscarried fetus had acquired ownership in the meantime.

[48] Abaye said in reply to Rav Sheshet: Inheritance, which comes into the possession of the heir by itself without a formal act of acquisition, is different. Even if a fetus inherits property, it may not be able to acquire property in any other manner, e.g., receiving a gift. Rava said: It is different there, in the case where they plundered the property of the convert, as the property was initially only loosely held in their hands, as they did not clearly know whether or not the deceased convert had heirs. Therefore, the first time they took possession was not sufficient, and they needed to take possession again in order to acquire the property.

[49] The Gemara asks: What is the difference between Abaye's refutation and Rava's refutation? The practical difference between them is in a case where they initially heard with regard to the fetus that he had died, and they then took possession of the property. But in reality, he had not died, and then he died. According to Abaye, a fetus inherits property. Therefore, the property was not ownerless, and the plunderers did not acquire it. According to Rava, since the plunderers heard that the fetus had died, they took a firm hold upon the property, and they acquired it the first time.

[50] The Gemara offers another refutation of the opinion of Rav Sheshet: Come and hear a proof from a mishna (Nidda 43b–44a): A one-day-old child inherits property and bequeaths property. One can infer that if the child is one day old, yes, he inherits property; but a fetus does not. The Gemara replies: Doesn't Rav Sheshet say that the mishna teaches a different halakha? The mishna teaches that a one-day-old child inherits his mother's property the moment he is born, so that he is able to bequeath it, if he then dies, to his heirs who are not the mother's heirs, e.g., his paternal brothers. This halakha specifically applies from when he is one day old, but a fetus whose mother died does not inherit from her. What is the reason for this?

[51] The reason is that we presume that the fetus died first, before its mother died, and the son does not inherit from his mother while in the grave, in order to bequeath the inheritance to his paternal brothers. The halakha is that if a son dies, and afterward his mother dies, the deceased son does not inherit from his mother and subsequently bequeath the inheritance to his paternal brothers, who are

not related to the mother. But in other cases, where it is not his mother’s estate, a fetus inherits property.

[52] The Gemara asks: Is this to say that it is certain that the fetus died first? But there was an incident where the mother died and the fetus made three spasmodic motions afterward. Apparently, a fetus can die after the mother. Mar bar Rav Ashi said: That incident was just as it is with the tail of the lizard, which jerks after being severed from the lizard, but it is just a spasmodic motion which does not indicate that it is still alive.

[53] Mar, son of Rav Yosef, says in the name of Rava: The mishna comes to say that a one-day-old child reduces the portion of the firstborn. The firstborn is entitled to a double portion of the inheritance, and this is calculated taking into account the portion due to his dead brother. And it is in this context that specifically the portion of a one-day-old child is taken into account, but the portion of a fetus is not taken into account, even though a fetus also inherits property. What is the reason for this? The Merciful One states concerning the portion of the firstborn: “If a man has two wives, the one beloved, and the other hated, and they bore him children, both the beloved and the hated; and if the firstborn son be hers that was hated” (Deuteronomy 21:15). The term “children” excludes a fetus.

[54] This is similar to another halakha, as Mar, son of Rav Yosef, says in the name of Rava: A son who was born after his father’s death does not reduce the firstborn’s portion. What is the reason for this? The Merciful One states in the Torah: “And they bore him children,” and this term “children” does not apply to a fetus.

[55] The Gemara notes: In Sura they taught Mar’s statement that way, but in Pumbedita they taught it this way: Mar, son of Rav Yosef, says in the name of Rava: A firstborn who was born after his father’s death does not receive a double portion. What is the reason for this? The Merciful One states in the Torah: “But he shall acknowledge the firstborn, the son of the hated, by giving him a double portion” (Deuteronomy 21:17), and in this case the father is not there that he can acknowledge him. The Gemara concludes: And the halakha is in accordance with all these versions of that which Mar, son of Rav Yosef, says in the name of Rava. Accordingly, a one-day-old child reduces the portion of the firstborn, a son born after his father’s death does not reduce the firstborn’s portion, and a firstborn born after his father’s death does not receive a double portion.

[56] § Rabbi Yitzḥak says that Rabbi Yoḥanan says: With regard to one who transfers ownership of an item to a fetus, the fetus does not acquire the item. And if you say that the statement of our mishna (140b), with regard to one who gives a gift to his unborn child, indicates that an item can be transferred to a fetus, the circumstances there are unique. Since the disposition of a person is to be inclined toward his son, the Sages validated such a transfer, but one cannot transfer an item to the unborn child of another.

[57] Shmuel said to Rav Ḥana of Baghdad: Go out and bring me an assembly of ten men, and I will say a halakha to you in their presence, so that it will be well publicized. The halakha was: With regard to one who transfers ownership of an item to a fetus, the fetus acquires the item. The Gemara concludes: And the halakha is that with regard to one who transfers ownership of an item to a fetus, the fetus does not acquire the item.

[58] § The Gemara relates: There was a certain man who said to his wife, before she conceived: My property is given to the sons that I will have from you. His older son from a previous marriage came and said to him: That man, i.e., me, what will become of him, i.e., will I receive nothing? He said to

his son: Go and acquire a portion like one of the sons who will be born, i.e., you will receive a share as well. The Gemara comments: Those sons who were not yet born certainly did not acquire the property, and do not receive more than their share as heirs, as they are not yet in existence.

[59] The Gemara asks: With regard to this son, does the young man [letalya] receive an additional share of the inheritance in a case where there are other sons from the second wife, since his father gave him an additional share, or does the young man not receive an additional share of the inheritance where there are other sons? There are Rabbi Avin, and Rabbi Meyasha, and Rabbi Yirmeya, who all say: The young man does receive an additional share of the inheritance where there are other sons. And there are Rabbi Abbahu, and Rabbi Ḥanina bar Pappi, and Rabbi Yitzḥak Nappaḥa, who all say: The young man does not receive an additional share of the inheritance where there are other sons.

[60] Rabbi Abbahu said to Rabbi Yirmeya: Is the halakha in accordance with our opinion, or is the halakha in accordance with your opinion? Rabbi Yirmeya said to Rabbi Abbahu: It is obvious that the halakha is in accordance with our opinion, as we are older than you, and the halakha is not in accordance with your opinion, as you are youngsters [dardekei]. Rabbi Abbahu said to Rabbi Yirmeya in reply: Does the matter depend upon age? The matter depends upon the reason behind the ruling. Rabbi Yirmeya asked him: And what is your reason? Rabbi Abbahu replied: Go to Rabbi Avin, as I explained this halakha to him,

[61] and he nodded [vekharkeish] his head in the study hall in approval of this explanation. Rabbi Yirmeya went to Rabbi Avin, who said to him: Rabbi Abbahu's reasoning is that if a father said to his son: Acquire an item as a donkey does, does he acquire it? In the same manner that the son would not acquire anything if his acquisition were likened to that of a donkey, which possesses no ability to acquire an item, so too, since the father compared the son's acquisition to the acquisition effected by his unborn children, who possess no ability to acquire property, the son did not acquire any property.

[62] This is as it was stated: With regard to one who says to another: Acquire an item as a donkey does, he does not acquire any property, as a donkey cannot acquire property. But with regard to one who says: You and a donkey shall both acquire my property, there is a disagreement. Rav Naḥman says: The person acquires his half of the property, and Rav Hamnuna says: It is as though the giver does not say anything. Since the beneficiary was included with the donkey in the same acquisition, he does not acquire any property, just as the donkey does not acquire any property. Rav Sheshet says: The person acquires all the property. As the giver knew that a donkey cannot acquire property, he intended for the person, who was capable of acquiring property, to acquire all the property.

[63] Rav Sheshet said: From where do I say this? As it is taught in a baraita: Rabbi Yosei says: There is nothing bitter in the cucumber other than its inner part, which is sometimes bitter and inedible and unfit to be separated as teruma. Therefore, since one does not know if the cucumber he separates as teruma is bitter inside, when he separates teruma, he adds part of another cucumber as teruma, in addition to the outer part of the cucumber, which is edible. And he separates both as teruma, thereby ensuring that the teruma consists of sufficient edible cucumber.

[64] Rav Sheshet asks: Why does the separation of teruma take effect? Is it not analogous to one who states: You and a donkey shall acquire an item, since he designated as teruma both the outer part of the cucumber, which is fit to become teruma, and the inedible inner part, which is not fit to become teruma? Since this does not invalidate the separation of teruma with regard to the edible outer part,

one can infer that although the donkey cannot acquire property, this does not prevent the person from acquiring the property.

65 The Gemara replies: It is different there, as by Torah law the bitter inner part is also properly considered teruma, even though by rabbinic law if one separated inferior produce as teruma he must again separate produce of superior quality as teruma. Therefore, when one designates the entire cucumber as teruma, he is not designating both fit and unfit produce.

66 This is as Rabbi Ile'a says: From where is it derived that the halakha with regard to one who separates teruma from poor-quality produce for superior-quality produce is that his teruma is valid teruma? It is as it is stated with regard to teruma: "And you shall bear no sin by reason of it, seeing that you have set apart from it the best thereof" (Numbers 18:32). By inference, this indicates that it is a transgression to separate the inferior part of the produce as teruma. Rabbi Ile'a explains the proof: And if the inferior produce is not sanctified as teruma, why does it involve the bearing of sin, as it is a meaningless act? From here one can derive that that the halakha with regard to one who separates teruma from poor-quality produce for superior-quality produce is that although he acted improperly, his teruma is valid teruma.

67 § The Gemara cited Rav Hamnuna's opinion that if one says: You and a donkey shall acquire my property, he did not say anything. Rav Mordekhai said to Rav Ashi: Rav Avya raises an objection to Rav Hamnuna's opinion from a mishna (Kiddushin 50b): An incident occurred involving five women, and among them were two sisters, and one person gathered a basket of figs that belonged to them, and the fruit was of the Sabbatical Year, and he said: You are hereby all betrothed to me with this basket, and one of them accepted it on behalf of all of them. The Sages said: The sisters are not betrothed, as it is prohibited to marry the sister of one's wife during her lifetime.

68 One can infer from the mishna: It is only the sisters who are not betrothed, but the unrelated women are betrothed. But why is that so? It is analogous to one who states: You and a donkey shall acquire an item. Since he tried to betroth two women ineligible for betrothal together with the eligible women, the betrothal should not take effect even with regard to the eligible women.

69 Rav Ashi said to Rav Mordekhai: This is why I saw Rav Huna bar Avya in a dream, because you were going to tell me that Rav Avya raised an objection to Rav Hamnuna's opinion. But as for this objection, didn't we interpret the mishna in Kiddushin as referring to where he says: Those of you who are eligible for engaging in sexual intercourse with me shall be betrothed to me? Since the sisters were forbidden to him, they were not included in the betrothal in the first place, and there was no impediment to the betrothal of the eligible women taking effect. The case is therefore not comparable to the case discussed by Rav Hamnuna.

70 § The Gemara relates: There was a certain man who said to his wife: My property is given to you and to your sons. Rav Yosef says: In such a case, the wife acquires half of the property, even though the man did not specify how much of his property he was giving her. And Rav Yosef said: From where do I say this? As it is taught in a baraita: Rabbi Yehuda HaNasi says: The verse states with regard to the shewbread: "And it shall be for Aaron and his sons" (Leviticus 24:9). This means half for Aaron and half for his sons. One can infer from the baraita that when it is specified that a gift is to be divided between an individual and a group, the intention is that the individual receives half.

71 Abaye said to Rav Yosef: Granted, there, in the case of the shewbread, Aaron is eligible to receive a share of the shewbread as a priest; it is for this reason that the Merciful One specified him

separately, so that he should take more than other priests, i.e., half. But with regard to a woman, who is not eligible to inherit her husband's property, it is sufficient for her to receive a portion of the inheritance as one of the sons, not half of all the property.

[72] The Gemara raises an objection: Is that so? But there was an incident in Neharde'a where a man gave a gift to an individual and to a group of people, and Shmuel collected half the sum for the individual. There was a similar case in Tiberias, and Rabbi Yoḥanan collected half the sum for the individual. And furthermore, when Rav Yitzḥak bar Yosef came from Eretz Yisrael he said: There was a certain coronation tax that was placed by the royal house on the city councilmen [a'abulei] and on the prominent citizens [ve'a'isterugei]. Rabbi Yehuda HaNasi said: Let the city councilmen give half and the prominent citizens half. This indicates that when two groups are mentioned together, the intent is that each one represents half.

[73] The Gemara rejects this argument: How can the case concerning the tax be compared to the other cases? There, initially, when they would write the writ of assessment, they would write that it was placed on the city councilmen alone. And the prominent citizens would assist them in raising the sum, and the king knew that they were assisting them. Therefore, now, the meaning of what they wrote: It is placed on the city councilmen and on the prominent citizens, is to say that these should give half of the tax, and those should give half.

[74] Rabbi Zeira raises an objection to Rav Yosef's ruling from a baraita (Tosefta, Menaḥot 12:7): With regard to one who says: It is incumbent upon me to bring a meal-offering of one hundred tenths of an ephah in two vessels, he brings sixty-tenths in one vessel, and the remaining forty-tenths in one vessel, as no more than sixty-tenths may be brought in a single vessel.

[75] And if he brought fifty-tenths in one vessel and fifty in one vessel, he fulfilled his obligation. One can infer from the baraita that after the fact, if he had brought fifty-tenths in each vessel, yes, he fulfilled his obligation, but he may not do so ab initio. And if it should enter your mind to say that every case like this is divided half and half, it should be permitted to divide the meal-offering into equal halves even ab initio.

[76] The Gemara dismisses Rabbi Zeira's objection: How can these cases be compared? There, in the case of the meal-offering, it is clear to us that this person initially intended to bring a large offering, and the reason that he said he will bring the offering in two vessels was that he knew that it is not possible to bring the entire offering in a single vessel. Therefore, we bring, in a single vessel, as much as it is possible to bring, which is sixty-tenths. In any other case it is possible that the division should be into two equal portions.

[77] The Gemara concludes: And the halakha is in accordance with the opinion of Rav Yosef in three matters where he disagreed with Rabba: In the matter of dividing a field between brothers (see 12b); in the matter of whether certain actions are limited by the court session or by the topic of discussion in the court (see 114a); and in the matter of half, i.e., this matter, whether an unspecified division into two parts is divided into two equal halves.

[78] § The Gemara cites additional incidents concerning a gift whose method of division was not specified: There was a certain man who sent swaths of silk to his home as a gift. Rabbi Ami says that in such a case, those swaths that are suitable for the sons' garments are given to the sons, and those that are suitable for the daughters' garments are given to the daughters. The Gemara comments: We said this only when he does not have daughters-in-law, but if he has daughters-in-law, it is presumed

that he sent it for his daughters-in-law. And if his daughters are not married, it is presumed that he does not forsake his daughters and send to his daughters-in-law, so the silk is given to his daughters.

79 There was a certain man who said to those surrounding him: I leave my property to my sons [levanai], and he had only a son and a daughter. The question was raised: Do people call a single son in the plural: My sons, and in his will he came to remove his daughter even from the tenth of his property that would rightfully be her dowry? Or perhaps people do not call a single son: My sons, and he came to include his daughter in the gift?

80 Abaye said: Come and hear a proof that one does refer to a single son using the plural term sons, as it is written: “And the sons of Dan: Hushim” (Genesis 46:23). Rava said to Abaye: Perhaps this verse should be understood as the school of Ḥizkiyya taught, that Hushim is not the name of Dan’s son but that they, Dan’s sons, were as numerous as the groups [ḥushim] of reeds. Rather, Rava said: One can prove this usage of the term sons in the verse: “And the sons of Pallu: Eliab” (Numbers 26:8). Rav Yosef said: This can be proven from another verse: “And the sons of Ethan: Azariah” (I Chronicles 2:8).

81 There was a certain man who said to those surrounding him: I leave my property to my sons, and he had a son and a grandson, i.e., his son’s son. The question was raised: Do people call a grandson a son, or do they not? Rav Ḥaviva said: People call a grandson a son. Mar bar Rav Ashi said: People do not call a grandson a son. The Gemara comments: It is taught in a baraita in accordance with the opinion of Mar bar Rav Ashi: With regard to one prohibited by a vow from deriving benefit from a certain person’s sons, it is permitted for him to derive benefit from the sons of that person’s sons, as they are not included in the term sons.

82 MISHNA: In the case of one who died and left behind adult and minor sons, if the adult sons enhanced the property, they enhanced it so that the profit goes to the middle, i.e., it is distributed among all the heirs. If the adult sons said from the outset: See that which our father left behind; we are going to engage in business with our share of the property and profit from it, then they enhanced the property for themselves. And similarly, with regard to a wife who enhanced the property of her deceased husband, she enhanced it so that the profit goes to the middle, i.e., it is divided between her and the heirs. If she said: See that which my husband left me; I am going to engage in business with my share and profit from it, then she enhanced the property for herself.

83 GEMARA: Rav Ḥaviva, son of Rav Yosef, son of Rava, says in the name of Rava: They taught this halakha only with regard to where the property was enhanced on account of the property, i.e., the heirs invested money from the common inheritance in order to enhance the property, and their input was only in the management of its investment. But if the property was enhanced on their account, i.e., on account of the efforts or expenditure of the adult sons, the halakha is that they enhanced it for themselves.

84 The Gemara asks: Is that so? But doesn’t Rabbi Ḥanina say: Even if their father left them nothing but

85 a mortar [udaini], which people pay to use, the rent goes to the middle? But isn’t the profit accruing from a mortar considered profit accruing on his, i.e., the adult son’s, own account, as the adult son must supervise its operation, and there is no outlay from the property? The Gemara dismisses this objection: A mortar is different, as for its typical use it can suffice with supervision,

and even minors are able to supervise its use. Since the adults do not contribute anything more than the minors, they cannot demand a greater share of the profits.

[86] § The mishna teaches: If the adult sons said from the outset: See that which our father left behind; we are going to engage in business with our share of the property and profit from it, then they enhanced the property for themselves. The Gemara relates: Rav Safra's father left him dinars. Rav Safra took them and entered into a business venture with them. His brothers came and charged him in a court of law before Rava, claiming their share of the profits. Rava said to them: Rav Safra is a great man; he does not abandon his studies and toil for others. It is therefore clear that if he invested the money, it was for his own profit, even if he did not explicitly declare so at the outset.

[87] § The mishna teaches: With regard to a wife who enhanced the property of her deceased husband, she enhanced it so that the profit goes to the middle. The Gemara asks: What is the deceased's wife doing with the orphans' property? What rights does she have to the property? Rav Yirmeya said: The mishna is referring to a wife who is an heiress, e.g., if she were the daughter of her husband's brother, and both brothers died without leaving sons, in which case she inherits in her father's stead.

[88] The Gemara asks: Isn't it obvious that the halakha in this case is the same as with regard to any other heir? The Gemara replies: It is necessary to state this, lest you say that since it is not a woman's way to toil to enhance property, then even though she did not expressly state that she is toiling for herself, it is considered as though she had expressly stated this. The mishna teaches us that only if she expressly stated this do the profits accrue to her.

[89] The mishna teaches: And if she said: See that which my husband left me; I am going to engage in business with my share and profit from it, then she enhanced the property for herself. The Gemara asks: Isn't this obvious? The Gemara explains: It is necessary to state this, lest you say that since it is praiseworthy for her to enhance the property on behalf of the orphans, as people will say: See how she toils for the orphans, she relinquishes her right to the profits and they should divide them equally. The mishna teaches us that this is not the case.

[90] Rabbi Ḥanina says: In the case of one who marries a woman to his eldest son and arranges the wedding feast in a house that he designated for the purpose of the wedding canopy and the wedding feast, the son acquires the house as a gift. The Gemara notes: And this is the halakha specifically in the case of the eldest son, and specifically if he is marrying a virgin, and specifically when this woman is his first wife, and specifically when the father married him off first among his sons. When all these conditions exist, it is presumed that the father has a particular fondness toward the son, due to which he gave him the house.

[91] The Gemara clarifies the details of this halakha: It is obvious that if his father designated a house for the son's nuptials and there is an upper story above the house, the son acquired the house, but he did not acquire the upper story. If he designated a house for the son, and there is a portico [ve'akhsadra] in front of the house, what is the halakha? If there were two houses, one within the other, and the inner one was designated for the son's nuptials, what is the halakha? The Gemara concludes: These questions shall stand unresolved.

[92] The Gemara raises an objection from a baraita: If his father designated a house and furniture for his son's nuptials, the son acquired the furniture, but he did not acquire the house. Rabbi Yirmeya says: This is referring to a case where his father's storeroom was placed there. It is clear that just as his father did not intend to give him the storeroom, neither did he intend to give him the house. The

Sages of Neharde’a say: Even if there is only a dovecote in the house that belongs to the father, the son does not acquire the house. Rav Yehuda and Rav Pappi say: Even if there is only a pot [atzitza] of small fried fish, the son does not acquire the house. Mar Zutra married off his son, and hung a sandal in the house, to indicate that he did not intend to give the house as a gift. Rav Ashi married off his son, and hung a jug [ashisha] of oil in the house.

93 Mar Zutra says: These three matters were instituted by the Sages as a halakha without any explanation of their process, i.e., they instituted these enactments despite the fact that the mechanism by which they function is unclear: One is this halakha with regard to the son acquiring the house designated for his nuptials. Another is that which Rav Yehuda says that Shmuel says: One who writes a deed granting all of his property to his wife renders her only a steward of his property, i.e., he intends only to put her in charge of the property and she does not acquire it. Another is that which Rav says: With regard to one who says to another: I have one hundred dinars in your possession; give it to so-and-so, if this occurred in the presence of all three parties, that third person acquires it, without need of witnesses or a formal act of acquisition.

94 MISHNA: With regard to brothers who were also partners, and it occurred that one of them was summoned to public service, which is assessed per family, he was summoned from the middle, i.e., the profits or expenses of his service are divided among them. If one of the brothers became sick and sought treatment, the cost of the treatment is paid from his own resources.

95 GEMARA: The Sages taught: This service mentioned in the mishna is referring to forced imperial service, but if one of the brothers engaged in a trade of his own volition, the profits are his alone. The Sages taught in a baraita (Tosefta 10:5): In the case of one of the brothers who was appointed as a tax collector or a military commander [polmustos], a position with the potential for profit, if he was appointed on account of all the brothers, as the procedure was to impress a representative from each family for this purpose, any profit accrues to all the brothers. If he was appointed on account of himself, the profit accrues to himself.

96 The Gemara asks: Isn’t it obvious that if he was appointed on account of all the brothers, then the profit accrues to all the brothers? The Gemara responds: No, it is necessary to state this halakha in a case where the brother appointed was sharper, i.e., more capable, than the other brothers. Lest you say that his sharpness caused him to be selected for the position, and he should receive all the profits, the baraita teaches us that his talent notwithstanding, since he was selected as a representative of the family, the profit accrues to all the brothers.

97 The Sages taught: With regard to one of the brothers, who took two hundred dinars from the common inheritance to support himself when he went to another place to study Torah or to learn a trade, the brothers can say to him: If you are here with us, you are entitled to sustenance along with us. If you are not here with us, you are not entitled to sustenance.

98 The Gemara asks: But shouldn’t they give him his sustenance wherever he is? The Gemara answers: This ruling supports the opinion of Rav Huna, as Rav Huna says: The blessing of the house is in its abundance. This means that the extent to which blessing permeates a home is proportionate to the number of people who live there, and when many people live together the expenses per capita decrease. The Gemara asks: But shouldn’t they give him his sustenance according to the blessing of the house, i.e., the expenses he would incur even if he were in the house? The Gemara responds: Indeed, they are required to provide for those expenses that he would incur in any event.

99 § The mishna teaches: If one of the brothers became sick and sought treatment, the cost of the treatment is paid from his own resources. Ravin sent a ruling in the name of Rabbi Ela: They taught this only in a case where he became ill through negligence. But if he became ill through circumstances beyond his control, the cost of the treatment is paid from the middle, i.e., from the common inheritance. The Gemara asks: What are the circumstances in which it is considered negligence? This is in accordance with the statement of Rabbi Ḥanina, as Rabbi Ḥanina says: All occurrences that befall man are in the hand of Heaven except for colds and obstacles [paḥim], from which one is able to protect himself, as it is stated: “Colds and snares are on the path of the crooked; he who guards his soul shall keep far from them” (Proverbs 22:5).

100 MISHNA: It was common practice for friends of a groom to give him gifts in order to help cover the expenses of the wedding feast. These gifts are known as gifts of groomsmen, and would be reciprocated in turn. While the groom and the groomsman were at times the recipient and the giver of the gifts, respectively, the gifts were at times provided by the father of the groomsman and received by the father of the groom. In the case of brothers, some of whom brought gifts of groomsmen in their father’s lifetime, which were provided by their father, when the gifts of groomsmen are reciprocated after the father’s death, when one of the brothers gets married, they are reciprocated to the middle, i.e., the gift is divided among the brothers. This is because gifts of groomsmen are a legal debt owed to the father, collectible in court. But with regard to one who sends his friend jugs of wine or jugs of oil, a reciprocal gift is not collectible in court, because they are considered acts of kindness.

101 GEMARA: And the Gemara raises a contradiction between the mishna’s ruling that the gifts of groomsmen are reciprocated to the middle, and the first clause of a baraita: If a father sent his son with gifts of groomsmen, when they are reciprocated when that son gets married, they are reciprocated to that son. If his father was sent gifts of groomsmen for the wedding of one of his sons, when they are reciprocated from the father’s estate, they are reciprocated from the middle, i.e., the cost of the gift is divided among the brothers. Rabbi Asi says that Rabbi Yoḥanan says: When we learned the mishna as well, we learned it as teaching the halakha with regard to gifts of groomsmen that were sent to the father for the wedding of one of his sons, not with regard to gifts of groomsmen sent by the father.

102 The Gemara objects: But the mishna teaches the halakha with regard to brothers, some of whom brought gifts of groomsmen. The Gemara responds: Emend the text of the mishna and teach it as saying: With regard to brothers, to some of whom gifts of groomsmen were brought. The Gemara objects: But the mishna explicitly teaches the halakha if the gifts of groomsmen are reciprocated. The Gemara responds: This is what the mishna is saying: When it is collected from the brothers in return, it is collected from the middle.

103 Rabbi Asi says: Even if the text of the mishna is not emended, it is not difficult and can be reconciled with the baraita. Here in the mishna it is referring to where the father sent the gifts of groomsmen without specifying which son should be ascribed credit for bringing the gifts. There in the baraita, it is referring to where the father specified that the credit for the gifts of groomsmen should be ascribed to a specific son, who receives gifts in return, as it is taught in another baraita: If his father sent gifts of groomsmen on his, i.e., the son’s, behalf, then when the gift is reciprocated, it

is reciprocated to him, i.e., to that specific son. If his father sent gifts of groomsmen without specification, then when the gift is reciprocated, it is reciprocated to the middle.

[104] And Shmuel says: Here in the mishna we are dealing with a man whose married brother died childless [yavam]. The son who brought the gifts of groomsmen died childless, his brother entered into levirate marriage with the widow, and the gifts of groomsmen were reciprocated at the wedding of the yavam. Although the yavam inherits the property of his brother, since the reciprocal gifts were not extant when his brother died, they do not belong solely to him; rather, they are divided among the brothers. This is because the yavam does not take in inheritance the property due the deceased as he does the property the deceased already possessed.

[105] The Gemara asks: Is it possible to conclude by inference from Shmuel's statement that the other side, i.e., a friend who had received gifts of groomsmen from the deceased, is obligated to repay the gifts of groomsmen he received from the deceased? Why should this be so? Let him say: Give me my groomsman and I will rejoice with him. Since the one who gave him the gifts is deceased, he is not obligated to reciprocate.

[106] Isn't it taught in a baraita (Tosefta, Pesaḥim 3:1) with regard to similar circumstances: In a place where people are accustomed to return the betrothal money when the betrothed man or woman dies, they return it; in a place where people are accustomed not to return it, they do not return it. And Rav Yosef bar Abba says that Mar Ukva says that Shmuel says: They taught this only with regard to when the woman dies, in which case one follows the local custom. But if the man dies, all agree that they do not return the money. What is the reason for this? Since she can say:

[107] Give me my husband and I will rejoice with him, i.e., it is not my fault that we are not getting married, she is not required to return the betrothal money. Here too, let him say: Give me my groomsman and I will rejoice with him.

[108] Rav Yosef said: With what are we dealing here? Shmuel's statement is referring to a case where the original recipient, in reciprocation, rejoiced with the brother who brought the gifts of groomsmen during the seven days of the wedding feast, but did not suffice to repay him before the brother died. Since it was the usual practice to send the gifts of groomsmen after the groomsman rejoiced with the betrothed man for seven days, he is obligated to reciprocate the gifts of groomsmen, and the yavam cannot claim them for himself.

[109] The Gemara suggests: Shall we say that Shmuel's statement that a betrothed woman can claim: Give me my husband and I will rejoice with him, is a dispute between tanna'im? As it is taught in a baraita: With regard to one who betrothed a woman and then he divorces her or dies, if she is a virgin, she collects two hundred dinars in payment of her marriage contract. And if she is a widow, she collects one hundred dinars. In a place where people were accustomed to return the betrothal money when the betrothed man or woman died, they return it. In a place where people were accustomed not to return the betrothal money, they do not return it. This is the statement of Rabbi Natan. Rabbi Yehuda HaNasi says: Actually they said: In a place where people were accustomed to return it, they return it; in a place where people were accustomed not to return it, they do not return it.

[110] The Gemara clarifies: The opinion of Rabbi Yehuda HaNasi is identical to the opinion of the first tanna, i.e., Rabbi Natan. Rather, is it not that the difference between them concerns the validity of the claim: Give me my husband and I will rejoice with him?

[111] And the statement in the baraita is incomplete and this is what it is teaching: With regard to one who betrothed a woman and then the betrothal is terminated, if she is a virgin, she collects two hundred dinars in payment of her marriage contract, and if she is a widow, she collects one hundred dinars. In what case is this statement said? It is said where he retracted, i.e., he died or divorced her. But with regard to where she died, the halakha is as follows: In a place where people were accustomed to return the betrothal money, they return it; in a place where people were accustomed not to return the betrothal money, they do not return it. And this applies specifically to where she died; but if he died, they do not return it. What is the reason for this? It is because she can say: Give me my husband and I will rejoice with him. This is the statement of Rabbi Natan.

[112] And Rabbi Yehuda HaNasi came to say: Actually they said: Whether he died or whether she died, in a place where people were accustomed to return it, they return it; in a place where people were accustomed not to return it, they do not return it, and she cannot say: Give me my husband and I will rejoice with him.

[113] The Gemara rejects this explanation: No, everyone agrees that she can say: Give me my husband and I will rejoice with him, and in a case where he died, everyone agrees that she does not have to return the betrothal money. They disagree in a case where she died, and here it is with regard to the question of whether betrothal money is given as a sunk cost, i.e., that it is not returned even if the betrothal is not consummated, that they disagree. Rabbi Natan holds that betrothal money is not given as a sunk cost, and in a place where people were accustomed to return it, they return it. And Rabbi Yehuda HaNasi holds that betrothal money is given as a sunk cost.

[114] The Gemara asks: But doesn't the baraita teach that according to Rabbi Yehuda HaNasi, in a place where people were accustomed to return it, they return it? This indicates that Rabbi Yehuda HaNasi does not hold that the betrothal money was given as a sunk cost. The Gemara replies: This is not referring to the betrothal money, which is not returned in any event. This is what the baraita is saying: But with regard to presents, which the betrothed man sent his betrothed following the betrothal, certainly in a place where people were accustomed to return them, they return them.

[115] The Gemara notes: The dispute between these tanna'im, in the following baraita, is like the dispute between those tanna'im just mentioned, as it is taught in a baraita: In a case where the man betrothed a woman with a talent of silver, equivalent to six thousand dinars, if she was a virgin she collects in payment of her marriage contract two hundred dinars over and above this amount, and if she was a widow she collects one hundred dinars over and above this amount. This is the statement of Rabbi Meir. Rabbi Yehuda says: A virgin collects two hundred dinars and a widow one hundred dinars, and she returns the rest of the betrothal money to him. Rabbi Yosei says: If he betrothed her with twenty, he gives her thirty halves; if he betrothed her with thirty, he gives her twenty halves, as the Gemara will explain.

[116] The Gemara clarifies the baraita: With what are we dealing? If we say the baraita is referring to when she died, is she entitled to receive payment of her marriage contract? Rather, perhaps the baraita is referring to where he died, in which case why does Rabbi Yehuda state that she returns the rest of the betrothal money to him? Let her say: Give me my husband and I will rejoice with him. Rather, perhaps the baraita is referring to the case of the wife, i.e., the betrothed, of an Israelite, who committed adultery, who cannot claim that she is available to marry her betrothed, as it is prohibited for her to engage in intercourse with him. The Gemara challenges: This is also difficult, as with what

circumstance is the baraita dealing? If it is referring to where she committed adultery willingly, is she entitled to receive payment of her marriage contract? Rather, it is referring to a case of rape. But in that case, she is permitted to him. Why should she return the betrothal money?

[117] Rather, the baraita is referring to the wife, i.e., the betrothed, of a priest, who was raped and is prohibited from engaging in intercourse with her betrothed. She therefore cannot claim: Give me my husband and I will rejoice with him, yet she is entitled to receive payment of her marriage contract, and the tanna'im disagree with regard to whether betrothal money is given as a sunk cost: Rabbi Meir holds that betrothal money is given as a sunk cost. Rabbi Yehuda holds that it is not given as a sunk cost. And Rabbi Yosei is uncertain if it is given as a sunk cost or not.

[118] The Gemara explains Rabbi Yosei's opinion: And since it is uncertain whether or not she is required to return the betrothal money, therefore, she returns only half the money: If he betrothed her with twenty sela, which are equivalent to eighty dinars, she owes him forty dinars. Yet, if she is widowed or divorced, she is entitled to one hundred dinars in payment of her marriage contract, so he or his estate gives her thirty halves of a sela, which are equivalent to sixty dinars, so that she receives one hundred dinars in all. If he betrothed her with thirty sela, which are equivalent to one hundred twenty dinars, she owes him sixty dinars. Since she is entitled to one hundred dinars in payment of her marriage contract, he gives her twenty halves of a sela, equivalent to forty dinars.

[119] Rav Yosef bar Minyumi says that Rav Naḥman says: In every place where they were accustomed to return the betrothal money, they return it. And the interpretation of this statement is that it is referring to Neharde'a. The Gemara asks: With regard to the rest of Babylonia, what is the halakha? Rabba and Rav Yosef both say: The presents are returned and the betrothal money is not returned. Rav Pappa said: The halakha is that whether he died or whether she died or whether he retracted his agreement to the betrothal and divorced her, the presents are returned and the betrothal money is not returned. If she retracted her agreement to the betrothal and requested a divorce, even the betrothal money is returned.

[120] Ameimar said: The betrothal money is not returned. This is a rabbinic decree, lest people say that betrothal takes effect with her sister. If the betrothal money is returned, people are likely to think that the betrothal is retroactively nullified and that the man can betroth her sister, whereas in fact the betrothal was not retroactively nullified and he cannot betroth her. Rav Ashi said: Her bill of divorce proves for her that she was betrothed, so this concern is not in effect. The Gemara comments: And this statement of Rav Ashi is a mistake, since there are those who heard about this, i.e., the return of the betrothal money, but did not hear about that, i.e., the bill of divorce.

[121] § The mishna teaches: If the gifts of groomsmen are reciprocated after the father's death, they are reciprocated to the middle, because gifts of groomsmen are a legal debt owed to the father, collectible in court. The Sages taught (Tosefta 10:8): Five statements were said with regard to gifts of groomsmen: They are collectible in court; and they are reciprocated only at their relevant time, i.e., at the time of the groomsman's own wedding; and they are not subject to the prohibition of interest, i.e., it is permitted to reciprocate with a gift of greater value than the original gift;

[122] and the Sabbatical Year does not abrogate them; and the firstborn does not take a double portion of them.

[123] The baraita states that gifts of groomsmen are collectible in court. What is the reason for this? It is that they are considered similar to a loan. The baraita states: And they are not subject to the

prohibition of interest. The reason is that it was not with that in mind that he gave him a larger gift. Rather, he did so on account of his joy at his friend's wedding. The baraita states: And the Sabbatical Year does not abrogate them. The reason is that one cannot read the verse concerning the abrogation of debts during the occurrence of the Sabbatical Year: "He shall not exact it of his neighbor and his brother, because the Lord's release has been proclaimed" (Deuteronomy 15:2), with regard to gifts of groomsmen. Since one cannot choose to exact the gifts until the time of one's own wedding, they are not addressed by this verse.

[124] The baraita states: And the firstborn does not take a double portion from them. The reason is that they constitute potential inheritance, and the firstborn does not take in inheritance the property due the deceased as he does the property the deceased possessed.

[125] § Rav Kahana said: The principle with regard to the reciprocation of gifts of groomsmen is: If the recipient was in town when his groomsman wed, he should have come to the wedding, and even if he did not come, he is obligated to send the gifts of groomsmen. If he was not in town, but he was nearby and he heard the sound of the drum announcing the wedding, he should have come. If he was far away and did not hear the sound of the drum, the betrothed man should have informed him. If he did not inform him, the recipient has a grievance against the betrothed man because he did not inform him about the wedding, but he still repays the gifts of groomsmen.

[126] In this case, since he did not partake of the wedding feast, he is entitled to deduct a sum from the reciprocal gift. The Gemara asks: And up to how much can he deduct? Abaye said: The members of a wedding feast were accustomed to deduct according to the following principle: If the gift of groomsmen that the reciprocal giver received was up to a dinar, he now pays nothing, because what a person brings in his hand he consumes in his stomach. If the gift of groomsmen was up to four dinars, he now pays half. From that sum onward, each person deducts according to his prominence, i.e., in accordance with the outlay that would have been required to honor the reciprocal giver properly, had he participated in the wedding feast.

[127] The Sages taught (Tosefta 10:9): If one served as groomsman for his friend at a public [pumbei] wedding, and when the groomsman himself wed, he requested that his friend reciprocate by serving as a groomsman for him at a private wedding, the friend can say to him: I am willing to reciprocate and serve as groomsman for you only at a public wedding, where the rejoicing is greater, in the manner you served as a groomsman for me. If one served as a groomsman for his friend when he married a virgin, and he requested that his friend reciprocate by serving as a groomsman for him when he marries a widow, the friend can say to him: I shall serve as a groomsman for you only when you marry a virgin, in the manner you served as a groomsman for me.

[128] If one served as a groomsman for his friend when he married a second wife, and he requested that his friend reciprocate by serving as a groomsman for him when he marries a first wife, the friend can say to him: When you marry another woman I will serve as a groomsman for you. If one served as a groomsman for his friend when he married one woman, and he requested that his friend reciprocate by serving as a groomsman for him when he marries two women, the friend can say to him: I will serve as a groomsman for you when you marry one woman, in the manner you served as a groomsman for me.

[129] § The Sages taught in a baraita: There are different types of Torah scholars. There is a scholar who is wealthy in figurative property and wealthy in public renown; this is the master of homiletics.

There is a scholar who is wealthy in coins and wealthy in houses; this is the master of dialectics. There is one who is wealthy in oil and wealthy in hidden stores; this is the master of halakhic traditions. Everyone is dependent on the owner of wheat; this is the master of Talmud, who understands the reasons behind the rulings and traditions.

130 Rabbi Zeira says that Rav says: What is the meaning of that which is written: “All the days of the poor are terrible; and for the good-hearted it is always a feast” (Proverbs 15:15)? “All the days of the poor are terrible”; this is referring to the master of Talmud, who is wearied by the difficulty of his Talmud study. “And for the good-hearted it is always a feast”; this is referring to the master of Mishna, who recites the mishnayot by rote and is not wearied thereby.

131 Rava says: The opposite is true. And this is consistent with that which Rav Mesharshiyya says in the name of Rava: What is the meaning of that which is written: “He who quarries stones shall be hurt by them; and he that chops wood shall be warmed thereby” (Ecclesiastes 10:9). “He who quarries stones shall be hurt by them”; these are the masters of Mishna. They exert themselves to memorize the mishnayot, but since one cannot reach practical conclusions from the mishna, they are comparable to one who carries a heavy load without benefiting from it. “He that chops wood shall be warmed thereby”; these are the masters of Talmud, who attain the benefit of their exertions in the form of practical conclusions.

132 The Gemara cites other interpretations of this verse. Rabbi Ḥanina says: “All the days of the poor are terrible”; this is referring to one who has a wicked wife. “And for the good-hearted it is always a feast”; this is referring to one who has a good wife. Rabbi Yannai says: “All the days of the poor are terrible”; this is referring to one who is delicate [istenis] and overly sensitive, because he constantly encounters unpleasant situations. “And for the good-hearted it is always a feast”; this is referring to one who is relaxed and not particular with regard to his food or his surroundings.

133 Rabbi Yoḥanan says: “All the days of the poor are terrible”; this is referring to an empathetic person, because he is constantly affected by the suffering in the world. “And for the good-hearted it is always a feast”; this is referring to a cruel person, who is not pained by the suffering of others. And Rabbi Yehoshua ben Levi says: “All the days of the poor are terrible”; this is referring to a person of impatient disposition. “And for the good-hearted it is always a feast”; this is referring to a person of patient disposition.

134 And Rabbi Yehoshua ben Levi says: Is it so that all the days of the poor are terrible? But aren’t there Shabbatot and Festivals, when even the poor enjoy their meals and rest? Rather, explain this in accordance with the statement of Shmuel, as Shmuel says: A change of regimen [veset] causes the onset of intestinal disease, and as a result the poor suffer even from a change for the good.

135 It is written in the book of ben Sira: All the days of the poor are terrible. Ben Sira says: The nights as well. His roof is at the lowest point of the roofs; the rain of roofs go onto his roof. His vineyard is at the height of the mountains; the soil of his vineyard goes onto other vineyards.

136 MISHNA: With regard to one who sends presents [sivlonot] to his father-in-law’s house following his betrothal, even if he sent there the sum of ten thousand dinars and subsequently ate there a groom’s feast even worth the value of a single dinar, if for any reason the marriage is not effected, the presents are not collected in return by the formerly betrothed man. If he did not eat a groom’s feast there, the presents are collected, as they were not an unconditional gift. If he sent many presents with the stipulation that they return with her to her husband’s house, i.e., to his own house,

after the wedding, these are collected if the marriage is not effected. If he sent a few presents for her to use while in her father’s house, they are not collected.

137 GEMARA: The mishna states that if the betrothed man ate food worth even a single dinar at his father-in-law’s house, the presents are not returned. Rava says: This applies specifically to the value of a dinar, but if he ate food worth less than the value of a dinar, it is not so. The Gemara asks: Isn’t that obvious, as we learned the halakha in the mishna with reference to the value of a dinar? The Gemara answers: It is stated lest you say that the same is true even in the case of less than a dinar, and the reason that the mishna teaches the halakha with reference to a dinar is that it teaches the matter in the manner in which it typically occurs, and one does not usually eat less than that. Rava therefore teaches us that the formulation of the mishna is precise; the mishna is not referring to the value of less than a dinar.

138 § The Gemara asks: We learned the halakha in the mishna with regard to a betrothed man who ate at his father-in-law’s house. What is the halakha if he drank there? We learned the halakha in the mishna with regard to a case where he, the betrothed, ate there. What is the halakha if his agent ate there? We learned the halakha in the mishna with regard to a case where the betrothed man ate there, at his father-in-law’s house. What is the halakha if his father-in-law sent him a feast to his home?

139 The Gemara answers: Come and hear a proof concerning one these matters, as Rav Yehuda says that Shmuel says: There was an incident involving one man who sent to his father-in-law’s house one hundred wagons full of jars of wine and of jars of oil, and one hundred wagons full of silver vessels, and one hundred wagons full of gold vessels, and one hundred wagons full of garments of fine wool [milat]. And he rode over in his state of joy and went and stood by the entrance to his father-in-law’s house. And they brought out to him a cup of hot drink and he drank it, and he subsequently died.

140 The question arose as to whether the presents must be returned to the betrothed’s heirs. And Rabbi Aḥa Sar HaBira raised this halakha before the Sages in Usha, and they said: Presents that are typically consumed are not collected, and those that are not typically consumed are collected. One can conclude from this incident that even if the betrothed only drank, some of the presents cannot be reclaimed.

141 The Gemara asks: Can you learn from this incident that the presents cannot be claimed even if he ate or drank less than the value of a dinar, since a cup of hot drink is not worth a dinar? Rav Ashi said: Who shall say to us that they did not grind a pearl worth one thousand dinars and serve it to him to drink? The Gemara asks: Can you learn from this incident that even if they sent the feast to him the presents cannot be claimed, as he drank at the entrance and did not enter inside? The Gemara rejects this conclusion: Perhaps the entire entrance of his father-in-law’s house is considered as his father-in-law’s house.

142 A dilemma was raised before the Sages: Rava states that if the betrothed man ate less than the value of a dinar at his father-in-law’s house, and the marriage is not effected, he can collect the presents he sent. What is the halakha concerning whether he must divide the value of the presents, and claim only part of the value, in proportion to the amount he ate? And what is the halakha concerning the enhancement of the value of the presents? Does one say that since the halakha is that if they are extant they are returned to him, therefore they were enhanced under his ownership? Or perhaps, since the halakha is that if they are lost or stolen, the betrothed woman’s family is required

to repay him, therefore they were enhanced under her ownership. The Gemara concludes: These dilemmas shall stand unresolved.

143 Rava raises a dilemma: What is the halakha with regard to presents that are typically consumed, but were not consumed? The Gemara replies: Come and hear a proof: And Rabbi Aḥa Sar HaBira raised this halakha before the Sages at Usha, and they said: Presents that are typically consumed are not collected, and those that are not typically consumed are collected. What, is it not referring to presents that are typically consumed even though they were not consumed? The Gemara rejects this: No, the mishna is referring to presents that were actually consumed.

144 The Gemara replies: Come and hear a proof from the mishna: If he sent a few presents for her to use while she is in her father's house, they are not collected. This indicates that they cannot be collected in any event, irrespective of whether they were used or not. Rava interpreted the mishna as referring to a snood or hairnet, which are insignificant items that the betrothed man sends without any intention of later collecting them.

145 § Rav Yehuda says that Rav says: There was an incident involving one man who sent new wine, and new oil, and new linen garments to his father-in-law's house at the time of Shavuot. The Gemara asks: What is this incident teaching us? The Gemara answers: If you wish, say that it teaches us the importance, i.e., the greatness, of Eretz Yisrael, where there is new wine, oil, and linen already available at the time of Shavuot. And if you wish, say instead that it teaches that if the betrothed man claims that he sent these items at the time of Shavuot, his claim is a plausible claim, and there is no reason to question it.

146 Rav Yehuda says that Rav says: There was an incident involving one man who was told that his wife, i.e., his betrothed, was one whose sense of smell was impaired, and he followed her into a ruin, carrying a date with him, to check her to see if she could correctly identify the smell. He said to her: I smell the scent of radish in the Galilee.

147 She said to him: Who will give us of the dates of Jericho that I shall eat them, hinting that she smelled the date he had brought with him. The ruin collapsed upon her and she died. The Sages said: Since he went into the ruin after her only to check her sense of smell, and not for the purpose of consummating their marriage, if she dies, he does not inherit from her, as the marriage was not effected, and a man does not inherit from his betrothed.

148 § The mishna teaches: If he sent a few presents for her to use while in her father's house, they are not collected. Ravin the Elder was sitting before Rav Pappa and he was sitting and saying: Whether she died, or whether he died, or whether he retracted his agreement to the betrothal and divorced her, the presents return to the betrothed man or his heirs, but food and drink do not return. If she retracted her agreement to the betrothal and requested a divorce, even a bundle of vegetables returns to the betrothed man. Rav Huna, son of Rav Yehoshua, said: When the presents are returned, the court appraises for the betrothed woman's family the sum that they must repay for any meat he gave her, according to a reduced assessment of the value of the meat and not according to the price the betrothed man paid. How much less is the reduced assessment? Up to one-third less than he paid.

149 MISHNA: With regard to a person on his death-bed who wrote a deed granting all of his property to others, and he reserved for himself any amount of land, his gift stands even if he subsequently recovers. If he did not reserve for himself any amount of land, and he recovered, his gift does not

stand, as the gift was conditional upon his death, since is it evident that he did not intend to leave himself without means of support.

150 GEMARA: Who is the tanna who taught that we follow the principle of assessing a person's intentions, even when he did not expressly state them? Rav Naḥman said: This is the opinion of Rabbi Shimon ben Menasya, as it is taught in a baraita (Tosefta, Ketubot 5:9): In a case where one's son went overseas and he heard that his son died, and then he arose and wrote a document granting all of his property to another, and then his son came back, his gift to the other people is a valid gift. Rabbi Shimon ben Menasya says: His gift is not a valid gift, as had he known that his son was alive he would not have written a document granting them his property.

151 Rav Sheshet said: This is the opinion of Rabbi Shimon Shezuri, as it is taught in a mishna (Gittin 65b): Initially the Sages would say: With regard to one who was taken out in a collar to be executed and said: Write a bill of divorce for my wife, these people should write and give her the document. Although he did not explicitly say the word give, this is understood to have been his intention, to release her from the necessity to perform levirate marriage or ḥalitza. They then said that this halakha applies even to one who sets sail and one who departs with a caravan to a far-off place. A bill of divorce is given to his wife under these circumstances even if her husband said just: Write. Rabbi Shimon Shezuri says: Even in the case of one who is dangerously ill who gives that instruction, they write the bill of divorce and give it to his wife.

152 The Gemara asks: And what is the reason that Rav Naḥman does not interpret the mishna as being in accordance with the opinion of Rabbi Shimon Shezuri? The Gemara answers: Rav Naḥman holds that it is different there, as he said: Write a bill of divorce, thereby partially stating his intention to divorce her, whereas in the case of the mishna here, he did not express his intention at all. The Gemara asks: And what is the reason that Rav Sheshet does not interpret the mishna as being in accordance with the opinion of Rabbi Shimon ben Menasya? The Gemara answers: An assessment of a person's intentions that is clearly proven is different, and it is possible that Rabbi Shimon ben Menasya does not apply this principle where the person's intentions are less evident.

153 The Gemara asks: Who is the tanna who taught that which the Sages taught (Tosefta, Ketubot 4:15): If one was ill and bedridden, and those present said to him: To whom shall your property be given? And he said to them:

154 Previously, I thought that I had a son. Now that I have been informed that I do not have a son, my property shall be given to so-and-so. Or if he was ill and bedridden, and those present said to him: To whom shall his property be given? And he said to them: Previously, I thought that my wife was pregnant. Now that I have been informed that my wife is not pregnant, my property shall be given to so-and-so. And if it then became known, in either of those cases, that he had a son or that his wife was pregnant, his gift is not a valid gift, since he clearly indicated that he bestowed the gift on that recipient only because he thought he had no heir.

155 The Gemara asks: Shall we say that this is the opinion of Rabbi Shimon ben Menasya and not the opinion of the Rabbis? The Gemara rejects this: You can even say that this is the opinion of the Rabbis, as the case where he said: I thought that I had a son, is different, since he stated the reason for his actions.

156 Since the difference between the cases is obvious, the Gemara asks: He who asked it, why did he ask it? The Gemara replies: Lest you say that when the bedridden man mentioned that he does not

have a son, he is mentioning it only as an expression of his sorrow, since the matter of the disposal of his estate brings it to mind, but he is not mentioning this as the reason for the gift, the baraita therefore teaches us that the reference to his son indicates that had he known that he had a son, he would not have given his property to others.

157 § Unlike the gifts of a healthy person, the gifts of a person on his deathbed do not require a formal act of acquisition. Rabbi Zeira says that Rav says: From where is it derived that this halakha with regard to the gift of a person on his deathbed is by Torah law? As it is stated in the passage delineating the laws of inheritance: “If a man dies, and he does not have a son, then you shall cause his inheritance to pass to his daughter” (Numbers 27:8). The term “you shall cause…to pass” is superfluous, as the verse could have stated: His inheritance shall go to his daughter. One can therefore derive from this term that you have another case of causing property to pass to another, which is comparable to this case of inheritance, which does not require an act of acquisition. And what is this case? This is the case of the gift of a person on his deathbed.

158 Rav Naḥman says that Rabba bar Avuh says: The halakha with regard to the gift of a person on his deathbed is derived from here: “And if he has no daughter, then you shall give his inheritance to his brothers” (Numbers 27:9). The verse could have stated: His inheritance shall go to his brothers, as inheritance is transferred by itself, without any intervention. One can therefore derive from the term “you shall give” that you have another case of giving that is comparable to this case. And what is this case? This is the case of the gift of a person on his deathbed.

159 The Gemara asks: And with regard to Rav Naḥman, what is the reason that he did not say that this halakha can be derived from the term “you shall cause…to pass”? The Gemara answers: He requires that verse for that which is taught by Rabbi Yehuda HaNasi, as it is taught in a baraita: Rabbi Yehuda HaNasi says: With regard to all of the heirs, the term giving was stated in the Torah, and here, with regard to the daughter, the term causing to pass was stated. One can derive from this that there is no heir who can cause one’s inheritance to pass from one tribe to another tribe except for the daughter, since her son and her husband inherit from her, and they may be of a different tribe.

160 The Gemara asks: And with regard to Rabbi Zeira, what is the reason that he did not say that this halakha can be derived from the term “Then you shall give”? The Gemara answers: Rabbi Zeira maintains that this usage is the usual manner of the verse, and one cannot derive anything from this term.

161 Rav Menashya bar Yirmeya says: The halakha with regard to the gift of a person on his deathbed is derived from here: “In those days Hezekiah became deathly ill, and Isaiah ben Amoz the prophet came to him, and said to him: So says the Lord: Instruct your household, for you will die, and you will not live” (II Kings 20:1). This indicates that merely by issuing an instruction, a person on his deathbed can transfer ownership of his property.

162 Rami bar Yeḥezkel says: The halakha with regard to the gift of a person on his deathbed is derived from here: “And when Ahithophel saw that his counsel was not followed, he saddled his ass, and he arose, and went to his home, to his city; and he instructed his household, and strangled himself” (II Samuel 17:23). This indicates that merely by issuing an instruction, a person on his deathbed can transfer ownership of his property.

163 The Sages taught: Before his death, when he saw that Absalom’s rebellion against King David had failed, Ahithophel instructed his sons with regard to three matters: Do not be participants in a

dispute. And do not rebel against the kingship of the house of David. And if the festival of Shavuot is a clear day, sow wheat, as it is a sign that the wheat crop will thrive. Mar Zutra said: It was stated that the wheat crop will thrive if Shavuot is a cloudy day, not if it is a clear day. The Sages of Neharde'a say in the name of Rabbi Ya'akov: According to both opinions, a clear day does not literally mean a clear day, nor does a cloudy day literally mean a cloudy day. Rather, even if the day is cloudy but a north wind is blowing the clouds away, this is considered a clear day.

164 Rabbi Abba said to Rav Ashi: We teach this matter of signs concerning crops with regard to the statement of Rav Yitzḥak bar Avdimi, as Rav Yitzḥak bar Avdimi says: At the conclusion of the final day of the festival of Sukkot, everyone looked upon the smoke rising from the arrangement of wood on the altar. If the smoke inclined toward the north due to a south wind, the poor were glad and the homeowners were sad, because this was a sign that the year's rainfall would be plentiful, and although the rain would produce an abundant crop, the produce would decay due to the humidity. The humidity would make it difficult to store the abundant harvest, forcing the homeowners to sell the produce quickly at a lower price.

165 If the smoke inclined toward the south due to a north wind, the poor were sad and the homeowners were glad, because this indicated that the year's rainfall would be sparse and the produce would be meager and would store well. If the smoke inclined toward the east due to a west wind, everyone was glad, because this indicated that there would be sufficient rainfall to ensure a substantial crop, and at the same time, the produce would store well. If the smoke inclined toward the west due to an east wind, everyone was sad, because the east wind does not bring rain, and this indicated that there would be a drought.

166 The Gemara raises a contradiction from a baraita: An east wind is always beneficial, and a west wind is always harmful. A north wind is beneficial to the wheat when it has reached one-third of its growth and harmful to the olives when they are blossoming. And a south wind is harmful to the wheat when it has reached one-third of its growth and beneficial to the olives when they are blossoming.

167 And Rav Yosef says, and some say it is Mar Zutra who says this, and some say it is Rav Naḥman bar Yitzḥak who says this: The following is your mnemonic to remember which wind is beneficial to which crop: The Table is in the north of the Sanctuary, and the Candelabrum is in the south. This one increases its own, and that one increases its own, i.e., the Table, upon which the shewbread made from wheat is placed, is in the north, and the north wind is beneficial to the wheat. The Candelabrum, which is lit with olive oil, is in the south, and the south wind is beneficial to the olives. In any event, the baraita contradicts the statement of Rav Yitzḥak bar Avdimi with regard to the effect of the western and eastern winds.

168 The Gemara answers: This is not difficult. This, the east wind, is for us, in Babylonia, and that, the west wind, is for them, in Eretz Yisrael. In Babylonia the east wind is beneficial, because water is plentiful there, and the dry east wind does not harm the crops. In Eretz Yisrael the east wind is harmful, because water is scarce, and the east wind ruins the crops, whereas the west wind brings the necessary rain.

169 It is taught in a baraita: Abba Shaul says: If the festival of Shavuot is a clear day, this is a good sign for the entire year. Rav Zevid said: With regard to this first day of Rosh HaShana, if it is warm,

the entire year will be warm, but if it is cold, the entire year will be cold. The Gemara asks: What difference is there whether one knows this or not?

[170] The Gemara answers: The difference is with regard to the prayer of the High Priest, who would pray on Yom Kippur for beneficial weather, and this knowledge enabled him to formulate his prayers accordingly.

[171] The Gemara resumes the discussion with regard to the gifts of a person on his deathbed: And Rava says that Rav Naḥman says: The halakha that the gift of a person on his deathbed does not require an act of acquisition is merely by rabbinic law, and it is instituted lest he see that his will is not being carried out and he lose control of his mind due to his grief, exacerbating his physical state.

[172] The Gemara asks: And did Rav Naḥman actually say this? But doesn't Rav Naḥman say: Even though Shmuel says that with regard to one who sells a promissory note to another and then forgives the debt, the debt is forgiven and the note is nullified, and even the heir of the creditor can forgive the debt, Shmuel concedes that if the creditor gave the promissory note as the gift of a person on his deathbed, his heir cannot forgive the debt?

[173] Granted, if you say that the gift of a person on his deathbed is valid by Torah law without an act of acquisition, due to that reason the heir cannot forgive the debt, as the debt was acquired by another. But if you say that it is valid by rabbinic law, why is the heir unable to forgive the debt? The Gemara replies: Rav Naḥman maintains that although this gift is not effective by Torah law, nevertheless, the Sages made it a halakha with the force of Torah law.

[174] Rava says that Rav Naḥman says: With regard to a person on his deathbed who says: So-and-so shall reside in this house, or who says: So-and-so shall eat the fruit of this palm tree, he has not said anything, as one cannot give that which is not tangible, such as the right to use property, or the right to consume fruit that has not yet grown. His statement is ineffective until he says: Give this house to so-and-so and he shall reside there, or: Give this palm tree to so-and-so and he shall eat its fruit.

[175] The Gemara asks: Is this to say that Rav Naḥman maintains that only a matter that can be conferred as a gift by a healthy person with an act of acquisition can be conferred as a gift by a person on his deathbed by means of verbal instruction, but a matter that cannot be conferred as a gift by a healthy person cannot be conferred as a gift by a person on his deathbed? Consequently, a person on his deathbed cannot transfer ownership of an intangible right, just as a healthy person cannot do so. But doesn't Rava say that Rav Naḥman says:

[176] With regard to a person on his deathbed who says: Give the loan owed to me to so-and-so as a gift, the loan owned to him is acquired by so-and-so. And this is the halakha despite the fact that this does not apply in the case of a healthy person, as one cannot transfer a loan to a third party without a promissory note. Rav Pappa says: In this case the halakha of transferring loans differs with regard to a person on his deathbed, since an heir inherits loans without a promissory note, and the Sages accorded the gift of a person on his deathbed the halakhic status of an inheritance.

[177] Rav Aḥa, son of Rav Ika, said: A loan without a promissory note can be conferred as a gift by a healthy person. And this is in accordance with that which Rav Huna says that Rav says, as Rav Huna says that Rav says: With regard to one who said to another: I have one hundred dinars in your possession, give it to so-and-so, if this was stated in the presence of all three of the parties, the third party acquires the money without an act of acquisition and without the need for witnesses.

[178] § A dilemma was raised before the Sages: With regard to one who gave a palm tree to one person and its fruit to another, what is the halakha? Did he reserve the place of the fruit on the tree for the second person in order to give him a tangible object, and therefore the second person acquires the fruit, or did he not reserve it, and the second person does not acquire the fruit? Furthermore, if you say that giving the palm tree to one person and giving the fruit to another is not considered reserving the place of the fruit unless this is explicitly stipulated, then if he reserves the fruit for himself, stating that the tree is given to another except for its fruit, what is the halakha?

[179] Rava said that Rav Naḥman said: Even if you say that giving the palm tree to one person and its fruit to another is not considered reserving the place of the fruit for the second person, if he gave the palm tree to one person and reserved the fruit for himself, he also reserved the place of the fruit for himself. What is the reason for this distinction? The reason is that anything that one reserves with regard to himself, he reserves generously, and therefore he reserves for himself not only the fruit itself, but also the place of the fruit.

[180] Rabbi Abba said to Rav Ashi: We learned the aforementioned statement of Rav Naḥman with regard to the statement of Rabbi Shimon ben Lakish concerning a different matter, as Rabbi Shimon ben Lakish says: In the case of one who sells a house to another and says to him: I am selling the house on the condition that the upper story [deyota] remains mine, the upper story remains his.

[181] A dilemma was raised before the Sages with regard to the statement of Rabbi Shimon ben Lakish: If one sold a house, i.e., a lower story, to one person and stated that the upper story will be sold to one other person, what is the halakha? Is this considered reserving additional rights for the second person apart from the upper story, or not? If you say that in a case where one sells his house to one and the upper story to one, his stipulation is not considered reserving rights for the second person, there is another dilemma. If one sold a house except for the upper story, reserving the upper story for himself, what is the halakha? Is this considered reserving additional rights for himself?

[182] Rava said that Rav Naḥman said: Even if you say that where one sells the house to one person and the upper story to one other person, he is not considered to be reserving rights for the second person, if one sold a house except for the upper story, he is considered to be reserving additional rights for himself. And this is in accordance with the opinion of Rav Zevid, who says that the reason the seller reserves additional rights is that if he wants to extend projections from the upper story into the space of the courtyard, he may extend them.

[183] The Gemara concludes: Evidently, since he reserved the upper story, he also reserved the place of the projections. Here too, with regard to the one who gave a palm tree to another and reserved the fruit for himself, since he said that the tree is given to another except for its fruit, he reserved the place of the fruit for himself as well.

[184] § The mishna (146b) states that if a person on his deathbed granted all of his property to others but reserved for himself any amount of land, his gift is valid even if he recovers. If he did not reserve for himself any amount of land, his gift is not valid if he recovers. Rav Yosef bar Minyumi says that Rav Naḥman says: In the case of a person on his deathbed who wrote a deed granting all of his property to others, the manner in which he divided his property is examined. If it appears that he was intending to divide his entire estate among various recipients, then if he dies, all the recipients acquire their gifts. If he recovers, he can retract all of the gifts, in accordance with the ruling of the mishna.

[185] But if it appears that he was reconsidering the matter, initially intending to give away only a portion of his property, and then reconsidering and distributing the rest, then if he dies, all of the recipients acquire their gifts. If he recovers, he can retract only the last gift, as the previous gifts were given with the intent to reserve part of the property for himself, and they are valid even if he recovers. The Gemara asks: Perhaps he was not reconsidering; rather, he initially intended to transfer ownership of all of his property, and he was considering to whom to give each portion and then giving it. The Gemara answers: The usual way of a person on his deathbed is to consider the matter carefully first and only then to confer his gifts. Therefore, if he pauses to consider in the interim, it appears that he did not initially intend to transfer ownership of his entire estate.

[186] § Rav Aḥa bar Minyumi says that Rav Naḥman says: With regard to a person on his deathbed who wrote a deed granting all of his generally known property to others, and he then recovered, he cannot retract it, as we are concerned that perhaps he has property in another province that he reserved for himself, in which case the gift is valid even if he recovered.

[187] The Gemara asks: But as for the mishna, which teaches: If he did not reserve for himself any amount of land, and he recovered, his gift is not valid, how can you find these circumstances? Rav Ḥama said: The mishna is referring to a case where he says: All my property is given to so-and-so, in which case he clearly reserved nothing for himself. Mar bar Rav Ashi said: The mishna is referring to a case where our presumption is that he does not have property elsewhere.

[188] § A dilemma was raised before the Sages: With regard to the gift of a person on his deathbed, is a partial retraction of the gift considered a retraction of the entire gift, or is it not considered a retraction of the entire gift? The Gemara suggests: Come and hear a proof from a baraita: If one gave all of his property to the first recipient and then he partially retracted his gift and gave part of his property to the second recipient, the second acquired his gift, but the first did not acquire anything. What, is it not referring to a case where the giver died, and the reason that the first recipient does not acquire anything is that a partial retraction is considered a retraction of the entire gift?

[189] The Gemara rejects this explanation: No, the baraita is referring to a case where the giver recovered. The first gift was invalidated, because he left nothing for himself, whereas the second gift remained valid, since he gave only part of his property. Had he died, the first recipient would have received the remainder, as the giver retracted only part of the first gift, which he gave to the second recipient.

[190] The Gemara comments: So too, it is reasonable to understand the baraita in this manner. From the fact that the last clause of the baraita teaches: If he gave part of his property to the first recipient, and then he gave all of his property to the second recipient, the first recipient acquired his gift, but the second did not acquire anything. Granted, if you say that the baraita is referring to a case where the giver recovered, due to that reason the second recipient did not acquire the gift. But if you say that the baraita is referring to a case where he died, both of them should acquire their gifts.

[191] Rav Yeimar said to Rav Ashi: And even if the first clause of the baraita is referring to a case where he recovered, one can prove that a partial retraction is considered a retraction of the entire gift. Granted, if you say that a partial retraction is considered a retraction of the entire gift, this is the reason that at least the second recipient acquired the gift, as the giver reserved part of his property for himself. But if you say that a partial retraction is not considered a retraction of the entire gift, the

giver should be considered as one who was dividing all of his property between the two recipients, and neither of them should acquire their gifts.

192 The Gemara concludes: And the halakha is that a partial retraction is considered a retraction of the entire gift. You find the halakha that is stated in the first clause of the baraita both in a case where the giver died and in a case where he recovered. You find the halakha that is stated in the last clause only in a case where he recovered.

193 § A series of dilemmas were raised before the Sages: If a person on his deathbed consecrated all of his property to the Temple treasury and subsequently recovered, what is the halakha? Do we say that in any case that concerns consecrated property the assumption is that he resolves to transfer the property unconditionally, and therefore the consecration is valid even if he recovers? Or perhaps in any matter that concerns himself he does not resolve to transfer the property unconditionally.

194 Furthermore, if a person on his deathbed declared all of his property ownerless, what is the halakha? Do we say that since declaring his property ownerless is for the benefit of the poor as well as the rich, it involves the potential mitzva of providing for the poor, and therefore the assumption is that he resolves to transfer the property, i.e., declare it ownerless, unconditionally? Or perhaps in any matter that concerns himself he does not resolve to transfer the property unconditionally.

195 Furthermore, if a person on his deathbed divided all of his property to be distributed to the poor, what is the halakha? Do we say that with regard to charity the assumption is that he certainly resolves to transfer the property unconditionally? Or perhaps in any matter that concerns himself he does not resolve to transfer the property unconditionally. The Gemara concludes: These dilemmas shall stand unresolved.

196 The Gemara presents another version of this series of dilemmas: If a person on his deathbed consecrated all of his property to the Temple treasury, what is the halakha? If he declared all of his property ownerless, what is the halakha? If he divided all of his property to be distributed to the poor, what is the halakha? These dilemmas shall stand unresolved.

197 Rav Sheshet says: If one says: So-and-so shall take my property, or: So-and-so shall gain possession of my property, or: So-and-so shall take possession of my property, or: He shall acquire my property, all of these are terms that denote the bestowal of gifts. It was taught in a baraita: If one says: So-and-so shall receive as an inheritance, or: So-and-so shall inherit, these are also valid terms denoting inheritance in the case of one who is fit to inherit from him. And this baraita is in accordance with the opinion of Rabbi Yoḥanan ben Beroka, who holds that one can bequeath all of his property to one of his sons using terms that denote inheritance, not only using terms that denote the bestowal of a gift.

198 A series of dilemmas were raised before the Sages:

199 If a person on his deathbed says: So-and-so shall benefit from my property, what is the halakha? Is he saying that all of the property shall be a gift? Or perhaps he is saying that the recipient shall derive some benefit from the property. If he says: So-and-so shall be seen in my property, what is the halakha? If he says: So-and-so shall stand in my property, what is the halakha? If he says: So-and-so shall rely on my property, what is the halakha? The Gemara concludes: All these dilemmas shall stand unresolved.

[200] A dilemma was raised before the Sages: If a person on his deathbed sold all of his property, what is the halakha? Rav Yehuda says that Rav says: If he recovers, he cannot retract the sale. And at times, Rav Yehuda said that Rav said: If he recovers, he can retract the sale. And these statements do not disagree. This statement, that he can retract the sale, applies in a case where the dinars he received as payment are still extant, i.e., in his possession. That statement, that he cannot retract the sale, applies in a case where he paid his debt with those dinars.

[201] § A dilemma was raised before the Sages: In the case of a person on his deathbed who admitted that he owed money to a certain person, where it was possible that he did not actually owe him money, what is the halakha? Does his admission qualify as the gift of a person on his deathbed? The Gemara answers: Come and hear a proof, as Issur the convert had twelve thousand dinars deposited in the house of Rava. Rav Mari, Issur's son, whose conception was not in the sanctity of the Jewish people, i.e., he was conceived before his father converted, but his birth was in the sanctity of the Jewish people, i.e., he was born after his father converted, was in a study hall elsewhere when his father was on his deathbed.

[202] Rava reasoned that he would acquire possession of the deposit for himself, as he said: How can Rav Mari acquire these dinars? If he attempts to acquire the money as inheritance, he is not fit to inherit from Issur. Since he was conceived before his father converted, he is therefore not halakhically considered his son. If he attempts to acquire it as a gift, the Sages equated the halakhic status of the gift of a person on his deathbed with that of inheritance. Therefore, anywhere that the property can be acquired as inheritance, it can also be acquired as a gift, and anywhere that the property cannot be acquired as inheritance, it cannot be acquired as a gift.

[203] If he attempts to acquire the dinars by pulling them, which is a formal act of acquisition, he will not be able to do this, as the dinars are not with him. If he attempts to acquire them by means of symbolic exchange, a pro forma act of acquisition effecting the transfer of ownership of an article, money cannot be acquired by means of symbolic exchange. If he attempts to acquire them by means of the acquisition of land, Issur does not have any land. If he attempts to acquire them by means of verbal instruction made by his father in the presence of all three parties, i.e., the giver, the recipient, and the bailee, if he sends for me, the bailee, I shall not go, as without the presence of the bailee he cannot transfer ownership of the money.

[204] Rav Ika, son of Rav Ami, objected to this: Why is Rav Mari unable to acquire the money? But why not let Issur admit that these dinars are owned by Rav Mari, and he shall transfer ownership of them to Rav Mari by means of a document of admission? In the meantime, a document of admission stating that the dinars belonged to Rav Mari emerged from Issur's house. Rava became angry, and said: They are teaching people legal claims and causing me loss. In any event, this incident proves that the admission of a person on his deathbed is a valid means of transferring ownership.

[205] § The mishna teaches (146b): If a person on his deathbed reserved for himself any amount of land, his gift stands even if he subsequently recovers. The Gemara asks: And how much is meant by the term: Any amount? Rav Yehuda says that Rav says: This means land that is sufficient to provide for his livelihood. Since he reserved this land for himself, one can assume that he wished to transfer the rest of his property in any event. And Rav Yirmeya bar Abba says: Even if he reserved for himself movable property that is sufficient to provide for his livelihood, his gift is valid.

206 Rabbi Zeira said: How meticulous are the halakhic statements of the elders Rav Yehuda and Rav Yirmeya. With regard to land, what is the reason that he must have reserved enough for his livelihood? The reason is that if he recovers he will rely on that land for his livelihood. With regard to movable property as well, if he recovers he will rely on it for his livelihood.

207 Rav Yosef objects to Rabbi Zeira's statement: What is meticulous about these statements? The statement of the one who says the gift is valid even if he reserved for himself movable property is difficult, as we learn in the mishna that he must leave himself land. The statement of the one who says that he must leave himself an amount sufficient to provide for his livelihood is difficult, as we learn in the mishna that his gift is valid if he reserved for himself any amount.

208 Abaye said to Rav Yosef: And anywhere that the term land is taught, does it mean specifically land? But didn't we learn in a mishna (Pe'a 3:8): With regard to one who writes, i.e., gives via a document, all of his property to his Canaanite slave, the slave has been emancipated, but if he reserved for himself any amount of land, then he has not been emancipated, as perhaps he reserved the slave for himself as well. Rabbi Shimon says: He always becomes a freeman regardless of the wording of the document, even if the owner reserved land for himself, unless it says in the document: All of my property is given to so-and-so my slave, except for one ten-thousandth of it, as in that case it is possible that the master meant to include the slave in the portion that he is not giving away. Consequently, the slave is not emancipated.

209 And Rav Dimi bar Yosef says that Rabbi Elazar says: The Sages deemed movable property to be considered a significant reserving of property for oneself with regard to the emancipation of a slave, so that a slave is not emancipated when his owner gives him all of his other property. But they did not deem movable property that one withheld from his sons and earmarked for his wife to be considered a significant reserving of property with regard to her marriage contract. If one granted all of his property to his sons but reserved any amount of land for his wife, she forfeits her marriage contract. By not protesting the gift, she has conceded that she will collect her marriage contract only from the land he reserved for her. Nevertheless, if he reserved only movable property for his wife, she does not forfeit her marriage contract. Rabbi Elazar's ruling with regard to a slave indicates that the expression: Reserves any amount of land, does not necessarily exclude movable property.

210 Rav Yosef replies: There, with regard to the slave, by right the mishna should not have taught the halakha with regard to land, but it should have taught the halakha with regard to all property. But since the former clause of the mishna teaches a halakha with regard to land, the mishna mentions land in the subsequent clause as well. The Gemara cites the former clause (Pe'a 3:6): Rabbi Akiva says: The owner of any amount of land is obligated in pe'a and in first fruits; and if the debtor possesses any amount of land the creditor can write a document that prevents the Sabbatical Year from abrogating an outstanding debt [prosbol] for it so that his loans will not be canceled in the seventh year; and he can acquire property that does not serve as a guarantee along with it by means of money, by a deed, or by taking possession of it. Rav Yosef concludes: Due to this reason, the mishna teaches the halakha with regard to land.

211 Abaye raises an objection to Rav Yosef's statement that the term any amount should be understood literally: And anywhere that the term: Any amount, is taught, does the amount not have a measure? But didn't we learn in a mishna (Ḥullin 135a): Rabbi Dosa ben Harkinas says: When shearing five sheep, the sheared wool of each sheep, with the wool weighing one hundred dinars and

half of one hundred dinars, i.e., one hundred and fifty dinars, renders the owner obligated in the mitzva to give the first sheared wool to the priests. And the Rabbis say: Five sheep, each of whose sheared wool yields wool weighing any amount. And we say: And how much is signified by the term: Any amount? Rav says: A total weight of one hundred dinars and half of one hundred dinars, provided that the one hundred and fifty dinars are divided equally between the five sheep. This indicates that the term any amount can denote a certain minimal amount.

212 Rav Yosef replies: There, with regard to the first sheared wool, by right the mishna should not have taught the halakha with regard to any amount. But since the first tanna, Rabbi Dosa ben Harkinas, states a large measure, the Rabbis also state that they require a small measure, and therefore they call this measure any amount. But with regard to the gift of a person on his deathbed, the term any amount should be understood literally.

213 § It is obvious that if one said: I give my movable property to so-and-so, then that person acquires all of his utensils, excluding his wheat and barley. If one said: I give all my movable property to so-and-so, then that person acquires even the wheat and barley, and he acquires even the upper millstone, since it is occasionally removed from its place. He acquires all the property that is not land or houses, except for the lower millstone, which is never moved. If he said: I give everything that can be moved to so-and-so, that person acquires even the lower millstone, as it is possible to move it.

214 A dilemma was raised before the Sages: Is the legal status of a Canaanite slave like that of land, or is his status like that of movable property? Rav Aḥa, son of Rav Avya, said to Rav Ashi: Come and hear a proof from a mishna (68a): A landowner who sells the city has sold with it the houses, and the ditches and caves, and the bathhouses, and the olive presses and the irrigated fields, but not the movable property. But when the seller said to the buyer: I am selling it and everything that is in it, then even if there were animals or Canaanite slaves in the city, they are all sold. Rav Aḥa, son of Rav Avya, explains the proof: Granted, if you say that the legal status of a Canaanite slave is like that of movable property, due to that reason he is not sold in the first case. But if you say that the legal status of a Canaanite slave is like that of land, why is he not sold with the city?

215 Rav Ashi replied: Rather, what do you say? Do you maintain that his legal status is like that of movable property? If there is no difference in legal status between Canaanite slaves and movable property, what is the reason that the mishna emphasizes in the second case that even the Canaanite slaves are sold? Rather, what have you to say to explain this? One must explain that movable property that moves by itself is different from movable property that does not move by itself, and therefore one might have thought that although the sale includes movable property, Canaanite slaves are not included in the sale. In the same manner, even if you say that the legal status of a Canaanite slave is like that of land, land that moves is different from land that does not move. Therefore, the legal status of Canaanite slaves cannot be proved from this mishna.

216 Ravina said to Rav Ashi: Come and hear a proof from a mishna (Pe’a 3:8): With regard to one who writes, i.e., gives via a document, all of his property to his Canaanite slave, the slave has been emancipated, but if he reserved for himself any amount of land, then he has not been emancipated, as perhaps he reserved the slave for himself as well. Rabbi Shimon says: He always becomes a freeman regardless of the wording of the document, even if the owner reserved land for himself, unless it says

in the document: All of my property is given to so-and-so my slave, except for one ten-thousandth of it.

[217] And Rav Dimi bar Yosef says that Rabbi Elazar says: The Sages deemed movable property to be considered a significant reserving of property for oneself with regard to a slave, so that the slave is not emancipated when the owner gives him all of his other property. But they did not deem movable property that one withheld from his sons and earmarked for his wife to be considered a significant reserving of property with regard to her marriage contract. And Rava said to Rav Naḥman: What is the reason for this? Rav Naḥman explained: A Canaanite slave is considered movable property, and reserving movable property is considered a significant reserving with regard to movable property. But a woman's marriage contract is a document concerning land, since the payment of the marriage contract is collected from land, and reserving movable property is not considered a significant reserving with regard to land. Rav Naḥman states that a Canaanite slave is considered movable property.

[218] Rav Ashi said to Ravina: The reason the slave is not emancipated if the master reserved part of the property for himself is not that the slave is included in the property that the owner reserved for himself. Rather, we teach this halakha as being due to the fact that the document is not a bill of manumission that completely severs the bond between the slave and the master.

[219] § Rava says that Rav Naḥman says: There are five types of gifts to which specific halakhot apply, but the halakhot do not apply until the owners write a deed granting all of their property to another without reserving anything for themselves, and they are as follows: The gift of a person on his deathbed, a gift to one's Canaanite slave, a gift to one's wife, a gift to one's sons, and the gift of a woman who shelters her property from her prospective husband by transferring her property to another before her marriage. In this latter case the Sages instituted that if her husband dies or divorces her she can reclaim the property.

[220] The Gemara explains each of these cases: In the case of a gift of a person on his deathbed, this is as we learned in the mishna (146b): With regard to a person on his deathbed who wrote a deed granting all of his property to others, and he reserved for himself any amount of land, his gift stands even if he subsequently recovers. If he did not reserve for himself any amount of land, and he recovered, his gift does not stand, as the gift was conditional upon his death, since evidently he did not intend to leave himself without means of support if he survived.

[221] In the case of a gift to one's slave, this is as we learned in a mishna (Pe'a 3:8): With regard to one who writes a deed granting all of his property to his Canaanite slave, the slave has been emancipated, but if he reserved for himself any amount of land, then he has not been emancipated, as perhaps he reserved the slave for himself as well.

[222] In the case of a gift to one's wife, this is as Rav Yehuda says that Shmuel says: One who writes a deed granting all of his property to his wife renders her only a steward of his property, i.e., he intends only to place her in charge of the property and she does not acquire it. According to Rav Naḥman, this applies only if he did not reserve any part of the property for himself.

[223] In the case of a gift to one's sons, this is as we learned in a mishna (Pe'a 3:7): With regard to one who writes a deed granting all of his property to his sons, and he writes in the deed that he grants any amount of land to his wife, she forfeits payment of her marriage contract. If he reserves any amount of land for himself, his wife does not forfeit payment of her marriage contract.

[224] In the case of a gift of a woman who shelters her property from her intended husband, this is as the Master says: In the case of a woman who wishes to shelter her property from her prospective husband, she must write a deed granting all of her property to another. If she reserves for herself any amount of property, she cannot reclaim the property if she is widowed or divorced.

[225] The Gemara concludes: With regard to all of these cases, reserving movable property is considered a significant reserving of property, except with regard to a woman's marriage contract. If one grants all of his property to his sons except for any amount of land, which he gives to his wife, and he reserves for himself only movable property, his wife forfeits payment of her marriage contract, as nothing remains in the husband's possession from which she is entitled to collect payment. This is because the Sages instituted that the lien on the marriage contract is placed on land, and the Sages did not institute that the marriage contract can be collected from movable property.

[226] Ameimar said: With regard to movable property that is explicitly written in the marriage contract as property from which the debt may be collected and is still extant, if the husband reserves this property for himself, this is considered a significant reserving of property, and his wife does not forfeit payment of her marriage contract.

[227] § If one said: My property shall go to so-and-so, anything that is referred to as property is included in the gift. A Canaanite slave is called property, as we learned in a mishna (Pe'a 3:8): With regard to one who writes, i.e., gives via a document, all of his property to his Canaanite slave, the slave has been emancipated. Land is called property, as we learned in a mishna (Kiddushin 26a): Property that serves as a guarantee, i.e., land, can be acquired by means of money, by means of a deed, or by taking possession of it. A cloak, as well as other garments and movable property, is called property, as we learned in that same mishna: And property that does not serve as a guarantee, i.e., movable property, can be acquired only by pulling.

[228] Money [zuzei] is called property, as we learned in that same mishna: And property that does not serve as a guarantee can be acquired together with property that serves as a guarantee by means of money, by means of a deed, or by taking possession of it. Money is among the types of property that can be acquired by means of the acquisition of land, as is evident from this incident involving Rav Pappa, who had twelve thousand dinars loaned to the people of Bei Ḥozai. Rav Pappa transferred ownership of the money to Rav Shmuel bar Aḥa, who was traveling to Bei Ḥozai, by means of transferring ownership of the threshold of his house, so that Rav Shmuel bar Aḥa could collect the money. When Rav Shmuel bar Aḥa came back with the money, Rav Pappa was so pleased that he went out as far as Tavakh to meet him.

[229] A deed is called property, as Rabba bar Yitzḥak says: There are two types of deeds with regard to the acquisition of land. If one said to the witnesses: Acquire this field on behalf of so-and-so and write the deed for him as proof of the sale, the giver can retract the deed but he cannot retract the transfer of ownership of the field once the other party has taken possession of it. If one said: Acquire this field on behalf of so-and-so on the condition that you write the deed for him, the giver can retract both the deed and the transfer of the field, as he stipulated that the acquisition of the field is dependent on the writing of the deed.

[230] And Rav Ḥiyya bar Avin says that Rav Huna says: There are three types of deeds. Two are those that we stated above, and the other is as follows: If the seller wrote the deed in advance and kept it

until the buyer would come and pay him. The Gemara adds parenthetically: This is like that halakha that we learned in a mishna (167b):

[231] A scribe may write a deed of sale for the seller of property at the seller’s request, even if the buyer is not with him when he presents his request, as the deed obligates only the seller. In this case, once this one, the buyer, has taken possession of the land, the deed is acquired, wherever it is. And this is as it is stated in the mishna that we learned (Kiddushin 26a): Property that does not serve as a guarantee can be acquired together with the property that serves as a guarantee by means of money, by means of a deed, or by taking possession of it. One can learn from this that a deed is included in the term: Property that does not serve as a guarantee.

[232] An animal is called property, as we learned in a mishna (Shekalim 12a): In a case of one who consecrated his property, and on the property there were animals fit to be sacrificed upon the altar, male animals are sacrificed as burnt-offerings, and female animals are sold for the purpose of being sacrificed as peace-offerings. Birds are called property, as we learned in a mishna (Shekalim 12a): In a case of one who consecrated his property, and on the property there were items that were fit to be sacrificed upon the altar, e.g., wines, oils, and birds, Rabbi Eliezer says: They are sold for the needs of that kind of item, i.e., to individuals who will use them as such.

[233] Phylacteries are called property, as we learned in a mishna (Arakhin 23b): With regard to one who consecrates his property, the value of his phylacteries is assessed for him and he redeems them by paying their value to the Temple treasury. A dilemma was raised before the Sages: With regard to a Torah scroll, what is the halakha? Is it considered property or not? Does one say that since it is not sold, as it is prohibited to sell a Torah scroll, it is therefore not considered property? Or perhaps one says that since it may be sold in order to enable one to study Torah or to marry a woman, it is considered property. The Gemara concludes: The dilemma shall stand unresolved.

[234] § The Gemara presents a mnemonic for the series of incidents stated below: Zutra, the mother, of Amram, from two sisters, Rav Tovi, and Rav Dimi and Rav Yosef.

[235] The mother of Rav Zutra bar Toviyya wrote a deed granting her property to Rav Zutra bar Toviyya, explaining that she was doing so because she wanted to get married to Rav Zevid, and she did not want him to acquire her property. She married Rav Zevid, and he divorced her. She came before Rav Beivai bar Abaye to claim her property from her son. Rav Beivai said: She transferred her property because she wanted to get married, and she married. Since her intentions were fulfilled, even though she subsequently was divorced, the gift is a valid gift.

[236] Rav Huna, son of Rav Yehoshua, said to Rav Beivai: Is it because you come from a line of truncated [mula’ei] people, from the house of the High Priest Eli, whose descendants were condemned to premature death (see I Samuel 2:31), that you say truncated [mulyata] and unsound matters? Even according to the one who says that the deed of a woman who shelters her property from her intended husband effects acquisition, and the woman cannot reclaim the property, this matter applies where she did not reveal her intentions in transferring ownership of her property. But here, she revealed her intentions that she transferred the property because she wanted to marry; and she married, but was divorced. Therefore, since she is no longer married, she can reclaim the property.

[237] The mother of Rami bar Ḥama wrote a deed in the evening granting her property to Rami bar Ḥama. In the morning of the following day, she wrote a deed granting her property to his brother,

Rav Ukva bar Ḥama. Rami bar Ḥama came before Rav Sheshet, who established him as the owner of the property, as the deed transferring the property to him preceded the gift to his brother. Rav Ukva bar Ḥama came before Rav Naḥman, who established him as the owner of the property.

238 Rav Sheshet came before Rav Naḥman and said to him: What is the reason that the Master established Rav Ukva bar Ḥama as the owner of the property? If it is because she retracted her gift, but didn't she die? Since the gift of a person on his deathbed is considered valid, Rami bar Ḥama already acquired the property in the evening. Rav Naḥman said to Rav Sheshet: This is what Shmuel says: With regard to the gift of a person on his deathbed, in any case where he could retract his gift if he were to recover, i.e., if he transferred ownership of all of his property, even if he does not recover, he can retract his gift.

239 Rav Sheshet responded: Say that Shmuel said that he can retract his gift if he wants to retain the property for himself, but if he wants to retract his gift in order to give it to another, did he also say that he can do so? Rav Naḥman said to Rav Sheshet: Shmuel explicitly said that he can retract his gift both in order to retain the property for himself and to grant it to another.

240 The mother of Rav Amram the Pious had a bundle [meloga] of promissory notes. When she was dying, she said: Let these promissory notes be for Amram, my son. His brothers came before Rav Naḥman. They said to Rav Naḥman: But Rav Amram did not pull the bundle of documents, and since an act of acquisition was not performed he did not acquire them. Rav Naḥman said to them: An act of acquisition was not required, because the statement of a person on his deathbed is considered as written and as though the documents were delivered to the recipient.

241 The sister of Rav Tovi bar Rav Mattana wrote a deed in the morning granting her property to Rav Tovi bar Rav Mattana. In the evening another brother, Rav Aḥadvoi bar Rav Mattana, came and cried to her. Rav Aḥadvoi said to her: Now people will say that you gave your property to Rav Tovi because this Master, Rav Tovi, is a Torah scholar, and that Master, Rav Aḥadvoi, is not a Torah scholar. She wrote a deed granting the property to him. Rav Tovi came before Rav Naḥman. Rav Naḥman said to Rav Tovi: This is what Shmuel says: With regard to the gift of a person on his deathbed, in any case where he could retract his gift if he were to recover, even if he does not recover, he can retract his gift, and therefore the property belongs to Rav Aḥadvoi.

242 The sister of Rav Dimi bar Yosef had a tract of land in an orchard. Whenever she was sick and thought that she was dying, she would transfer ownership of the orchard to Rav Dimi,

243 and when she recovered she would retract her gift. On one occasion she was sick. She sent a message to Rav Dimi: Come and acquire my property. He sent a message back to her: I do not want to come. She sent a message to him: Come and acquire my property in any manner that you want. He went and reserved for her part of the orchard, and he acquired the rest of the property from her with an act of acquisition. When she recovered she retracted the gift.

244 She came before Rav Naḥman to reclaim it. Rav Naḥman sent a message to Rav Dimi: Come to court. Rav Dimi did not come. He said: What reason is there for me to come? Didn't I reserve part of the property for her, and I acquired the rest of the property from her with an act of acquisition? Therefore, the acquisition is complete. Rav Naḥman sent a message to Rav Dimi: If you do not come, I will strike you with a thorn [besileva] that does not draw blood, i.e., I will excommunicate you.

[245] Inquiring into the matter, Rav Naḥman said to the witnesses: How did the act of transferring the property take place? The witnesses said to Rav Naḥman: This is what she said: Woe, that woman is dying! Rav Naḥman said to them: If so, this is a case of one who issues directives with regard to his property due to his expectation of his imminent death. And one who issues directives due to his expectation of his imminent death can retract his gift even if he did not transfer all of his property, as he evidently granted the gift only because he expected to die.

[246] § It was stated that the amora'im disagreed with regard to a gift of a person on his deathbed that includes only a part of his property. The Sages said the following before Rava in the name of Mar Zutra, son of Rav Naḥman, who said it in the name of Rav Naḥman: This type of gift is in some respects like the gift of a healthy person, and in other respects it is like the gift of a person on his deathbed. It is like the gift of a healthy person, as, if he recovers he cannot retract it, as stated in the mishna. And it is like the gift of a person on his deathbed, as it does not require an act of acquisition. Rather, it is acquired by means of verbal instruction alone.

[247] Rava said to the Sages: Did I not say to you: Do not hang empty pitchers [bukei] upon Rav Naḥman, i.e., do not attribute incorrect statements to him? This is what Rav Naḥman says: A gift of a person on his deathbed that includes only a part of his property is like the gift of a healthy person and requires an act of acquisition. If an act of acquisition is not performed, the acquisition of the gift is not effective even if the owner dies.

[248] Rava raised an objection to Rav Naḥman from the mishna (146b): If he reserved for himself any amount of land, his gift stands. What, is it not referring even to a case where the gift was not acquired from him by means of an act of acquisition? No, it is referring to a case where the gift was acquired from him by means of an act of acquisition. Rava asks: If that is so, say the last clause of the mishna: If he did not reserve for himself any amount of land, and he recovered, his gift does not stand. And if the mishna is referring to a case where the gift was acquired from him by means of an act of acquisition, why does his gift not stand?

[249] Rav Naḥman said to Rava: This is what Shmuel says: With regard to a person on his deathbed who wrote a deed granting all of his property to others without reserving anything for himself, even though the gift was acquired from his possession by means of an act of acquisition, if he recovers, he can retract his gift. The reason for this is that it is known that he was issuing directives with regard to his property only due to his expectation of his imminent death.

[250] Rav Mesharshiyya raised an objection to Rava: There was an incident involving the mother of the sons of Rokhel, who was sick, and she said: My brooch [keveinati] shall be given to my daughter, and it is valued at twelve hundred dinars. And this woman subsequently died, and the Sages upheld her statement even though the gift included only a part of her property and an act of acquisition was not performed. Rava replied: That incident is different, as the case there is referring to one who issues directives due to his expectation of his imminent death.

[251] Ravina raised an objection to Rava from a mishna (Gittin 13a): In the case of one who says: Give this bill of divorce to my wife, or: Give this bill of manumission to my slave, and then he dies, one should not give it after his death. But if one says: Give one hundred dinars to so-and-so, and then he died, one does give the recipient the money after his death. This indicates that a gift of a person on his deathbed that includes only a part of his property does not require an act of acquisition.

[252] And from where can one learn that the money was not acquired from him by means of an act of acquisition? This is learned from the fact that this halakha was juxtaposed to the halakha with regard to a bill of divorce, indicating that this case is similar to a bill of divorce. Just as a bill of divorce is not subject to the standard halakhot of an act of acquisition, so too, in this case of the gift of one hundred dinars, the mishna is referring to a case where the money was not acquired from him by means of an act of acquisition. Rava replied: There, too, the mishna is referring to one who issues directives with regard to his property due to his imminent death.

[253] Rav Huna, son of Rav Yehoshua, said: The gift of one who issues directives with regard to his property due to his expectation of his imminent death generally requires an act of acquisition. And when it is taught in these baraitot that an act of acquisition is not required, the baraitot are referring to one who divides all of his property between different recipients, as in that case, the Sages accorded the gift the legal status of a gift of a person on his deathbed.

[254] The Gemara concludes: And the halakha is that a gift of a person on his deathbed that includes only a part of his property requires an act of acquisition; otherwise it is invalid even though he subsequently died, and the gift is inherited by his heirs instead. The gift of one who issues directives with regard to his property due to his expectation of his imminent death does not require an act of acquisition. And this applies only when he subsequently died. If he recovered, he can retract his gift even though it was acquired from him by means of an act of acquisition.

[255] § It was stated that the amora’im disagreed with regard to a deed pertaining to the gift of a person on his deathbed in which it is written that an act of acquisition was also performed. In the study hall of Rav they say in the name of Rav: The person on his deathbed caused the recipient to mount two steeds, i.e., he strengthened the validity of his gift in two different ways. And Shmuel said: I do not know what I should rule with regard to this gift, as it may not be a valid gift.

[256] The Gemara explains: In the study hall of Rav they say in the name of Rav that he caused him to mount two steeds. On the one hand, it is like the gift of a healthy person, but on the other hand, it is like the gift of a person on his deathbed. It is like the gift of a healthy person, as, if he recovers he cannot retract the gift, because an act of acquisition was performed. It is like the gift of a person on his deathbed, as, if he said that the loan owed to him should be given to so-and-so, the loan owed to him is acquired by so-and-so, whereas a healthy person cannot transfer his right to collect a debt except in the presence of all three parties.

[257] And Shmuel said: I do not know what I should rule with regard to this gift. Perhaps the fact that an act of acquisition was performed indicates that he resolved to transfer it to him only with a deed. The gift of a person on his deathbed takes effect only after he dies, and a deed is not effective if it is delivered after the death of the owner.

[258] The Gemara raises a contradiction between this statement of Rav and another statement of Rav, and between this statement of Shmuel and another statement of Shmuel. This is as Ravin sent in the name of Rabbi Abbahu: You should know that Rabbi Elazar sent a ruling to the Diaspora, i.e., Babylonia, in the name of our teacher, Rav: With regard to a person on his deathbed who says: Write a deed and give with it one hundred dinars to so-and-so, and he died before the deed was written, it is not written and given to that person. The reason for this is that perhaps he resolved to transfer the gift to him only with the deed, and a deed is not effective if it is delivered after the death of the owner.

And Rav Yehuda says that Shmuel says: The halakha is that the deed is written and given to the recipient.

259 The Gemara concludes: The first statement of Rav is difficult, as it is apparently contradicted by the other statement of Rav, and the first statement of Shmuel is difficult, as it is apparently contradicted by the other statement of Shmuel.

260 The Gemara replies: The apparent contradiction between the first statement of Rav and the other statement of Rav is not difficult. This statement, that the gift is valid, is referring to a case where the gift was acquired from the person on his deathbed by means of an act of acquisition. That other statement is referring to a case where the gift was not acquired from him by means of an act of acquisition, but only by verbal instruction, and therefore the deed is not written after his death. The apparent contradiction between the first statement of Shmuel and the other statement of Shmuel is not difficult, as Shmuel's statement that the deed is written after his death is referring to a case where the giver was clearly enhancing the legal power of the recipient by providing him with a deed, and he was not making the gift contingent upon the delivery of a deed.

261 Rav Naḥman bar Yitzḥak was sitting behind Rava, and Rava was sitting before Rav Naḥman, and Rava asked Rav Naḥman: Did Shmuel actually say that perhaps the fact that an act of acquisition was performed indicates that the person on his deathbed resolved to transfer ownership of the gift only with the deed, and therefore the gift is invalid, as a deed is not effective if it is delivered after the death of the owner? But doesn't Rav Yehuda say that Shmuel says: With regard to a person on his deathbed who wrote a deed granting all of his property to others, even though they performed an act of acquisition, if he recovers he can retract his gift?

262 The reason for Shmuel's ruling is that it is known that an act of acquisition was performed only due to his expectation of imminent death. This ruling indicates that if the giver does not recover, the recipient acquires the gift, and the performance of an act of acquisition does not indicate that the giver intended to transfer the property only after his death. Rav Naḥman indicated the answer to Rava with a gesture of his hand, and Rava was silent.

263 When Rav Naḥman arose from his place, Rav Naḥman bar Yitzḥak said to Rava: What did he indicate to you with that gesture? Rava said to him: He indicated that the statement of Rav Yehuda is referring to a case where the giver was clearly enhancing the legal power of the recipient by requiring an act of acquisition to be performed in addition to bestowing the gift.

264 The Gemara asks: What is considered an act of acquisition that enhances the legal power of the recipient? Rav Ḥisda said: An act of acquisition is clearly intended only to reinforce the legal power of the recipient when, for example, the following phrase is written in the deed: And we, the witnesses, acquired it from him by means of an act of acquisition in addition to this gift. This indicates that the act of acquisition was not performed in order to effect the actual acquisition.

265 § It is obvious that if a person on his deathbed wrote a deed of transfer granting his property to this individual, and he then wrote a deed granting the same property to that individual, i.e., a second recipient, this is the case discussed by Rav Dimi. As when Rav Dimi came from Eretz Yisrael to Babylonia he said: A later will [dayetikei] nullifies an earlier will. The amora'im disagree with regard to a case where one wrote a deed of transfer and also conferred possession of the property on this individual, and then he wrote a deed of transfer and conferred possession of the same property on

that second individual. Rav says: The first recipient acquires the gift, and Shmuel says: The second recipient acquires the gift.

266 The Gemara explains: Rav says that the first recipient acquires the gift. Since an additional act of conferring possession of the property was performed, the gift is considered like the gift of a healthy person, which cannot be retracted. Shmuel says that the second recipient acquires the gift because it is considered like the gift of a person on his deathbed, which can be retracted.

267 The Gemara asks: But didn't Rav and Shmuel already disagree about this matter once? With regard to a deed pertaining to the gift of a person on his deathbed in which it is written that an act of acquisition was also performed, Rav maintained that the gift cannot be retracted, whereas Shmuel maintained that the acquisition was not effective. Why is it necessary to record another disagreement with regard to the same principle?

268 The Gemara replies: It is necessary to cite both cases. This is because if it were stated only with regard to that case, where an act of acquisition was recorded in the deed, one might say that only in that case Rav says that the gift cannot be retracted, because an act of acquisition was performed. But in this case, where an act of acquisition was not performed, one might say that he concedes to Shmuel. And if it was stated only with regard to this case, where he conferred possession of the property on the recipient through a deed alone, one might say that only in this case Shmuel says that he can retract the gift. But in the other case, where an act of acquisition was recorded in the deed, one might say that Shmuel concedes to Rav that he cannot retract it. Therefore, it is necessary to cite both cases.

269 In Sura they taught the statements of Rav and Shmuel that way, as stated above. In Pumbedita they taught their statements like this: Rav Yirmeya bar Abba says: After the death of Rav, the following question was sent from the study hall of Rav to Shmuel: Let our teacher teach us: With regard to a person on his deathbed who wrote a deed of transfer granting all of his property to others, and they performed an act of acquisition, what is the halakha? Shmuel sent to them in reply: After an act of acquisition is performed, nothing can effect a retraction of the gift.

270 Rav's disciples understood from this that this statement applies only when the person on his deathbed wishes to retract his gift and transfer it to another. But if he recovers and wishes to retract the gift and retain it for himself, Shmuel's statement does not apply. Rav Ḥisda said to them: When Rav Huna came from Kufrei, he explained that Shmuel's statement applies both to retaining the property for himself and to transferring it to others.

271 The Gemara relates: There was a certain person on his deathbed who wrote a deed of transfer granting his property to another, and it was acquired from him by means of an act of acquisition. He subsequently recovered and wanted to retract the gift, and he came before Rav Huna. Rav Huna said to him: What can I do for you? You cannot retract the gift, as you did not transfer the gift in the manner that people on their deathbed transfer ownership of gifts, and you enhanced the legal power of the recipient by performing an act of acquisition.

272 § The Gemara relates: There was a deed pertaining to a certain gift of a person on his deathbed, in which it was written that the gift is given both in life and in death. In such a case, Rav says: It is like the gift of a person on his deathbed, and if he recovers he can retract it. And Shmuel says: It is like the gift of a healthy person, and he cannot retract it.

273 The Gemara explains: Rav says: It is like the gift of a person on his deathbed. This can be inferred from the fact that it is written in the deed that the gift is given in death. This means that the giver is saying to him that the gift should take effect after his death, and that which is written in the deed, that the gift is given in life, is merely an auspicious omen, expressing hope that the giver will live.

274 And Shmuel says: It is like the gift of a healthy person. This can be inferred from the fact that it is written in the deed that the gift is given in life. This means that the giver is saying that the gift takes effect during his life, i.e., immediately. And that which he wrote, that the gift is given in death, is like one who says: From now and for evermore, i.e., that the gift is not retractable. The Sages of Neharde'a say: The halakha is in accordance with the opinion of Rav.

275 Rava said: And if it was written in the deed that the gift is given during life and in death, the recipient acquires the gift and it cannot be retracted, as this term indicates that the gift takes effect while the giver still lives.

276 Ameimar said: The halakha is not in accordance with the opinion of Rava. Rav Ashi said to Ameimar: Isn't that obvious, as the Sages of Neharde'a say that the halakha is in accordance with the opinion of Rav? Ameimar replied: Lest you say that with regard to the term: During life, Rav concedes that the giver intends for the gift to take effect immediately, Ameimar teaches us that since the giver also mentioned death, he intended the gift as the gift of a person on his deathbed and he can retract it.

277 The Gemara relates: There was a certain person who wrote in the deed that the gift is given in life and in death. When he recovered he wanted to retract the gift. He came before Rav Naḥman in Neharde'a. Rav Naḥman sent him to appear before Rabbi Yirmeya bar Abba in Shum Tamya. Rav Naḥman said in explanation of his actions: Here, Neharde'a, is the place of Shmuel. Consequently, Shmuel's rulings should be followed, and therefore how can we act in accordance with the opinion of Rav?

278 The Gemara relates: There was a certain woman who wrote in the deed that the gift is given during life and in death. She came before Rava. Rava acted with regard to her case in accordance with his halakhic ruling, and he ruled that she cannot retract the gift. She did not accept the ruling, and she constantly troubled him, saying that he had not judged her case properly.

279 Rava said to Rav Pappa, his scribe, son of Rav Ḥanan: Go, write for her a ruling in her favor, and write in the ruling the phrase: He may hire replacements at their expense, or deceive them to get them to return to work. This is a phrase from the mishna (Bava Metzia 75b) that discusses the ruling in the case of one who hired laborers to perform a task that cannot be delayed, and they quit. Rava intended this phrase to indicate to the court that the ruling was merely a ruse in order to persuade the woman to leave. The woman understood the ruse. She said: May his ship sink; you are deceiving me. Rava had his clothes immersed in water so that the curse should be fulfilled in this alternative manner, but even so he was not saved from the sinking of his ship.

280 MISHNA: If one did not write in the deed that he was on his deathbed, and he then recovered and wished to retract the gift, and he says: I was on my deathbed, and since I recovered, I can retract the gift, but the recipients say: You were healthy, and the gift cannot be retracted, the giver must bring proof that he was on his deathbed in order to retract the gift. This is the statement of Rabbi Meir. And

the Rabbis say: The burden of proof rests upon the claimant, and since the property is in the possession of the giver, the recipients must bring proof that they have the right to receive it.

281 GEMARA: There was a deed pertaining to a certain gift of a person on his deathbed, in which it was written that the gift was bestowed when the giver was sick and lying in his bed, but the continuation of the standard formula: And from his sickness he departed to his eternal home, was not written in it. The giver's heirs claimed that although he was ill when he wrote the deed, he later recovered, and his gift is not valid.

282 Rabba said: He is dead, and his grave proves that he died. It may therefore be assumed that he did not recover from his sickness, and his gift remains valid. Abaye said to him: And now, if in the case of a ship that sank, where the fate of most of the passengers of sunken ships is to perish, the stringencies of the living and the stringencies of the dead are applied to them due to the uncertainty as to whether they are alive or dead, in the case of sick people, where the fate of most sick people is to return to life, all the more so is it not clear that one should assume that he recovered from the illness and his gift is invalid?

283 Rav Huna, son of Rav Yehoshua, said: In accordance with whose opinion is that halakha of Rabba? It is in accordance with the opinion of Rabbi Natan, as it is taught in a baraita: With regard to a case where one who gave his property to others claims that since he was on his deathbed at the time he can retract the gifts, and the recipients claim that he was healthy and cannot retract it, who removes the property from whose possession? The giver can remove it from the recipients' possession without proof, as the property was previously established to be in his possession, but the recipients can remove it from the giver's possession only with proof. This is the statement of Rabbi Ya'akov.

284 Rabbi Natan says: The presumption is that the current situation reflects the situation at the time the gift was bestowed. Therefore, if he is currently healthy, the obligation is upon him to bring proof that he was on his deathbed when he gave his property to others. If he is currently on his deathbed, the obligation is upon the recipients to bring proof that he was healthy then.

285 Rabbi Elazar says: And with regard to a case of uncertain ritual impurity, the halakha depends on the same dispute. This is as we learned in a mishna (Teharot 6:7): The halakha is that a case where it is uncertain if something or someone became impure in the public domain, the item or person is deemed pure. With regard to an expanse of fields, in the summer, when many people pass through the fields, it is considered the private domain with regard to the halakhot of Shabbat, but it is considered the public domain with regard to the halakhot of ritual impurity, and if one is uncertain as to whether he was rendered impure there, he is deemed pure.

286 In the rainy season, when not many people pass through the fields, an expanse of fields is considered the private domain both with regard to this, Shabbat, and with regard to that, ritual impurity. Therefore, if one is uncertain whether he was rendered impure there, he is deemed impure. If one does not know whether the day he entered the expanse of fields was considered part of the summer or the rainy season, and he is uncertain whether he was rendered impure there, Rabbi Ya'akov maintains that he retains the status of purity that he held before entering the fields. According to Rabbi Natan, it is presumed that he entered the fields during the same season in which he came to ask whether he was rendered impure.

[287] Rava disagrees with Rabbi Elazar and says: They taught the ruling of the mishna only with regard to a case where the rainy season has not yet passed over the fields after the possibility arose that the fields contained impurity. But if the rainy season has already passed over the fields, it is considered the private domain both with regard to this, Shabbat, and with regard to that, ritual impurity. Even though the one who passed through the fields came to ask about his status in the summer, when the fields should be considered the public domain, he is nevertheless deemed impure even according to Rabbi Natan, and there is no parallel dispute with regard to uncertain ritual impurity.

[288] § The mishna teaches: And the Rabbis say: The burden of proof rests upon the claimant, and since the property is in the possession of the giver, the recipients must bring proof that they have the right to receive it.

[289] The Gemara asks: With regard to the proof that the recipients must bring, in what manner is it brought? Rav Huna says: The proof is presented by bringing witnesses who testify that the giver was healthy. Rav Ḥisda and Rabba bar Rav Huna say: The proof is presented by the ratification of the deed, i.e., the recipients are required only to ascertain that the signatures of the witnesses on the deed are authentic in order to prove that it is not forged.

[290] The Gemara explains: Rav Huna says that the proof is presented by bringing witnesses. He maintains that Rabbi Meir and the Rabbis disagree with regard to the issue that is the subject of the dispute of Rabbi Ya’akov and Rabbi Natan in the baraita (153b).

[291] The Gemara notes a mnemonic device that indicates which tannaitic opinions are correlated: Manniaḥ, which represents the letters mem, nun, yod, ḥet, stands for Meir, Natan, Ya’akov, and the Rabbis [ḥakhamim]. This indicates that Rabbi Meir, who says that the giver must bring proof that he was on his deathbed, holds in accordance with the opinion of Rabbi Natan, who maintains that one presumes that the current situation reflects the situation at the time the gift was bestowed. And the Rabbis, who say that the recipients must bring proof that the giver was healthy, hold in accordance with the opinion of Rabbi Ya’akov.

[292] Rav Ḥisda and Rabba bar Rav Huna say that the proof is presented by the ratification of the deed. The Gemara explains: Rav Ḥisda and Rabba bar Rav Huna maintain that Rabbi Meir and the Rabbis disagree with regard to whether when there is a debtor who admits that he wrote a promissory note, the creditor must ratify it in court in order to collect payment. The same ruling would apply to a case where the person on his deathbed admits that he wrote the deed granting the gift. They explain that Rabbi Meir holds that when there is a debtor who admits that he wrote a promissory note, the creditor need not ratify it in court in order to collect payment, and in this case the giver cannot invalidate the deed by claiming that he was on his deathbed. But the Rabbis hold that even when there is a debtor who admits that he wrote a promissory note, the creditor must ratify it in court in order to collect payment.

[293] The Gemara asks: But didn’t they already disagree with regard to this matter once? As it is taught in a baraita: With regard to witnesses who ratified their signatures but claimed that at the time they signed the document they were not fit to bear witness, their testimony is not deemed credible to invalidate the document; this is the statement of Rabbi Meir. And the Rabbis say: Their testimony is deemed credible.

[294] The Gemara answers: It is necessary to state both cases, because if only that case with regard to witnesses who disqualified their testimony was stated, one might think that the Sages say that their

testimony is accepted only in that case, due to the fact that the testimony of witnesses is powerful and they can impair the validity of the document, but here, with regard to him, the giver, who admitted that he wrote the deed but it is not in his power to impair the validity of the deed, I would say that his claim is not accepted.

[295] And if only this case, with regard to a debtor who admits that he wrote a promissory note, was stated, one might think that Rabbi Meir says that the giver cannot invalidate the deed only with regard to this case, but with regard to that case, where the witnesses ratified their signatures, I would say that Rabbi Meir concedes to the Rabbis that witnesses can invalidate the deed. Therefore, it is necessary to state the dispute in both cases.

[296] And Rabba also says: With regard to the proof that the recipients must present, it is presented by bringing witnesses who testify that the giver was healthy. Abaye said to him: What is the reason for this? If we say that due to the fact that in all deeds of gift the following formulation is written: When he was walking on his feet in the marketplace, which indicates that the gift was the gift of a healthy person, and in this deed this was not written, therefore one may conclude from the deed that the giver was on his deathbed, that is not correct. On the contrary, one could say that due to the fact that in all deeds concerning the gifts of a person on his deathbed the following is written: When he was sick and lying in his bed, and in this deed this was not written, therefore one may conclude from the deed that the giver was healthy.

[297] Rabba replied: Since one can say this and one can say that, nothing can be concluded from the formulation of the deed. Therefore, due to the uncertainty, establish the property in the possession of its last known owner.

[298] And this dispute with regard to the statement of the Rabbis is also the subject of a dispute between other amora’im, as Rabbi Yoḥanan says: The proof is presented by bringing witnesses, and Rabbi Shimon ben Lakish says: The proof is presented by the ratification of the deed.

[299] Rabbi Yoḥanan raised an objection to Rabbi Shimon ben Lakish from a baraita: There was an incident in Bnei Brak involving one who sold some of his father’s property that he had inherited, and he died, and the members of his family came and contested the sale, saying: He was a minor at the time of his death, and therefore the sale was not valid. And they came and asked Rabbi Akiva: What is the halakha? Is it permitted to exhume the corpse in order to examine it and ascertain whether or not the heir was a minor at the time of his death? Rabbi Akiva said to them: It is not permitted for you to disgrace him for the sake of a monetary claim. And furthermore, signs indicating puberty are likely to change after death, and therefore nothing can be proved by exhuming the body.

[300] Rabbi Yoḥanan explains: Granted, according to my explanation of the mishna, that I say that the proof must be presented by bringing witnesses, I can explain the baraita. Since Rabbi Akiva said to the buyers: Bring witnesses, and they did not find witnesses, this is the reason that they came and said to him: What is the halakha? Is it permitted to examine him? But according to you, that you say that the proof is presented by ratification of the deed, why do they need to examine him? Let them ratify their deed and they shall be established as owners of the property.

[301] Rabbi Shimon ben Lakish replies: Do you maintain that the property stood in the possession of the members of his family and the buyers came and contested their possession of the property? Rather, the property stood in the possession of the buyers, and the members of his family came and

contested the sale. Since they claimed that the deed was invalid, they could not prove their claim by ratifying the deed, but only by bringing witnesses or examining the body.

[302] This, too, stands to reason, as Rabbi Akiva said to the claimants: You are not permitted to disgrace him, and they were silent. Granted, if you say that the members of his family were contesting the sale, due to that reason they were silent, as they accepted that they should not disgrace their relative. But if you say that the buyers were contesting the claim of the relatives, why were they silent? They should have said to Rabbi Akiva: We gave him money, and if our right to the property cannot be proven without disgracing him, let him be disgraced.

[303] The Gemara rejects this argument: If it is due to that reason, i.e., this claim they could have said, there is no conclusive argument. This is what Rabbi Akiva said to them: One reason to prohibit exhuming the body is that you are not permitted to disgrace him. And furthermore, if you should say: He took the money; let him be disgraced, in any event nothing can be proved by exhuming the body, as signs indicating puberty are likely to change after death.

[304] The Gemara suggests: Come and hear a proof: Rabbi Shimon ben Lakish asked Rabbi Yoḥanan about that which is taught in the Mishna of bar Kappara: There was one who was continually enjoying the profits from a field, and it was the presumption that it was his, and someone contested his claim, saying: It is mine. And that person, who was profiting from the field, produced a deed, in order to say: It is mine, as you sold this field to me, or: It is mine, as you gave me this field as a gift. If the one who protested his claim said: I do not recognize that deed as one that I have ever written, the deed must be ratified through its signatures.

[305] If the one who protested his claim said: This is a document of appeasement [shtar passim], a document written only so that the holder should appear wealthy, or a document of trust, which means that I sold the field to you and provided you with the deed, trusting you to provide payment, and since you did not give me the money the sale is void, then if there are witnesses, follow the testimony of the witnesses, and if not, follow the deed.

[306] Rabbi Shimon ben Lakish concludes: According to your explanation, the Rabbis maintain that even if the deed is ratified the claimant cannot take possession of the property without bringing witnesses. If so, shall we say that this baraita is in accordance with the opinion of Rabbi Meir, who says that when there is a debtor who admits that he wrote a promissory note, the creditor is not required to ratify it in court in order to collect payment, and it is not in accordance with the opinion of the Rabbis?

[307] Rabbi Yoḥanan said to Rabbi Shimon ben Lakish: No, it is not so. As I say that everyone agrees that in the case of a debtor who admits that he wrote a promissory note, the creditor is not required to ratify it in court in order to collect payment. Rabbi Shimon ben Lakish asked: But don’t they disagree, as we learned in a baraita: With regard to witnesses who ratified their signatures but claimed that they were not fit to bear witness when they signed the deed, their testimony is not deemed credible to invalidate the document; this is the statement of Rabbi Meir. And the Rabbis say: Their testimony is deemed credible.

[308] Rabbi Yoḥanan said to Rabbi Shimon ben Lakish: Even if the testimony of witnesses is powerful and they impair the validity of the deed, which they admit to have written, with regard to him, the giver, is it in his power to impair the validity of a deed that he admits to have written? Rabbi Shimon ben Lakish said to Rabbi Yoḥanan: But wasn’t it stated in your name with regard to the

aforementioned incident in Bnei Brak: The members of his family contested the claim correctly, even though they admitted that the deed was authentic? This means that the claimant is required to ratify the deed. Rabbi Yoḥanan said to Rabbi Shimon ben Lakish: That statement was stated in my name by Rabbi Elazar, my disciple, but I never said that statement.

309 Rabbi Zeira says: If Rabbi Yoḥanan denies the statement of Rabbi Elazar, his disciple, will Rabbi Yoḥanan also deny that which he said to Rabbi Yannai, his teacher? This is as Rabbi Yannai says that Rabbi Yehuda HaNasi says: When there is a debtor who admits that he wrote a promissory note, the creditor is not required to ratify it in court in order to collect the payment. And Rabbi Yoḥanan said to Rabbi Yannai: My teacher, is this not the case discussed in our mishna, which states to the contrary: And the Rabbis say: The burden of proof rests upon the claimant? Rabbi Yoḥanan concludes: The proof mentioned in this mishna is nothing other than ratification of the deed. This indicates that Rabbi Yoḥanan maintains that according to the opinion of the Rabbis, the recipient is required to ratify the deed. If so, why does he state that everyone agrees that the recipient is not required to ratify the deed?

310 Rabbi Zeira explains: Indeed, the statement of our teacher, Rav Yosef, appears to be correct, as our teacher Rav Yosef says that Rav Yehuda says that Shmuel says: The opinions here should be reversed. This, the baraita taught by bar Kappara, according to which the deed does not require ratification, is the statement of the Rabbis. But Rabbi Meir says that when there is a debtor who admits that he wrote a promissory note, the creditor is not required to ratify it in court in order to collect payment. And what is the meaning of Rabbi Yoḥanan's statement that everyone agrees that in this case, the recipient is not required to ratify the deed? Rabbi Yoḥanan means that this is the statement of the Rabbis, and a statement of the Rabbis that is disputed only by Rabbi Meir is tantamount to a statement accepted by all.

311 The Gemara asks: But didn't we learn the opposite in the mishna: And the Rabbis say that the burden of proof rests upon the claimant? This means that the recipient is required to ratify the deed. The Gemara replies: Reverse the opinions in the mishna. The Gemara asks: But isn't it taught in a baraita: With regard to witnesses who ratified their signatures but claimed that they were not fit to bear witness, their testimony is not deemed credible to invalidate the document; this is the statement of Rabbi Meir. And the Rabbis say: Their testimony is deemed credible. This indicates that according to the Rabbis the document requires ratification. The Gemara answers: Here too, reverse the opinions.

312 The Gemara asks: But doesn't Rabbi Yoḥanan say with regard to the proof that the recipient is required to bring, that the proof is presented by bringing witnesses who testify that the giver was healthy, and not by ratifying the deed? The Gemara answers: Reverse the opinions of Rabbi Yoḥanan and Rabbi Shimon ben Lakish. Rabbi Yoḥanan maintains that the recipient is required to prove his claim only by ratifying the deed, whereas Rabbi Shimon ben Lakish maintains that the recipient is required to bring witnesses. The Gemara asks: Shall we say that we should also reverse the objection that Rabbi Yoḥanan raised to Rabbi Shimon ben Lakish previously, and say that Rabbi Shimon ben Lakish raised the objection to Rabbi Yoḥanan? The Gemara answers: No, that is unnecessary.

313 This is what Rabbi Yoḥanan said to Rabbi Shimon ben Lakish: Granted, according to my explanation of the mishna, that I say that presenting proof through the ratification of the deed is sufficient in order to enable the recipient to claim the gift, this is the reason that with regard to the

incident in Bnei Brak you find the possibility that the buyers take possession of the property by ratifying the deed. It is therefore possible that the buyers held the property, and the relatives were claiming it from them. But according to you, that you say that the proof must be presented by bringing witnesses, how can you find circumstances in which the buyers take possession of the property, since they have no proof?

[314] Rabbi Shimon ben Lakish said to Rabbi Yoḥanan: I concede to you with regard to a case where the members of the deceased's family contested the legality of the buyers' claim that their contesting the legality of that claim is not taken into consideration, since they are contesting the deed held by the buyers. It is therefore possible for the buyers to take possession of the property, as in this case what do the relatives say? They say that the seller was a minor. But there is a presumption that witnesses do not sign the document unless the seller has become an adult. In the mishna, by contrast, there is no presumption that counters the giver's claim that he was on his deathbed. The recipient is therefore required to bring proof that the giver was healthy.

[315] § It was stated that there was a dispute with regard to the following matter: From when, i.e., from what age, can a minor sell his deceased father's property? Rava says that Rav Naḥman says: From the time he is eighteen years old, and Rav Huna bar Ḥinnana says that Rav Naḥman says: From the time he is twenty years old. The Gemara notes: And this statement of Rava was not stated explicitly; rather, it was stated by inference.

[316] Rabbi Zeira raises an objection from the aforementioned baraita: There was an incident in Bnei Brak involving one who sold some of his father's property, which he had inherited, and he died, and the members of his family came and contested the sale, saying: He was a minor at the time of his death, and therefore the sale was not valid. And they came and asked Rabbi Akiva: What is the halakha? Is it permitted to exhume the corpse in order to examine it and ascertain whether or not the heir was a minor at the time of his death? Rabbi Akiva said to them: It is not permitted for you to disgrace him for the sake of a monetary claim. And furthermore, signs indicating puberty are likely to change after death, and therefore nothing can be proved by exhuming the body. Rabbi Zeira explains the objection: Granted, according to the one who says that the heir can sell the property once he is eighteen years old,

[317] this is the reason that they came and said to Rabbi Akiva: What is the halakha? Is it permitted to examine the corpse? But if you say that he can sell the property from the time he is twenty years old, even if they examine him, what of it? But didn't we learn in a mishna (Nidda 47b): With regard to a twenty-year-old man who did not develop two pubic hairs, proof must be brought that he is twenty years old, and then he is no longer considered a minor. And he is the sexually underdeveloped man, who is excluded from the mitzva of levirate marriage. Therefore, if his married brother dies childless, he neither performs ḥalitza nor enters into levirate marriage with his widow. Since a twenty-year-old is considered an adult even if he has not developed signs of puberty, there is no reason to examine the body.

[318] The Gemara replies: Wasn't it stated with regard to that mishna: Rabbi Shmuel bar Rav Yitzḥak says that Rav says: And is this the halakha only where he developed the signs of a sexually underdeveloped man? Otherwise, a twenty-year-old who has not developed two pubic hairs is still considered a minor. The examination of the deceased could therefore be effective to see if he has other signs of being sexually underdeveloped. Rava said: The language of the mishna is also precise,

as it teaches: And he is the sexually underdeveloped man. The usage of the definitive article indicates that the mishna is referring to one who is clearly a sexually underdeveloped man. The Gemara affirms: One can conclude from the mishna that the mishna is speaking of one who developed the signs of a sexually underdeveloped man.

[319] The Gemara asks: And if he did not develop the signs of a sexually underdeveloped man, until when is he considered a minor if he does not develop two pubic hairs? Rabbi Ḥiyya teaches in a baraita: He is considered a minor until most of his years have elapsed, i.e., until he is thirty-five years old. When the case of one who had not developed pubic hair would come before Rabbi Ḥiyya, he would offer the following advice: If the person was thin, he would say to those appearing in court: Cause him to become fat, and if he was fat, he would say to them: Cause him to become thin. This is because these signs indicating puberty sometimes develop due to excessive thinness, and sometimes they develop due to corpulence.

[320] § A dilemma was raised before the Sages: During the time, i.e., the year, when a minor comes of age with regard to selling his deceased father's property, i.e., during his eighteenth or twentieth year, is this year considered as before the time that he comes of age or is it considered as after the time? Does one come of age at the beginning or end of that year? Rava says that Rav Naḥman says: During that time is considered as before the time, and he does not come of age until the year has elapsed. Rava bar Rav Sheila says that Rav Naḥman says: During that time is considered as after the time, and he is considered as having come of age during that year.

[321] The Gemara notes: And this statement of Rava was not stated explicitly; rather, it was stated by inference. As there was a certain person who was during the time, i.e., the year, when one comes of age who went and sold his father's property, and the case came before Rava. Rava said to the litigants: He did not do anything, and the sale is not valid. One who observed Rava's ruling assumed that he ruled in this manner because he maintained that during the time when he comes of age is considered as before the time. But that is not so. The reason for Rava's ruling was that there, Rava observed excessive mental incompetence in the behavior of that individual, as he was emancipating his slaves. Since Rava saw that he was mentally incompetent, he invalidated the sale.

[322] § Giddel bar Menashya sent an inquiry to Rava: Let our teacher instruct us: With regard to a girl who is fourteen years and one day old who understands the nature of business negotiations, what is the halakha? Can she sell property that she inherited from her father? Rava sent a reply to Giddel bar Menashya: If she understands the nature of business negotiations her purchase is a valid purchase and her sale is a valid sale.

[323] The Gemara asks: But Giddel could have sent this question to Rava with regard to a boy. Why did he not do so? The Gemara answers: The incident that took place, took place in this way. The Gemara asks: But he could have sent this question to Rava with regard to a girl who is twelve years and one day old, at which age a girl reaches her majority. Why did he not do so? The Gemara answers: The incident that took place, took place in this way.

[324] The Gemara notes: And this statement of Rava was not stated explicitly; rather, it was stated by inference, as it was inferred from the following incident. There was a certain person who was under twenty years old and understood business negotiations who went and sold his father's property, in accordance with the ruling that Rava sent to Giddel bar Menashya, and the case came before Rava. The seller's relatives said to the one who sold the property: Go eat dates and throw the pits into

Rava’s house, in order to prove to Rava that their relative was not mentally competent. He did so. Rava said to them: His sale is not a valid sale.

325 When they were writing for him a writ containing the decision, the buyers said to the seller, in order to prove that he was mentally competent: Go and say to Rava: The scroll of Esther, which is a large scroll, is bought for a dinar. Why then does the short writ containing Master’s ruling also cost a dinar, which was the scribe’s fee? The seller went and said this to Rava. Rava said to them: His sale is a valid sale. The boy’s relatives said to Rava: The buyers taught him to say that. Rava said to them: Even so, when they explain the matter to him he understands. Since, when they explain a matter to him he understands, he knows what he is doing. And the reason that he acted in this manner, throwing the pits into Rava’s house, was because of excessive impudence that was in him, not mental incompetence.

326 § Rav Huna, son of Rav Yehoshua, says: And with regard to the testimony of one who is not old enough to sell property that he inherits from his father, his testimony is valid testimony. Mar Zutra said: We said that his testimony is valid only with regard to movable property, but not with regard to land.

327 Rav Ashi said to Mar Zutra: In what way is movable property different from land? It is different because with regard to movable property his sale is a valid sale. But if that is so, consider that which we learned in a mishna (Gittin 59a): A purchase made by young children is a valid purchase, and a sale made by them is a valid sale. These halakhot apply to transactions involving movable property. Is it possible that also in the case of young children their testimony is valid testimony? Isn’t it an established halakha that minors are disqualified from bearing witness? Mar Zutra said to Rav Ashi: There, with regard to testimony, I require the witnesses to be men, as the verse states: “Then the two men shall stand” (Deuteronomy 19:17), which is interpreted as referring to witnesses, and this requirement is not fulfilled in the case of young children.

328 § Ameimar says: With regard to one who is not old enough to sell property that he inherits from his father, if he gave a gift from the property, his gift is a valid gift. Rav Ashi said to Ameimar: Now, if with regard to a sale, in which he receives money, you say that the Sages instituted an ordinance that he is not authorized to sell, lest he reduce the price of the property and deplete his father’s estate, all the more so in the case of a gift he is not authorized to give a gift, as nothing at all comes into his possession in exchange. Ameimar said to Rav Ashi:

329 And according to your reasoning, that the money he receives in exchange for the property is a reason one could consider his sale valid, if he sold property worth five dinars for six dinars, would his sale also be a valid sale?

330 Rather, the Sages maintain that a child’s inclination is to be attracted to money. And if you say that his sale is a valid sale, there may be times that there are potential buyers who rattle the dinars before him in order to tempt him to sell, and he will go and sell all of his father’s property. That is why the Sages ruled that all of his sales are not valid. But with regard to a gift, if he did not derive benefit from the recipient, he would not give him a gift. The Sages therefore said: Let the gift of an orphan be a valid gift, so that people will perform beneficial matters for the orphans, as the orphan can reciprocate by giving gifts.

331 § Rav Naḥman says that Shmuel says: Children who have reached the age of majority, i.e., a boy who is thirteen years old and a girl who is twelve years old, are examined for signs indicating

puberty if it is necessary to determine their adulthood for the purpose of betrothal, for the purpose of divorce, for the purpose of ḥalitza, and for the purpose of stating a girl’s refusal to remain married. But in order to sell from the property that one inherited from his father, the seller must be older, and one cannot sell this property until the seller is twenty years old.

[332] The Gemara asks: But once I examined the boy for the purpose of betrothal, why do I need to examine him again for the purpose of divorce? The Gemara answers: This is necessary only with regard to the levirate marriage of a minor, as we learned in a mishna (Nidda 45a): A boy who is nine years and one day old who engaged in intercourse with his yevama, i.e., his brother’s widow, acquired her as his wife by means of engaging in the act of intercourse. Although a minor cannot betroth a woman under ordinary circumstances, in the case of levirate marriage the act of intercourse of a nine-year-old with his yevama effects acquisition. But he cannot give her a bill of divorce until he reaches his majority. It is therefore necessary to examine him at the time of the divorce.

[333] The Gemara explains why it is necessary to mention examining a boy for the purpose of ḥalitza: This is mentioned to the exclusion of that which Rabbi Yosei says, as Rabbi Yosei says: “Man,” i.e., an adult man, is written in the Torah passage with regard to ḥalitza, as the verse states: “And if the man does not wish to take his brother’s wife” (Deuteronomy 25:7). But a woman, whether she is an adult or a minor, can be released by ḥalitza, as the verse does not indicate her age. To counter this, Rav Naḥman teaches us that a woman is juxtaposed to a man in this passage, indicating that the yevama must also have reached adulthood, and the halakha is not in accordance with the opinion of Rabbi Yosei.

[334] The Gemara explains why it is necessary to mention examining a person for the purpose of stating her refusal. This is mentioned to the exclusion of that which Rabbi Yehuda says, as Rabbi Yehuda says that a girl whose mother or brother married her off while she was a minor can nullify her marriage by refusing to remain married, and she can state this refusal until she reaches complete maturity, i.e., when the area covered by black pubic hairs is greater than the skin of the genital area. Rav Naḥman therefore teaches us that the halakha is not in accordance with the opinion of Rabbi Yehuda, and once a girl has developed two pubic hairs she cannot state her refusal.

[335] Rav Naḥman states: But in order to sell from the property that one inherited from his father, the seller must be older, and he cannot sell the property until he is twenty years old. This is mentioned to the exclusion of the opinion of the one who says that the seller can be eighteen years old.

[336] The Gemara concludes: And the halakha is that with regard to the age when a minor can sell property inherited from his father, during the time, i.e., during his twentieth year, is considered as before the time when it is permitted, and he cannot sell until the end of his twentieth year. And the halakha is in accordance with the ruling that Rava sent to Giddel bar Menashe, that a child who has reached his majority and understands the nature of business negotiations can sell land.

[337] The Gemara continues: And the halakha is in accordance with the statement of Mar Zutra, that one who is not fit to sell land is also not fit to bear witness with regard to land. And the halakha is in accordance with the statement of Ameimar, that an orphan under the age of twenty can bestow gifts from the property he inherited from his father. And the halakha is in accordance with the statement that Rav Naḥman says that Shmuel says with regard to all the matters that he mentioned.

[338] MISHNA: With regard to one who divides his property between various recipients by means of verbal instruction, Rabbi Elazar says: Both in the case of one who is healthy and in the case of one

who is dangerously ill, the halakha is as follows: Property that serves as a guarantee, i.e., land, is acquired by means of money, by a deed of transfer, or by taking possession of it. And that which does not serve as a guarantee, i.e., movable property, can be acquired only by pulling.

339 The Rabbis said to Rabbi Elazar: There was an incident involving the mother of the sons of Rokhel, who was sick, and who said: My brooch shall be given to my daughter, and it is valued at twelve hundred dinars. And this woman subsequently died, and the Sages upheld her statement. This indicates that a person on his deathbed can gift property without an act of acquisition. Rabbi Elazar said to them: That case was different; the sons of Rokhel should be buried by their mother, i.e., he cursed them. It is not possible to bring a proof from this incident, as these sons were wicked people. Consequently, when ruling in this matter the Sages did not act in accordance with the halakha, but allowed the mother of the sons of Rokhel to give this valuable piece of jewelry to their sister without an act of acquisition having been performed.

340 GEMARA: It is taught in a baraita: Rabbi Eliezer said to the Rabbis: There was an incident involving a certain man of Meron who was in Jerusalem, and he had a lot of movable property. And he desired to give the movable property as gifts to various individuals, but they could not be acquired by pulling. The Rabbis said to him: There is no remedy for transferring the property unless he transfers the movable property by means of transferring the ownership of land.

341 He went and acquired one plot of rocky land adjacent to Jerusalem, and he said: I give the north part of this area to so-and-so, and with it one hundred sheep and one hundred barrels. And I give the south part of the area to so-and-so, and with it one hundred sheep and one hundred barrels. And he died, and the Sages upheld his statement. This indicates that a person on his deathbed cannot transfer property without an act of acquisition. The Rabbis said to Rabbi Eliezer: Do you bring proof from there? The man of Meron was healthy at the time. This was not the gift of a person on his deathbed, and it could not be acquired by verbal instruction.

342 § The mishna teaches: Rabbi Elazar said to them: That case was different; the sons of Rokhel should be buried by their mother. The Gemara asks: What is the reason that he was cursing them? Rav Yehuda says that Shmuel says: They were maintaining thorns in a vineyard and did not uproot them, and Rabbi Eliezer conforms to his line of reasoning, as we learned in a mishna (Kilayim 5:8): With regard to one who maintains thorns in a vineyard, Rabbi Eliezer says: He has proscribed the vineyard, rendering it forbidden due to the prohibition against diverse kinds. And the Rabbis say: Only growing a matter, i.e., a crop, the like of which people usually maintain, proscribes a vineyard and renders it forbidden.

343 The Gemara asks: Granted, if it were saffron that grew in the vineyard, it is useful for seasoning and other uses, and therefore it proscribes the vineyard. But with regard to thorns, for what are they useful? Rabbi Ḥanina said: What is the reasoning of Rabbi Eliezer? It is because in Arabia they maintain thorns in the fields for their camels. Rabbi Eliezer holds that since thorns are maintained in one place, they are considered useful everywhere.

344 Rabbi Levi says: An act of acquisition may be performed in order to effect acquisition of property from a person on his deathbed even on Shabbat, even though transactions are not performed on Shabbat. And this, that an act of acquisition must be performed, is not stated in order to take into consideration the statement of Rabbi Eliezer that the gifts of any person on his deathbed require an act of acquisition. Rather, the reason for this is that if a person on his deathbed requests the

performance of an act of acquisition, his request is fulfilled, lest his anxiety upon seeing that his will is not being carried out cause him to lose control of his mind due to his grief, exacerbating his poor physical state.

345 MISHNA: Rabbi Eliezer says: On Shabbat, the verbal statement of a person on his deathbed stands, as he cannot write, and the Sages instituted that he can effect the transaction verbally lest the inability to do so exacerbate his condition. But a verbal instruction does not stand if stated on a weekday. Rabbi Yehoshua says: With regard to Shabbat, the Sages stated that his verbal instruction is sufficient, even though writing is prohibited. One can infer a fortiori that the same applies with regard to a weekday, when writing is permitted.

346 Similarly, one can acquire property on behalf of a minor, but one cannot acquire property on behalf of an adult, since he can perform the act of acquisition himself; this is the statement of Rabbi Eliezer. Rabbi Yehoshua says: The Sages stated this halakha with regard to a minor, and one may infer a fortiori that this also applies with regard to an adult, who is able to perform the act of acquisition himself.

347 GEMARA: The Gemara asks: Whose opinion is expressed in the mishna? The Gemara answers: This is the opinion of Rabbi Yehuda. This is as it is taught in a baraita: Rabbi Meir says that Rabbi Eliezer says: With regard to a person on his deathbed who distributes his property by verbal instruction, on a weekday, his statements stand, because he can write, but his statement does not stand on Shabbat, because he cannot write.

348 Rabbi Yehoshua

349 says: With regard to weekdays the Sages stated that the verbal instruction of person on his deathbed is valid, even though it is permitted to write. And one may infer a fortiori that the same applies with regard to Shabbat, when writing is prohibited. Similarly, one can acquire property on behalf of an adult, as he is able to effect acquisition himself, but one cannot acquire property on behalf of a minor; this is the statement of Rabbi Eliezer. Rabbi Yehoshua says: The Sages stated this halakha with regard to an adult, even though he can effect acquisition himself. One may infer a fortiori that this also applies with regard to a minor, who cannot effect acquisition himself.

350 Rabbi Yehuda says that Rabbi Eliezer says: On Shabbat, the verbal statement of a person on his deathbed stands due to the fact that he cannot write. But a verbal instruction does not stand on a weekday. Rabbi Yehoshua says: With regard to Shabbat the Sages stated that his verbal instruction stands, even though writing is prohibited. One may infer a fortiori that the same applies with regard to a weekday, when writing is permitted. Similarly, one can acquire property on behalf of a minor, but one cannot acquire property on behalf of an adult, since he can effect the acquisition himself; this is the statement of Rabbi Eliezer. Rabbi Yehoshua says: The Sages stated this halakha with regard to a minor, and one may infer a fortiori that this also applies with regard to an adult.

351 MISHNA: A house collapsed on a son and upon his father, or upon a certain person and upon those from whom he stands to inherit, and it is unknown who died first. If the son bore the responsibility to pay the marriage contract of his wife and to pay a creditor, and the son had no money with which to pay them except that which he might inherit from his father, and the father’s heirs say: The son died first and afterward the father died, and therefore the son did not inherit property from his father, and the creditors say: The father died first and afterward the son died,

resulting in the son’s inheriting his father’s property, enabling the creditors to collect payment from the property even after the son’s death, there is a dispute with regard to how to rule.

352 Since it cannot be determined who died first, Beit Shammai say: They divide the property between them so that the father’s heirs receive half of his property and the son’s creditors receive the other half. And Beit Hillel say: The property retains its previous ownership status. Since the last known owner of the property was the father, the property is given to the father’s heirs.

353 GEMARA: We learned in a mishna elsewhere (175a): One who lends money to another with a promissory note can collect the debt even from liened property that has been sold. If one lends money only with witnesses, he can collect the debt only from unsold property.

354 Shmuel raises a dilemma: If the borrower wrote in the promissory note: The property that I will acquire in the future shall be liened to this debt, and he subsequently acquired property, what is the halakha? Is the property liened or not? The Gemara clarifies the dilemma: According to the opinion of Rabbi Meir, who says: A person can transfer ownership of an entity that has not yet come into the world, you should not raise the dilemma, as the lender certainly acquires, i.e., places a lien, on the property. Rather, when should you raise the dilemma? Raise it according to the opinion of the Rabbis, who say: A person cannot transfer ownership of an entity that has not yet come into the world.

355 Rav Yosef said: Come and hear proof from a mishna (Ketubot 110a): If one produces a promissory note against another, and the borrower produced a bill of sale dated after the promissory note that states that the lender sold him a field of his, Admon says that the borrower can say: Were I really indebted to you, you should have collected the loan when you sold me the field. And the Rabbis say: This does not prove anything. It is possible that this lender was perspicacious, as he sold the borrower the land for a good reason, because now he can take the field as collateral from him in lieu of the outstanding loan. This mishna indicates that even property acquired by the borrower after the promissory note is written is liened.

356 Rava said to Rav Yosef: Do you speak of a case where the debt is collected from the debtor? With regard to collecting the debt from him, the debt is collected from any property currently in his possession, even from the cloak that is upon his shoulders. When the dilemma was raised to us, it was with regard to a case where the borrower wrote: The property that I will acquire shall be liened, and he subsequently acquired property and sold it to others. The dilemma also pertains to a case where the borrower wrote: The property that I will acquire shall be liened, and he subsequently acquired property and bequeathed it to his heirs. In these cases, what is the halakha? Can the lender repossess the property from the buyer or heir?

357 Rav Ḥana said: Come and hear a proof from the mishna: In a case where the house collapsed on a son and upon his father, or upon a certain person and upon those from whom he stands to inherit, and it is unknown who died first, the halakha depends on the circumstances. If the son bore the responsibility to pay the marriage contract of his wife and to pay a creditor, and the son had no money with which to pay them except that which he might inherit from his father, and the father’s heirs say: The son died first and afterward the father died, and therefore the son did not inherit property from his father, and the creditors say: The father died first and afterward the son died, there is a dispute with regard to how to rule. In this case, the creditors claim that the son inherited his father’s property, and therefore they have a lien upon the property.

[358] The Gemara explains: And if it enters your mind to say that when the borrower writes: The property that I will acquire shall be liened, and he acquires property and sells it to others, it is not liened, and that when he writes: The property that I will acquire shall be liened, and he acquires property and bequeaths it to his heirs, it is not liened, then the mishna is difficult. Although the father indeed died first, this case is comparable to one where the borrower writes: The property that I will acquire shall be liened, as the son acquired the property after receiving the loan. This indicates that a lien can be placed upon property that one will acquire in the future.

[359] Rav Naḥman said to the Sages: Rabbi Zeira, our colleague, interpreted the mishna as follows: In this case, the creditors do not claim the property because it is liened. Rather, they claim it because it is a mitzva incumbent upon the orphans to repay their father's debt. Rav Ashi objects to this: If the promissory note does not place a lien on the property, this is considered a loan by oral agreement, and Rav and Shmuel both say: A loan by oral agreement cannot be collected, neither from the heirs nor from the buyers.

[360] Rather, in accordance with whose opinion is this mishna? This mishna is in accordance with the opinion of Rabbi Meir, who says: A person can transfer ownership of an entity that has not yet come into the world. Similarly, Rabbi Meir maintains that one can place a lien on property that the borrower will subsequently acquire.

[361] Rav Yaakov from Nehar Pekod says in the name of Ravina: Come and hear proof from a mishna (Shevi'it 10:5): Promissory notes that are antedated, i.e., that are dated prior to the date on which the loan actually was given, are invalid. This is because the promissory note places a lien on the borrower's property. By dating the document earlier than the loan itself, the lender appears to have a lien on property that the borrower sold prior to taking out the loan, enabling the lender to fraudulently repossess it from the buyer. But promissory notes that are postdated are valid, as this does not enable the lender to defraud a buyer.

[362] The Gemara explains: And if it enters your mind to say that property that the borrower acquires after receiving the loan is not liened even when he writes: The property that I will acquire shall be liened, and he acquires property and sells it to others, or when he writes: The property that I will acquire shall be liened, and he acquires property and bequeaths it to his heirs, why, then, are postdated promissory notes valid? They should be invalid, as in some instances they enable the creditor to fraudulently repossess property that is not liened, e.g., if the borrower acquires property after receiving the loan but before the date on the promissory note, and he sells it after that date. This case is comparable to one where the borrower writes: The property that I will acquire shall be liened.

[363] The Gemara answers: In accordance with whose opinion is this mishna? This mishna is in accordance with the opinion of Rabbi Meir, who says: A person can transfer ownership of an entity that has not yet come into the world.

[364] Rav Mesharshiyya says in the name of Rava: Come and hear proof from a baraita: With regard to collecting a debt in a case of enhancement of land, how does it happen that the debt cannot be collected from liened property that has been sold? This question arises in a case where a debtor sold a field to another and the buyer enhanced it, and a creditor came and repossessed it from the buyer. When the buyer collects the value of the land from the seller, he collects the principal even from liened property that was sold to others, but he collects the value of the enhancement only from unsold property.

[365] And if it enters your mind to say that property that the borrower acquires after receiving the loan is not liened even when he writes: The property that I will acquire shall be liened, and he acquires property and sells it to others, or when he writes: The property that I will acquire shall be liened, and he acquires property and bequeaths it to his heirs, why does the creditor collect his debt by repossessing the enhancement from the buyer? Since the enhancement was not extant at the time of the loan, it is not liened.

[366] The Gemara answers: In accordance with whose opinion is this mishna? This mishna is in accordance with the opinion of Rabbi Meir, who says: A person can transfer ownership of an entity that has not yet come into the world. The dilemma of Shmuel is raised according to the opinion of the Rabbis.

[367] The Gemara comments: If you say that when the borrower writes: The property that I will acquire shall be liened, and he acquires property and sells it to others, it is not liened, and that when he writes: The property that I will acquire shall be liened, and he acquires property and bequeaths it to his heirs, it is not liened, then it is not liened and the following question will not arise. If you say that it is liened, what is the halakha with regard to one who borrowed money from one lender and then borrowed money from another lender, stating in both cases that the property that he will acquire shall be liened, and he then acquired land? Does the first lender have a lien upon the property or does the last lender have a lien upon the property?

[368] Rav Naḥman said: This matter was raised before us, and the Sages sent a response from there, from Eretz Yisrael: The first lender acquires the property, since his lien came first. Rav Huna says: The lenders divide the property between them. And so teaches Rabba bar Avuh: The lenders divide the property between them. Ravina said: The first time Rav Ashi taught this matter he said to us: The first lender acquires the property. The last time Rav Ashi taught this matter he said to us: The lenders divide the property between them. And the halakha is that they divide the property between them.

[369] The Gemara raises an objection from the aforementioned baraita: With regard to collecting a debt in a case of enhancement of land, how does it occur that the debt cannot be collected from liened property that has been sold? This question arises in a case where one sold a field to another, and the buyer enhanced it, and a creditor came and repossessed it from the buyer. When the buyer collects the value of the land from the seller, he collects the principal even from liened property that was sold to others, but he collects the value of the enhancement only from unsold property. And if it is so that in general, the property is divided between the creditors, then, since both the creditor and the buyer have a lien upon the enhancement of the property, the buyer should collect only half of the value of the enhancement.

[370] The Gemara answers: What does the baraita mean, as well, when it teaches that the buyer collects the enhancement? The baraita means that he collects half of the value of the enhancement.

[371] MISHNA: If the house collapsed upon a husband and upon his wife, and it is unknown who died first, if the wife did not have any children from her husband, then the following claims arise: The husband’s heirs say: The wife died first and was inherited by her husband, and afterward the husband died, and therefore the husband’s heirs inherit both his and her property. The wife’s heirs say: The husband died first and afterward the wife died, and her heirs inherit the property that she brought with her to the marriage and the payment of her marriage contract.

372 Beit Shammai say: They divide the property under dispute between them. And Beit Hillel say: The guaranteed property that the wife brought with her to the marriage retains its previous ownership status. The sum of the marriage contract remains in the possession of the husband's heirs, since the marriage contract is collected from the husband's property. Property that is brought into and taken out of the marriage with her, i.e., usufruct property that remains in the wife's possession during her marriage, remains in the possession of the heirs of the woman's father.

373 GEMARA: The mishna teaches that according to Beit Hillel, the guaranteed property that the wife brought with her to the marriage retains its previous ownership status. The Gemara asks: In whose possession does the guaranteed property remain? Rabbi Yoḥanan says: It remains in the possession of the husband's heirs, since the husband is liable to compensate his wife for guaranteed property in the event of loss. And Rabbi Elazar says: It remains in the possession of the wife's heirs, as the property came from her father's house and belongs to her.

374 And Rabbi Shimon ben Lakish says in the name of bar Kappara: They divide the property between them. And likewise bar Kappara teaches in a baraita: Since these heirs come to inherit and those heirs come to inherit, and neither can prove his claim, they divide the property between them.

375 MISHNA: If the house collapsed on a son and upon his mother, and it is unknown who died first, the following claims arise: The mother's paternal family claims that the son died first, and therefore they inherit from the mother, and the son's heirs claim that the mother died first and her son inherited from her, and therefore they inherit from the son. In this case, both these Sages and those Sages, Beit Shammai and Beit Hillel, concede that they divide the property between them. Rabbi Akiva said: In this case I concede that the property retains its previous ownership status. Ben Azzai said to Rabbi Akiva: We are already troubled by those cases where Beit Shammai and Beit Hillel are in disagreement. But do you come to bring upon us a disagreement with regard to the case where they agree?

376 GEMARA: The mishna states that according to Rabbi Akiva, the property retains its previous ownership status. The Gemara asks: In whose possession does the property remain? Rabbi Ila says: It remains in the possession of the mother's heirs. Rabbi Zeira, when he was still in Babylonia, said: It remains in the possession of the son's heirs. When Rabbi Zeira ascended to Eretz Yisrael, he adopted the opinion of Rabbi Ila, whereas Rabba, in Babylonia, adopted the opinion stated by Rabbi Zeira. Rabbi Zeira said: Conclude from this incident that the air of Eretz Yisrael makes one wise, as when I ascended to Eretz Yisrael I accepted the opinion of Rabbi Ila, who was also from Eretz Yisrael, whereas Rabba, who remained in Babylonia, accepted my former opinion.

377 The Gemara asks: And what is the reason that the property remains in the possession of the mother's heirs? Abaye says: Since the inheritance was initially in the possession of that tribe of the mother, it is not removed from their possession in order to transfer it to the son's heirs, who are from a different tribe.

378 The mishna teaches: Ben Azzai said to Rabbi Akiva: We are already troubled by those cases where Beit Shammai and Beit Hillel are in disagreement. But do you come to bring upon us a disagreement with regard to the case where they agree? Rabbi Shamlai said: That is to say that ben Azzai was a disciple-colleague of Rabbi Akiva and not just a disciple, since he said to him: Do you come, in the second person, rather than using the more formal third person.

[379] § The Sages sent a ruling from there, Eretz Yisrael: With regard to a son who borrowed money based on the security of his father’s property during his father’s lifetime, and whose father subsequently died, his son repossesses the property from the buyers. And this is the most difficult halakha to understand with regard to monetary law. The Gemara clarifies the ruling: If the son borrowed, what does he repossess? He needs to repay a debt, not to collect payment. Moreover, what is the relevance of the buyers in this matter? There is no mention of them in the premise. Rather, if this matter was stated, it is in this manner

[380] that it was stated: With regard to a son who sold some of his father’s property during his father’s lifetime, and the son died, the son’s son repossesses the property from the buyers. And this is a difficult halakha with regard to monetary law, as the buyers can say to the son’s son: Does your father sell the property to us and you repossess it?

[381] The Gemara asks: And what is the difficulty? Perhaps he can say: I come to repossess the property on the basis of the right of my father’s father to the property, as I inherit directly from him. Know that this is so, as it is written: “In the place of your fathers shall be your sons; you shall make them into princes throughout the land” (Psalms 45:17). The phrase “In the place of your fathers shall be your sons” indicates that a grandson inherits from his grandfather directly, and he does not inherit through his father.

[382] Rather, if there is a halakha with regard to monetary law that poses a difficulty, this is the difficult halakha: With regard to a firstborn son who sold, during his father’s lifetime, the portion of the firstborn that he was set to inherit, and he died in his father’s lifetime, his son can repossess the portion of the firstborn from the buyers. And this is a difficult halakha with regard to monetary law, as his father sells the property and he repossesses it. And if you would say: Here too, he says: I come to repossess the property on the basis of the right of my father’s father to the property, this is not a valid claim, as, if he comes to repossess the property on the basis of the right of his father’s father, what is the relevance of the portion of the firstborn, since he is not his grandfather’s firstborn?

[383] The Gemara rejects this: And what is the difficulty? Perhaps he can say: I come to repossess the property on the basis of the right of my father’s father to the property, and yet I receive the portion of the firstborn, as I stand in my father’s stead.

[384] Rather, if there is a halakha with regard to monetary law that poses a difficulty, this is the difficult halakha: One knew testimony supporting another, and his testimony was written in a document before he became a robber, and then he became a robber and was disqualified from bearing witness. In this case, he may not testify as to the legitimacy of his handwriting. But others may testify that it is his handwriting on the document. The difficulty is that now that his testimony is not deemed credible, although he knows of the matter with certainty, is it logical that others are deemed credible and his signature is ratified according to their testimony? And this is a difficult halakha with regard to monetary law.

[385] The Gemara rejects this: What is the difficulty? Perhaps this halakha is referring to a case where the signature was already presumed by the court to be his handwriting before he was disqualified, and the witnesses testify merely that the document was already ratified.

[386] Rather, if there is a halakha with regard to monetary law that poses a difficulty, this is the difficult halakha: One knew testimony supporting another concerning the latter’s ownership of a plot of land, and his testimony was written in a document before the land came into the witness’s possession as an

inheritance, which caused the witness to become an interested party. In this case, the witness may not ratify his handwriting. But others may ratify his handwriting. The Gemara rejects this: And what is the difficulty? Perhaps here too, the halakha is referring to a case where the signature was already presumed by the court to be his handwriting before he became an interested party, and the witnesses testify merely that the document was already ratified.

[387] Rather, if there is a halakha with regard to monetary law that poses a difficulty, this is the difficult halakha: One knew testimony with regard to another, and his testimony was written in a document before he became that person's son-in-law, and then he became his son-in-law. In this case, the son-in-law may not testify as to his handwriting, since one cannot bear witness for his relative. But others may testify that it is his handwriting. Is it logical that his testimony is not deemed credible, yet others are deemed credible and may ratify his signature?

[388] And if you would say: Here too, the halakha is referring to a case where the signature was already presumed by the court to be his handwriting before he became a relative, this is difficult. But doesn't Rav Yosef bar Minyumi say that Rav Naḥman says: Others may testify as to the validity of his handwriting even though the signature was not previously presumed by the court to be his handwriting?

[389] The Gemara rejects this: And what is the difficulty? Perhaps it is the King's edict, i.e., a divine decree, that the testimony of a son-in-law is not deemed credible, and yet the testimony of others is deemed credible, and the reason he is disqualified is not that he is suspected of lying. This must be so, as if you do not say so, why are Moses and Aaron disqualified from bearing witness for their father-in-law? Could this be because their testimony is not deemed credible? Rather, it is the King's edict that even Moses and Aaron shall not bear witness for their relatives. Here too, it is the King's edict that a son-in-law shall not testify as to the validity of his handwriting for his father-in-law.

[390] Rather, the difficulty is actually as we said initially, with regard to the halakha that if a son sold some of his father's property and then died, the son's son repossesses the property from the buyers. And with regard to the verse that posed a difficulty for you: "In the place of your fathers shall be your sons" (Psalms 45:17), which apparently indicates that a grandson inherits from his grandfather directly, this is not difficult. That verse is written as a blessing. The verse does not indicate the halakhic status of the grandson's inheritance, and the reason he can repossess the property is still difficult.

[391] The Gemara asks: But can you say that the verse is written as a blessing,

[392] but with regard to the halakha it does not indicate anything?

[393] But isn't it taught in the mishna (157a): A house collapsed on a son and upon his father, or upon a certain person and upon those from whom he stands to inherit, and it is unknown who died first. If the son bore the responsibility to pay the marriage contract of his wife and to pay a creditor, and the son had no money with which to pay them except that which he might inherit from his father, and the father's heirs say: The son died first and afterward the father died, and therefore the son did not inherit property from his father, and the creditor says: The father died first and afterward the son died, there is a dispute as to the halakha. The son therefore inherited his father's property, and his creditor has a lien upon the property, enabling him to collect payment from the property even after the son's death.

394 What, is it not correct to explain that the father’s heirs are the son’s sons, and the term: Those from whom he stands to inherit, is referring to the deceased son’s brothers? And if it enters your mind to maintain that the grandson cannot say: I come to repossess the property on the basis of the right of my father’s father to the property, as when it is written in the verse in Psalms: “In the place of your fathers shall be your sons,” this is written as a blessing, then the mishna is difficult. According to this understanding, grandsons inherit from their grandfather only through their father. If so, even if the son died first and afterward the father died, what of it? Let the creditor say to the son’s sons: It is their father’s inheritance that I am taking, as the grandsons inherit from their grandfather only through their father.

395 The Gemara rejects this explanation: No, the father’s heirs are the deceased son’s brothers, who certainly inherit from their father directly, and the term: Those from whom he stands to inherit, is referring to the deceased son’s father’s brothers. Therefore, one cannot derive from the mishna that a grandson inherits from his grandfather directly.

396 § The Sages raised a dilemma before Rav Sheshet: What is the halakha with regard to a son inheriting from his mother while he is in the grave, in order to bequeath that inheritance to his paternal brothers? If a son dies, and afterward his mother dies, does the deceased son inherit from his mother, and subsequently bequeath the inheritance to his paternal brothers, who are not related to the mother? Rav Sheshet said to them: You learned it in a baraita: Consider the case of a father who was taken captive and died in captivity, and his son died in the province, i.e., at home, and consider the case of a son who was taken captive and died, and his father died in the province. Since it is not known who died first, the father’s heirs and the son’s heirs divide the inheritance.

397 The Gemara asks: What are the circumstances of the case? If we say that the case is as the baraita teaches, the baraita is difficult. Who are the father’s heirs and who are the son’s heirs? The same individuals inherit from both of them. Rather, is it not so that this is what the baraita is saying: Consider the case of a father who was taken captive and died in captivity, and his daughter’s son died in the province, and consider the case of the son of his daughter who was taken captive and died, and the father of the captive’s mother died in the province, and we do not know which of them died first. If the father died first, his daughter’s son inherits from him, and the son’s paternal relatives subsequently inherit from the son. If the son died first, the father’s heirs inherit the father’s estate. Since it is unknown which of them died first, the father’s heirs and the son’s heirs divide the inheritance.

398 And if it is so that a son inherits from his mother while in the grave, although the son indeed died first, he should inherit from his mother’s father while in his grave and bequeath his inheritance to his paternal brothers, and the son’s heirs should receive the entire inheritance. Rather, isn’t it correct to conclude from the baraita that the son does not inherit from his mother while in the grave in order to bequeath that inheritance to his paternal brothers?

399 Rav Aḥa bar Minyumi said to Abaye: We learn this halakha in the mishna (158b) as well: If the house collapsed on a son and upon his mother, both these Sages and those Sages, Beit Shammai and Beit Hillel, concede that the son’s heirs and the mother’s heirs divide the property between them. And if it is so that a son inherits from his mother while in the grave, although the son indeed died first, he should inherit from his mother while in his grave and they should inherit from him, i.e., he should bequeath his inheritance to his paternal brothers. Rather, isn’t it correct to conclude from that

mishna that the son does not inherit from his mother while in the grave in order to bequeath that inheritance to his paternal brothers? The Gemara affirms: Conclude from the mishna that this is so.

[400] And what is the reason that a son does not inherit from his mother while in the grave? Abaye says: The term transfer, concerning the transfer of inheritance from one tribe to another, was stated with regard to the inheritance of a son (see Numbers 36:7), and the term transfer was stated with regard to the inheritance of a husband (see 111b–113a and Numbers 36:9). Just as in the case categorized as transfer that was stated with regard to the inheritance of a husband, the husband does not inherit from his wife while he is in the grave in order to bequeath that inheritance to his heirs, so too, in the case categorized as transfer that was stated with regard to the inheritance of a son, the son does not inherit from his mother while in the grave in order to bequeath that inheritance to his paternal brothers.

[401] § There was a certain person who said to another: I am selling to you all of the property that I own of bar Sisin. There was one parcel of land that was called the tract of the house of bar Sisin. The seller said to the buyer: This latter parcel of land is actually not the property of the house of bar Sisin, and it is merely called: Of the house of bar Sisin, and therefore it is not included in the sale.

[402] The matter came before Rav Naḥman, and he placed the land in the possession of the buyer. Rava said to Rav Naḥman: Is this the halakha? The halakha is that the burden of proof rests upon the claimant, which in this case is the buyer. And the Gemara raises a contradiction between this statement of Rava and another statement of Rava, and between this statement of Rav Naḥman and another statement of Rav Naḥman.

[403] The Gemara explains the contradictions. There was a certain man who said to another: What do you want, i.e., what are you doing, with this house of mine? He said to the claimant: I purchased it from you and I worked and profited from it for the years necessary for establishing the presumption of ownership. The claimant said to him: I was traveling among the settlements in a distant location, and I was unaware that you were residing in my house, which is why I did not lodge a protest.

[404] The one residing in the house came before Rav Naḥman for a judgment. Rav Naḥman said to him: Go clarify your profiting, i.e., prove that you really resided there for three years, and then the case can be judged. Rava said to Rav Naḥman: Is this the correct judgment? The halakha is that the burden of proof rests upon the claimant. Therefore, the claimant should have to prove that the possessor did not reside in the house. The first statement of Rava is difficult, as it is contradicted by the second statement of Rava, and the first statement of Rav Naḥman is difficult, as it is contradicted by the second statement of Rav Naḥman. In the first case, Rav Naḥman ruled in favor of the buyer, and Rava ruled in favor of the seller, whereas in the second case their rulings were reversed.

[405] The Gemara answers: The apparent contradiction between the first statement of Rava and the second statement of Rava is not difficult. Here, with regard to the property of bar Sisin, the seller stands in possession of his property, and the buyer claims the parcel of land from him. There, the buyer stands in possession of his property, since he dwells in the house, and the seller wishes to evict him.

[406] The contradiction between one statement of Rav Naḥman and the other statement of Rav Naḥman is not difficult as well, because there, since the seller said to him: I am hereby selling you all of the property that I own of the house of bar Sisin, and this parcel of land is called: Of the house of bar Sisin, it is incumbent on him to reveal that it is not of the house of bar Sisin. But here, in the case

where the claimant states that he had been in a distant location, it should not be considered as any case other than one where the possessor is holding a document as evidence that he purchased the house. Wouldn’t we then say to him: First ratify your document, and only then be established as the owner of the property? In this case as well, since his presumptive ownership is in place of a document, he needs to clarify the matter by means of witnesses.

Chapter 10

[1] MISHNA: In an ordinary document, its witnesses are to sign inside it, i.e., on the written side of the paper. In a folded and tied document, its witnesses are to sign on the back of it.

[2] With regard to an ordinary document whose witnesses wrote their signatures on the back of it, and a tied document whose witnesses wrote their signatures inside of it, both of these are not valid. Rabbi Ḥanina ben Gamliel says: A tied document whose witnesses wrote their signatures inside of it is valid, because one can transform it into an ordinary document by untying it. Rabban Shimon ben Gamliel says: Everything is in accordance with regional custom.

[3] An ordinary document is rendered valid by its having at least two witnesses, and a tied document is rendered valid by its having at least three witnesses. With regard to an ordinary document in which a single witness wrote his signature, and a tied document in which only two witnesses wrote their signatures, they are both not valid.

[4] GEMARA: The Gemara asks: From where are these matters derived? What biblical basis is there for the existence of these two types of documents? Rabbi Ḥanina says: As the verse states: “They shall buy fields for money, and subscribe the deeds, and seal them, and call witnesses” (Jeremiah 32:44). When the verse states: “They shall buy fields for money, and subscribe the deeds,”

[5] this is referring to an ordinary document. When the verse states: “And seal them,” this is referring to a tied document. The next phrase, “and call witnesses [veha’ed edim],” which more literally would be translated: And have witnesses bear witness, is interpreted as follows: “And have bear witness [veha’ed],” this indicates the need for two witnesses, as the term “witness [ed]” in the Torah generally refers to two witnesses. As to the word “witnesses [edim],” this additional term indicates the need for three witnesses. How so? How can the verse call for both two witnesses and three witnesses? Rabbi Ḥanina explains: Two witnesses are required for an ordinary document, and three are required for a tied document.

[6] The Gemara questions this explanation: But I can just as well reverse it, requiring two witnesses for a tied document and three for an ordinary one. The Gemara answers: Since the tied document requires more to be done with regard to its ties, it stands to reason that it requires more to be done with regard to its witnesses, requiring three rather than two.

[7] Rafram says that there is a different source for two kinds of documents, from here: “So I took the deed of the purchase, that which was sealed, the terms and conditions, and that which was open” (Jeremiah 32:11). When the verse states: “So I took the deed of the purchase,” this is referring to an ordinary document. When it states: “That which was sealed,” this is referring to a tied document. When it states: “And that which was open,” this is referring to the ordinary, unfolded part of a tied document.

[8] Rafram continues: With regard to the phrase: “The terms and conditions,” these are the matters that distinguish an ordinary document from a tied one. How so? What are the details that differentiate the two types of documents? This one, the ordinary document, has two witnesses, and that one, the tied document, has three witnesses. And in this one, the ordinary document, its witnesses are signed inside it, on the front side, while in that one, the tied document, its witnesses are signed on the back of it.

[9] The Gemara questions this explanation: But I can just as well reverse it, requiring two witnesses for a tied document and three for an ordinary one. The Gemara answers: Since the tied document requires more to be done with regard to its ties, it stands to reason that it requires more to be done with regard to its witnesses, requiring three rather than two.

[10] Rami bar Yeḥezkel said that there is a different source for two sets of halakhot for two types of documents from here: “At the mouth of two witnesses or at the mouth of three witnesses shall a matter be established” (Deuteronomy 19:15). If witnesses’ testimony is established with two witnesses, why did the verse specify for you that it is also established with three, which is self-evident? Rather, this verse serves to tell you that there is a requirement for two witnesses for an ordinary document, and a requirement for three witnesses for a tied document.

[11] The Gemara questions this explanation: But I can just as well reverse it, requiring two witnesses for a tied document and three for an ordinary one. The Gemara answers: Since the tied document requires more to be done with regard to its ties, it stands to reason that it requires more to be done with regard to its witnesses, requiring three rather than two.

[12] The Gemara asks: And is it so that these verses are coming for this purpose, to teach that there are two types of documents? But each and every one of them comes for its own purpose. The first verse comes for that which is taught in a baraita: When the verse states: “They shall buy fields for money, and subscribe the deeds, and seal them, and call witnesses” (Jeremiah 32:44), it is merely to teach us good advice, that people should carefully document their purchases in order to provide permanent proof of purchase. When the verse states: “So I took the deed of the purchase” (Jeremiah 32:11), this was merely how that incident occurred, and the phrase is not intended to teach any halakhot. When the verse states: “At the mouth of two witnesses or at the mouth of three witnesses shall a matter be established” (Deuteronomy 19:15), this is stated in order to juxtapose three witnesses with two witnesses for several reasons, as delineated in the dispute between Rabbi Akiva and the Rabbis (Makkot 5b).

[13] The Gemara explains: Rather, the entire institution of the tied document is rabbinic in origin, and all these verses that were cited above by various amora’im were intended as mere support for the concept of a tied document, as opposed to actual sources.

[14] The Gemara asks: And what is the reason that the Sages instituted the tied document? The Gemara explains: There was a place where there were many priests, and they were very quick tempered, and they would seek to divorce their wives impetuously. The halakha is that a priest may not marry a divorcée, even his own ex-wife. These priests, who acted impetuously, often regretted having divorced their wives. And therefore, the Sages instituted an ordinance that the bill of divorce for these people should be of the tied format, which is a long, drawn-out process, hoping that meanwhile, their composure would be regained and they would reconsider their decision to divorce.

[15] The Gemara asks: This works out well for bills of divorce, but what can be said with regard to other documents? Why is this procedure used for other documents as well? The Gemara answers: This was instituted so that you should not differentiate between bills of divorce and other documents.

[16] § Where do the witnesses sign on a tied document? Rav Huna says: They sign between each tied fold. And Rav Yirmeya bar Abba says: They sign on the back of the written side, taking care that the signatures are exactly opposite the writing, on the outside.

[17] Rami bar Ḥama said to Rav Ḥisda: According to Rav Huna, who says that the witnesses sign between each tied fold, it enters our mind that he meant between each tied fold on the inside of the document. But this is difficult, as there was a certain tied document that came before Rabbi Yehuda HaNasi, and Rabbi Yehuda HaNasi, not realizing it was tied, said: There is no date on this document, so it is not valid. Then, Rabbi Shimon, son of Rabbi Yehuda HaNasi, said to Rabbi Yehuda HaNasi: Perhaps the date is hidden between the tied folds. Rabbi Yehuda HaNasi opened it and saw that the date was in fact between the tied folds. And if it is so that the witnesses sign between each tied fold on the inside of the document, Rabbi Yehuda HaNasi should have had two objections, and said: There is no date on this document, and there are also no witnesses signed on this document.

[18] Rav Ḥisda said to him: Do you maintain that Rav Huna meant that the witnesses sign between the tied folds on the inside? No, he meant between the tied folds on the outside of the document.

[19] The Gemara questions Rav Huna's opinion: But let us be concerned that perhaps the party holding the document falsified some information and wrote whatever he wanted. And this is a concern, as there are already witnesses signed on the document. In an ordinary document the witnesses sign immediately following the text, so there is no possibility of adding to the text. A tied document has part of its text written in the folds, but also has a part written on the face of the document on the unfolded paper, before or after the text in the folded part. If the witnesses sign between the folds there is the possibility of writing additional text in the unfolded section.

[20] The Gemara explains: The case is one where it is written in the document: Everything is confirmed and established. That is, every folded document must contain this formula at the end of the text, to prevent forgery, as any writing after this formula would be disregarded.

[21] The Gemara questions this explanation: But let us be concerned that perhaps the holder of the document wrote whatever he wanted and afterward wrote another time: Everything is confirmed and established. The Gemara explains: We write only one declaration of: Everything is confirmed and established; we do not write two declarations of: Everything is confirmed and established. Therefore, anything written after the first declaration would be rejected, even if followed by a repetition of the declaration.

[22] The Gemara questions further: But let there be a concern that perhaps the holder of the document erased the declaration: Everything is confirmed and established, and then wrote whatever he wanted over the erasure, and afterward wrote the declaration: Everything is confirmed and established. The Gemara responds: How could this happen? Doesn't Rabbi Yoḥanan say: A document that includes a suspended correction of text inserted between lines of the document, which is verified at the end of the document, is valid;

[23] but a document with a reference to words written over an erasure is not valid, even if it is verified at the end of the document. At the end of a document, before the formula: Everything is confirmed

and established, is written, any corrections made in the document are verified by adding to the text: On line so-and-so, such and such a word has been added, or some similar formulation. This may be done only for inserted corrections, not for erasures.

[24] The Gemara clarifies this statement: And they said that an erasure on a document renders the document not valid only if it is in a place on the document where the declaration: Everything is confirmed and established, should have been written, and only if the erasure is the measure of space in which the declaration: Everything is confirmed and established, can be written. The only concern with erasures is that the crucial formula: Everything is confirmed and established, might have been erased, as this would allow for unlimited forgery. If the erasure is such that this formula could not possibly have been erased, the document is valid.

[25] § Rami bar Ḥama asked Rav Ḥisda: And according to Rav Yirmeya bar Abba, who says that the witnesses sign on the back of the written side, taking care that the signatures are exactly opposite the writing, on the outside let there be a concern that perhaps the party holding the document will write whatever he wants on the inside, i.e., the front of the document, adding to the text, and then have extra witnesses sign on the outside, and he will say to anyone questioning the number of witnesses being more than the minimum: I did this in order to increase the number of witnesses, the more to publicize the matters written in the document.

[26] Rav Ḥisda said to him: Do you maintain that the witnesses sign in order, that is, one under the other, starting from the top of the page on the back? This is not correct; rather, the witnesses sign from bottom to top. The witnesses sign in a perpendicular direction relative to the text of the document. The first signature begins at the reverse side of the last line of the document, and it continues upward toward the first line. There is therefore no possibility of adding to the text of the document, as, if the text extended beyond the beginning of the signatures, it would be recognized as a forgery.

[27] Rami bar Ḥama continues to question the method of signature prescribed by Rav Yirmeya bar Abba: But let there be a concern that perhaps something detrimental to the holder of the document happens to appear in the final line of the document, and he excises the final line, and in doing so excises the first name of the witness on the opposite side as well. For instance, if the witness's name is Reuven, son of Ya'akov, he will excise Reuven along with the final line of the document, and the document will be rendered valid with the remaining part of the signature: "Son of Ya'akov, witness." As we learned in a mishna (Gittin 87b): If one signs: Son of so-and-so, witness, without mentioning his own name, the document is valid.

[28] The Gemara answers: It is a case where it is written "Reuven, son of" on one line, i.e., opposite the final line of the document, and "Ya'akov, witness," above it, beginning from the penultimate line of the document and continuing upward in a perpendicular manner. That is, a tied document is valid only if the witnesses sign in this manner. In this case, if the final line of the document is excised, all that will remain of the signature will be: "Ya'akov, witness."

[29] Rami bar Ḥama continues to ask: But let there be a concern that perhaps he will excise the final line of the document, along with the words "Reuven, son of," and the document will be rendered valid with the remaining part of the signature: "Ya'akov, witness." As we learned in a mishna (Gittin 87b): If someone signs just: So-and-so, witness, the document is valid.

[30] The Gemara answers: It is a case where the word witness is not written after the witnesses' names. That is, a tied document is valid only if the word witness does not appear after the signatures. It is only in such a case that the document cannot be materially changed by excising the final line without rendering the witnesses' names disqualified.

[31] And if you wish, say instead that actually the witness did write "witness" after his signature, and the case is one where we know for a fact that this signature, which consists of the words "Ya'akov, witness,"

[32] is not Yaakov's signature. That is, it is known for a fact that there is no one living in the city where the document was written who is named Ya'akov and whose signature matches the signature on this document. Therefore, the court will recognize that the signature must have originally stated: "So-and-so, son of Ya'akov, witness," and that the last line had been excised, and they will invalidate it.

[33] Rami bar Ḥama challenges: But perhaps this witness signed using the name of his father instead of his own name, as a gesture of respect toward his father. The Gemara answers: This is not done; a person does not discard his own name and sign using only the name of his father.

[34] Rami bar Ḥama challenges further: But perhaps the witness made this name into a mere distinguishing mark that he uses as his signature, as it is known that Rav used to draw a fish as his signature mark, rather than signing his name, and Rabbi Ḥanina used to draw a palm branch as his signature mark, and Rav Ḥisda used to sign just the letter samekh, and Rav Hoshaya used to sign just the letter ayin, and Rava bar Rav Huna used to sign his name by drawing a ship's mast [makhota]. The Gemara answers: A person is not so insolent as to use his father's name as a distinguishing mark.

[35] Mar Zutra said: Why do you need all this? Why go to such lengths to answer the question posed above? There is a simpler answer: Any tied document whose witnesses do not end on a single line is not valid. The Gemara had previously assumed that the witnesses sign one after the other, beginning at the document's bottom line and going upward toward the first line; this arrangement leaves open the possibility that the signature of the first witness could be truncated by an unscrupulous party. Mar Zutra explains that this is not so; rather, the signatures are written with each one beginning opposite the bottom line and heading upward toward the beginning of the document. Therefore, if a line of text is excised from the bottom of the document, the names of all the witnesses on the reverse side will be truncated, and the forgery will become apparent.

[36] § Rav Yitzḥak bar Yosef says that Rabbi Yoḥanan says: There are two halakhot with regard to documents: For any erasures in a document, the scribe must write at the end of the document: And this is their verification. That is, he must list the erasures, stating that on line so-and-so there is an erasure and a correction stating such and such, for each erasure. And the second halakha is that the scribe must review some of the details of the document in the final line of the document. What is the reason for this second requirement?

[37] Rav Amram says: It is because one may not learn any new details from the final line of a document. There is a concern that the holder of the document may have written in an extra line of text to his advantage, between the text and the witnesses' signatures. Therefore, any new information contained in the last line is disregarded. Since the final line is disregarded, it is necessary that the final line of a document contain only a review of what is already written in it.

[38] Rav Naḥman said to Rav Amram: From where do you know this? Rav Amram said to him: As it is taught in a baraita (Tosefta 11:1): If one writing a document distanced the witnesses' signatures two lines from the text of the document, leaving two lines blank, the document is not valid, as it would be possible for the holder of the document to fill in false information in those lines. But if one distanced the signatures one line from the text, the document is valid.

[39] Rav Amram analyzes the baraita: What is different in the case of two blank lines that the document is not valid? If you say that perhaps the holder of the document will take advantage of those two blank lines, and forge unverified information and write it in those lines, then in the case of one line left blank as well, he can forge information and write it in that line. Rather, must one not conclude from the baraita that one may not learn any new details from the final line of a document? Therefore, only when two lines are left blank is there a concern that false information would be added to the penultimate line. The Gemara affirms: Conclude from this baraita that it is so.

[40] A dilemma was raised before the Sages: If the space of a line and a half is left blank, what is the halakha? The Gemara seeks a solution to the dilemma. Come and hear what was stated in the baraita cited earlier: If one writing a document distanced the witnesses' signatures two lines from the text of the document, leaving two lines blank, the document is not valid. One can infer: But if there is a gap of only a line and a half, the document is valid.

[41] The Gemara deflects this proof: Say the last clause of the baraita: If one writing a document distanced the witnesses' signatures one line from the text of the document, the document is valid. One can infer: It is only when there is a gap of one line that the document is valid, but if there is a gap of a line and a half it is not valid. The Gemara states: Rather, no inference is to be learned from this baraita.

[42] What halakhic conclusion was reached about this matter? Come and hear a proof from a different source, as it is taught in a baraita (Tosefta 11:10): If one writing a document distanced the witnesses' signatures two lines from the text of the document, the document is not valid, but if the gap is less than that, it is valid. It is clear from the baraita that any gap less than two full lines does not invalidate the document.

[43] The baraita continues: If there were four or five witnesses signed on the document, and one of them was found to be a relative of one of the parties in the document, or one of them was found to be otherwise disqualified from bearing witness, the testimony on the document may be established via the other witnesses.

[44] The Gemara draws a further conclusion from this baraita: This supports the opinion of Ḥizkiyya, as Ḥizkiyya says: If one filled in the gap between the document and the signatures with signatures of relatives, the document is valid.

[45] Ḥizkiyya continued: And do not be surprised by this, as a similar situation is found with regard to the roofing of a sukka. Empty space in the roofing of a sukka disqualifies the sukka if the space extends for three handbreadths, whereas materials that are unfit to be used as roofing disqualify the sukka only if the unfit material extends for four handbreadths. If a sukka had a gap in its roofing of three handbreadths it is disqualified, but if the gap is filled in with unfit material the sukka is valid, since it is less than four handbreadths. This is comparable to the situation with a document: If there is a significant gap between the text and the signatures the document is not valid, but if the gap is filled in with signatures of those disqualified from bearing witness it is valid.

[46] § A dilemma was raised before the Sages: With regard to the gap of two blank lines between the text and the signatures, which the Sages said invalidates the document,

[47] does this refer to the size of lines with the space between lines added? Or is it perhaps referring to lines of writing themselves, without their spaces?

[48] Rav Naḥman bar Yitzḥak said: It stands to reason that it is referring to the lines with their spaces. As, if it were to enter your mind that it is referring to the lines without their spaces, for what is one line without its space fit? The baraita did not have to state that a document with a single blank line after the text, measured without counting spaces, is not forgeable; this is obvious. Rather, one may conclude from this claim that the reference is to two lines with their spaces. The Gemara affirms: Conclude from this claim that it is so.

[49] Rabbi Shabbtai says in the name of Ḥizkiyya: With regard to the gap of two blank lines between the text and the signatures, which the Sages said invalidates the document, the lines are measured by the handwriting of witnesses, and not by the handwriting of a scribe, who is presumably skilled enough to write in a smaller script. What is the reason for this? Anyone who forges a document, adding additional lines to the document, would not go to a scribe and ask him to forge it; he would execute the forgery himself, or have another unscrupulous person who is not a professional scribe forge it. Therefore, in order to present a concern for possible forgery, a document must have two blank lines that are measured by the handwriting of an ordinary person, such as one of the witnesses.

[50] The Gemara has established that the width of the gap required to invalidate the document is two lines with interlinear space. The Gemara clarifies: And how much interlinear space is necessary to invalidate the document? Rav Yitzḥak ben Elazar says: For example, enough to write the Hebrew word lekha, and then the Hebrew word lekha, this word on top of that one. These two words each consist of the two letters lamed and final khaf; the former has a projection that fully occupies the interlinear space above it, and the latter has a projection that fully occupies the interlinear space below it. Writing these words one under the other, then, would require an additional interlinear space above and below both lines. The Gemara concludes: Apparently, Rav Yitzḥak ben Elazar maintains that the empty space required to invalidate the document is the width of two written lines with four interlinear spaces.

[51] Rav Ḥiyya bar Ami states a different opinion in the name of Ulla: For example, enough to write a lamed on the upper line and a final khaf on the lower line. The Gemara concludes: Apparently, Ulla maintains that the empty space required to invalidate the document is the width of two written lines with three interlinear spaces, one above the first line, one between the two lines, and one beneath the second line.

[52] Rabbi Abbahu states a different opinion: For example, enough to write the name Barukh ben Levi on one line. Barukh contains a final khaf, and Levi contains a lamed. The Gemara concludes: Apparently, Rabbi Abbahu maintains that the empty space required to invalidate the document is the width of one written line with two interlinear spaces, one above the line and one beneath the line.

[53] § Rav says: They taught in the baraita that a gap of two lines invalidates the document only if that space is between the witnesses' signatures and the text of the document. But if there is a gap between the witnesses' signatures and a court's ratification of the document, which follows the witnesses' signatures, then even if there is more space than this, the document is valid.

[54] The Gemara asks: What is different about the case where the gap is between the witnesses and the text, that it invalidates the document? There is a concern that perhaps the holder of the document may forge additional lines and write whatever he wants, and the witnesses have already signed at the bottom, giving the appearance that they attest to the added lines as well. But the same concern can be raised concerning a gap between the witnesses' signatures and the court's ratification as well: There, too, he can forge additional lines and write whatever he wants, and have witnesses sign it, with the court's ratification giving the appearance that it attests to the added lines and signatures as well. Why is this document valid?

[55] The Gemara explains: When is a gap between the witnesses' signatures and the court's ratification not problematic, according to Rav? Only when someone inks in the blank space with lines or dots, to prevent information from being added there. The Gemara asks: If so, the gap between the witnesses' signatures and the text of the document should also be made irrelevant in this manner: Let the scribe ink in [metayyet] the blank space. Why, then, was it taught categorically that the witnesses must sign within two lines of the text?

[56] The Gemara answers: Inking in the gap between the text and the signatures of the witnesses will not help, as people might say, i.e., the concern might be raised: The witnesses are signed only on the inking in. It is possible that the witnesses' signatures were affixed only to attest that the inking was done in their presence and that the inking in is not a sign of duplicity, and their signatures do not relate to the actual text of the document. The Gemara asks: If so, raise the same concern when the gap between the witnesses' signatures and the court's ratification is inked in; there too, people might say: The court's ratification is signed only for the inking in, and not for the actual text of the document. The Gemara answers: A court does not sign on mere inking in; their ratification is always in reference to the entire document.

[57] The Gemara raises another issue: And let there be a concern that perhaps the holder of the document will excise the entire text that appears above the signatures, and then erase the inked-in part and write whatever he wants in that erased area, and have unscrupulous witnesses sign it. And this would be a valid document, as Rav says: A document that comes before the court for ratification in which its content and the signatures of its witnesses are both written over an erasure is valid. The court ratification would then be assumed to be referring to this new, forged document.

[58] This works out well, i.e., this concern does not apply, according to Rav Kahana, who teaches in the name of Shmuel that a document in which its content and its witnesses' signatures are both written over an erasure is valid; according to him, all is well. It is Rav who says that an inked-in gap between the witnesses' signatures and the court's ratification is acceptable, and it is Shmuel who says that a document that is written and signed over an erasure is acceptable. But according to Rav Tavyumei, who teaches this latter statement in the name of Rav, what can be said? According to him, Rav said both statements, and taken together they pose a difficulty: The inked-in gap between the witnesses' signatures and the ratification can easily be erased and a new document with signatures can be written over the erasure.

[59] The Gemara answers: Rav maintains that in all cases like this, where a document and its witnesses' signatures are written over an erasure and there is a court ratification on a non-erased part of the paper, the later court ratifies the document not on the basis of the previous court's ratification that is on it, but only on the basis of the signatures of the witnesses that are on it. Therefore, the

forging of a document in this manner is impossible, as the prior ratification of the court is disregarded, and the witnesses will attest to what they signed upon.

60 The Gemara cites another opinion: And Rabbi Yoḥanan says: They taught in the baraita that a gap of one line does not invalidate the document only in the case where that space is between the witnesses' signatures and the text of the document. But if the gap is between the witnesses' signatures and a court's ratification of the document, then a space of even one line renders the document not valid.

61 The Gemara asks: What is different about the case where there is a one-line gap between the witnesses' signatures and the court's ratification that you say it is not valid? The Gemara answers: There is a concern that perhaps the holder of the document will excise the entire text of the document at the top of the paper and then write a new, brief document, with its text and the signatures of its witnesses on one line. The court's ratification will appear to verify the new, forged document. And Rabbi Yoḥanan holds that a document that comes before the court with its text and the signatures of its witnesses appearing on one line is valid.

62 The Gemara suggests: If so, the same problem also exists when there is a one-line gap between the witnesses' signatures and the text: There should be a concern that perhaps he will excise the entire text of the document at the top of the paper and then write whatever he wants in a brief, one-line document. And the witnesses' signatures on the next line, which are there from the old document, will still be signed there, appearing to attest to the veracity of the new, one-line document. The Gemara answers: Rabbi Yoḥanan holds that a document that comes before the court with its text on one line and the signatures of its witnesses appearing on another line, i.e., on the following line, is not valid.

63 The Gemara suggests: And let there be a concern that perhaps the holder of the document will excise the entire document, leaving only the blank line and the signatures that follow it, and he will write a brief document in which its text and the signatures of its witnesses are on one line, followed by the original signatures that remained from the original document, and he will say: I did this in order to increase the number of witnesses, the more to publicize the matter written in the document. The document is therefore still forgeable.

64 The Gemara answers: Rabbi Yoḥanan maintains that in all cases like this, where a document and its witnesses' signatures are written on one line, followed by other signatures on subsequent lines, the court ratifies the document not on the basis of the signatures of the witnesses that are on the bottom, but on the basis of the signatures of the witnesses that are on top, on the same line as the text. Therefore, the forging of a document in this manner is impossible. The false signatures of the witnesses will be discovered when those witnesses attest to what they signed upon.

65 § Having cited Rav's statement, the Gemara discusses the matter itself. Rav says: A document that comes before the court in which its content and the signatures of its witnesses are both written over an erasure is valid.

66 And if you say: There is a possibility of forgery with such a document, as the holder of the document can erase the original writing on the paper, then write the text of the document and have witnesses sign on the part that had been erased, then erase the document text once again, substituting for it a text that is more to his advantage, leaving the original signatures in place, this is not a valid argument. Paper that has been erased once is not similar in appearance to paper that has been erased

twice. It will be seen that the signatures are on a place that had been erased once and that the text is written on a place that had been erased twice, and the forgery will be noticed.

[67] The Gemara suggests: But let there be a concern that perhaps the holder of the document will initially, after the entire original document, including the signatures, has been erased, but before the second one is written, throw some ink on the place where the witnesses are to sign under the text of the second document, and then erase that ink. He will do this so that when, after the witnesses have signed, he then erases the document text and writes a false text, it will emerge that both this, the new document's text, and that, the signatures, will be on paper that had been erased twice.

[68] Abaye said in response: Rav holds that witnesses may not sign a document written over an erasure unless the paper was erased in their presence, i.e., unless they saw the paper after its old text had been erased, before the new text was written. They will then see that the place where they are to sign has been erased twice, while the place where the document is to be written has been erased only once. They will realize that this leaves open an opportunity of subsequent erasing and falsification, and they will refrain from signing.

[69] The Gemara raises an objection to the opinion of Rav from a baraita: A document in which its text is on a part of the paper that has never had writing erased and the signatures of its witnesses are on an erasure is valid. The Gemara suggests: But let us be concerned that perhaps the holder of the document will erase the text and write in its place whatever he wants, and it will then be a document where both its text and the signatures of its witnesses are on an erasure. Since Rav maintains that such a document is valid, it is easily forgeable in this manner.

[70] The Gemara answers: Such a document is valid only in a case where the witnesses write this: We, the witnesses, signed on an erasure, but the document text was written on a part of the paper that never had writing erased. If the holder of the document then tries to erase the original text and write new text in its place, the forgery will be noticed.

[71] The Gemara asks: Where do the witnesses write this declaration? If they write it underneath their signatures, the holder of the document can simply excise it. And if they write it above their signatures, the holder of the document can erase it along with the text of the document. The Gemara answers: They write the declaration between the signature of one witness and the signature of the other witness.

[72] The Gemara asks: If that is so, that the baraita is discussing a case in which the witnesses write a declaration about the circumstances of the document's condition, say the latter clause of the baraita: A document in which its text is on an erasure and the signatures of its witnesses are on a part of the paper that never had writing erased is not valid. The Gemara presents its question: Why is such a document not valid? Here, too, let the witnesses write this: We, the witnesses, signed on paper that never had writing erased, but the document text was written on an erasure.

[73] Now in this case as well it should be valid, as what can you say to argue that it is a forgeable document? If you say that the holder of the document, having erased the original document, can erase the writing once again and write a new, false document, this is not a concern, as didn't you say that paper that has been erased once is not similar in appearance to paper that has been erased twice? It would therefore be noticeable that the document had been erased a second time, and the forgery would be noticeable. The Gemara answers: That statement applies only when the witnesses are signed on an erasure, and the appearance of that erasure can be compared with the appearance of a

double erasure. But in a case where the witnesses are signed not on an erasure but on paper that has not had its writing erased, so that there is no contrast between a single erasure and a double erasure, the forgery would not be known.

[74] The Gemara suggests: But let the court bring another parchment, write something on it and erase it, and then compare this single erasure with the erasure on the document in question. If the document were erased twice, a contrast would be seen between a single erasure and a double erasure. The Gemara answers: The erasure of this parchment is not necessarily similar to the erasure of that parchment. A single erasure on one parchment might resemble a double erasure on a different parchment.

[75] The Gemara continues to suggest: But let us accept, i.e., verify, the signatures of the witnesses on the document in court, after which they may safely be erased; and then erase the signatures and compare that erasure to the erasure of the document text, to see if it was erased once or twice. In response to this question Rav Hoshaya says: That which is erased on the same day that it was written is not necessarily similar to that which was erased two days ago, i.e., more than a day after it was written. An older erasure looks different from a new one, so the comparison might not show that there was a double erasure in the document.

[76] The Gemara suggests: But let us retain the document for an extra day, at which point both erasures will be old and can be compared. Rabbi Yirmeya said in response: We are concerned for the possibility of an erring court. If such complicated procedures were used in order to declare a document valid, there would be a chance that a particular court would not apply them properly, and that court would end up ratifying a document that was not valid.

[77] § The mishna teaches that Rabbi Ḥanina ben Gamliel says: A tied document whose witnesses wrote their signatures inside of it is valid, because one can transform it into an ordinary document by untying it. Rabbi Yehuda HaNasi raised an objection to the statement of Rabbi Ḥanina ben Gamliel:

[78] But the date of this one, a tied document, is not the same as the date of that one, an ordinary document. In an ordinary document, when the king has reigned for one year, one year is counted for him, and when he has reigned for two years, two years are counted for him. By contrast, in a tied document, when the king has reigned for one year, two years are counted for him, and when he has reigned for two years, three years are counted for him. If a tied document is simply opened up and used as an ordinary document, then it will emerge that it is postdated by a year.

[79] Rabbi Yehuda HaNasi continues: And there are times this can be problematic, as in a case where the debtor borrows money from the creditor, and the details of the loan are written in a tied document. And the debtor chances upon some money in the interim, i.e., during the first year after the document was written, and he repays the creditor, and says to him: Give me back my promissory note, as I have just repaid you. And the creditor says to the debtor: I lost the document and cannot give it to you. And in lieu of returning the promissory note, the creditor writes a receipt for the debtor, as protection against a second collection.

[80] Rabbi Yehuda HaNasi continues: And then, when the time for repayment written in the promissory note arrives, the creditor will make it into an ordinary document by undoing its stitches and opening it up, and he can then say to the debtor: It is now that you borrowed this money from me, as attested in this promissory note, and the receipt you have in your possession is for a previous debt, as its date precedes the date on my document.

[81] The Gemara answers: Rabbi Ḥanina ben Gamliel holds that one does not write a receipt in such cases. If a creditor loses his promissory note, the debtor need not pay him at all, out of concern that the debt may one day be collected again when the promissory note is found. He is not required to pay the debt and accept only a receipt, which he will then have to guard permanently to protect himself against a second collection.

[82] The Gemara asks with regard to the previous discussion: And was Rabbi Yehuda HaNasi expert in the halakhot of tied documents? But wasn't there a certain tied document that came before Rabbi Yehuda HaNasi, and when Rabbi Yehuda HaNasi saw the date he said: This is a postdated document. And a Sage named Zunin said to Rabbi Yehuda HaNasi: Such is the custom of this nation; when the king has reigned for one year, two years are counted for him, and when he has reigned for two years, three years are counted for him. The document is therefore not postdated. From this anecdote it is clear that Rabbi Yehuda HaNasi himself had not been familiar with this practice.

[83] The Gemara answers: After Rabbi Yehuda HaNasi heard it from Zunin he accepted the explanation and held this way himself, and that is what prompted him to raise his objection.

[84] § There was a certain document on which was written, as its date: In the year of so-and-so, Archon [Arkhan], a title for a ruler, without stating any particular year of his reign. Rabbi Ḥanina said: Let it be investigated when it was that this Archon rose to his position of archon, i.e., find out the year he came to power, and the validity of the document is established from that year.

[85] The Gemara suggests: But perhaps the writer of the document was using an Aramaic or Hebrew term, and intended to say that the reign of so-and-so had already extended [arikh] for several years. Rav Hoshaya says: Such is the custom of this nation where the document was written: In the first year of the king's reign they refer to him with the title Archon; in his second year they refer to him with the title Digon.

[86] The Gemara suggests: But perhaps the people deposed the ruler and then reinstated him, and the document was written in the first year of his second reign. Rabbi Yirmeya said: In that case, they would refer to him with the title Archon Digon.

[87] § Apropos these Greek terms, the Gemara cites two baraitot that mention them. The Sages taught (Tosefta, Nazir 1:2) that if one said: I am hereby a nazirite heina, or stated a similar expression with other comparable Greek terms, Sumakhos said that his status depends on which term he used. If he used the word heina, he is a nazirite for one term of naziriteship, i.e., thirty days; if he said digon, he is a nazirite for two terms of thirty days each; if he said terigon, he is a nazirite for three terms; tetrigon, for four terms; pentigon, for five terms.

[88] The Sages taught in another baraita (Tosefta, Nega'im 6:3): A round house, or one that is shaped like a digon, i.e., it has two walls, one straight and one curved, or one that is shaped like a terigon, i.e., a triangle, or one that is shaped like a pentagon, does not become susceptible to the ritual impurity of leprous spots. If it is shaped like a tetrigon, i.e., a quadrilateral, it becomes susceptible to the ritual impurity of leprous spots.

[89] The Gemara asks: From where are these matters derived? The Gemara answers: It is as the Sages taught in a baraita: The Torah states above: "If the plague be in the walls of the house" (Leviticus 14:37). The verse did not state: A wall, but "walls," indicating that the house in question has at least two walls. And where it states below: "If the plague has spread in the walls of the house" (Leviticus

14:39), instead of stating: A wall, the verse states “walls,” indicating another two walls. There are a total of four walls mentioned here in order to indicate that a house can become impure through leprous spots only if it has four sides.

90 § The Gemara relates: There was a certain tied document that came before Rabbi Yehuda HaNasi, and Rabbi Yehuda HaNasi, not realizing it was a folded document, said: There is no date on this document, so it is not valid. Rabbi Shimon, son of Rabbi Yehuda HaNasi, said to Rabbi Yehuda HaNasi: Perhaps the date is hidden between its tied folds. Rabbi Yehuda HaNasi opened it and saw that the date was in fact between the tied folds. Afterward, Rabbi Yehuda HaNasi looked at his son disapprovingly, as he held that one should not write a tied document. His son said to him: I did not write it; Rabbi Yehuda Ḥayyata wrote it. Rabbi Yehuda HaNasi said to his son: Turn away from uttering this kind of malicious speech.

91 Another time, Rabbi Shimon was sitting before his father and reciting a section of the book of Psalms. Rabbi Yehuda HaNasi said to him: How straight and neat is this writing in this book from which you are reading. Rabbi Shimon said to him: I did not write it; Yehuda Ḥayyata wrote it. Rabbi Yehuda HaNasi told his son: Turn away from uttering this kind of malicious speech.

92 The Gemara asks: Granted, there, in the first episode, there is malicious speech involved, since Rabbi Yehuda HaNasi was displeased with the writer of the document, but here, in the second episode, what malicious speech is there? Rabbi Yehuda HaNasi was complimenting the writer of the book of Psalms, not criticizing him. The Gemara answers: It is because of what Rav Dimi teaches. As Rav Dimi, the brother of Rav Safra, teaches: A person should never speak the praises of another, as out of the praise spoken about him someone may come to speak to his detriment.

93 Rav Amram says that Rav says: There are three sins from which a person is not spared each day. They are: Having sinful thoughts, and committing sins concerning deliberation in prayer, and uttering malicious speech. The Gemara asks: Can it enter your mind that a person cannot go through the day without uttering malicious speech?

94 The Gemara answers: Rather, Rav was referring to uttering a hint, i.e., words with a bare trace, of malicious speech.

95 Rav Yehuda says that Rav says: The majority of people succumb to sin with regard to robbery, and a minority of people succumb to sin with regard to sexual matters, and everyone succumbs to sin with regard to malicious speech. The Gemara asks: Can it enter your mind that all people sin with regard to malicious speech? The Gemara answers: Rather, Rav was referring to uttering a hint of malicious speech.

96 § The mishna teaches, with regard to documents, that Rabban Shimon ben Gamliel says: Everything is in accordance with regional custom. The Gemara wonders: And does the first tanna not accept that one should follow the regional custom? It is not reasonable that he would take issue with such a basic concept.

97 Rav Ashi said in explanation: In a place where the custom is to write an ordinary document, and one said to a scribe: Make an ordinary document for me, and the scribe went and made a tied document for him, it is assumed that he was particular about wanting an ordinary document. Similarly, in a place where the custom is to write a tied document, and one said to a scribe: Make a tied document for me, and the scribe went and made an ordinary document for him, it is assumed that

he was particular about wanting a tied document. In both of these cases, the document is considered to have been written without the consent of the one who requested it. If it is a bill of divorce it may not be used, as a bill of divorce must be written with the knowledge and consent of the husband.

98 When the tanna'im of the mishna disagree is in a place where the custom is to write both an ordinary document and a tied document, and one said to a scribe: Make an ordinary document for me, and the scribe went and made a tied document for him. In such a case, one Sage, the first tanna, holds that the one requesting the document was particular about wanting an ordinary document, and since the scribe wrote a tied document, it is considered to have been written without his consent. And one Sage, Rabban Shimon ben Gamliel, holds that the one requesting the document was merely indicating his position to the scribe, stating that if the scribe wanted to save himself the trouble of writing a tied document there would no objection.

99 Abaye said: Concerning Rabban Shimon ben Gamliel, and Rabbi Shimon, and Rabbi Elazar, they all hold that when one gives instructions to an agent, he is merely indicating his position to him, as opposed to expressing an insistence on certain details.

100 Rabban Shimon ben Gamliel holds this is the case, as we have just said. Rabbi Shimon holds this as well, as we learned in a mishna (Kiddushin 48a), as explained by the Gemara there, that the first tanna rules that if a woman appoints an agent to accept her betrothal money and tells him that the man will be giving a golden dinar, or that he will be giving a silver dinar, and he in fact gives the other type of dinar, the betrothal is not valid, as in accepting the wrong dinar the agent did not follow the woman's instructions exactly.

101 But Rabbi Shimon says: If he misled her to her advantage, i.e., he told her he was going to give a silver dinar and gave her a golden dinar, she is betrothed. When the woman told the agent to receive the silver dinar she did not mean to insist that the dinar be silver as opposed to gold, but was only indicating her position, which is that she would have no objection to receiving only a silver dinar.

102 Abaye continues: Rabbi Elazar also holds this, as we learned in a mishna (Gittin 65a): With regard to the woman who, when designating her agent for receipt of her bill of divorce, said to her agent: Receive my bill of divorce for me in such and such a place, and he received it for her in another place, the divorce is invalid; and Rabbi Elazar deems it valid. One Sage, the first tanna, holds that the woman is particular that her instructions be followed, and one Sage, Rabbi Elazar, holds that she was merely indicating her position to the agent, informing him of where she thought her husband would be.

103 § The mishna teaches: With regard to an ordinary document in which the signature of a single witness is written, and a tied document in which the signatures of only two witnesses are written, they are both not valid. The Gemara asks: Granted, it was necessary for the mishna to teach that a tied document in which the signatures of only two witnesses are written is not valid, as it might enter your mind to say that since generally a document is valid with two signatures, here too it is valid; therefore, the mishna teaches us that it is in fact not valid. But why was it necessary to state that an ordinary document in which the signature of a single witness is written is not valid; isn't this obvious?

104 Abaye said: It is necessary to state this halakha only to teach that even if there is one witness signed on the document in writing and, in addition, one witness testifies orally to the contents of the document, the document is not valid.

[105] The Gemara relates: Ameimar deemed a document valid in the case of one witness signed on the document in writing and one witness testifying orally to the contents of the document. Rav Ashi said to Ameimar: And what of that statement of Abaye, which deemed such a document invalid? Ameimar said to him: I did not hear of it, as though to say: I do not hold like it; I disagree with Abaye.

[106] Rav Ashi asks: But if you disagree, the difficulty

[107] with the mishna remains: Why does the mishna state that which is obvious, that a document with a single witness's signature is not valid?

[108] The Gemara answers that the mishna teaches us this: That the case of two witnesses signed on a tied document is similar to the case of one witness signed on an ordinary document: Just as there, in the case of a single witness signed on an ordinary document, the disqualification is by Torah law, so too here, in the case of two witnesses signed on a tied document, the disqualification is by Torah law.

[109] Ameimar added: Know that the signature of one witness on a document and the oral testimony of one person about it can be combined into a single testimony, as the colleagues of the academy sent a question from there, i.e., Eretz Yisrael, to Rabbi Yirmeya seeking clarification of a baraita. The baraita states that the first tanna holds that the testimony of two witnesses to an event can be combined into a single testimony only if both of them witnessed the event together, while Rabbi Yehoshua ben Korḥa holds that the testimony can be combined even if they saw the event one after the other. Furthermore, the first tanna holds that their testimony is accepted only if they both testify together. By contrast, Rabbi Natan holds that the testimony of one witness may be accepted today, and when the other witness comes the next day his testimony may be accepted, and the two testimonies may thereby be combined.

[110] The dilemma they posed to Rabbi Yirmeya was this: In the case of a loan for which there is one witness in writing, signed on a promissory note, and one other witness who testifies to the loan orally, what is the halakha with regard to the possibility that the two of them will combine to testify as two witnesses?

[111] The dilemma is clarified: According to the opinion of the first tanna of the baraita, who engages in a dispute with Rabbi Yehoshua ben Korḥa, you should not raise the dilemma, as according to his opinion there are situations where even two testimonies in writing or two oral testimonies are not combined into a single testimony. All the more so they are not combined when one is written and one is oral. Rather, when should you raise the dilemma? Raise it according to the opinion of Rabbi Yehoshua ben Korḥa. The dilemma is: Is it only testimonies of two witnesses in writing or two oral witnesses that are combined into a single testimony, but we do not combine testimony of one witness in writing and one orally? Or perhaps there is no difference between these cases.

[112] Rabbi Yirmeya humbly sent back his response to the colleagues of the academy: I am not worthy of being the recipient of the query that you sent to me. But this is how the opinion of your student, i.e., himself, leans: That the testimonies should be combined. This exchange between Rabbi Yirmeya and his questioners indicates that Ameimar's opinion is accepted.

[113] Rav Ashi said to Ameimar: We teach this entire incident with Rabbi Yirmeya differently, as follows: That the colleagues of the academy sent this question to Rabbi Yirmeya: If there are two witnesses who testified, one in this court and one in that court, what is the halakha with regard to the

possibility that the judges of one court could come to the other court and in this manner the two testimonies will be combined to become a valid testimony of two witnesses?

[114] The dilemma is clarified: According to the opinion of the first tanna of the baraita, who also engages in a dispute with Rabbi Natan, you should not raise the dilemma, as according to his opinion, testimonies that are not given concurrently are not combined even in one court; all the more so when they are given in two different courts. Rather, when should you raise the dilemma? Raise it according to the opinion of Rabbi Natan. The dilemma is: Is it in one court that the two separate testimonies are combined, but when they are given in two separate courts they are not combined? Or perhaps there is no difference.

[115] And Rabbi Yirmeya sent back his response to them: I am not worthy of being the recipient of the query that you sent to me. But this is how the opinion of your student leans: That they should be combined. According to this version of the exchange between Rabbi Yirmeya and his questioners there is no relevance to Ameimar's statement.

[116] Mar bar Ḥiyya said yet a third version, that the dilemma the colleagues of the academy sent to Rabbi Yirmeya is as follows: If there are two witnesses who testified in this court and then testified in that court, what is the halakha with regard to the possibility that one judge would come from each court to one location and relate the testimony he had heard to the other, and in this manner the two testimonies will be combined?

[117] The dilemma is clarified: According to the opinion of Rabbi Natan you should not raise the dilemma. Now that he maintains that we combine two individual witnesses, is it necessary to ask if judges may be combined in this manner? They certainly can be combined. Rather, when should you raise the dilemma? Raise it according to the opinion of the first tanna of the baraita, who engages in a dispute with Rabbi Natan. The dilemma is: Is it only testimony of witnesses that we do not combine into a single testimony, but we do combine judges from two different courts? Or perhaps there is no difference.

[118] Rabbi Yirmeya sent back his response to them: I am not worthy of being the recipient of the query that you sent to me. But this is how the opinion of your student leans: That they should be combined.

[119] Ravina said a fourth version, that the dilemma the colleagues of the academy sent to Rabbi Yirmeya is as follows: If there were three judges who sat as a court to ratify a document, and, after verifying the signatures of the witnesses, one of the judges died, must they mention this in their statement of ratification, to account for why the declaration is signed by only two judges, and write: We were sitting in a group of three judges, and one of the judges is no longer alive? Or perhaps they are not required to write this.

[120] Rabbi Yirmeya sent back his response to them: I am not worthy of being the recipient of the query that you sent to me. But this is how the opinion of your student leans: That they are required to write: We were sitting in a group of three judges, and one of the judges is no longer alive.

[121] The Gemara relates: And it was because of this fitting answer, to whichever version of the dilemma that is adopted, that the Sages brought Rabbi Yirmeya into the study hall after he had been expelled, as related earlier in this tractate (23b).

[122] MISHNA: If it is written in a document that someone owes: One hundred dinars, which are twenty sela, which is internally inconsistent since there are twenty-five sela in a hundred dinars, the holder of the document has the right to claim only twenty sela, the lower of the two amounts. If it is written that he owes: One hundred dinars, which are thirty sela, the holder of the document has the right to claim only one hundred dinars, again the lower of the two amounts.

[123] If it is written that someone owes: Silver dinars that are, and the remainder of the text, where the number of dinars should be specified, was erased, the amount must be no less than two dinars, the lowest amount to which the plural word dinars can be referring. That is what the creditor can claim. Similarly, if it is written: Silver sela that are, and the remainder of the text was erased, the amount must be no less than two sela. And if it is written: Darics that are, and the remainder of the text was erased, the amount must be no less than two darics.

[124] If it is written in the document above, in an earlier place in the document, that someone owes one hundred dinars, and below, toward the end of the document, it is written that the amount owed is two hundred dinars, or if above it is written two hundred dinars and below one hundred dinars, everything follows the bottom amount. If so, why does one write the information in the upper part of the document at all? It is a safety measure, so that if one letter is erased from the lower part of the document, thereby rendering it illegible, the information can be learned from the upper part of the document.

[125] GEMARA: The Sages taught (Tosefta 11:2): If a document states that someone owes silver, without specifying which silver coin, the amount must be no less than a silver dinar. If it states: Silver dinars, or: Dinars silver, the amount must be no less than two silver dinars, the lowest amount to which that phrase can refer. If it states: Silver, in dinars, the amount must be no less than two golden dinars' worth of silver.

[126] The Gemara analyzes the beginning of the baraita. The Master says: If a document states that someone owes silver, without specifying which silver coin, the amount must be no less than a silver dinar. The Gemara asks: But why not say that the intention of the word silver is not to a coin at all, but to a small piece of silver? Rabbi Elazar said: The case of the baraita is where the word coin is written in the document. The Gemara asks further: But why not say that the intent is not a dinar, but smaller coins, such as perutot? Rav Pappa said: The halakha of the baraita is stated with regard to a place where silver perutot do not circulate.

[127] The Sages taught in the continuation of the baraita: If it is written in a document that someone owes gold, the amount must be no less than a golden dinar. If it is written: Golden dinars, or: Dinars golden, the amount must be no less than two golden dinars. If it is written: Gold, in dinars, the amount must be no less than two silver dinars' worth of gold.

[128] The Gemara analyzes the beginning of this section of the baraita. The Master says: If it is written in a document that someone owes gold, the amount must be no less than a golden dinar. The Gemara asks: But why not say that the intention of the word gold is not to a coin at all, but to a small piece of gold? Rabbi Elazar said: The case of the baraita is where the word coin is written in the document.

[129] The Gemara asks further: But why not say that the intent is not a dinar, but smaller coins, such as perutot? The Gemara answers: People do not make perutot of gold.

[130] The Gemara continues its analysis of the baraita, which states: If it is written: Gold, in dinars, the amount must be no less than two silver dinars' worth of gold. The Gemara asks: But why not say that the document is speaking of two golden dinars' worth of pieces of gold? Abaye says: This interpretation is also possible, but the guiding principle in all interpretations of ambiguities is that the holder of the document is at a disadvantage.

[131] The Gemara asks a question from the first clause of the baraita, which teaches that if the document states: Silver in dinars, the amount must be no less than two golden dinars' worth of silver. Why is he entitled to so much? Say that the document is speaking of silver only, and means: Two silver dinars' worth of silver pieces. This interpretation would be a lower value than the interpretation assigned to it by the baraita, and would be in keeping with the principle that the holder of the document is at a disadvantage.

[132] Rav Ashi said in reply that the text of the baraita should be emended: In the first clause the case is that the scribe wrote: Silver in dinars, using the plural form dinarei, which refers specifically to golden dinars. In the latter clause, the case is that the scribe wrote: Gold in dinars, using the plural form dinarin, which denotes silver dinars specifically.

[133] The Gemara supports its assertion that there is a difference between these two plural forms: And from where do you say that there is a difference between the words dinarei and dinarin?

[134] This is as it is taught in a mishna (Karetot 8a): In the case of a woman for whom there was uncertainty with regard to five births, and likewise a woman for whom there was uncertainty with regard to five irregular discharges of blood from the uterus [ziva], she brings one offering, and then she may partake of the meat of offerings. And the remaining offerings are not an obligation for her. If she has in her case five definite births or five definite discharges of a zava, she brings one offering, and then she may partake of the meat of offerings. And the remaining offerings are an obligation for her.

[135] That mishna continues: There was an incident where the price of nests, i.e., pairs of birds, stood in Jerusalem at golden dinarei, as the great demand for birds for the offerings of a woman after childbirth and a zava led to an increase in the price. Rabban Shimon ben Gamliel said: I take an oath by this abode of the Divine Presence that I will not lie down tonight until the price of nests will be in dinarin. Ultimately, he entered the court and taught: A woman for whom there were five definite births or five definite discharges of a zava brings one offering, and then she may partake of the meat of offerings. And the remaining offerings are not an obligation for her.

[136] The mishna concludes: And as a result, the price of the nests stood that day at one-quarter of a silver dinar, as the demand for nests decreased. It is clear in the mishna that the term dinarei indicates a higher value than the term dinarin.

[137] § The mishna teaches: If it is written in the document above that someone owes one hundred dinars, and below it is written two hundred dinars, or if above it is written two hundred and below one hundred, everything follows the bottom amount. If so, why does one write the information in the upper part of the document at all? It is a safety measure, so that if one letter is erased from the lower part of the document, thereby rendering it illegible, the information can be learned from the upper part of the document. The Sages taught in a baraita (Tosefta 11:4): Information concerning what is written below may be learned from what is written above if the lower text is missing one letter, but

not if it is missing two letters. In that case, in the event of a discrepancy between information written above and information written below, the document is not valid.

[138] For example, if the name of one party is written as Ḥanan below and Ḥanani above, it may be derived from the word Ḥanani written above that the party is named Ḥanani. And similarly, if a name is written Anan below, it may be learned from the name Anani written above that the party is named Anani.

[139] The Gemara asks: What is different about two letters missing, that the baraita teaches that the name written below cannot be corrected from the name written above? The Gemara suggests: It is out of concern that perhaps it will occur by chance that there is a four-letter name, and the omission of two letters would be half of the name, and for this reason the Sages extended this concern to all cases where two letters are missing. The Gemara challenges: If so, the same could be said when one letter is missing as well, as perhaps it will occur by chance that there is a two-letter name, and the omission of one letter would be half of the name.

[140] The Gemara explains: Rather, this is the reason that when two letters are missing the name written below cannot be corrected from the name written above: The concern is that perhaps it will occur by chance that there is a three-letter name, and the omission of two letters would be a majority of the name. The Sages applied this concern to all cases where two letters are missing.

[141] The Gemara continues to discuss discrepancies between the information written above and below in a document. Rav Pappa said: It is obvious to me that if a document states above that one owes a sefel, a type of cup, and below it states kefel, a type of garment, everything is determined by the information written below. In this case there is not a missing letter at the bottom but an altered letter. Therefore, the information written below is not corrected from the information written above.

[142] Rav Pappa raises a dilemma: What if it is stated kefel above and sefel below? The difference between the two words is that the former begins with kuf, whereas the latter begins with samekh. The orthographical difference between these two letters is a single stroke that extends downward, as the omission of the extension of this stroke would change kuf into samekh. Rav Pappa’s dilemma is: Are we concerned for the possibility that a fly landed on the stroke of the kuf, removing the ink and changing it into samekh? Or are we not concerned with this possibility? The Gemara comments: The dilemma shall stand unresolved.

[143] § The Gemara relates: There was a certain document in which it was written that the amount due was six hundred and a dinar, without specifying to which denomination the six hundred amount referred. Rav Sherevya sent this question before Abaye: Does the holder of the document collect six hundred istira and a dinar? Istira is another name for a sela, which equals four dinars. Or is he perhaps entitled to collect only six hundred perutot and a dinar, a peruta being a small fraction of a dinar? Abaye said to him: Remove the possibility of six hundred perutot, since people do not write large numbers of perutot in a document, as they instead combine them into larger denominations

[144] and change them into a smaller number of dinars. Therefore, what can you say? The highest and lowest remaining possibilities are: Six hundred istira and a dinar, and six hundred dinars and one more dinar. The guiding principle is that the holder of the document is at a disadvantage, and the lesser of these two values is assumed.

[145] § Abaye said: With regard to this one who needs to show his signature in court for the purpose of corroborating his signature on a document, he should not show it by writing it at the end of the parchment, lest another, unscrupulous, person find the parchment and write above the signature that the signatory owes him money. And such a document would be valid, as we learned in a mishna (175b): If one presents to a debtor a document in the handwriting of the debtor stating that he owes money to him, but without witnesses signed on the document, the creditor can collect only from unsold property, i.e., property that is currently in the possession of the debtor.

[146] The Gemara relates: There was a certain Jewish tax collector who came before Abaye and said to him: Let the Master show me his signature on a piece of paper to keep in my records, as when rabbis come to me and show me a note with your signature on it, attesting to the fact that they are Torah scholars, I let them pass without paying the tax. Abaye showed him his signature at the top of the parchment, though the unscrupulous tax collector kept pulling the parchment away from Abaye so that the signature would be at the bottom. Abaye noticed this and said to him: The Sages have already anticipated people such as you and advised that one should never write his signature at the bottom of a paper.

[147] § Abaye said: When writing a promissory note, one should not write any number from three until ten at the end of a line, lest someone commit forgery and write an extension to the number, since it is at the end of the line. In Hebrew and Aramaic, the words for the numbers three through nine can be changed to thirty through ninety, respectively, by appending to them the suffix in, written with the letters yod and nun. Ten can be changed to twenty in a similar manner. And if by chance it occurs for him that these numbers fall out at the end of a line, he should repeat his words two or three times, stating and restating the agreement in question, as it is impossible that the number will not eventually occur for him in the middle of a line. When there is a contradiction, it is the final mention of the amount that is authoritative, as the mishna teaches.

[148] The Gemara relates: There was a certain bill of sale in which it was written that the item sold was: In my garden, one-third of the orchard. The purchaser went and erased the roof and the foot of the beit of the term: Of the orchard [befardeisa], and thereby changed the prefix beit into a vav, yielding: In my garden one-third, and the orchard [ufardeisa], indicating that the sale included one-third of the garden in addition to all of the orchard. The document came before Abaye, who said to the purchaser: What is the reason that there is so much space around this vav? Since the letter vav is narrower than the letter beit, a larger space between letters emerged as compared to the spacing of letters in the rest of the document. Abaye bound the purchaser, i.e., he subjected him to physical coercion, and he admitted to the forgery.

[149] The Gemara relates: There was a certain bill of sale in which it was written that the item being sold was: The portions of Reuven and Shimon, brothers [aḥei]. Reuven and Shimon happened to have a brother whose name was Aḥai, which, when writing without vowels, is spelled identically to aḥei. The purchaser went and wrote a conjunctive vav in the document before the word aḥei, and changed the wording into: The portions of Reuven and Shimon and Aḥai. The document came before Abaye, who said to the purchaser: What is the reason that it is so crowded around this vav? By inserting the extra vav, a smaller space between letters emerged as compared to the spacing of letters in the rest of the document. Abaye bound the purchaser, i.e., he subjected him to physical coercion, and he admitted the forgery.

150 The Gemara relates: There was a certain document upon which the signatures of Rava and Rav Aḥa bar Adda were signed. The one holding the document came before Rava, who said to him: This is my signature, but I never signed any document before Rav Aḥa bar Adda. Rava bound the holder of the document, i.e., he subjected him to physical coercion, and he admitted the forgery. Rava said to him: Granted, you were able to forge my signature, but how did you perform a forgery of Rav Aḥa bar Adda's signature, since his hands shake and as a result his signature is distinctive? The man said: I placed my hands on the rope of a narrow footbridge [amitzra], and was thereby able to duplicate Rav Aḥa's signature. And some say that the forgery was accomplished when the forger stood upon a wobbly water skin [azarnuka] and wrote the signature.

151 MISHNA: A scribe may write a bill of divorce for a man who requests one, even if his wife is not with him to give her consent when he presents his request, as there is no possibility that he will misuse the document. And a scribe may write a receipt for a woman upon her request, attesting to the payment of her marriage contract, even if her husband is not with her to give his consent. This is true provided that the scribe recognizes the parties requesting the document, to prevent misrepresentation. And for both documents, the husband gives the scribe his wages.

152 A scribe may write a promissory note for a debtor who requests one, even if the creditor is not with him when he requests the document, but a scribe may not write a promissory note for a creditor who requests it unless the debtor is with him and consents. And it is the debtor who gives the scribe his wages.

153 A scribe may write a bill of sale for a seller of a field who requests one even if the purchaser is not with him when he presents his request, but a scribe may not write a bill of sale for a purchaser who requests it unless the seller is with him and consents. And it is the purchaser who gives the scribe his wages.

154 A scribe may not write documents of betrothal and documents of marriage except with the consent of both parties, the groom and the bride. And it is the groom who gives the scribe his wages.

155 A scribe may not write contracts for sharecroppers and contractors except with the consent of both parties, i.e., the sharecropper or contractor and the one who hires him. And it is the sharecropper or contractor who gives the scribe his wages.

156 A scribe may not write documents testifying to arbitration agreements or any other court enactment except with the consent of both parties to the litigation. And both parties give the scribe his wages. Rabban Shimon ben Gamliel says: The scribe writes two documents for the two parties, one for this one by himself, and one for that one by himself.

157 GEMARA: What is meant by: Provided that the scribe recognizes the parties requesting the document? Rav Yehuda says that Rav says: It means provided that he recognizes the man's name in the case of the bill of divorce and the woman's name in the case of the receipt.

158 The Gemara relates: Rav Safra and Rav Aḥa bar Huna and Rav Huna bar Ḥinnana were sitting, and Abaye was sitting near them. And as they were sitting, they raised a dilemma: Did Rav mean that with regard to the man's name in the case of bill of divorce bill, yes, it must be known to the scribe, but the woman's name need not be known to the scribe? And did he mean that with regard to the woman's name in the case of the receipt, yes, it must be known to the scribe, but the man's name need not be known to the scribe?

159 But if so, let there be a concern that perhaps the man who made the request writes the bill of divorce and intends to go and give it to the wife of another man with the same name.

160 And similarly, in the case of the receipt let there be a concern that there will be times when the woman writes the receipt and intends to give it to a man who is not her husband, whose wife shares her name.

161 Abaye said to them: You are not understanding Rav's statement correctly. This is what Rav says: The man's name in the case of the bill of divorce must be known to the scribe, and the same is true of the woman's name, which must also be known to the scribe. And the woman's name in the case of the receipt must be known to the scribe, and the same is true of the man's name, which must also be known to the scribe.

162 They continued their line of questioning: And even if both names are known to the scribe, let there be a concern for the possibility of two men with the same name, such as two men named Yosef ben Shimon, who live in one city and whose wives share the same name as well, and perhaps the man who made the request will write the bill of divorce and intend to go and give it to the wife of the other man who bears the same name as him. Rav Aḥa bar Huna said to them in reply that this is what Rav says: If there are two men named Yosef ben Shimon who live in one city and are married to women who share the same name, they may divorce their wives only in the presence of one another.

163 They continued to ask: But even if the scribe knows the man's name and the name of the man's wife, let there be a concern that perhaps someone will go to another city and establish a false name for himself as Yosef ben Shimon, and he will write the bill of divorce and give it to the wife of the other man, whose name really is Yosef ben Shimon.

164 Rav Huna bar Ḥinnana said to them that this is what Rav says: With regard to anyone whose name has been established in a city for thirty days, there is no concern harbored about him that his name is false. It is assumed that this is his true name.

165 They continued to ask: What if his name has not been established for thirty days? How can a newcomer in a town have a bill of divorce drawn up for him? Abaye said: It is sufficient that people call him by the name he claims for himself and he responds to that call. Rav Zevid said: A liar is careful about upholding his lies, and just because he responds to being called by a particular name does not prove he is telling the truth. A newcomer would therefore have to wait thirty days before requesting that a scribe write him a bill of divorce.

166 § There was a certain receipt of payment of a marriage contract upon which Rav Yirmeya bar Abba was signed as a witness. That woman, whose name matched the name on the receipt, came before Rav Yirmeya, seeking to collect payment of her marriage contract. Rav Yirmeya recognized her name, but not her appearance. The woman said to him: It was not I whose name was on the receipt that you signed, but another woman with the same name; I have not collected payment of my marriage contract. Rav Yirmeya said: I, too, said to the other witnesses signed on the document: The woman for whom we signed the receipt is not she. But they said to me: It is in fact the same woman, but she has aged and her voice has matured and changed, and that is why you do not recognize her.

167 Abaye said that although the Sages said:

168 Once one has stated his testimony he may not then state a revision, this case of Rav Yirmeya is an exception, and he can retract his initial statement in which he supported the woman's claim. The

reason is that it is not the manner of a Torah scholar to be careful about identifying women, for reasons of modesty.

169 The Gemara relates: There was a certain receipt of payment for a marriage contract upon which Rav Yirmeya bar Abba was signed. A woman whose name appeared on the receipt, who was seeking to collect payment of her marriage contract, said to him: It was not I, but another woman with the same name, who had this receipt written. He said to her: But it was you, and you are lying now. Abaye said: Although I said that it is not the manner of a Torah scholar to be careful about identifying women, once he is careful about such an identification and states positively that he recognizes a particular woman, he is careful.

170 Abaye said: A Torah scholar who goes to betroth a woman should take an ignoramus with him to establish a positive identity of the woman, lest people exchange another woman for her when given to him for marriage, taking advantage of his innocence.

171 § The mishna teaches that the husband gives the scribe's wages for writing a bill of divorce. The Gemara asks: What is the reason for this? The Gemara answers: As the verse states: "When a man takes a wife and marries her, and it comes to pass, if she finds no favor in his eyes, because he has found some unseemly matter in her, he shall write her a scroll of severance and give it in her hand" (Deuteronomy 24:1). It is therefore the husband's responsibility to have the bill of divorce written. The Gemara adds: But today, the reason that we do not do so, but instead have the woman pay the scribe, is that the Sages placed the burden upon the woman, so that the husband should not delay the divorce by refusing to pay the scribe.

172 The mishna teaches: A scribe may write a promissory note for a debtor who requests one, even if the creditor is not with him, and it is the debtor who gives the scribe his wages. The Gemara asks: Isn't it obvious that the debtor pays the wages? After all, he is the beneficiary of the loan. The Gemara answers: No, it is necessary for the mishna to state this, as there are times when the loan is beneficial to the creditor as well, as in a case of a joint venture, where the creditor receives a share of the profits engendered by the money provided to the borrower (see Bava Metzia 104a).

173 The mishna teaches: A scribe may write a bill of sale for a seller of property who requests one, even if the purchaser is not with him when he presents his request, and it is the purchaser who provides the scribe's wages. The Gemara asks: Isn't it obvious that the purchaser pays the wages? After all, he is the beneficiary of the sale. The Gemara answers: No, it is necessary for the mishna to state this, as sometimes the sale is beneficial to the seller as well, as in a case of one who sells a field because of its poor quality, as he is anxious to be rid of it.

174 The mishna teaches: A scribe may not write documents of betrothal and documents of marriage except with the consent of both the groom and the bride, and it is the groom who provides the scribe's wages. The Gemara asks: Isn't it obvious that the groom pays the wages? After all, he is the one acquiring his betrothed. The Gemara answers: No, it is necessary for the mishna to state this, to teach us that it applies even when the groom is a Torah scholar, in which case it gives his father-in-law satisfaction to bring him into his family by having him marry his daughter. Even in such a case, where the bride's family is a beneficiary, it is the groom who pays the wages.

175 The mishna teaches: A scribe may not write contracts for sharecroppers and contractors except with the consent of both parties, i.e., the sharecropper or contractor and the one who hires him, and it is the sharecropper or contractor who provides the scribe's wages. The Gemara asks: Isn't it obvious

that the contractor pays the wages? After all, the contract details his rights to the field. The Gemara answers: No, it is necessary for the mishna to state this, as sometimes the deal is detrimental to the contractor, as in the case of a fallow field. It might have been thought that in this case the cost of the document is borne by the landowner.

176 The mishna teaches: A scribe may not write documents testifying to arbitration or any other court enactment except with the consent of both parties to the litigation. The Gemara asks: What is meant by documents testifying to arbitration? Here in Babylonia the Sages interpreted it to mean documents recording the claims of the two parties to the litigation. Rav Yirmeya bar Abba says: A document testifying to arbitration is one that records the procedure in which the composition of the court is chosen, as described in tractate Sanhedrin (23a), whereby this litigant chooses one judge and that litigant chooses one judge, and these two judges choose the third one.

177 § The mishna teaches that Rabban Shimon ben Gamliel says: The scribe writes two documents for the two parties, one for this one by himself and one for that one by himself. The Gemara analyzes the disagreement between Rabban Shimon ben Gamliel and the first tanna, who did not call for two separate documents: Shall we say that they disagree with regard to the principle that the court coerces people to prevent conduct characteristic of Sodom, i.e., selfish behavior? That is, the case is where one of the litigants does not want to contribute to the writing of a joint document, and insists that each litigant pay to have his own document written, which would entail an additional expenditure on the part of the other party.

178 The dispute is then as follows: As one Sage, the first tanna, holds that the court coerces people to prevent this conduct, so the obstinate litigant is forced to pay his share of a joint document, and one Sage, Rabban Shimon ben Gamliel, holds that the court does not coerce people to prevent this conduct, and a litigant can insist upon paying only for a document of his own.

179 The Gemara rejects this analysis: No, everyone in the mishna holds that the court coerces people to prevent conduct characteristic of Sodom, and here this is the reason for the ruling of Rabban Shimon ben Gamliel: It is because the litigant demanding separate documents is not making a pointless, selfish request at all, as he says to the other litigant: It is not amenable for me that your defense, i.e., the record of your claims, should be together with my defense, as you are to me like an ambushing lion, i.e., our interests are in conflict.

180 MISHNA: In the case of a debtor who repaid part of his debt and with the agreement of the creditor deposited the promissory note with a third party serving as a trustee to ensure that the creditor would not collect the full amount, and the debtor said to the trustee: If I have not given you the balance from now until such and such a day, give the creditor his promissory note, thereby enabling him to collect the full amount stated on the note, if the stipulated time arrived and the debtor did not give the balance to the trustee, Rabbi Yosei says: The trustee should give the promissory note to the creditor, in accordance with the debtor’s stipulation. Rabbi Yehuda says: The trustee should not give it, as the stipulation is void.

181 GEMARA: With regard to what principle do Rabbi Yosei and Rabbi Yehuda disagree? Rabbi Yosei holds that a transaction with inconclusive consent [asmakhta] effects acquisition. In this case, the debtor willingly undertook a penalty if he would not repay the remainder of the debt on time. Yet, he did not think that he would miss the deadline and be held accountable to pay that penalty. Rabbi

Yosei holds that he is nevertheless bound by his word. And Rabbi Yehuda holds that an asmakhta does not effect acquisition, i.e., it is not binding.

[182] Rav Naḥman says that Rabba bar Avuh says that Rav says: The halakha is in accordance with the opinion of Rabbi Yosei. When questioners came before Rabbi Ami, inquiring of him what the halakha is in this matter, he said to them: But since it is the case that Rabbi Yoḥanan taught us a first time and a second time, i.e., repeatedly, that the halakha is in accordance with the opinion of Rabbi Yosei, what can I do to contradict his words?

[183] The Gemara concludes: But in fact the halakha is not in accordance with the opinion of Rabbi Yosei, i.e., an asmakhta is not binding.

[184] MISHNA: In the case of a creditor whose promissory note has become erased, he should produce witnesses who remember the details of the document to testify about it. And they come before the court, and they ratify his promissory note for him, stating: The promissory note of so-and-so was erased, and it stated that a loan for such and such an amount took place on such and such a date,

[185] and so-and-so and so-and-so were its witnesses. The ratification document is signed, and it may be used as a replacement for the erased document.

[186] GEMARA: The Sages taught (Tosefta, Bava Metzia 1:16): What is the text of the ratification document of an erased document? The court writes as follows: We, so-and-so and so-and-so and so-and-so, were sitting as three judges, and so-and-so, son of so-and-so, produced an erased document before us, which was written on such and such a date, and so-and-so and so-and-so were its witnesses. And if it is written in this ratification document also: We engaged in the investigation of the testimony of the witnesses and their testimony has been found to be congruent, the creditor can collect his debt on the basis of this ratification document, and he does not need to bring further proof. But if this formula is not written, the creditor needs to bring further proof of the loan in order to collect it.

[187] The baraita continues with its discussion of damaged documents: If a promissory note was torn intentionally it is not valid, but if it became torn accidentally it is valid. In a case where it was erased or smudged, if its imprint is recognizable, i.e., if the words are still legible, though barely, it is valid.

[188] The Gemara seeks to clarify the terms in the second part of the baraita: What are the circumstances, i.e., what are the defining characteristics, of a document that was torn, and what are the circumstances of a document that became torn? Rav Yehuda says: A document that was torn means that it had a tear created by the court, because they wished to render it not valid due to payment of the loan or some other circumstance. A document that became torn means it had a tear that was not created by the court.

[189] The Gemara seeks further clarification: What are the circumstances, i.e., what are the signs, of a document that had a tear created by the court? Rav Yehuda says: The document has a tear that ruins the place of the witnesses' signatures and the place of the date and the place of the essential part of a document. Abaye says: It has a tear that goes both lengthwise and widthwise.

[190] § The Gemara relates: There was once a certain group of Arabs who came to Pumbedita and who would rob people's land and force the victims to surrender the deeds to their property to prevent subsequent legal action. The owners of land who had not yet fallen victim to these Arabs came before Abaye and said to him: Let the Master look at our deeds to our property and let the Master

write us another deed for it, so that if one of the deeds is robbed we will have the other one in our possession.

[191] Abaye said to them: What can I do for you? I cannot comply with your request, as Rav Safra says: One may not write two deeds of ownership for one field, lest the owner of that land repossess property once and then go back and repossess it once again. Generally, whenever real estate is sold there is a guarantee given to the purchaser in the event that the land is repossessed by the seller's creditor or by someone else who proves that the land rightfully belongs to him. If the seller of the repossessed land has no money to honor the guarantee, the purchaser can repossess property from others who had purchased property from the same seller subsequent to the sale of the repossessed land. In order to do so, he would have to produce the bill of sale proving that he had purchased the repossessed property. If he has two such deeds, he would be able to collect payment twice. To eliminate this possibility, duplicate property deeds are not written.

[192] The landowners kept badgering Abaye to write the duplicate documents, until, in order to be rid of them, he said to his scribe: Go write the document for them, but first write on paper and then erase it, and then write the desired document over the erased text, so that the text of the document will be written over an erasure, and the signatures of its witnesses will be on a part of the paper where the writing had not been erased, a situation in which the document is not valid.

[193] Rav Aḥa bar Minyumi said to Abaye: But perhaps the first writing on the paper was not erased thoroughly, so its imprint is recognizable, and it is taught in the baraita that in a case where the writing on a document was erased or smudged, if its imprint is recognizable, the document is valid. Abaye said to him: Did I say that he should write a proper document and then erase it? I said, i.e., I intended, that he should merely write letters of the alphabet [ales beit], not actual words.

[194] § The Sages taught in a baraita: In a case where one came to court and said: My promissory note was lost, even if witnesses said: We wrote and signed such a promissory note and gave it to this man, the court may not write a new document for him. The Gemara asks: In what case is this statement said? In the case of documents detailing loans. But in a case of deeds of buying and selling land, the court may write a replacement document, excluding the standard guarantee that was in the first document, which states that if the field is repossessed the seller will compensate the purchaser for his loss.

[195] The baraita continues: Rabban Shimon ben Gamliel says: The court may not write a replacement document even for deeds of buying and selling land. And Rabban Shimon ben Gamliel says as well: With regard to one who gives a gift of land to another, and the recipient returned the deed to him, his gift of land returns to him as well. But the Rabbis say: His gift of land remains in the possession of the recipient.

[196] The Gemara analyzes the baraita: The Master says in the baraita: With regard to deeds of buying and selling land, the court may write a replacement document, excluding the guarantee that was in the first document. What is the reason that the guarantee may not be written?

[197] Rav Safra says: It is because the court may not write two deeds of sale for the same sale of one field, lest a creditor of the seller go and repossess the field sold to this purchaser, and that purchaser go and take out one deed, and in accordance with the guarantee clause of the sale, repossess land from other purchasers who purchased land from the same seller at a later date, and say to the creditor: Remain quiet [shof] about this matter for a few years, while I become established in the

property I repossessed. And then, come and claim your loan again, and then you will repossess this property from me. And then, after it is taken from him a second time, the purchaser will then take out the other document of sale, the replacement that the court had written for him, and then go and repossess land from other purchasers who purchased land from the same seller. In short, a replacement document with a guarantee will enable double collection on that guarantee.

198 The Gemara asks with regard to Rav Safra's scenario: How would it be possible for this to occur? But once the creditor repossessed the land the first time as payment of the debt, we, the court, tore the promissory note of the seller's creditor; with what document could the creditor repossess the purchaser's land again?

199 And if you would say that we did not tear the creditor's promissory note in the course of the first collection, that cannot be. But doesn't Rav Naḥman say that any document of authorization to repossess liened property from its purchaser in which it is not written: We have torn the creditor's promissory note, is not a valid document of authorization to repossess liened property; and any document of authorization used to seize a debtor's property in which it is not written: We have torn the creditor's document of authorization to repossess liened property, is not a valid document of authorization; and any document of appraisal of an article's value in which it is not written: We have torn the creditor's document of authorization, is not a valid document of appraisal.

200 The Gemara answers: No, it is necessary to explain Rav Safra's case as follows: The concern is not that a creditor will repossess the field, but that someone will come to repossess it based on his claim to the land as the property of his ancestors. That is, he proved that the field had belonged to his ancestors, and by extension belongs to himself as their heir, and the one who sold the field was in fact a thief. It was for this reason that he repossessed the field from the purchaser, and the concern is that the purchaser will seek reimbursement, as stipulated in the guarantee, from other property sold subsequently by the seller. If the purchaser has two deeds of sale with guarantees, he can collect payment twice.

201 The Gemara presents another question pertaining to Rav Safra's case. Rav Aḥa of Difti said to Ravina: And why did Rav Safra have to include in his case that the purchaser will say to the creditor: Remain quiet about this matter for a few years while I become established in this land I repossessed, and then come and claim your loan again? Why did he devise a case in which the seller's creditor collects payment twice? Let the problem derive from the fact that since the purchaser holds two deeds he will be able to repossess land based on his guarantee once and then repossess land again, even if the creditor does not collect his debt twice.

202 Ravina answered: If so, if the purchaser attempts to repossess land twice based on a single repossession of the creditor, he will have too many litigants to deal with at once, and his dishonest dealings will be discovered.

203 The Gemara asks further: But let the court write a proper bill of sale, one that includes a guarantee, for this purchaser, and then let the court write a receipt for the seller, stating: All documents that are issued with regard to the purchase of this field are not valid, except for the one issued on this date, referring to the replacement document written by the court. This will prevent double collection, as if the purchaser attempts to collect on his guarantee with a second document, the seller will foil this attempt by showing this receipt.

[204] The Rabbis said before Rav Pappa in response to this question, and some say it was said before Rav Ashi: Is that to say that the tanna of the baraita holds that in general the court does not write a receipt in such cases?

[205] Rav Pappa or Rav Ashi said to them: Do not draw this conclusion. It is possible that the tanna of the baraita holds that generally the court writes a receipt when a creditor has lost his promissory note. And here, this is the reason that it does not write a receipt: As, perhaps the creditor, i.e., the one from whom the property was stolen, will go and repossess property from the purchaser who bought the stolen land, and the purchaser, seeking reimbursement in accordance with the guarantee, will go and repossess property from other purchasers who had later bought property from the same seller. And the receipt will not help, because it is not with the purchasers who bought property from the seller, but is in the possession of the seller himself. The purchasers, who are the ones who will suffer from the double collection, have no protection; they will in fact not even be aware that they are the victims of a double collection.

[206] The Gemara asks: Ultimately, don't these purchasers go back to the owner, i.e., the seller, of the land to demand reimbursement? At that point the seller will produce the receipt, exposing the double collection, and the entire process will be reversed, so that ultimately the purchaser who suffered from the unjust collection will obtain possession of his property.

[207] The Gemara answers: While it is true that ultimately the deception will be discovered, in the interim, between the time the land was unjustly repossessed from the purchaser and the time when the injustice is reversed, the one who repossessed the land seizes the land and consumes its produce, i.e., he enjoys the profits produced by the land, and it will be difficult to receive full reimbursement for this stolen produce.

[208] Alternatively, the reason the option of writing a receipt for the seller of the land is not pursued here is that there is a concern about one who purchases land without a guarantee. As such a purchaser knows that he has no recourse to be reimbursed from the seller if the land he bought is repossessed, he will never contact the seller and discover that the seller has a receipt and that he has been the victim of an unjust double collection.

[209] The Gemara asks: If so, the same concern should be taken into consideration in the case of promissory notes as well. And yet Rav Pappa, or Rav Ashi, said that the tanna of the baraita concedes that a receipt may be written for the debtor to enable the collection of a debt in the event of the loss of the promissory note. Why are the aforementioned concerns not applicable to the case of debt collection?

[210] The Gemara answers: There, where the debtor owes money, when the creditor seeks to repossess sold land, the purchaser of that land will say to himself: There is a possibility that the debtor appeased the creditor by paying him money, since debts are usually settled with money. I will therefore investigate the matter with the debtor before allowing the creditor to repossess my land. At that point the receipt, held by the debtor, will be discovered, and double collection will be prevented. Here, where he owes land, as the issue is that the claim is based on reimbursement for having bought stolen land, the purchaser knows that it is not common for one who is owed land to be appeased with money in such cases. The purchaser will therefore allow his land to be repossessed and will seek reimbursement at a later time.

211 § The Gemara returns to the baraita and analyzes one of its statements. The Master says in the baraita: With regard to deeds of buying and selling land, the court may write a replacement document, excluding the guarantee that was in the first document that if the field is repossessed the seller will compensate the purchaser for his loss. How do we write a bill of sale in such a way that it does not include this guarantee? Rav Naḥman said that the case is one in which the court writes as follows: Our deed is not intended to enable the collection of reimbursement in event of repossession, neither collection from liened property that has been sold nor collection from unsold property; rather, it is intended merely to ensure that the land is established in the possession of the purchaser.

212 Rafram says: This statement of Rav Naḥman serves to say that the omission of the guarantee of the sale from a document is a scribal error. That is, it is assumed that when one purchases land he expects to have his purchase guaranteed, and that if such a clause is not stated in the document it is presumed to be a mere scribal oversight, and a guarantee is in effect. Rav Naḥman said, in explaining the baraita, that the only reason a land purchase would not have a guarantee is that the scribe wrote this for him, i.e., he wrote that there is no guarantee, explicitly in the deed; this indicates that if the scribe did not write this explicitly for the purchaser, but left out the subject of the guarantee altogether, the purchaser would nevertheless have the guarantee and would be able to collect reimbursement from the seller in the event of repossession.

213 Rav Ashi disagrees and says: The omission of the guarantee of the sale from a document is not a scribal error. Accordingly, if mention of a guarantee is omitted from a bill of sale, there is in fact no guarantee. And what does the baraita mean when it says: Excluding the guarantee that was in the first document? It means simply that in this case there was no clause about a guarantee written in it at all.

214 The Gemara relates: There was a certain woman who gave money to a certain man to act as her agent and purchase land for her. The agent went and purchased land for her, but he conducted the purchase in such a way that it was without a guarantee. The woman wanted to take action against the agent and came before Rav Naḥman to ask what recourse she had.

215 Rav Naḥman said to the agent: The principle with regard to an agent is that if he acts to the detriment of the one who appointed him, the one who appointed him can say: I sent you to act for my benefit and not to my detriment. Therefore, the entire agency is null and void, thereby negating the purchase. Nevertheless, you agreed to purchase the land without a guarantee. Therefore, go yourself and purchase the land from him without a guarantee, and then sell it to this woman with a guarantee that you will reimburse her in the event the land is repossessed.

216 § The baraita teaches that Rabban Shimon ben Gamliel says: In the case of one who gives a gift of land to another, and the recipient returned the deed to him, his gift of land returns to him as well. But the Rabbis say: His gift of land remains in the possession of the recipient. The Gemara asks: What is the reason for the opinion of Rabban Shimon ben Gamliel? Rav Asi says: It becomes as if the giver said to the recipient: This field is given to you only as long as the deed remains in your possession. Therefore, by returning the deed to the giver, the recipient is canceling the gift.

217 Rabba objects to this: If that is so that these are the conditions of the gift, then when the deed is stolen from or lost by the recipient, the gift should also be canceled.

218 Rather, Rabba said a different explanation: Rabban Shimon ben Gamliel and the Rabbis disagree about whether or not the letters, i.e., the contents of a promissory note, are acquired by merely transferring the document from one holder of the document to another. Rabban Shimon ben Gamliel

holds that the letters are acquired by transferring the document. Therefore, if the recipient returns the bill of sale to the giver, the land returns to the giver as well. And the Rabbis hold that the letters are not acquired by transferring the document.

219 The Sages taught in a baraita: With regard to one who comes to court to be judged over a claim that land that is in his possession belongs to another, if he claims ownership based on a deed, i.e., a bill of sale, and claims further that he is the owner based on presumptive ownership of the land, as it was in his uncontested possession for three years, and he therefore does not need the deed as proof, his claim is judged based on the deed. This is the statement of Rabbi Yehuda HaNasi. Rabban Shimon ben Gamliel says: His claim is judged based on his presumptive ownership.

220 The Gemara analyzes the baraita: With regard to what do Rabbi Yehuda HaNasi and Rabban Shimon ben Gamliel disagree? When Rav Dimi came from Eretz Yisrael to Babylonia he said: They disagree about whether or not letters are acquired by transferring the document from one holder of the document to another.

221 The Gemara explains: This is a case where one party sold land to another, who then sold it to a third party by transferring the bill of sale to him. Rabban Shimon ben Gamliel holds that the letters are not acquired by transferring possession of the document. Handing the bill to the third party is therefore not a valid act of acquisition. In order to establish that the land is his, one must prove presumptive ownership by demonstrating that he has lived in the land uncontested for three years. And Rabbi Yehuda HaNasi holds that the letters are acquired by transferring possession of the document. Therefore, if the third party produces the bill of sale that had been transferred to him, this is sufficient proof that the land is his.

222 Abaye objected and said to Rav Dimi: If that is so, that Rabban Shimon ben Gamliel holds that letters are not acquired by transferring possession of the bill of sale, this would be in disagreement with what the Master, Rabba, said earlier, that Rabban Shimon ben Gamliel maintains that letters are acquired by transferring possession of the bill of sale. Rav Dimi said back to him: And let it be in disagreement. I am not obligated to be in agreement with Rabba.

223 Abaye clarified his objection and said to him: This is what I meant to say to you. The baraita (168b), which Rabba was explaining, can be explained only the way the Master, Rabba, explained it. And if so, i.e., if you do not agree with Rabba's understanding of the opinion of Rabban Shimon ben Gamliel, there is a difficulty, as there is a contradiction between one statement of Rabban Shimon ben Gamliel and the other statement of Rabban Shimon ben Gamliel.

224 Rather, Abaye said that the explanation of the baraita concerning one who appears before a court to be judged is as follows: With what are we dealing here? We are dealing with a case where one of the witnesses signed on the bill was found to be a relative to one of the parties, or he was found to be disqualified from bearing witness for another reason, and therefore the document is rendered invalid.

225 Abaye continues: And the two opinions in the baraita disagree with regard to the issue that is the subject of the dispute between Rabbi Meir and Rabbi Elazar. Rabbi Yehuda HaNasi holds in accordance with the opinion of Rabbi Elazar, who says: The witnesses of the transmission of the document effect the transaction, meaning that witnesses are not required to be signed on a document at all, provided that there are witnesses who saw the transfer of the document to the relevant party. It is therefore inconsequential that one of the witnesses that signed the document is disqualified. This is why Rabbi Yehuda HaNasi says that the claim is judged based on the deed, i.e., the deed is valid.

[226] And Rabban Shimon ben Gamliel holds in accordance with the opinion of Rabbi Meir, who says: The signatory witnesses on the document effect the transaction, meaning that it is necessary for a document to have witnesses sign it. If there are no witnesses or if one or both of them are disqualified, the document is not valid even if its transmission is witnessed by qualified witnesses. This is why Rabban Shimon ben Gamliel says that the claim is judged based on the claimant's presumptive ownership; this is his only valid proof since the deed he possesses is not valid.

[227] The Gemara objects to Abaye's explanation: But doesn't Rabbi Abba say that Rabbi Elazar concedes that in the case of a document whose falsification is inherent in it that it is not valid? Rabbi Elazar said only that a document that has no witnesses signed on it at all is valid if its transmission was witnessed. If the document has disqualified witnesses, he agrees it is not valid.

[228] Rather, Rabbi Avina said a modification of Abaye's explanation. All concede that if it is written in the document: We, the court, engaged in an investigation of the testimony of the witnesses and have determined that they signed the document, and their testimony was found to be false, the document is not valid, in accordance with the statement of Rabbi Abba. They disagree only with regard to a document upon which there are no witnesses signed at all. As Rabbi Yehuda HaNasi holds in accordance with the opinion of Rabbi Elazar, who says: The witnesses of the transmission of the document effect the transaction. Signatory witnesses are not necessary, and the deed can therefore be used as proof. And Rabban Shimon ben Gamliel holds in accordance with the opinion of Rabbi Meir, who says: The signatory witnesses on the document effect the transaction, so the deed cannot be used. Therefore, the only valid proof would be based on his presumptive ownership.

[229] The Gemara suggests: And if you wish, say instead: The case in the baraita is one where the alleged purchaser has a bill of sale for the land, but the alleged seller, although he admits that the document was written with his consent, claims that the sale did not ultimately occur, and that the alleged purchaser took the document from him. And the tanna'im in the baraita disagree, with regard to the halakha in the case of a debtor who admits that he wrote a promissory note, whether the creditor is required to ratify it in court in order to collect, and, by extension, in a case where a seller admits that he wrote a bill of sale, whether the purchaser must ratify it in court in order to establish its validity.

[230] As, Rabbi Yehuda HaNasi holds that in the case of a debtor who admits that he wrote a promissory note, the creditor is not required to ratify it in court in order to collect what is owed to him. In this case as well, the purchaser can use the bill of sale as proof that he is the rightful owner of the property. And Rabban Shimon ben Gamliel holds that in the case of a debtor who admits that he wrote a promissory note, the creditor is required to ratify it in court in order to use it to collect the debt. In this case as well, since the purchaser is unable to ratify it, his only recourse to prove his ownership is showing that he lived in the land uncontested for three years.

[231] The Gemara asks: But didn't we hear the opposite concerning Rabbi Yehuda HaNasi and Rabban Shimon ben Gamliel? As it is taught in a baraita (Tosefta, Bava Metzia 1:8) that if two people, the debtor and the creditor, are grasping a promissory note, and the creditor says: It is mine, i.e., the debt has not yet been paid, and it fell from me, and you, the debtor, found it, and the debtor says: It is in fact yours, i.e., I did borrow the money from you, but I paid you and was given the promissory note, and it fell from me, and you found it, the promissory note must be ratified through its signatories, even though the debtor admits it is a valid document. This is the statement of Rabbi Yehuda HaNasi.

Rabban Shimon ben Gamliel says: They should divide the amount written in the promissory note, i.e., the debtor must pay half of the recorded sum to the creditor.

[232] The Gemara explains: And we discussed it once before and asked the following question about it: But doesn't Rabbi Yehuda HaNasi agree to that which we learned in a mishna (Bava Metzia 2a), with regard to two people who came to court holding a garment, where this one is saying: I found it, and that one is saying: I found it; that this one takes an oath that he does not have claim to less than half of it, and that one takes an oath that he does not have claim to less than half of it, and they divide it? Why does Rabbi Yehuda HaNasi not maintain that in a case where the debtor and creditor are grasping a promissory note, there too they should divide the money?

[233] And in response to this question Rava said that Rav Naḥman said: In the case of a ratified promissory note, everyone agrees that they should divide it. Where they disagree is in the case of a note that is not ratified. Rabbi Yehuda HaNasi holds that in the case of a debtor who admits that he wrote a promissory note, the creditor is required to ratify it in court in order to collect the debt from him. And if he successfully ratifies it, the creditor collects half of the recorded sum, since the two parties are contesting ownership of the document. And if he is not successful in ratifying the note, it is merely a shard, i.e., a worthless piece of paper.

[234] And Rabban Shimon ben Gamliel holds that in the case of a debtor who admits that he wrote a promissory note, the creditor is not required to ratify it in court in order to collect payment. Since the note is valid and fit for collection, they should divide it, i.e., the creditor collects half the sum, as the ownership of the document is contested. The positions of Rabbi Yehuda HaNasi and Rabban Shimon ben Gamliel are therefore the reverse of what the Gemara proposed in its explanation of the first baraita.

[235] The Gemara answers: Reverse the way the opinions of Rabbi Yehuda HaNasi and Rabban Shimon ben Gamliel are recorded in one of the two baraitot so that they are consistent in both baraitot.

[236] And if you wish, say instead: Actually, do not reverse their opinions. There is no contradiction between them, because the issue in the first baraita is not whether or not a bill of sale must be ratified when the seller admits that he wrote it. Rather, here the tanna'im disagree with regard to verifying, i.e., they disagree about whether a litigant is required to verify all his claims in circumstances where his case is strong enough to have the court rule in his favor even if they were to disregard some of his claims. Generally, if one has evidence of presumptive ownership of a field he does not have to produce a bill of sale for it. Here, Rabbi Yehuda HaNasi holds that since the one occupying the land claims that he has a bill of sale, he must verify this claim by producing it. Rabban Shimon ben Gamliel holds that he is not required to produce it, as the claim of presumptive ownership suffices.

[237] The Gemara explains: It is like this case where Rav Yitzḥak bar Yosef was owed money by Rabbi Abba. The case came before Rabbi Yitzḥak Nappaḥa. Rabbi Abba said: I already repaid you the debt in the presence of so-and-so and so-and-so. Rabbi Yitzḥak Nappaḥa said to Rabbi Abba: The witnesses you have named, so-and-so and so-and-so, must come and testify that they saw you repay the loan. Rabbi Abba said to Rabbi Yitzḥak Nappaḥa: If they do not come, am I not deemed credible to say that I repaid the loan? But don't we maintain that with regard to one who lends money to another in the presence of witnesses, the debtor need not repay him in the presence of witnesses, as he is deemed credible to say he repaid the debt even with no supporting testimony?

[238] Rabbi Yitzḥak Nappaḥa said to Rabbi Abba: With regard to this issue, I hold like the halakha said by the Master, i.e., you yourself. As Rabbi Abba says that Rav Adda bar Ahava said that Rav says: If one says to another, i.e., if a debtor says to his creditor: I repaid you in the presence of so-and-so and so-and-so, it is required that so-and-so and so-and-so come to court and testify that they witnessed the repayment. Rabbi Abba said to Rabbi Yitzḥak Nappaḥa: But doesn't Rav Giddel say that Rav says that the halakha is in accordance with the statement of Rabban Shimon ben Gamliel, that it is not required that a litigant verify all his stated claims if his case is sufficiently strong without those claims? And moreover, even Rabbi Yehuda HaNasi did not

[239] say that the litigant loses the case if he cannot produce verification of his extraneous claims, but only that he is told to verify those claims if he can. Rabbi Yitzḥak Nappaḥa said to Rabbi Abba: I, too, am saying only that you are required to verify your claim if you can; if you cannot, you will not be required to pay.

[240] MISHNA: In the case of a debtor who repaid part of his debt, Rabbi Yehuda says: The creditor should exchange the promissory note for a new one stating the current balance and tear up the first promissory note. Rabbi Yosei says: The creditor may keep the original promissory note, and he should write a receipt for the payment he has received and give it to the debtor as proof of his partial payment of the sum recorded in the old note. Rabbi Yehuda said with regard to this arrangement: It is found that this debtor must now guard his receipt against being destroyed by mice, as if he no longer has the receipt, he will have to pay the entire sum recorded in the promissory note. Rabbi Yosei said to him: This situation is fitting for him; it is better that this procedure be followed, and the strength of the claim of this creditor not be weakened.

[241] GEMARA: Rav Huna says that Rav says: The halakha is not in accordance with the opinion of Rabbi Yehuda, nor is it in accordance with the opinion of Rabbi Yosei. Rather, the halakha is that the court tears up the original promissory note and writes a different promissory note for the creditor, listing the new sum owed, dated from the time of the first document.

[242] Rav Naḥman said to Rav Huna, and some say it was Rav Yirmeya bar Abba who said this to Rav Huna: If Rav would have heard this following baraita, as it is taught in a baraita that according to Rabbi Yehuda the proper procedure is that the witnesses tear the original promissory note and write another promissory note for the creditor listing the new sum owed, dated from the time of the first document, he would have retracted his statement that the court tears the promissory note and writes a new one.

[243] Rav Huna said to him: Rav heard the baraita, and nevertheless he did not retract his statement. While Rabbi Yehuda says in the baraita that the witnesses write a new promissory note, Rav maintains that this must be done specifically by a court. Why is this?

[244] Granted, a court can write a new document, because the court has the power to confiscate money. A creditor has the right to seize any property that the debtor had owned on the day the promissory note was written, even if that property was subsequently sold to others; the earlier the date on the note, the more properties it applies to. By dating the new document on the date of the original document the creditor is once again given the right to seize properties from those who had purchased land from the debtor in between the date of the original loan and the date the new promissory note is actually written. The court has such confiscatory power. But with regard to witnesses, who already

performed their agency, i.e., fulfilled their assigned role, the first time they wrote the promissory note, can they return and perform their agency again by writing a second promissory note?

245 The Gemara asks: And is it so that witnesses are not empowered to do so? But doesn't Rav Yehuda say that Rav says: Witnesses who were commissioned to write a deed for the transfer of property may write even ten deeds for one field? If the original deed is lost or destroyed, the witnesses may write a replacement deed for the purchaser, even if the deed is lost many times.

246 Rav Yosef says an answer to this question: Rav Yehuda's statement was concerning a deed of gift, not a bill of sale. A gift of land has no guarantee; if it is repossessed from the recipient by the giver's creditor to repay the giver's debt, the recipient has no recourse and cannot collect any money from anyone. Therefore, in this case no one is jeopardized by the writing of many replacement deeds, which are intended only to serve as a proof that the recipient is actually entitled to the land.

247 And Rabba says: It is possible to say that Rav Yehuda's statement applied even with regard to a bill of sale that does not have a guarantee in it. In that case as well, there is no potential loss to any purchasers of land. By contrast, in the case of a promissory note, which can be used to repossess property from those who have purchased land from the debtor, witnesses do not have the authority to predate a document and thereby subject more purchasers to possible land seizures due to the predating of the document.

248 The Gemara cited an excerpt from a baraita earlier. It now cites it in full: What is the full text of the baraita? As it is taught: If one thousand dinars are owed by a debtor, and the debt is recorded in a promissory note, and the debtor repaid five hundred dinars out of the total, the witnesses tear the original promissory note and write another promissory note for him, dated from the time of the first note. This is the statement of Rabbi Yehuda. Rabbi Yosei says: This original promissory note shall remain in its place, in the custody of the creditor, and witnesses write a receipt for the five hundred dinars that were repaid. This receipt is given to the debtor to protect himself against a possible attempt by the creditor to use the promissory note to collect the entire one thousand dinars.

249 Rabbi Yosei continues: And there are two reasons why the Sages said that they write a receipt, as opposed to writing a new promissory note: One reason is so that the creditor can coerce the debtor to repay him, i.e., the psychological pressure for the debtor of knowing that the creditor has a promissory note with a larger amount listed than what he owes him will induce the debtor to repay the remainder promptly. And the other one is so that he, the creditor, should be able to collect liened property from the first date, that of the original document.

250 The Gemara asks with regard to Rabbi Yosei's second reason: But doesn't Rabbi Yehuda also say that the new document must be dated from the time of the first document? The Gemara answers: Rabbi Yosei did not hear a full explanation of Rabbi Yehuda's opinion; he heard only that Rabbi Yehuda prescribed writing a new promissory note recording the new balance. And this is what Rabbi Yosei is saying to Rabbi Yehuda: If you mean to say that the new promissory note is dated from the time of the first document, I disagree with you on one count, as I hold a receipt should be written to pressure the debtor. If you mean to say that the second promissory note is dated from the second date, i.e., from when the second promissory note was written, I disagree with you on two counts.

251 § The Gemara discusses a related halakha. The Sages taught in a baraita (Tosefta, Makkot 1:3): If there is a promissory note whose date is written as a Shabbat or as the tenth of Tishrei, i.e., Yom Kippur, it is assumed to be a postdated promissory note, as writing is forbidden on Shabbat and Yom

Kippur, and it is therefore valid. This is the statement of Rabbi Yehuda. Rabbi Yosei deems the promissory note invalid. Rabbi Yehuda said to Rabbi Yosei: But didn’t such an incident come before you in Tzippori, and you yourself deemed the promissory note valid? Rabbi Yosei said to him: When I deemed the promissory note valid, it was in a case like this, where the date was a Shabbat or Yom Kippur, that I deemed it valid.

252 The Gemara is puzzled by Rabbi Yosei’s response at the end of the baraita: But Rabbi Yehuda was also speaking in a case like this, where the date was a Shabbat or Yom Kippur, and yet Rabbi Yosei’s opinion was that the promissory note is invalid.

253 Rabbi Pedat says: All parties to this dispute agree that if we engaged in an investigation of the date of the document, and its date was found to be exactly on Shabbat or on the tenth of Tishrei, that it is self-evident that it is a postdated promissory note and is valid.

254 The two Sages disagree only with regard to a case of a postdated promissory note in general, i.e., one in which the fact that it is postdated is not readily discernible from the dating of the document, as opposed to one dated on Shabbat or Yom Kippur.

255 As Rabbi Yehuda conforms to his line of reasoning, as he says: One does not write a receipt for a debtor when he pays his debt; rather, the original document is torn, and in the case of partial repayment a new document is written, attesting to the balance due. And consequently, no harm can emerge from a postdated document. There is no concern that the date on the postdated document may have been recorded after the writing of a receipt.

256 And Rabbi Yosei conforms to his line of reasoning, as he says: One writes a receipt for a debtor when he pays his debt, in lieu of tearing the promissory note. And consequently, harm can emerge from a postdated promissory note. Harm can occur in a case such as the following: The loan was given on the first of Nisan. The debt was paid on the following day and, rather than tearing the promissory note, a receipt was written and dated on the second of Nisan. If the original note had been postdated to the third of Nisan or thereafter, the creditor could use it to collect his debt a second time, arguing that the debtor’s receipt is irrelevant, as its date is prior to the date in the promissory note.

257 § Rav Huna, son of Rav Yehoshua, says: Even according to the one who says that one writes a receipt for the debtor when he pays, in lieu of tearing the promissory note, this statement applies only with regard to a case where the debtor pays half, i.e., a portion, of the debt. But with regard to a case where the debtor comes to repay all of the debt and the creditor has lost the promissory note and cannot tear it, all agree that one does not write a receipt. Rather, the debtor will not be required to repay the loan unless the creditor can produce the promissory note.

258 The Gemara rejects this opinion: But it is not so; we write a receipt even in a case where the debtor pays all of the debt.

259 The Gemara proves its assertion: This is like that case where Rav Yitzḥak bar Yosef was owed money by Rabbi Abba. Rav Yitzḥak bar Yosef came before Rabbi Ḥanina bar Pappi, and said to Rabbi Abba: Give me my money. Rabbi Abba said to him: First give me my promissory note, and then take your money. Rav Yitzḥak bar Yosef said to him: I lost your promissory note; instead, I will write a receipt for you. Rabbi Abba said to him: Isn’t there the opinion of Rav and Shmuel, who both say that the halakha is that one does not write a receipt?

[260] Rabbi Ḥanina bar Pappi, the judge, thereupon said: Who will give us some of the dust of Rav and Shmuel, and I will place it on my eyes, so highly do I regard them. Nevertheless, isn't there the opinion of Rabbi Yoḥanan and Reish Lakish, who both say that one writes a receipt?

[261] And similarly, when Ravin came from Eretz Yisrael to Babylonia, he said that Rabbi Ilai says: The halakha is that one writes a receipt.

[262] The Gemara concludes: And it stands to reason that one writes a receipt. As, if it would enter your mind that one does not write a receipt, then if the promissory note of this creditor is lost, should this debtor eat and rejoice? Is it fair that he should keep money that he knows he owes the creditor?

[263] Abaye objects to this line of reasoning: Rather, what should the halakha be, that one writes a receipt when the creditor cannot find the promissory note? If the receipt of the debtor is lost, should this creditor eat and rejoice? Once the debtor has lost his receipt, there is nothing to prevent the creditor from collecting the debt a second time. This, too, is unfair. In either case, whether a receipt is written or not, an injustice could result. Why should it be preferred that the potential of suffering an injustice should be borne by the debtor rather than the creditor? Rava said to Abaye: Yes, it is preferable, because, as it is written: "The borrower is a servant to the lender" (Proverbs 22:7). The debtor's interests are subordinated to those of the creditor.

[264] § We learned in a mishna elsewhere (Shevi'it 10:5): Promissory notes that are antedated are not valid, but those that are postdated are valid.

[265] Rav Hamnuna says: They taught this halakha only with regard to promissory notes, but with regard to deeds of buying and selling property, even postdated documents are not valid. What is the reason for this stringency in the case of bills of sale? If postdated documents were allowed, there could be times that the seller sells land to the purchaser in the month of Nisan of a particular year and writes a postdated deed for him stating that the sale took place in the following Tishrei, and some money happens to reach the seller between Nisan and Tishrei and he purchases the land back from the purchaser. And then, when Tishrei arrives, the purchaser takes out the original bill of sale and says to the seller: It is true that you purchased the field from me, but I then purchased it from you again now, in Tishrei, as stated in this document.

[266] The Gemara asks: If so, a similar scenario could occur with promissory notes as well: There could be times that one borrows money in Nisan and writes a promissory note for the creditor stating that the loan took place in the following Tishrei, and some money happens to reach the debtor between Nisan and Tishrei and he repays his debt to the creditor early and says to him: Give me my promissory note. And the creditor says to him: I lost it, and he writes him a receipt instead. And then, when the time written in the note arrives, the creditor takes out the supposedly lost promissory note and says to the debtor: It is true that you repaid me previously, but it is now, after you repaid that loan, that you borrowed from me these dinars recorded in this document, which is dated in Tishrei.

[267] The Gemara answers: Rav Hamnuna holds that one does not write a receipt, so that scenario cannot occur. Like Rabbi Yehuda, Rav Hamnuna maintains that if a creditor loses his promissory note the debtor does not have to repay the loan. Rabbi Yosei, who does allow the creditor to collect his debt in such a case and write a receipt for the debtor, is concerned about that scenario, and consequently he holds that postdated promissory notes are not valid.

268 Rav Yeimar said to Rav Kahana, and some say it was Rav Yirmeya of Difti who said this to Rav Kahana: And today, when we write postdated promissory notes, and we also write a receipt in cases where the creditor loses his promissory note, why do we do this? The combination of allowing postdated promissory notes and allowing the writing of a receipt instead of producing the promissory note would enable double collection of the loan to take place. Rav Kahana said to him: The problem was rectified after Rabbi Abba told his court scribe: When you write postdated promissory notes, write as follows: We did not write this document on its date, i.e., on the date written within the document; rather, we postdated it and wrote it. Since it is clear from the text of the document that it was postdated, double collection of the loan is avoided.

269 Rav Ashi said to Rav Kahana: But what about today, when we do not do this, i.e., we do not follow Rabbi Abba's instructions? How do we avoid double collection of the loan? Rav Kahana replied: The problem was rectified after Rav Safra said to his court scribe: When you write these receipts for debtors who pay debts without the original promissory note being torn, if you know the date written in the missing promissory note, write it into the receipt. But if you do not know the date written in the promissory note, write the receipt without specification, i.e., do not write any date at all in the receipt, so that whenever the creditor produces the promissory note, the undated receipt can weaken it, i.e., exempt the debtor from payment.

270 Ravina said to Rav Ashi, and some say it was Rav Ashi who said to Rav Kahana:

271 But today, when we do not do this either when writing receipts, how can we avoid double collection of a loan? Rav Kahana said to him: The Sages instituted taking this precaution. One who does what the Sages instituted does it and protects himself from loss; and as for one who does not do so, he has brought the loss upon himself, and will suffer the consequences if the promissory note is found and presented in the future.

272 Rava bar Rav Sheila said to those who wrote deeds of acquisition, i.e., deeds of sale or deeds of gifts for property they acquired: When you write deeds of acquisition after the acquisition was performed, if you know the day on which you effected the acquisition, write that date on the document. But if you do not know the day on which you effected the acquisition, write the date on which you are currently writing the document. You should follow this procedure, and not write an approximate or estimated date, so that the document shall not appear as a falsehood.

273 Rav said to his scribe, and Rav Huna said similarly to his scribe: When you are writing a document and you are situated in Shili, write that the document was written in Shili, and you should do so even if the matters were given over to you, i.e., the transaction attested to in the document took place, in Hini. When you are situated in Hini, write that the document was written in Hini, even if the matters were given over to you in Shili.

274 § Rava said: With regard to this one who is holding a promissory note of one hundred dinars, and he says to the court: Prepare this note for me, i.e., exchange it, for two notes of fifty dinars each, so that if the debtor pays half the debt I will be able to give him one document and keep the other, we do not prepare the new notes for him.

275 What is the reason? The Sages have performed a matter here that is beneficial to the creditor and is beneficial to the debtor as well. It is beneficial to the creditor to keep the promissory note with the larger sum so that he can coerce the debtor to repay him, as there is a greater incentive to pay off a larger promissory note than a smaller one. And it is beneficial to the debtor, so that when he pays half

the debt his promissory note becomes vitiated, and the remainder of the sum written in the vitiated promissory note can be collected only if the creditor takes an oath that he has not received the entire sum.

276 And Rava said further: With regard to this one who is holding two promissory notes, each of fifty dinars, owed by the same person, and he says to the court: Prepare this note for me into a single note of one hundred dinars, we do not prepare the new note for him.

277 What is the reason? The Sages have performed a matter here that is beneficial to the creditor and is beneficial to the debtor as well. It is beneficial to the creditor to keep the smaller notes, so that if the debtor pays fifty dinars, his promissory note will not become vitiated, which would require the creditor to take an oath before collecting the remainder. And it is beneficial to the debtor, so that the creditor will not be able to coerce him to repay the debt quickly, as there is a greater incentive to repay a larger sum than a smaller one.

278 Rav Ashi says: With regard to this one who is holding a promissory note of one hundred dinars, and he said to the court: Prepare this note for me into one note of fifty dinars, as the debtor has paid me half, we do not prepare the new note for him.

279 What is the reason? We say, i.e., we are concerned, that the following may have happened: This debtor actually repaid all one hundred dinars, and when he did so he said to the creditor: Give me back my promissory note. And the creditor said to him: I lost it. And the creditor wrote a receipt for him in lieu of handing over the promissory note. And now, if we write a new promissory note of fifty dinars for the creditor, he will present this note and say to the debtor, who presents his receipt for a hundred dinars: That receipt is for a different loan that you repaid.

280 MISHNA: In a case where there are two brothers, one poor and one rich, and their father left them a bathhouse or an olive press as an inheritance, if the father had built these facilities for profit, i.e., to charge others for using them, the profit that accrues after the father’s death is shared equally by the two brothers. If the father had built them for himself and for the members of his household to use, the poor brother, who has little use for these amenities, cannot force the rich brother to convert the facilities to commercial use; rather, the rich brother can say to the poor brother: Go take servants for yourself, and they will bathe in the bathhouse. Or he can say: Go take olives for yourself, and come and make them into oil in the olive press.

281 If there are two people who were living in one city, one named Yosef ben Shimon and the other also named Yosef ben Shimon, one cannot present a promissory note against the other, as the purported debtor can claim: On the contrary, it is you who owed me money; you repaid me and I returned this note to you upon payment. Nor can another, third person, present a promissory note against either of them, as each one can claim: It is not I but the other Yosef ben Shimon who owes you money.

282 If a document is found among one’s documents stating: The promissory note against Yosef ben Shimon is repaid, and both men named Yosef ben Shimon owed this man money, the promissory notes of both of them are considered repaid, as it cannot be determined which debt was repaid and which is outstanding.

283 What should two people with the same name in a single city do in order to conduct their business? They should triple their names by writing three generations: Yosef ben Shimon ben so-and-

so. And if they have identical triple names, i.e., not only their fathers but their grandfathers had identical names, they should write an indication as to which one is referred to, such as: The short Yosef ben Shimon or the dark Yosef ben Shimon. And if they have identical indications, they should write: Yosef ben Shimon the priest, if one of them is a priest.

284 GEMARA: There was a certain promissory note that was presented at the court of Rav Huna, in which it was written: I, so-and-so son of so-and-so, borrowed one hundred dinars from you. No name was given as the creditor, but the one presenting the document claimed that the money was owed to him.

285 Rav Huna said: The term: From you, in the document does not identify anyone in particular, and can mean even: From the Exilarch, or even: From King Shapur.

286 Rav Ḥisda said to Rabba: Go out and investigate this matter, as tonight Rav Huna will ask this question of you.

287 Rabba went out, examined the matter, and discovered a relevant source. As it is taught in a baraita: Concerning a bill of divorce in which there are the signatures of witnesses on the document but there is no date written on it, Abba Shaul says that if it is written in it: I divorced her today, it is valid.

288 Rabba concludes: Apparently, the term: Today, indicates that day on which the bill of divorce emerges in the presence of the court. Here too, the term: From you, in a promissory note indicates that man from whose possession it emerges.

289 Abaye said to him: But this is not a valid proof, as perhaps Abba Shaul holds in accordance with the opinion of Rabbi Eliezer, who says that witnesses of the transmission of the bill of divorce effect the divorce. But here, let there be a concern for the possibility of the promissory note falling from its rightful owner and being found by the present holder of the document.

290 Rabba said to Abaye: We are not concerned for the possibility of a promissory note falling from its rightful owner and being found by another. And from where do you say, i.e., from where can it be proven, that we are not concerned for the possibility of a promissory note falling and being found by another?

291 As we learned in the mishna: If there are two people who were living in one city, one named Yosef ben Shimon and the other also named Yosef ben Shimon, one cannot present a promissory note against the other, as the purported debtor can claim: On the contrary, it is you who owed me money; you repaid me and I returned this note to you upon payment. Nor can another, third person, present a promissory note against either of them. This indicates that one of them can present a promissory note against others. But why can they do so? Let there be a concern for the possibility of the promissory note falling from one Yosef ben Shimon and being found by the other. Rather, must one not conclude from this mishna that we are not concerned for the possibility of the promissory note falling from one Yosef ben Shimon and being found by the other?

292 The Gemara asks: And why did Abaye, who is concerned for this possibility, not see a proof to the contrary from the mishna? He would counter: We are not concerned for the possibility of a promissory note falling from one particular person and being found by the other person with the same name, which is the case in the mishna, as that is extremely unlikely. We are concerned for the

possibility of a promissory note falling from one of the general public and being found by someone else.

293 The Gemara asks: And what of that which is taught in another baraita: Just as the two men named Yosef ben Shimon cannot produce a promissory note, this one against that one, so they cannot produce promissory notes against others, as those others can claim: I did not borrow from you but from the other Yosef ben Shimon, and somehow the note he was holding is in your possession? This baraita contradicts the mishna, from which it was inferred that one of the two men named Yosef ben Shimon can produce promissory notes to collect the debt from others. With regard to what principle do the mishna and baraita disagree?

294 They disagree with regard to whether letters, i.e., the content of a promissory note, are acquired by merely transferring the document to a new owner. In other words, they disagree about whether or not a creditor can transfer his right to collect a debt to another by merely transferring the document to him.

295 The tanna of our mishna maintains that letters are acquired by transferring the document. There is no concern that the promissory note was inadvertently transferred from one Yosef ben Shimon to the other by being lost and then found, as explained earlier. Nevertheless, there is still the possibility that one Yosef ben Shimon deliberately transferred the promissory note to the other, transferring the right of collection to him. According to this tanna, the second Yosef ben Shimon is fully entitled to collect the debt by producing the promissory note. And the tanna of the baraita holds that letters are not acquired by transferring the document, so that even if one Yosef ben Shimon transferred his promissory note to the other, the new holder of the document is not entitled to collect the debt.

296 And if you wish, say that everyone, i.e., both the tanna of the mishna and the tanna of the baraita, holds that letters are acquired by transferring the document, and here they disagree with regard to whether or not the new holder of the promissory note is required to bring proof that the original creditor transferred it to him for collection, as opposed to his having received it for safekeeping or having found it by chance. The tanna of our mishna holds that the present holder of the document is not required to bring proof that the debt was transferred to him and therefore he can collect the debt through the promissory note in his possession. And the tanna of the baraita holds that he is required to bring such proof, and in its absence he cannot collect the debt with the document he holds.

297 This is as it was stated: Letters are acquired by transferring the document. Abaye says: The new holder of the document is required to bring proof that he has in fact acquired the right to collect the debt. And Rava says: He is not required to bring such proof; it is assumed that if he is holding the document it was transferred to him knowingly by the original creditor.

298 Abaye said: From where do I say that he is required to bring proof? This is as it is taught in a baraita: In the case of one of several brothers, heirs of an estate, who has a promissory note in his possession listing a debt owed to the deceased father, and he seeks to collect the debt for himself, it is upon him to bring proof that the document was transferred to him legally by his father in his lifetime, or that it was bequeathed to him specifically and he did not appropriate it from the other brothers. Abaye concludes from this: What, is the same not true for all others in a similar situation? In other words, whenever someone holds a promissory note that did not initially belong to him he is required to prove that he acquired it legally.

[299] And Rava said in response: Proof is not generally required in such a case. But the case of brothers who are heirs is different, as it is common for brothers who are co-heirs to seize property belonging to the estate from one another.

[300] There are those who say there is a different version of this exchange between Abaye and Rava. According to this version, Rava said: From where do I say that no proof is required? As it is taught in a baraita: In the case of one of several brothers, heirs of an estate, who has a promissory note in his possession listing a debt owed to the deceased father, and he seeks to collect the debt for himself, it is upon him to bring proof that the document was transferred to him legally by his father in his lifetime, or that it was bequeathed to him specifically and that he did not appropriate it from the other brothers. The implication is that it is only brothers who must bring such proof, as it is common for brothers who are co-heirs to seize property belonging to the estate from one another. But others in a similar situation do not have to bring proof that they acquired the promissory note legally.

[301] And how would Abaye counter this proof? He would say: There is no difference between brothers and anyone else; they all have to bring proof. The baraita specifies brothers because it was necessary for it to mention that case, as it might enter your mind to say that since it is common for brothers who are co-heirs to seize property belonging to the estate from one another, one might say that they are careful to prevent such attempts. And therefore, when brothers produce a promissory note, they are not required to bring proof that they obtained it legally, as it is assumed that the other brothers would not have allowed the note to escape their possession otherwise. To counter this, the baraita teaches us that brothers, too, must bring proof when they produce promissory notes.

[302] § The Gemara returns to discuss the case of two men with the same name. But what about that which is taught in another baraita: Just as the two men named Yosef ben Shimon can produce a promissory note against others, so can they produce promissory notes against one another. This represents a third opinion, standing in opposition to both the mishna and the previous baraita. The Gemara asks: With regard to what do the mishna and first baraita on the one hand, and this baraita on the other, disagree?

[303] The Gemara answers: They disagree about whether or not a scribe may write a promissory note for a debtor even if the creditor is not with him.

[304] The tanna of our mishna holds that a scribe may write a promissory note for a debtor even if the creditor is not with him. The Gemara explains: At times, it could happen that one of the men named Yosef ben Shimon goes to a scribe and to witnesses and says to them: Write a promissory note for me, as I wish to borrow money from another Yosef ben Shimon. And then, after they write the document and sign it for him, he will take it and say to the other Yosef ben Shimon: Give me the hundred dinars that you borrowed from me, as attested to in this document. That is the reason why the mishna rules that two people of the same name cannot collect a debt through a promissory note from one another, thereby preventing this occurrence.

[305] By contrast, the tanna of the other baraita holds that a scribe may not write a promissory note for a debtor unless the creditor is with him and consents to the writing of the document. If one Yosef ben Shimon consents to the writing of the document before the other, they apparently trust one another, and there is no concern that the one holding the promissory note will defraud the other.

[306] § The mishna teaches: If a document is found among one’s documents stating: The promissory note against Yosef ben Shimon is repaid, and both men named Yosef ben Shimon owed this man

money, the promissory notes of both of them are considered repaid, as it cannot be determined which debt was repaid and which is outstanding. The Gemara comments: The implication of the mishna is that the reason this man cannot collect his debt is that this note was found among his papers; but if it was not suddenly found, rather he was always aware of its existence, he could present a promissory note against one of the men named Yosef ben Shimon and collect the debt from him. The Gemara asks: But didn't we learn earlier in the mishna: Nor can another present a promissory note against either of them?

307 Rabbi Yirmeya said: This later line in the mishna is stated with regard to a promissory note in which the debtors Yosef ben Shimon are identified by having their names tripled, i.e., through mentioning the name of their respective grandfathers, as is explained at the end of the mishna.

308 The Gemara questions this explanation: But let us see in whose name the receipt, i.e., the note stating that Yosef ben Shimon's debt has been repaid, is written. Why is there uncertainty as to which Yosef ben Shimon is referred to in the document? Rav Hoshaya said: The case is where the debtors are identified by having their names tripled in the promissory note, but the names are not tripled in the receipt.

309 Abaye stated a different answer to this question, that the mishna is speaking about the debtor, not the creditor, and this is what it is saying: If a receipt is found among the debtor's documents stating: The promissory note of Yosef ben Shimon against me has been repaid, and this debtor had borrowed money from both men named Yosef ben Shimon, the promissory notes of both of them are considered repaid, i.e., they are not valid for collection, as it cannot be determined which debt was paid and which one is outstanding.

310 The mishna teaches: What should two people with the same name in a single city do in order to conduct their business? They should triple their names by writing three generations: Yosef ben Shimon ben so-and-so. If their grandfather's names are identical and they have no prominent physical difference to indicate who is the one listed in the document, they write that the one referred to in the document is a priest, if that is the case. The Sages taught the following continuation of the mishna in a baraita: And if both of them were priests, they should write several generations of ancestors, until a divergence in names is found that can serve as a means of identification.

311 MISHNA: In the case of one who says to his son before dying: One promissory note among the promissory notes in my possession is repaid, but I do not know which one, the promissory notes of all of those who owe him money are considered repaid, i.e., they are not valid for collection, as it cannot be determined which debt was repaid and which are outstanding. If there were found among his papers two promissory notes owed by one person, the one for the greater amount is considered repaid, and the one for the smaller amount is not considered repaid and can be collected; the debtor is favored in the case of an uncertainty.

312 GEMARA: Rava says that if a creditor says to a debtor who borrowed money twice from him: One promissory note of the two that I have of yours in my possession is repaid, without specifying which one, the one for the greater amount is considered repaid, and the one for the smaller amount is not considered repaid, and can be collected. If the creditor said instead: The debt of yours that I have in my possession is repaid, all the promissory notes this creditor has from this debtor are considered repaid, as the term debt covers all the loans at once.

313 Ravina said to Rava: If that is so that when one makes an ambiguous statement it is interpreted to his detriment, does the same halakha apply to sales? If a seller of land writes a document for a purchaser stating: My field is hereby sold to you, without specifying which of his two fields he is referring to, is it the larger field that is sold to him? And if he writes a document for the purchaser stating: The field that I have is sold to you, is it so that all of his fields are sold to him, as the Hebrew word for field can refer to several fields as well as a single field?

314 Rava explains: There, the holder of the document of sale is at a disadvantage, as it is he who seeks to take more property from the seller, and must accept the minimal meaning. Here too, in the case of the promissory notes, it is the holder of the document, the creditor, who seeks to collect more money from the debtor. Therefore, the creditor is at a disadvantage.

315 MISHNA: One who lends money to another with the assurance of a guarantor cannot collect the debt from the guarantor.

316 But if the creditor said to the debtor: I am lending the money on the condition that I will collect the debt from whomever I wish, i.e., either the debtor or the guarantor, he can collect the debt from the guarantor. Rabban Shimon ben Gamliel says: If the debtor has property of his own, then whether in this case, where the creditor stipulated this condition, or that case, where he did not, he cannot collect the debt from the guarantor.

317 And so Rabban Shimon ben Gamliel would say: If there is a guarantor for a woman for her marriage contract, from whom the woman can collect payment of her marriage contract instead of collecting it from the husband, and her husband was divorcing her, the husband must take a vow prohibiting himself from deriving any benefit from her, so that he can never remarry her. This precaution is taken lest the couple collude [kenunya] to divorce in order to collect payment of the marriage contract from this guarantor’s property, and then the husband will remarry his wife.

318 GEMARA: The mishna teaches: One who lends money to another with a guarantor cannot collect the debt from the guarantor. The Gemara at first understands that the mishna is ruling that a guarantor’s commitment is limited to when the debtor dies or flees. What is the reason the guarantor’s commitment is limited? Rabba and Rav Yosef both say that the guarantor can tell the creditor: You gave a man over to me, to take responsibility for him if he dies or flees; I have given a man back to you. The debtor is here before you; take your money from him, and if he has nothing, suffer the loss yourself.

319 Rav Naḥman objects to this: This is Persian law.

320 The Gemara interjects: On the contrary, the Persian courts go after the guarantor directly, without even attempting to collect the debt from the debtor himself. Why, then, did Rav Naḥman say that excusing the guarantor from payment is Persian law?

321 The Gemara clarifies Rav Naḥman’s intent: Rather, Rav Naḥman meant to say that this kind of ruling would be appropriate for the members of a Persian court, who do not give a reason for their statements, but issue rulings by whim. Rav Naḥman was saying that it is not fair or logical to excuse the guarantor and cause a loss to the creditor who was depending on him.

322 Rather, Rav Naḥman said: What does the mishna mean when it says that the creditor cannot collect the debt from the guarantor? It means that he cannot claim payment from the guarantor at the

outset, until after it is established that the debtor has no means to repay the debt. After the borrower defaults, the creditor can collect the debt from the guarantor.

323 This halakha is also taught in a baraita: One who lends money to another with the assurance of a guarantor cannot claim payment of the debt from the guarantor at the outset, rather, he must first attempt to collect the debt from the debtor. But if the creditor said to the debtor: I am lending the money on the condition that I will collect the debt from whomever I wish, he can claim payment of the debt from the guarantor at the outset, bypassing the debtor.

324 § Rav Huna said: From where is it derived that a guarantor becomes obligated to repay a loan he has guaranteed? As it is written that Judah reassured his father concerning the young Benjamin: "I will be his guarantor; of my hand shall you request him" (Genesis 43:9). This teaches that it is possible for one to act as a guarantor that an item will be returned to the giver.

325 Rav Ḥisda objects to this: This incident involving Benjamin is not a case of a standard guarantor, but a case of an unconditional guarantee, as it is written, also in the context of Benjamin, that Reuben said: "Deliver him into my hand, and I will bring him back to you" (Genesis 42:37). One who undertakes unconditional responsibility for a loan has a different status than a standard guarantor, as will soon be elaborated. Therefore, a biblical source has yet to be adduced to teach that one can become a standard guarantor.

326 Rather, Rabbi Yitzḥak said that the source is from here: "Take his garment that is surety for a stranger; and hold him in pledge that is surety for an alien woman" (Proverbs 20:16). The verse advises a creditor to take the garment of the debtor's guarantor as payment for the loan.

327 And it is stated: "My son, if you have become surety for your neighbor, if you have shaken your hands for a stranger, you have become ensnared by the words of your mouth, you have been caught by the words of your mouth. Do this now, my son, and save yourself, seeing that you have come into the hand of your neighbor: Go, humble yourself [hitrappes], and assemble your neighbors" (Proverbs 6:1–3). This last part of the passage means: If your neighbor's money is in your possession, as you owe it as a guarantor, open up [hatter] the palm [pissat] of your hand and repay him. And if it is not money that you owe him, but rather "you have become ensnared by the words of your mouth" and owe him an apology for a personal slight, gather together many neighbors through which to seek his forgiveness.

328 § Ameimar said: The issue of whether or not a guarantor in fact becomes obligated to repay the loan he has guaranteed is a dispute between Rabbi Yehuda and Rabbi Yosei. According to Rabbi Yosei, who says that a transaction with inconclusive consent [asmakhta] effects acquisition, a guarantor becomes obligated to repay the loan, whereas according to Rabbi Yehuda, who says that an asmakhta does not effect acquisition, a guarantor does not become obligated to repay the loan. Any obligation one undertakes that is dependent on the fulfillment of certain conditions that he does not expect will be fulfilled, in this case the debtor's default on the loan, is considered an asmakhta.

329 Rav Ashi said to Ameimar that he was conflating these two issues: But it is a daily occurrence, i.e., it is taken for granted, that an asmakhta does not effect acquisition, and it is also taken for granted that a guarantor becomes obligated to repay the loan he has guaranteed.

330 Rather, Rav Ashi said: Through that satisfaction that the guarantor feels when the creditor trusts him and loans the money based on his guarantee, the guarantor resolves to obligate himself to repay

the loan. Guaranteeing a loan is unlike a usual case of an obligation undertaken that is dependent on the fulfillment of certain conditions that he does not expect will be fulfilled, in which the commitment is not considered a real one. Here, the one obligating himself experiences a sense of satisfaction when the money is loaned to the debtor, and due to that, fully commits to fulfill his obligation.

331 § The mishna teaches: But if the creditor said to the debtor: I am lending the money on the condition that I will collect the debt from whomever I wish, he can collect the debt from the guarantor. Rabba bar bar Ḥana says that Rabbi Yoḥanan says: They taught this only when the debtor has no property of his own from which to repay the loan, but if the debtor has property the creditor cannot collect the debt from the guarantor.

332 The Gemara questions this assertion: But from the fact that the latter clause of the mishna teaches that Rabban Shimon ben Gamliel says: If the debtor has property of his own, then whether in this case, where the creditor stipulated this condition, or that case, where he did not, he cannot collect the debt from the guarantor, by inference one can understand that the first tanna maintains that there is no difference if it is like this and there is no difference if it is like that. Whether or not the debtor has property from which to repay the loan, the creditor can collect the debt from the guarantor.

333 The Gemara clarifies: The mishna is incomplete and this is what it is teaching: One who lends money to another with the assurance of a guarantor cannot collect the debt from the guarantor before first claiming the debt from the debtor. But if the creditor said to the debtor: I am lending the money on the condition that I will collect the debt from whomever I wish, he can collect the debt from the guarantor. In what case is this statement said? When the debtor has no property of his own from which to repay the debt; but if the debtor has property, the creditor cannot collect the debt from the guarantor. This is the halakha with regard to a standard guarantor, but in the case of an unconditional guarantor, even if the debtor has property of his own, the creditor can collect the debt from the unconditional guarantor.

334 Rabban Shimon ben Gamliel says: If the debtor has property, in both this case and in that case, i.e., whether the guarantor is a standard guarantor or an unconditional guarantor, the creditor cannot collect the debt from either type of guarantor.

335 Rabba bar Ḥana says that Rabbi Yoḥanan says: Wherever Rabban Shimon ben Gamliel taught a halakha in the corpus of our Mishna, the halakha is in accordance with his opinion, except for the following three cases: The responsibility of the guarantor, and the incident that occurred in the city of Tzaidan (see Gittin 74a), and the dispute with regard to evidence in the final disagreement (see Sanhedrin 31a).

336 § The Gemara discusses which expressions confer upon a person the status of a standard guarantor, and which confer the status of an unconditional guarantor. Rav Huna says that if one says to a potential creditor: Lend money to him and I am a guarantor, or: Lend money to him and I will repay the debt, or: Lend money to him and I am obligated to repay the debt, or: Lend money to him and I will give the money back to you, all these are expressions that confer the status of a standard guarantee.

337 If one says: Give money to him and I am an unconditional guarantor, or: Give money to him and I will repay the debt, or: Give money to him and I am obligated to repay the debt, or: Give money to him and I will give the money back to you, all these are expressions that confer the status of an

unconditional guarantee. The usage of the word give, as opposed to lend, confers the status of an unconditional guarantor.

338 A dilemma was raised before the Sages: What is the halakha if one says: Lend money to him and I am an unconditional guarantor? On the one hand, the word lend is used, as opposed to give, but on the other hand, he explicitly states that he will be an unconditional guarantor. What is the halakha if one says: Give money to him and I am a guarantor? On the one hand, the word give is used, as opposed to lend, but on the other hand, he states that he will be a guarantor.

339 Rabbi Yitzḥak says in resolving this dilemma: When one employs the language of a standard guarantee, it is a standard guarantee, even if he also used the word give. And when one employs the language of an unconditional guarantee, it is an unconditional guarantee, even if he also used the word lend.

340 Rav Ḥisda says: All of the expressions mentioned in this discussion are expressions of an unconditional guarantee, except for: Lend money to him and I am a guarantor.

341 Rava says: All of the expressions mentioned in this discussion are expressions of a standard guarantee, except for: Give money to him and I will give the money back to you.

342 Mar bar Ameimar said to Rav Ashi: My father said the following: If one says: Give money to him and I will give the money back to you, this expression binds the guarantor to such an extent that the lender has no claim against the debtor at all; his only option is to collect the debt from the guarantor.

343 The Gemara rejects this last statement: But that is not so. Rather, the debtor is not exempted from dealing with the creditor unless the guarantor takes the money from the creditor and gives it to the debtor with his own hand.

344 § The Gemara relates: There was once a certain judge who permitted a creditor to enter the debtor’s property and collect it for his debt before lodging a claim against the debtor himself. Rav Ḥanin, son of Rav Yeiva, overruled that judge and expelled the creditor from the seized property.

345 When Rava heard about this he said: Who is wise enough to perform such a matter, i.e., to issue this ruling, if not Rav Ḥanin, son of Rav Yeiva? He holds that a person’s property is a guarantee for him, i.e., it acts as a guarantor for the loan if the debtor does not repay it; and we learned in the mishna: One who lends money to another with the assurance of a guarantor cannot collect the debt from the guarantor. And we established that the mishna means that he cannot collect the debt from the guarantor at the outset, before seeking payment from the debtor himself. So too, he cannot collect the debt by taking the debtor’s property without first seeking payment from the debtor himself.

346 § The Gemara relates: There was once a certain guarantor for orphans whose father borrowed money and died, and the orphans were minors, and this guarantor repaid the debt to the creditor before informing the orphans that he was repaying the debt for them. The guarantor now sought reimbursement from the orphans.

347 Rav Pappa said: Repaying a creditor is a mitzva, and orphans who are minors are not obligated in performing a mitzva. They therefore do not have to repay any debts owed by their deceased father until they reach the age of majority.

348 And Rav Huna, son of Rav Yehoshua, also said that the orphans do not have to repay the guarantor until reaching majority, but for a different reason: Say that perhaps the deceased gave bundles of money to his creditor before his death, and therefore some or all of the debt has been paid.

As long as they are minors, the heirs would not be aware of this payment, but upon reaching majority there is a chance that they may examine their father’s papers and discover that their father had done this. Therefore, payment is deferred until they reach majority.

349 The Gemara asks: What is the difference between the opinion of Rav Pappa and that of Rav Huna, son of Yehoshua, as both agree that the orphans are exempt from repaying the debt until they reach majority?

350 The Gemara answers: The difference between them is in a case where the one who owed the money, i.e., the deceased, admits explicitly just before his death that he did not yet repay any of his loan. Alternatively, there is a difference between them in a case where the court excommunicated the deceased for not cooperating with the court in repaying his debt, and he died while still in a state of excommunication, which demonstrates that the debt had not been repaid prior to his death. In both of these cases Rav Pappa would exempt the minor orphans from payment, as minors are not obligated to perform mitzvot, while Rav Huna, son of Yehoshua, would require them to repay the debt immediately, as there is no possibility that their father had repaid the debt.

351 The Sages of Eretz Yisrael sent a ruling from there to Babylonia: In a case where the court had excommunicated a debtor for not cooperating in repaying his debt, and the debtor died while still in a state of excommunication, the halakha is in accordance with the opinion of Rav Huna, son of Rav Yehoshua, and the orphans must repay the debt immediately.

352 The Gemara raises an objection from a baraita (Tosefta 11:15): A guarantor for a debt who has the promissory note for that debt in his possession, indicating that he has repaid the debt, and now seeks reimbursement from the debtor, cannot collect if the debtor has died and the obligation for the debt has fallen to his minor heirs. But if it is written by the creditor in the promissory note: I received repayment from you, the guarantor, then the guarantor can collect the debt from the minor heirs.

353 The Gemara explains the objection: Granted, according to the opinion of Rav Huna, son of Rav Yehoshua, you find a case where the minor heirs would be required to repay the debt, such as when the one who owed the money, i.e., the deceased, admits explicitly just before his death that he did not yet repay the loan. But according to the opinion of Rav Pappa, who maintains that minor heirs never have to repay their father’s debts, it is difficult. What is the case discussed in the baraita?

354 The Gemara answers: It is different there, as it is for this reason that the creditor troubled himself and wrote for the guarantor: I received repayment from you. Once the creditor writes this in the promissory note, it attains the status of a promissory note of the guarantor held directly against the debtor, and even Rav Pappa agrees that a debt that is recorded in a promissory note can be collected from the deceased’s property immediately, even from the minor heirs.

355 The Gemara relates: There was a certain guarantor who had guaranteed a loan given by a gentile, who repaid the gentile creditor before the gentile creditor claimed repayment from the orphans who survived the debtor. The guarantor now sought reimbursement from the orphans. Rav Mordekhai said to Rav Ashi: This is what Avimi of Hagronya said in the name of Rava: Even according to the one who says that we are concerned for the possibility that the deceased may have given bundles of money to the creditor before his death, this statement applies only in the case of a Jewish creditor. But in the case of a gentile creditor, since according to gentile law he is entitled to go directly to a guarantor, we are not concerned for the possibility that the deceased may have given bundles of

money. The debtor would not repay the gentile before the loan is due, as the latter has the right to collect directly from the guarantor, and would thereby receive double payment.

356 Rav Ashi said to Rav Mordekhai: On the contrary, even according to the one who says that we are not concerned for the possibility that the deceased may have given bundles of money, this statement applies only in the case of a Jewish creditor. But in the case of a gentile creditor, since according to gentile law they are entitled to go directly to a guarantor, no guarantor would accept upon himself to guarantee such a loan if the debtor had not given bundles of money as collateral to the gentile creditor from the outset.

357 § The mishna teaches: And so Rabban Shimon ben Gamliel would say: If there is a guarantor for a woman for her marriage contract, and her husband is divorcing her, the husband must take a vow prohibiting himself from deriving any benefit from her so that he can never remarry her. The Gemara relates an incident pertaining to this ruling: Someone named Moshe bar Atzari was a guarantor for the marriage contract of his daughter-in-law, guaranteeing the money promised by his son in the event of death or divorce. His son, named Rav Huna, was a young Torah scholar, and was in financial straits. Abaye said: Is there no one who will go advise Rav Huna that he should divorce his wife, and she will go and collect her marriage contract from Rav Huna's father, and then Rav Huna should remarry her?

358 Rava said to Abaye: But didn't we learn in the mishna that when a husband divorces his wife in such circumstances he must take a vow prohibiting himself from deriving any benefit from her, thereby precluding the possibility of remarriage? Abaye said to him: Is that to say that everyone who divorces his wife divorces her in a court? Rav Huna could be advised to divorce his wife outside the court, in which case he could do so without being forced to take the prescribed vow.

359 Ultimately, it was revealed that this Rav Huna was a priest, who may not marry a divorcée, even his own ex-wife. Abaye's suggestion was therefore not an option for him. Upon hearing this, Abaye said: This is in accordance with the adage that people say: Poverty follows the poor.

360 The Gemara asks: But did Abaye really say this? Would he really encourage giving such advice? But doesn't Abaye himself say: Who is a cunning, wicked person? This is one who provides advice to sell property in accordance with the ruling of Rabban Shimon ben Gamliel. As taught elsewhere (Ketubot 95b), if one says: My property is hereby bequeathed to you, and after you die it will pass to so-and-so, Rabban Shimon ben Gamliel rules that the first recipient can sell the property, which would thereby deprive the second recipient from receiving it. Abaye said that giving advice to someone to pursue such action, though it is legally sound, is considered wicked. Here as well, why would he give advice to Rav Huna to divorce his wife only in order to force his father to pay the marriage contract?

361 The Gemara answers: When dealing with one's son it is different. It is not considered wickedness to force a father to give money to his own son. Moreover, when dealing with a Torah scholar it is different. It is not considered wickedness to procure money for a Torah scholar, because the money enables him to pursue his studies.

362 The Gemara asks another question with regard to this incident: But wasn't Moshe bar Atzari a guarantor? And we maintain, as the Gemara will soon note, that a guarantor for a marriage contract does not become obligated to pay. The Gemara answers: He was an unconditional guarantor.

[363] The Gemara objects: This works out well according to the one who says that an unconditional guarantor for a marriage contract becomes obligated to pay it even if the husband has no property of his own at the time of the marriage. According to this opinion all is well. But according to the one who says: If the husband has his own property the unconditional guarantor becomes obligated to pay, but if the husband does not have his own property he does not become obligated, what is there to say? Rav Huna obviously did not have any property of his own. Why, then, was his father held responsible for paying his marriage contract according to this latter opinion?

[364] The Gemara answers: If you wish, say that Rav Huna had property when he got married, so that his father's guarantee took effect, but it became blighted, i.e., it was ruined or lost in the interim. And if you wish, say instead: A father, vis-à-vis his son, sincerely obligates himself to guarantee his marriage contract, even when the son has no property of his own.

[365] The Gemara elaborates on the issue under discussion. This is as it was stated: Everyone agrees that a standard guarantor for a marriage contract does not become obligated to pay the marriage contract, and everyone agrees that an unconditional guarantor for a creditor, i.e., for a loan, becomes obligated to repay the loan. With regard to an unconditional guarantor for a marriage contract and a standard guarantor for a creditor, the Sages disagree. One Sage holds that if the debtor or husband has his own property, these guarantors become obligated for the guarantees they have undertaken, but if he does not have his own property the guarantor does not become obligated. And one Sage holds that whether the debtor or husband has property or does not have property, the guarantor becomes obligated to pay it.

[366] And the halakha is that a guarantor becomes obligated to pay, whether the debtor has his own property or does not have property. This is to the exclusion of a guarantor for a marriage contract, in which case even if the husband has his own property he does not become obligated to pay. What is the reason for this? The intention of the guarantor is to perform the mitzva of facilitating a marriage by encouraging the woman to consent to the marriage as a result of his involvement, but he does not truly intend to obligate himself. And furthermore, in contrast to a guarantor for a loan, where the creditor stands to suffer a loss if he is not repaid, the woman does not suffer any concrete loss, as the husband does not borrow money from the woman. Therefore, the level of commitment of the guarantor in this case is lower. Accordingly, the Sages instituted that the guarantor does not become responsible for payment of the marriage contract from his own property.

[367] § Rav Huna says that a person on his deathbed who consecrated all his property to the Temple treasury, and then says: So-and-so has one hundred dinars in my possession, i.e., I owe one hundred dinars to so-and-so, is deemed credible, and the money is to be repaid to that person. The reason for this is that there is a presumption that a person does not collude against the Temple treasury. He would not lie about owing money to someone, thereby causing a loss to the Temple treasury.

[368] Rav Naḥman objects to this ruling: And does a person collude against his children? Of course not. Yet, as Rav and Shmuel both say that in the case of a person on his deathbed who says: So-and-so has one hundred dinars in my possession, only if he says explicitly: Give him the money, the children give it, but if he did not say explicitly: Give him the money, the children do not give it. The person on his deathbed is not assumed to be telling the truth about owing the money unless he explicitly instructs that the money be given. Apparently, then, it is assumed that a person is prone to

make false statements so as not to make his sons appear sated, i.e., wealthy. A person on his deathbed may falsely claim that he is in debt in order to dispel the notion that his children are wealthy heirs.

[369] Here, too, with regard to the Temple treasury, apply the same principle and say: A person is prone to make false statements so as not to make himself appear sated. It is therefore possible that the money was not owed, and payment should not be made from the consecrated property.

[370] The Gemara answers: When does Rav Huna say that payment should be made there, in the case of a person on his deathbed who consecrated all his property? In a case where the creditor, to whom the deceased admitted owing money, holds a promissory note corroborating the deceased's admission.

[371] The Gemara comments: By inference, the statement of Rav and Shmuel, where the money is not given to the creditor unless the person on his deathbed explicitly requests that it be given, is applicable in a case where the creditor does not hold a promissory note corroborating the admission. The Gemara asks: If so, how can it be that if the deceased says: Give him the money, the children give it to him, i.e., it is collected from the estate left to the heirs, as it is a loan by oral contract, and as Rav and Shmuel both say: One does not collect a loan by oral contract from heirs nor from purchasers who bought land from the debtor after the loan was granted?

[372] The Gemara gives a different answer to this question. Rather, Rav Naḥman said: Both this case and that case are discussing where the creditor holds a promissory note corroborating the deceased's admission. And yet it is not difficult. In this ruling of Rav Huna, the case is where the creditor's promissory note has been ratified by the court, and in that ruling of Rav and Shmuel, the case is where the creditor's promissory note has not been ratified by the court. Therefore, in the latter case, if the person on his deathbed says: Give him the money, he has in effect ratified the creditor's promissory note, and if he did not say: Give him the money, he has not ratified the creditor's promissory note.

[373] § Rabba says that in the case of a person on his deathbed who says: So-and-so has one hundred dinars in my possession, and the orphans who inherited his property subsequently said: We repaid the debt, they are deemed credible. But if the father said: Give one hundred dinars to so-and-so, as I owe it to him, and subsequently the orphans said: We repaid him the money, they are not deemed credible.

[374] The Gemara objects: Isn't it the opposite [kelappei layya]? The opposite is more reasonable. If the father says: Give one hundred dinars to so-and-so, since their father stated the matter assertively, as he gave an explicit directive, it could be said that the heirs repaid the money. But if he said: So-and-so has one hundred dinars in my possession, since the orphans' father did not state the matter assertively, it could be said that the heirs did not repay the creditor.

[375] The Gemara reformulates Rabba's statement: Rather, if Rabba's statement was stated, it was stated as follows: In a case of a person on his deathbed who says: So-and-so has one hundred dinars in my possession, and the orphans subsequently said: After his admission, Father retracted his words and said to us: I repaid the debt, they are deemed credible. What is the reason for this? At first the father had forgotten, but subsequently he remembered repaying the debt. But if the father says assertively: Give one hundred dinars to so-and-so, and the orphans subsequently said: Afterward Father retracted his words and said: I repaid the debt, they are not deemed credible. The reason is that if it is so that the father repaid the debt or was uncertain about the matter, he would not say with such assertiveness: Give the money to him.

376 § Rava raises a dilemma: With regard to a person on his deathbed who, upon hearing someone’s monetary claim against him, admitted owing the money to him, what is the halakha? Is it required for him to say to two people: You are my witnesses, as is usually necessary in order to prove that an admission is stated in earnest and not in jest? Or is it perhaps not required for him to say: You are my witnesses, since he is a person on his deathbed, whose instructions are generally binding? Is it required that he say to two people: Write my admission in a document, as is usually required, or is it not required for him to say: Write my admission in a document? The issue in question here is: Does a person sometimes jest at the time of death, i.e., while on his deathbed, or can it be assumed that a person does not jest at the time of death?

377 After Rava raised the dilemma, he then resolved it, and ruled: A person does not jest at the time of death, and therefore the statements of a person on his deathbed are considered as if they were written in a document and transmitted to the relevant party.

378 MISHNA: One who lends money to another by means of a promissory note can collect the debt from liened property that had been sold to others by the debtor after the loan was granted. One who lends money by means of witnesses, without recording the loan in a promissory note, can collect the debt only from unsold property.

379 If one presents to a debtor a document in the handwriting of the debtor stating that he owes money to him, but without witnesses signed on the document, the creditor can collect only from unsold property.

380 In the case of a guarantor whose commitment emerged after the signing of the promissory note, the creditor can collect the sum only from unsold property of the guarantor.

381 The mishna relates: An incident occurred where such a case came before Rabbi Yishmael, and he said: The creditor can collect the sum from unsold property of the guarantor, but not from liened property that he has sold to others. Ben Nannas said to Rabbi Yishmael: The creditor cannot collect the sum from the guarantor at all, not from liened property that has been sold, nor from unsold property.

382 Rabbi Yishmael said to him: Why not? Ben Nannas said to him: If one was strangling someone in the marketplace, demanding repayment of a loan, and another person found him doing so and said to the attacker: Leave him alone and I will give you the money he owes, the person who intervened is exempt from paying, as the creditor did not loan the money in the first place based on his trust of the one who intervened. Rather, who is a guarantor who is obligated to repay the loan he has guaranteed? One who tells the creditor before the loan takes place: Lend money to him, and I will give you the repayment, as in that case the creditor did loan the money based on his trust of the guarantor.

383 And Rabbi Yishmael thereupon said: One who wants to become wise should engage in the study of monetary law, as there is no greater discipline in the Torah, and it is like a flowing spring. And, he added, one who wants to engage in the study of monetary law should attend to, i.e., become a disciple of, Shimon ben Nannas.

384 GEMARA: Ulla says: By Torah law, a creditor, whether in the case of a loan with a promissory note or the case of a loan by oral contract, can collect the debt from liened property that has been sold by the debtor subsequent to his receiving the loan. What is the reason for this? The property of a debtor at the time of the loan, even an oral loan, is liened by Torah law. And what is the reason the

Sages said that one who gives a loan by oral contract can collect the debt only from unsold property? Because of the loss that would be incurred by purchasers of land if the seller's creditors could seize the land they have purchased.

[385] The Gemara asks: If so, a loan with a promissory note should also not be collected from purchasers of property, as this would cause them a loss. The Gemara answers: There, in the case of a loan recorded in a promissory note, the purchasers, who neglected to investigate the financial status of the seller before purchasing land from him, brought the loss upon themselves. By contrast, loans by oral contract are often impossible to discover, even with a thorough investigation.

[386] And Rabba says: By Torah law, a creditor, whether in the case of a loan with a promissory note or the case of a loan by oral contract, can collect the debt only from the debtor's unsold property. What is the reason for this? The property of a debtor is not liened by Torah law. And what is the reason the Sages said that one who gives a loan with a promissory note can collect the debt from liened property that has been sold? So as not to lock the door in the face of potential borrowers. If one could not collect a debt by taking liened property that has been sold, people would be hesitant to put their money at risk by lending it.

[387] The Gemara asks: If that is so, that there is a desire to encourage people to lend money by granting greater power of collection to creditors, a loan by oral contract should also be collectible from liened property that has been sold. The Gemara answers: There, in the case of a loan by oral contract, it has no publicity associated with it, so that purchasers often cannot find out about it, even after a thorough investigation, and it would be an unfair burden on them to have the property purchased by them seized in such cases.

[388] The Gemara asks: And did Rabba really say this? But doesn't Rabba say, in the case of a firstborn son, that if he and his brothers collected a debt from land, he has the right to receive a double portion of that payment, but if they collected a debt from money, he does not have the right to a double portion? A firstborn son is entitled to a double share of inheritance of any property that was owned by his father at the time of his death, but not to profits or income that accrue to the estate after his death. If a debt owed to the father is collected from land after his death, Rabba said that the firstborn is entitled to a double portion, indicating that the land was considered in the father's possession even before he died, which indicates that Rabba holds that the property of a debtor is liened to a creditor by Torah law.

[389] And if you would say: The opinions as they were cited earlier are attributed incorrectly, and it is necessary to reverse the two opinions, and exchange the opinion of Rabba for that of Ulla, and that of Ulla for that of Rabba, there is a difficulty: But doesn't Ulla say elsewhere: By Torah law the halakha of a creditor is to collect his debt only from inferior-quality land?

[390] The Gemara resolves the contradiction between Rabba's two statements: Rather, Rabba was stating an explanation for the opinion of the people of the West, Eretz Yisrael, cited earlier (125a), but he himself does not hold accordingly, as he holds that a firstborn son is not entitled to a double portion of a debt collected from land.

[391] The Gemara continues to discuss the issue of the extent of liens on a debtor's property. Rav and Shmuel both say: In the case of a loan by oral contract, the creditor can collect the debt only from the one who took the loan, but not from the heirs of the debtor after his death, and not from purchasers of

his property. What is the reason for this? They maintain that the property of a debtor is not liened by Torah law.

392 Rabbi Yoḥanan and Rabbi Shimon ben Lakish both say: In the case of a loan by oral contract, the creditor can collect the debt both from the heirs of the debtor after his death and from the purchasers of his property. What is the reason for this? They maintain that the property of a debtor is liened by Torah law.

393 The Gemara raises an objection to the opinion of Rav and Shmuel from a baraita (Tosefta, Bava Kamma 6:2): If one was digging a pit in the public domain, and an ox fell on him and killed him as he was in the pit, the owner of the ox is exempt from paying for the damage caused, as it is the one who dug the pit who is at fault. Moreover, if it occurred that the ox died as a result of the fall, the heirs of the owner of the pit are liable to pay the value of the ox to its owner. Compensation for damages is comparable to a loan by oral contract, and yet the baraita states that the heirs of the culpable party must pay it.

394 Rabbi Ela says that Rav says: The baraita is discussing a case in which the one who dug the pit stood trial for the damage before he died, and once judgment is rendered by a court, the resulting financial liability is comparable to a loan with a promissory note.

395 The Gemara objects: But it is taught in the baraita that the ox killed him by falling on him. How then can one say that he stood trial? Rav Adda bar Ahava says: The baraita does not mean that the ox killed him instantly, but that it rendered him one who has a wound that will cause him to die within twelve months [tereifa], and there was enough time before his death to try him and deem him liable to pay for damages.

396 The Gemara objects that there is a different version of the baraita according to which this interpretation is not possible: But doesn’t Rav Naḥman say that a certain tanna taught the baraita with a different formulation, stating that the one who dug the pit died from the impact of the ox and the ox in effect buried him in the ground at the bottom of the pit? In this scenario it would be impossible to take the one who dug the pit to court to stand trial. The Gemara answers: There, according to that second version, it is discussing a case where judges sat at the opening of the pit and deemed liable the one who dug the pit to pay for the damage before he died.

397 Rav Pappa said: The halakha is that when a creditor gives a loan by oral contract, he can collect the debt from the heirs of the debtor after his death, but he cannot collect the debt from the purchasers of the debtor’s property. He can collect the debt from the heirs so as not to lock the door in the face of potential borrowers. But he cannot collect the debt from the purchasers, as a loan by oral contract has no publicity associated with it.

398 § The mishna teaches: If one presents to a debtor a document in the handwriting of the debtor stating that he owes money to him, but without witnesses signed on the document, the creditor can collect only from unsold property. Rabba bar Natan asked Rabbi Yoḥanan: If the document in the handwriting of the debtor was ratified in court at a later time, what is the halakha? Would it then be possible to collect the debt from liened property that has been sold? Rabbi Yoḥanan said to him in reply: Even if the document in the handwriting of the debtor was ratified in court, the creditor can collect the debt only from unsold property.

[399] Rami bar Ḥama raises an objection from a mishna (Gittin 86a), which states: There are three types of bills of divorce that are not valid ab initio, but if the woman marries another man on the basis of one of these bills of divorce the lineage of the offspring from this marriage is unflawed. In other words, she is not considered to be a married woman who engaged in sexual intercourse with another man, which would impair the lineage of their child. And they are these: A bill of divorce that the husband wrote in his handwriting but there are no signatures of witnesses in the document at all; a bill of divorce where there are the signatures of witnesses in the document but there is no date written in it; and a bill of divorce where there is a date written in it, but it contains only one witness. These are the three bills of divorce that are not valid with regard to which the Sages said: And if she marries, the lineage of the offspring is unflawed.

[400] Rabbi Elazar says: Even though there are no signatures of witnesses in the document, but he handed it to her in the presence of two witnesses, it is a valid bill of divorce. And on the basis of this bill of divorce the woman can collect the amount written to her in her marriage contract even from liened property that has been sold. This indicates that even when no witnesses signed the document, the debt listed therein can be collected from liened property that has been sold, as long as witnesses saw the document being transferred to the creditor. All the more so a debt listed in a document in the handwriting of the debtor that has been ratified by a court should be eligible for collection from liened property that has been sold.

[401] The Gemara answers: There it is different, as the husband obligated himself and his property immediately from the time of the writing of the document, as he knew at that time that the document would be transferred in the presence of witnesses. By contrast, in the case of the mishna here, the document in the handwriting of the debtor was written without the intent of ratifying it. It was only at a later date, as an afterthought, that it was ratified, and the terms of the obligation of the debt cannot be changed at that time.

[402] § The mishna teaches: In the case of a guarantor whose commitment emerged, i.e., was written, after the signing of the promissory note, the creditor can collect the debt only from unsold property of the guarantor. Rav says: If the guarantor’s commitment is written before the signing of the document, the creditor can collect the debt from the guarantor from liened property that has been sold; if it is written after the signing of the document, the creditor can collect the debt only from unsold property.

[403] At other times, Rav said: Even if the guarantee is written before the signing of the document, the creditor can collect the debt only from unsold property.

[404] The Gemara asks: There is a difficulty resulting from the contradiction between one statement of Rav to the other statement of Rav, as they seem to contradict one another with regard to a guarantee that is written before the signing of the document. The Gemara answers: This is not difficult. This case, where Rav says the creditor can collect the debt only from unsold property, is where it was written in the document as follows: So-and-so is a guarantor, as this formulation is an independent statement, and the witnesses signing the document do not necessarily relate to that statement. And that case, where Rav says the creditor can collect the debt from liened property that has been sold, is where it was written in the document as follows: And so-and-so is a guarantor. The usage of the conjunctive: And, causes this clause to be an integral part of the document, so that the signatures of the witnesses relate to it as well.

405 And Rabbi Yoḥanan says: In both this case and that case, the creditor can collect the debt only from unsold property. The Gemara comments: And according to the opinion of Rabbi Yoḥanan, this is the halakha even if it is written in the document: And so-and-so is a guarantor.

406 Rava raises an objection from a baraita (Tosefta, Gittin 9:9): In a case where witnesses are signed on a greeting written in a bill of divorce, the bill of divorce is not valid, as we are concerned that perhaps the witnesses signed on the greeting alone, i.e., they did not intend to testify to the divorce, but only to verify that the greeting was written.

407 And Rabbi Abbahu said concerning this baraita: It was explained to me personally by Rabbi Yoḥanan himself that it is only when the wording of the greeting begins: Send a greeting to so-and-so, that the bill of divorce is not valid, as this is an independent statement and it is possible that the signatures relate to it alone. But if the wording is: And send a greeting to so-and-so, the usage of the conjunctive: And, causes this clause to be an integral part of the document, and the bill of divorce is valid. This indicates that Rabbi Yoḥanan himself maintains that when the conjunction is used the signatures relate to the entire document.

408 The Gemara answers: Here too, when did Rabbi Yoḥanan say that the creditor can collect the debt only from the guarantor's unsold property? Where it was written: So-and-so is a guarantor. If the conjunction is used, he can collect the debt even from liened property that has been sold.

409 The Gemara objects: But if so, this is identical to the opinion of Rav, whereas Rabbi Yoḥanan was presented as disagreeing with Rav. The Gemara answers: That presentation was inaccurate. Say instead: And so Rabbi Yoḥanan says as Rav did.

410 § The mishna relates: An incident occurred where such a case came before Rabbi Yishmael, and he said: The creditor can collect the debt from unsold property of the guarantor, but not from liened property that the guarantor has sold to others. Ben Nannas said to Rabbi Yishmael: The creditor cannot collect the debt from the guarantor at all, not from liened property that has been sold, nor from unsold property. Rabba bar bar Ḥana says that Rabbi Yoḥanan says: Although Rabbi Yishmael praised Ben Nannas after hearing his dissenting opinion (see 175b), the halakha is actually in accordance with Rabbi Yishmael's opinion as he stated it initially, i.e., that in the case of a guarantee that is written after the signatures, the creditor can collect the debt only from unsold property of the guarantor, but not from liened property that has been sold.

411 A dilemma was raised before the Sages: What would Rabbi Yishmael say to me about the case of the debtor who was being strangled, as depicted by ben Nannas? Perhaps he would agree in that case, since the guarantee was given under duress, that it is not valid. The Gemara suggests: Come and hear, as Rabbi Yaakov says that Rabbi Yoḥanan says: Rabbi Yishmael disagreed with ben Nannas also in the case of the debtor being strangled.

412 The Gemara asks: And is the halakha in accordance with Rabbi Yishmael's opinion even in the case of the debtor being strangled, or is the halakha not in accordance with his opinion in that case? Come and hear, as when Ravin came he said that Rabbi Yoḥanan says: Rabbi Yishmael disagreed with ben Nannas also in the case of the debtor being strangled, and the halakha is in accordance with Rabbi Yishmael's opinion also in the case of the debtor being strangled.

413 Rav Yehuda says that Shmuel says: If the debtor was being strangled, and in addition an act of acquisition was performed with the guarantor, the guarantor becomes obligated to repay the debt. The

Gemara deduces: By inference it emerges that a guarantor generally does not require an act of acquisition to become obligated to pay. And this disagrees with a statement of Rav Naḥman, as Rav Naḥman says:

[414] It is only a guarantor who undertakes a loan guarantee in the presence of a court who does not require an act of acquisition; this indicates that generally, a guarantor requires an act of acquisition in order to be obligated to pay.

[415] The Gemara concludes: And the halakha is that a guarantor who accepts responsibility for the loan at the time of the giving of the money does not require an act of acquisition; but if he accepts responsibility after the giving of the money, he requires an act of acquisition. Moreover, a guarantor who undertakes a loan guarantee in the presence of a court does not require an act of acquisition, as in return for that gratification that he experiences in that the court trusts him, he resolves to obligate himself.