JUDAISM

# The Talmud

## Bava Kamma

A massive, multi-volume compendium of rabbinic debates and commentary on the Torah that forms the basis of Jewish religious law, ethics, and practice. Presents all 37 tractates with Gemara, via Sefaria's William Davidson Talmud (the Koren Talmud Bavli translation, CC BY-NC), plus Avot and Eduyot (which have no Gemara) via Michael L. Rodkinson's 1896-1918 translation.

Presented by Earth's Sacred Texts — blackbetty.space

# Contents

Bava Kamma

# Bava Kamma

## Chapter 1

[1] MISHNA: There are four primary categories of damage: The category of Ox; and the category of Pit; and the category of Maveh, which, based on a discussion in the Gemara refers either to the tooth of an animal that causes damage or to a person who causes damage; and the category of Fire.

[2] Each of these categories is unique; therefore, the halakhot of one cannot be derived from another. The defining characteristic of the primary category of Ox is not similar to the defining characteristic of the primary category of Maveh, and the defining characteristic of the primary category of Maveh is not similar to the defining characteristic of the primary category of Ox. And the defining characteristics of this category of Ox and that category of Maveh, in which there is a living spirit that causes damage, are not similar to the defining characteristic of the category of Fire, in which there is no living spirit.

[3] The mishna continues: And the defining characteristics of this primary category of Ox and Maveh and that primary category of Fire, in which the typical manner of their components is to proceed from one place to another and cause damage, are not similar to the defining characteristic of the primary category of Pit, in which the typical manner of its components is not to proceed from one place to another and cause damage; rather, it remains in place and the damage is caused by the injured party proceeding and encountering the obstacle.

[4] The common denominator of the components in all of these primary categories is that it is their typical manner to cause damage, and the responsibility for their safeguarding to prevent them from causing damage is incumbent upon you, the owner of the animal or generator of the fire or the pit. And when a component of any of these categories causes damage, the owner or generator of the component that caused the damage is obligated to pay restitution for damage with best-quality land.

[5] GEMARA: From the fact that the mishna teaches its ruling employing the term: Primary categories, by inference, there are subcategories of those primary categories. The Gemara asks: Are their subcategories similar to them, i.e., to their respective primary categories, so that the same halakhot apply to them, or are they dissimilar to them?

[6] The Gemara cites additional areas of halakha where there are primary categories and subcategories and considers the relationship between them: With regard to Shabbat we learned in a mishna (Shabbat 73a): The primary categories of labor prohibited on Shabbat number forty-less-one. There too, from the fact that the mishna teaches its ruling employing the term: Primary categories, by inference, there are also subcategories.

[7] With regard to the primary categories of labor prohibited on Shabbat, their subcategories are similar to them, as it is no different if one unwittingly performed labor that is a primary category, for which he is liable to bring a sin-offering, and it is no different if one unwittingly performed labor that is a subcategory, for which he is liable to bring a sin-offering. Likewise, it is no different if one

intentionally performed labor that is a primary category, for which he is liable to be executed by stoning, and it is no different if one intentionally performed labor that is a subcategory, for which he is liable to be executed by stoning.

[8] And what difference is there between a primary category and a subcategory? The Gemara explains: The practical difference is that if one unwittingly performs two labors classified as different primary categories together, during a single lapse of awareness, or, alternatively, if one unwittingly performs two labors classified as subcategories of two different primary categories together, during a single lapse of awareness, one is liable to bring a sin-offering for each and every labor that he performed. Each primary category of labor is an independent transgression. While if one unwittingly performs a labor that is a primary category and another labor classified as its subcategory during a single lapse of awareness, he is liable to bring only one sin-offering.

[9] The Gemara asks: And according to Rabbi Eliezer, who deems one liable to bring two sin-offerings even if one performs a labor classified as a subcategory together with a labor that is its primary category, why is one labor characterized as a primary category and why is the other labor characterized as a subcategory? The Gemara explains: Of the labors prohibited on Shabbat, that which was a significant labor in the Tabernacle, the Sages characterized it as a primary category, and that which was not a significant labor in the Tabernacle, the Sages characterized it as a subcategory. The labors prohibited on Shabbat are derived from the labors employed in the construction of the Tabernacle; therefore, their classification is also based on their significance in its construction.

[10] With regard to ritual impurities, we learned in the mishna (Kelim 1:1): The primary categories of ritual impurity are as follows: Any of the eight species of the creeping animal enumerated in the Torah (Leviticus 11:29–30), and semen,

[11] and one who is impure with impurity imparted by a human corpse. A person, a vessel, or food that is rendered impure through contact with an item classified as a primary category of ritual impurity is characterized as a subcategory. In that domain, their subcategories are dissimilar to them, as any person or item classified as a primary category of ritual impurity impurifies a person and impurifies any vessels with which it comes into contact, while a person or item classified as a subcategory of ritual impurity impurifies food or drink, but does not impurify a person or vessels.

[12] After determining that there are instances where the legal status of subcategories is like that of primary categories, e.g., Shabbat, and there are instances where the legal status of subcategories is dissimilar to that of primary categories, e.g., ritual impurity, the Gemara asks: Here, with regard to the laws of damages, what is the relationship between the primary categories and their subcategories? Rav Pappa said: There are, among the primary categories of damage, some whose subcategories are similar to them, and there are, among them, some whose subcategories are dissimilar to them.

[13] § Seeking to clarify Rav Pappa’s statement, the Gemara cites a baraita that delineates the primary categories of damage. The Sages taught in a baraita: Three primary categories of damage were stated in the Torah with regard to an ox. An ox causes damage in three ways, and each is classified as a distinct primary category of damage represented by a part of the body of the ox: There is the category of Goring [keren], literally, horn. This is referring to an ox goring a person or an animal and causing damage. And there is the category of Eating [shen], literally, tooth. This is referring to one’s ox causing damage by consuming another person’s produce. And there is the category of Trampling [regel], literally, foot. This is referring to an ox trampling another person’s belongings and causing

damage. These are classified as primary categories because they are mentioned explicitly in the Torah.

14 The Gemara elaborates: From where do we derive the primary category of Goring? The source is as the Sages taught in a baraita: The verse states: “And if an ox gores a man or a woman” (Exodus 21:28); and goring is performed only with a horn, as it is stated: “And Zedekiah, son of Chenaanah, made himself horns of iron, and said: So says the Lord: With these shall you gore the Arameans, until they are consumed” (I Kings 22:11). And the verse also states: “His firstborn bull, majesty is his, and his horns are the horns of the wild ox; with them he shall gore the nations” (Deuteronomy 33:17).

15 The Gemara interrupts its citation of the baraita and asks: What is the purpose of citing the additional verse introduced with the term: And the verse also states? The Gemara answers: And if you would say that the first verse cited is not a legitimate source as it is a verse from the Prophets, and we do not derive Torah matters from the texts of the tradition, i.e., Prophets and Writings, come and hear proof from the Torah: “His firstborn bull, majesty is his.”

16 The Gemara rejects the possibility that the reason a second verse was cited is that the primary category of Goring cannot be derived from a verse in the Prophets: But is this a halakhic derivation? It is a mere disclosure of the matter, that goring is performed with a horn. A verse in the Prophets can certainly serve as a source for that disclosure.

17 Rather, the reason the baraita cites a second verse is lest you say, based on the first verse, that when the Merciful One distinguishes between liability for damage caused by an innocuous ox, for which the owner is liable to pay half of the damages for the first three times that it gores, and liability for damage caused by a forewarned ox, which already gored three times and whose owner was cautioned to prevent the ox from goring, for which he is liable to pay the full damages, that statement applies only to damage caused with a detached horn, like the horn of Zedekiah described in the verse, e.g., if an animal held a detached horn in its mouth and caused damage with it; but for damage that an ox caused with a horn attached to its head, say that in all cases the legal status of the ox is that of a forewarned ox and its owner is liable to pay for all of the damage.

18 Therefore, the baraita says: Come and hear a proof from another verse: “His firstborn bull, majesty is his, and his horns are the horns of the wild ox; with them he shall gore the nations,” where the reference is to a horn attached to the ox’s head. Evidently, when an ox gores with its own horns there is a distinction between an innocuous ox and a forewarned ox.

19 The Gemara resumes its citation of the baraita: What is a subcategory of Goring? It includes any action that an ox performs with its body with the objective of inflicting damage: Pushing [negifa], biting, crouching upon items with the objective of inflicting damage, and kicking.

20 The Gemara asks: What is different about goring that it is characterized as a primary category of damage, as it is written explicitly in the verse: “And if an ox gores a man or a woman” (Exodus 21:28); accordingly, negifa should also be characterized as a primary category, as it is written: “If one man’s ox hurts [yiggof ] the ox of another” (Exodus 21:35)? The Gemara answers: This negifa mentioned in the verse, is actually a reference to goring, as it is taught in a baraita that the verses states: “And if one man’s ox hurts [yiggof ] the ox of another…or if it is known that the ox was a goring ox in time past” (Exodus 21:35–36). The verse began its description of the case with the term negifa and it concluded with the term goring to say to you that in this context the two terms describe the same action: This action is negifa and this same action is goring.

[21] The Gemara asks: If the two terms are interchangeable, what is different with regard to an ox goring a person that it is written: “And if an ox gores a man or a woman” (Exodus 21:28), and what is different with regard to an ox goring an animal that it is written: “If one man’s ox hurts [yiggof ] the ox of another” (Exodus 21:35)?

[22] The Gemara explains: With regard to a person, who has the ingenuity to defend himself and is not easily injured, it is written: “If an ox gores,” a term indicating an attack of greater force. With regard to an animal, which does not have the ingenuity to defend itself and is more easily injured, it is written: “If an ox hurts [yiggof ],” a term indicating an attack of lesser force. The term yiggof is related to the term magefa, meaning plague. The Torah employs that term with regard to the goring of an animal to indicate that when an animal is gored, regardless of the force of the blow, it will likely result in its death.

[23] And the Torah’s use of these terms teaches us a matter in passing: Because the effort required for the ox to gore a person to death is greater than the effort required for the ox to gore an animal to death, the halakha is that an ox that is forewarned with regard to goring a person is also forewarned with regard to an animal. But an ox that is forewarned with regard to an animal is not forewarned with regard to a person.

[24] The Gemara questions the classification in the baraita of biting, crouching, and kicking as subcategories of Goring: Isn’t biting a subcategory of Eating, as the animal both eats and bites with its teeth? The Gemara answers: No, in cases included in the primary category of Eating, there is pleasure for the animal in the course of its causing damage. In this case of damage caused by biting, there is no intrinsic pleasure for the animal in the course of the damage that it causes, as when the ox bites forcefully, the exclusive objective of the action is to cause damage.

[25] The Gemara asks: Aren’t crouching upon items and kicking items in order to damage them each a subcategory of Trampling, as the animal crouches by bending its legs and kicks with its feet? The Gemara answers: No, in cases included in the primary category of Trampling, the damage is commonplace, as it is caused in the course of the animal’s walking; in these cases of crouching and kicking, the damage is not commonplace, as animals do not typically kick or crouch upon utensils.

[26] After citing the subcategories listed in the baraita, the Gemara resumes its analysis of the statement of Rav Pappa: But with regard to the statement that Rav Pappa said: There are among them some whose subcategories are dissimilar to them, to which primary category was Rav Pappa referring?

[27] If we say that his reference was to these subcategories of Goring, what is different about Goring that defines it as a unique primary category? What is different is that the objective of the ox’s action is to cause damage, and the ox is your property, and responsibility for its safeguarding, to prevent it from causing damage, is incumbent upon you, its owner. In these subcategories of Goring, i.e., pushing [negifa], biting, crouching, and kicking, as well, the objective of the oxen’s actions is to cause damage, and the oxen are your property, and responsibility for their safeguarding, to prevent your oxen from causing damage, is incumbent upon you.

[28] Rather, it is apparent that the status of a subcategory of Goring is like that of the primary category of Goring, and when Rav Pappa says: There are among them some whose subcategories are dissimilar to them, he was referring to Eating and Trampling.

[29] The Gemara asks: Where are Eating and Trampling written in the Torah that led them to be classified as primary categories? The Gemara answers: The source is as the Sages taught in a baraita: The verse states: “If a man causes a field or vineyard to be eaten, and he sends forth his animal, and it consumed in the field of another” (Exodus 22:4). The two parts of the verse are referring to different categories: “And he sends forth,” this is a reference to the primary category of Trampling, as sending forth results in the animal trampling another’s produce and damaging it, and likewise it states: “Happy are you that sow beside all waters that send forth the feet of the ox and the donkey” (Isaiah 32:20). Clearly the term “send forth” is a reference to trampling by the feet of the animal.

[30] “And it consumed,” this is a reference to the primary category of Eating, and likewise it states: “And I will utterly sweep away the house of Jeroboam, as one consumes with

[31] the tooth until it be all gone” (I Kings 14:10).

[32] The Master said in the baraita just cited: “And he sends forth,” this is a reference to the category of Trampling, and likewise it says: “Happy are you that sow beside all waters that send forth the feet of the ox and the donkey” (Isaiah 32:20). The Gemara infers: The reason that the phrase: “And he sends forth,” is interpreted as a reference to the category of Trampling is that the Merciful One writes: “That send forth the feet of the ox and the donkey.” The Gemara asks: Were it not for this verse, with regard to what would you have interpreted that phrase?

[33] If you say that it could have been interpreted as referring to Goring, that cannot be, as Goring is written in a different verse. If you say that it could have been interpreted as referring to Eating, that too cannot be, as Eating is written in a different verse. Perforce the reference is to Trampling, and the baraita had no need to prove this from the phrase: “That send forth the feet.”

[34] The Gemara answers that it is necessary for the baraita to cite the verse: “That send forth the feet of the ox and the donkey,” as it could enter your mind to say that both this phrase: “And he sends forth,” and that phrase: “And it consumed,” are referring to the primary category of Eating, and that phrase: “And it consumed,” is referring to a case where the object damaged is completely destroyed, and this phrase: “And he sends forth,” is referring to a case where the object damaged is not completely destroyed. Therefore, the verse “that send forth the feet of the ox and the donkey” teaches us that the phrase “and he sends forth,” is referring to Trampling.

[35] The Gemara asks: And now that we have interpreted that the phrase “and he sends forth” is referring to Trampling, from where do we derive that one is liable with regard to acts categorized as Eating in a case where the object damaged is not completely destroyed? The primary category of Eating is derived from the phrase “and it consumed.” The connotation of that phrase is damage in which the object is completely destroyed.

[36] The Gemara answers: It is derived because the category of Eating is juxtaposed to and therefore similar to the category of Trampling: Just as with regard to liability for the category of Trampling, it is no different if the object damaged is completely destroyed and it is no different if the object damaged is not completely destroyed; so too, with regard to liability for the category of Eating, it is no different whether the object damaged is completely destroyed and it is no different whether the object damaged is not completely destroyed.

[37] The Master said in that baraita: When the verse states: “And it consumed” (Exodus 22:4), this is a reference to the category of Eating. And likewise it states: “And I will utterly sweep away the house

of Jeroboam, as one consumes with the tooth until it be all gone” (I Kings 14:10). The Gemara infers: The reason that the phrase “and it consumed” is interpreted as a reference to the category of Eating is that the Merciful One writes: “As one consumes with the tooth until it be all gone.” The Gemara asks: Were it not for this verse, with regard to what case would you have interpreted that phrase?

[38] If you say that it could have been interpreted as referring to Goring, that cannot be, as Goring is written in a different verse. And if you say that it could have been interpreted as referring to Trampling, that too cannot be, as Trampling, is written in a different verse. Perforce the reference is to Eating. The Gemara answers that it is necessary for the baraita to cite the verse: “As one consumes with the tooth until it be all gone,” as it could enter your mind to say that both this phrase: “And it consumed,” and that phrase: “And he sends forth,” are referring to the primary category of Trampling, and this phrase: “And it consumed,” is referring to a case where the animal went and caused damage on its own, and that phrase: “And he sends forth,” is referring to a case where the owner sent the animal to cause damage. Therefore, the verse “as one consumes with the tooth until it be all gone” teaches us that the phrase “and it consumed” is referring to Eating.

[39] The Gemara asks: And now that we have interpreted that the phrase “and it consumed” is referring to Eating, from where do we derive that one is liable with regard to actions categorized as Trampling in a case where the animal went and caused damage on its own? The primary category of Trampling is derived from the phrase “and he sends forth.” The connotation of that phrase is a case where the owner sent the animal to cause damage.

[40] The Gemara answers: It is derived because the category of Trampling is juxtaposed to and therefore similar to the category of Eating: Just as with regard to liability for the category of Eating, it is no different if the owner sent the animal to cause damage and it is no different if the animal went and caused damage on its own, so too, with regard to liability for the category of Trampling, it is no different if the owner sent the animal to cause damage and it is no different if the animal went and caused damage on its own.

[41] The Gemara suggests: And let the Merciful One write only the first phrase, “and he sends forth,” and there would be no need to write the second phrase, “and it consumed,” as the phrase “and he sends forth” connotes Trampling and connotes Eating. It connotes Trampling, as it is written: “That send forth the feet of the ox and the donkey” (Isaiah 32:20), and it connotes Eating, as it is written: “And the teeth of animals I will send forth against them” (Deuteronomy 32:24).

[42] The Gemara answers: If not for the additional phrase in the verse, “and it consumed,” I would say that the verse refers either to this category of damage or to that category of damage: It refers either to Trampling, where its damage is commonplace, or to Eating, where there is pleasure for the animal in the course of its causing damage.

[43] The Gemara asks: Since both interpretations are of equal validity, let both of them come and be derived from the verse, as which of them will you exclude? Since there is no reason to prefer one category over the other, perforce both are derived, and the phrase “and it consumed” is unnecessary. The Gemara answers: The additional phrase is necessary, as it might enter your mind to say that this matter of liability applies only in a case where the owner sent the animal to cause damage, but in a case where the animal went and caused damage on its own, the owner would not be liable for the damage. Therefore, the phrase “and it consumed” teaches us that the owner is liable even in a case where the ox went and caused damage on its own.

[44] Having clarified the sources for the primary categories of Eating and Trampling, the Gemara proceeds to identify their subcategories and to determine whether it was with regard to these primary categories of damage that Rav Pappa said: There are among them some whose subcategories are dissimilar to them. What is a subcategory of Eating? It is a case where, for example, an animal rubbed against a wall for its pleasure and damaged the wall, or where it sullied produce by rolling on it for its pleasure.

[45] If so, what is different about Eating that it is defined as a unique primary category? What is different is that there is pleasure for the animal in the course of its causing damage, and the ox is your property, and responsibility for its safeguarding, to prevent it from causing damage, is incumbent upon you, its owner. In these subcategories of Eating, as well, there is pleasure for the animals in the course of the damage that they cause and the oxen are your property, and responsibility for their safeguarding, to prevent your oxen from causing damage, is incumbent upon you. Therefore, the subcategories of Eating are not dissimilar to the primary category. Rather, it is apparent that the status of a sub-category of Eating is like that of the primary category of Eating, and when Rav Pappa says: There are among them some whose subcategories are dissimilar to them, he is referring to a subcategory of Trampling.

[46] The Gemara asks: What is a subcategory of Trampling? The classification is applied in a case where, for example, an animal caused damage with its body, not its legs, in the course of its walking; or caused damage with its hair that became entangled with an object in the course of its walking; or caused damage with a rope that is upon it; or caused damage with a bit [bifrumbiya] that is in its mouth; or caused damage with a bell that is around its neck.

[47] If so, what is different about Trampling that it is defined as a unique category? What is different is that its damage is commonplace, and the animal is your property, and responsibility for its safeguarding, to prevent it from causing damage, is incumbent upon you, its owner. In these subcategories of Trampling, as well, their damage is commonplace, and the oxen are your property, and responsibility for their safeguarding, to prevent them from causing damage, is incumbent upon you. Therefore, the subcategories of Trampling are not dissimilar to the primary category. Rather, it is apparent that the status of a subcategory of Trampling is like that of the primary category of Trampling, and when Rav Pappa says: There are among them some whose subcategories are dissimilar to them, he is referring to a subcategory of Pit.

[48] The Gemara examines that assertion: What is a subcategory of Pit? If we say that the primary category of Pit applies when, in the public domain, one leaves an uncovered pit that is ten handbreadths deep, and that is the pit mentioned in the Torah, and a subcategory of Pit applies when one leaves an uncovered pit that is nine handbreadths deep, there is no basis for that distinction, as neither nine handbreadths are written in the Torah, nor are ten handbreadths written in the Torah.

[49] The Gemara explains: This is not difficult, as the Merciful One states in the Torah: “And the carcass shall be for him” (Exodus 21:34), and the Sages have an accepted tradition that a pit ten handbreadths deep causes the death of an animal that falls into it, but a pit nine handbreadths deep causes damage to an animal that falls into it but does not cause death. Accordingly, the pit written in the Torah (Exodus 21:33), which mentions the death of the animal that fell therein, is ten handbreadths deep. This is classified as the primary category of Pit, and a pit nine handbreadths deep is its subcategory.

[50] The Gemara asks: Ultimately, this pit that is ten handbreadths deep is a primary category of damage with regard to death, and that pit that is nine handbreadths deep is a primary category with regard to damage.

[51] Rather, Rav Pappa's statement: There are among them some whose subcategories are dissimilar to them, was stated in reference to these subcategories of Pit: His stone, his knife, or his load, any of which he placed in a public domain as obstacles, and they caused damage when people stumbled upon them.

[52] The Gemara asks: What are the circumstances where one is liable for damage caused by these obstacles? If it is a case where one declared these items ownerless, both according to the opinion of Rav and according to the opinion of Shmuel, cited later in the Gemara, these cases are a subcategory of Pit, as both Rav and Shmuel agree that any obstacle declared ownerless by its owner that causes damage in the public domain is a subcategory of Pit.

[53] And if it is a case where one did not declare them ownerless, there is still a difficulty. If Rav Pappa's statement is in accordance with the opinion of Shmuel, who says: We learned that one is liable for damage caused by all obstacles that he places in a public domain, whether or not he declares them ownerless, from the halakhot with regard to one's pit, these cases are a subcategory of Pit. And if Rav Pappa's statement is in accordance with the opinion of Rav, who says: We learned that one is liable for damage caused by all obstacles that he places in a public domain that he did not declare ownerless, from the halakhot with regard to one's ox that gored another animal, these cases are a subcategory of Ox. With regard to the subcategories of Ox, the Gemara already established that their legal status is like that of the primary category of Ox.

[54] The Gemara asks concerning an obstacle that is a subcategory of Pit: What is different about Pit that it is defined it as a unique category? It is that its initial formation, i.e., the digging of the pit, is done in a manner that can result in damage, and it is your property, and responsibility for its safeguarding, to prevent it from causing damage to others, is incumbent upon you. In these subcategories of Pit, too, their initial formation, i.e., the placement of the obstacle in the public domain, is done in a manner that can result in damage, and they are your property, and responsibility for their safeguarding, to prevent them from causing damage, is incumbent upon you. Rather, it is apparent that the status of a subcategory of Pit is like that of the primary category of Pit, and when Rav Pappa says: There are among them some whose subcategories are dissimilar to them, he is referring to a subcategory of Maveh.

[55] The meaning of the term Maveh is not clear; therefore, the Gemara asks: What is the primary category of Maveh to whose subcategories the Gemara referred? If one suggests that Rav Pappa said his statement in accordance with the opinion of Shmuel, who says: Maveh, this is the category of Eating, this cannot be Rav Pappa's intent. But didn't we already establish that the legal status of a subcategory of Eating is like that of the primary category of Eating? Clearly, Rav Pappa was not referring to subcategories of Maveh. And if one suggests that Rav Pappa said his statement in accordance with the opinion of Rav, who says: Maveh, this is the primary category of Man, which includes damage caused by a person, not by his property or animals, what primary categories and what subcategories are there in that category? The halakha is the same with regard to all damage that a person causes.

[56] And if you would say that there is a distinction: The primary category is a case where one causes damage while awake, and a subcategory is a case where one causes damage while asleep; but didn't we learn in a mishna (26a): The legal status of a person is always that of one forewarned, and he is liable for any damage that he causes, both when he is awake and when he is asleep? Accordingly, that is not the distinction between a primary category and a subcategory.

[57] Rather, perhaps Rav Pappa was referring to cases where one causes damage with his phlegm or his spittle. The Gemara asks: What are the circumstances where one would be liable for damage in that case? If it is a case where his phlegm and spittle cause damage as they were moving through the air after the person expectorated, that is damage caused by his direct action and there is no room to distinguish between the damage that it caused and any other damage caused by one's direct action. If it is a case where his phlegm or spittle causes damage after it comes to rest on the ground, e.g., if one slipped in the spittle, fell, and was injured, both according to Rav and according to Shmuel this is a subcategory of Pit, as the spittle is an ownerless obstacle in the public domain. Rather, it is apparent that the status of a subcategory of Maveh is like that of the primary category of Maveh, and when Rav Pappa says: There are among them some whose subcategories are dissimilar to them; he was referring to a subcategory of Fire.

[58] The Gemara asks: What is a subcategory of Fire? If we say that it is a case of his stone, his knife, or his load, where he placed them on top of his roof, and they fell off the roof by means of a common wind, and they caused damage, what are the circumstances in which one would be liable for the damage that was caused? If it is a case where those items caused damage as they were moving through the air propelled by the wind, that is a case of Fire.

[59] If so, what is different about Fire that defines it as a unique category? What is different is that another force, the wind, is involved with the fire in causing damage, as the wind causes the fire to spread, and the fire is your property, and responsibility for its safeguarding, to prevent it from causing damage, is incumbent upon you. In these subcategories of Fire too, another force is involved with the items placed on the roof and causes damage, as the wind causes them to fall, and they are your property, and responsibility for their safeguarding, to prevent them from causing damage, is incumbent upon you. Rather, it is apparent that the status of a subcategory of Fire is like that of the primary category of Fire, and when Rav Pappa says: There are among them some whose subcategories are dissimilar to them, he was referring to a subcategory of Trampling.

[60] The Gemara questions this explanation: A subcategory of Trampling? But didn't we already establish that the status of a subcategory of Trampling is similar to that of the primary category of Trampling? The Gemara explains: Rav Pappa was referring to one's liability to pay half the cost of the damage caused by pebbles in a case where they were inadvertently propelled by the foot of a walking animal, which is a halakha learned through tradition and not explicitly written in the Torah.

[61] The Gemara asks: But if it is a unique halakhic category and the payment is different, why is it characterized as a subcategory of Trampling? The Gemara explains: It is due to the fact that it shares a common aspect with Trampling. One whose animal propels pebbles while it walks and thereby causes damage is liable to pay half of the damages from his superior-quality property, and he does not pay only from the body of his animal, as is the halakha concerning half the cost of the damage paid by the owner of an innocuous ox that gored a person or an animal.

[62] The Gemara asks: But didn’t Rava raise a dilemma with regard to that matter? As Rava raised a dilemma: With regard to one’s liability to pay half the cost of the damage caused by pebbles propelled by the foot of his animal, does one pay damages exclusively from the body of his ox that caused the damage, or does one pay damages from his superior-quality property?

[63] The Gemara explains: Although it is a dilemma for Rava, it is obvious to Rav Pappa that one pays from his superior-quality property, and in that sense, he classified the pebbles that cause damage as a subcategory of Trampling.

[64] The Gemara asks: According to Rava, who raises it as a dilemma, why is it characterized as a subcategory of Trampling when its legal status is different both in terms of the extent of one’s liability and in terms of the manner of payment? The Gemara explains: It is classified as a subcategory of Trampling in order to exempt from liability pebbles that cause damage in the public domain, just as damage in the category of Trampling is exempt in the public domain.

[65] § One of the primary categories of damage enumerated in the mishna is the category of Maveh and another is the category of Fire. The Gemara asks: What is the meaning of Maveh? Rav says: Maveh, that is the category of Man, which includes a person who causes damage, but not the property or animal of a person that causes damage. And Shmuel says: Maveh, this is the category of Eating.

[66] The Gemara elaborates: Rav says: Maveh, this is the category of Man, as it is written: “The watchman said: Morning has come, and also night; if you will inquire [tivayun], inquire [be’ayu]” (Isaiah 21:12). The terms “tivayun” and “be’ayu,” meaning inquire, refer to a person, who is able to inquire. Accordingly, Maveh relates to an action performed by a person.

[67] And Shmuel says: Maveh, this is the category of Eating, as it is written: “How is Esau searched out [neḥpesu]; how are his hidden places revealed [nivu]” (Obadiah 1:6)? The terms nivu and maveh share a common root. The Gemara asks: From where may it be inferred that nivu connotes Eating? The Gemara explains that it is as Rav Yosef translates the verse into Aramaic: How is Esau searched out [itbelish]; how are his hidden places revealed [itgaleyan]? The meaning of the Aramaic term itgaleyan means revealed, and that is the meaning of the Hebrew term “nivu.” Maveh references the animal’s teeth, which are covered when its mouth is closed and revealed when it eats.

[68] The Gemara asks: And as for Rav, what is the reason that he did not say that Maveh refers to Eating, as does Shmuel? The Gemara explains that Rav could have said to you: Is it taught in the mishna: Niveh? Niveh is the passive form of the word maveh, which would be the appropriate form if the reference was to teeth that are revealed. The term in the mishna is maveh, an active form of the verb.

[69] And as for Shmuel, what is the reason that he did not say that Maveh refers to the category of Man, as does Rav? The Gemara explains that Shmuel could have said to you: Is it taught in the mishna: Bo’eh? Bo’eh is a form of the word maveh connoting an action taken directly, which would be appropriate were the reference to one’s actions that cause damage. The term in the mishna is maveh, which connotes an action that one causes another to take.

[70] The Gemara notes: After all, the meaning of the term in the verses is not precise according to one Sage, Rav, and it is not precise according to the other Sage, Shmuel. It is apparent that their dispute is not based upon their interpretation of the verses; it must be based on another issue. The Gemara asks

again: As for Rav, what is the reason that he did not say that Maveh refers to Eating, as does Shmuel? The Gemara explains: Rav holds that the tanna teaches the primary category of Ox in the mishna. This includes damage caused by an ox and all matters involving damaging actions that are completed by an ox, i.e., the actions included in the categories of Goring, Eating, and Trampling. Perforce, Maveh refers to a different category of damage, i.e., Man.

[71] The Gemara asks: And as for Shmuel too, who interpreted Maveh as Eating, doesn't the mishna teach the category of Ox, which should include all matters involving damaging actions that are completed by an ox? Rav Yehuda said that according to Shmuel, the tanna teaches Ox specifically with regard to damage caused with its horn, and it teaches Maveh with regard to damage caused with its tooth. And when the mishna contrasts Ox with Maveh, this is what the tanna is saying: The defining characteristic of the primary category of Goring, where there is no inherent pleasure for the animal in the course of its causing damage, is not similar to the defining characteristic of the category of Eating, where there is pleasure for the animal in the course of its causing damage.

[72] And the defining characteristic [re'i] of the category of Eating, where it is not the objective of the animal to cause damage, is not similar to the defining characteristic of the category of Goring, where the objective of the animal is to cause damage.

[73] The Gemara asks: But isn't it possible to derive Goring from Eating by means of an a fortiori inference: If in a case of Eating, where it is not the objective of the animal to cause damage, its owner is liable, with regard to Goring, where the objective of the animal is to cause damage, should the owner not all the more so be liable? The Gemara answers: Nevertheless, it was necessary for the Torah to state the case of Goring, as it might enter your mind to say that the owner is exempt, just as he is exempt in the case where his slave or maidservant causes damage. When a slave or maidservant causes damage, is it not so that although their objective is to cause damage, even so their owners are exempt from liability; and so too, when one's animal causes damage, it is no different. To dispel this notion, the Torah explicitly states that one is liable for damage caused by the primary category of Goring.

[74] Rav Ashi said: Is that to say that in a case where one's slave or maidservant causes damage there is not a substantial reason to exempt the master? In that case there is concern that perhaps his master will provoke him and in retribution he will go and set fire to another's stack of grain, and it is found that this slave renders his master liable to pay one hundred maneh, ten thousand dinars, each day. Therefore, there is no basis for the notion that an ox that gores would be exempt just as a slave is exempt, as perhaps, fundamentally, one is liable to pay for damage caused by his slave. A master is exempt from payment to prevent a situation where a slave would exploit that situation to take revenge against his master.

[75] Rather, the mishna refutes any possibility to derive the halakhot of Ox from Maveh or Maveh from Ox in this manner: The characteristic of the category of Goring, where the objective of the animal is to cause damage, is not similar to the characteristic of the category of Eating, where it is not the objective of the animal to cause damage, and the characteristic of the category of Eating, where there is pleasure for the animal in the course of its causing damage, is not similar to the characteristic of the category of Goring, where there is no pleasure for the animal in the course of its causing damage.

[76] According to Rav Yehuda's explanation of Shmuel's opinion, among the primary categories of damage caused by an ox, the mishna mentions only Goring and Eating. The Gemara asks: But what of the category of Trampling; did the tanna omit it from the mishna? The Gemara answers: The principle stated in general terms at the end of the mishna: And when a component of any of these categories causes damage, the owner or generator of the component that caused damage is obligated to remit payments of restitution for damage with best-quality land, serves to include the primary category of Trampling.

[77] The Gemara asks: But if the intent of the tanna is to teach the primary category of Trampling as well, let him teach it explicitly. Accordingly, Rav Yehuda's explanation of how Shmuel interprets the mishna is rejected.

[78] Rather, Rava said that according to Shmuel, the tanna teaches Ox specifically with regard to actions that cause damage with its foot and it teaches Maveh with regard to actions that cause damage with its tooth. And when the mishna contrasts Ox with Maveh this is what the tanna is saying: The defining characteristic of the primary category of Trampling, where its damage is commonplace, is not similar to the defining characteristic of the primary category of Eating, where its damage is not commonplace, and the defining characteristic of the primary category of Eating, where there is pleasure for the animal in the course of its causing damage, is not similar to the characteristic of the primary category of Trampling, where there is no pleasure for the animal in the course of its causing damage.

[79] According to Rav Yehuda's explanation of Shmuel's opinion, among the primary categories of damage with regard to an ox, the mishna mentions only Goring and Trampling. The Gemara asks: But what of the primary category of Goring; did the tanna omit it from the mishna? The Gemara answers: The principle stated in general terms at the end of the mishna: And when a component of any of these categories causes damage, the owner or generator of the component that caused damage is obligated to remit payments of restitution for damage with best-quality land, serves to include the primary category of Goring.

[80] The Gemara asks: But if the intent of the tanna is to teach the primary category of Goring as well, let him teach it explicitly. The Gemara explains: It is with regard to those categories of damage where the animal is forewarned from the outset and the owner is liable to pay for the entire damage the first time his animal causes damage that the tanna of the mishna speaks; but with regard to those categories of damage where the animal is initially innocuous and the owner is liable to pay only half the cost of the damage caused by his animal, and the animal is ultimately forewarned, the tanna of the mishna does not speak of them. With regard to Goring, the first three times an ox gores a person or an animal the owner of the ox pays only half of the damages. This is because an ox is considered forewarned with regard to damage categorized as Goring only after it attacks three times.

[81] After addressing the reason that Rav did not say that Maveh refers to Eating in accordance with the explanation of Shmuel, the Gemara asks: And as for Shmuel, what is the reason that he did not say that Maveh refers to Man, as does Rav? Shmuel could have said to you, if it enters your mind to say that Maveh is Man, isn't it taught in the latter clause of the mishna (15b): Both a forewarned ox, and an ox that causes damage in the domain of the injured party, and any damage caused by man? Apparently, Man was mentioned in the latter clause of the mishna because it was not mentioned in the first clause.

[82] The Gemara asks: But let the tanna teach Man among the primary categories of damage in the first clause. The Gemara explains: It is with regard to those categories of damage caused by one's property that the tanna of the mishna speaks; but with regard to the category of damage caused by one's body, the category of Man, the tanna of the mishna does not speak.

[83] The Gemara asks: And according to Rav, too, the same difficulty arises: Isn't damage caused by a man taught in the latter clause of the mishna? The Gemara answers: Rav could have said to you: That mention of damage caused by a man in the latter clause comes to enumerate that damage together with the other forms of damage in a case where the owner of the cause of damage or the generator of that damage is forewarned.

[84] The Gemara asks: And according to Rav, what is the meaning of the statement in the mishna: The defining characteristic of the primary category of Ox is not similar to the defining characteristic of the primary category of Maveh?

[85] The Gemara explains: This is what the mishna is saying: The defining characteristic of the primary category of Ox, where if the ox kills a person the owner pays the ransom to the heirs of the injured party, is not similar to the defining characteristic of the primary category of Man, where one who kills another does not pay the ransom for killing him; rather, if he killed him unwittingly he is exiled and if he did so intentionally he is executed. And the defining characteristic of the primary category of Man, where if one injures another he is liable to pay four types of indemnity, i.e., pain, humiliation, medical costs, and the loss of livelihood, in addition to payment for the damage, is not similar to the defining characteristic of the primary category of Ox, where the owner of the ox is not liable to pay four types of indemnity and is liable to pay only the cost of the damage.

[86] The Gemara questions Rav's understanding that Ox, as mentioned in the mishna, includes all actions an ox performs that cause damage, including goring, based on the continuation of the mishna: The common denominator of the components in all these primary categories of damage is that it is their typical manner to cause damage. The Gemara asks: But is it the typical manner of an ox to cause damage by goring? The Gemara answers: The statement in the mishna is with regard to a forewarned ox. The Gemara asks: But is it the typical manner of a forewarned ox to cause damage by goring? The Gemara answers: Yes, once it was forewarned after goring repeatedly, its typical manner is to cause damage by goring.

[87] The Gemara questions Rav's understanding that Maveh is the primary category of Man: Is it man's typical manner to cause damage? The Gemara answers: The statement in the mishna is referring to the damage one causes while sleeping. The Gemara asks: Is it the typical manner of a person to cause damage while sleeping? The Gemara answers: Since one contracts and extends his limbs while sleeping, it is his typical manner to damage objects placed next to him.

[88] If Maveh is referring to Man, is it correct to state, as the mishna does in its enumeration of common denominators of the primary categories: And responsibility for their safeguarding is incumbent upon you? That formulation is appropriate in cases where one is safeguarding another person, animal, or item. When applied to the primary category of Man, it would indicate that responsibility to safeguard one person is incumbent upon another person. With regard to man, responsibility for safeguarding his body is incumbent upon him alone, not upon anyone else.

[89] The Gemara responds: And according to your reasoning, that the formulation: And their safeguarding is incumbent upon you, indicates that Maveh is not Man, there is a difficulty with that

which the Sage Karna taught in a baraita: There are four primary categories of damage, and Man is one of them. That baraita continues and states that one common denominator is: Their safeguarding is incumbent upon you. With regard to that baraita, the same question arises: With regard to Man, responsibility for safeguarding his body is incumbent upon him, not upon anyone else, and the wording of Karna is imprecise. Rather, just as Rabbi Abbahu said to the tanna, who was reciting the baraita in the study hall: Teach the baraita: And with regard to Man, responsibility for safeguarding his body is incumbent upon him;

[90] here too, teach the mishna: And with regard to man, responsibility for safeguarding his body is incumbent upon him.

[91] § Rav Mari objects to the Gemara's initial suggestion that the dispute between Rav and Shmuel with regard to the meaning of Maveh is based on biblical terms with similar etymology. He suggests: But why not say that Maveh, this is the primary category of damage caused by water, as it is written: "As when fire ignites brushwood; fire boils [tiveh] water" (Isaiah 64:1). The terms tiveh and maveh share a common root, and the reference is to water. The Gemara rejects this: Is it written in the verse: Water boils [nivu] from fire, with water, a plural noun in Hebrew, the subject of the intransitive plural verb, nivu? No, "fire boils [tiveh] water" is written, and since tiveh is a transitive singular verb, the subject is fire, which is a singular noun. Therefore, no proof can be adduced from this verse that Maveh refers to an action performed with water.

[92] Rav Zevid objects to the Gemara's initial suggestion that the dispute between Rav and Shmuel with regard to the meaning of Maveh is based on biblical terms with similar etymology. He suggests: But why not say that Maveh, this is the primary category of Fire, as when the term "tiveh" is written in the verse cited by Rav Mari, it is written with regard to Fire. The Gemara rejects this: If so, what is the meaning when the mishna enumerates the primary categories of damage: The category of Maveh and the category of Fire, indicating that they are two distinct categories? And if you would say that these are not two distinct categories but rather the mishna is explaining the meaning of Maveh, if so, why does the mishna say: There are four primary categories of damage? There are only three.

[93] And if you would say that Maveh is Fire, and there are four categories in the mishna, as the mishna teaches the primary category of Ox, in which there are two primary categories of damage, Eating and Trampling, the mishna remains difficult. If it is so that Maveh in the mishna is referring to Fire, what is the meaning of that which the mishna states with regard to the common denominator of Maveh and Ox: And the defining characteristics of this category of Ox and that category of Maveh, in which there is a living spirit, are not similar to the defining characteristic of the next category in the mishna, in which there is no living spirit. Accordingly, how can Maveh mean Fire; what living spirit is there in Fire? And furthermore, if Maveh is Fire, what is the meaning of the next phrase in the mishna: They are not similar to the defining characteristic of the category of Fire, in which there is no living spirit. Clearly, Maveh is not Fire.

[94] § Contrary to the mishna, where four primary categories of damage were enumerated, Rabbi Oshaya taught (Tosefta 9:1) that there are thirteen primary categories of damage. The thirteen categories consist of four bailees, five types of indemnity, and the four primary categories listed in the mishna. The four bailees are: The unpaid bailee, who is liable for damage caused by his negligence; and the borrower, who is liable for all damage; the paid bailee, and the renter, who is liable if the object is lost or stolen. The five types of indemnity one is liable to pay for injuring

another person are: Damage, i.e., the decrease in the injured party's value; pain; and medical costs; loss of livelihood; and humiliation that the injured party suffered from the assault. And with the four primary categories enumerated in the mishna, that is a total of thirteen.

95 The Gemara asks: And what is the reason the tanna of our mishna does not teach these nine categories and enumerates only four? Granted, according to the opinion of Shmuel, who says that Maveh is Eating, it is with regard to the categories of damage caused by one's property that the tanna of the mishna speaks. With regard to categories of damage caused by one's body, the tanna of the mishna does not speak, and the additional categories of Rabbi Oshaya are damage caused by one's body. But according to the opinion of Rav, who says that Maveh is Man, let the tanna of the mishna teach these nine categories as well. The Gemara answers: According to Rav, the mishna teaches the primary category of Man, and included in that category are all matters of damage that are caused by man, among them the categories added by Rabbi Oshaya.

96 The Gemara asks: And according to Rabbi Oshaya too, doesn't the mishna teach the primary category of Man? Why then did he enumerate the four bailees and the five types of indemnity? The Gemara answers: In his enumeration, Rabbi Oshaya distinguishes between two types of damage caused by a man: He teaches cases involving a man who injures another person, and he teaches the primary category of Maveh, which involves the cases of a man who damages an ox or damages other property belonging to another person.

97 The Gemara asks: If so, with regard to Ox as well, let him teach two categories of Ox. Let him teach the case of an ox that damages an ox or other property belonging to another person, and let him teach the case of an ox that injures a person.

98 The Gemara rejects this suggestion: What is this comparison? Granted, in the case of a man who damages another's ox or other property, he pays merely for the damage; in the case of a man who injures another person, he pays an additional four types of indemnity payments: Pain, medical costs, loss of livelihood, and humiliation. But with regard to damage caused by an ox, what difference is there to me if it is an ox that damages an ox or other property belonging to another person and what difference is there to me if it is an ox that injures a person? In both this case and that case the owner of the ox pays merely for the damage. Therefore, unlike a case where a person causes the damage, there is no reason to distinguish between cases where an ox causes damage based on the victim of that damage.

99 With regard to the assertion that Rabbi Oshaya added only cases involving a man who injures another person, the Gemara asks: But aren't there the categories of the unpaid bailee and the borrower, the paid bailee and the renter, which are categories that describe a man who damages another's ox or other property, as the cases referred to by Rabbi Oshaya are those where the bailee fails to return the deposit that he was entrusted to safeguard? And yet Rabbi Oshaya teaches each type of bailee as distinct categories and does not include them under the rubric of Man, one of the four categories enumerated in the mishna.

100 The Gemara answers that the reason why Rabbi Oshaya enumerates Man separately from the bailees is that he teaches one category, Man, referring to damage that is engendered by direct action, e.g., the five types of indemnity payments, and he teaches the four bailees, referring to damage that occurs on its own, e.g., failure of the four bailees to safeguard the deposit.

[101] The Gemara cites a third listing of primary categories of damage. Rabbi Ḥiyya teaches that there are twenty-four primary categories of damage: Payment of double the principal, paid by a thief who is apprehended and convicted based on the testimony of witnesses and who does not admit his crime; and payment of four or five times the principal, paid by a thief who steals an ox or sheep, respectively, and then slaughters or sells it; and payment of the principal, by a thief who admits his crime; and a robber, who steals openly and by force or threat of violence; and conspiring witnesses who pay the individual against whom they falsely testified with regard to a sum that they conspired to cause him to lose.

[102] And the rapist, and the seducer, who seduces an unmarried young woman, who pay a fine of fifty sela; and the defamer, i.e., one who defames his wife by claiming falsely in court that he discovered that she was not a virgin when he consummated the marriage and alleges that she engaged in intercourse with another man while betrothed, who pays a fine of one hundred sela; and one who causes another's teruma to become ritually impure, rendering it prohibited to partake of that teruma; and one who mixes teruma with another's non-sacred food, rendering it prohibited for any non-priest to partake of it; and one who pours another's wine as a libation for idolatry. When one combines the eleven categories enumerated by Rabbi Ḥiyya and these thirteen categories enumerated by Rabbi Oshaya, this totals twenty-four principal categories of damage.

[103] The Gemara asks: And as for Rabbi Oshaya, what is the reason that he did not teach these eleven additional categories? The Gemara answers: It is with regard to cases where one is liable to pay monetary restitution that Rabbi Oshaya speaks. With regard to cases where one is liable to pay a fine, Rabbi Oshaya does not speak.

[104] The Gemara asks: What of the cases of a thief and a robber, which are cases where one is liable to pay monetary restitution? Let Rabbi Oshaya also teach those cases and include them in his list. The Gemara answers: Doesn't he teach those cases, as he enumerates in his list the unpaid bailee and the borrower? An unpaid bailee who takes a false oath that the deposit was stolen, when in fact it remained in his possession, is liable to pay restitution like a thief.

[105] The Gemara asks: And as for Rabbi Ḥiyya too, doesn't he teach those cases; as he enumerates in his list the unpaid bailee and the borrower? Why does Rabbi Ḥiyya list them separately? The Gemara answers: Rabbi Ḥiyya makes a distinction between different types of theft: He teaches cases of theft with regard to property that came into one's possession in a permitted manner, e.g., an unpaid bailee who was entrusted with a deposit and later misappropriated it, and he teaches cases of theft with regard to property that came into one's possession in a prohibited manner, e.g., the actions of a thief and a robber.

[106] The Gemara asks: With regard to the payment made by conspiring witnesses, which is categorized as monetary restitution, as the witnesses pay the precise sum that they conspired to cause the defendant to lose, let Rabbi Oshaya also teach it as one of the categories on his list. The Gemara answers: Rabbi Oshaya holds in accordance with the opinion of Rabbi Akiva, who says that conspiring witnesses do not pay on the basis of their own admission. Evidently, theirs is not a payment of monetary restitution; rather, it is a fine, as only one who was found liable based on the testimony of witnesses pays a fine, not one who was found liable based on his own admission.

[107] The Gemara asks: If Rabbi Oshaya holds in accordance with the opinion of Rabbi Akiva, let him teach two distinct types of categories of damage under the rubric of Ox: Let him teach one category

for an ox that damages an ox or other property belonging to another person, and let him also teach the case of an ox that injures a person.

[108] The Gemara explains its question: As we learned in a mishna (33a): In a case where the two parties damaged each other concurrently, Rabbi Akiva says: The owner of the innocuous ox that injured a person also pays the full cost of the damage with regard to the difference between the damage caused by his ox and the damage that the person caused the ox. Rabbi Akiva holds that if an innocuous ox injures a person, the owner pays the full cost of the damage, whereas if an innocuous ox damages another's property then the owner is liable only for half the cost of the damage. Since the owner's liability in the two cases is different, each case should be classified as a distinct category, and Rabbi Oshaya should list them separately in his baraita.

[109] The Gemara answers: Didn't Rabbi Akiva break the force of his fist [gezizeih], i.e., he significantly tempered the force of his statement, as it is taught in a baraita that Rabbi Akiva says: One might have thought that even in the case of an innocuous ox that injured a person, the owner of the ox would pay from his superior-quality property and not merely from the body of his animal, as in the case of an innocuous ox that damages property; therefore, the verse states with regard to an ox that gores a person: "According to this judgment shall it be done to him" (Exodus 21:31), from which it is derived that the owner of the ox pays restitution exclusively from proceeds of the sale of the body of his ox, and he does not pay from his superior-quality property. The mishna states that one pays restitution from his superior-quality property in instances of all primary categories of damage. Since in the case of an innocuous ox that injured a person even Rabbi Akiva concedes that the owner does not pay from his superior-quality property, it should not be included in a list of the primary categories.

[110] The Gemara asks: As for the rapist, and the seducer, and the defamer, all of which are cases in which the offender pays monetary restitution, let Rabbi Oshaya teach them as categories in his list.

[111] The Gemara explains why Rabbi Oshaya did not teach them as separate categories: Whichever way you look at it, they should not be listed. If the payments listed by Rabbi Ḥiyya are for damage caused to the woman's body, which reduces her value, he already taught it; if the payments are for pain, he already taught it; if the payments are for humiliation, he already taught it; if the payment is for degradation, that too is a payment for damage, which he already taught. What, then, have you to say? What is the nature of the payments paid by the rapist and the seducer mentioned by Rabbi Ḥiyya? In these cases, each payment paid is considered a fine [kenasa], and as explained, with regard to cases in which one is liable to pay a fine, Rabbi Oshaya does not speak.

[112] The Gemara asks further: And one who causes another's teruma to become ritually impure, and one who mixes teruma with another's non-sacred food, and one who pours another's wine as a libation for idolatry, each of which is a case in which the offender must pay monetary restitution to compensate the owner for his loss due to the lowered value of his food or wine, let Rabbi Oshaya teach them as categories in his list.

[113] The Gemara answers: Whichever way you look at it, these cases should not be listed. If Rabbi Oshaya holds that damage that is not evident, i.e., where the object is physically unchanged but its halakhic status is changed, is characterized as damage for which one is liable to pay restitution, Rabbi Oshaya already taught, i.e., included in his list, restitution for damage, and if he holds that damage that is not evident is not characterized as damage for which one is liable to pay restitution,

then it is a fine, and, as explained, with regard to cases for which one is liable to pay a fine, Rabbi Oshaya does not speak.

[114] The Gemara suggests: Since Rabbi Ḥiyya lists these cases as distinct categories, let us say that Rabbi Ḥiyya holds that damage that is not evident is not characterized as damage for which one is liable to pay restitution, as, if it were characterized as damage for which one is liable to pay restitution, didn't he already teach, i.e., include in his list, restitution for damage? The Gemara rejects that suggestion: Even if he holds that damage that is evident is characterized as damage for which one is liable to pay restitution, he distinguishes between different types of damage. He teaches cases of damage that is evident and he teaches cases of damage that is not evident.

[115] The Gemara considers the fact that each of the lists of primary categories is introduced with the number that they total: Granted, according to the tanna of our mishna, he taught the number of four primary categories in introducing his list to exclude those additional categories of Rabbi Oshaya. And similarly, Rabbi Oshaya taught the number of thirteen primary categories to exclude those additional categories of Rabbi Ḥiyya. But what does the number of twenty-four primary categories of Rabbi Ḥiyya serve to exclude?

[116] The Gemara answers: He taught that number in order to exclude the cases of an informer, who provides information to the authorities leading them to confiscate another person's property; and to exclude the case of a priest who renders an offering piggul by performing the sacrificial rites for one offering with the intent to sacrifice it for the sake of another offering, in which case the person who brought the offering must replace it with another.

[117] The Gemara asks: And let Rabbi Ḥiyya teach these cases. Granted, he did not include the case of a priest who renders an offering piggul. Perhaps, with regard to cases involving consecrated items, Rabbi Ḥiyya does not speak. But with regard to the case of an informer, what is the reason Rabbi Ḥiyya did not teach it and include it in his list of categories? The Gemara answers: The case of an informer is different, as the damage is caused through speech, and with regard to damage caused through speech, Rabbi Ḥiyya does not speak.

[118] The Gemara asks: But isn't there the case of a defamer, where the damage is caused through speech, and yet Rabbi Ḥiyya teaches it and includes it in his list? The Gemara answers: He includes that case because it is a case of speech that involves an action. One who defames his wife is liable only if he made his allegation after engaging in intercourse with her.

[119] The Gemara asks: But isn't the case of conspiring witnesses a case of speech that involves no action, as they are liable for their testimony, and Rabbi Ḥiyya teaches it and includes it in his list? The Gemara answers: There, although it involves no action, the Merciful One characterizes it as an action, as it is written: "And you shall do to him as he conspired to do unto his brother" (Deuteronomy 19:19).

[120] The Gemara considers the subcategories of the various primary categories listed: Granted, according to the tanna of our mishna, his terminology is understandable, as he taught primary categories, which, by inference, means that there are also additional forms of damage that are subcategories of those primary categories. But according to Rabbi Ḥiyya and Rabbi Oshaya, why did they employ the terminology they employed? They employed the term primary categories, which, by inference, means that there are subcategories. What are the subcategories of the primary categories they listed? It appears that they enumerated all the various categories of damage.

[121] Rabbi Abbahu says: When Rabbi Ḥiyya and Rabbi Oshaya characterize, as primary categories, the various categories of damage that they listed, it is not to indicate that there are subcategories; rather, it is to indicate that all of them are characterized as primary categories, in the sense that one is liable to pay from one's best-quality property.

[122] The Gemara asks: What is the reason for this, i.e., from where is it derived? The Gemara explains: It is derived using a verbal analogy from the terms "in place of," "giving," "he shall pay," and "money." The term "in place of" is written with regard to a forewarned ox that gores (Exodus 21:36); "he shall give" is written with regard to an ox that kills a slave (Exodus 21:32); "he shall pay" is written with regard to the categories of damage of Eating and Trampling (Exodus 22:4); and "money" is written with regard to Pit (Exodus 21:34). The halakha that one must pay from his best-quality property is stated explicitly in each of those four verses. In each of the twenty-four categories listed by Rabbi Ḥiyya one of those four terms is written, so by means of a verbal analogy, the requirement to pay from one's best-quality property applies to each of them.

[123] § The mishna states: The defining characteristic of the primary category of Ox is not similar to the defining characteristic of the primary category of Maveh. The Gemara asks: What is the mishna saying? Rav Zevid said in the name of Rava that this is what the mishna is saying: Let the Merciful One write one of the primary categories and derive the other categories from it. Then the tanna says: It is not possible to derive one category from one other category, as each category has its unique characteristics.

[124] The mishna continues: And the defining characteristics of this category of Ox and that category of Maveh, in which there is a living spirit, are not similar to the defining characteristic of the category of Fire, in which there is no living spirit. The Gemara asks: What is the tanna saying? Rav Mesharshiyya said in the name of Rava that this is what the tanna is saying:

[125] Let the Merciful One write only two of the primary categories and derive the other categories from them. Then the tanna says: It is not possible to derive one category from two other categories, as each category has its own unique characteristics, which prevent the derivation of a new category even from a combination of two categories.

[126] Rava said: And with regard to all of the primary categories in the mishna, when you cast the primary category of Pit among them, all of the rest of them can then be derived through an analogy based on the common factor of two categories. This is the case with all of the categories except for Goring, due to the fact that there is room to refute the analogy to teach the halakha of Goring with the following contention: What is notable about all of the other categories? They are notable in that they are forewarned from their outset. Since it is the typical manner of the animal to trample and eat, and the typical manner of fire to burn, and the typical manner of a pit to serve as an obstacle, the owner is always forewarned with regard to safeguarding against damage and is liable to pay full damages for his failure to prevent the damage even the first time. With regard to Goring, the animal is innocuous for the first three instances of damage and only thereafter is the animal forewarned, rendering its owner liable to pay full damages.

[127] And according to the one who says: On the contrary, Goring is superior in the sense that one's liability in a case of Goring is more apparent, as the objective of the ox's action is to cause damage, even Goring can be derived from the common factor of two sources.

[128] The Gemara asks: But if all the categories can be derived from another category and Pit, for the purpose of deriving what halakha did the Merciful One write all the primary categories explicitly? The Gemara answers: It is in order to derive their unique halakhot that apply exclusively to each category.

[129] Goring is written explicitly in order to distinguish between the halakhot of damage caused by an innocuous animal and damage caused by a forewarned animal.

[130] Eating and Trampling are written explicitly in order to exempt from liability those whose animals perform the actions in these categories in a public domain.

[131] Pit is written explicitly in order to exempt one from liability for damage to vessels caused when they fall into a pit. The Gemara adds: And according to the opinion of Rabbi Yehuda, who deems one liable even for damage to vessels caused when they fall into a pit, Pit was written in order to exempt one from liability for the death of a person who was killed by falling into a pit. Rabbi Yehuda concedes that the possessor of the pit is exempt because the person who ultimately fell into the pit was capable of avoiding it.

[132] Man is written explicitly in order to render him liable for four additional types of indemnity, beyond the payment of damages for the diminution in value caused when one injures a person.

[133] Fire is written explicitly in order to exempt one from liability for damage caused to a concealed object, e.g., one hidden by grain, that was consumed by fire. The Gemara asks: And according to Rabbi Yehuda, who deems one liable even for damage done to a concealed object damaged by fire, to add what halakha does the Torah mention the category of Fire explicitly?

[134] The Gemara answers: It serves to add cases where the fire scorched another’s plowed field and cases in which it singed his stones. Even though the damaged object remains intact and is not consumed by the fire, one is still liable to pay for the damage caused.

[135] § The mishna teaches: The common denominator of the components in all these categories is that it is their typical manner to cause damage. The Gemara asks: In order to add what halakha is this statement cited in the mishna? Abaye said: The stating of the common denominator in the mishna serves to add that one is liable in a case of his stone, his knife, or his load, where he placed them on top of his roof, and they fell off the roof by means of a common wind and caused damage.

[136] The Gemara asks: What are the circumstances in which one would be liable for the damage that was caused? If it is a case where those items cause damage as they are moving through the air propelled by the wind, that is a subcategory of Fire.

[137] Therefore, one could claim: If so, what is different about Fire that defines it as a unique category? It is that another force is involved with it in causing damage, as it is the wind that causes the fire to spread and cause damage; and the entity propelled by the wind is your property, and responsibility for its safeguarding, to prevent it from causing damage, is incumbent upon you. In these cases, too, another force is involved with them in causing damage; and the objects are your property, and responsibility for their safeguarding, to prevent them from causing damage, is incumbent upon you. Perforce, there is no need for the common denominator in the mishna to teach the case of an object that causes damage when propelled off a roof by the wind. That case is included in the primary category of Fire that is explicitly mentioned in the mishna.

[138] Rather, perhaps the common denominator serves to teach the halakha that one is liable when after those objects fall from the roof they come to rest on the ground, and they cause damage as an obstacle on which a person or an animal stumbles. The mishna teaches that the one who placed them on the roof is liable. The Gemara questions this explanation: What are the circumstances in which one is liable? If it is a case where one declared them ownerless, both according to Rav and according to Shmuel, this is a subcategory of Pit.

[139] Therefore, one could claim: What is different about Pit that defines it as a unique category? It is that its initial formation, i.e., the digging of the pit, is done in a manner that can result in damage, and it is your property, and responsibility for its safeguarding, to prevent it from causing damage to others, is incumbent upon you. With regard to these items he had placed on the roof, too, their initial formation, i.e., when they are placed in the public domain, is done in a manner that can result in damage, and they are your property, and responsibility for their safeguarding, to prevent them from causing damage, is incumbent upon you. Perforce, there is no need for the common denominator in the mishna to teach the case where the objects fell from the roof, came to rest in the public domain, and were declared ownerless. That case is included in the primary category of Pit that is explicitly mentioned in the mishna.

[140] Rather, perhaps the common denominator serves to teach the halakha that one is liable even in a case where one did not declare them ownerless. The Gemara asks: According to Shmuel, who says: We learned that one is liable to pay for damage caused by all obstacles that one places in a public domain, whether or not he declares them ownerless, from the halakhot with regard to one’s pit; this is a subcategory of Pit. The question remains: What halakha does the common denominator in the mishna teach?

[141] The Gemara answers: Actually, the mishna teaches one’s liability in a case where one declared the objects ownerless, and even if he declared them ownerless, those objects are not similar to the primary category of Pit. What is notable about the primary category of Pit? It is notable in that there is no other force involved with it in causing the damage. Will you say the same with regard to these cases, where there is another force involved with it in causing the damage, i.e., the wind that propelled them from the roof to rest on the ground?

[142] The Gemara suggests: If one attempts to challenge the derivation from Pit in this manner, it is possible to respond: The halakha of the primary category of Fire will prove that this factor, that there is another force involved with the object in causing the damage, is not a reason to exempt one from paying restitution for the damage, as although there is another force involved in the spreading of a fire, one is liable for the damage the fire causes, so the halakha with regard to these objects can be derived from that of Fire.

[143] The Gemara questions the derivation from Fire: What is notable about Fire? It is notable in that its typical manner is to proceed from one place to another and cause damage. Will you say the same with regard to these objects propelled by the wind into the public domain, where it is not their typical manner to proceed and cause damage? Accordingly, how can one learn the halakha in this case from that of Fire?

[144] The Gemara suggests: If one attempts to challenge the derivation from Fire in this manner, it is possible to respond: The halakha of the primary category of Pit will prove that the lack of this characteristic, of a typical manner being to proceed and cause damage, is not a reason to exempt the

owner of the objects from paying restitution for the damage, as that is the nature of Pit, and one is liable for damage caused by his pit. The Gemara notes: And as Pit and Fire each prove that the defining characteristic of the other is not decisive in establishing liability or exemption, the derivation has reverted to its starting point, and liability in these cases is derived from the common denominator of Pit and Fire. This is the halakha added by the common denominator stated in the mishna.

145 Rava said: The stating of the common denominator in the mishna serves to add the halakha that one is liable in a case of Pit where an object is rolled by the feet of a person or the hooves of an animal. This is a case where one placed an obstacle in a public domain and the obstacle caused no damage where it was placed, but subsequently was kicked by passersby to a different location where it caused damage.

146 The Gemara asks: What are the circumstances in which one is liable for damage in that case? If it is a case where one declared the objects ownerless, both according to Rav and according to Shmuel this is a subcategory of Pit.

147 Therefore, one could claim: What is different about Pit that it is defined as a unique category? It is that its initial formation, i.e., the digging of the pit, is done in a manner that can result in damage, and responsibility for its safeguarding, to prevent it from causing damage to others, is incumbent upon you. With regard to these objects, too, their initial formation, i.e., when the obstacle reaches the in the public domain, is done in a manner that can result in damage, and responsibility for their safeguarding, to prevent them from causing damage, is incumbent upon you. Perforce, there is no need for the mishna to state their common denominator to teach the halakha in the case where the objects came to rest and are declared ownerless. That case is included in the primary category of Pit that is explicitly mentioned in the mishna.

148 Rather, perhaps the common denominator serves to teach the halakha that one is liable even in a case where one did not declare the objects ownerless. The Gemara asks: According to Shmuel, who says: We learned that one is liable for damage caused by all obstacles that one places in a public domain, whether or not he declares them ownerless, from the halakhot with regard to one’s pit, this is a subcategory of Pit. What halakha does the common denominator in the mishna teach?

149 The Gemara answers: Actually, the mishna teaches one’s liability in a case where one declared the objects ownerless, and even if he declared them ownerless, those objects are not similar to the primary category of Pit. What is notable about the primary category of Pit? It is notable in that one’s actions, the digging of the pit, cause the damage. Will you say the same with regard to these cases, where one’s actions do not cause damage? Rather, it is the feet of the passersby that caused the damage, by rolling the object to a different location where it caused damage.

150 The Gemara suggests: If one attempts to challenge the derivation from Pit in this manner, it is possible to respond: The halakha of the primary category of Ox will prove that this fact, that one’s actions do not cause the damage, is not a reason to exempt one from paying restitution for the damage, as although the owner’s actions do not cause the ox to cause damage, one is liable for the damage caused by his ox.

151 The Gemara questions the derivation from Ox: What is notable about Ox? It is notable in that it is the typical manner of the animals in these categories to proceed from one place to another and cause damage. By contrast, in the case of the obstacle kicked by passersby to a different location where it

caused damage, it is not its typical manner to proceed and cause damage. Accordingly, how can one learn the halakha in this case from the primary category of Ox? The Gemara suggests: The primary category of Pit will prove that this fact, that the typical manner of a category's components is not to proceed and cause damage, is not a reason to exempt one from paying restitution for the damage, as that is the nature of Pit, and one is liable for damage caused by his pit.

[152] The Gemara notes: And as Pit and Ox each proves that the defining characteristic of the other is not decisive in establishing one's liability or exemption, the derivation has reverted to its starting point, which is that the defining characteristic of this primary category of Ox is not similar to the defining characteristic of that category of Pit, and liability in these cases is derived from the common denominator of Pit and Ox. This is the halakha added by the common denominator stated in the mishna.

[153] Rav Adda bar Ahava said: The stating of the common denominator in the mishna serves to add the halakha that one is liable to pay damages in this case that is taught in a baraita: With regard to all those people who engage in activities that the Sages stated are permitted, i.e., those who open their gutters and drain the sewage from their houses into the public domain, and those who flush out the water from their caves, where foul-smelling water was stored, into the public domain, during the summer they do not have permission to do so, while during the rainy season they have permission to do so, since the street is rained upon in any event and thereby washed. And although all these people perform their actions with permission, if they cause damage they are liable to pay for it.

[154] The Gemara asks: What are the circumstances in which one is liable for damage caused by the sewage? If the sewage causes damage as it is moving, after he poured it into the public domain, it is damage caused by his own direct action, and it is no different from any other damage caused by a person. According to Rav, it is under the rubric of Maveh in the mishna. According to Shmuel it appears in the next mishna, and it is not derived from the common denominator mentioned in the mishna.

[155] Rather, it is in a case where the damage was caused after the sewage came to rest on the floor, e.g., a passerby slipped on it. The Gemara asks: What are the circumstances? If it is a case where one declared the sewage ownerless, both according to Rav and according to Shmuel, this is a subcategory of Pit. What is different about Pit that it is defined as a unique category? It is that its initial formation, i.e., the digging of the pit, is done in a manner that can result in damage, and it is your property, and responsibility for its safeguarding, to prevent it from causing damage to others, is incumbent upon you. With regard to this sewage, too, its initial formation, i.e., the placement of the sewage in the public domain, is done in a manner that can result in damage, and it is your property, and responsibility for its safeguarding, to prevent it from causing damage, is incumbent upon you.

[156] Rather, perhaps the common denominator serves to teach the halakha that one is liable even in a case where he did not declare the sewage ownerless. The Gemara asks: According to Shmuel, who says: We learned that one is liable for damage caused by all obstacles that one places in a public domain, whether or not he declares them ownerless, from the halakhot with regard to one's pit, this is a subcategory of Pit. The question remains: What halakha does the common denominator in the mishna teach?

[157] The Gemara answers: Actually, the mishna teaches one's liability in a case where he declared the sewage ownerless, and even if he declared it ownerless, it is not similar to the primary category of

Pit. What is notable about the primary category of Pit? It is notable in that the pit was dug in the public domain without permission. Will you say the same with regard to these cases where the sewage was channeled into the public domain with permission?

158 The Gemara suggests: The primary category of Ox will prove that this fact, that the ox, i.e., the cause of the damage, entered the public domain with permission, is not a reason to exempt its owner from payment, as that is the nature of the primary category of Ox, and one is liable for damage caused by his ox.

159 The Gemara questions the derivation from Ox: What is notable about Ox? It is notable in that it is the typical manner of the animals in these categories to proceed from one place to another and cause damage. By contrast, in the case of the sewage, it is not its typical manner to proceed and cause damage. Accordingly, how can one learn the halakha in this case from the primary category of Ox?

160 The Gemara suggests: If one attempts to challenge the derivation from Ox in this manner, it is possible to respond: The halakha of the primary category of Pit will prove that the lack of this characteristic, of the typical manner being to proceed and cause damage, is not a reason to exempt one from paying restitution for the damage, as that is the nature of Pit, and one is liable for damage caused by his pit. The Gemara notes: And as Pit and Ox each prove that the defining characteristic of the other is not decisive in establishing liability or exemption, the derivation has reverted to its starting point, and liability in these cases is derived from the common denominator of Pit and Ox. This is the halakha added by the common denominator stated in the mishna.

161 Ravina said: The stating of the common denominator in the mishna serves to add the halakha that one is liable to pay damages in this case that we learned in a mishna (117b): In the case of a wall or a tree that fell on its own into the public domain and caused damage, the owner of the wall or tree is exempt from paying damages because he is a victim of circumstances beyond his control. But if the court had sensed the potential danger and had allotted him a certain amount of time during which he was obligated to chop down the tree or to demolish the wall, and he had not yet done so, and the wall or tree fell into the public domain within the allotted time and caused damage, he is exempt from paying damages. If he did not do so and it fell after the allotted time expired, he is liable to pay the damages.

162 The Gemara asks: What are the circumstances? If it is a case where one declared the fallen tree or wall ownerless, both according to Rav and according to Shmuel, this is a subcategory of Pit. What is different about the primary category of Pit that it is defined as a unique category? What is different is that its damage is commonplace, and it is your property, and responsibility for its safeguarding, to prevent it from causing damage, is incumbent upon you. In these cases involving the tree and the wall, too, their damage is commonplace, and they are your property, and responsibility for their safeguarding, to prevent them from causing damage, is incumbent upon you.

163 If it is a case where one did not declare them ownerless, according to Shmuel, who says: We learned that one is liable for damage caused by all obstacles that he places in the public domain whether or not he declares them ownerless, from the halakhot with regard to one’s pit, this is a subcategory of Pit.

164 The Gemara answers: Actually, the mishna teaches one’s liability in a case where one declared the tree or wall ownerless, and even if he declared them ownerless, they are not similar to the primary category of Pit. What is notable about the primary category of Pit? It is notable in that its

initial formation, i.e., the digging of the pit, is done in a manner that can result in damage. Will you say the same with regard to these cases, where their initial formation, i.e., the planting of the tree and the building of the wall, is not done in a manner that can result in damage?

165 The Gemara suggests: The primary category of Ox will prove that this factor, of not being initially formed in a manner that can result in damage, is not a reason to exempt its owner from payment, as that is the nature of the primary category of Ox, i.e., an ox is not born in a manner that results in damage, and one is liable for damage caused by his ox.

166 The Gemara questions the derivation from Ox: What is notable about Ox? It is notable in that it is the typical manner of the animals in these categories to proceed from one place to another and cause damage. By contrast, in the case of the tree and wall, it is not their typical manner to proceed and cause damage. Accordingly, how can one learn the halakha in these cases from the primary category of Ox?

167 The Gemara suggests: If one attempts to challenge the derivation from Ox in this manner, it is possible to respond: The halakha of the primary category of Pit will prove that the lack of this characteristic, of the typical manner being to proceed and cause damage, is not a reason to exempt one from paying restitution for the damage, as that is the nature of Pit, and one is liable for damage caused by his pit. The Gemara notes: And as Pit and Ox each prove that the defining characteristic of the other is not decisive in establishing liability or exemption, the derivation has reverted to its starting point, and liability in the cases of the tree and the wall is derived from the common denominator of Pit and Ox. This is the halakha added by the common denominator stated in the mishna.

168 § The mishna states: And when a component of any of these categories causes damage, the owner or generator of the component that caused damage is obligated [ḥav] to pay restitution with best-quality land. The Gemara asks: Why does the tanna of the mishna use the unusual expression: The one liable for the damage is ḥav to pay? He should have used the more standard expression for liability: The one liable for the damage is ḥayyav to pay. The Gemara explains: Rav Yehuda said that Rav said: This tanna is a Jerusalemite, who teaches using a light and concise formulation, as ḥav is more concise than ḥayyav.

169 § The mishna continues: The owner or generator of the component that caused damage is obligated to pay restitution for damage with best-quality land. The one liable for the damage is indebted to pay payments of restitution for damage with his superior-quality land. The Sages taught in a baraita: The Torah states with regard to paying damages: “Of the best of his field, and of the best of his vineyard he shall pay” (Exodus 22:4). What is the meaning of “his field” and “his vineyard”? It refers to that property of the injured party; the one liable for the damage pays from land of a quality that is commensurate to the best-quality field of the injured party and to the best-quality vineyard of the injured party, even if the property he damaged was of a lesser quality; this is the statement of Rabbi Yishmael.

170 Rabbi Akiva says that the verse comes only to allow injured parties to collect compensation from superior-quality land belonging to the one liable for the damage, in the event that he has no money or movable property. And by means of an a fortiori inference one can derive that the Temple treasury of consecrated property collects from superior-quality land.

171 The Gemara asks: And according to the opinion of Rabbi Yishmael, if one's animal ate from a rich garden bed, it is understandable that he must pay the injured party the value of a rich garden bed. But if it ate from a poor garden bed, is it reasonable that he pays the value of a rich garden bed? While this is the straightforward meaning of his statement, it is untenable, as he would be paying more than the value of the damage he caused.

172 Rav Idi bar Avin said: With what are we dealing here? We are dealing with a case where the animal that caused the damage ate from one garden bed among other garden beds, and we do not know whether it ate from a poor one or it ate from a rich one. In such a case, the halakha is that the animal's owner pays the injured party the value of a rich one.

173 Rava raised a question and said: And if we would know that the animal ate from a poor garden bed, its owner would have to pay only the value of a poor garden bed. Now that we do not know whether it ate from a poor garden bed or if it ate from a rich garden bed, is it reasonable that he should have to pay the value of a rich garden bed? There is a general principle governing monetary disputes that the burden of proof falls on the claimant. Therefore, so long as the injured party cannot prove that the animal ate from the rich garden bed, he should not be entitled to collect the value of such a garden bed.

174 Rather, Rav Aḥa bar Ya'akov said: With what are we dealing here? We are dealing with a case where, after appraising the damage, the court comes to collect from the one liable for the damage, but he does not have money available to pay for the damage. And the tanna'im disagree in a case where the superior-quality land [iddit], i.e., the best land, of the injured party is equal in quality to the inferior-quality land of the one liable for the damage, and the one liable for the damage also has land of superior quality.

175 And they disagree with regard to this: Rabbi Yishmael holds: We appraise the value of the land of the injured party, and therefore the one liable for the damage can pay with his inferior-quality fields, which are equal in quality to the best fields owned by the injured party. And Rabbi Akiva holds: We appraise the value of the land of the one liable for the damage and have him pay with his fields of superior quality.

176 The Gemara explains: What is the reason of Rabbi Yishmael? The word "field" is stated below, toward the end of the verse: "Of the best of his field, and of the best of his vineyard he shall pay" (Exodus 22:4). And the word "field" is also stated above, at the beginning of that same verse: "If a man causes a field or vineyard to be eaten, and he sends forth his animal, and it consumed in the field of another." Just as the field which is stated above belongs to the injured party, so too the field stated below belongs to the injured party.

177 And Rabbi Akiva holds: When the verse says: "Of the best of his field and of the best of his vineyard he shall pay," it means from the best of the one who is paying, i.e., from the best fields belonging to the one liable for the damage.

178 And how would Rabbi Yishmael respond to this? The verbal analogy between the two instances of the word "field" is effective, and the straightforward meaning of the verse itself is effective. The verbal analogy is effective, as I stated. It serves to teach that when it says that he pays from the best of his field, it means from land equal in quality to the best field owned by the injured party.

[179] And the straightforward meaning of the verse itself is effective, as it serves to teach a different halakha, in a case where the one liable for the damage has superior-quality land and inferior-quality land, and the injured party has superior-quality land, and the inferior-quality land of the one liable for the damage is not as good as the superior-quality land of the injured party. In this case, the halakha is that the one liable for the damage pays the injured party from his best land, i.e., from the superior-quality land that he owns.

[180] This is as the one liable for the damage is legally unable to say to him: You should come and collect from my inferior-quality land. He cannot say this because the standard for classifying land as being of superior-quality is set according to the injured party's superior-quality land, and the inferior-quality land of the one liable for the damage is of a lower quality than that. Rather, the injured party collects his damages from the best-quality land of the one liable for the damage.

[181] § The baraita cited above teaches: Rabbi Akiva says that the verse comes only to allow injured parties to collect compensation from superior-quality land belonging to the one liable for the damage, in the event that he has no money or movable property. And by means of an a fortiori inference one can derive that the Temple treasury of consecrated property collects from superior-quality land. The Gemara asks: What is the a fortiori inference from ordinary damage to damage involving the consecrated property? To which case does this refer?

[182] If we say that our ox, i.e., an ox belonging to a Jew, gored an ox that is consecrated property, there is a difficulty, as the Merciful One states: "And if one man's ox hurts the ox of another" (Exodus 21:35). This teaches that the halakha applies only if the ox hurt an ox belonging to another Jew, but not if it hurt an ox that is consecrated property. In the latter case no damages are collected.

[183] Rather, we say that the a fortiori inference is referring not to a case of damage but to one who vows and says: It is incumbent upon me to donate one hundred dinars for Temple maintenance. And the inference teaches that if the one who took the vow has no money, then the Temple treasurer comes and collects the hundred dinars from his superior-quality land.

[184] The Gemara challenges this understanding: The Temple treasurer should not be treated any better than an ordinary creditor,

[185] and the halakha of a creditor is to collect only from intermediate-quality land, not from superior-quality land.

[186] And if you would say that Rabbi Akiva holds that a creditor can collect the money owed him from superior-quality land as well, there is still a difficulty; the a fortiori inference can still be refuted in the following manner: What is notable about an ordinary creditor? He is notable in that the Torah enhanced his power with regard to payment of damages, as an ordinary person can collect payment of damages for loss or injury caused by another's ox. But can you say the same about the Temple treasury of consecrated property, with regard to which the Torah weakened its power with regard to payment of damages, not allowing it to collect such compensation? Accordingly, even if a creditor collects from superior-quality land, it does not necessarily follow that a Temple treasurer would also do so. It is therefore apparent that Rabbi Akiva's a fortiori inference is not referring to the case of one who donates money to the Temple.

[187] The Gemara rejects this: Actually, we can explain that we are dealing here with a case where our ox gored an ox that is consecrated property. And with regard to that which posed a difficulty for you

about this explanation, i.e., that the Merciful One states: “The ox of another” (Exodus 21:35), which indicates that liability is incurred only for damaging another person’s ox but not for an ox consecrated to the Temple, Rabbi Akiva disagrees with that interpretation and holds in accordance with the opinion of Rabbi Shimon ben Menasya.

[188] As it is taught in a baraita: Rabbi Shimon ben Menasya says: If an ox that is consecrated property gored an ox belonging to a common person [hedyot], the Temple treasury is exempt from liability. By contrast, in the case of an ox belonging to a common person that gored an ox that is consecrated property, whether the ox that gored the other ox was an innocuous ox, i.e., an ox with no consistent history of causing damage with the intent to injure, or it was a forewarned ox, i.e., an ox whose owner was forewarned because his ox had already gored another ox three times, the ox’s owner pays the full cost of the damage.

[189] The Gemara asks: If so, from where do you know to say that Rabbi Akiva and Rabbi Yishmael disagree about a case where the superior-quality land belonging to the injured party and the inferior-quality land belonging to the one liable for the damage are equal in quality, and the one liable for the damage also has land of superior quality, as the dispute was previously interpreted by Rav Aḥa bar Ya’akov? Perhaps everyone, including Rabbi Akiva, agrees that we appraise the value of the land of the injured party, and here they disagree with regard to the dispute between Rabbi Shimon ben Menasya and the Rabbis.

[190] The Gemara explains: Rabbi Akiva holds in accordance with the opinion of Rabbi Shimon ben Menasya, that in the case of damage caused by the ox of a common person to the property of the Temple treasury, compensation is collected from superior-quality land belonging to the one liable for the damage. And Rabbi Yishmael holds in accordance with the opinion of the Rabbis, that the owner of the ox bears no liability. In other words, perhaps in the baraita recording the dispute between Rabbi Yishmael and Rabbi Akiva (see 6b), Rabbi Yishmael first taught that land is appraised based on the quality of the injured party’s land, and then, although it is not explicit in the baraita, he continued to state his opinion that the Temple treasury is unable to collect damages. Accordingly, Rabbi Akiva can be understood as having first expressed his agreement concerning the valuation of land and then proceeding to dispute Rabbi Yishmael’s opinion with regard to the Temple treasury.

[191] The Gemara rejects this suggestion: If it is so that this is the disagreement, then what is the meaning of Rabbi Akiva’s statement: The verse comes only to allow injured parties to collect compensation from superior-quality land? This indicates that Rabbi Akiva disagrees about how to understand this verse.

[192] And furthermore, if the subject is the Temple treasury, what is the meaning of: And by means of an a fortiori inference one can derive that the Temple treasury of consecrated property collects from superior-quality land. If, as suggested, Rabbi Akiva holds in accordance with the opinion of Rabbi Shimon ben Menasya, then he maintains that damage to consecrated property is dealt with more stringently than damage to another person’s property, in that if one’s ox damages consecrated property one is liable for the full cost of the damage even if the ox was considered innocuous. If damage to consecrated property is dealt with more stringently, there is no basis to derive an a fortiori inference.

[193] And furthermore, didn’t Rav Ashi say: It is taught explicitly in a baraita: The verse: “The best of his field and the best of his vineyard he shall pay” (Exodus 22:4), teaches that the appraisal is of the

best of the field of the injured party, and of the best of the vineyard of the injured party. This is the statement of Rabbi Yishmael. Rabbi Akiva says: The appraisal is of the best of the field of the one liable for the damage, and of the best of the vineyard of the one liable for the damage. This clearly indicates that according to Rabbi Akiva compensation is collected from the superior-quality land belonging to the one liable for the damage.

194 § The Gemara considers others issues concerning the form in which restitution should be paid: Abaye raises a contradiction and addresses it to Rava: It is written: “The best of his field and of the best of his vineyard he shall pay” (Exodus 22:4), which indicates that from his best-quality land, yes, he shall pay, but from something else, no, he shall not pay.

195 But isn’t it taught in a baraita: The verse states: “And if a man shall open a pit, or if a man shall dig a pit and not cover it, and an ox or a donkey fall therein, the owner of the pit shall pay; he shall recompense money to its owners” (Exodus 21:33–34)? Since the verse states: “The owner of the pit shall pay,” the additional term “he shall recompense” is superfluous. It therefore serves to include any item worth money, and even bran, a relatively inferior commodity, as valid forms of restitution.

196 Rava resolves the contradiction: This is not difficult. Here, the term “he shall recompense” is referring to a case where he pays of his own volition, without being taken to court, and he may therefore use any form of payment. There, the phrase “of the best of his field” is referring to a case where he pays against his will, after the injured party has sued him in court. Since he caused the injured party additional trouble, he must pay using his best-quality land.

197 Ulla, son of Rav Ilai, said: According to this explanation, the language of the verse is also precise, as it is written: “He shall pay,” a term that, as opposed to: “He shall recompense,” connotes that he is forced to pay against his will.

198 Abaye said to him that the precise meaning of the verse does not indicate that he is paying against his will: Is it written: He shall be paid, in the passive form, which would clearly indicate that he did not voluntarily initiate the payment himself but rather is paying against his will? No; “he shall pay” is written, which can also indicate that he pays of his own volition.

199 Rather, Abaye said an alternative resolution, similar to that with which the Master, i.e., Abaye’s teacher, Rabba, employed in order to resolve a different difficulty. As it is taught in a baraita: A wealthy person is not entitled to take a poor man’s tithe. He is instead expected to sell his assets and purchase food with the proceeds. But in the case of an individual who owns houses, fields, and vineyards, but at the present time cannot find buyers to whom he can sell them, one may feed him with food from the poor man’s tithe up until half the value of his assets.

200 And the Master discussed it and asked: What are the circumstances that led to him being unable to sell his land? If everyone’s land depreciated in value, and his land also depreciated along with theirs, let us provide him with even more than half the value of his assets, as, since everyone’s land also depreciated, the market value of his property is low and he is genuinely classified as a poor person, who may take as much poor man’s tithe as is given to him.

201 Rather, it must be that everyone else’s land appreciated in value, and with regard to his land, since people see that he goes in and goes out for money, i.e., he is in need of money, they reason that he will be forced to accept a lower offer for his property. Consequently, his land depreciated in value.

[202] The Gemara asks: But if that is the case, we should not provide him with even a slight amount of poor man’s tithe. Since his assets, based on their market value, have a high value, he is not to be classified as a poor person.

[203] And the Master, Rabba, said concerning this: No, the halakha that he is provided with only up to half the value of his assets is necessary in a case where he cannot sell due to seasonal fluctuations in price. This is because in the days of the month of Nisan, which is the beginning of the harvest season, the market value of land appreciates, and in the days of the month of Tishrei, a time when the harvest had already been reaped and it is too late to prepare the land for the coming year, the market value of land depreciates.

[204] Consequently, everyone generally waits until Nisan and sells only at that point. But this person, since he is in need of money, sells his land in Tishrei according to the current, lower, market price. Accordingly, based on the current market prices, his assets have a low value and there is justification in regarding him as a poor person. Yet, since if he waited until Nisan, as everyone else does, his land would have a high value, he cannot truly be classified as a poor person. Therefore, he is permitted to take only as much poor man’s tithe as will cover his losses. The Gemara explains why he is permitted to take only up to half the value of his land: Since it is the nature of land to depreciate up to half its value, and it is not its nature to depreciate more than that, he is entitled to take poor man’s tithe that is worth up to half the value of his land and the rest he can supplement by selling his land at its current, lower price.

[205] Abaye uses a similar distinction to resolve the contradiction he raises: And here also, with regard to damages, if one considers a case where the injured party comes to collect his damages during Tishrei, his legal right is to collect payment from superior-quality land. This will be a relatively large amount of land, owing to the current seasonal depreciation in its value.

[206] But if the injured party says to the one liable for the damage: Give me slightly more land of intermediate quality instead, then the one liable for the damage can say to him: If you choose to take superior-quality land, as is your legal right, take a large amount in accordance with the current market value; but if not, and you wish to take intermediate-quality land, take according to the future value in Nisan, after it will have appreciated, which will mean you will be entitled to a smaller amount of land. This can be used to resolve the contradiction: The phrase “of the best of his field,” which indicates that payment is made only from superior-quality land, defines the injured party’s basic rights. The term “he shall recompense,” which indicates that payment may be made in any form, is referring to a case where the injured party forgoes his rights. In such a case the value of the land or item he agrees to receive is appraised based on its appreciated value at the season when it is generally sold.

[207] Rav Aḥa bar Ya’akov objects to this suggestion: If so, you have weakened the power of injured parties with regard to intermediate-quality and inferior-quality land, as, by agreeing to receive land of a lower quality than that to which their rights entitle them, they will actually receive less land, since the land is then appraised based on the appreciated market values in Nisan. Such an opinion is untenable, as the Merciful One states that injured parties collect from the best-quality land, clearly intending to enhance their rights, and yet you said he cannot also collect from intermediate-quality and inferior-quality land unless he agrees that the land should be appraised based on the appreciated Nisan values, thereby lowering the value of his payment.

[208] Rather, Rav Aḥa bar Ya’akov said: If there is a case to compare to Rabba’s distinction, it is not compared to a case of payment of damages, but we can compare it to a case of a creditor who comes to collect the loan during Tishrei. His legal right is to collect from the borrower’s intermediate-quality land, which will be a relatively large amount owing to the current seasonal depreciation in the value of land. But if the creditor says to the borrower: Give me slightly more land of inferior quality instead, the borrower can say to him: If you choose to take the intermediate-quality land, as is your legal right, take a large amount in accordance with the current market value, but if not, and you wish to take land of inferior quality, take it in accordance with the future, appreciated, market value in the month of Nisan. This would mean that the creditor would be entitled to a smaller amount of land.

[209] Rav Aḥa, son of Rav Ika, objects to this suggestion: If so, you have locked the door in the face of potential borrowers, as, according to your suggestion, the creditor is in a disadvantageous position. He can say to the borrower: Were I still to have the money I lent you, I would be able to purchase a large parcel of land in accordance with the current depreciated market value, so why, now that the money is with you, should I be forced to purchase land in accordance with the future, appreciated market value of the month of Nisan? If people are penalized as a result of granting loans, they will cease to do so.

[210] Rather, Rav Aḥa, son of Rav Ika, said: If there is a case to compare to Rabba’s distinction, we can compare it to the collection of a woman’s marriage contract where she comes to collect it during Tishrei. As a woman’s legal right in a marriage contract is to collect payment from her husband’s inferior-quality land, which will be a relatively large amount owing to the current seasonal depreciation in the value of land. But if she says to her former husband: Give me slightly less land of intermediate quality instead, her former husband can say to her: If you choose to take the lowest-quality land, as is your legal right, take a large amount in accordance with the current market value, but if not, and you wish to take land of a higher quality, take in accordance with the future appreciated market value of the month of Nisan, which will mean you will be entitled only to a smaller amount of land.

[211] The Gemara returns to examine the contradiction raised by Abaye: In any case, the original difficulty still remains.

[212] Rava said: Whatever he gives the injured party as payment he must give him of the best of that type. For example, even if he pays in bran he must pay with his best-quality bran, and this is the meaning of the phrase “of the best of his field.” Accordingly, the contradiction is resolved. The term “he shall recompense” indicates that payment can be given in any form, but the phrase “of the best of his field” indicates only that whichever form of payment is used, it must be of a superior quality, and not, as Abaye initially understood it, as limiting the form of payment specifically to land of superior quality.

[213] The Gemara asks: But isn’t “the best of his field” written, which suggests that the requirement to pay with one’s best land applies only when one pays with land?

[214] Rather, when Rav Pappa and Rav Huna, son of Rav Yehoshua, came from Rav’s academy, they explained it as follows: With regard to payment, all items are classified as property of the best quality, as, if an item cannot be sold here, it can be sold in another city. Since movable items are easily liquidated, they are always considered an acceptable form of payment. This is with the exception of land, which is not always easily sold. Therefore, the halakha is that the one liable for the

damage must give the injured party payment from his best-quality land, which is easier to sell. This is in order to ensure the possibility that a buyer will jump at the opportunity to purchase it, thereby providing the injured party with the possibility of liquidating it. This resolves the contradiction. The phrase “of the best of his field” indicates that if payment is made with land it must be with superior-quality land, and the term “he shall recompense” indicates that if payment is made from movable property, anything worth money may be used.

215 § Rav Shmuel bar Abba from Akronya asked Rabbi Abba: When the court appraises land to determine if it is to be classified as being of superior-quality, does it appraise land based on the quality of a property owner’s other land or does it appraise it based on the quality of the land in the world at large?

216 The Gemara notes: Do not raise the dilemma in accordance with the opinion of Rabbi Yishmael, as he says that we appraise land based on the quality of land owned by the injured party, and therefore payment is made with land that is of a similar quality to the best-quality land of the injured party. Accordingly, it is obvious that the classification is based only on the land of the injured party.

217 When you raise this dilemma, it is in accordance with the opinion of Rabbi Akiva, who says that we appraise land based on the quality of land owned by the one liable for the damage, and he pays with his superior-quality land even if its quality exceeds that of any of the injured party’s land. Consequently, according to Rabbi Akiva it is appropriate to ask whether the appraisal is based only on his other land or based on the land in the world at large.

218 The Gemara asks: What is the answer to the dilemma? When the Merciful One states: “The best of his field” (Exodus 22:4), does the stress in the verse on “his field” serve to exclude only the possibility of appraising land based solely on the value of the land of the injured party, but land is appraised based on the quality of land in the world at large? Or perhaps, does it serve to exclude the possibility of appraising land based on the quality of land of the world at large as well, and it is sufficient if the land he pays with is his best-quality land?

219 Rabbi Abba said to him: The Merciful One states: “The best of his field,” and you say the court appraises land based on the quality of land in the world at large? Certainly the term “his field” teaches that it is sufficient that the land be the best of the land of the one liable for the damage.

220 Rav Shmuel bar Abba raised an objection to this opinion from a baraita that delineates the forms of payment used for paying damages, repaying a debt to a creditor, and paying a marriage contract: If the debtor has only superior-quality land, all of them collect from the superior-quality land. Similarly, if he has only intermediate-quality land, all of them collect from the intermediate-quality land. And if he has only inferior-quality land, all of them collect from the inferior-quality land.

221 If he has superior-quality, intermediate-quality, and inferior-quality land, damages are paid from the superior-quality land, and a creditor collects from the intermediate-quality land, and a woman’s marriage contract is paid from the inferior-quality land. If he has only superior-quality and intermediate-quality land, damages are paid from the superior-quality land, and payment to a creditor and payment of a woman’s marriage contract are made from the intermediate-quality land. If he has only intermediate-quality and inferior-quality land, payments for damages and payments owed to a creditor are made from the intermediate-quality land, while payments of a woman’s marriage contract are made from the inferior-quality land.

[222] If he has only superior-quality and inferior-quality land, damages are paid from the superior-quality land, and payments owed to a creditor and payments of a woman’s marriage contract are made from the inferior-quality land.

[223] The Gemara explains how this baraita poses a challenge: In any event, the baraita teaches in the middle clause: If he owns only intermediate-quality and inferior-quality land, payments for damages and payments owed to a creditor are made from the intermediate-quality land, and payments of a woman’s marriage contract are made from the inferior-quality land. This clause demonstrates that the quality of land is appraised objectively based on the standard of the world at large. The reason for this is that if you say that the court appraises land based on the quality of the land of the one liable for the damage, let his intermediate-quality land be classified as superior-quality land, as that is the best land he owns, and consequently, the creditor should be directed to collect the debt from the inferior-quality land.

[224] The Gemara rejects this: With what are we dealing here? This is a case where at the time the borrower took the loan he also had superior-quality land and he subsequently sold it. Accordingly, no matter how land is appraised, at the time that the loan was given his intermediate-quality land would be classified as being of intermediate quality. Consequently, the creditor’s lien on the borrower’s land, which took effect from the moment the loan was given, takes effect with regard to the intermediate-quality land. Therefore, the creditor retains his right to collect from that land, regardless of the fact that by the time of collection it was the borrower’s best land and at that point could be reclassified as land of superior quality.

[225] And so says Rav Ḥisda: The baraita deals with a case where at the time he took the loan he also had superior-quality land and he subsequently sold it.

[226] The Gemara notes: This too stands to reason, from the fact that another baraita teaches: If a debtor has only intermediate-quality and inferior-quality land, damages are collected from the intermediate-quality land, while payments to a creditor and payments of a woman’s marriage contract are made from the inferior-quality land. These two baraitot are difficult, as they contradict each other. The baraita above teaches that in this case the creditor collects the debt from the intermediate-quality land, whereas this baraita teaches that he collects the debt from the inferior-quality land.

[227] Rather, must one not conclude from it that here, in the baraita above, it is a case where he also had superior-quality land at the time that he took the loan and he subsequently sold it, while there, in the baraita subsequently cited, it is a case where he did not have superior-quality land and he did not sell it. In such a case, since his intermediate-quality land was his best land, it is classified as superior-quality land and accordingly, no lien took effect with regard to it.

[228] And if you wish, say instead that the contradiction between the baraitot can be resolved differently: Both this baraita and that baraita concern cases where the borrower did not have superior-quality land and sell it. And it is not difficult because this second baraita concerns a case where his intermediate-quality land is equivalent in quality to the superior-quality land of the world at large; therefore, it is classified as superior-quality land and the creditor has no right to collect from it. And here, the first baraita concerns a case in which his intermediate-quality land is not equivalent in quality to the superior-quality land of the world at large but is similar to the intermediate-quality land of the world at large; consequently, the creditor has a claim to it.

229 And if you wish, say instead: Both this baraita and that baraita concern a case where the borrower’s intermediate-quality land, which is the best land he owns, is equivalent in quality to the intermediate-quality land of the world at large, and here, the baraitot disagree about this: One Sage, the tanna of the second baraita, holds that the court appraises the debtor’s land based on the quality of his other land, so that his best land is classified as superior-quality land and the creditor has no claim on it. And the other Sage, the tanna of the first baraita, holds that the court appraises the debtor’s land based on the quality of land in the world at large, so that his land is classified as intermediate-quality land and the creditor is entitled to claim it.

230 Ravina said: Another resolution to the contradiction between the baraitot is that the baraitot disagree with regard to the opinion of Ulla, as Ulla says: By Torah law, a creditor collects from inferior-quality land, as it is stated: “You shall stand outside, and the man you have a claim against will bring his collateral out to you” (Deuteronomy 24:11). One can infer: What item would a person typically choose to bring out for use as collateral and potential payment? Certainly it is the most inferior of his utensils. The verse thereby indicates that a creditor collects from inferior-quality land. But if so, for what reason did the Sages say that a creditor collects from intermediate-quality land? They instituted this ordinance so as not to lock the door in the face of potential borrowers, as, if creditors were limited to collecting from inferior-quality land they would be hesitant to offer loans in the first place.

231 Ravina explains: One Sage, the tanna of the first baraita, is of the opinion that the ruling is in accordance with the ordinance cited by Ulla that a creditor collects from intermediate-quality land. And the other Sage, the tanna of the second baraita, is not of the opinion that the ruling is in accordance with the ordinance cited by Ulla, so the creditor has a right to collect from only inferior-quality land, in accordance with Torah law.

232 § The Sages taught in the Tosefta (Ketubot 12:3): If one owes money to pay damages, repay a loan, and pay a woman’s marriage contract, and he owns inferior-quality, intermediate-quality, and superior-quality land, and he sells all of his land, then if he sold all of the land to one person or to three people simultaneously, all the buyers replace the land’s prior owner with regard to repayment of his debts. At the time when each debt was created, each creditor gained a lien on the plots of the debtor’s land, from which they have a right to collect. As a lien remains in effect even if the land is sold, then even after the sale, each creditor can collect from the plots of land upon which they have a lien. Accordingly, damages are collected from the superior-quality land, the loan is repaid from the intermediate-quality land, and the marriage contract is paid from the inferior-quality land.

233 If he sold his plots of land one after the other, all the creditors collect from the last buyer, regardless of the quality of the land he purchased. If that buyer does not have sufficient land purchased from the debtor to pay all the debts, the creditors take the land he has and collect the remaining sums from the one who purchased land before him, and if he also does not have sufficient land, they collect the rest from the one before the one before him, i.e., the first buyer. The Sages instituted that creditors may not collect from land that a debtor sold, even though it is technically still liened to them, as long as the debtor still has sufficient means with which to repay the debt (see Gittin 48b). Accordingly, after the sale of the first plot of land, the creditors’ rights to collect are restricted to the land that remains in the possession of the debtor, and consequently they gain a lien on it, irrespective of its quality. Therefore, even if that land is subsequently sold, their rights to

collect are restricted to that land, and only if the value of that land is insufficient to cover the cost of the debt may they utilize the original liens they had on the plots of land that were sold first.

234 The Gemara clarifies: With regard to the first case in the baraita, where he sold all the land to one person, what are the circumstances?

235 If we say that he simultaneously sold all of the land to one person, that is difficult. Now that the baraita teaches that if he sold the land to three different people simultaneously, where it is possible to say that the sale to one of them preceded the other sales, yet you say the halakha is that all the buyers replace the land's prior owner equally, and the possibility that one might have proceeded the other is disregarded, is it necessary to teach that the halakha is the same in a case where all the plots of land were simultaneously sold to one person?

236 Rather, it is obvious that the baraita is referring to a case where the plots of land were sold one after the other.

237 The Gemara asks: But what is different about the latter clause of the baraita, where the plots of land were sold to three buyers, one after the other, and the creditors collect only from the last buyer? It is different in that each one of the first two buyers can say to any creditor who tries to seize the land they purchased: Do not collect my land, as I left a place for you, a plot of land in the debtor's possession, from which to collect. In other words, when the first two buyers purchased their land a plot of land remained with the debtor, and therefore the creditor's rights of collection are restricted to that land.

238 The Gemara continues its question: In this case as well, where all the plots of land were sold to a single buyer, with regard to each one of the first two plots of land that were sold, let the buyer say to any creditor who tries to collect: With my purchase of the first two plots of land, I left a place for you, a plot of land in the debtor's possession, from which to collect. Therefore, even though the debtor subsequently sold the buyer all of the land, the creditor's rights of collection are restricted to the last plot of land the debtor sold the buyer, irrespective of its quality. Why then does the baraita rule that in this case each creditor collects from the land that was originally liened to him?

239 The Gemara explains: With what are we dealing here? This is a case where the individual buyer purchased the superior-quality land last. Accordingly, the buyer is satisfied with allowing each creditor to collect from the land that was previously liened to him, rather than having them each collect from the superior-quality land. And so says Rav Sheshet: It is a case where the individual buyer purchased the superior-quality land last.

240 The Gemara asks: If that is so, let them all come and collect from the superior-quality land, as their rights to collect should be restricted to it, since it was purchased last.

241 The Gemara answers: Because he can say the following threat to them: If you are silent and do not insist on collecting from the superior-quality land, and take the land of a quality that is due to you according to your standard legal rights, as in a case where you collect directly from the debtor, i.e., the injured party will collect from the superior-quality land, the creditor from the intermediate-quality land, and the woman will collect her marriage contract from the inferior-quality land, then take that land and I will allow you to do so. But if not, and you insist on taking the superior-quality land that I purchased last, then I will return the bill of sale of the inferior-quality land to its prior

owner, i.e., the debtor, and you will all be forced to collect from the inferior-quality land, because whenever the debtor has land in his possession you are able to collect the debts only from him.

[242] The Gemara asks: If so, that this is the reason for the ruling in the baraita,

[243] then also with regard to damages, let the buyer say this to the injured party. He could threaten to return the bill of sale of the inferior-quality land to the debtor, which would force the injured party to collect directly from the debtor's inferior-quality land. Since the buyer can do so, he can effectively force the injured party to collect from the purchased intermediate-quality land instead of fulfilling his right to collect from superior-quality land. Yet, the baraita teaches that in this case each party collects from the land that was originally liened to him, which means that damages are collected from the superior-quality land, indicating that this threat would not be effective.

[244] Rather, with what are we dealing here? We are dealing with a case in which the debtor died and his inheritors are his orphans, who are not subject to an obligation to repay the debts of their father. When one dies, his monetary debts are not inherited by his children. And therefore, the lien of the creditor rests solely upon the buyer of the land. Any lien that was in effect with regard to the land he owned at the time he incurred the obligation remains, and his creditors can therefore collect what they are owed from that land, even if it is in the possession of a buyer.

[245] Therefore, one cannot say that the ruling in the baraita is based on the fact that the buyer can threaten to return the bill of sale to the debtor, or in this case, to his orphans. In this case, even if he were to return the bill of sale, the creditors would not be able to collect from the land now in the orphans' possession, as they received it anew, not as an inheritance from their father. Therefore, the creditors can still collect from the plots of land that remain with the buyer.

[246] The Gemara suggests another explanation of the Tosefta: Rather, not all the creditors collect from the superior-quality land, which was the last plot of land purchased from the debtor, because the buyer can say to them: What is the reason that the Sages said one is not paid from liened property, i.e., property liened to a creditor that has been sold by the debtor, whenever there is unsold property still in the debtor's possession? It is due to an ordinance created solely for my benefit, as I should not be expected to pay from the land I purchased when the debtor is still able to pay. If that ordinance were to be in effect in this case, all of their liens would be in effect with regard to the superior-quality land, as that was purchased last. In this case I do not find this ordinance satisfactory to me, and I would prefer for the lien of each creditor to remain in effect with regard to the land it had been on initially, and I will give each of you that land.

[247] The Gemara notes: This fact that one is not required to avail himself of the financial benefit provided by a rabbinic ordinance is in accordance with the opinion of Rava. As Rava says: Anyone who says: I do not want to avail myself of the financial benefit provided by an ordinance of the Sages, such as this one, one listens to him.

[248] The Gemara asks: What does Rava mean by saying: An ordinance of the Sages, such as this one?

[249] The Gemara answers: His statement is in accordance with the opinion of Rav Huna. As Rav Huna says: The Sages enacted that a husband must sustain his wife. They also enacted that he receives her earnings in exchange. Yet, a wife is legally entitled to 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. Since his obligation to sustain her is only for her benefit, she may forgo her sustenance and retain her earnings for herself.

[250] The Gemara discusses a limitation on the buyer’s ability to refuse the benefit of the rabbinic ordinance: It is obvious that if the buyer sold, of the land he purchased from the debtor, the intermediate- and inferior-quality land to another buyer and retained in his possession only the superior-quality land, which he had purchased last, then all the creditors may come and collect from the superior-quality land.

[251] For if the intermediate-quality and inferior quality land were in his possession, he would be able to say to the creditors: Collect from the intermediate-quality land and from the inferior-quality land, as it is not satisfactory to me to avail myself of the ordinance of the Sages. Now that he has sold the land of intermediate and inferior quality, however, he cannot unilaterally waive the ordinance without the consent of the second buyer. The second buyer benefits from the ordinance, since it compels the creditors to collect from the first buyer, and he will therefore certainly not agree to waive it.

[252] But if the first buyer sold only the superior-quality land that he had purchased last, and he retained in his possession the intermediate-quality and inferior-quality land, what is the halakha?

[253] Abaye thought to say: All the creditors should come and collect from the superior-quality land. Since that land was the last plot of land in the debtor’s possession, the creditors’ right of collection was restricted to that land, irrespective of the fact that it was then subsequently sold twice.

[254] Rava said to him: What has the first person sold to the second in any sale? Any rights that will come into his possession. And since, if the creditors were to come to the first buyer while he was still in possession of all three plots of land, he could have had them collect from the intermediate-quality and inferior-quality land; and this is the halakha even though when he initially purchased the intermediate-quality and inferior-quality land the superior-quality land was still unsold property in the debtor’s possession. As although there is the rabbinic ordinance that one does not exact payment from liened property when there is unsold property still in the debtor’s possession, the buyer could have said to them: I do not find this ordinance satisfactory to me.

[255] Rava continues: Therefore, since the first buyer had the right to say this, the second buyer can also say to them: Collect from the intermediate-quality and inferior-quality land in the first buyer’s possession. As, when the second buyer purchased the superior-quality land, he purchased it with the understanding that he also acquired all the rights that the first buyer had with regard to that land. Accordingly, he also acquires the right to insist that the creditors collect from the intermediate-quality and inferior-quality land.

[256] In a related ruling, Rava says: In the case of Reuven, who sold all of his fields to Shimon simultaneously and Shimon proceeded to sell one field of those purchased to Levi, and Reuven’s creditor came to collect the debt, if the creditor so desires, he collects from this one, i.e., Shimon, and if he so desires, he collects from that one, i.e., Levi. And we said this only in a case where Levi purchased intermediate-quality land from Shimon. A creditor’s right is to collect the debt from intermediate-quality land. Accordingly, in this case, Reuven’s creditor can collect his loan from the intermediate-quality land even after it has been transferred into Levi’s possession. Nevertheless, if he so desires, he may insist on collecting his loan from any inferior-quality land left in Shimon’s possession. This is because a creditor also has the right to demand payment from a borrower’s inferior-quality land instead of his intermediate-quality land, and therefore that land is also liened to the loan.

[257] But if Levi purchased superior-quality and inferior-quality land from Shimon, no, the creditor can collect only from Shimon’s intermediate-quality land, as Levi could say to him: For this reason I was particular to purchase superior-quality and inferior-quality land, which is land that is not fit for you to collect from as a creditor.

[258] And if Levi purchased the intermediate-quality land from Shimon as well, we said that Reuven’s creditor can collect from him only in a case where he did not leave some similar intermediate-quality land in Shimon’s possession, as in that case, Levi is unable to say to the creditor: I left a place for you, i.e., a plot of land, in Shimon’s possession, from which to collect. But where Levi did leave some similar intermediate-quality land in Shimon’s possession, the creditor does not collect from Levi, as Levi is able to say to him: I left a place for you from which to collect.

[259] In another related ruling, Abaye says: In the case of Reuven, who sold a field liened to his creditor to Shimon with a guarantee, meaning that Reuven agreed to reimburse Shimon should Reuven’s creditor collect the debt from that field, and Reuven’s creditor came and seized the field from Shimon, the halakha is that Reuven can go and litigate with his creditor and claim that he had already repaid the debt, and insist that the field be returned to Shimon. And the creditor is unable to say to Reuven: I am not legally answerable to you, as I am not taking away your land, since you sold it to Shimon. This is because Reuven could say to him: If you extract the field from him, Shimon will return to me and demand that I reimburse him for his loss. Consequently, I am involved in this matter.

[260] And there are those who say: Even in a case where he sold the field without a guarantee, as well, in which case even if the creditor seizes Shimon’s land there are no legal consequences for Reuven, Reuven can litigate with the creditor, as he could say to him: It is not satisfactory for me for Shimon to have a grievance against me because he lost the field I sold him on account of the fact that I was unable to pay my debt. Consequently, I am involved in this matter.

[261] And in another related ruling, Abaye says: In the case of Reuven, who sold a field to Shimon without a guarantee,

[262] and claimants [asikin] come forth about the ownership of the land, disputing Reuven’s prior ownership, as long as Shimon has not yet taken possession of the land, he can retract his agreement to the transaction and is not required to pay for the land. Once he has taken possession of the land, he cannot retract his agreement to the transaction.

[263] What is the reason that he cannot retract his agreement to the transaction once he has taken possession? As Reuven says to him: The purchase of the land was like purchasing a tied bag [ḥayta] whose contents are unknown and might not have any value. Since you were aware of and accepted that possibility, as you purchased it without a guarantee, you cannot retract your agreement.

[264] The Gemara asks: From when is it considered that he has taken possession of the property? He takes possession from the time that he walks upon the boundaries of the land to inspect it.

[265] The Gemara notes: And this is referring specifically to a case where the field was sold without a guarantee. But where it was sold with a guarantee this is not so, and Shimon can retract his agreement and refuse to pay for the land even after taking possession of it. The reason is that if the claimants succeed with their claims and seize the land, Reuven will then have to return the sum Shimon paid for it. In order to minimize judicial proceedings, the court allows Shimon to claim that

there is no point in paying Reuven now only to have his money returned to him later. Therefore, he can retract his agreement to the transaction.

[266] And there are those who say that even where the field was sold with a guarantee, Shimon is unable to retract his agreement to the transaction, as Reuven has the legal right to say to him: First show me the claim authorization document, which a court provides to a buyer when the land he purchased is seized from him by a third party who proved that he had a lien on the land, and only then I will pay you. Consequently, Shimon cannot claim that there is no point in paying Reuven now, after he agreed to the sale but before a third party seized the land, as even if the land will be seized it does not automatically follow that Reuven will have to reimburse Shimon.

[267] § The Gemara returns to its earlier discussion concerning the form of the payment of damages: Rav Huna says: Damages are paid either with money or with one's best-quality land.

[268] Rav Naḥman raised an objection to Rav Huna from a baraita: The verse states: "He shall recompense money to its owner" (Exodus 21:34), which serves to include items worth money, even bran, a relatively inferior commodity, as valid forms of payment.

[269] Rav Huna replied: With what are we dealing here in the baraita? We are dealing with a case where he does not have any money or land. The Gemara asks: If he does not have any other means with which to pay, isn't it obvious that he can pay using what he has? The Gemara explains: Lest you say that we would say to him: Go to the trouble of selling whatever commodity you own, and thereby bring him money as payment for the damage, the baraita teaches us that it is unnecessary to sell one's possessions and pay with money.

[270] Rav Asi says: Money is equivalent to land. The Gemara asks: With regard to what halakha are they equivalent? If we say that it is with regard to fulfilling the requirement of paying with one's best-quality land, meaning that he can choose to pay with money instead, this is precisely the ruling of Rav Huna; and yet the ruling of Rav Asi is presented as an independent ruling.

[271] Rather, Rav Asi is referring to a case of two brothers who divided their inheritance, and one took land and the other one took money, and subsequently their father's creditor came and took the land, as it was liened to his loan. Rav Asi's ruling teaches that this brother whose land was taken can go and take a half share of the money together with his brother.

[272] The Gemara rejects this explanation: Isn't that obvious? Is this one a son and that one not a son? Since they are both sons and equally inherited the estate of their father, they share responsibility for their father's debts. If the creditor takes repayment of the debt from one brother, the other one must reimburse him.

[273] There are those who say that the Gemara rejects this explanation not because it is obvious, but on the contrary, because it is incorrect. As, one could look at it from the opposite direction, saying that one brother could say to the other: It was with this understanding that I took the money, that if it would be stolen from me I would not be reimbursed from your land, and it was with this understanding that you took the land, that if it would be seized from you by a creditor you would not be reimbursed from my money.

[274] Rather, Rav Asi is referring to a case of two brothers who divided the land they inherited from their father, and their father's creditor came and took the portion of one of them. Since the brothers carry joint responsibility for their father's debt, the one whose portion was seized has a right to be

reimbursed by his brother. Rav Asi's ruling teaches that this may be done either by redistributing the remaining portion of land or by reimbursing him with money.

275 The Gemara asks: But didn't Rav Asi already explicitly say that ruling once before? Therefore, this cannot be the explanation of this ruling. As it was stated: In a case of brothers who divided the land they inherited from their father, and their father's creditor came and took the portion of one of them, Rav says that the initial division of the land is voided and any remaining land is divided equally between the brothers. Shmuel says that each brother, upon taking his portion, relinquished [viter] any rights to be reimbursed if his portion were lost. And Rav Asi says that the brother whose portion was seized has a right to receive half of the remaining inheritance: He takes a quarter in land, and he takes the other quarter in money.

276 The Gemara explains the rationale behind each opinion: Rav says that the initial division of the land is voided. This is because he holds that brothers who divided their inheritance are considered to still be similar to heirs with respect to the inheritance, and therefore they continue to share joint responsibility for their father's debts. Consequently, any remaining land is divided equally between the brothers.

277 And Shmuel says that each brother, upon taking his portion, relinquished any rights to be reimbursed if his portion were lost, as he holds that brothers who divided their inheritance are considered to be like buyers of their respective portions, and each one is considered to be similar to a buyer who bought his portion without a guarantee that would have provided him with a right to be reimbursed if his portion were seized by a creditor.

278 And Rav Asi says that the brother whose portion was seized has the right to receive half the remaining inheritance. He takes a quarter in land and he takes the other quarter in money. This is because he is uncertain as to whether they are similar to heirs, in which case the remaining land should be redistributed between them, or whether they are similar to buyers who bought their portions with a guarantee, in which case the brother whose portion was taken should be reimbursed by his brother with a sum of money equal to the value of the land that was seized from him. Therefore, he takes a quarter in land and he takes the other quarter in money.

279 As Rav Asi had already stated the halakha of brothers who divided their inheritance, the Gemara suggests another explanation of his statement. Rather, with regard to what did Rav Asi state that money is equivalent to land? He stated it with regard to the requirement of paying with one's best-quality land, and is teaching that one may choose to pay with money instead of land.

280 The Gemara repeats its original rejection of this suggestion: If so, then this is precisely the ruling of Rav Huna, and yet Rav Asi is presented as an independent ruling. The Gemara resolves the problem: Emend the statement and say: And similarly, Rav Asi said.

281 § Rabbi Zeira says that Rav Huna says: For the purchase of an object with which to fulfill a mitzva, one should spend up to one-third.

282 The Gemara asks: To what does this one-third refer?

283 If we say it means that one should spend up to one-third of his estate to perform a mitzva, but if that is so, and if it happened to him that he became obligated in three mitzvot at the same time, should he give his entire estate away in order to fulfill those mitzvot? One is certainly not required to do so.

[284] Rather, what Rabbi Zeira said is that for the embellishment of the performance of a mitzva, e.g., to purchase a more beautiful item used in the performance of a mitzva, one should spend up to one-third more than the cost of the standard item used to perform the mitzva.

[285] Rav Ashi raises a dilemma: How is this one-third calculated? Is it one-third from within, i.e., he calculates the cost of a standard item, adds one-third of that value, and spends the total on purchasing a more beautiful item; or is it one-third from without, i.e., one-third of the sum he ultimately spends should be the additional sum added in order to purchase a more beautiful item? The Gemara concludes: The dilemma shall stand unresolved.

[286] In the West, Eretz Yisrael, they say in the name of Rabbi Zeira: Of the money one spends on purchasing a more beautiful item to perform a mitzva, up to one-third more than the cost of a standard item comes from his own finances, but from this point forward, any additional sum spent on purchasing a more beautiful item comes from the largesse of the Holy One, Blessed be He, i.e., God will reimburse him for spending that additional sum.

[287] MISHNA: With regard to anything for which I became responsible for safeguarding it to prevent it from causing damage, if it in fact causes damage, it is considered as if I actively facilitated that damage, and accordingly I must pay for it. In any case in which I facilitated part of the damage it caused, I am liable for payments of restitution for damage it caused, as if I were the one who facilitated the entire damage it caused.

[288] One is liable only with regard to damage caused to property for which, were he to use it for a non-sacred purpose, he would not be liable for the misuse of consecrated property; with regard to damage caused to property that belongs to members of the covenant, i.e., Jews; and with regard to assigned property, the meaning of which the Gemara will explain.

[289] And one is liable for damage caused in any place except for a domain designated exclusively for the use of the one responsible for the damage.

[290] And one is liable for damage caused in a domain designated for the joint use of the injured party and the one liable for the damage.

[291] When an animal or item one is responsible to safeguard causes damage, the one liable for the damage caused by insufficiently safeguarding it is obligated to pay payments of restitution for damage with his best-quality land.

[292] GEMARA: The Sages taught a baraita that elucidates the mishna’s ruling: With regard to anything for which I became responsible for safeguarding it to prevent it from causing damage, if it in fact causes damage, it is considered as if I actively facilitated that damage and accordingly must pay for it. How so? In the case of an ox or a pit that one transferred to the care of a deaf-mute, an imbecile, or a minor, whose presumed limited intellectual capacity means they are deemed incapable of sufficiently safeguarding them from causing damage, and the ox or pit caused damage, the halakha is that since the owner of the ox or pit did not fulfill his duty to safeguard them, he is liable to pay for the damage, which is not so in a corresponding case where the damage is caused by a fire.

[293] The Gemara elucidates: With what are we dealing? If we say that the baraita deals with a tethered ox or a covered pit, which cannot cause damage in the manner in which the owner left them, then the case in the corresponding situation of fire, where he is not liable, is where one transferred an ember to one of limited halakhic competence, which, had it been left alone, would not have erupted into a

fire and caused damage. This cannot be correct, because if so, what is different here in the case of an ox and a pit, where one is liable, and what is different there in the case of the fire, that exempts him from liability? There seems to be no reason to differentiate between them.

294 Rather, the baraita must be dealing with an untethered ox or an exposed pit, which can cause damage in the manner in which the owner left them. If so, then the case in the corresponding situation of fire, where he is not liable, is where one transferred a flame to one of limited halakhic competence, which can also cause damage in this form. The Gemara rejects this suggestion: But if so, why does the baraita state: Which is not so in the case of damage caused by a fire, as one is exempt from paying damages? But this is untenable, as didn't Reish Lakish say in the name of Ḥizkiyya: They taught that one is exempt from damage caused by a fire only in a case where he transferred an ember to one of limited halakhic competence who then fanned it into a flame. But if he transferred a flame to him, the one who transferred the flame to him is liable for any damage caused. What is the reason? He is responsible because the capacity for it to cause damage is certain.

295 The Gemara returns to its initial suggestion: Actually, the ruling of the baraita is stated with regard to a tethered ox or a covered pit, and the case in the corresponding situation of fire, where he is not liable, is where one transferred an ember to one of limited halakhic competence. And with regard to that which you said in order to reject this: What is different here in the case of an ox and a pit that causes him to be liable and what is different there in the case of the fire, that exempts him from liability? Seemingly, in all these cases the item was not able to cause damage in its current form, so he is exempt from liability.

296 The Gemara explains: You could answer as follows: The typical manner of an ox is to free itself from being tethered and the typical manner of a pit is for its cover to become dislodged. Therefore, as it is negligent to transfer an ox or pit to someone who is incapable of sufficiently safeguarding them, the one who transferred the ox or flame to them is liable. By contrast, with regard to an ember, as long as he leaves it alone it progressively dims, and the only way in which it will cause damage is if someone else actively fans it into a flame; therefore, he is not liable.

297 The Gemara asks: And according to Rabbi Yoḥanan, who says: Even if the halakha is that if one transferred a flame to one of limited halakhic competence he is exempt, it is possible to say that the case in the corresponding situation here in the first clause of the baraita is stated with regard to an untethered ox or an exposed pit. The Gemara asks: But if so, what is different here in the case of an ox and a pit that causes him to be liable and what is different there in the case of the fire that exempts him from liability? Seemingly, in all these cases the item that was transferred is capable of causing damage in its current form, so he would be expected to be liable.

298 The Gemara explains: There, in the case of fire, ultimately the deaf-mute's handling [tzevata] of the flame causes the damage, as if it were not for him moving the flame no damage would have been caused. Here, in the case of the ox and the pit, the deaf-mute's handling of them does not cause the damage. Rather, the damage was caused even though they remained in exactly the same dangerous state in which the one who had transferred them to the deaf-mute did so. Therefore, the damage is a result of that person's negligence, and he is liable.

299 § The Sages taught: There is a stringency that applies to the category of Ox as opposed to the category of Pit, and conversely, there is a stringency that applies to Pit as opposed to Ox.

300 The baraita elucidates: The stringency that applies to Ox as opposed to Pit is that if the ox kills a Jew, the owner is liable to pay a ransom to the victim's heirs. And for killing a slave the owner of the ox is liable to pay thirty sela to the slave's master. Furthermore, in such a case, once the court hears the evidence and the verdict of the ox is complete and the court rules that the ox must be killed, it is prohibited to derive any benefit from the ox. And from then, it is considered that the typical manner of the ox is to proceed and cause damage. All of this is not so in the case of a pit that caused damage. And the stringency, i.e., the reason to be stringent, that applies to Pit as opposed to Ox is that with regard to the primary category of Pit, its initial formation, e.g., its digging, is done in a manner that can result in damage, and the one responsible for it is considered forewarned from its inception. This is not so with regard to Ox.

301 There is a stringency that applies to the category of Ox as opposed to Fire, and conversely, there is a stringency that applies to Fire as opposed to Ox.

302 The baraita elucidates: The stringency that applies to the category of Ox as opposed to the category of Fire is that if an ox kills a Jew the owner is liable to pay a ransom, and for killing a slave the owner is liable to pay thirty sela. Furthermore, in such a case, once the court hears the evidence and the verdict of the ox is complete and the court rules that the ox must be killed, it is prohibited to derive any benefit from the ox. And if one transfers his ox to the care of a deaf-mute, an imbecile, or a minor, and it causes damage, he is liable. All of this is not so with regard to a fire. And the stringency that applies to Fire as opposed to Ox is that the one responsible for the fire is considered forewarned from its inception, which is not so with regard to an ox.

303 There is a stringency that applies to the category of Fire as opposed to the category of Pit, and conversely, there is a stringency that applies to Pit as opposed to Fire.

304 The baraita elucidates: The stringency that applies to the category of Pit as opposed to the category of Fire is that its initial formation, e.g., its digging, is done in a manner that can result in damage, and if one transfers it to the care of a deaf-mute, an imbecile, or a minor and it causes damage, one is liable. This is not so with regard to a fire. The stringency that applies to Fire as opposed to Pit is that the typical manner of a fire is to proceed and cause damage. And the one responsible for it is considered forewarned with regard to its consuming both something that is fitting for it and something that is not fitting for it, i.e., both flammable and non-flammable items. This is not so with regard to a pit.

305 The Gemara asks: But let the baraita also teach the following additional stringency: A stringency that applies to Ox as opposed to Pit is that if the ox damages vessels, the ox's owner is liable to pay for the vessels, which is not so with regard to a pit, which incurs liability for its owner only for damage it causes to people and to animals but not to vessels.

306 The Gemara explains: In accordance with whose opinion is this baraita taught? It is taught in accordance with the opinion of Rabbi Yehuda, who deems one liable also for damage caused to vessels by his pit.

307 The Gemara challenges this: If the baraita is in accordance with Rabbi Yehuda, try to say and explain accordingly the latter clause, which states: The stringency that applies to Fire as opposed to Pit is that the typical manner of a fire is to proceed and cause damage. And the one responsible for it is considered forewarned with regard to its consuming both something that is fitting for it and something that is not fitting for it. This is not so with regard to a pit. The Gemara clarifies:

Something that is fitting for it, what are these? Pieces of wood. Something that is not fitting for it, what are these? Vessels. And yet the baraita concludes: This is not so with regard to a pit, which indicates that liability is not incurred for damage done to vessels by one's pit. The Gemara presents the difficulty: If the baraita is in accordance with the opinion of Rabbi Yehuda, didn't you say that Rabbi Yehuda deems one liable for damage caused to vessels by his pit?

[308] Rather, actually, the baraita is in accordance with the opinion of the Rabbis, and the additional stringency mentioned is true but was not mentioned because the tanna taught certain cases and omitted others. The Gemara asks: What else did he omit that makes it reasonable to assume that he omitted this? As a tanna would never omit just a single case, perforce there must be more. The Gemara explains: He also omitted the case of damage done to a concealed item. Liability is incurred for damage done to a concealed item only when it was caused through a category of damage other than fire. If it is damaged by a fire that one lit, he is exempt.

[309] The Gemara suggests another explanation of the baraita: If you wish, say that actually the baraita is in accordance with the opinion of Rabbi Yehuda, and explain that the term: Something that is not fitting for it, in the baraita, does not serve to include vessels; with regard to vessels there is no distinction between Fire and Pit. Rather, it serves to include a case where a fire scorched another person's plowed field or singed [sikhsekha] his stones, which are ways of causing damage that cannot be caused by a pit.

[310] Rav Ashi objects to this suggestion: If so, let the baraita also teach the following additional stringency: A stringency that applies to Ox as opposed to Pit is that in the primary category of Ox one is liable if his ox damages another's ox that is in the category of disqualified consecrated animals, i.e., an animal set aside to be an offering that was disqualified from use and then redeemed. He is liable despite the fact that even after being redeemed it retains a degree of sanctity. This is not so with regard to damage caused by a pit to a disqualified consecrated animal, as in that case he is not liable for the damage caused.

[311] Rav Ashi explains his objection: Granted, if you say that the baraita is in accordance with the opinion of the Rabbis, then since the tanna omitted that case of damage done to vessels, he also omitted this case of damage done to disqualified consecrated animals. But if you say that the baraita is in accordance with Rabbi Yehuda, what else did he omit that makes it reasonable to assume that he omitted this?

[312] The Gemara answers: He omitted the case of an ox that intentionally trampled on a plowed field of another person in order to cause damage. Since the damage was intentional it is included in the primary category of Goring and so one is liable. This manner of causing damage cannot be done by a pit. The Gemara rejects this: If one claims that the tanna omitted the case of damage done to disqualified consecrated animals only due to the fact that he also omitted the case of an ox that intentionally trampled on a plowed field of another person, that is not a sufficient justification. The latter case is not an additional independent omission, as it is included in that which is taught in that baraita: The stringency that applies to Fire as opposed to Pit is that the typical manner of a fire is to proceed and cause damage. The fact that there is no case in the category of Pit corresponding to an ox that intentionally trampled on a plowed field is addressed by this clause.

313 § The mishna states: In any case in which I facilitated part of the damage it caused, I am liable for payments of restitution for damage it caused, as if I were the one who facilitated the entire damage it caused.

314 The Sages taught a baraita that elucidates the mishna's ruling: In any case in which I facilitated part of the damage it caused, I am liable for payments of restitution for damage it caused, as if I were the one who facilitated the entire damage it caused. How so? In the case of one who digs a pit to a depth of nine handbreadths, and another person comes along and completes the digging to a depth of ten handbreadths, the depth at which a pit, according to halakha, can cause death, only the latter individual is liable for injuries and death caused by the pit. Although the pit was already able to cause injury before the second individual deepened it, since by deepening it he increased its capacity to cause damage, he becomes liable for any damage it causes.

315 The Gemara suggests: And this is not in accordance with the opinion of Rabbi Yehuda HaNasi, as it is taught in a baraita: In the case of one who digs a pit to a depth of nine handbreadths, and another person comes along and completes the digging to a depth of ten handbreadths, only the latter individual is liable for both injuries and death caused by the pit. Rabbi Yehuda HaNasi says: With regard to death caused by the pit, the responsibility is ascribed to the latter individual. With regard to damage caused by the pit, the responsibility is ascribed to the two of them.

316 Rav Pappa said: The baraita refers only to a digger's liability for death caused by a pit, and then the ruling of the baraita is unanimous, i.e., it is in accordance with the opinions of both the first tanna and Rabbi Yehuda HaNasi.

317 There are those who say that the preceding discussion took a slightly different form: The Gemara asks: Shall we say that the baraita is not in accordance with the opinion of Rabbi Yehuda HaNasi? Rav Pappa answered and said: The baraita refers only to a digger's liability for death caused by a pit, and then the ruling of the baraita is unanimous.

318 Rabbi Zeira objects to the explanation of the baraita, that the mishna is referring only to one specific case: But are there no more cases? But isn't there the case of one who transferred his ox to five individuals in order for them to safeguard it, and one of them was negligent in his duties and the ox caused damage? Isn't this individual liable for all the damage? This seems to be an additional example of the principle in the mishna that if one facilitated part of the damage caused, he is liable for payments of restitution for the damage caused, as if he were the one who facilitated the entire damage, so the baraita should have mentioned it.

319 The Gemara rejects the possibility that the mishna could be referring to this case: What are the circumstances in which the negligent watchman bears full liability? If we say that without him the ox would not have been properly safeguarded because the ox was particularly strong and it took all five individuals to safeguard it, it is obvious that the negligent individual is liable for all the damage. The reason is that he alone, through his negligence, caused all the damage, not just part of it. Rather, the case must be where even without him the ox would still have been sufficiently safeguarded. The Gemara asks: But if that is the case, what did he do by not safeguarding it? It was still safeguarded without him, so he should not be liable for even part of the damage. It is apparent, then, that the mishna is not referring to this case.

320 Rav Sheshet objects to the explanation of the baraita, that the mishna is referring only to one specific case: But isn't there also the case of a fire that was left unattended by its owner and someone

else augmented the fire by adding a bundle of wood to it, thereby increasing the capacity of the fire to cause damage to another's field? Even though he only increased the fire's capacity to damage, he is liable for any damage it causes. Seemingly, this is an additional example of the mishna's principle that if one facilitated part of the damage caused, he is liable for payments of restitution for the damage caused, as if he were one who facilitated the entire damage, so the baraita should have mentioned it.

321 The Gemara rejects this suggestion: What are the circumstances?

322 If the fire would not have spread to another person's field without him adding bundles the fire, it is obvious that he alone is liable for the damage because he alone did everything that led to the damage. Rather, the case must be one where the fire would have spread even without him. The Gemara asks: But if that is the case, what did he do by adding bundles of wood? The fire would have spread without him, so he did not cause even part of the damage. It is apparent, then, that the mishna is not referring to this case.

323 Rav Pappa objects to the claim of the baraita that the mishna refers only to one specific case: But isn't there also that which is taught in a baraita: With regard to a case in which five people were sitting on one bench [safsal] and it did not break, and then one additional person came and sat upon it and broke it with his added weight, the latter individual is liable for all the damage. And Rav Pappa said by way of clarification that this applies in a case where the last individual to sit down was as heavy as Pappa bar Abba. Since he could have potentially broken it even on his own, he had no right to use it. In this case, even though the weight of the first five individuals was presumably a contributing factor in causing the damage, since the damage was ultimately caused by the additional weight of the last individual, he is liable for all of the damage. Seemingly, this is an additional example of the mishna's principle, and the baraita should have mentioned it.

324 The Gemara rejects this suggestion: What are the circumstances? If we say that without him the bench would never have broken under the weight of the first five people, then it is obvious that the last individual is liable for all the damage, as ultimately it was his action alone that caused the damage. Rather, it must be that even without him the bench would have broken under the weight of the first five people, and the last individual sat down just as it was about to break. The Gemara asks: But if that is the case, what did he do, i.e., why should he be liable at all? It is apparent, then, that the mishna is not referring to this case.

325 The Gemara asks: Ultimately, how is the baraita cited by Rav Pappa to be explained? As the Gemara explained, the ruling of the baraita is understandable only if it is referring to a case where the bench would not have broken without him. But if that is the case, as the Gemara noted, it is obvious and therefore unnecessary to state it.

326 The Gemara explains: No, it is necessary in a case where without him it would have broken in two hours, and now it broke in one hour. The baraita teaches that the last individual alone is liable and not the first five, as they can say to the last individual: Were it not for you, we would have sat a little bit more and then stood up; consequently, the bench would never have broken. Therefore, it was ultimately you who caused the bench to break, and therefore only you are liable.

327 The Gemara rejects this suggestion, because in that situation the last individual would have a valid counterclaim: But let him say to them: Were it not for you continuing to sit on the bench after I

sat down, the bench would not have broken, as under my weight alone it would not have broken. Accordingly, we should share the liability for damaging it.

328 The Gemara offers a different suggestion: No, it is necessary in a case where instantaneously, as he was leaning upon the other five people, the bench broke.

329 The Gemara asks: If so, it is obvious that he alone is liable, as his action alone caused the damage, and the other five could not have done anything to prevent it as he was leaning upon them.

330 The Gemara explains: The ruling is necessary lest you say that when one causes damage with one's direct force it is not equivalent to a situation where one causes damage with one's body. If he broke the bench by actually sitting down upon it, his action would be considered a direct act of damage completed with his body and he alone would be liable even though the other peoples' weight was a contributing factor. In this case, since he broke the bench by merely leaning upon the others sitting there, it is his force that led to the damage, not his body, and one might have thought that since the weight of the others certainly contributed to the breakage they should share liability. Therefore, the baraita teaches us that causing damage with one's direct force is equivalent to causing damage with one's body. And it teaches that the halakha is that anywhere that one would be liable if his body broke something, one is also liable if his force broke something.

331 The Gemara continues to consider the possibility that there are additional cases covered by the mishna's ruling aside from the one listed in the baraita: And are there not more cases? But isn't there also the case of that which is taught in a baraita: If one was beaten by ten people with ten sticks, whether they beat him simultaneously or one after the other, and he died, they are all exempt from liability for killing him. Rabbi Yehuda ben Beteira says: Where they beat him sequentially, the last individual to beat him alone is liable, because he hastened his death. In this case, the other individuals contributed to the man's death, but the last one alone is liable. Why didn't the baraita also mention this case?

332 The Gemara explains: The baraita is not speaking of one's liability to receive the death penalty, only of one's liability to pay damages.

333 And if you wish, say instead that the baraita is not speaking of an issue that is the subject of a dispute. The Gemara asks: But isn't it? But didn't we uphold that the case stated in the baraita concerning a pit is subject to a dispute, and it is not in accordance with the opinion of Rabbi Yehuda HaNasi, but of the Rabbis? The Gemara explains: We will interpret the baraita to be in accordance with the opinion of the Rabbis and not to be in accordance with the opinion of Rabbi Yehuda HaNasi, but we will not interpret it to be in accordance with the opinion of Rabbi Yehuda ben Beteira and not in accordance with the opinion of the Rabbis. In other words, although we will interpret the baraita as referring to a case that is subject to a dispute, that applies only if it is in accordance with the majority opinion in that dispute.

334 § The mishna teaches: In any case in which I facilitated part of the damage it caused, I am liable for payments of restitution for damage it caused, as if I were the one who facilitated the entire damage. The Gemara notes that the mishna does not teach: I am liable for the damage it caused, rather: I am liable for payments of restitution for damage it caused. The Hebrew terms: Payments of restitution [tashlumim], and: To complete [lehashlim], share the same Hebrew root. This alludes to the halakha that the payment of damages is required only in order to complete the injured party's compensation, which is already partially accounted for, as the injured party is able to recover his

dead animal’s current value by selling its carcass. Accordingly, the one liable for the damage is not required to pay the animal’s prior value; rather, he must pay only the difference in its value from before it was damaged and its current state.

335 The Gemara notes: We already learned this, as the Sages taught in a baraita: The mishna uses the term: Payments of restitution for damage, as opposed to simply stating: One is liable for the damage caused, to allude to the halakha that the one who is liable must pay only for the decrease in the value of the animal. This assumes that the injured party is able to recover his animal’s current value by selling the carcass. Therefore, the mishna teaches that the owner of the injured animal attends to, i.e., retains ownership of, the animal carcass so that, if he wishes to, he may sell it and keep the proceeds.

336 The Gemara asks: From where are these matters derived? Rabbi Ami said: As the verse states: “One who strikes an animal shall pay for it [yeshallemenna]” (Leviticus 24:18). Do not read the final word yeshallemenna, meaning he shall pay for it; rather, read it as though it were vocalized as yashlimenna, meaning he shall complete it, to teach that he shall complete the injured party’s compensation, which is already partially accounted for by the injured party’s right to sell his animal’s carcass.

337 Rav Kahana said that this halakha is derived from here: The verse states with regard to a case where an animal was entrusted with a paid bailee who did not fulfill his duty to safeguard it, and the animal was attacked by a wild beast: “If it be torn in pieces, let him bring a witness, the torn animal he shall not pay” (Exodus 22:12). Rav Kahana expounds the verse to mean that he shall pay only up until the value of the torn animal; but he shall not pay for the torn animal itself. In other words, he pays only the difference in value between the animal before it was injured and its current torn state. If the owner of the injured animal wishes to fully recover his loss he must sell the animal’s carcass and keep the proceeds.

338 Ḥizkiyya said that this halakha is derived from here: The verse states with regard to a person’s ox that fatally gored another ox: “He shall pay an ox for the ox, and the carcass shall be his” (Exodus 21:36), meaning the carcass belongs to the injured party, the owner of the gored animal.

339 And similarly, the school of Ḥizkiyya taught in a baraita: The verse states: “And the carcass shall be his” (Exodus 21:36). The verse means the carcass belongs to the injured party. Do you say it belongs to the injured party? Or perhaps it belongs only to the one liable for the damage? To this suggestion, you should say: It could not have been that.

340 The Gemara asks: What does the baraita mean by: It could not have been that?

341 Abaye said: If it enters your mind to say that the animal carcass is the property of the one liable for the damage, let the Merciful One write: “He shall pay an ox for the ox,” and then be silent and state no more. Why do I need the verse to continue: “And the carcass shall be his”? Conclude from it that the carcass belongs to the injured party.

342 The Gemara notes: And it is necessary to have multiple sources for this halakha, as if the Merciful One wrote only: “One who strikes an animal shall pay for it,” I could claim that only in that case does one have to pay for only part of the damage because it is an uncommon occurrence. But in the case of a torn animal, which is a common occurrence, I will say that his liability should not be limited to the difference in value between what the animal had been worth and the carcass, but he

should pay for the entire value of the injured animal. Therefore, it is necessary to explicitly state the halakha also in that case.

[343] And if the Torah had taught us only the case of a torn animal, I could claim that only in that case does one have to pay for only part of the damage because the damage occurred by itself, i.e., it was not directly caused by the one liable for it. But in the case of one who strikes an animal, who does so by direct action, I will say that his liability should not be limited. Therefore, it is necessary to explicitly state the halakha also in that case.

[344] And if the Torah had taught us only these two cases, I could claim that only in those cases does one have to pay for only part of the damage, this one because it is an uncommon occurrence, and that one because the damage occurred by itself. But in a case where one's ox gores another's ox, of which the Torah states: "And the carcass shall be his," which is a common occurrence, and the damage is considered to have been inflicted by its owner's direct action, since it was under his guard, I will say his liability should not be limited.

[345] And if the Torah had taught us only the case in the verse "And the carcass shall be his," I could claim that only in that case does one have to pay for only part of the damage because it is one's property that causes damage. But here, in the case of one who strikes another's animal, where one causes damage with one's own body, I will say his liability should not be limited. Therefore, it is necessary to explicitly state the halakha in each case.

[346] Rav Kahana said to Rav: But according to the statement of Ḥizkiyya, as explained by Abaye, the only reason the injured party retains ownership of the carcass is that the Merciful One wrote: "And the carcass shall be his," but were it not for that I would say that the carcass is the property of the one liable for the damage.

[347] Rav Kahana questions the need for the Torah to teach this: Now, if the one liable for the damage had in his possession the carcasses of several torn animals, he could give the injured party a carcass as payment, as the Master said above (7a): The verse states: "He shall recompense" (Exodus 21:34), to include items worth money, and even bran, a relatively inferior commodity, as valid items with which to pay restitution. Is it necessary for the Torah to teach that he can pay restitution with his, i.e., the injured party's, animal carcass? Granting ownership of the carcass to the injured party seems pointless, because even had the Torah granted it to the one liable for the damage, he could give it to the injured party as payment.

[348] The Gemara explains: It is necessary only for the issue of who sustains the loss due to the diminishing value of the carcass between its death and when the case is brought before the court. By granting ownership of the carcass to the injured party from the moment of the animal's death, the Torah limits the damages to the difference between the value of the animal when it was alive and its value immediately after it is killed, irrespective of what happens to the carcass afterward.

[349] The Gemara asks: Shall we say that the issue of the diminishing value of the carcass is a dispute between tanna'im? As it is taught in a baraita: The verse states with regard to a case where an animal was entrusted with a paid bailee and was attacked by a wild beast: "If it be torn in pieces, let him bring a witness [ed]" (Exodus 22:12).

[350] This means that the bailee should bring witnesses that the animal was mauled through circumstances beyond his control, and based on their testimony he is exempt from liability. Abba

Shaul says: The word ed should not be interpreted as witness, but as carcass. Accordingly, the bailee should immediately bring the carcass [aduda] to court in order to appraise its current value.

351 What, is it not so that they disagree about this matter: That one Sage, Abba Shaul, holds that the loss due to the diminishing value of the carcass is sustained by the injured party, and so there is a need to appraise its value immediately in order to correctly assess how much the one liable for the damage must pay, and the other Sage, the first tanna, holds that the loss due to the diminishing value of the carcass is sustained by the one liable for the damage because the Torah granted him ownership of it.

352 The Gemara rejects this: No, everyone agrees that the loss due to the diminishing value of the carcass is sustained by the injured party, since he owns it, and here they disagree concerning who must go to the effort of retrieving the carcass and transporting it to the court to be appraised.

353 And so it is taught in a baraita: Others say: From where is it derived that it is incumbent upon the owner of the pit to raise the ox from his pit after it was killed by falling into it? The verse states: “The owner of the pit shall pay; he shall restore money to its owner, and the carcass shall be his” (Exodus 21:34). They read the term “and the carcass” as a second subject of the term “he shall restore.” It therefore indicates that the one liable for the damage must restore the carcass to the injured party by retrieving it. The fact that this opinion is introduced with the phrase: Others say, suggests that it stands in opposition to another opinion. That other opinion apparently holds that the owner of the injured animal is responsible for retrieving the carcass.

354 Abaye said to Rava: What are the circumstances in which the one liable for the damage is required to go to this effort, to retrieve the carcass from the pit?

355 If we say that while still inside the pit, the carcass is worth a dinar, and when it is at the edge of the pit, since it is more accessible, its market value increases and is worth four dinars, then when the one liable for the damage expends the effort to retrieve the carcass, he is expending the effort for his own sake, since by increasing the value of the carcass he reduces his own liability. Therefore, he will certainly retrieve it of his own accord, and it is not necessary for the Torah to require him to do so.

356 Rava said to him: No, it is necessary to require him to retrieve the carcass in a case where, while still inside the pit the carcass is worth one dinar, and when it is at the edge of the pit, despite being more accessible, it is still worth one dinar. Since it is of no benefit to him to retrieve it, the Torah had to require him to do so.

357 The Gemara asks: But is there ever a case like this, where despite being more accessible its market value does not change? The Gemara answers: Yes, as people say, a beam of wood in the city sells for a dinar, and a beam of wood in the field also sells for a dinar, despite the fact that it needs to be transported from there to the city.

358 § Shmuel says: The practice of the court is that when an animal or other item is stolen and then is damaged or dies, the court does not appraise its current value and assign ownership of it to its owner, in order that the perpetrator should have to pay only the difference between its prior value and its current value, neither for the sake of a thief nor for the sake of a robber. Rather, the thief or robber acquires ownership of the carcass or damaged item and compensates the owner for its prior value. The court appraises the item or carcass only for damages, as the Gemara explained above. And I say that they appraise the item or animal even for a borrower who borrowed an item and while it was in

his possession it became damaged, or who borrowed an animal and while it was in his possession it died, and Abba, i.e., Rav, concedes to me.

[359] A dilemma was raised before them: Is this what Shmuel is saying: The court appraises the value of an item or a carcass even for the sake of a borrower, and Abba concedes to me; or perhaps, this is what Shmuel is saying: And I say that the court does not appraise its value even for a borrower, and Abba concedes to me?

[360] Come and hear a resolution from the following incident: There was a certain man who borrowed an ax from another and he broke it. He came before Rav to rule if, and how much, he was liable to pay for it. Rav said to him: Go and pay him with a full-fledged ax, i.e., you must compensate the owner for the full value of the ax that you broke. The Gemara suggests: Conclude from it that the court does not appraise its value for the sake of a borrower.

[361] The Gemara rejects this: On the contrary, from the fact that Rav Kahana and Rav Asi said to Rav on that occasion: Is this the halakha? And Rav remained silent, this suggests that he conceded to their opinion that the borrower should not have had to pay the full value of the ax. Accordingly, conclude from it that the court appraises an item's value for the sake of a borrower.

[362] An amoraic dispute was stated: Ulla says that Rabbi Elazar says: The court appraises a stolen item's value for a thief and for a robber. Rav Pappi says: It does not appraise its value for them. The Gemara concludes: And the halakha is that the court does not appraise value either for a thief or for a robber; but it appraises value for a borrower, in accordance with the opinion of Rav Kahana and Rav Asi.

[363] § The Gemara cites additional halakhot taught by Ulla, citing Rabbi Elazar: When a woman gives birth or miscarries a fetus she is thereby rendered ritually impure (see Leviticus 12:1–5). Even if she delivers only the afterbirth, with no discernible fetus, she is rendered ritually impure due to the possibility that the fetus was dissolved in the afterbirth, and it is therefore considered as though she delivered it (Nidda 24b). The length of the period of impurity depends on the sex of the child. In the case where it is unclear what the sex is, she must observe the longer period of fourteen days (Nidda 29a). At the end of that period she may purify herself by immersing in a ritual bath. And Ulla says that Rabbi Elazar says: If part of the afterbirth [shilya] emerged on the first day of a woman's miscarriage and part of it emerged on the second day, one counts the period of ritual impurity from the first day.

[364] Rava said to him, to Ulla: What is the rationale for your opinion to begin counting from the first day? It would appear to be based on the following: Ritual impurity is engendered only once the woman has delivered the fetus. This is defined as the emergence of the majority of the fetus or its head. Since in this case the fetus is not discernible, one must consider the possibility that it had already emerged on the first day, and therefore one is required to act stringently and regard her as impure from the first day.

[365] Rava questions the propriety of acting stringently in this case, as it is a stringency that results in a leniency, because if she begins counting from the first day, you will also render her fit to immerse and become pure from fourteen days after the first day. This is a leniency because it is possible that the majority of the fetus emerged only on the second day and therefore her period of impurity began only then. She will therefore remain impure until the fifteenth day.

[366] Rather, Rava said: With regard to being concerned for the possibility that she is impure from the first day, she should be concerned. But with regard to counting the period of impurity, one counts only from the second day.

[367] The Gemara asks: What is Ulla teaching us through this halakha? Does he mean to teach us that part of the afterbirth does not emerge without part of the fetus inside? But we already learned that in a mishna (Ḥullin 77a): When an animal is ritually slaughtered, the animal and everything inside it becomes permitted for consumption. This applies to an unborn fetus as well. If prior to the slaughter the majority of the fetus emerged, it is considered to have been born, and therefore the entire fetus, even the part that is still within its mother, is not rendered permitted for consumption by the slaughter. Accordingly, if part of the afterbirth emerged prior to the slaughter, it is prohibited to eat it, because an afterbirth is a sign of a fetus in a woman and a sign of a fetus in an animal.

[368] The Gemara explains: If I would know this only from the mishna, I would say

[369] that there is a possibility that part of the afterbirth will emerge without part of the fetus inside, and the reason that the Sages forbid eating the afterbirth is due to a rabbinic decree prohibiting a case where part of an afterbirth emerges from the womb and part of it remains inside, due to the possibility that one may confuse it with a case where all of the afterbirth emerges. Therefore, Ulla teaches us that, in fact, part of the afterbirth does not emerge without part of the fetus inside.

[370] The Gemara cites another halakha taught by Ulla, citing Rabbi Elazar: And Ulla says that Rabbi Elazar says: With regard to a male firstborn child who was mauled by an animal within thirty days of his birth and died, one is not required to redeem him, as the requirement to do so, by paying five sela to a priest, applies only once the child is thirty days old (see Numbers 18:15–16).

[371] And similarly, Rami bar Ḥama taught a baraita: Since it is stated: “Yet you shall redeem” (Numbers 18:15), one might have thought that even if a male firstborn child was mauled by an animal within thirty days of his birth one should redeem him. Therefore, the verse states “yet you shall redeem”; the addition of the word “yet” serves to differentiate and limit the requirement to redeem the firstborn male.

[372] The Gemara cites another halakha taught by Ulla, citing Rabbi Elazar: And Ulla says that Rabbi Elazar says: A large animal, such as a cow or a horse, is acquired by the buyer pulling the animal.

[373] The Gemara asks: But didn’t we learn in a mishna (Kiddushin 25b): A large animal is acquired by passing the reins of the animal to the buyer? The Gemara explains: Rabbi Elazar states his opinion in accordance with the opinion of that tanna, i.e., the Rabbis, as it is taught in a baraita: And the Rabbis say: This and that, i.e., both large and small animals, are acquired through the buyer pulling the animal. Rabbi Shimon says: This and that are acquired through the buyer lifting the animal.

[374] The Gemara cites another halakha taught by Ulla, citing Rabbi Elazar: And Ulla says that Rabbi Elazar says: With regard to brothers who divide the estate they inherited, the court appraises whatever clothes are upon them if those clothes came from, or if they were purchased with money from, the deceased’s estate, and that sum is considered part of the portion they receive. But the court does not appraise whatever is upon their sons and daughters. In order to save the children from the humiliation of having to appear in court, the brothers waive their rights to the clothes the children are wearing.

375 Rav Pappa said: Sometimes, it does not even appraise whatever is upon the brothers. You find such a case with the eldest brother where the other brothers waive their rights to the value of his clothes, as it is beneficial for them to have the eldest brother appear well dressed in order that when he represents their interests in dealings with others, his words will be listened to and respected.

376 The Gemara cites another halakha taught by Ulla, citing Rabbi Elazar: And Ulla says that Rabbi Elazar says: In the case of a bailee who conveyed a deposit that was entrusted to him to another bailee, the first bailee is exempt for any occurrence for which he would have been exempt had he kept the deposit with him. The Gemara adds: And it is not necessary to state this in the case of an unpaid bailee who conveyed a deposit to a paid bailee, thereby increasing the level of its safeguarding, since the paid bailee has a greater level of accountability than an unpaid bailee. Rather, this is the halakha even in a case of a paid bailee who conveyed a deposit to an unpaid bailee, thereby decreasing the level of its safeguarding. In this case, the first bailee is exempt for any occurrence for which he would have been exempt had he kept the deposit with him, because he conveyed it to a mentally competent person and thereby fulfilled his responsibility to ensure the deposit is safeguarded.

377 Rava said: With regard to a bailee who conveyed a deposit to another bailee, the first bailee becomes liable to pay for any loss to the item, even for mishaps for which he would not have been liable had he kept the deposit with him. The Gemara adds: And it is not necessary to state this in a case of a paid bailee who conveyed a deposit to an unpaid bailee, thereby decreasing the level of its safeguarding. Rather, this is the halakha even in the case of an unpaid bailee who conveyed a deposit to a paid bailee, thereby increasing the level of its safeguarding; he is liable.

378 The reason he is liable is that the owner of the deposit can say to him: You are credible to me with regard to taking an oath, but this other bailee, to whom you conveyed my item, is not credible to me with regard to taking an oath. If an occurrence for which a bailee does not carry liability occurs, damaging the deposit, in order to release himself from an obligation to pay the bailee must take an oath to the item’s owner that none of the types of occurrences for which he bears liability occurred. Rava rules that the owner is required to accept an oath only from the bailee with whom he entrusted his item, but not from anyone else. Accordingly, since the first bailee was not present when the event occurred, he is unable to attest to what happened, and even if the second bailee takes an oath to that effect, the owner is not expected to accept his oath. Consequently, the first bailee bears full liability for any loss.

379 The Gemara cites another halakha taught by Ulla, citing Rabbi Elazar: And Ulla says that Rabbi Elazar says: The halakha is that one can collect from the debtor the slaves that he owns as payment for a debt.

380 Rav Naḥman said to Ulla: Did Rabbi Elazar say that this halakha applies even when collecting from a debtor’s orphans? A creditor can collect the debt from orphans only by taking the land the debtor bequeathed to his children. Rav Naḥman asked whether this also extends to collecting any slaves the children inherited. Ulla replied: No, a creditor collects a debt by taking slaves only when he collects directly from the debtor himself. Rav Naḥman challenges this: But when the creditor collects from him, he can collect the debt even from the cloak that is upon his shoulders, and therefore he can certainly also collect the debt by taking his slaves, so what is the novelty of this ruling?

[381] Ulla explains: With what are we dealing here? We are dealing with a case in which the debtor set aside his slave as designated repayment [appoteiki]. Consequently, if the slave was subsequently sold to a third party and the debtor was later unable to repay the debt, the creditor can seize the slave from the third party as payment of the debt. Even though generally only land can be seized from a buyer as payment for the seller's debt, a slave is considered to have similar status to land in this regard. This is in accordance with the opinion 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 by taking the slave; but if one set aside his ox as designated repayment and then sold it, the creditor does not collect the debt by taking the ox.

[382] The Gemara asks: What is the reason for this difference? The Gemara explains: The designation of this slave generates publicity, since a slave is significant and identifiable, therefore any prospective buyer is assumed to have been aware of the status of the slave and accepted the consequences of purchasing him. But the designation of this ox does not generate publicity, since one ox is not easily distinguishable from another, and a buyer cannot be assumed to be aware that the ox was set aside as designated repayment. Therefore it is unfair that one who purchases such an ox should have it seized from him. Therefore, the Sages enacted that a creditor cannot do so.

[383] The Gemara relates: After Rav Naḥman exited the study hall, Ulla said to the remaining Sages in the study hall: In truth, this is what Rabbi Elazar said: A slave can be collected as payment even when collecting from the debtor's orphans. Generally, when collecting a debt from the debtor's orphans the creditor can collect only from the land that they inherited from their father, which is liened to the debt. Rabbi Elazar rules that a creditor can also collect from the slaves they inherited, as he holds that in this regard, the legal status of slaves is like that of land. Ulla did not reveal this fact to Rav Naḥman, as he knew that Rav Naḥman disagreed and held that the legal status of slaves is like that of movable property. When he heard of Ulla's revelation, Rav Naḥman said: Ulla evaded me, as had he told me Rabbi Elazar's full opinion, I would have brought proofs against his opinion.

[384] The Gemara relates: There was an incident in Neharde'a, and the judges of Neharde'a collected, on behalf of a creditor, slaves that orphans had inherited from the debtor. There was an incident in Pumbedita, and Rav Ḥana bar Bizna collected slaves from orphans as repayment for a debt. Rav Naḥman said to those judges: Go and return those slaves to the orphans, and if you do not do so, we will collect the value of the slaves from the proceeds of your own mansions in order to compensate the orphans for their loss, as you have made an elementary mistake in your ruling and therefore you are responsible to rectify it.

[385] Rava said to Rav Naḥman: There is Ulla, there is Rabbi Elazar, there are the judges of Neharde'a, and there is Rav Ḥana bar Bizna, all of whom ruled based on the assumption that the legal status of slaves is like that of land. In accordance with whose opinion does the Master, i.e., you, Rav Naḥman, hold?

[386] Rav Naḥman said to him: I know a baraita that supports my opinion, as Avimi teaches: A document that prevents the Sabbatical Year from abrogating an outstanding debt [prosbol] takes effect upon a debt assumed by one who owns land, but a prosbol does not take effect upon a debt assumed by one who owns slaves of the debtor. And movable property is acquired together with the land one acquires through the act of acquisition performed on the land, but movable property cannot

be acquired together with the slaves that one acquires. Both halakhot assume that in these cases the legal status of slaves is not like that of land.

387 The Gemara suggests: Let us say that this issue is the subject of a dispute between tanna’im in the following baraitot.

388 One baraita teaches: If one sold slaves and land to a buyer and the buyer took possession of the slaves alone, he does not thereby acquire the land. If he took possession of the land alone, he does not thereby acquire the slaves. If one sold land and movable property to a buyer and the buyer took possession of the land alone, he thereby also acquires the movable property. If he took possession of the movable property alone, he does not thereby acquire the land. If one sold slaves and movable property to a buyer and the buyer took possession of the slaves alone, he does not thereby acquire the movable property. If he took possession of the movable property alone, he does not thereby acquire the slaves.

389 But isn’t it taught in another baraita: If the buyer took possession of the slaves alone, he thereby also acquires the movable property? This directly contradicts the ruling in the parallel clause of the previous baraita.

390 What, is it not the case that it is about this that they disagree, that one Sage, the tanna of the second baraita, holds that the legal status of slaves is like that of land, and the other Sage, the tanna of the first baraita, holds that the legal status of slaves is like that of movable property?

391 The Gemara rejects this: Rav Ika, son of Rav Ami, said: According to everyone, the legal status of slaves is generally like that of land, and therefore, that which is taught in the second baraita, that by taking possession of the slaves he also acquires the movable property, is properly understood. And that which is taught in the first baraita, that in such a case he does not acquire the movable property, the reason for this ruling is that the tanna of that baraita holds that in order for movable property to be acquired together with land, we require that he acquire land similar to “fortified cities in Judea” (II Chronicles 21:3), which do not move around. Slaves, even if their legal status is generally like that of land, do not fulfill this requirement.

392 The reason behind the need for land to be like the “fortified cities in Judea” is that the halakha that one can acquire movable property together with land is derived from this verse, as we learned in a mishna (Kiddushin 26a): Property that does not serve as a guarantee, i.e., movable property, is acquired together with property that does serve as a guarantee, i.e., land, be it through the buyer giving money to the seller, by the seller giving the buyer a bill of sale, or by the buyer performing an act of taking possession. The Gemara asks: From where is this matter derived? Ḥizkiyya said: As the verse states: “And their father gave them great gifts, of silver, and of gold, and of precious things, with fortified cities in Judea” (II Chronicles 21:3). The verse indicates that the acquisition of the movable property was done together with that of the cities of Judea.

393 There are those who say that Rav Ika stated a different answer: Rav Ika, son of Rav Ami, said: According to everyone, the legal status of slaves is generally like that of movable property, and therefore, that which is taught in the first baraita, that by taking possession of the slaves he does not also acquire the movable property, is properly understood. And that which is taught in the second baraita, that in such a case he acquires the movable property, applies to a case in which at the moment the slave was acquired, the movable property was still upon him, e.g., the slave was holding

it, and it could therefore be acquired together with the slave. This is because one's slave is considered like one's courtyard, and any item that is placed within it is acquired for its owner.

394 The Gemara asks: But even if the movable property was still upon him, what of it? Even if one claims a slave is like a courtyard, he is a mobile courtyard, and a mobile courtyard does not acquire items placed upon it. And if you would say that the case is one where the slave is standing at the time of the transaction, that is still insufficient, as didn't Rava say: Anything that does not acquire when moving also does not acquire when it is standing or sitting. The fact that the slave can move gives him the status of a mobile courtyard, regardless if he is currently moving or not.

395 The Gemara concludes: And the halakha is that where a slave is bound up and is unable to walk, his status is like that of an immobile courtyard, and his master will acquire anything that is placed upon him at that time.

396 The Gemara presents another contradiction to the first baraita cited above, which explicitly states that one cannot acquire slaves by taking possession of land: But isn't it taught in another baraita: If he took possession of the land alone, he thereby also acquires the slaves?

397 The Gemara resolves the contradiction: There, in the baraita just cited, the case is one where the slaves are standing within the borders of the land that was acquired.

398 The Gemara notes: By inference, the ruling of this first baraita, which states that he does not acquire the slaves, is stated with regard to a case where they are not standing within the borders of the land that was acquired.

399 This works out well according to that second formulation of that which Rav Ika, son of Rav Ami, said, that the legal status of slaves is like that of movable property. This is the reason that if the slaves are standing within the borders of the land, yes, they are acquired together with the land, but if not, no, they are not acquired. The Gemara assumes that movable property is acquired together with land only if at the time of the acquisition it is placed upon the land.

400 But according to that first formulation of that which Rav Ika, son of Rav Ami, said, that the legal status of slaves is like that of land, why do I need the slaves to be standing within the borders of the land? As doesn't Shmuel say: If someone sold him ten fields, located in ten different countries, once he takes possession of one of them, he has acquired all of them? If the legal status of slaves is like that of land, then the same principle should apply to them, and it should be unnecessary for them to be standing within the land's borders.

401 The Gemara reconsiders: But even according to your reasoning, one can ask: According to the second formulation of that which Rav Ika, son of Rav Ami, said, that the legal status of slaves is like that of movable property, why do I need the slaves to be standing within the borders of the land?

402 Don't we maintain that the halakha is that we do not need movable property to be piled up upon the land one acquires in order to acquire the movable property together with it?

403 Rather, what have you to say? Perforce, movable property that moves around by itself, such as slaves, is different from movable property that does not move around by itself, i.e., inanimate objects. The halakha that movable property does not need to be piled up upon the land applies only to the latter. Accordingly, in order to acquire slaves together with land, they must be standing within its borders.

[404] Given this distinction, one can say that here, also, an entity legally classified as land that moves around, such as a slave, is different from land that does not move around. Accordingly, a slave, which is classified as land that moves around, is not included in Shmuel's ruling, as in his ruling there, he refers only to acquiring multiple plots of land, which is possible only because the crust [sadna] of the earth is one block, and therefore each field is really only one part of a bigger whole. This rationale does not permit acquiring land and slaves together, as a slave is not attached to the earth and is separate from the land.

[405] § The mishna teaches: One is liable only with regard to damage caused to property for which, were he to use it for a non-sacred purpose, he would not be liable for the misuse of consecrated property.

[406] The Gemara infers: The property in question does not have the prohibition of misuse of consecrated property, but it is consecrated property, yet one is still liable for causing damage to it.

[407] The Gemara asks: Who is the tanna who holds like this? The Gemara answers: Rabbi Yoḥanan said: The mishna is referring to offerings of lesser sanctity and is in accordance with the opinion of Rabbi Yosei HaGelili, who says that such offerings, before they are slaughtered, are considered property of their owners, as opposed to property of Heaven. It is only once such an offering is slaughtered that it becomes subject to the halakhot of misuse of consecrated property.

[408] 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 a case in which one denies having in his possession offerings of lesser sanctity, which are property of their owners. This is the statement of Rabbi Yosei HaGelili.

[409] The Gemara asks: But didn't we learn in the mishna (Kiddushin 52b): In the case of a priest who betroths a woman with his portion of an offering, whether it is from offerings of the most sacred order or from offerings of lesser sanctity, she is not betrothed? Shall we say that this mishna is not in accordance with the opinion of Rabbi Yosei HaGelili?

[410] The Gemara suggests: You can even say that it is in accordance with the opinion of Rabbi Yosei HaGelili, as when Rabbi Yosei HaGelili said that offerings of lesser sanctity are the property of their owners, that applies only when the animal is still alive. But after its slaughter, even Rabbi Yosei HaGelili concedes that the offering takes on a higher degree of sanctity and is now the property of Heaven. As when they receive their portions, they do not receive them because those portions belong to them; rather, they receive them from the table of the Most High, i.e., they have the right to partake of them, but do not own them.

[411] The Gemara asks: But does he say his opinion only when the offering is still alive? But didn't we learn in a mishna (Ma'aser Sheni 1:2): With regard to the male firstborn of a kosher animal, which is endowed upon its birth with the sanctity of an offering of lesser sanctity, a priest may sell it if it is unblemished and alive, but he may not sell it once it is slaughtered, as if an unblemished firstborn animal is slaughtered it is prohibited to derive benefit from it, and if it is blemished, one can sell it both when it is alive or after it is slaughtered, and one can betroth a woman with it. This mishna assumes that even when a firstborn animal is unblemished it is considered to be the property of the priest.

412 And Rav Naḥman says that Rabba bar Avuh says: They taught this only with regard to the status of a firstborn animal in the present; since it is not fit to be sacrificed, as there is no Temple, the priests have ownership of it. But when the Temple is standing, in which case the animal is fit to be sacrificed, no. When the Temple is standing a priest may slaughter and eat the firstborn only if it becomes blemished. Nowadays, since it is not possible to offer it as a sacrifice, it is certain that the animal will eventually develop a blemish and the priest will then be permitted to slaughter and eat it. Consequently, the priest is considered to have ownership of the firstborn even before it develops any blemish.

413 And Rava raised an objection to Rav Naḥman from the baraita cited above: The verse states: “A person who sins and commits a trespass against the Lord” (Leviticus 5:21). The verse serves to include a case in which one denies having in his possession offerings of lesser sanctity, as they are the property of their owners; this is the statement of Rabbi Yosei HaGelili. Rabbi Yosei HaGelili’s statement is clearly referring to a time when the Temple is standing, as it is based on a verse that continues to obligate one to bring a guilt-offering. Nevertheless, he states that offerings of lesser sanctity, of which a firstborn is an example, are considered to be the property of their owners even when they are unblemished.

414 And Ravina answered that Rabbi Yosei HaGelili’s statement is said with regard to a firstborn outside of Eretz Yisrael, and is in accordance with the opinion of Rabbi Shimon, who says: If firstborn animals came from outside of Eretz Yisrael to Eretz Yisrael and they are unblemished, they may be sacrificed on the altar. From Rabbi Shimon’s formulation it is apparent that if they came, then yes, they are sacrificed, but they should not be brought ab initio. Since the firstborn animals should not be brought to Eretz Yisrael, they are considered unfit to be sacrificed, and therefore they are considered to be the property of the priest even before they develop a blemish.

415 It is apparent that Ravina understood Rav Naḥman’s qualification to be true even according to Rabbi Yosei HaGelili. Therefore, the Gemara asks: And if it is so that when Rabbi Yosei HaGelili said that an offering of lesser sanctity is the property of its owner, that was referring only to a situation when they are still alive,

416 let Ravina answer Rava’s objection by saying: This baraita, which states that an offering of lesser sanctity is the property of its owner and may be sold even when the Temple stands, is in accordance with the opinion of Rabbi Yosei HaGelili, and it is referring to a case where the animal is still alive. And that qualification of the mishna by Rav Naḥman, that the sale of an unblemished firstborn animal when the Temple is standing is invalid, is in accordance with the opinion of the Rabbis, who dispute Rabbi Yosei HaGelili’s opinion.

417 The Gemara answers: He said to him that this is not difficult: Do you speak of gifts to which members of the priesthood are entitled, of which a firstborn animal is an example? Gifts of the priesthood are different from other offerings of lesser sanctity, as when the priests receive their portions, they receive them from the table of the Most High. Rabbi Yosei HaGelili claims that the act of consecration of an animal as an offering of lesser sanctity does not nullify one’s ownership of the animal. The sanctity of a firstborn offering takes effect with its birth, so it may be that it was never owned; rather, it is reasonable that the Torah provided the priest only with the right and the obligation to partake of it after it is sacrificed.

418 § The Gemara considers the matter itself: The baraita teaches: 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 a case in which one denies having in his possession offerings of lesser sanctity, which are the property of their owners, and are included in the phrase “and deals falsely with his neighbor.” This is the statement of Rabbi Yosei HaGelili. Ben Azzai says: This phrase serves to include peace-offerings. Abba Yosei ben Dostai says: Ben Azzai said this only with regard to a firstborn offering.

419 The Master said in the baraita: Ben Azzai says: This phrase serves to include peace-offerings. The Gemara asks: Ben Azzai’s interpretation of the phrase, limiting its interpretation to a reference only to peace-offerings, is to exclude what?

420 If we say it is to exclude a firstborn offering, because he holds that a firstborn is not the property of the priest, one could reject this, as the sanctity of a firstborn offering is a lesser sanctity than that of a peace-offering, as follows: Now, just as with regard to peace-offerings, which have a higher degree of sanctity such that they require placing hands on the head of the offering and are accompanied by libations and the waving of their breast and the right hind leg by the priest and owner together, you nevertheless say that it is the property of the owners, is it necessary to state that with regard to a firstborn offering, for which these halakhot do not apply, that the priest has ownership of it?

421 Rather, Rabbi Yoḥanan said: Ben Azzai mentioned peace-offerings in order to exclude an animal tithe offering, i.e., every tenth animal of one’s flock that is designated as tithe for those ten animals and is sacrificed as an offering of lesser sanctity. Animal tithes are excluded because ben Azzai holds that an animal tithe offering is not the property of the owner of the flock.

422 This is as it is taught in a baraita: With regard to a firstborn offering it is stated: “You shall not redeem” (Numbers 18:17), indicating that the owner can never fully redeem the offering, thereby removing its sanctity. And the firstborn offering can be sold when it is unblemished and alive, or when it is blemished and alive, or blemished and slaughtered. With regard to animal tithe offerings, it is stated: “It shall not be redeemed” (Leviticus 27:33), indicating that the one who designated it can never fully redeem an animal tithe offering, thereby removing its sanctity. And the animal tithe offering cannot be sold, not when it is alive and not when it is slaughtered, not when unblemished and not when blemished. The fact that the sale of an animal tithe offering is invalid demonstrates that it is not the property of the one who designated it.

423 Ravina taught the preceding discussion with regard to the last clause of the baraita: Abba Yosei ben Dostai says that ben Azzai said this only with regard to a firstborn offering. The Gemara asks: Abba Yosei ben Dostai’s interpretation of the phrase, limiting its interpretation to a reference only to a firstborn offering, is to exclude what?

424 If we say it is to exclude peace-offerings, because he holds that they are not the property of the one who consecrated them as offerings, one could reject this, as the sanctity of peace-offerings is a lesser sanctity than that of a firstborn offering, as follows: Now, just as with regard to a firstborn offering, which is already sanctified upon its emergence from the womb yet nevertheless is the property of the priest, is it necessary to state that peace-offerings are the property of those who

consecrated them, where the animals were already the property of its owner before they were consecrated?

425 Rabbi Yoḥanan said: Abba Yosei ben Dostai mentioned peace-offerings in order to exclude an animal tithe offering. Animal tithes are excluded because Abba Yosei ben Dostai holds that an animal tithe offering is not the property of the owner of the flock.

426 This is as it is taught in a baraita: With regard to a firstborn offering it is stated: “You shall not redeem” (Numbers 18:17), indicating that the owner can never fully redeem the offering, thereby removing its sanctity. And the firstborn offering can be sold when it is unblemished and alive, or when it is blemished and alive, or blemished and slaughtered. With regard to animal tithe offerings, it is stated: “It shall not be redeemed” (Leviticus 27:33), indicating that the one who designated it can never fully redeem an animal tithe offering, thereby removing its sanctity. And the animal tithe offering cannot be sold, not when it is alive and not when it is slaughtered, not when unblemished and not when blemished. The fact that the sale of an animal tithe offering is invalid demonstrates that it is not the property of the one who designated it.

427 The Gemara asks: How can one claim that Abba Yosei ben Dostai holds that peace-offerings are also owned by those who consecrated them? Doesn’t Abba Yosei ben Dostai say: Ben Azzai said this only with regard to a firstborn offering. The Gemara concedes: This is difficult.

428 § The Gemara cites an alternative explanation of the mishna’s statement: Rava said: What does the mishna mean when it says: One is liable only for damage caused to property for which, were one to use it for a mundane purpose, one would not be liable for the misuse of consecrated property? It is referring to property that is not at all subject to the halakhot of misuse of consecrated property, and what is that? It is referring to any property of an ordinary person, which has no sanctity at all.

429 The Gemara asks: But then let the mishna teach explicitly: One is liable only for damage caused to property of an ordinary individual. The Gemara concedes: This is difficult.

430 § Rabbi Abba says: With regard to the case of an innocuous animal that was consecrated as a peace-offering and that caused damage, the injured party collects damages from its meat, i.e., from the portion of the offering that would have been eaten by its owners. This is in accordance with the general halakha that the payment for damage caused by an innocuous ox is collected exclusively from the proceeds of the sale of the body of the ox and not from any other property of its owner. But he does not collect the damages from the sacrificial portions.

431 The Gemara asks: Isn’t it obvious that one collects exclusively from the meat portion and not from the sacrificial portions, as those are to be offered up to God?

432 The Gemara answers: No, it is necessary for Rabbi Abba to teach that there is no collection from the owner’s meat portions corresponding to the sacrificial portions. Payment for damage caused by an innocuous animal is half the amount of the damages, and can be no more than the value of the animal itself. Rabbi Abba is teaching that when assessing the damage to determine the amount to be paid, one deems the owner responsible only according to his share of the animal, i.e., the meat portions, in relation to the animal as a whole.

433 Rabbi Natan and the Rabbis engage in a dispute concerning the halakha in a case in which an ox pushed another animal into a pit (see 53a). If it were an innocuous ox, for which the Torah limits the owner’s liability to half the damages, the Rabbis rule that liability is incurred exclusively by the

owner of the ox, i.e., he pays half the value of the damage, and the owner of the pit is entirely exempt. Rabbi Natan holds that since the damage was caused jointly by the ox and the pit, the owner of the ox need pay only half of what he would pay if his animal had been solely responsible, i.e., a quarter of the damages. Rabbi Natan further rules that the remaining sum can then be fully recovered from the owner of the pit, i.e., he pays the remaining three-quarters of the damages. The Gemara asks: In accordance with whose opinion, of those tanna'im, does Rabbi Abba state his ruling?

[434] If it is in accordance with the opinion of the Rabbis, then it is obvious and there is no need to state it, as didn't the Rabbis say: Whenever, for whatever reason, the full cost of the damage cannot be recovered from this party, it is not recovered from that party, i.e., even though the injured party suffered the loss of the full value of his animal and recovered only half its value from the owner of the ox, he may not demand the remaining sum from the owner of the pit. So too, in this case, where the injured party cannot collect damages from the sacrificial portions, he cannot recover that loss from the meat portions of the one who brought the offering.

[435] And if it is in accordance with the opinion of Rabbi Natan, doesn't he say: Whenever the full cost of the damage cannot be recovered from this one, it is recovered from that one, i.e., since the owner of the ox pays only a quarter of the damages, the remaining sum can be recovered from the owner of the pit. So too, in this case, since the injured party cannot collect payment from the sacrificial portions, he should be able to recover that loss from the meat portions of the one who brought the offering, in contrast to the ruling of Rabbi Abba.

[436] The Gemara explains: If you wish, say Rabbi Abba's ruling is in accordance with Rabbi Natan, and if you wish, say his ruling is in accordance with the Rabbis.

[437] The Gemara explains: If you wish, say Rabbi Abba's ruling is in accordance with the Rabbis, as one might have thought that this matter, the ruling of the Rabbis, applies only where the damage is caused by two bodies, such as an ox and a pit. But where the damage is caused by one body, as in the case of damage caused by an animal consecrated as a peace-offering, the injured party can say to the owner of the animal: From anywhere that I want to, I will recover my losses, and accordingly, the injured party could collect the full cost of the damage from the meat portions of the one who brought the offering. Therefore, it is necessary for Rabbi Abba to teach that this is not the halakha.

[438] And if you wish, say Rabbi Abba's ruling is in accordance with Rabbi Natan: It is only there that the owner of the damaged ox can say to the owner of the pit: Since I found my ox in your pit, ultimately you bear responsibility for any damage, and therefore whatever I cannot recover from the other one, i.e., the owner of the ox, I will recover from you.

[439] But here, in the case of damage caused by an animal consecrated as a peace-offering, is the injured party actually able to say: Only the meat of the animal caused damage but the sacrificial portions did not cause damage? Since the entire animal caused the damage, he does not collect the full cost of the damage from the meat portions of the one who brought the offering.

[440] Rava says: In the case of an innocuous animal consecrated as a thanks-offering that caused damage, the injured party collects damages from its meat, i.e., from the portion of the offerings that would have been eaten by the one who brought the offering, but he does not collect from its bread, i.e., from the offering of forty loaves of bread that accompanies the sacrifice of the animal.

[441] The Gemara asks: Isn’t it obvious that he does not collect from the bread? The bread is not part of the animal that caused damage.

[442] The Gemara answers: It was necessary for Rava to state this because of the latter clause of his ruling, which states: The injured party eats the meat portions of the offering according to the value of the damages owed to him, but the one achieving atonement, i.e., the one bringing the offering, brings the bread.

[443] The Gemara asks: Isn’t this also obvious? Why should anyone else bring the bread? The Gemara explains: Lest you say, since the bread is a necessary qualifying factor for the thanks-offering, as without it one does not fulfill one’s obligation, let the owner of the offering say to the one eating it, why should you eat the meat and I bring the bread? If you wish to eat, you should bring the bread. Therefore, Rava teaches us that the offering of the loaves of bread is the obligation of the owners of the offering.

[444] § The mishna teaches: One is liable only for damage caused to property that belongs to members of the covenant.

[445] The Gemara asks: This clause serves to exclude what? If it serves to exclude the property of a gentile, isn’t that already explicitly taught in the mishna below (37b): In the case of an ox of a Jew that gored an ox of a gentile, the Jew is exempt. The Gemara answers: The tanna teaches this as a principle in the mishna here and then explains it in greater detail in the mishna below.

[446] The mishna continues: One is liable only for assigned property. The Gemara asks: This clause serves to exclude what? Rav Yehuda said: This clause serves to exclude a case in which an animal is injured but it is unclear which of two oxen, owned by different people, caused the damage. The owner of this ox says to the owner of the other: Your ox caused the damage. And the owner of that ox says to the owner of the other: Your ox caused the damage. Since it cannot be proven which ox actually caused the damage, neither owner is liable. The intention of the mishna is that one is liable only where the belligerent ox is assigned to, i.e., is known to be the property of, a specific individual.

[447] The Gemara asks: Isn’t that explicitly taught in the mishna below (35a): If two oxen were seen pursuing a single ox, and then the single ox is found to be injured, and the owner of this ox says to the owner of the other: Your ox caused the damage. And the owner of that ox says to the owner of the other: Your ox caused the damage. In such a case, both of them are exempt since it is uncertain which one is guilty. The Gemara answers: The tanna teaches this as a principle in the mishna here and then explains it in greater detail in the mishna below.

[448] It was taught in a baraita in explanation of the mishna that the term assigned property serves to exclude ownerless property. The Gemara clarifies: What are the circumstances in which the mishna teaches that one is exempt? If we say it is referring to a case where an ox belonging to us, i.e., to a Jew, gored an ownerless ox, it is obvious that the owner bears no liability, as who is claiming damages from him? Rather, it must be referring to a case where an ownerless ox gored an ox belonging to us, and it teaches that the injured party does not have a right to damages.

[449] The Gemara asks: What is the point of this halakha? If the injured party wishes to recover his losses, let him go and take the belligerent ox for himself, since it is currently ownerless. The Gemara explains: The mishna teaches that the injured party does not have any right to the ox, in order to

teach that in a case where another person preceded him and acquired it, the injured party has no claim to it.

[450] Ravina said an alternative interpretation of the mishna: The term assigned property serves to exclude a case in which an ox gored and subsequently its owner consecrated it, or where it gored and subsequently its owner declared it ownerless. Since the owners did not own the ox at the time the case was brought before the court, they are exempt from paying. Ravina explains that this is the intention of the mishna: That one is liable only when the property that caused the damage was owned by a responsible party both when it caused the damage and when it was tried. In this case, at the time of the court hearing it was not owned by a responsible party, as it was either consecrated or ownerless.

[451] It is also taught in a baraita: The halakha is that an ox that kills a person is stoned to death. The mishna states (44b) that this does not apply to an ox consecrated to the Temple or an ownerless ox. Moreover, Rabbi Yehuda said: Even if an ox gored and its owner subsequently consecrated it to the Temple, or if an ox gored and its owner subsequently declared it ownerless, the owner is exempt from liability, as it is stated: “And if the ox was wont to gore in time past, and had been forewarned with its owner, and he had not guarded it in, and it killed a man or a woman; the ox shall be stoned, and also its owner shall be put to death” (Exodus 21:29). The repetition of the reference to the owner at the beginning and end of the verse indicates that the ox is not stoned unless the ox’s status as the owner’s property at the time of the death of the victim and at the time of the owner’s standing trial is the same, i.e., the ox is owned by a responsible party for both events.

[452] The Gemara asks: But do we not also require that the ox’s status be the same at the time of the verdict? Isn’t the phrase: “The ox shall be stoned” written with regard to the time of the verdict?

[453] Rather, say that the owner of the ox is exempt unless the ox’s status as the owner’s property at the time of the death of the victim and at the time of the owner’s standing trial and at the verdict is the same, i.e., the ox is owned by a responsible party for all three events.

[454] § The mishna teaches: One is liable for damage caused in any place except for a domain designated exclusively for the use of the one responsible for the damage. The Gemara explains the reason for this: This is because the one liable for the damage can say to the injured party: What did your ox want in my domain? One does not have to guard his ox from causing damage within his own property, since another person’s animal has no right to be there.

[455] The mishna continues: And one is liable for damage caused in a domain designated for the joint use of the injured party and the one liable for the damage.

[456] The Gemara cites a dispute concerning this case that results in two different ways of interpreting the mishna: Rav Ḥisda says that Avimi says: With regard to a courtyard designated for the joint use of two partners, either one of them is liable for damage caused by the ox of one partner to the property of the other partner while in it, both for the category of Eating and for the category of Trampling. And accordingly, this is what the mishna is saying: One is liable for damage caused in any place except for a domain designated exclusively for the use of the one responsible for the damage, as he is exempt there; but in a domain designated for the joint use of the injured party and the one responsible for the damage, when he causes damage, the one who is responsible for the damage is obligated to pay damages. The statement in the mishna concerning a domain designated

for joint use is the beginning of the following clause and introduces a case in which one is liable for damage.

457 And Rabbi Elazar says: In a courtyard designated for joint use, one is exempt for one's ox causing damage to the property of his partner in the category of Eating, and for one's ox causing damage to the property of his partner in the category of Trampling. And accordingly, this is what the mishna is saying: One is liable for damage caused in any place except for a domain designated exclusively for the use of the one responsible for the damage, and one is also exempt for damage done in a domain designated for the joint use of the injured party and the one liable for the damage. The statement in the mishna about a domain designated for joint use is a continuation of the previous clause and adds an additional case in which one is exempt. And the following clause: When one causes damage, the one liable for the damage is obligated to pay damages, serves to add the fact that one is liable for damage in the framework of the category of Goring, which was not previously mentioned in the mishna.

458 This interpretation of the concluding clause of the mishna, as a reference to Goring, works out well according to Shmuel, in his dispute with Rav (3b) concerning the meaning of Ox and Maveh in the first mishna of this chapter. According to Shmuel they mean Trampling and Eating, respectively, and Goring has yet to be addressed. But according to Rav, who says: The term ox in the mishna includes damage caused by the ox and all matters involving damaging actions that are completed by an ox, including Goring, Eating, and Trampling, Goring is already addressed in the mishna. What is added by the clause: The one liable for the damage is obligated to pay damages?

459 The Gemara answers: It serves to add that which the Sages taught in a baraita that elucidates the mishna's statement. The mishna states: When an animal or item one is responsible to safeguard causes damage, the one liable for the damage caused by insufficiently safeguarding it is obligated to pay payments of restitution for damage. This serves to include the cases of an unpaid bailee, a borrower, a paid bailee, and a renter, in which an animal, e.g., an ox, caused damage while in their possession. If the ox was innocuous, he pays half of the damages, and if it was forewarned, he pays the full damages. If the ox was safely enclosed and a wall broke open at night, or if bandits [listin] broke it open and the ox went out and caused damage, he is exempt from liability.

460 The Gemara analyzes the baraita: The Master said that the mishna states: When an animal or item one is responsible to safeguard causes damage, the one liable for the damage caused by insufficiently safeguarding it is obligated to pay payments of restitution for damage. This serves to include the cases of an unpaid bailee, a borrower, a paid bailee, and a renter. The Gemara asks: What are the circumstances?

461 If we say that the lender's ox, which was under the watch of the borrower, injured the borrower's ox, and the baraita is teaching that the lender is liable to pay the borrower, why is this so? Let the lender say to the borrower: If my ox had injured an ox in the world at large, i.e., someone else's ox, you, the borrower, would be required to pay, as you were entrusted with safeguarding it. Now that my ox has injured your ox, should I be required to pay?

462 Rather, the case must be that the borrower's ox injured the lender's ox, and the baraita is teaching that the borrower is liable to pay. The Gemara asks: According to this interpretation, the baraita teaches that if the belligerent ox was innocuous, the borrower is liable to pay only half of the damages. But why? Let the lender say to the borrower: By borrowing my ox, you undertook full

responsibility for it such that if my ox had been injured by an ox from the world at large, you would be required to pay me for the entire value of my ox, irrespective of whether the belligerent ox was considered innocuous or forewarned. Now that it is your ox that injured my ox, should you have to pay only half of the damages? This interpretation of the baraita is also difficult.

463 The Gemara explains: Actually, the case is where the lender's ox injured the borrower's ox, and with what are we dealing here? This is a case where the borrower undertook the responsibility of safeguarding the body of the lender's ox from being injured,

464 but he did not undertake the responsibility of safeguarding the lender's ox to prevent it from causing damage. Accordingly, the lender remains responsible for his ox, and if it caused damage to the borrower's ox the lender is liable, as in any other case in which his ox caused damage.

465 The Gemara asks: If that is so, say, and try to explain accordingly, the latter clause of the baraita: If the ox was safely enclosed and a wall broke open at night, or if bandits broke it open and the ox went out and caused damage, the bailee is exempt from liability. The Gemara infers: If it broke open during the day and then caused damage, he is liable. The Gemara asks: According to the interpretation offered in explanation of the previous clause, the baraita concerns a case in which one borrowed an ox but did not undertake the responsibility to prevent it from causing damage. If so, how can the latter clause imply that there are cases in which he is liable? If he did not undertake the responsibility of safeguarding the lender's ox to prevent it from causing damage, he should never be liable for the damage that it caused.

466 The Gemara answers that the latter clause of the baraita concerns a different case than that of the previous clause. This is what the latter clause of the baraita is saying: If, by contrast, the borrower did undertake the responsibility of safeguarding the lender's ox to prevent it from causing damage, if it causes damage, the borrower is liable. But if the ox was safely enclosed and the wall enclosing it broke open at night, or if bandits broke it open and the ox went out and caused damage, he is exempt.

467 The Gemara returns to its prior discussion of the mishna's statement concerning property designated for the joint use of the injured party and the one liable for the damage. The Gemara cited Rabbi Elazar's opinion that each partner is exempt from liability for any damage that falls within the categories of Trampling or Eating that their ox caused to the other partner's property. The Gemara challenges his opinion: Is that so? But didn't Rav Yosef teach in a baraita: In a courtyard designated for the joint use of partners, or in an inn [pundak], one is liable for Eating and for Trampling caused by an ox of one partner to the property of the other. It would appear that this baraita is a conclusive refutation of the opinion of Rabbi Elazar.

468 The Gemara answers: Rabbi Elazar could have said to you: But how can you understand that this baraita provides a refutation of my opinion? Are there not baraitot that disagree with regard to this issue? And it is taught in accordance with my opinion in a baraita in the Tosefta (1:9): Rabbi Shimon ben Elazar would state four principles with regard to the liability incurred based on where the damage occurs. With regard to any location that is the property of the injured party and is not the property of the one liable for the damage, the owner of an animal that causes damage is liable for all the damage caused there. If a place is the property of the one liable for the damage and is not the property of the injured party, the owner of an animal that causes damage is exempt for all the damage caused there.

469 If a place is the property of both this one and that one, e.g., a courtyard designated for the joint use of partners or a field in the valley that is used by the public, the owner of an animal that causes damage is exempt for Eating and for Trampling performed by his animal in that place. But for goring, and for pushing, and for biting, and for crouching upon items in order to damage them, and for kicking, which are all subcategories of the primary category of Goring, if the ox is innocuous, the owner pays half the value of the damage, and if it is forewarned, he pays the full cost of the damage.

470 If a place where the damage occurs is the property of neither this one nor that one, e.g., a courtyard that is not owned by either of the two of them, the owner of an animal that causes damage is liable for Eating and for Trampling performed by his animal in that place. But for goring, and for pushing, and for biting, and for crouching upon items in order to damage them, and for kicking, which are all subcategories of the primary category of Goring, if the ox is innocuous, the owner pays half the value of the damage, and if it is forewarned, he pays the full cost of the damage.

471 The Gemara notes that in any event the baraita teaches that in a courtyard designated for the joint use of partners or a field in the valley that is jointly owned, the owner of an animal that causes damage is exempt for Eating and for Trampling performed by his animal in that place. This baraita supports Rabbi Elazar's opinion.

472 The Gemara comments: These baraitot are difficult, as they seem to contradict one another.

473 The Gemara explains: When that baraita is taught, it is with regard to a jointly owned courtyard, which under the terms of their partnership is designated for the use of both this one and that one, i.e., as partners, for bringing both produce and oxen there. Since both partners have a right to keep their oxen there, they are not liable for any damage their oxen cause in the jointly owned space. That baraita of Rav Yosef is taught with regard to a jointly owned courtyard, which under the terms of their partnership is designated for the purpose of bringing their produce there, but it is not designated for bringing oxen there. Accordingly, with regard to damage of the category of Eating caused by one partner's ox to the other's produce, it is equivalent to a courtyard owned exclusively by the injured party, and therefore he is liable.

474 The Gemara notes: In accordance with this explanation, the language of each of these baraitot is also precise, as it teaches here, in the baraita of Rav Yosef, the case of a courtyard that is similar to an inn, where oxen are usually not allowed to be brought, and it teaches there, in the second baraita, the case of a courtyard that is similar to a field in the valley, where oxen are usually allowed to enter. Conclude from it that the Gemara's distinction between the two baraitot is correct.

475 Rabbi Zeira objects to this interpretation of Rav Yosef's baraita: Since the courtyard is designated for both of them to keep their produce there, they should not be liable for damage caused by their oxen there, as in order for one to be liable don't we need a case that fits the depiction of the verse: "And it consumed in a field of another" (Exodus 22:4), and since they both have the right to use the courtyard it does not fulfill this condition.

476 Abaye said to him: Since it is not designated for them to keep oxen there, that is sufficient for it to be termed "a field of another."

477 Given the distinction between the cases discussed in the baraitot, the Gemara reconsiders the dispute between Rav Ḥisda and Rabbi Elazar concerning the mishna's statement about property whose use is designated for both the injured party and the one liable for the damage. Rav Aḥa of Difti

said to Ravina: Let us say that from the fact that the baraitot do not disagree, as they are referring to different cases, so too, the amora’im, i.e., Rav Ḥisda and Rabbi Elazar, also do not disagree, as they are similarly referring to these different cases.

[478] Ravina said to him: Yes, that is correct. And even if you say that they disagree, their dispute does not concern every case of a jointly owned courtyard, as the Gemara had assumed; rather, their dispute concerns specifically a courtyard designated for the use of their produce, but not the use of their oxen. And they disagree whether to accept the difficulty raised by Rabbi Zeira, that such a courtyard cannot be considered “a field of another,” or whether to accept the resolution of Abaye, that it can be considered “a field of another.”

[479] § The Gemara returns to the matter itself and analyzes the baraita in the Tosefta cited above. It states: Rabbi Shimon ben Elazar would state four principles with regard to the liability incurred based on where the damage was caused. With regard to any location that is the property of the injured party and is not the property of the one liable for the damage, the owner of an animal that causes damage is liable for all the damage caused there.

[480] The Gemara infers: The baraita does not teach: One is liable for any [al hakkol] damage caused there, which would suggest that one is liable for all types of damage. Rather, it teaches: One is liable for all [bakkol] the damage caused, which can be translated as: For the full cost of the damage. This indicates that even were one’s ox considered to be innocuous and caused damage of the category of Goring, which would generally incur liability for half the value of the damage, in this case the owner is liable for the full cost of the damage.

[481] Whose opinion is this? It is in accordance with the opinion of Rabbi Tarfon, who says: The halakha of cases of Goring performed by an innocuous animal, which is atypical, done in the courtyard of the injured party, is that the owner of the ox pays the full cost of the damage even if the ox is innocuous.

[482] If this is so, say, and try to explain accordingly, the latter clause of the baraita: If a place where the damage occurs is the property of neither this one nor that one, e.g., a courtyard that is not owned by either of the two of them, the owner of an animal that causes damage is liable for Eating and for Trampling performed by his animal in that place.

[483] The Gemara asks: What does the baraita mean by saying the property is of neither this one nor that one? If we say the intention of the baraita is that the property is of neither this one nor that one at all, but rather it belongs to another person, why should either partner be liable? But don’t I need a case that fits the depiction of the verse: “And it consumed in a field of another” (Exodus 22:4), which is understood to mean that the consumed produce belongs to the owner of the field in which the act of consumption occurred; and since the injured party does not have any rights to this place it does not fulfill this condition?

[484] Rather, it is obvious that the intention of the baraita is that the property is of neither this one nor that one together; rather, it belongs to only one of them, i.e., the injured party, and the latter clause teaches: If the ox is innocuous, the owner pays half the value of the damage, and if it is forewarned, he pays the full cost of the damage.

485 If so, in the latter clause we arrive at the opinion of the Rabbis, who say: The halakha of cases of Goring performed by an innocuous animal, which is atypical, occurring in the courtyard of the injured party, is that the owner of the ox pays half the value of the damage.

486 The Gemara asks: Could it be that the first clause of the baraita is in accordance with the opinion of Rabbi Tarfon and the last clause is in accordance with the opinion of the Rabbis?

487 The Gemara answers: Yes, that is as Shmuel said to Rav Yehuda with regard to another mishna (15b): Shinnana, leave the mishna and follow after me and my interpretation that the first clause of the mishna is in accordance with the opinion of Rabbi Tarfon and the last clause is in accordance with the opinion of the Rabbis. In this baraita as well, the different clauses are taught in accordance with different Sages' opinions.

488 The Gemara presents a different interpretation of the baraita: Ravina said in the name of Rava: The entire baraita is in accordance with the opinion of Rabbi Tarfon, and what does it mean by saying that the property is of neither this one nor that one? The property does not belong both to this one and that one; rather, it is designated for the use of only one of them, for him to keep his produce there. Only the injured party has the right to keep his produce there. But it is designated both for this one and for that one, for them to keep their oxen there, as both have this right.

489 Accordingly, with regard to damage of the category of Eating, the property is considered to be the courtyard of the injured party; therefore, the one responsible for the damage is liable to pay for the damage. By contrast, with regard to damage of the category of Goring, since they both have the right to keep their oxen there, the property is considered to be like a public domain, and therefore even Rabbi Tarfon agrees that if one's innocuous ox causes damage there one is liable for only half the value of the damage.

490 The Gemara asks: If that is so, does the baraita list four principles? There are only three. In other words, according to the way Ravina explains the latter clause, i.e., the fourth principle, it does not teach anything that is not already known from the first three principles, as the fact that one is liable for Eating and Trampling in property designated for the use of the injured party is explicitly stated in the first principle, and the fact that one is liable for only half the cost of the damage in a case of Goring in a jointly owned courtyard is expressed in the third principle.

491 Rav Naḥman bar Yitzḥak said:

492 There are only three distinct principles, but they are listed as four cases because they apply in four different places.

493 MISHNA: The determination of payment of damages is made by monetary appraisal. One pays with items worth money. This halakha applies before a court. And it is based upon the testimony of witnesses who are free men, i.e., men who are not Canaanite slaves, and who are members of the covenant, i.e., Jews. And women are included in the halakhot of damages in the same way as men. And both the injured party and the one liable for the damage are involved in the payment. The Gemara will explicate each of these principles.

494 GEMARA: What is the meaning of: The determination of payment of damages is made by monetary appraisal?

495 Rav Yehuda says: This appraisal of the damage caused should be made only in terms of the monetary value of the damage.

[496] The Gemara notes: We learn, in this mishna, this halakha that the Sages taught explicitly: In a case in which a cow damaged a cloak, and the cloak injured the cow, e.g., the cow tread on it, thereby damaging it, and it became entangled in the cow's legs, causing the cow to trip, one does not say that it may be presumed that the damage to the cow is offset by the damage to the cloak and the damage to the cloak is offset by the damage to the cow, and therefore the owners of both are exempt from any payment. Rather, the court appraises separately the damage caused to each side in terms of its monetary value and only then calculates to what extent the liabilities offset each other.

[497] § The mishna continues: With items worth money; to what does this refer?

[498] This is as the Sages taught in a baraita: Payment is made with items worth money. This teaches that the court attends to the collection of damages only in order to collect from property that serves as a guarantee, i.e., land. But if the injured party proceeded, of his own accord, to seize movable property from the one liable for the damage, the court collects damages for him from those items he seized. According to the baraita, the phrase: Items worth money, is referring to land.

[499] The Gemara analyzes this: The Master said in the baraita: Payment is made with items worth money. This teaches that the court attends to the collection of damages only in order to collect from property that serves as a guarantee, i.e., land. The phrase: Items worth money, therefore, is used as a term for land. The Gemara asks: From where is this inferred?

[500] Rabba bar Ulla says that the phrase: Items worth money, is referring to something that is worth any amount of money, and what is that? It is something that is not subject to price fraud, which is the halakha with regard to land. Unlike the sale of movable property, the sale of land is valid irrespective of the sum for which the land is sold. The Gemara challenges this explanation: But slaves and documents are also not subject to price fraud, and yet these are not included in the phrase: Items worth money, as the court does not collect payments of damages from them.

[501] Rather, Rabba bar Ulla said: The phrase is referring to something that is acquired with money, which is the halakha with regard to land but not with regard to movable property (see Kiddushin 26a). The Gemara rejects this explanation: But slaves and documents are also acquired with money.

[502] Rather, Rav Ashi said: The phrase is referring to something that is worth money, but is not actually money, and all these things, i.e., movable property, slaves, and documents, are considered like actual money because they have the defining characteristics of money in that they are valuable and portable.

[503] Rav Yehuda bar Ḥinnana raises a contradiction to the opinion of Rav Huna, son of Rav Yehoshua: In the baraita cited earlier it is taught: The mishna's statement that payment is made with items worth money teaches that the court attends to the collection of damages only in order to collect from property that serves as a guarantee, i.e., land. But it is taught also in another baraita: The verse states the superfluous phrase: "He shall recompense" (Exodus 21:34), to include items worth money, and even bran, a relatively inferior commodity, is accepted as a valid form of payment. The first baraita teaches that only land is a valid form of payment, whereas the second baraita teaches that one may pay even with movable property.

[504] The Gemara answers: With what are we dealing here in the baraita that teaches that the court collects damages only from land? We are dealing with a case where damages are collected from

orphans whose father was liable to pay damages. The baraita teaches that the liability inherited by the orphans applies only to the land they inherited from their father as it is liened to their father’s debts.

[505] The Gemara asks: If the baraita is referring to collection from orphans, say, and try to explain accordingly, the latter clause of the baraita: But if the injured party proceeded, of his own accord, to seize movable property from the one liable for the damage, the court collects damages for him from those items he seized. The Gemara asks: If, as suggested, the baraita is referring to collection from orphans, why does the court collect damages for him from those items he seized, as the father’s movable property is not liened to his debts?

[506] The Gemara answers: The case is like that which Rava says that Rav Naḥman says with regard to a mishna (Ketubot 84a), which teaches that creditors who seize movable property as payment for a debt may keep those items: That is referring to a case in which he seized the property while the debtor was still alive. Here also, the baraita is referring to a case in which he seized the property while the one liable for the damage was still alive.

[507] § The mishna continues: Before a court. What does this phrase mean?

[508] This phrase should be understood as a qualification of the previous phrase in the mishna that teaches, as the Gemara explained, that a court collects damages only from land. The mishna then teaches that the court collects only from land that is still in the possession of the one liable for the damage when he appears in court. This excludes a case where the one liable for the damage sells his landed property and afterward goes to court. Since at the time of the hearing he no longer owns land, the court does not collect damages from it.

[509] The Gemara challenges this: Should we conclude from the mishna that if one borrows money and then sells his landed property, and afterward he goes to the court, the court does not collect the loan from those landed properties that he sold? This is certainly incorrect, as the creditor has a lien on the debtor’s property from the time that he borrows the money.

[510] Rather, the phrase: Before a court, should be understood as an independent clause that excludes a court of non-ordained judges [hedyotot] from judging all types of damages, as the payment for certain types of damage is considered to be a fine, and only expert judges who have been ordained are able to impose fines.

[511] § The mishna continues: Payment is made based upon the testimony of witnesses.

[512] The Gemara explains: This clause is stated to exclude from liability one who admits he is liable to pay a fine, even if witnesses come afterward and testify that he is liable to pay it. The mishna teaches that he is nevertheless exempt, due to his admission.

[513] The Gemara asks: This works out well according to the one who says: One who admits he is liable to pay a fine is exempt, even if witnesses come afterward and testify to his liability. But according to the one who says: With regard to one who admits he is liable to pay a fine and then witnesses come afterward and testify that he is guilty, he is liable to pay the fine, what is there to say in explanation of this clause of the mishna?

[514] The Gemara answers: This clause does not serve to exclude some other case; rather, it is needed to preface the latter clause that teaches that the only people who are accepted as witnesses in cases of damages are both

[515] free men and members of the covenant. The mishna states: Free men, to exclude Canaanite slaves from being valid witnesses, and it states: Members of the covenant, to exclude gentiles.

[516] The Gemara notes: And it is necessary to teach both exceptions, as had the Torah taught us only about a slave, I might have presumed that he is disqualified from serving as a witness because he has no lineage, i.e., the child of a Canaanite slave is not legally considered to be his child in any sense; but a free gentile, who has lineage, I might say no, he is qualified. And similarly, had the Torah taught us only about a gentile, I might have presumed that he is disqualified from serving as a witness because he has no connection to the mitzvot of the Torah; but with regard to a Canaanite slave, who does have a connection to the mitzvot, as he is obligated to keep the mitzvot that a woman is obligated to keep, I might say no, he is qualified. Therefore, it is necessary to teach both exceptions.

[517] § The mishna continues: And women are included in the halakhot of damages in the same way as men. The Gemara asks: From where is this matter derived?

[518] The Gemara presents three sources for this halakha. Rav Yehuda says that Rav says, and similarly, the school of Rabbi Yishmael taught: The verse states with regard to the liability of one who takes a false oath that he had not stolen: “When a man or woman shall commit any of the sins of a person” (Numbers 5:6). The verse equates a woman with a man with regard to all punishments in the Torah.

[519] The school of Rabbi Elazar taught: The verse states with regard to the civil laws given following the revelation at Sinai: “And these are the civil laws that you shall set before them” (Exodus 21:1). The reference to “them” in the verse is referring to all those who stood at the revelation, both men and women. The verse thereby equates a woman with a man with regard to all civil laws in the Torah.

[520] The school of Ḥizkiyya and Rabbi Yosei HaGelili taught: The verse states with regard to liability in a case where one’s ox kills a person: “And it killed a man or a woman” (Exodus 21:29). The verse thereby equates a woman with a man with regard to all killings in the Torah, i.e., the liability incurred is the same whether the person killed was a man or a woman.

[521] The Gemara notes: And all three sources are necessary, as had the Torah taught us only the first source, one might have said that it is there that men and women are equated, as the Merciful One had pity upon a woman and made her liable in order that she should achieve atonement through paying restitution. But with regard to civil law, one might say that for a man, who is involved in business dealings, yes, the civil laws apply to him, but to a woman, who generally is not involved in business dealings, the laws do not apply.

[522] And had the Torah taught us only that men and women are equated in civil law, one might have said that this is in order that she should be able to sustain herself by engaging in business dealings. If civil laws did not apply to a woman, one would be wary about conducting business with her. But with regard to obligating a woman to achieve atonement, one might have said that a man, who is obligated in mitzvot, yes, he is similarly obligated to achieve atonement; but a woman, who is not obligated in all the mitzvot to the same extent as a man, no, the obligation does not apply to her.

[523] And had the Torah taught us only these first two sources, one might have limited the fact that a woman and man are equated to these two cases, here due to the fact that she also needs atonement, and there due to the fact that she needs to be able to sustain herself. But with regard to one’s liability

for his ox killing a person, one might have said that only for killing a man, who is obligated in all mitzvot, yes, the owner of the ox is liable to pay a ransom; but for killing a woman, who is not obligated in all mitzvot, one might say he is not liable.

[524] And had the Torah taught us only the equivalence of a man and woman with regard to a ransom, one might have thought that this is because it is a very serious matter as there is a loss of life, but in these first two sources, where there is not a loss of life, I would say no, a woman is not included. Accordingly, it is necessary to have all three sources.

[525] § The mishna continues: And both the injured party and the one liable for the damage are involved in the payment.

[526] An amoraic dispute was stated with regard to the payment of half the cost of the damage made when one's innocuous ox gores another's animal. Rav Pappa says: It is monetary restitution for the injured party's loss. Rav Huna, son of Rav Yehoshua, says: It is a fine.

[527] The Gemara elucidates: Rav Pappa says: The payment is monetary restitution, as he holds that even ordinary oxen, which have not been forewarned with regard to Goring, are not presumed to be safeguarded, as their nature does not prevent them from acting in a belligerent manner. Therefore, the owner is responsible to safeguard them, to prevent them from doing so. Accordingly, if an ox causes damage by goring, by right it should have been that the owner needs to pay the full cost of the damage. Nevertheless, the Merciful One had pity upon him, as his ox had not yet been forewarned and he was not fully aware of the possibility that it might gore, and accordingly, the Torah reduced the extent of his liability.

[528] Rav Huna, son of Rav Yehoshua, says: It is a fine, as he holds that ordinary oxen are presumed to be safeguarded, as their nature prevents them from acting in a belligerent manner. Therefore, the owner is not responsible for safeguarding them to prevent them from doing so. Accordingly, if an ox causes damage by goring, by right it should have been that the owner does not pay at all. Nevertheless, the Merciful One penalized him in order that he will safeguard his ox, even before it is forewarned, and decreed that the fine should be given to the injured party even though he is not really entitled to be compensated for his loss.

[529] We learned in the mishna: Both the injured party and the one liable for the damage are involved in the payment. Granted, according to the one who says that the payment of half the cost of the damage is monetary restitution, this assumes that the injured party is theoretically entitled to receive the full value of his damaged animal but in practice receives only half. This is what the mishna means by saying that the injured party is also involved in the payment, because it is as though he is compelled to forgo half of the cost of the damage that by right he should be paid. But according to the one who says that the payment of half the cost of the damage is a fine, which assumes that the injured party is not really entitled to be compensated for his loss, now that even the money that he takes is not his by right, is it accurate to describe him as being involved in the payment?

[530] The Gemara explains: The mishna's statement is necessary only with regard to the fact that the injured party is the one who absorbs the loss due to the diminishing value of the carcass between the animal's death and the time that the case is brought before the court. Since he must absorb this financial loss, it may be said that he is involved in the payment.

[531] The Gemara asks: How can one claim that the mishna is referring to the diminishing value of the carcass? Isn't it already taught in the first clause of the mishna, which by using the term: Payments of restitution for damage, teaches that the owner of the injured animal attends to, i.e., retains ownership of, the animal carcass? And therefore it follows that he bears any depreciation in its value, as the Gemara (10b) explained above.

[532] The Gemara explains why the mishna needs to teach this principle twice: One mention is made with regard to an innocuous ox and the other one is made with regard to a forewarned ox.

[533] And it is necessary to state both cases, because if it would teach us the principle only with regard to an innocuous ox, I might say that only there does the Torah limit the liability of the owner of the ox, because it has not yet been forewarned. But with regard to a forewarned ox, I would say the Torah does not limit the owner's liability at all and the owner must also bear the loss due to the diminishing value of the carcass. And similarly, if it would teach us the principle only with regard to a forewarned ox, I might say that only there does the Torah limit the owner's liability because he is paying the full cost of the damage, so the Torah does not overly burden him. But with regard to an innocuous ox, where he is liable for only half of the damage, I would say the Torah does not limit his liability any further, so he must bear the loss of the diminishing value of the carcass. Therefore, it is necessary to state the principle in both cases.

[534] The Gemara attempts to prove whether the payment of half the cost of the damage is considered to be monetary restitution or a fine: Come and hear a proof from a mishna (16b): What is the difference between the liability incurred for damage caused by an innocuous ox and that caused by a forewarned ox? The difference is that the owner of an innocuous ox pays half the cost of the damage exclusively from proceeds of the sale of its body, and the owner of a forewarned ox pays the full cost of the damage from his superior-quality property.

[535] The Gemara explains the challenge posed by the mishna: And if it is so, that payment for damage caused by an innocuous ox is considered a fine, let the mishna also teach this additional distinction: The owner of an innocuous ox does not pay based on his own admission, in accordance with the halakha that one does not pay a fine based on one's own admission, whereas the owner of a forewarned ox pays based on his own admission.

[536] The Gemara answers: The tanna could have taught this distinction; however, he taught only certain distinctions and omitted others, including this one. The Gemara asks: What else did he omit that he omitted this? A tanna would never omit just a single case, perforce there must be another halakha he omitted.

[537] The Gemara answers: He omitted the halakha that if an innocuous ox kills someone, its owner does not pay even half of the ransom payment, whereas if the ox is forewarned, he pays the full ransom.

[538] The Gemara rejects this: If one claims that the mishna omits the halakha of one who admits his liability due to the fact that it also omits the halakha that the owner of an innocuous ox does not pay even half of the ransom, that is a flawed claim, as this is not an omission, because one could say: In accordance with whose opinion is this mishna? It is in accordance with the opinion of Rabbi Yosei HaGelili, who says that when an innocuous ox kills a person, one pays half the ransom, and therefore the distinction between an innocuous and forewarned ox is included in the mishna's ruling that the

owner of an innocuous ox pays half the cost of the damage. Accordingly, no proof can be adduced from the mishna.

[539] The Gemara suggests another proof: Come and hear a proof from a mishna (Ketubot 41a):

[540] If one admits: My ox killed so-and-so, or my ox killed so-and-so's ox, then this person pays based on his own admission.

[541] The Gemara analyzes the mishna: What, is the halakha of the mishna not stated with regard to an innocuous ox? If so, this mishna proves that one is required to pay for half the cost of the damage even based on one's own admission, which demonstrates that the payment is monetary restitution and not a fine.

[542] The Gemara rejects the proof: No, the halakha of the mishna is stated with regard to a forewarned ox. The Gemara asks: But according to this explanation, if it had been an innocuous ox that gored, what would be the halakha? Would one say that indeed, he does not pay based on his own admission? But if so, rather than teaching in the latter clause of the mishna in Ketubot: If one admits: My ox killed so-and-so's Canaanite slave, he does not pay based on his own admission, let the mishna differentiate and teach the distinction with regard to the case raised in the first clause itself. The reason for the distinction between the cases when one's ox kills a Jew or a Canaanite slave is that in the first one pays monetary restitution, while in the second one pays a fine. If the mishna wishes to demonstrate the difference between a fine and monetary restitution with regard to admission, then instead of introducing a new case, the mishna would have modified the case of the previous clause.

[543] The mishna would have continued: In what case is this statement in the first clause said? It is said with regard to a forewarned ox, but with regard to an admission that one's innocuous ox gored, he does not pay based on his own admission. The fact that the mishna does not do so suggests that in fact one is required to pay for half the cost of the damage based on one's own admission that his innocuous ox gored. Evidently, the payment is considered to be monetary restitution.

[544] The Gemara rejects this: The reason the mishna did not raise the distinction between an innocuous and a forewarned ox is not because that distinction is not a valid one, but because the entire mishna speaks only of cases of a forewarned ox. Accordingly, no proof can be adduced from the mishna.

[545] The Gemara suggests further: Come and hear a proof from the concluding clause of the mishna just cited: This is the principle: Anyone who pays more than the cost of that which he damaged does not pay based on his own admission. The Gemara infers: What, is it not that were he liable to pay less than the cost of that which he damaged, he would pay based on his own admission? Since when an innocuous ox gores, its owner is liable to pay more than the cost of the damage, the payment is clearly not monetary restitution, and this is why it is not payable based on one's own admission.

[546] The Gemara rejects the inference: No, one should infer only that were he liable to pay as much as the cost of that which he damaged, he pays based on his own admission. If the sum to be paid is more or less than the cost of that which he damaged, he would not pay based on his own admission.

[547] The Gemara asks. But according to that opinion, where one is liable to pay less than the cost of the damage, what would be the halakha? Would one say that, indeed, he does not pay based on his own admission? If so, instead of teaching: This is the principle: Anyone who pays more than the cost of that which he damaged does not pay based on his own admission, let the mishna teach instead:

This is the principle: Anyone who does not pay as much as the cost of that which he damaged does not pay based on his own admission. As that statement indicates cases where one is liable to pay more than the cost of that which he damaged and it also indicates cases where one is liable to pay less than the cost of that which he damaged. Evidently, the mishna holds that where one's liability is for less than the cost of the damage, it is payable based on one's own admission. This therefore provides a conclusive refutation of the opinion that the payment for half the cost of the damage is a fine.

[548] The Gemara adds: And the halakha is that the payment for half the cost of the damage is a fine.

[549] The Gemara notes the obvious inconsistency: How can it be that the Gemara offers a conclusive refutation of the opinion that the payment for half the cost of the damage is a fine and then state that the halakha is in accordance with that opinion?

[550] The Gemara explains: Yes, the halakha may be in accordance with that opinion because of the following resolution of the refutation. What is the reason that the Gemara held that there is a conclusive refutation of the opinion that the payment for half the cost of the damage is a fine? Because the mishna does not teach: Anyone who does not pay as much as the cost of that which he damaged does not pay based on his own admission. This is not, in fact, a conclusive refutation, as even if one holds that the payment of half the cost of the damage for an innocuous ox is considered monetary restitution, one can still explain why the mishna doesn't discuss cases where one is liable for less than the cost of the damage.

[551] This is because the tanna cannot make an absolute statement about such cases, that one never pays based on one's own admission. Since there is an obligation for one to pay for half the cost of the damage resulting from pebbles inadvertently propelled by the foot of a walking animal, which, through tradition it is learned that this payment is monetary restitution, and it is due to that reason that the mishna does not teach cases where one's liability is valued at less than the cost of the damage.

[552] The Gemara considers the ramifications of this halakha: And now that you have said that the halakha is that the payment of half the cost of the damage is a fine, with regard to this innocuous dog that ate lambs or this innocuous cat that ate a chicken, which is atypical behavior for dogs and cats, we do not collect the payment for these acts in the courts in Babylonia. Since it is not common for these animals to eat those animals, these acts are classified as Goring, irrespective of the fact that the animal gained pleasure from the damage, for which it would normally be classified in the category of Eating. Therefore, in cases where these animals had not performed this act of damaging before, and were therefore considered innocuous, the owner is liable for only half the cost of the damage, which is a fine. Since the collection of fines may be imposed only by judges who have been ordained, and ordination is given only in Eretz Yisrael, these payments are not collected in Babylonia.

[553] The Gemara adds: And this matter applies only where they attacked large animals, as it is atypical behavior for them; but where they attacked small animals, since that is their typical manner of behavior, it is classified as Eating, for which the owner pays the full cost of the damage, which is certainly considered monetary restitution. Accordingly, the payment is collected by the courts in Babylonia.

554 And even in a case where the payment is considered a fine, if the injured party seized the property of the owner of the belligerent animal in order to cover his loss, we do not reclaim it from him since he is entitled to it.

555 And also, if the injured party said to the court: Fix a time for me to go to Eretz Yisrael to present the case before ordained judges, we fix a time for him and require the owner of the belligerent animal to go to the court in Eretz Yisrael at that time. And if he does not go, we excommunicate him for disobeying the orders of the court.

556 And either way, we excommunicate the owner of the belligerent animal until he removes the danger, e.g., by killing the animal or otherwise neutralizing the danger.

557 The justification for this is from the ruling of Rabbi Natan, as it is taught in a baraita: Rabbi Natan says: From where is it derived that one may not raise a vicious dog in his house, and one may not set up an unstable ladder in his house? The verse states: “You shall not bring blood into your house” (Deuteronomy 22:8), i.e., one may not allow a hazardous situation or item to remain in one’s house. As long as the hazard remains, the owner is in violation of this verse and therefore the court may excommunicate him for failing to remove the danger.

558 MISHNA: There are five damage-causing acts that an animal can perform twice and remain innocuous even when its owner was warned each time to prevent it from doing so. After the third time, the animal is rendered forewarned. In such cases, the owner is liable to pay only half of the damages. And there are five damage-causing acts for which an animal is considered forewarned, at times even if it had never caused damage in that manner. In such cases the owner is liable to pay the full cost of the damage.

559 An animal is not considered forewarned with regard to Goring, i.e., not for goring with its horns, nor for pushing with its body, nor for biting, nor for crouching upon items in order to damage them, nor for kicking. In these cases the animal is considered to be innocuous and its owner is liable for only half of the damages.

560 Concerning acts of damage performed with the tooth, the animal is considered forewarned with regard to eating that which is fitting for it to eat. Concerning acts of damage performed with the foot, the animal is considered forewarned with regard to breaking items while walking. And there is a forewarned ox, which gored three times and each time his owner was warned to safeguard his ox from doing so. And there is an ox that causes damage to the property of the injured party while on the property of the injured party. And there is the person, i.e., any damage done by a person. In all of these cases the one who caused the damage is considered to be forewarned, resulting in the obligation to pay the full cost of the damage.

561 The mishna presents the halakha for wild animals: The wolf; the lion; the bear; the leopard; the bardelas, the meaning of which the Gemara will discuss; and the snake. These are considered forewarned even if they had never previously caused damage. Rabbi Elazar says: When these animals are domesticated they are not considered forewarned. But the snake is always considered forewarned.

562 GEMARA: From the fact that the mishna teaches in its latter clause: Concerning acts of damage performed with the tooth, the animal is considered forewarned with regard to eating that which is fitting for it to eat, we learn, by inference, that we are dealing throughout the mishna with cases of

damage done in the courtyard of the injured party, as one is exempt from liability for acts of damage classified as Eating if they occur in the public domain. And yet the first clause teaches: An animal is not considered forewarned with regard to Goring. Stating that it is not forewarned indicates that the liability of its owner is limited only with regard to paying the full cost of the damage, but the owner pays half the cost of the damage.

563 The Gemara asks: Who is it that holds that when damage classified as Goring is done within the property of the injured party the owner of the belligerent animal is liable for only half of the damages? It is the Rabbis, who say: The halakha of cases of Goring performed by an innocuous animal, which is atypical behavior, done in the courtyard of the injured party, is that the owner of the ox pays half the cost of the damage.

564 But then say, and try to explain accordingly, the next part of the latter clause of the mishna: And there is a forewarned ox that gored three times, and each time his owner was warned to safeguard his ox from doing so. And there is an ox that causes damage to the property of the injured party while on the property of the injured party. And there is the person. In these cases, the responsible party pays full damages. With this clause we arrive at the opinion of Rabbi Tarfon, who says: The halakha of cases of Goring performed by an innocuous animal, which is atypical, done in the courtyard of the injured party, is that the owner of the ox pays the full cost of the damage even if the ox is innocuous.

565 The Gemara asks: Could it be that the first part of the latter clause of the mishna is in accordance with the opinion of the Rabbis and the next part of the latter clause is in accordance with the opinion of Rabbi Tarfon?

566 The Gemara answers: Yes, as Shmuel said to Rav Yehuda: Large-toothed one, leave the mishna and follow after me and my interpretation that the first part of the latter clause of the mishna is in accordance with the opinion of the Rabbis and the next part of the latter clause is in accordance with the opinion of Rabbi Tarfon.

567 The Gemara presents a different interpretation of the mishna: Rabbi Elazar said in the name of Rav:

568 The entire mishna is in accordance with the opinion of Rabbi Tarfon; the first part of the latter clause is stated with regard to a jointly owned courtyard, which under the terms of their partnership is designated for the use of one of them, i.e., the injured party, to keep his produce there, and for this one and for that one to keep their oxen there. Accordingly, with regard to damage of the category of Eating caused by one partner’s ox to the injured party’s produce in that courtyard, it is equivalent to the case of a courtyard owned exclusively by the injured party, and the ox’s owner is liable for all the damage. But with regard to damage of the category of Goring, since they are both allowed to keep oxen there, the courtyard is equivalent to a public domain, and if one’s innocuous ox causes damage there, one is liable for only half the cost of the damage.

569 Rav Kahana said: I stated this teaching of Rabbi Elazar before Rav Zevid of Neharde’a, and he said to me: Are you really able to interpret that the entire mishna is in accordance with the opinion of Rabbi Tarfon? But doesn’t the mishna teach: Concerning acts of damage performed with the tooth, the animal is considered forewarned with regard to eating that which is fitting for it to eat. This indicates that only if what it eats is fitting for it, then yes, one is liable for the full cost of the damage, but if it eats something that is not fitting for it, the owner would not be liable for the full cost of the damage, but only for half the cost of the damage.

[570] Rav Kahana explains his difficulty: And if the mishna is in accordance with the opinion of Rabbi Tarfon, the owner should be liable to pay the full cost of the damage even if his animal ate something not fitting for it, as doesn't Rabbi Tarfon say: The halakha of cases of Goring performed by an innocuous animal, which is atypical, done in the courtyard of the injured party, is that the owner of the ox pays the full cost of the damage even if the ox is innocuous.

[571] Rather, Rav Kahana said: Actually it must be that the entire mishna is in accordance with the opinion of the Rabbis and the mishna is incomplete and this is what it is teaching: The opening clause should be understood as saying: There are five damage-causing acts that animals can perform twice and remain innocuous, but if they were warned for performing those acts three times, with regard to the five acts they are considered forewarned, i.e., the mishna is not referring to two different sets of damages, five acts for which the animal is considered innocuous and five for which it is considered forewarned. Rather, both statements in the initial clause of the mishna are referring to the same five acts of Goring, and they teach that although the animal is initially considered innocuous with regard to these five acts, it can become forewarned.

[572] The next part of the mishna then provides another halakha: But for damage of the categories of Eating and Trampling, an animal is considered forewarned from the outset. The next two items in the mishna: A forewarned ox and an ox that causes damage on the property of the injured party, should be understood as a question and an answer: And where does their forewarned status with regard to these acts apply? It applies in the courtyard of the injured party. According to Rav Kahana's explanation, the statement: In the courtyard of the injured party, refers only to cases of Eating or Trampling, not to acts classified as Goring, and therefore it is true even according to the opinion of the Rabbis.

[573] Ravina objects to this explanation: Doesn't the mishna below (24b) teach: With regard to the case of an ox that causes damage to the property of the injured party on the property of the injured party, stated in the mishna here (15b), how so, i.e., what are the circumstances in which one is liable to pay the full cost of the damage? The mishna below (24b) proceeds to list acts of damage classified as Goring. Ravina states his objection: Granted, if you say that the mishna here (15b) discusses that case, i.e., that it is referring to Goring, it is due to that ruling that the mishna below teaches: How so, and proceeds to discuss one's liability for Goring, as it is elucidating the case mentioned in the mishna here. But if you say, as Rav Zevid suggests, that the mishna here (15b) does not discuss Goring, what is the meaning of the mishna below when it asks: How so, and then proceeds to discuss one's liability for Goring?

[574] Rather, Ravina said: The mishna is incomplete and this is what it is teaching: There are five damage-causing acts that animals can perform twice and remain innocuous, but if they were warned for performing those acts three times with regard to the five acts, they are considered forewarned.

[575] The next part of the mishna then provides another halakha: But for damage of the categories of Eating and Trampling, an animal is considered forewarned from the outset, and this is a case in which all agree that the animal is classified as a forewarned ox. And there is the case of an ox that causes damage to the property of the injured party, on the property of the injured party, which is subject to a dispute between Rabbi Tarfon and the Rabbis. And there are other cases similar to these in which animals are considered forewarned from the outset, namely: The wolf, the lion, the bear, the leopard, the bardelas, and the snake.

576 The Gemara notes: This interpretation of the mishna is also taught in a baraita: There are five damage-causing acts that animals can perform twice and remain innocuous, but if they were warned for performing those acts three times with regard to the five acts, they are considered forewarned. The next part of the mishna then provides another halakha: But for damage of the categories of Eating and Trampling, an animal is considered forewarned from the outset, and this is a case in which all agree that the animal is classified as a forewarned ox. And there is the case of an ox that causes damage to the property of the injured party, on the property of the injured party, which is subject to a dispute between Rabbi Tarfon and the Rabbis. And there are other cases similar to these in which animals are considered forewarned from the outset, namely: The wolf, the lion, the bear, the leopard, the bardelas, and the snake.

577 There are those who raise this issue as a contradiction and through doing so arrived at the same conclusions, as follows: We learned in the opening clause of the mishna: There are five damage-causing acts that animals can perform twice and remain innocuous, and there are five damage-causing acts for which an animal is considered forewarned. With regard to this, one can ask: But is there nothing else? But aren't there the cases mentioned in the continuation of the mishna: The wolf, the lion, the bear, the leopard, the bardelas, and the snake? These are considered to be forewarned even if they had never caused damage before.

578 And they resolve the contradiction through that which Ravina said: The mishna is incomplete and this is what it is teaching: There are five damage-causing acts that animals can perform twice and remain innocuous, but if they were warned for performing those acts three times with regard to the five acts, they are considered forewarned. The next part of the mishna then provides another halakha: But for damage of the categories of Eating and Trampling, an animal is considered forewarned from the outset, and this is a case in which all agree that the animal is classified as a forewarned ox. And there is the case of an ox that causes damage to the property of the injured party, on the property of the injured party, which is subject to a dispute between Rabbi Tarfon and the Rabbis. And there are other cases similar to these in which animals are considered forewarned from the outset, namely: The wolf, the lion, the bear, the leopard, the bardelas, and the snake.

579 § The mishna teaches: An animal is not considered forewarned with regard to Goring, i.e., not for goring with its horns, nor for pushing with its body, nor for biting, nor for crouching upon items in order to damage them. Rabbi Elazar says: They taught this only with regard to large vessels, as it is atypical for an animal to crouch upon them, and therefore the act is classified as a subcategory of Goring. But if the animal crouched upon small vessels, since that is its typical manner of behavior, it is classified as a subcategory of Trampling, for which the animal is considered forewarned from the outset.

580 The Gemara suggests: Let us say that the following baraita supports the opinion of Rabbi Elazar: An animal is considered forewarned, from the outset, to walk in its typical manner and to break or crush a person, or an animal, or vessels. The baraita indicates that an animal's typical manner is to crush vessels, presumably by crouching down upon them. This would seem to contradict the mishna that states that such behavior is atypical. It would appear the only resolution to this contradiction is if one accepts the distinction made by Rabbi Elazar that the mishna concerns large vessels and the baraita concerns small vessels.

[581] The Gemara rejects this: Perhaps the baraita concerns a case where the animal pushed against the utensils from the side and crushed them against a wall, but it does not concern a case where it crouched upon them.

[582] There are those who say a different version of this discussion, as follows: Rabbi Elazar says: Do not say that the mishna's ruling refers only to large vessels, as it is atypical for an animal to crouch upon them, but if the animal crouched upon small vessels, that is its typical manner and for that type of damage the animal is considered forewarned. Rather, the mishna refers even to small vessels, as it is atypical for an animal to crouch upon them.

[583] The Gemara raises an objection from a baraita: An animal is considered forewarned, from the outset, to walk in its typical manner and to break or crush a person, or an animal, or vessels.

[584] Rabbi Elazar said: Perhaps the baraita concerns only a case where the animal pushed against the utensils from the side and crushed them against a wall.

[585] There are those who raise this issue as a contradiction: We learned in the mishna: An animal is not considered forewarned with regard to Goring, i.e., not for goring with its horns, nor for pushing with its body, nor for biting, nor for crouching upon items in order to damage them. But isn't it taught in a baraita: An animal is considered forewarned, from the outset, to walk in its typical manner and to break or crush a person, or an animal, or vessels? In order to resolve this contradiction, Rabbi Elazar said: It is not difficult; here, in the mishna, the reference is to large vessels, while there, in the baraita, the reference is to small vessels.

[586] § The mishna teaches: The wolf, the lion, the bear, the leopard, the bardelas, and the snake; these are considered to be forewarned even if they had never caused damage before. The Gemara asks: What is a bardelas? Rav Yehuda said: It is a nafreza. The Gemara asks: What is a nafreza? Rav Yosef said: It is an appa.

[587] The Gemara raises an objection from a baraita: In addition to the list of animals that are considered forewarned, Rabbi Meir says: Also the hyena [tzavo'a]. Rabbi Elazar says: Also the snake. And Rav Yosef said in explanation of the baraita: The hyena mentioned by Rabbi Meir, this is the animal called an appa. If Rav Yosef understands a hyena to be an appa, how could he also claim, above, that it is a bardelas?

[588] The Gemara explains: It is not difficult: Here, in the baraita, Rabbi Meir is referring to a male hyena, and there, in the mishna, the reference is to a female hyena.

[589] And it is apparent that a male hyena is distinct from a female one, as it is taught in a baraita: A male hyena after seven years metamorphoses into an insectivorous bat [atalef ]; an insectivorous bat after seven years metamorphoses into a herbivorous bat [arpad]; a herbivorous bat after seven years metamorphoses into a thistle [kimosh]; a thistle after seven years metamorphoses into a briar [ḥo'aḥ]; and a briar after seven years metamorphoses into a demon. Similarly, a person's spine, seven years after his death, metamorphoses into a snake. The Gemara qualifies the last statement: And this matter applies only to a case where that person did not bow during the blessing of thanksgiving, the eighteenth blessing of the Amida prayer.

[590] The Gemara analyzes the baraita: The Master says above: In addition to the list of animals that are considered forewarned, Rabbi Meir says: Also the hyena.

[591] Rabbi Elazar says: Also the snake. By using the term also, Rabbi Elazar suggests he considers a snake to be forewarned to the same extent as the other animals in the mishna's list, which, according to his opinion, are not considered to be forewarned if they are domesticated. The Gemara asks: But didn't we learn in the mishna: Rabbi Elazar says: When these animals are domesticated they are not considered to be forewarned, but the snake is always considered forewarned?

[592] The Gemara answers: Emend and teach the baraita as saying that Rabbi Elazar says: A snake, instead of saying: Also a snake. Accordingly, the baraita is teaching that he holds that only a snake is considered to be forewarned under all circumstances because he holds that even if it is domesticated it is still prone to cause damage.

[593] § The Gemara considers cases of damage caused by a lion: Shmuel says: With regard to a lion that kills an animal in the public domain, if it clawed its prey and ate it, the lion's owner is exempt from liability. But if it first tore apart its prey with its teeth in order to kill it, and only then ate it, the owner is liable for the damage.

[594] The Gemara elucidates: If it clawed its prey and ate it, the owner is exempt, since it is its typical manner to claw its prey and eat it, and it is therefore equivalent to the case of an animal that eats fruit and vegetables belonging to someone else. Therefore, it is classified as Eating done in a public domain, and the owner of the lion is exempt. But if the lion first tore apart its prey to kill it, since this is not its typical manner, the act is classified as Goring, for which an owner is liable even in a public thoroughfare.

[595] The Gemara asks: Is this to say that tearing apart its prey is not the typical manner of a lion? But isn't it written: "The lion tears apart for its young, and it strangles for its lionesses, and it fills its caves with prey, and its den with that which was torn apart" (Nahum 2:13). The description in the verse clearly indicates that it is the typical manner of a lion to tear apart its prey. The Gemara answers that each phrase of this verse is referring not to a situation where the lion catches prey for its own immediate use, but to one where it provides food for its young, as it says: "The lion tears apart for its young"; to provide food for its lionesses: "And it strangles for its lionesses"; to provide food for the young cubs in its lair: "And it filled its lair with prey"; and to provide food for the young cubs in its den: "And its den with that which was torn apart." Therefore, we cannot learn from this verse that it is the typical manner of a lion to tear apart prey for its own immediate use.

[596] The Gemara asks: But isn't it taught in a baraita concerning acts classified as Eating: And similarly, in the case of a wild animal, including a lion, that entered the courtyard of the injured party and tore apart the courtyard owner's animal and ate its meat, the owner of the wild animal pays the full cost of the damage.

[597] The Gemara answers: With what are we dealing here? This is a case where it tore apart the animal in order to leave it for later consumption. Since this is typical behavior for a lion, the lion is considered forewarned with regard to it. The Gemara asks: Doesn't the baraita teach: And ate its meat? The Gemara answers: This is a case where the lion initially killed the animal to leave it for later consumption but then reconsidered and ate it.

[598] The Gemara questions this understanding: How can we know what the animal's initial intentions were? And furthermore, if one accepts this claim, then the ruling of Shmuel is also called into question, as perhaps the case he ruled on is a case like this, where the lion initially intended to leave

the prey he killed for later consumption, and therefore the owner should be exempt. The Gemara therefore rejects this understanding.

599 Rav Naḥman bar Yitzḥak said: The baraita teaches two cases disjunctively and should be understood as teaching two halakhot: With regard to a lion that tore apart an animal in order to leave it for later consumption, or a lion that clawed its prey and ate it, since each acted in the typical manner of a lion, the owner pays the full cost of the damage.

600 Ravina said: It is the typical manner of a wild lion to kill its prey and then eat it, and therefore such damage is classified as Eating. Accordingly, if the damage was done in the public domain, the lion's owner is exempt from any liability. When Shmuel says that an owner is liable if his lion does so, that was with regard to a domesticated lion and in accordance with the opinion of Rabbi Elazar, who says it is not the typical manner of a domesticated wild animal to attack. Accordingly, the act is classified as being of the category of Goring, for which one is liable even in a public thoroughfare.

601 The Gemara asks: If so, then even when the lion clawed its prey and ate it, the owner should be liable for any damage it causes in a public domain, since according to Rabbi Elazar such behavior is atypical for a domesticated lion. Why then does Shmuel rule that in such a case the owner is exempt?

602 The Gemara concedes that its presentation of Ravina's opinion is untenable: Rather, Ravina's explanation was not stated in reference to Shmuel's ruling, but rather in reference to the baraita, cited above, that discusses a case where a lion causes damage in the courtyard of the injured party. Accordingly, Ravina's statement should be understood as follows: When the baraita teaches that one is liable if one's lion tore apart an animal and ate it, that was with regard to a domesticated lion and in accordance with the opinion of Rabbi Elazar, who says it is not the typical manner of a domesticated wild animal to attack.

603 The Gemara asks: If that is so, since the act is atypical behavior for a lion, it should be classified as Goring, and the owner should be required to pay for only half the cost of the damage. The Gemara answers: The baraita is referring to a case where the lion was forewarned.

604 The Gemara questions further: If that is so, what is the reason that the baraita teaches this among the subcategories of Eating? It should have taught it among the subcategories of Goring. The Gemara concedes: This is a difficulty with this explanation.

605 MISHNA: What is the difference between the liability incurred for damage caused by an ox that is considered innocuous and the liability incurred for damage caused by an ox that is forewarned?

606 The only differences are that for damage caused by an innocuous ox, the owner pays half the cost of the damage exclusively from proceeds of the sale of the body of the ox, and for a forewarned ox he pays the full cost of the damage from his higher property.

607 GEMARA: What does the mishna mean by saying he pays from his higher [aliyya] property? Rabbi Elazar says: It means that he pays with the superior-quality [bame'ulla] items of his property.

608 And similarly, the fact that the word aliyya is referring to superior-quality property is indicated by the verse that states: "And Hezekiah lay with his ancestors, and they buried him in the best [bema'ale] of the sepulchers of the descendants of David" (II Chronicles 32:33), and Rabbi Elazar says: The term bema'ale means beside the best of the family. And who are they? David and Solomon.

609 The Gemara offers an interpretation of another verse about the burial of a king of Judea, King Asa: "And they buried him in his own sepulchers, which he had hewn out for himself in the city of

David, and laid him in the resting place, which was filled with perfumes and spices [zenim] prepared by the perfumers' art" (II Chronicles 16:14). What is meant by "perfumes and spices"? Rabbi Elazar says: It means many different types [zinei] of perfumes. Rabbi Shmuel bar Naḥmani says: The word zenim sounds similar to the word zenut, licentiousness, and should therefore be understood about types of perfumes that anyone who smells them is led to licentiousness.

610 The Gemara cites another dispute between Rabbi Elazar and Rabbi Shmuel bar Naḥmani: Jeremiah requested of God to punish those who hounded him: "For they have dug a pit to trap me and they have set snares for my feet" (Jeremiah 18:22). In what way did they dig a pit to trap him? Rabbi Elazar says: They cast suspicion upon him of engaging in intercourse with a woman who had engaged in sexual intercourse with a man forbidden to her by the Torah [zona]. Rabbi Shmuel bar Naḥmani says: They cast suspicion upon him of engaging in intercourse with a married woman.

611 The Gemara asks: Granted, according to the one who says that they cast suspicion upon him of engaging in intercourse with a zona, this is because the word "pit" is used as a metaphor for a zona, as it is written: "For a zona is a deep pit" (Proverbs 23:27). But according to the one who says that they cast suspicion upon him of engaging in intercourse with a married woman, for what reason did Jeremiah use the word "pit"? The Gemara answers: Due to the fact that she is a married woman, should she be excluded from the category of a zona? If she commits adultery she is also termed a zona, and the term "pit" can justifiably be applied to her.

612 The Gemara asks: Granted, according to the one who says that they cast suspicion upon him of engaging in intercourse with a married woman, this is consistent with that which is written: "You, Lord, know all their plans to kill me" (Jeremiah 18:23). By claiming he engaged in intercourse with a married woman, they implicated him in a prohibition punishable by the death penalty. But according to the one who says that they suspected him of engaging in intercourse with a zona, what did he mean by saying "to kill me" when there is no court-imposed capital punishment for doing so? The Gemara answers: Jeremiah was referring to the fact that they cast him into a pit of mire.

613 Rava interpreted a verse homiletically: What is the meaning of that which is written: "Let them be made to stumble before You; deal with them in the time of Your anger" (Jeremiah 18:23)? It means that Jeremiah said before the Holy One, Blessed be He: Master of the Universe, even at a time when they try to perform acts of charity, make them stumble by ensuring that they do so with people who are unworthy of charity in order that they should not receive the reward for helping them.

614 The Gemara, above, cited a verse concerning King Hezekiah's burial. The Gemara cites the continuation of that verse: "And they afforded him honor in his death" (II Chronicles 32:33). This teaches that they established a yeshiva at his grave to study Torah there.

615 Rabbi Natan and the Rabbis disagree with regard to this yeshiva: One said: They studied there for three days.

616 And the other one said: They studied there for seven days. And some say they studied there for thirty days.

617 The Sages taught a baraita that offers another interpretation of the verse cited: "And afforded him [lo] honor in his death" (II Chronicles 32:33). This is referring to the honor given to Hezekiah, king of Judea, that at his burial 36,000 men with bared shoulders went out before him. They removed their

robes from their shoulders as a sign of mourning. The number 36,000 is alluded to by the numerical value of the word lo, which is thirty-six. This is the statement of Rabbi Yehuda.

618 Rabbi Neḥemya said to him: But didn't they also do this before Ahab? Apparently, if they did this for the wicked king Ahab, it is an honor shown to all kings, and it is was not a unique show of honor for the righteous Hezekiah.

619 Rather, the honor that was done for Hezekiah was that they laid a Torah scroll upon his bier and they said: This one, i.e., Hezekiah, fulfilled that which is written in this, i.e., the Torah scroll.

620 The Gemara asks: But nowadays as well, we do this for any great Torah scholar that dies, so what is unique about what was done to honor Hezekiah? The Gemara answers: Nowadays, we take a Torah scroll out but we do not lay it on the bier of the deceased. And if you wish, say instead that nowadays we also lay a Torah scroll on the bier of the deceased; but we do not say: This one fulfilled that which is written in this.

621 Rabba bar bar Ḥana said: I was once walking together with Rabbi Yoḥanan to ask him about this statement. Whenever he would enter a lavatory, upon his exit I would ask him to explain a matter, and he would not answer us until he had washed his hands and donned his phylacteries and made the blessing, and only then would he answer us. With regard to the honor given to King Hezekiah, he said: Nowadays, we even say: This one fulfilled that which is written in this, but we do not say: He taught that which is written in this, which was a unique honor performed at the burial of the righteous King Hezekiah.

622 The Gemara asks: But didn't the Master say: Torah study is great because the study of Torah leads to one's performance of the mitzvot? This indicates that the performance of mitzvot is considered of greater value than Torah study. If so, once Hezekiah had been praised with the fact that he fulfilled the mitzvot of the Torah, why mention that he studied it? The Gemara explains: This is not difficult: This statement of the Master is about studying the Torah for one's own knowledge, and that unique praise given to King Hezekiah was about teaching the Torah to others.

623 § A verse that was cited at the beginning of this chapter (2b) as part of a halakhic exposition is now explained homiletically: Rabbi Yoḥanan says in the name of Rabbi Shimon ben Yoḥai: What is the meaning of that which is written: "Happy are you that sow beside all waters, that send forth the feet of the ox and the donkey" (Isaiah 32:20)? It teaches that whoever engages in the study of Torah and in the performance of acts of kindness merits reward equal to the portion of two tribes, Joseph and Issachar.

624 The Gemara explains how this is derived from the verse: As it is stated: "Happy are you that sow." And the reference to sowing refers only to acts of charity, as it is stated: "Sow for yourselves for charity, reap according to kindness" (Hosea 10:12). And the reference to water refers only to the study of Torah, as it is stated with regard to Torah study: "Ho, all who are thirsty, go to water" (Isaiah 55:1).

625 And the fact that he merits reward equal to the portion of two tribes is derived as follows: The reference to the ox in the verse is an allusion to Joseph, who is described as an ox (Deuteronomy 33:17), and one's reward is that he merits to receive a canopy of honor, as did Joseph, as it is written: "Joseph is a fruitful vine, a fruitful vine by a fountain; its branches run over the wall." The branches over the wall in this verse allude to the canopy. And the reference to the donkey is an allusion to the

fact that he merits to receive the portion of Issachar, who is described as a donkey, as it is stated: “Issachar is a large-boned donkey” (Genesis 49:14).

626 There are some who say that the comparison should be understood in a different manner. His enemies will fall before him just like in the blessing given by Moses to the tribe of Joseph, as it is written in the blessing bestowed by Moses to the tribe of Joseph: “His horns are the horns of the wild-ox; with them he shall gore the nations, even to the ends of the earth” (Deuteronomy 33:17). And he merits the understanding of Issachar, as it is written: “And of the children of Issachar, men that had understanding of the times, to know what Israel ought to do” (I Chronicles 12:33).

## Chapter 2

1 MISHNA: The mishna in the previous chapter (15b) teaches that the owner of an animal is always forewarned with regard to the category of Trampling. The mishna elaborates: For what damage caused with the hoof is the animal deemed forewarned? It is deemed forewarned with regard to trampling objects and breaking them in the course of its walking. An animal is deemed forewarned with regard to walking in its typical manner and, by doing so, breaking objects as it proceeds.

2 By contrast, if the animal was kicking while it was walking, or it transpired that pebbles were inadvertently propelled from under its feet and those pebbles broke vessels, cases of that kind do not fit precisely into the primary category of Trampling. In both of these cases the owner of the animal pays half the cost of the damage. If an animal trod upon a vessel and broke it and then a shard of that vessel fell upon a second vessel and broke it, the owner pays the full cost of the damage for the first vessel, as its action is classified under the primary category of Trampling, and he pays half the cost of the damage for the latter vessel, as the damage caused by the shard is tantamount to damage caused by pebbles inadvertently propelled by the foot of an animal.

3 Chickens are deemed forewarned with regard to walking in their typical manner and breaking objects, and therefore, the owner of a chicken pays the full restitution for the damage done to any objects broken by his chicken. If there was a string [delil] tied to a chicken’s leg as an indication of ownership and it wrapped around a vessel and broke it, or if the chicken was hopping in an atypical manner and breaking vessels, its owner pays half the cost of the damage.

4 GEMARA: The Gemara analyzes the mishna: Ravina said to Rava: In the context of the category of Trampling, damage caused by an animal trampling an object with its foot is the same as damage caused by an animal breaking an object with its body. Why does the mishna repeat the same halakha twice? Rava said to him: First, the tanna teaches the primary categories of damage, namely the category of Trampling with an animal’s foot, which is mentioned explicitly in the Torah, and then he teaches the subcategories of those primary categories, i.e., the animal is deemed forewarned with regard to causing damage with other parts of its body in the course of its walking.

5 Ravina challenges this explanation: If that is so, the latter clause of the mishna (19b), which teaches, concerning the primary category of Eating: For what damage caused by Eating is the animal deemed forewarned? It is deemed forewarned with regard to eating food items fit for its consumption, i.e., the animal is deemed forewarned with regard to eating fruits and vegetables. Ravina asks: What primary categories and what subcategories are there in that context? No

subcategories of Eating are enumerated there, and nevertheless, the phrase: The animal is deemed forewarned, is repeated. Rava responded to Ravina with a humorous response and said to him: I resolved the difficulty in one mishna, now you resolve the difficulty in one mishna.

[6] And what is the reason for the apparent redundancy in the mishna with regard to Eating? Rav Ashi said: First the tanna teaches the halakha of Eating by an undomesticated animal and then he teaches the halakha of Eating by a domesticated animal. And it was necessary to state both, as it enters your mind to say that since it is written: “And he set his animal loose” (Exodus 22:4), with regard to domesticated animals, yes, the primary category of Eating applies, but with regard to undomesticated animals, no, the primary category of Eating does not apply. Therefore, the tanna teaches us that undomesticated animals are included in the category of domesticated animals in this regard and the owner of an undomesticated animal is liable for damage caused by his animal eating another person’s produce.

[7] The Gemara asks: If so, the tanna should have taught the halakha with regard to a domesticated animal first and only afterward taught the halakha with regard to an undomesticated animal, as the latter is included in the category of the former. The Gemara answers: On the contrary, that halakha, which is derived from an interpretation, is dear to him, and therefore the tanna preferred to begin with the derived halakha and only then proceed to the explicit halakha.

[8] The Gemara asks: If so, then with regard to the first clause, in this mishna too, let the tanna teach that which is not explicitly written first, as that which is derived from an interpretation is dear to him. The Gemara distinguishes between the cases: How can they be compared? There, with regard to Eating, this damage caused by a domesticated animal and that damage caused by an undomesticated animal are primary categories of damage; therefore, the tanna taught first that halakha, which is derived from an interpretation, is dear to him. But here, with regard to Trampling, would he leave aside the primary category of Trampling, done with the animal’s foot, and teach a subcategory first?

[9] If you wish, say instead that the reason that in this mishna the tanna begins with that which is written explicitly in the Torah and only then proceeds to teach that which is derived through an interpretation is as follows: Since the tanna concluded the discussion in the final mishna in the previous chapter (15b) with the primary category of Trampling by teaching the clause: The foot of an animal is deemed forewarned with regard to trampling objects and breaking them in the course of its walking, therefore, he began the first mishna in the second chapter with the primary category of Trampling.

[10] § The Sages taught: An animal is deemed forewarned with regard to walking in its typical manner and, while doing so, breaking objects in the course of its walking. How so? If an animal entered into the courtyard of the injured party and it damaged an object with its body in the course of its walking; or if it caused damage with its hair in the course of its walking; or with the saddle that is on it; or with the packed saddlebag [shalif ] that is on it; or with the halter in its mouth; or with the bell [zog] around its neck; or if it was a donkey that caused damage with its burden; in all these cases the owner pays the full cost of the damage. Sumakhos says: In the case of pebbles propelled by an animal in the course of its walking, or in the case of a pig that was burrowing in the garbage heap and caused damage, the owner of the animal pays the full cost of the damage.

[11] The Gemara asks: If a pig caused damage, it is obvious that its owner must pay the full cost of the damage. What novel element is Sumakhos introducing? The Gemara answers: Rather, say: If it propelled pebbles and thereby caused damage, the owner pays the full cost of the damage.

[12] The Gemara asks: Pebbles, who mentioned anything about it? The Gemara answers: The baraita is incomplete and this is what it is teaching: For damage caused by pebbles that were propelled by animals walking in their typical manner, the owner pays half the cost of the damage, and for damage caused by a pig that was burrowing in the garbage heap and propelled pebbles and that damaged an object, its owner pays half the cost of the damage. Sumakhos says: Both in the case of pebbles that were propelled and in the case of a pig that was burrowing in the garbage heap and propelled pebbles and damaged an object, the owner pays the full cost of the damage. Sumakhos does not accept the halakha that the owner pays only half the cost of the damage caused by pebbles inadvertently propelled by the foot of an animal in the course of its walking, i.e., in its typical manner. He holds that since the damage results from the animal's typical behavior, the owner pays the full cost of the damage.

[13] The Sages taught (Tosefta 2:1): If chickens were flying from place to place and broke vessels with their wings, their owner pays the full cost of the damage as this is a subcategory of Trampling. By contrast, if the damage was caused by the wind generated by their wings, the owner pays half the cost of the damage, in accordance with the halakha in the case of pebbles. Sumakhos says: The owner pays the full cost of the damage. It is taught in another baraita: If chickens were hopping upon dough or upon produce and they sullied it with their feet, or if they pecked at it and caused damage, their owner pays the full cost of the damage. If in the course of their hopping they stirred up dust or propelled pebbles, the owner pays half the cost of the damage. Sumakhos says: He pays the full cost of the damage.

[14] It is taught in another baraita: If a chicken was flying from place to place and wind emerged from beneath its wings and the wind caused vessels to break, the owner pays half the cost of the damage. The Gemara notes: This unattributed baraita is in accordance with the opinion of the Rabbis, who disagree with Sumakhos and hold that the owner pays half the cost of the damage in these cases, just as he does in the case of pebbles propelled by the feet of an animal.

[15] Rava analyzed the baraita and said: Granted, the opinion of Sumakhos is understood, as he holds that the status of damage resulting from a force generated by the animal's action is like that of damage directly caused by the animal itself, and therefore the owner pays the full cost of the damage in both cases. But the opinion of the Rabbis is difficult, as if they hold that the status of damage resulting from a force generated by the animal's action is like that of damage directly caused by the animal itself, the owner should be required to pay the full cost of the damage. And if they hold that the status of damage resulting from a force generated by the animal's action is not like that of damage directly caused by the animal itself, and is not attributed to the animal, then the owner should not be required to pay even half the cost of the damage.

[16] Then Rava said: Actually, the Rabbis hold that the status of damage resulting from a force generated by the animal's action is like that of damage directly caused by the animal itself, and in principle the owner should be required to pay the full cost of the damage. And the liability to pay for half the cost of the damage caused by pebbles is because the Rabbis learned this halakha through tradition, and it does not correspond to the standard halakhot of damages.

[17] § Rava says: With regard to any type of action which, when a zav interacts with a vessel in that manner, he renders it ritually impure, if the same type of action was done by an animal, resulting in damage, the owner of the animal is liable to pay the full cost of the damage. Conversely, with regard to any type of action which, when a zav interacts with a vessel in that manner, he leaves it ritually pure, e.g., where the contact is indirect, if the same type of action was done by an animal, resulting in damage, the owner of the animal is liable to pay only half the cost of the damage.

[18] The Gemara asks: And Rava, did he come to teach us the halakha of pebbles? The substance of Rava's statement is that for damage caused by the indirect action of an animal, its owner pays half the cost of the damage. That is identical to the halakha of pebbles articulated in the baraitot cited earlier. The Gemara answers: No, Rava teaches us the halakha in the case of a calf pulling a cart [karon]. Just as with regard to a zav, the status of a vessel that a zav moves is like that of a vessel with which he came into contact, so too, the status of damage caused by the cart pulled by the animal is like that of damage caused by the animal's body, and it is not considered indirect damage like in the case of pebbles.

[19] It is taught in a baraita in accordance with the opinion of Rava: An animal is deemed forewarned with regard to breaking objects in the course of its walking. How so? If an animal entered into the courtyard of the injured party, and it damaged an object with its body in the course of its walking; or with its hair in the course of its walking; or with the saddle that is on it; or with the packed saddlebag that is on it; or with the halter that is in its mouth; or with the bell that is around its neck; or if a donkey caused damage with its burden; or if a calf caused damage while pulling a cart; in all these cases the owner pays the full cost of the damage.

[20] § The Sages taught: In a case where chickens were pecking at the rope tied to a bucket and the rope was severed and the bucket fell and broke, their owner pays the full cost of the damage.

[21] Rava raises a dilemma: If an animal trod upon a vessel but did not break it and the vessel then rolled to another place and broke there, what is the halakha? Rava elaborates: In determining one's liability for causing damage, do we follow the initial action that ultimately led to the damage and this case is regarded as damage caused by the animal itself? Accordingly, the owner would pay the full cost of the damage as he would in any case classified under the primary category of Trampling. Or perhaps do we follow the breaking of the vessel and therefore this case is regarded as similar to the case of pebbles propelled by the foot of an animal in the course of its walking, since the vessel was not broken by a direct action of the animal, but rather, as an indirect result of the animal's action?

[22] The Gemara suggests: Resolve Rava's dilemma from the statement of Rabba, as Rabba says: If one threw a vessel from a roof and another came and broke it with a stick as it was falling, the one who hit it with the stick is exempt from all liability as we say to him that he broke a broken vessel. From the moment the vessel was tossed from the roof it was inevitable that it would break. Consequently, breaking it with a stick as it was falling had no real effect. Apparently, the initial action is the decisive factor in determining liability for damages. The same should be the halakha in a case where a vessel was trod upon by an animal but it did not break, and the vessel then rolled to another place and broke there. The liability should be determined based on the initial action that caused the damage. The Gemara rejects this proof: The halakha in this case is clear to Rabba, who ruled as he did, but it remains a dilemma to Rava. One cannot prove the opinion of one amora from the opinion of another.

[23] The Gemara suggests: Come and hear the resolution of this dilemma from a baraita: With regard to hopping, a chicken is not deemed forewarned. And some say that it is forewarned.

[24] The Gemara questions the formulation of the baraita: Does it enter your mind to raise the possibility that a chicken is not forewarned with regard to hopping? Hopping is the typical manner of movement for chickens. Rather, is it not that the reference in the baraita is to a case where the chicken was hopping and the hopping propelled the vessel to roll to another place, and the vessel was broken there? And they disagree with regard to this: One Sage holds that we follow the initial action that ultimately led to the damage, and since hopping is typical manner of movement for a chicken, its owner is responsible for any damage that resulted from its hopping. And one Sage holds: We follow the breaking of the vessel, and since there was an additional factor that broke the vessel, the owner of the chicken is not liable.

[25] The Gemara rejects the parallel between the dispute and the dilemma: No, the dispute in the baraita can be explained differently.

[26] The dispute concerns a case where the chicken propelled pebbles from underfoot as it was hopping, and it is with regard to the issue that is the subject of the dispute of Sumakhos and the Rabbis, cited earlier, that the tanna'im in the baraita disagree. One tanna holds that the owner pays the full cost of the damage for pebbles propelled by an animal in the course of its walking, and the other tanna holds that its owner pays half the cost of the damage.

[27] The Gemara suggests: Come and hear an additional attempt to resolve the dilemma from a baraita: In a case where chickens were pecking at the rope tied to a bucket and the rope was severed and the bucket fell and broke, the owner of the chickens pays the full cost of the damage. Conclude from the baraita that we follow the initial action that ultimately led to the damage in determining liability for damage. The Gemara rejects this conclusion, and one cannot adduce proof from the baraita. Interpret instead that the reference in the baraita is to the damage caused to the rope, while the owner pays only half the cost of the damage for breaking the bucket.

[28] The Gemara asks: But isn't eating a rope atypical behavior for a chicken, and therefore it should be classified within the primary category of Goring, not the primary category of Eating? Why then must the owner of the chicken pay the full cost of the damage? The Gemara answers: The reference in the baraita is to a case where the rope was filthy [ma'us] with kneaded dough, and in those circumstances it is typical for a chicken to peck at it. The Gemara asks: But doesn't the tanna teach in the baraita: And the bucket broke, indicating that the dispute is with regard to damage done to the bucket, not to the rope? The Gemara explains: Rather, this baraita is in accordance with the opinion of Sumakhos, who says: In the case of pebbles propelled by an animal, the owner pays the full cost of the damage.

[29] The Gemara asks: If it is in accordance with the opinion of Sumakhos, say the latter clause of the baraita: If a shard was propelled from the bucket broken by a chicken and it fell upon another vessel and broke it, the owner of the chicken pays the full cost of the damage for the first vessel, and half the cost of the damage for the second one. And if the baraita is in accordance with the opinion of Sumakhos, is he of the opinion that one pays half the cost of the damage caused by pebbles?

[30] And if you would say that there is a difference, according to Sumakhos, between damage resulting from a force generated by the animal's action, e.g., pebbles, and damage caused by a force generated by a force generated by its action, e.g., damage caused by the shard of the bucket, and in the latter

case Sumakhos concedes that the owner pays half the cost of the damage, that would result in a difficulty. The Gemara asks: But what of this dilemma raised by Rav Ashi: According to the opinion of Sumakhos, what is the halakha with regard to damage caused by a force generated by a force generated by the animal's action? Is the status of that secondary force like that of damage caused by a force generated by its action, in which case the owner is liable, or is its status not like that of damage caused by a force generated by its action?

[31] Why did Rav Ashi state his dilemma; why did he not resolve the dilemma and conclude that according to Sumakhos its status is not like that of damage caused by a force generated by its action? Since Rav Ashi does not resolve the dilemma based on this baraita, apparently, Sumakhos does not distinguish between the two types of force.

[32] The Gemara suggests: Rather, is it not so that this baraita is in accordance with the opinion of the Rabbis, and conclude from the baraita that we follow the initial action that ultimately led to the damage when determining one's liability for the damage. Therefore, an owner is liable for any damage resulting from his animal's typical behavior, and he pays the full cost of the damage done to the bucket even if the damage took place in another location.

[33] Rav Beivai bar Abaye said: There is no proof from the baraita, as it could be explained that the reference in the baraita is to a case where the bucket is continually propelled from the impetus of the chicken, who caused the bucket to break. That is why the ruling in the baraita is that the owner of the chicken pays the full cost of the damage. The dilemma with regard to the case where an animal treads upon a vessel that rolls away and breaks elsewhere remains unresolved.

[34] § Rava raises a dilemma: With regard to one's liability to pay half the cost of the damage caused by pebbles inadvertently propelled by the foot of a walking animal, does the owner of the animal pay restitution exclusively from the body of the animal, just as one pays half the cost of the damage caused by an innocuous ox with regard to damage categorized under the primary category of Goring? Or does he pay restitution from his superior-quality land, as he does for other forms of damage? The Gemara elaborates: Does he pay restitution exclusively from the body of the animal, as we do not find any case where one pays half the cost of the damage from his superior-quality land? Or perhaps he pays restitution from his superior-quality land, as we do not find any case where an animal causes damage in its typical manner where the owner pays restitution exclusively from the body of his animal?

[35] The Gemara suggests: Come and hear a resolution to this dilemma from a baraita: With regard to hopping, a chicken is not deemed forewarned. And some say that it is forewarned. The Gemara questions the formulation of the baraita: Does it enter your mind to raise the possibility that a chicken is not forewarned with regard to hopping? Hopping is the typical manner of movement for chickens. Rather, is it not that the reference in the baraita is to a case where the chicken was hopping and propelled pebbles that caused the damage?

[36] And it is with regard to this matter that they disagree: The one who says that the chicken is not deemed forewarned holds that its owner pays restitution from the body of the animal, as is the halakha when an innocuous animal gores, while the one who says that the chicken is forewarned holds that he pays restitution from his superior-quality land, as is the halakha when a forewarned animal causes damage. According to this analysis, Rava's dilemma is the subject of a tannaitic dispute.

[37] The Gemara rejects this: No, perhaps the dispute in the baraita is with regard to the issue that is the subject of the dispute of Sumakhos and the Rabbis with regard to the legal status of damage caused by a force generated by the animal's action. It is with regard to the similarity of damage caused by an action performed by an animal's body to the case where the chicken was hopping and propelled pebbles that caused the damage that the tanna'im in the baraita disagree.

[38] The Gemara suggests: Come and hear a resolution of this dilemma from a mishna (21b): If the dog took a loaf [ḥarara] that was baking on hot coals and went to a stack of grain to eat the loaf, and the dog ate the loaf and ignited the stack of grain with one of the coals attached to the loaf, the owner of the dog pays the full cost of the damage for the damage to the loaf, as it is classified in the primary category of Eating, and he pays half the cost of the damage for the damage to the stack of grain. Rabbi Elazar says: He pays the full cost of the damage for the damage to the stack of grain as well.

[39] What is the reason that the first tanna holds that the owner pays half the cost of the damage caused to the stack of grain? Is it not due to the fact that it is analogous to propelling pebbles, as the coal fell from the loaf held in its mouth and ignited the grain? And it is taught in a baraita in that regard that when the first tanna said that he pays half the cost of the damage, he pays restitution exclusively from proceeds of the sale of the body of his animal. Apparently, half the cost of the damage caused by pebbles is paid from the body of the animal that caused the damage.

[40] The Gemara rejects this explanation: And can you understand the baraita in that way? According to that understanding, with regard to Rabbi Elazar, who disagrees with the first tanna and holds that the owner of the dog pays the full cost of the damage caused to the grain, do we find anywhere that according to Rabbi Elazar one pays restitution exclusively from proceeds of the sale of the body of his animal?

[41] Rather, the baraita can be explained in a case where the dog acted atypically with this coal with which he lit the stack of grain. Since the dog's behavior was atypical, the damage is classified under the primary category of Goring, not under the category of Eating. And Rabbi Elazar holds in accordance with the opinion of Rabbi Tarfon, who says in a mishna (24b): The halakha of Goring in the courtyard of the injured party is atypical, as there, the owner of the ox pays the full cost of the damage, in contrast to half the cost of the damage that he pays when it transpires in the public domain. Nevertheless, since it was an innocuous animal that caused the damage, restitution is paid from its body.

[42] The Gemara rejects that explanation: But that is not so. What is the reason that you interpreted that the baraita is in accordance with the opinion of Rabbi Tarfon? It is due to the difficulty presented by the halakha that he pays the full cost of the damage exclusively from proceeds of the sale of the body of the animal, which would not be so according to Rabbi Elazar.

[43] The Gemara suggests: There is an alternative explanation. Rabbi Elazar holds in accordance with the opinion of Sumakhos, who says that one pays the full cost of the damage caused by pebbles, and he also holds in accordance with the opinion of Rabbi Yehuda, who says with regard to a forewarned ox: The aspect of innocuousness, which dictates that the owner pays half the cost of the damage from the body of the ox, remains intact. According to Rabbi Yehuda, the owner of a forewarned ox pays half the cost of the damage from the body of his ox and half the cost of the damage from his superior-quality land. And when the tanna of the baraita teaches that the owner pays restitution from the body of his animal, the reference is to the aspect of innocuousness, i.e., half the cost of the

damage. He pays the other half from his superior-quality land as he would in the case of any forewarned animal.

[44] Rav Samma, son of Rav Ashi, said to Ravina: Say that you heard that Rabbi Yehuda stated that the aspect of innocuousness remains intact with regard to damage categorized under the primary category of Goring, where the ox was initially innocuous and then became forewarned. In the case of propelled pebbles, which is a subcategory of Trampling, where the ox is forewarned from the outset,

[45] did you hear him distinguish between the different parts of the payment? There is no aspect of innocuousness in the case of pebbles.

[46] Rather, when Rabbi Elazar says that the owner of the dog pays the full cost of the damage in a case that is similar to one of propelled pebbles, he was referring to a case where the owner of the animal was forewarned with regard to this matter. And they disagree about this point: One Sage, Rabbi Elazar, holds that there is forewarning with regard to propelling pebbles; therefore, if there was testimony given in court that a particular animal regularly propels pebbles in the course of its walking, the animal is deemed forewarned and its owner pays the full cost of the damage. And one Sage, the first tanna, holds that there is no forewarning with regard to pebbles. Apparently, payment for damage caused by pebbles is paid from the body of the animal.

[47] The Gemara asks: But if this is the case, then the dilemma raised by Rava concerning whether there is forewarning for propelling pebbles or there is no forewarning for propelling pebbles, can be resolved from this dispute. If the dilemma is raised according to the Rabbis, i.e., the first tanna, there is no forewarning for propelling pebbles. If the dilemma is raised according to Rabbi Elazar, there is forewarning for propelling pebbles.

[48] The Gemara answers that Rava could have said to you: When I raise the dilemma, I do so specifically according to the opinion of the Rabbis who disagree with Sumakhos and hold that one pays half the cost of the damage in the case of pebbles; but here in this baraita, both the Rabbis, i.e., the first tanna, and Rabbi Elazar hold in accordance with the opinion of Sumakhos, who says that in the case of pebbles, one pays the full cost of the damage.

[49] And what is the reason that the Rabbis say that one pays half the cost of the damage in the case of pebbles? It is that in the case of pebbles the animal acted atypically and was not forewarned. And in this baraita, concerning the dog that lit the stack of grain, the dispute between the first tanna and Rabbi Elazar is with regard to the issue that is the subject of the dispute between Rabbi Tarfon and the Rabbis, i.e., the halakha in the case of damage caused by an innocuous ox on the property of the injured party.

[50] The Gemara rejects the parallel between the opinion of Rabbi Elazar and the opinion of Rabbi Tarfon. Say that you heard that according to Rabbi Tarfon the owner pays the full cost of the damage; but did you hear that according to Rabbi Tarfon restitution is paid only from the body of the animal that caused the damage?

[51] The Gemara answers: Yes, Rabbi Tarfon holds that restitution is paid only from the body of the animal that caused the damage. From where does Rabbi Tarfon derive the halakha that when damage is caused by an innocuous ox on the property of the injured party its owner is liable to pay the full cost of the damage and not merely half? He derives it via an a fortiori inference from damage categorized as Goring that is caused in the public domain, as explained in the mishna (24b).

[52] His ruling is based on the principle: It is sufficient for the conclusion that emerges from an a fortiori inference to be like its source, i.e., a halakha derived from an a fortiori inference cannot be more stringent than the source of that derivation. Since restitution for damage categorized as Goring that is caused in the public domain is paid only from the body of the damaging animal, the same is true with regard to restitution for damage categorized as Goring that is caused on the property of the injured party.

[53] The Gemara asks: But isn't it clear from that mishna that Rabbi Tarfon does not accept the principle: It is sufficient for the conclusion that emerges from an a fortiori inference to be like its source, as, if he accepted that principle, not only would he hold that payment is only from the body of the animal, he would also require payment of half the cost of the damage.

[54] The Gemara answers: He does not reject the principle. When he does not accept the principle: It is sufficient for the conclusion that emerges from an a fortiori inference to be like its source, it is in a case where the result of rejecting the principle is that the a fortiori inference is refuted. But in a case where the result of rejecting the principle is that the a fortiori inference is not refuted, but will be applied in a more limited fashion, he accepts the principle: It is sufficient for the conclusion that emerges from an a fortiori inference to be like its source. Therefore, in this case the payment of the full cost of the damage, which is derived by means of the a fortiori inference, is paid only from the body of the animal based on the principle: It is sufficient for the conclusion that emerges from an a fortiori inference to be like its source.

[55] § The Gemara discusses the matter itself, cited earlier. Rava raises a dilemma: Is there forewarning for propelling pebbles, so that the owner would pay the full cost of the damage if he had been forewarned three times, or is there no forewarning for propelling pebbles, and he will always pay half the cost of the damage? The Gemara elaborates: Do we liken the case of propelled pebbles to damage categorized as Goring? Accordingly, when an innocuous ox causes damage by propelling pebbles its owner pays half the cost of the damage, and when a forewarned ox does so the owner pays the full cost of the damage. Or perhaps, is it a subcategory of the primary category of Trampling, which is deemed forewarned from the outset? Accordingly, the owner would always pay half the cost of the damage, as there is no change in status after the third warning.

[56] The Gemara suggests: Come and hear the resolution of this dilemma from a baraita: With regard to hopping, a chicken is not deemed forewarned. And some say that it is forewarned. The Gemara questions the formulation of the baraita: Does it enter your mind to raise the possibility that a chicken is not forewarned with regard to hopping? Hopping is the typical manner of movement for chickens. Rather, is it not that the reference in the baraita is to a case where the chicken was hopping and propelled pebbles that caused damage?

[57] What, is it not referring to a case where the chicken has done so three times? And it is with regard to this that they disagree: One Sage holds: There is forewarning for pebbles, and one Sage holds: There is no forewarning for pebbles. According to this analysis, Rava's dilemma is the subject of a tannaitic dispute. The Gemara rejects this resolution: No, perhaps the reference in the baraita is to a case where the chicken hopped only one time. And the tanna'im disagree with regard to the issue that is the subject of the dispute between Sumakhos and the Rabbis, concerning the compensation for damage caused by pebbles.

[58] The Gemara suggests: Come and hear the resolution to the dilemma from an amoraic dispute: If an animal dropped excrement onto dough and damaged it, Rav Yehuda says: The owner of the animal pays the full cost of the damage, and Rabbi Elazar says: He pays half the cost of the damage. What, is it not referring to a case where the animal has done so three times? And it is with regard to this that they disagree, as one Sage holds: There is forewarning for pebbles, and one Sage holds: There is no forewarning for pebbles.

[59] The Gemara rejects this resolution: No, perhaps the reference in the baraita is to a case where the animal dropped excrement only one time. And the tanna'im disagree with regard to the issue that is the subject of the dispute between Sumakhos and the Rabbis, concerning compensation for damage caused by pebbles. The Gemara asks: But isn't this atypical behavior of the animal, and since all behavior that deviates from the norm is classified within the category of Goring, the owner should be liable to pay only half the cost of the damage? The Gemara answers: The case is one where the animal was forced into a narrow place and had no alternative to relieving itself onto the dough; therefore, it does not constitute atypical behavior.

[60] The Gemara asks: But if the amoraic dispute parallels the tannaitic dispute, let Rav Yehuda say: The halakha is in accordance with the opinion of Sumakhos, and let Rabbi Elazar say: The halakha is in accordance with the opinion of the Rabbis, instead of stating their dispute in the context of the particular case of the animal and the dough. The Gemara answers: It was necessary for them to state their dispute in this case, as there is a novel element concerning excrement. It would enter your mind to say: Since the excrement is drawn after the body of the animal, its legal status is like that of damage caused by its body, not like pebbles propelled by the animal. Therefore, their stating the dispute with regard to excrement teaches us that its status is like that of propelling pebbles. Therefore, the dispute between Rav Yehuda and Rabbi Elazar can be explained as parallel to the dispute between Sumakhos and the Rabbis with regard to pebbles.

[61] The Gemara suggests: Come and hear the resolution to the dilemma from a baraita: Rami bar Yeḥezkel taught: In the case of a rooster that extended its head into the airspace of a glass vessel and crowed in the vessel and broke it with the sound waves, its owner pays the full cost of the damage. And Rav Yosef said that the Sages from the school of Rav say: If a horse neighed or a donkey brayed and the sound waves broke vessels, the owner pays half the cost of the damage. These are cases similar to the case of pebbles, and there is a dispute between the Sages with regard to these cases.

[62] What, is it not referring to a case where the rooster or animal has done so three times?

[63] And it is with regard to this that they disagree: One Sage, the first tanna in the baraita cited by Rami bar Yeḥezkel, holds: There is forewarning for pebbles, and one Sage, Rav Yosef, holds: There is no forewarning for pebbles.

[64] The Gemara rejects this resolution: No, perhaps the reference in the baraita is to a case where the rooster or animal damaged the vessel one time. And the tanna'im disagree with regard to the issue that is the subject of the dispute between Sumakhos and the Rabbis, concerning compensation for damage caused by pebbles. The Gemara asks: But isn't it atypical behavior for an animal to insert its head into a glass vessel, and isn't all atypical behavior classified within the category of Goring, meaning that the owner should be liable to pay only half the cost of the damage? The Gemara answers: The case is one where there were seeds in the vessel, and therefore the rooster extending its head into the vessel is considered typical behavior.

[65] Rav Ashi raises a dilemma: Is there any halakhic significance to deviation from typical behavior with regard to propelling pebbles, and therefore if an animal propelled pebbles in an atypical manner its owner is liable to pay one-quarter of the damage, i.e., half the restitution for damage caused by pebbles? Or, is there no halakhic significance to deviation from typical behavior with regard to propelling pebbles, resulting in its owner being liable to pay only one-quarter of the damage, and therefore, even in an atypical case, the owner pays the standard restitution of half the cost of the damage?

[66] The Gemara answers: Resolve Rav Ashi's dilemma from Rava's dilemma, as Rava raises a dilemma: Is there forewarning for pebbles, or is there no forewarning for pebbles? Based on that dilemma, one may conclude by inference that there is no halakhic significance to deviation from typical behavior with regard to pebbles propelled by an animal, resulting in its owner being liable to pay only one-quarter of the damage, as, were that the case, forewarning would lead to an animal owner's liability to pay half the cost of the damage.

[67] The Gemara rejects this: Perhaps Rava stated his dilemma employing the style of: If you say. If you say that there is no halakhic significance to deviation from typical behavior with regard to propelling pebbles, resulting in its owner being liable to pay only one-quarter of the damage, and the owner pays half the cost of the damage in every case, is there forewarning for pebbles, meaning that after three incidents the owner pays the full cost of the damage, or is there no forewarning for pebbles? According to that understanding, the halakha with regard to Rav Ashi's dilemma cannot be inferred from Rava's dilemma. Rav Ashi's dilemma shall stand unresolved.

[68] Rav Ashi raises another dilemma with regard to pebbles: According to the opinion of Sumakhos, that one pays the full cost of the damage in the case of propelled pebbles, what is the halakha with regard to damage caused by a force generated by a force generated by the animal's action? Is the status of that secondary force like that of damage caused by a force generated by its action, in which case the owner is liable, or is its status not like that of damage caused by a force generated by its action?

[69] The Gemara elaborates: Did Sumakhos learn the halakha that one pays half the cost of the damage caused by pebbles as a tradition transmitted to Moses at Sinai, and he interprets that tradition as applying in a case where the damage was caused by a force generated by a force generated by the action of an animal? By contrast, in a typical case of damage caused by pebbles, which is an example of a force generated by the action of an animal, the owner pays the full cost of the damage, as it is a subcategory of Trampling. Or perhaps he did not learn any halakha as a tradition in this regard at all, and therefore even in a case where the damage was caused by a force generated by a force generated by the action of an animal, the owner pays the full cost of the damage, as it is a subcategory of Trampling. The Gemara concludes: This dilemma, too, shall stand unresolved.

[70] § The mishna teaches: If the animal was kicking while it was walking, or it occurred that pebbles were inadvertently propelled from under its feet and those pebbles broke vessels, the owner of the animal pays half the cost of the damage. A dilemma was raised before the Sages: With regard to what case is the tanna of the mishna speaking?

[71] The Gemara elaborates: Is the tanna saying that if the animal was kicking and caused damage directly with its kick, which is a subcategory of Goring, or if the animal was walking and propelled pebbles in its typical manner, the owner of the animal pays half the cost of the damage, and,

accordingly, the mishna is in accordance with the opinion of the Rabbis, who hold that one pays half the cost of damage caused by pebbles? Or perhaps the tanna is saying: If the animal was kicking and caused damage directly with its kick, or if the animal propelled pebbles due to its kick and the pebbles caused damage, the owner of the animal pays half the cost of the damage. Accordingly, one may infer: But if the animal propelled pebbles as it was walking in its typical manner, the owner pays the full cost of the damage, and if so, in accordance with whose opinion is the mishna? It is in accordance with the opinion of Sumakhos.

[72] The Gemara suggests: Come and hear a resolution to this dilemma from the latter clause of the mishna: If an animal trod upon a vessel and broke it and then a shard of that vessel fell upon a second vessel and broke it, the owner pays the full cost of the damage for the first vessel, and he pays half the cost of the damage for the latter vessel. And if the mishna is in accordance with the opinion of Sumakhos, does he hold that one pays half the cost of the damage caused by pebbles?

[73] And if you would say that the mishna is in accordance with the opinion of Sumakhos, and can be understood as follows: The first vessel, concerning which the owner of the animal pays the full cost of the damage, is the first vessel damaged following the propelling of shards from the vessel upon which the animal trod, i.e., the second vessel that was broken. And the second vessel, concerning which the owner of the animal pays half the cost of the damage, is the second vessel following the propelling of shards from the vessel upon which the animal trod, i.e., the third vessel that was broken by shards from the second vessel. And the reason for the difference in liability is that there is a difference, according to Sumakhos, between damage caused by a force generated by the action of an animal, for which the owner pays the full cost of the damage, and damage caused by a force generated by a force generated by its action, for which he pays for only half the cost of the damage.

[74] But if one were to say this explanation, what can be said of that dilemma which Rav Ashi raised: According to the opinion of Sumakhos, that one pays the full cost of the damage in the case of propelled pebbles, what is the halakha with regard to damage caused by a force generated by a force generated by the animal’s action? Is the status of that secondary force like that of damage caused by a force generated by its action, in which case the owner is liable, or is its status not like that of damage caused by a force generated by its action? Why does he have a dilemma? Let him resolve from here that its status is not like that of damage caused by a force generated by its action.

[75] The Gemara answers: Perhaps Rav Ashi interprets the mishna in accordance with the opinion of the Rabbis, that one pays half the cost of the damage in the case of propelled pebbles, and he raises this dilemma: If the animal was kicking and caused damage directly with its kick, which is a subcategory of Goring, or if the animal was walking and propelled pebbles in its typical manner, the owner of the animal pays half the cost of the damage. Accordingly, one may infer: But if the pebbles were propelled due to a kick, the owner pays one-quarter of the damage. And there is halakhic significance to deviation from typical behavior with regard to a case of pebbles, resulting in its owner being liable to pay only one-quarter of the damage.

[76] Or perhaps the tanna is saying: If the animal was kicking and caused damage directly with its kick or if the animal propelled pebbles due to its kick and the pebbles caused damage, the owner of the animal pays half the cost of the damage. And there is no halakhic significance to deviation from typical behavior with regard to a case of pebbles. The Gemara concludes: Rav Ashi’s dilemma shall stand unresolved.

[77] § Rabbi Abba bar Memel raised a dilemma before Rabbi Ami, and some say that it was before Rabbi Ḥiyya bar Abba: If the animal was walking in a place where it is impossible for it to walk without propelling pebbles as it proceeds, and it kicked and propelled pebbles and caused damage, what is the halakha? The Gemara elaborates: Does one say that since it is impossible for it to walk without propelling pebbles, propelling pebbles is its typical manner in that situation and the halakha in this case would be the same as any case of pebbles? Or perhaps, since now, in any event, the pebbles were propelled due to a kick, it is different. The Gemara concludes: Rabbi Abba bar Memel's dilemma shall stand unresolved.

[78] § Rabbi Yirmeya raised a dilemma before Rabbi Zeira: If the animal was walking in the public domain and it kicked and propelled pebbles and caused damage, what is the halakha? The Gemara elaborates: Do we liken the damage in this instance to Goring, since the action was performed with intent, and therefore the owner of the animal is liable even though the incident transpired in the public domain? Or perhaps, since this is a case of pebbles, it is classified as a subcategory of Trampling and the owner is exempt from liability in the public domain. Rabbi Zeira said to him: It stands to reason that it is a subcategory of Trampling.

[79] Rabbi Yirmeya continued and asked Rabbi Zeira another question: If an animal propelled pebbles in the public domain and caused damage on private property, what is the halakha? Rabbi Zeira said to him, employing terminology from the halakhot of Shabbat: If there is no act of lifting here, is there an act of placing here? Since the animal propelled the pebbles in the public domain, the owner is exempt from liability for any damage that it causes. The fact that the damage occurred on private property is not relevant.

[80] Rabbi Yirmeya raised an objection to Rabbi Zeira's first statement, that one is exempt from liability for one's animal propelling pebbles in the public domain because it is classified as a subcategory of Trampling, from a baraita: If an animal was walking along the way and it propelled pebbles, whether it was on private property and whether it was in the public domain, the owner is liable to pay damages. What, is it not a case where the pebbles were propelled in the public domain and caused damage in the public domain? Rabbi Zeira replied: No, the reference is to a case where the animal propelled the pebbles in the public domain and caused damage on private property. Rabbi Yirmeya asked him: But didn't you say: If there is no act of lifting here, is there an act of placing here? Rabbi Zeira said to him: I retract my previous statement, as there is proof from the baraita that there is liability in that case.

[81] Rabbi Yirmeya raised an objection to Rabbi Zeira's first statement from the mishna: If an animal trod upon a vessel and broke it and then a shard of that vessel fell upon a second vessel and broke it, the owner pays the full cost of the damage for the first vessel, as its action is classified under the primary category of Trampling, and he pays half the cost of the damage for the latter vessel. And it is taught in a baraita with regard to this halakha: In what case is this statement said? It is said in a case where the incident transpired on the private property of the injured party; but if it transpired in the public domain, the owner of the animal is exempt from liability for the first vessel, as it is classified as a subcategory of Trampling, and he is liable for the damage to the second vessel. What, is it not that the animal propelled the pebbles in the public domain and it caused damage in the public domain, indicating that one does not pay for damage caused by pebbles in the public domain?

[82] Rabbi Zeira replied: No, perhaps the reference in the mishna is to a case where the animal propelled the pebbles in the public domain and it caused damage on private property. Rabbi Yirmeya said: But didn’t you say: If there is no act of lifting here, is there an act of placing here? Rabbi Zeira said to him: I retract my previous statement.

[83] Rabbi Yirmeya raises an additional objection to Rabbi Zeira’s statement: Is that so? Is the owner of the animal exempt from liability for pebbles propelled by his animal in the public domain?

[84] But doesn’t Rabbi Yoḥanan say: Payment of half the cost of the damage is not differentiated between private and public domains, as there is no exemption from payment neither for damage on private property nor for damage in the public domain? What, is this principle not stated even in a case where the animal propelled pebbles in the public domain and caused damage in the public domain? Rabbi Zeira said to him: No, Rabbi Yoḥanan stated this principle in a case where the animal propelled pebbles in the public domain and caused damage on private property.

[85] Rabbi Yirmeya said to him: But didn’t you say: If there is no act of lifting here, is there an act of placing here? Rabbi Zeira said to him: I retract my previous statement. Or, if you wish, say instead: When Rabbi Yoḥanan said that payment of half the cost of the damage is not differentiated between private and public domains, and there is no exemption from payment neither for damage on private property nor for damage in the public domain, he said it only with regard to damage in the category of Goring, but not with regard to the case of propelled pebbles, for which one is exempt in the public domain.

[86] § The Gemara relates that Rabbi Yehuda Nesia and Rabbi Oshaya sat in the antechamber [akil’a] of Rabbi Yehuda Nesia. A matter emerged from among them and one of them raised a dilemma: If an animal swung its tail and thereby caused damage, what is the halakha? The other Sage said to him: Must the owner grasp its tail and walk to prevent the animal from causing damage? Since this is typical behavior for the animal, the owner should be exempt from liability. The Gemara asks: If so, with regard to damage in the category of Goring, too, let us say: Must the owner grasp its horn and walk to prevent the animal from causing damage? Nevertheless, the halakha is that the owner is liable for damage in the category of Goring.

[87] The Gemara rejects this: How can these cases be compared? Damage in the category of Goring is not caused in the course of the typical behavior of the animal. Consequently, the owner is required to prevent his animal from causing damage in that manner. This damage caused by the swinging of an animal’s tail is caused in the course of its typical behavior, and one cannot hold the owner responsible for an animal's normal behavior.

[88] The Gemara asks: And since that is its typical behavior, what is the dilemma that he raised? Obviously one has no liability for the damage caused by the typical behavior of his animal in the public domain. The Gemara answers: He raised a dilemma with regard to a case of excessive tail swinging; is excessive tail swinging considered typical behavior?

[89] Rav Eina raises a dilemma: If an animal swung its penis and caused damage, what is the halakha? The Gemara elaborates: Do we say just as it is with regard to Goring: Is it not so in a case of Goring that the animal’s inclination overcame it and caused it to gore? Here too, it is no different: The animal’s inclination overcame it and that is why it caused damage. Or perhaps the cases are different, as in the case of damage in the category of Goring the objective of its action is to cause damage,

whereas in this case the objective of its action is not to cause damage. The Gemara concludes: This dilemma shall stand unresolved.

90 § The mishna teaches: Chickens are deemed forewarned with regard to walking in their typical manner and breaking objects. If there was a string tied to a chicken's leg and it broke a vessel, or if the chicken was hopping in an atypical manner and breaking vessels, its owner pays half the cost of the damage. Rav Huna says: They taught that one pays half the cost of the damage only in a case where the string was tied to the leg of the chicken on its own, i.e., a string became entangled on the leg of a chicken without the involvement of the owner and an item was broken by the string; but if a person tied the string to the chicken, he is liable to pay the full cost of the damage, as the string is in the category of Pit.

91 The Gemara asks: If the string was tied on its own, who is liable to pay half the cost of the damage? If we say it is the owner of the string who pays, as the damage was caused by the string, what are the circumstances? If it is a case where the owner of the string concealed the string in a secure place and the chicken became entangled in it, the owner of the string is a victim of circumstances beyond his control and would be exempt from payment. And if he did not conceal it and instead left it exposed where it could become entangled in the feet of a passing chicken, he is negligent and liable as though he actually tied the string to the chicken.

92 Rather, the case in the mishna is one where the owner of the string concealed it and is exempt from liability, and Rav Huna means that the owner of the chicken is liable. Here too, the question arises: What is different in this case where one is not obligated to pay the full cost of the damage, as it is written (Exodus 21:33): "If a man shall open a pit, or if a man shall dig a pit and not cover it, and an ox or a donkey fall therein," he pays the damage, and it is not written: If an ox shall open a pit. This indicates that if an ox opens a pit, the owner of the ox is exempt from liability. With regard to the payment of half the cost of the damage as well, the owner should be exempt from liability, as it is written: "If a man shall open a pit," and it is not written: If an ox shall open a pit.

93 Rather, the case in the mishna is one where the chicken moved the string and thereby caused damage. Since the chicken did not cause damage with its body, the owner pays half the cost of the damage, as he does in a case of pebbles. And when Rav Huna's distinction between whether the string was tied on its own or by a person was stated, it was stated in a general sense, and not with regard to the halakha in the mishna. With regard to an ownerless string tied to the leg of a chicken, Rav Huna says: If the string was tied to the leg of the chicken on its own, the owner of the chicken is exempt; but if a person tied the string to the chicken, he is liable to pay the full cost of the damage.

94 The Gemara asks: Due to what primary category of damage is he liable? Rav Huna bar Manoaḥ says: He is liable due to the fact that although the string is not stationary, as in the standard obstacle in the primary category of Pit, this is an example of his pit that is rolled at the feet of a person and at the hooves of an animal, and that too is a subcategory of Pit.

95 MISHNA: Within the context of the primary category of Eating, for what damage caused with the tooth is an animal deemed forewarned? It is deemed forewarned with regard to eating food items fit for its consumption. The domesticated animal is deemed forewarned with regard to eating fruits and vegetables. If the animal ate garments or vessels, the owner pays half the cost of the damage. As these are not items fit for its consumption, the animal is not deemed forewarned in this case. In what case is this statement applied, that one pays the full value of the food eaten by the animal? It is a case

where the animal ate the food on the property of the injured party; but if the animal ate food in the public domain, the owner of the animal is exempt from liability.

96 And even if the animal ate food in the public domain, if the animal derives benefit from eating another’s produce in the public domain, the owner pays for the benefit that it derives, just not for the full cost of the food.

97 Under what circumstances does the owner of the animal pay for the benefit that it derives? If the animal ate produce in the public square in the area before the storefronts, the owner of the animal pays for the benefit that it derives. If the animal ate from food placed at the side of the public square, which is not a public thoroughfare, the owner of the animal pays for what it damaged, as the legal status of that area is like that of the property of the injured party. If the animal ate produce from the entrance of the store, its owner pays for the benefit that it derives, as the status of a store entrance is like that of the public domain. If the animal ate produce from inside the store, its owner pays for what it damaged.

98 GEMARA: The Sages taught: Eating is deemed forewarned in that an animal tends to eat that which is fit for it to eat. How is this applied? In the case of a domesticated animal that entered the courtyard of the injured party and it ate food fit for it to eat, or if it drank drinks fit for it to drink, the owner of the animal must pay the full cost of the damage. And similarly, in the case of an undomesticated animal that entered the courtyard of the injured party and tore apart a domesticated animal and ate its meat there, the owner must pay the full cost of the damage.

99 And in the case of a cow that ate barley, although this is not normally a food that a cow would eat, or in the case of a donkey that ate vetches, i.e., legumes which are usually fed to cows but not to donkeys, or in the case of a dog that licked oil or a pig that ate meat, the owner of the animal must pay the full cost of the damage. Although these animals do not ordinarily consume these items, doing so is not a significant deviation from the animal’s typical behavior. Rav Pappa said: Now that you said that eating anything that is not typical for an animal to eat but it eats it under duress is considered an ordinary act of eating, it can be deduced that in the case of a cat that eats dates or a donkey that is eating fish, the owner must pay the full cost of the damage, despite the fact that these animals do not ordinarily eat these items.

100 The Gemara relates: There was a certain donkey that ate bread and while eating it also broke the basket in which the bread was stored. Rav Yehuda obligated the owner to pay the full cost of the damage for the loss of the bread and half the cost of the damage to the basket. The Gemara asks: But why? Since it is typical for a donkey to eat bread, it is also typical for it to break the basket in which the bread is stored; therefore, the owner should pay the full cost of the damage for the basket as well. The Gemara answers: This case is one where the donkey ate the bread and then afterward broke the basket, a sequence which demonstrates that its intent was to cause damage. The breaking of the basket is therefore a subcategory of Goring, and the owner is liable to pay only half the cost of the damage.

101 The Gemara asks: But is it typical for a donkey to eat bread? The Gemara raises a contradiction against this based on a baraita: If it ate bread or meat or a cooked dish, its owner must pay for half the cost of the damage. What, is it not referring to a domesticated animal and thereby implying that it is not typical for a domesticated animal to eat bread? The Gemara rejects this: No, it is discussing an undomesticated animal, which does not typically eat bread, but a domesticated animal does eat bread.

[102] The Gemara questions this explanation: If the baraita is discussing an undomesticated animal, then it is typical for it to eat meat. The Gemara clarifies: The baraita is referring meat that is roasted, and it is not typical for an undomesticated animal to eat roasted meat. Or, if you wish, say instead that the halakha of the baraita is not stated with regard to an undomesticated predator, but with regard to a deer, which does not ordinarily eat meat and bread. Or, if you wish, say that actually it is discussing a domesticated animal, but it is discussing a case where the animal ate at the table, and this is not typical behavior for an animal.

[103] The Gemara relates: There was a certain goat that saw a turnip on top of a clay barrel [dedanna]. It climbed and went up and ate the turnip, and in doing so it broke the barrel. Rava obligated the owner of the goat to pay the full cost of the damage, both for the turnip and for the barrel. The Gemara explains: What is the reason that he held the owner fully liable for the clay barrel as well as for the turnip? After all, breaking barrels is not the typical behavior of a goat. The Gemara answers: Since it is typical for the goat to eat the turnip, it is also typical for it to climb and go up in order to get it. Consequently, breaking the vessel is categorized as Eating.

[104] § Ilfa says: If a domesticated animal was in the public domain, and it stretched out its neck and ate from a sack of produce that was loaded on the back of another animal, its owner is liable to pay the full cost of the damage. The Gemara asks: What is the reason for this? The Gemara explains: The back of the other animal is considered like the courtyard of the injured party, and for this reason the owner of the animal is liable for damage classified as Eating there.

[105] The Gemara suggests: Let us say that the following baraita supports his opinion (Tosefta 1:7): If a person was standing in the public domain, and his basket containing food was slung behind his back, and an animal stretched out its neck and ate from it, its owner is liable. The Gemara rejects this: This baraita does not support Ilfa’s opinion, because one could explain that the case in that baraita is as Rava says in a different situation: The ruling is stated with regard to a jumping animal; here also it can be suggested that the ruling of the baraita is stated with regard to a jumping animal, and since the animal engaged in atypical behavior it is classified as a case of Goring as opposed to a case of Eating. For damage classified as Goring, the owner of the animal is liable for his animal’s actions in the public domain, although he pays only half the cost of the damage.

[106] The Gemara asks: And where, i.e., in what context, was Rava’s interpretation initially stated? The Gemara answers: It was stated with regard to that which Rabbi Oshaya says: If a domesticated animal was walking along and eating in the public domain its owner is exempt, but if it was standing and eating he is liable. The Gemara questions this ruling: What is different if it was walking? Is it because eating while walking is the typical behavior of an animal? But standing and eating is also typical behavior. Rava says: Rabbi Oshaya’s ruling is stated with regard to a jumping animal, which is not typical behavior for the animal.

[107] § Rabbi Zeira raises a dilemma: If an animal was rolling, what is the halakha? The Gemara asks: What are the circumstances of the case about which Rabbi Zeira inquires? The Gemara answers: For example, if there was a sheaf of grain on private property, and it was rolled along by the animal and the sheaf went from the private property into the public domain, and the animal ate it there, what is the halakha? Should this be treated as a case of Eating on private property, rendering the owner of the animal liable, or should it be treated as a case of Eating in the public domain, thereby exempting him from liability?

[108] The Gemara suggests: Come and hear a solution from a baraita, as Rabbi Ḥiyya taught: If a load of food was located partly inside the property of its owner and partly outside of his property, i.e., in the public domain, and an animal ate inside the private property, its owner is liable, as this is a case of damage classified as Eating on the property of the injured party. But if the animal ate outside, its owner is exempt, in accordance with the halakhot of Eating in the public domain. What, is it not that the case is one where the food was rolling along, and the halakha follows the location where it was actually eaten? The Gemara explains: No, say instead: It ate, and for that which was initially inside the private property, its owner is liable even if the food rolled out of the private property, and for that which was initially outside, its owner is exempt.

[109] If you wish, say instead that there is a different resolution: When Rabbi Ḥiyya stated his ruling it was with regard to a long stalk of fodder [de'aspasta] that was partly inside and partly outside at the time it was consumed, and as the animal ate it the entire stalk was pulled to where the animal was standing.

[110] § The mishna teaches: If the animal ate garments or vessels, the owner must pay for half the cost of the damage. In what case is this statement said? It is said when the animal ate them while located on the property of the injured party, but if he ate them in the public domain the owner of the animal is exempt from liability.

[111] The Gemara asks: To which case is this referring? In which case is one exempt from liability if the damage occurred in the public domain? Rav said: It is referring to all of the cases. One is exempt from liability in the public domain even if his animal ate garments or vessels, despite the fact that this is an unusual thing for the animal to do and therefore eating garments or vessels should be classified as a case of Goring, which would normally result in liability when it occurs in the public domain. What is the reason for this? Rav answers his own question by stating a principle: With regard to anyone who deviates from normative behavior in his actions, if another came along afterward and deviates from the norm with regard to the action the first has done and thereby causes damage to him, the one who causes the damage is exempt from liability. In this case, the injured party left his garments or vessels in the public domain and thereby deviated from normative behavior, and therefore the owner of the animal that acted atypically and ate them is exempt from liability.

[112] And Shmuel said: They taught in the mishna that one is exempt from liability for damage caused in the public domain only in a case where his animal ate fruit or vegetables, in accordance with the halakhot of Eating in the public domain, but if the animal ate garments or vessels in the public domain, the owner is liable to pay for half the cost of the damage. Since this is atypical animal behavior, it is classified as a case of Goring, for which the owner of the animal is liable even if it occurs in the public domain.

[113] And similarly, Reish Lakish said, in accordance with the opinion of Rav: The exemption discussed in the mishna was said in reference to all of the cases. And Reish Lakish follows his own line of reasoning, as Reish Lakish says: If there were two cows in the public domain, one prone and one walking, and the walking cow kicked the prone cow, its owner is exempt from liability; but if the prone cow kicked the walking cow, its owner is liable. This indicates that Reish Lakish accepts the principle: Anyone who deviates from normative behavior, if another came along afterward and deviates from the norm with regard to the action the first has done and thereby causes damage to

him, the one who causes the damage is exempt. Since it is atypical behavior for a cow to lie down in the public domain, even if the walking cow also behaved atypically and kicked the prone cow, its owner is exempt from liability.

[114] And Rabbi Yoḥanan says, in accordance with the opinion of Shmuel: They taught in the mishna that one is exempt from liability in the public domain only if his animal ate fruit or vegetables, but if the animal ate garments or vessels, the owner is liable to pay for half the cost of the damage.

[115] The Gemara asks: Shall we say that Rabbi Yoḥanan does not accept Reish Lakish's opinion even in the case of the two cows? The Gemara rejects this suggestion: No, actually it is possible that Rabbi Yoḥanan accepts the opinion of Reish Lakish, but he distinguishes between the cases. In the case of garments, it is common for people to put their cloaks down in the public domain in order to rest [umitpeḥi], and this is not considered atypical behavior. But it is not common for an animal to lie down in the public domain, and since this animal behaved in an atypical manner, no liability is borne by the owner of the walking cow for engaging in atypical behavior and kicking the prone cow.

[116] § The mishna teaches: And if the animal derives benefit from eating another's produce in the public domain, although the owner is exempt from paying for the damage it caused, nevertheless the owner of the animal pays for the benefit that it derives. The Gemara asks: And how much is this payment, i.e., how is it calculated? Rabba says: It is the value of, i.e., the amount one would pay, for an equal quantity of stalks of hay or straw. This is because the owner can claim that had his animal not eaten the produce, he would have fed it inexpensive straw, so the animal's benefit is limited to the cost of the straw that it would have eaten. Rava says: If the animal ate barley, his owner must pay the value of the barley, i.e., as that is typical animal food, but based on the cheapest price available in the market.

[117] The Gemara notes: It is taught in a baraita in accordance with the opinion of Rabba and it is taught in a different baraita in accordance with the opinion of Rava. It is taught in a baraita in accordance with the opinion of Rabba: Rabbi Shimon ben Yoḥai said: The animal's owner pays only the value of stalks of straw.

[118] It is taught in a baraita in accordance with the opinion of Rava (Tosefta 1:7): If the animal derived benefit from eating another's produce, the owner of the animal pays for the benefit that it derived. How so? If the animal ate one kav or two kav of grain, we do not say that he should pay their value. Rather, the court estimates how much a person would pay in order to feed his animal typical food fit for it to eat, even if this particular animal does not usually eat that food, as its owner gives it cheaper food. Therefore, if the animal ate barley, which is typical animal fare, even though it does not usually do so, its owner must pay compensation for the barley that was eaten, at its cheapest market price. Therefore, if the animal ate wheat or another item that is detrimental to it, so that it did not derive any benefit, if this occurred in the public domain the owner is exempt from all liability.

[119] § In connection to the principle stated in the mishna, that if the animal derives benefit the owner of the animal pays for the benefit that it derived, the Gemara relates: Rav Ḥisda said to Rami bar Ḥama: You were not with us at night within our boundary when we raised dilemmas concerning exceptional matters. Rami bar Ḥama said to him: What are the exceptional matters you discussed? Rav Ḥisda said to him: With regard to one who resides in another's courtyard without his knowledge or permission, must he pay him rent for living there or does he not need to pay him rent?

120 The Gemara asks: What are the circumstances of this question? If we say that the case concerns a courtyard that does not stand to be rented out, i.e., if the squatter would not have lived there the owner would have kept it vacant, and the man squatting there is someone who would not have rented other living quarters because he has other lodgings available to him for free, then it is a case where this one, the squatter, does not derive benefit, and that one, the owner, does not suffer a loss; in that case certainly no payment is necessary. Rather, say that the discussion concerns a case of a courtyard that stands to be rented out, and the man squatting there would have rented other living quarters. If so, then this is a case where this one derives benefit and that one suffers a loss, and in that case he certainly must make payment. The dilemma was not with regard to either of these circumstances.

121 The Gemara explains: No, it is necessary to raise the dilemma in the case of a courtyard that does not stand to be rented out, but the man squatting there would have rented other living quarters had he not squatted in this property. What is the halakha in this case? Is the squatter legally able to say to the owner of the courtyard: What loss have I caused you, as you would not have rented it out anyway? Or perhaps the owner of the courtyard is legally able to say to the squatter:

122 You have derived benefit from my property, as by living there you saved the money you otherwise would have had to pay in order to rent out a different courtyard, and therefore you must pay me for the benefit you derived.

123 Rami bar Ḥama said to him: This dilemma is not new; rather, it is discussed in the mishna, and the mishna already provided a solution. Rav Ḥisda asked him: To which mishna are you referring? Rami bar Ḥama said to him: After you serve me, I will tell you. Rav Ḥisda took hold of Rami bar Ḥama's scarf [suderei] and folded it, as an act of service. Rami bar Ḥama then said to him: This is the mishna: If the animal derives benefit, the owner of the animal pays for the benefit that the animal derived. This demonstrates that one who derives benefit must pay for the benefit he derives, even if the injured party is not entitled to payment for his loss.

124 Rava said: How little does a man who has the assistance of his Lord have to worry or be concerned about the possibility that his opinion may not be accepted, as even though the dilemma that was raised is in fact not similar to the case in the mishna quoted by Rami bar Ḥama, Rav Ḥisda nevertheless accepted it from him. This case in the mishna, about the animal eating produce in the public domain, is where this one derives benefit and that one suffers a loss, and that case of the squatter living in the courtyard, is where this one derives benefit and that one does not suffer a loss.

125 The Gemara asks: And what does Rami bar Ḥama think? Why does he equate the two cases? The Gemara explains: He holds that if produce is left in the public domain without specification with regard to its ownership, it is assumed that the owner has rendered it ownerless. The owner does not expect to derive benefit from the produce, and therefore when the animal ate it he suffered no loss. Consequently, it is a case where this one derives benefit and that one does not suffer a loss, and it is comparable to the case of the squatter in the courtyard.

126 The Gemara attempts to cite conclusive evidence from another case: We learned in a mishna (Bava Batra 4b): If one's fields surround the fields of another on three sides, and he fenced in the first, the second, and the third field, thereby providing protection also to the other man's field, the court does not obligate the owner of the inner field to share in the costs of the fence, as he can claim that he does not derive benefit from it, since his field remains exposed on the fourth side. The Gemara infers: But this indicates that if his fields surrounded the inner field on all four sides, and the

owner of the outer fields fenced the field on the fourth side as well, the court does obligate the owner of the inner field to share in the expenses.

[127] The Gemara suggests: Conclude from the mishna that where this one derives benefit and that one does not suffer a loss, the one who derives benefit is obligated to pay for that benefit. In this case, the owner of the inner field benefits from the fence while the owner of the outer field does not suffer a loss, because in any event he would have needed to build those fences, and the owner of the inner field is obligated to share in the expense. The Gemara rejects this: It is different there because the owner of the outer field can say to the owner of the inner field: Your field caused me to have to build the fence with a larger circumference than I would have otherwise needed to had your field not been there, and therefore your field caused me an additional expense. This case is therefore similar to those where this one derives benefit and that one suffers a loss.

[128] The Gemara attempts another resolution: Come and hear a proof from the continuation of that mishna. Rabbi Yosei said: If the owner of the surrounded, i.e., inner, field arose and enclosed the fourth side on his own, the court imposes upon him the obligation to pay his share of all of it, as through his actions he demonstrated that he was interested in having the fence installed. The Gemara infers from this: The reason the court imposes upon him the obligation to pay his share of all of it is because the owner of the surrounded field arose and enclosed the fourth side himself. By inference, had the owner of the surrounding field built the fourth fence, the owner of the inner field would be exempt.

[129] The Gemara suggests: Conclude from the mishna that where this one derives benefit and that one does not suffer a loss, the one who derives benefit is exempt. The Gemara rejects this: It is different there because the owner of the inner field can say to the owner of the surrounding fields: For me, the protection of a fence worth a dinar would have been sufficient; I did not wish to pay for such an expensive fence.

[130] The Gemara attempts another resolution: Come and hear a proof from a mishna (Bava Metzia 117a): If a house and its upper story, which belonged to two separate people, collapsed, necessitating that the entire structure be rebuilt, and the owner of the upper story told the owner of the lower story of the house to build the lower story again so that he could rebuild the upper story, but the owner of the lower story does not want to do so, the owner of the upper story may build the lower story of the house and live in it until the owner of the lower story will pay him for his expenses, and only then will he be required to vacate the lower story of the house and build the upper story.

[131] The Gemara infers: It is all of his expenses that the owner of the lower story of the house is obligated to pay him, and he does not subtract from the amount compensation for rent for the time that the owner of the upper story lived in the lower story of the house. Conclude from the mishna that where this one derives benefit and that one does not suffer a loss, the one who derives benefit is exempt, as the owner of the upper story derived benefit from living in the lower story, while the owner of the lower story did not suffer a loss, since he said he did not need it. The Gemara rejects this proof: It is different there because the lower story of the house is subjugated to the upper story, because it also serves as the foundation of the upper story, and therefore the owner of the lower story of the house is obligated to provide lodging to the owner of the upper story in the interim.

[132] The Gemara attempts another resolution. Come and hear a proof from the continuation of the mishna, in which Rabbi Yehuda disagrees with the first tanna and holds that the owner of the upper

story may not reside in the lower story of the house without payment. Rabbi Yehuda says: A proof that the owner of the upper story must pay rent is from the halakha that even this one who resides in another’s courtyard without his knowledge must pay him rent. Conclude from the mishna that when this one derives benefit and that one does not suffer a loss, the one who derives benefit is obligated to pay. The Gemara rejects this: It is different there, as there it is possible to claim that the owner of the lower story suffers a loss due to the blackening of the walls, as when a person lives in a home, the value of the house depreciates due to the use.

[133] This dilemma was not successfully resolved so they sent it to the academy of Rabbi Ami to ask his opinion. Rabbi Ami said: And what did this squatter do to the owner? What loss did he cause him? How did he damage him? Rav Ami holds that if this one derives benefit and that one does not suffer a loss, no payment is necessary. When asked about this dilemma, Rabbi Ḥiyya bar Abba said: Let us consider the matter. After waiting and not receiving a response they sent the question to Rabbi Ḥiyya bar Abba again. He said: They keep sending me this dilemma; had I found a response to their question, would I not have sent them a reply? They should have realized that Rabbi Ḥiyya bar Abba did not have an answer for them.

[134] It was stated that the amora’im discussed this matter: Rav Kahana says that Rabbi Yoḥanan says: He need not pay him rent, and Rabbi Abbahu says that Rabbi Yoḥanan says: He must pay him rent.

[135] Rav Pappa said: This statement of Rabbi Abbahu, citing Rabbi Yoḥanan, was not stated explicitly; rather, it was stated from an inference that Rabbi Abbahu drew from something that Rabbi Yoḥanan said in a different context. As we learned in a mishna (Me’ila 5:4): If the treasurer of consecrated property took for himself a stone or a cross beam that had been consecrated, he has not violated the prohibition of misuse of consecrated property. This is because his act of taking the stone or the beam has not effectively removed it from within the jurisdiction of Temple property, as any item under his control is in the possession of the Temple treasury.

[136] If the treasurer gave it to another as a gift, he has then misused consecrated property, as he removed it from the possession of the Temple and conveyed it into the possession of another. But the other man, who received the item, has not misused a consecrated item until he actually uses the item. If the treasurer himself built it into his house, he has not violated the prohibition of misuse of consecrated property until he has lived beneath it for an amount of time worth one peruta.

[137] And Shmuel said: And this is the halakha provided that he placed it over the skylight, as were he to have built it into the actual structure of the house, he would have violated the prohibition of misuse with the very act of construction, as by doing so he effects a change in the stone itself. By contrast, when he places the stone in a place from which it is easy to remove it and give it back, then as long as he has not lived beneath it, he has not, as yet, misused consecrated property.

[138] And Rabbi Abbahu sat before Rabbi Yoḥanan and was saying in the name of Shmuel: That is to say, one who resides in another’s courtyard without his knowledge must pay him rent, similar to the treasurer who resides beneath the consecrated beam without detracting from the value of the beam in any way but has nevertheless violated the prohibition of misuse since he has derived personal benefit from it. And Rabbi Yoḥanan remained silent and offered him no reply.

[139] Rabbi Abbahu thought that since he was silent, this must mean he concedes to his conclusion, and therefore, from then on he would cite this opinion in the name of Rabbi Yoḥanan. But that is not so. The reason Rabbi Yoḥanan was silent was because he did not pay attention to Rabbi Abbahu and

did not bother to contradict his opinion on the issue. In truth Rabbi Yoḥanan’s opinion is as was reported in his name by Rav Kahana, that a squatter living on someone else’s premises without his permission and without causing him any loss does not need to pay the owner any rent.

[140] The Gemara explains the distinction between that case and the case of the consecrated stone or beam. The reason the treasurer of consecrated property is considered to have misused consecrated property by deriving benefit from it is in accordance with the statement of Rabba, as Rabba says: Consecrated property from which one derived benefit without the Temple treasury’s knowledge

[141] is similar to an action involving non-sacred property belonging to an ordinary person, which was performed with the owner’s knowledge and against his wishes. This is because consecrated property belongs to the Almighty, and it is therefore meaningless to speak of a situation where the owner is unaware of what is being done. Consequently, anyone who derives benefit from consecrated property is in violation of the prohibition of misuse, but it cannot be inferred from this that one who resides in another’s courtyard without his knowledge must pay him rent.

[142] Rabbi Abba bar Zavda sent a message to Mari bar Mar saying: Raise the following dilemma before Rav Huna: Does one who resides in another’s courtyard without his knowledge need to pay him rent or not? In the meantime, before he was able to respond to the question, Rav Huna died.

[143] Rabba, son of Rav Huna, said to him in response to the question that was asked of his father: So did my father, my Master, say in the name of Rav: He does not need to pay him rent. And he also stated another halakha: One who rents a house from Reuven must pay rent to Shimon. The Gemara is puzzled: Shimon? What does he have to do with this? The Gemara explains: This is what he is saying, i.e., what he means: If it is discovered that the house he rented did not actually belong to Reuven but rather it was Shimon’s, he must pay rent to Shimon.

[144] The Gemara questions this statement: Did Rav Huna state two contradictory halakhot? On the one hand he says that one who resides in a courtyard without the owner’s knowledge does not need to pay rent, but on the other hand he says that if it is discovered that the true owner of a rented house was someone else, and therefore the tenant was living in another’s courtyard without the owner’s knowledge, he is obligated to pay him rent. The Gemara resolves the difficulty: This second halakha, which stated that he is obligated to pay rent, is referring to a courtyard that stands to be rented out, while that halakha, which stated that he is not obligated to pay rent, is referring to a courtyard that does not stand to be rented out.

[145] It was also stated: Rabbi Ḥiyya bar Avin says that Rav says, and some say that Rabbi Ḥiyya bar Avin says that Rav Huna says: One who resides in another’s courtyard without his knowledge does not need to pay him rent, and one who rents a house from the residents of the city must pay rent to the owners. The Gemara is puzzled: Owners? What do they have to do with this? The case concerns one who rents a property from the residents of the city, i.e., the house is public property. The Gemara explains: This is what he said: If it is discovered that the house did have owners and was not public property, the renters must pay rent to those owners.

[146] The Gemara wonders about this: Did he state two contradictory halakhot? The Gemara answers: This second halakha, which stated that he is obligated to pay rent, is referring to a courtyard that stands to be rented out, while that halakha, which stated that he does not need to pay rent, is referring to a courtyard that does not stand to be rented out.

147 Rav Seḥora says that Rav Huna says that Rav says: One who resides in another’s courtyard without his knowledge does not need to pay him rent because it is stated: “Desolation remains in the city, and the gate is stricken unto ruin” (Isaiah 24:12), i.e., a house that is not lived in will collapse at some point due to neglect. Consequently, one who lives inside an otherwise uninhabited house is providing a service to the homeowner, as he maintains the house and prevents it from falling apart. Mar bar Rav Ashi said: I saw this ruin and it gores like an ox, i.e., it is devastating. Rav Yosef stated a similar idea: A home that is lived in is settled and safeguarded, while a home that is not lived in has no one to look after it and maintain it.

148 The Gemara asks: What is the difference between what Rav said and what Rav Yosef said? The Gemara answers: The difference between them is with regard to a house that the homeowner uses to store wood and straw. The house is not empty and desolate but there is nobody living in it. According to Rav Yosef’s reasoning, a squatter there would not have to pay rent to the homeowner.

149 The Gemara relates: There was a certain man who built a mansion [apadna] on a garbage heap [akilkalta] belonging to orphans, and Rav Naḥman confiscated his mansion from him as he did not pay the owners of the property. The Gemara asks: Shall we say that Rav Naḥman holds that one who resides in another’s courtyard without his knowledge must pay him rent? The Gemara rejects this: No, there is no proof taken from this case, because it was a unique situation. In that case Carmanians, nomadic tribes, were initially living on the property, and they would pay the orphans a small amount for the use of the land, and when this man built his mansion he removed the Carmanians from there. Rav Naḥman had said to the man who built the mansion: Go and appease the orphans with regard to their lost income, but he did not pay attention to the ruling. Therefore, Rav Naḥman confiscated his mansion from him.

150 § The mishna teaches: Under what circumstances does the owner of the animal pay for the benefit that his animal derived? If the animal ate produce in the public square in the area before the storefronts, the owner of the animal pays for the food from which it benefits. If the animal ate from food placed at the side of the public square, which is not a public thoroughfare, the owner of the animal pays for what it damaged, as the legal status of that area is like that of the property of the injured party. Rav said: When the mishna says that the owner of the animal pays for what it damaged, it is referring to a case where the animal turns its head to reach the food but the animal itself is standing completely inside the public domain and it eats while standing there. And Shmuel said: Even if it is standing in the public domain and it turns its head to eat from food placed at the side of the public square, its owner is also exempt, as the animal itself is in the public domain.

151 The Gemara asks: But according to the opinion of Shmuel, how can you find a case in which the owner is liable to pay for all of the damage caused when his animal ate from food placed at the side of the public square, as indicated by the mishna? The Gemara answers: For example, when an animal leaves the public square and goes and stands at the side of the public square, and eats the food stored there. In that case its owner certainly pays for what it damaged, as this area is comparable to the property of the injured party.

152 And there are those who teach this halakha as an independent dispute and not as an explanation of the mishna: If an animal is standing in the public domain and turns its head to eat from food placed at the side of the public square, Rav says: Its owner is liable, and Shmuel says: Its owner is exempt. The Sages asked: But according to the opinion of Shmuel, with regard to that which was

said in the mishna, that its owner pays for what it damaged, how can you find a case in which its owner will be liable? The Gemara answers: For example, when an animal leaves the public square and goes and stands at the side of the public square, and eats the food stored there.

153 Rav Naḥman bar Yitzḥak raises an objection to this explanation of Rav's opinion: The mishna says that if the animal ate produce from the entrance of the store, its owner pays for the benefit that the animal derived, as the status of a store entrance is like that of the public domain. How can you find these circumstances? It is obvious that the discussion in this case concerns an animal that turns its head from the public domain to the entrance of the store, and the Master says that the owner of the animal pays for the benefit that the animal derived. Evidently, for the benefit that the animal derived, yes, this is what the owner pays, but he does not pay for that which it damaged.

154 Rav Naḥman bar Yitzḥak raised the objection, and he resolved it by explaining that the case in the mishna is one where a store is located on a corner and it is situated in a way that some of the produce there would be in an animal's path as it turns the corner, and therefore the animal would not need to turn its head away from the public domain in order to eat the produce.

155 There are those who state a different explanation of the dispute between Rav and Shmuel. In a case where it turns its head to eat from the sides of the public square, everyone agrees that its owner is liable to pay the full cost of the damage. When they disagree it is with regard to a case where one allocates space from his property, as he does not have a use for it, and he adds this space to the public domain by leaving it accessible for the public to use, and the damage took place in that area. The dispute is about whether the area is categorized as private property or the public domain.

156 And this is what was stated, meaning this was their dispute: Rav says that in the mishna, they taught that one is liable only in a case where his animal turns its head to the sides of the public square, as this area is categorized as private property, but if one allocated some space from his property and added it to the public domain and the damage happened there, the owner is exempt, as that area is treated as part of the public domain. And Shmuel says: Even if he allocates space from his property and adds it to the public domain, the owner of the animal is liable as the damage took place in an area with the legal status of private property.

157 The Gemara suggests: Shall we say they disagree with regard to the question of damage classified as Pit that one dug inside one's own domain and then declared the area ownerless? Rav, who says that the owner of the animal is exempt for eating the produce placed in an area that the owner added to the public domain, holds that if one digs a pit or creates an obstacle that can cause damage within his own property and he then declares his property to be ownerless, he is liable for any damage that is caused by the pit, as now that it is in the public domain, he bears the responsibility for it. Similarly, the produce is viewed as if it is in the public domain, and the animal's owner is exempt.

158 And Shmuel, who says that the owner of an animal is liable for eating the produce placed in an area that the owner added to the public domain, holds that if one digs a pit within his own property and he then declares his property to be ownerless, he is exempt, as he dug the pit when the property was his. Similarly, the produce is viewed as if it is in the property of the injured party, and the animal's owner is liable.

159 The Gemara rejects this: Rav could have said to you: Actually, I will say to you

[160] that usually, if one digs a pit within his own property and he then declares his property to be ownerless, he is exempt, as he dug the pit when the property was his. But here it is different, because here the owner of the animal can say to the owner of the produce: It is not all in your power to bring your produce close to the public domain and to also hold my ox liable for eating it.

[161] And Shmuel can say: Usually, if one digs a pit or creates an obstacle that can cause damage within his own property and he then declares his property to be ownerless, he is liable for any damage that is caused by the pit. As with regard to the pit, granted, it is possible to say that he was not aware, meaning the injured party was not thinking about the possibility that there may be a pit there that could cause him harm, and therefore the one who dug the pit is liable. But with regard to produce that is spread out over the ground, can it be said that the animal was not aware of it? It cannot be, because the animal sees the produce.

[162] The Gemara suggests: Let us say that actually, the amoraic dispute about an animal that turns its head and eats produce at the side of the road is the subject of a dispute between tanna'im. As it is taught in a baraita: If an animal ate produce from the public square, the owner of the animal pays for the benefit that the animal derived; but if it ate from the sides of the public square, he pays for that which it damaged. This is the statement of Rabbi Meir and Rabbi Yehuda. But Rabbi Yosei and Rabbi Elazar say: It is not typical for an animal to eat in the public domain but only to walk there. Consequently, the owner is liable.

[163] Initially, the Gemara understands Rabbi Yosei's opinion as also referring to a situation in which the animal eats from the sides of the public square, and since this is so, it seems that the opinion of Rabbi Yosei is the same as that of the first tanna, Rabbi Meir, and the mishna presents their opinions as differing. Rather, it is clear that there is a difference between them with regard to a case in which the animal turns its head to eat. The first tanna holds that with regard to an animal that turns its head, the owner of the animal also pays for the benefit that the animal derived, while Rabbi Yosei holds that he pays for that which it damaged.

[164] The Gemara rejects this: No, it is possible to say that everyone agrees about the halakha in the case of an animal that turns its head, either in accordance with the opinion of Rav or in accordance with the opinion of Shmuel. And here they disagree about the exemption inferred from the verse: "It consumed in the field of another" (Exodus 22:4), which renders the owner of an animal liable for damage classified as Eating. One Sage, Rabbi Meir, holds that only if it ate from private property is its owner liable, as the verse stating the owner's liability means: "And it consumed in the field of another," but not when it eats in the public domain. And one Sage, Rabbi Yosei, holds it means that even if it ate from the public domain its owner is liable, as the verse stating the owner's liability means: "And it consumed in the field of another," but not when it eats in the domain of the one responsible for the damage; only if the animal ate produce of another that was on the property of the animal's owner, is its owner exempt.

[165] The Gemara challenges this: But not when it eats in the domain of the one responsible for the damage? What is the novelty in this statement? Let the owner of the animal say to the owner of the produce: What is your produce doing on my property? The owner would certainly not be liable if the produce is damaged in that case. Rather, it must be that the difference between them is with regard to the dispute between Ilfa and Rabbi Oshaya concerning an animal that ate produce from the back of another animal or the like. Rabbi Meir holds that one is never liable for damage classified as Eating

in the public domain, even if his animal ate from the back of another, and Rabbi Yosei holds that if it ate off the back of another animal, this is equivalent to Eating from the property of the injured party.

166 MISHNA: With regard to a dog or a goat that jumped from a rooftop and broke vessels while doing so, their owners must pay the full cost of the damage to the vessels because these animals are deemed forewarned concerning to jumping. With regard to a dog that took a cake that had been baked directly on hot coals, and went to a stack of grain to eat it, and it ate the cake and at the same time ignited the stack of grain with a coal that it had taken along with the cake, the owner of the dog must pay the full cost of the damage for the cake, and he must pay for half the cost of the damage to the stack of grain.

167 GEMARA: The Gemara infers from the mishna: The reason the owners must pay the full cost of the damage is because the animals jumped off the rooftop. This indicates that if they fell off the roof, they would be exempt from all liability despite his obligation to keep them from climbing onto the roof and jumping down from there. Apparently, the tanna holds that in an incident that begins with negligence, meaning carelessness or even an intention to cause damage, and ends in an accident, the one who caused the damage is exempt, as in this case the owner was careless in allowing the animals to go to the rooftop, but since they did not jump off the roof but rather fell accidentally, he is exempt.

168 The Gemara notes: This is also taught in a baraita: If a dog or a goat jumped from a rooftop and broke vessels while doing so, their owners must pay the full cost of the damage. If they fell from there, they are exempt from all liability. The Gemara asks: This works out well according to the one who says that if an incident begins with negligence and ends in an accident, the one who caused the damage is exempt, but according to the one who says that in such a case he is liable, what can be said? It seems that this baraita constitutes conclusive proof against that opinion.

169 The Gemara answers: The case in the baraita is a case where the vessels were brought close to the wall by their owners, so that when the animals jump off the rooftop in an ordinary leap they do not fall on top of them, and the vessels broke because the animal fell and didn’t jump. And since in an ordinary circumstance no damage should occur, this case does not even begin with negligence. Since the damage was caused by falling, the entire case is ruled an accident.

170 Rav Zevid said in the name of Rava: Sometimes one can be obligated to pay even in a case where the animals fell from the wall of their owner’s house. You find such a case where the wall was unstable, and the owner was negligent in allowing the animals to go up to the roof due to the danger of the wall collapsing. The Gemara asks: What is the reason for this? Is it because it should have occurred to him that bricks may fall from the wall and break the vessels? But ultimately, no bricks fell and instead the animals fell, so this is actually a case that begins with negligence and ends in an accident. The Gemara answers: No, it is necessary to state this halakha with regard to a case of a narrow wall, in which case it is clear that if they climb up there they will fall, and that is why he is liable for the damage they cause by falling.

171 The Sages taught in a baraita: If a dog or a goat jumped from below to something that was above them and thereby caused damage, their owners are exempt, as this is atypical behavior. But if they jumped from above to below, their owners are liable to pay the full cost of any damage they cause, as this is typical behavior. If a person or a chicken jumped and broke something, regardless of whether they jumped from above to below or from below to above, they are liable.

[172] The Gemara asks: But isn’t it taught in a baraita: If a dog or a goat jumped, regardless of whether they jumped from above to below or from below to above, their owners are exempt from all liability? Rav Pappa interpreted it in the following way: Their manners of movement were changed from the typical manner of movement for their species. The dog moved by leaping [bizkira], while the goat moved by climbing [bisrikha]. The Gemara asks: If that is so, why are the owners exempt from liability? After all, they still caused damage. The Gemara answers: The baraita does not intend to say that they are completely exempt, but that they are exempt from paying the full cost of the damage; they are, however, liable to pay half the cost of the damage, as is the halakha in any case of damage caused by atypical behavior, as such acts are classified as Goring.

[173] § The mishna teaches: With regard to a dog that took a cake that had been baked directly on hot coals, and went to a stack of grain to eat it, and it ate the cake and at the same time ignited the stack of grain with a coal that it had taken along with the cake, the owner of the dog must pay the full cost of the damage for the cake, and he must pay for half the cost of the damage to the stack of grain.

[174] With regard to damage caused by a fire lit by one person spreading to a location other than where it was lit, the Gemara cites a dispute among the amora’im: It was stated: Rabbi Yoḥanan says: His liability for damage caused by his fire is due to its similarity to his arrows, meaning that damage caused by a fire in a location other than where it was lit is comparable to damage caused by an arrow shot at a distant target. And Reish Lakish says: His liability for the damage caused by his fire is due to its similarity to his property; he is responsible for this damage just as he is responsible for damage caused elsewhere by any of his possessions, e.g., one of his animals.

[175] The Gemara asks: And what is the reason that Reish Lakish did not state his opinion in accordance with the opinion of Rabbi Yoḥanan? The Gemara answers: He could have said to you that fire is not comparable to an arrow, as an arrow proceeds as a result of his direct force, while this fire does not proceed as a result of his direct force, but requires a wind to carry it from the location where it was lit to the location of the damage. The Gemara asks about the other opinion: And what is the reason that Rabbi Yoḥanan did not state his opinion in accordance with the opinion of Reish Lakish? The Gemara answers: He could have said to you that one’s fire is not comparable to his possessions, as property is a tangible substance but this fire is not a tangible substance.

[176] The Gemara attempts to settle the dispute: We learned in the mishna: With regard to a dog that took a cake that had been baked directly on hot coals, and went to a stack of grain to eat it, and it ate the cake and at the same time ignited the stack of grain with a coal that it had taken along with the cake, the owner of the dog must pay the full cost of the damage for the cake, and he must pay for half the cost of the damage to the stack of grain. Granted, according to the one who says that one’s liability for damage caused by his fire is due to its similarity to his arrows, this fire is similar to the arrows of the dog, and therefore he must pay for half the cost of the damage caused by the dog’s force, as in a case of pebbles.

[177] But according to the one who says that one’s liability for damage caused by his fire is due to its similarity to his property, this fire is not the property of the owner of the dog; rather, it is the property of the owner of the cake, so why is the owner of the dog liable?

[178] The Gemara answers: Reish Lakish could have said to you: With what are we dealing here? We are dealing with a case where the dog took the coal and did not place the cake on the stack, rather it threw it onto the stack. The ruling of the mishna is: For the cake which the dog ate, the owner must

pay the full cost of the damage, and for the specific spot on the stack of grain that was damaged by the throwing of the coal there, the owner must pay for half the cost of the damage as in a case of pebbles. And for the stack of grain as a whole, he is exempt, because his liability for damage caused by the spread of the fire is due to its similarity to his property, and in this case it was not his property.

179 But Rabbi Yoḥanan can explain the mishna in a more straightforward manner. It is discussing a case where the dog placed the cake with the coal directly on the stack of grain in order to eat the cake. Accordingly, the owner of the dog must pay the full cost of the damage for the cake and for the specific spot where the coal was put down, as these cases of damage were caused directly by the dog. And for the rest of the stack of grain, he must pay for half the cost of the damage, because in Rabbi Yoḥanan's opinion one is liable for the damage caused by fire due to its similarity to arrows shot by his force. The damage to the rest of the stack of grain is an indirect result of the dog's force, and therefore his liability is according the halakhot of pebbles.

180 The Gemara suggests: Come and hear a proof from a mishna (62b): In the case of a camel that was laden with flax and was passing through the public domain, and its flax extended into a store at the edge of the public domain, and the flax caught fire from a lamp in the store belonging to the storekeeper, and as a result of the burning flax the camel set fire to the building together with all its contents, the owner of the camel is liable for the damage. But if the storekeeper placed his lamp outside in the public domain, thereby causing the flax on the camel to catch fire, and consequently the building was set on fire, the storekeeper is liable. Rabbi Yehuda says: In a case where the lamp placed outside was a Hanukkah lamp, the storekeeper is exempt from liability, as there is a mitzva to place a Hanukkah lamp outside.

181 Granted, according to the one who says that one's liability for the damage caused by his fire is due to its similarity to his arrows, the fire in the store is similar to the arrows of the camel, and that is why the camel's owner is liable. But according to the one who says that liability for the damage is due to its similarity to his property, this fire is not the property of the owner of the camel. The Gemara answers: Reish Lakish could have said to you: With what are we dealing here? We are dealing with a case where the camel moved the burning flax around and ignited the entire building, lighting one spot after another. The fire did not need to spread since the camel directly set the building on fire in each of those spots, and therefore this case is comparable to that of a dog who moved the coal around from place to place.

182 The Gemara asks: If that is so, say the latter clause of the mishna: If the storekeeper placed his lamp outside, the storekeeper is liable. And if the case is one where the camel ignited the entire building, spot by spot, why is the storekeeper liable? His fire did not spread through the building; it was the camel that moved it around from one place to another. The Gemara answers: The case is one where the camel did not move around, but rather stood still, but since there was an extremely large load of flax on its back, once it caught fire it ignited the entire building simultaneously.

183 The Gemara asks: If the camel stood without moving from place to place, but did shift the load on its back and thereby ignited the entire building, all the more so it should be that the storekeeper should be exempt from any liability and the owner of the camel should be liable, as it was his responsibility to move the camel away from there. Rav Huna bar Manoah said in the name of Rav Ika: With what are we dealing here? We are dealing with a case where the camel stood still in order

to urinate and while doing so set the building ablaze; in that case the incident is deemed an accident as the owner could not have moved the camel from the spot.

184 Consequently, in the first clause, the owner of the camel is liable, as he should not have overloaded the camel with flax to such a degree that it extended out so far from the sides that it could catch fire and ignite the store. But in the latter clause, the storekeeper is liable, as he should not have placed the lamp outside.

185 The Gemara attempts again to resolve the dispute: Come and hear a mishna (61b): With regard to one who ignites a stack of grain, and there was a goat tied to the stack, and there was also a Canaanite slave adjacent to it who was not tied to it, and both the goat and the slave were burned together with the stack of grain and killed, the one who ignited the fire is liable to pay compensation for both the stack and the goat, but he is exempt from paying for the slave because the slave should have run from the fire. Conversely, if the slave was tied to the stack and there was a goat adjacent to it that was not tied to it, and the slave and the goat were burned together with the stack of grain, the one who ignited the fire is completely exempt from payment for damage because he is liable to receive capital punishment for murder, and he is punished only for the greater transgression.

186 The Gemara clarifies: Granted, according to the one who says that one's liability for the damage caused by his fire is due to its similarity to his arrows, due to that reasoning he is exempt for the damage to the stack of grain in the second case, because it is as if he killed the slave with his arrows and consequently became subject to receive court-imposed capital punishment, and one who is subject to the death penalty is not liable to pay monetary compensation for the same act, as he receives the greater punishment of the two. But according to the one who says that liability for damage caused by his fire is due to its similarity to his property, why is he exempt? If his ox, which is his possession, were to kill a slave, would he also not be liable to pay for the damage?

187 The Gemara answers: Rabbi Shimon ben Lakish could have said to you: With what are we dealing here? We are dealing with a case where he lit the body of the slave on fire, consequently becoming subject to the death penalty as would anyone who kills a slave, and therefore he receives the greater punishment, the death penalty, but he does not also have to pay for the damage.

188 The Gemara asks: If that is so, what is the purpose of stating this; what novel idea is it supposed to teach? One who lit a slave on fire is most certainly a murderer, and a murderer is exempt from paying for damage caused while committing the murder. The Gemara answers: No, it is necessary to state this halakha for the case where the goat belonged to one person and the slave belonged to a different person; in that case one might have thought that since payment is due to someone other than the owner of the murdered slave, he would be required to pay the owner of the goat, despite being subject to the death penalty for killing the slave. Therefore, this mishna teaches that since he committed one act, for which he is liable to receive the death penalty, he is exempt from paying compensation to anyone as a result of that act.

189 The Gemara attempts another resolution: Come and hear a mishna (59b): One who sends a fire, i.e., places a burning object, in the hand of a deaf-mute, an imbecile, or a minor is exempt for any damage later caused by the fire according to human laws but liable according to the laws of Heaven, meaning that he would not be held liable in court, but nevertheless he remains responsible to pay for what he has done.

[190] The Gemara clarifies: Granted, according to the one who says that one's liability for the damage caused by his fire is due to its similarity to his arrows, this case is similar to the damage caused by the arrows of a deaf-mute or an imbecile or a minor, and this is why the one who gave them the fire is exempt from liability. But according to the one who says that one's liability for the damage caused by his fire is due to its similarity to his property, if he were to convey his ox to a deaf-mute, an imbecile, or a minor, would he also not be liable? That is impossible, as there is an explicit statement in a baraita (10a) saying that he would be liable.

[191] The Gemara answers: But it was stated already about this that Reish Lakish says in the name of Ḥizkiyya: They taught that one is exempt from the damage caused by a fire that he had entrusted in the care of a deaf-mute, an imbecile, or a minor only in a case where he conveyed a coal to him and the deaf-mute fanned the coal into a flame, which then caused damage. But if he conveyed an open flame to him and it caused damage, the one who gave him the flame is liable. What is the reason for this? This is because the damage is self-evident, i.e., it is clear that damage will ensue, and it is as if he placed a goring ox under his care. Therefore, if one's liability for damage classified as Fire is due to its similarity to damage caused by one's property, he would be liable in this case.

[192] And Rabbi Yoḥanan, who holds that one's liability for damage caused by fire is due to its similarity to one's arrows, says that he is exempt even if he conveyed an open flame to him, because he holds that it is the deaf-mute's handling of the flame that causes the blaze, and it is therefore not similar to a case of arrows shot; the one who conveys a fire to the deaf-mute does not become liable for the damage until he hands the deaf-mute chopped wood, kindling chips, and a lamp, as in that case, the damage that will ensue is self-evident and it is as if he started the blaze himself.

[193] Rava said: A verse and a baraita both support Rabbi Yoḥanan's opinion. The verse supporting his opinion is as it is written: "If fire breaks out" (Exodus 22:5), indicating that the fire breaks out on its own; yet the verse continues, "the one who ignited the fire shall pay," indicating that the fire was ignited by a person. Conclude from the verse that one's liability for the damage caused by his fire is due to its similarity to damage caused by his arrows, as the resolution of the apparent inconsistency in the verse is that it relates to the individual as if he had himself started the blaze, and that is why he is obligated to pay for the damage.

[194] The baraita supporting his opinion is as it is taught: The verse concerning liability for a fire opened

[195] with a reference to damage caused by one's possessions, as it is written: "If fire breaks out," indicating that his responsibility for the fire is the same as his responsibility for any of his possessions that cause damage, and it concludes with a reference to damage caused by one's body, as the verse refers to the person by calling him "the one who ignited the fire," telling you that his liability for the damage caused by his fire is due to its similarity to his arrows.

[196] Rava said that Abaye raised a difficulty: According to the one who says that one's liability for the damage caused by his fire is due to its similarity to his arrows, how can you find that the Merciful One exempted one from liability for concealed items damaged by a fire? If one caused damage by shooting an arrow, he would be equally liable for damaging both exposed and concealed items. Consequently, if one's liability for the damage caused by his fire is due to its similarity to his arrows, he should similarly be liable for concealed items damaged by a fire.

[197] And it was satisfactory for him, i.e., Abaye resolved the difficulty. He explained that the exemption from liability for concealed items damaged by a fire applies in a case where a fire broke out in that same courtyard, and afterward the fence separating this courtyard from the neighbor's courtyard collapsed, but not due to the fire, and therefore the fire spread and ignited items and caused damage in another courtyard. In such a circumstance he would be exempt because there, in this case, it is as if his arrows were depleted, i.e., he bears responsibility for the fire that he had started, which initially was confined to his courtyard alone. The fire that spread to the neighboring courtyard is not similar to his arrows, and therefore he is exempt.

[198] The Gemara challenges this explanation: If that is so, he should be exempt not only with regard to concealed items but also with regard to exposed items that were damaged by the fire, as his arrows are also depleted when the fire spreads and causes damage. If his exemption is due to fact that the damage was caused because the wall that had separated the two courtyards had collapsed, there should be no distinction between exposed and concealed items.

[199] Rather, it must be that the one who holds that one's liability for the damage caused by his fire is due to its similarity to his arrows also holds that his liability is due to the fire's similarity to his property. Consequently, it remains possible for a circumstance to exist in which one will be exempt from liability for damaging concealed items and yet be held liable for exposed items. For example, if he had the ability to repair the breach and fence in the courtyard again but he did not fence it in, he will be liable, as there, it is similar to a case where his ox was in danger of escaping from his property and he did not strike it in its face to hold it back, and therefore he is liable for any ensuing damage. In this case, however, the fire is not similar to his arrows since it was not responsible for the collapse of the fence, and therefore he is exempt from damage caused to concealed items, according to the halakhot of Fire.

[200] The Gemara asks: But according to this conclusion, since the one who holds that one's liability for the damage caused by his fire is due to its similarity to his arrows also holds that his liability is due to its similarity to his property, what is the difference between the opinions of Rabbi Yoḥanan and Reish Lakish?

[201] The Gemara answers: The practical difference between them is with regard to holding him liable for the additional four types of indemnity in a case where the fire injured a person. In such an instance Rabbi Yoḥanan would require, in addition to the costs of the damage itself, payments for pain, medical costs, loss of livelihood, and humiliation, as in any case of personal injury, given that Rabbi Yoḥanan considers Fire to be no different than an arrow he had shot at the injured party.

[202] § The mishna teaches that he must pay the full cost of the damage for the cake the dog ate but must pay for only half the cost of the damage to the burned stack of grain. The Gemara elucidates: Who is the one obligated to pay for the cake? The owner of the dog. The Gemara challenges this: But why not let the owner of the coal also be liable, as he shares some of the responsibility, being that he did not safeguard his coal and it ultimately caused damage? The Gemara answers: The case under discussion is one where the owner of the coal safeguarded his coal properly.

[203] The Gemara asks: If the case is one where he safeguarded his coal properly, what does the dog want, i.e., what is it doing there? If the dog was able to get in there, it cannot be that the owner of the coal safeguarded it properly. The Gemara answers: The case is one where the dog burrowed under the fence, entered the property, and took the cake and the coal. Rav Mari, son of Rav Kahana, said:

That is to say that ordinary doors are deemed vulnerable to being burrowed under by a dog because if it would be atypical for a dog to burrow under the door, the owner of the dog would be exempt from payment. Therefore, it must be that it is typical behavior for a dog to burrow beneath a door, and therefore it was incumbent upon the owner of the door to prevent it from causing damage.

[204] The Gemara asks: Where did it eat the cake? If we say that it ate it after placing it on a stack of grain belonging to another, i.e., someone other than the owner of the cake, then he should not be liable for the damage to the cake under the halakhot of Eating, as in order to hold someone liable we require fulfillment of scenario described in the verse: "And it consumed in the field of another" (Exodus 22:4), meaning that an act of damage classified as Eating must be caused on the property of the injured party, and that is not the case in this instance. The Gemara answers: No, it is necessary only in the case where the dog ate the cake after placing it on a stack of grain owned by the owner of the cake, and that is why the dog's owner is liable, as it ate it while on the property of the injured party.

[205] § The Gemara suggests: From here it is possible to resolve a dilemma and prove that the mouth of a cow

[206] is like the courtyard of the injured party, i.e., it is not a separate domain from the place in which the animal is eating. As if the mouth of the animal were to be considered like the courtyard of the one responsible for the damage, let the owner of the dog say to the injured party: What is your bread doing in my dog's mouth? The dog's mouth is my domain, and I am not liable for damage classified as Eating done to your property in my domain.

[207] The Gemara notes: The need for this type of inference arises from the fact that a dilemma was raised before the Sages: Is the mouth of a cow like the courtyard of the injured party, or is it like the courtyard of the one responsible for the damage, i.e., the owner of the cow?

[208] The Gemara asks: But if you say that the mouth of the cow is like the courtyard of the one responsible for the damage, how can you find a case of damage classified as Eating for which the Merciful One holds the owner of the animal liable? The halakha is that one must pay for damage classified as Eating only if it occurred on the property of the injured party. If the mouth of an animal is deemed the domain of the animal's owner, damage caused by an animal eating would always take place in the domain of the animal's owner and he would therefore be exempt from liability in every case.

[209] Rav Mari, son of Rav Kahana, said: It is possible to describe a case of Eating that would render the animal's owner liable according to the one who holds that the mouth of a cow is like the domain of its owner, for example, if the cow rubbed up against a wall for its pleasure and broke it, or if the cow soiled produce for its own pleasure. Any action in which an animal engages for its own pleasure is classified as Eating, and if the animal causes damage thereby within the domain belonging to the injured party, its owner will be held liable since nothing has entered the mouth of the animal.

[210] Mar Zutra objects to these examples of Eating: But in order to create liability under the halakhot of Eating, I require fulfillment of the verse: "As consumes the tooth until it be all gone" (I Kings 14:10), meaning that the damaged item must be completely destroyed or consumed, and here that is not the case, as the stones of the broken wall and the soiled produce have not been destroyed. To answer Mar Zutra's question, Ravina said: It is possible for a cow to cause complete destruction by rubbing against a wall, e.g., a cow that completely erases any decorative images that were adorning

the wall. Rav Ashi said: It is possible for cow to cause complete destruction by soiling produce, e.g., a cow that trods on the produce and crushes it, thereby totally eradicating it. Consequently, the initial question about the status of the cow's mouth remains.

[211] The Gemara suggests: Come and hear a resolution from a baraita: If he incited a dog against another person, or if he incited a snake against another person, he is exempt (Sanhedrin 66b). The Gemara clarifies: Who is exempt? The one who incited the dog is exempt, but the owner of the dog is liable. And if you say that the mouth of the animal is like the courtyard of the one liable for the damage, let the owner of the dog say to the injured party: What does your hand want, i.e., what is it doing, in my dog's mouth, which is my domain?

[212] The Gemara answers: The mishna could be understood a different way. Say that even the one who incited the dog is exempt, as the dog is not his property, but the dog owner is also exempt because his dog's mouth has a legal status similar to that of the dog owner's courtyard. And if you wish, say instead that the case under discussion is one where the dog extended his canine teeth and scratched the victim, but the victim's hand was not inside his mouth, and therefore this incident cannot be treated as if it took place in the domain of the owner of the dog.

[213] The Gemara suggests: Come and hear a solution based on the continuation of the above mishna: If one caused the snake to bite a person by bringing the fangs of the snake to the victim's body, and the snake killed him, Rabbi Yehuda deems the one who instigated the attack liable to receive the death penalty and the Rabbis exempt him.

[214] And Rav Aḥa bar Ya'akov says in explanation of the dispute: When you analyze the matter you will find that according to the statement of Rabbi Yehuda, the venom of a snake is deemed to be constantly present between its fangs, and therefore when the snake is made to strike the victim it is not actively engaged in any action. Consequently, the person handling the snake is liable, similar to one who strikes a victim with a sword, while the snake itself is exempt as it has not done anything. And according to the statement of the Rabbis, the venom of a snake is not present between its fangs but rather the snake must secrete it of its own volition. Consequently, the snake receives the penalty of stoning like any animal that kills a person, while the one who instigated the attack and striking with it is exempt.

[215] And if you say that the mouth of the cow is like the courtyard of the one responsible for the damage, let the owner of the snake metaphorically say to the injured party: What is your hand doing in my snake's mouth? The Gemara answers: We do not say this principle with regard to matters relating to the death penalty; therefore, one who kills another is always liable, regardless of whether it occurred within the domain of the killer or within the domain of the victim.

[216] And from where do you say this? As it is taught in a baraita (Tosefta 5:13): With regard to one who enters the courtyard of a property owner without his permission, and the property owner's ox gores the intruder and he dies, the ox receives the penalty of stoning while the owner is exempt from having to pay ransom.

[217] The Gemara clarifies: What is the reason that the owner is exempt from paying ransom? He is exempt because he can metaphorically say to the victim: What do you want in my domain, i.e., why were you there without permission? Since he entered the premises without authorization, he bears responsibility for his own fate. But if that is so, the same applies to his ox as well, and let the owner of the ox say to the victim: What do you want in my domain? Rather, it must be that we do not say

that this principle applies with regard to matters relating to the death penalty. Consequently, these cases do not prove that the mouth of the cow is like the courtyard of the victim within the scope of the halakhot of damages.

218 § The Gemara relates: There were these goats, belonging to the Tarbu family, that would frequently damage Rav Yosef's property. Rav Yosef said to Abaye: Go and tell their owners that they must keep their goats enclosed within their own property. Abaye said to Rav Yosef in response: Why should I go? If I go and deliver this message, they will say to me: Let the Master put a fence up around his property so that the goats will not be able to get in there.

219 The Gemara questions this claim: And if an individual did put up a fence to safeguard his property from the Eating of other animals because he was required to do so, and had he not done so the owners of those animals would not be liable to pay for the damage caused by their animals, how can you find damage classified as Eating for which the Merciful One holds the owner of the animal liable? As, if it is the responsibility of the injured party to fence in his property, animals will not be able to get inside. The Gemara answers: A case in which the Torah holds the owner of the animal liable can be explained as one where the animal burrowed under the fence. Alternatively, it could be explained as a case where the separating fence collapsed in middle of the night and the owner of the fence did not have the opportunity to repair it before the animals caused damage.

220 The Gemara comments: Rav Yosef, and some say it was Rabba, would announce: Those that ascend to Eretz Yisrael from Babylonia, bringing with them the rulings of the Babylonian Sages, as well as those that descend to Babylonia from Eretz Yisrael, bringing the rulings of the sages of Eretz Yisrael with them, all agree to the following halakha: With regard to these goats that loiter in the market until they are slaughtered and in the meantime cause damage to others, we warn their owner two or three times. If the owner of the goats heeds the warning and safeguards his animals from damaging others, then he heeds it and no further action is necessary. But if not, we say to him: Go, sit next to the butcher shop and take your money, meaning we instruct him to slaughter his goats immediately. Since he in any event intends to slaughter them, the court can force him to do so immediately. Otherwise, he cannot be forced to slaughter them as a preventive measure.

221 MISHNA: Which type of ox is deemed innocuous and which is deemed forewarned? An ox is deemed forewarned in any case where witnesses testified about it that it gored on three different days. And it reverts back to its previous innocuous status from when it reverses its behavior and refrains from goring for three consecutive days; this is the statement of Rabbi Yehuda. Rabbi Meir says: It is deemed forewarned in any case where witnesses testified that it gored three times, regardless of the number of days on which this behavior occurred. And it reverts back to its previous innocuous status in any case where children pet it and play with it and it does not gore them.

222 GEMARA: The Gemara asks: What is the reason for the opinion of Rabbi Yehuda that an ox is deemed forewarned only if it gored on three separate days? Abaye said: It states in the verse: "Or if it is known that the ox was a goring ox from yesterday and the day before yesterday, and its owner has not secured it" (Exodus 21:36). This leads to the following inference: "Yesterday" indicates one day, "from yesterday" indicates two days, "the day before yesterday" indicates three days, "and its owner has not secured it"; here we arrive at a fourth incident of goring, for which the owner pays the full amount of damages.

223 Rava said: “Yesterday” and “from yesterday” are not to be expounded separately. Rather, the inference from this phrase is that “from yesterday” indicates one day, “the day before yesterday” indicates two days, “and its owner has not secured it” indicates now, the third incident of goring, as it is liable as a forewarned animal for the third goring.

224 The Gemara asks: And what is the reason for the opinion of Rabbi Meir, who does not determine the forewarned status of an ox by the number of days on which the animal gored but simply by the number of times? As it is taught in a baraita that Rabbi Meir said:

225 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 that its owner is liable? They said to Rabbi Meir: The halakha with regard to a woman who experiences a discharge of uterine blood after her menstrual period [zava] will prove that your a fortiori inference is invalid: If her sightings occur at intervals, i.e., if she sees a flow of uterine blood on three consecutive days, she becomes ritually impure; while if her sightings were consecutive, for example if all three occurred on the same day, she remains pure.

226 Rabbi Meir said to them: The case of the zava does not disprove my opinion, because the verse states in reference to the parallel halakha of a man who experiences a gonorrhea-like discharge [zav]: “And this shall be his ritual impurity when he has a discharge” (Leviticus 15:3). The word “this” emphasizes that in this matter the halakha requires following the instructions of the verse precisely as they were recorded, and in this case the verse associates the impurity of the zav with the number of sightings of discharges the man observed, and it associates the impurity of the zava with the number of days during which she experienced sightings of blood, as it says: “Many days” (Leviticus 15:25). By contrast, with regard to the goring ox, the a fortiori inference remains in place.

227 The Gemara asks about this interpretation: From where is it determined that this additional phrase: “And this,” serves to exclude a zava from having her status determined by individual sightings of blood, associating it instead with the number of days on which she experienced bleeding? Say instead that it serves to exclude the zav from having his status determined by sightings on separate days, indicating that he will be rendered a zav only if he experienced three discharges on a single day and not on separate days. The Gemara answers: The verse states elsewhere: “And one who has a discharge, whether it be a man or a woman” (Leviticus 15:33). The verse juxtaposes the ritual impurity of a male to that of a female to teach that just as the female’s ritual impurity is caused by sightings on multiple days, so too the ritual impurity of a male can be caused by sightings on multiple days.

228 The Gemara asks: The derivation from the verse could just as easily lead to the opposite conclusion. But let him compare the female to the male; just as a male becomes ritually impure based on the number of sightings, even if they all occur on the same day, so too should a female become ritually impure based on the number of sightings, even on the same day. The Gemara answers: But the Merciful One excluded this possibility by making use of the term “and this.”

229 The Gemara asks: And what did you see to make you exclude associating the ritual impurity of women with the number of sightings, rather than excluding associating the ritual impurity of men with the number of days? The Gemara answers: It stands to reason that this is so, as the context of the verse deals with sightings, and therefore an additional phrase serves to exclude sightings, but can you say that in a context where it deals with sightings it excludes days? The exclusionary term “and this” appears in the section discussing the halakhot of the zav, in the context of which it mentions

sightings and not days, and therefore when it excludes something from these halakhot and limits them to specific cases, it will exclude it from being associated with sightings.

230 The Gemara returns to the subject of classifying an ox as innocuous or forewarned: The Sages taught in a baraita: Which type of ox is deemed forewarned? Any animal about which witnesses testified that it gored on three days is forewarned. And it reverts to its former innocuous status if children pet it and nevertheless it does not gore; this is the statement of Rabbi Yosei. Rabbi Shimon says: A forewarned ox is any ox about which witnesses testified that it gored three times, and the Sages spoke about three days only with regard to reversals, meaning that in order for an ox to revert to innocuous status, the ox must refrain from goring on three separate days. Each of these additional views on this subject combine aspects of both of the opinions mentioned in the mishna, those of Rabbi Yehuda and those of Rabbi Meir.

231 Rav Naḥman says that Rav Adda bar Ahava says: The halakha is in accordance with the opinion of Rabbi Yehuda concerning the criteria for deeming an animal forewarned, as Rabbi Yosei concedes to his opinion on this issue, and the halakha is in accordance with the opinion of Rabbi Meir concerning the criteria for reverting the status of an animal to innocuous, as Rabbi Yosei concedes to his opinion on that issue.

232 Rava said to Rav Naḥman: And let the Master say the reverse, that the halakha is in accordance with the opinion of Rabbi Meir concerning the criteria for deeming an animal forewarned, as Rabbi Shimon concedes to his opinion on this issue and the halakha is in accordance with the opinion of Rabbi Yehuda concerning the criteria for reverting the status of an ox to innocuous, as Rabbi Shimon concedes to his opinion on that issue. Rav Naḥman replied to Rava: I hold in accordance with the opinion of Rabbi Yosei, as Rabbi Yosei’s analysis [nimmuko] is with him, i.e., it is sound.

233 A dilemma was raised before the Sages: The three days that the mishna teaches in the context of Rabbi Yehuda’s opinion with regard to the testimony needed to assign the status of forewarned to an ox, are they needed in order to render the ox forewarned, or are they needed in order to forewarn the man who owns the ox, to inform him that he needs to take precautions to keep it from causing further harm?

234 The Gemara asks: What is the practical difference between the two possibilities? The Gemara answers: The practical difference is in a case where three groups of witnesses came to the court on one day, each testifying about a separate instance of goring caused by the ox on three separate days. If you say that their testimony serves to render the ox forewarned by determining that it gored on three separate days, then in this case the animal has been classified as forewarned on the basis of their testimony. But if you say that their testimony serves to forewarn the man, the ox has not been classified as forewarned on the basis of this testimony since the owner heard all of the testimony on a single day. This enables him to say: It is only now that they testified against me; and therefore his ox will not be deemed forewarned until he has been issued warnings over the course of three separate days. What, then, is the solution to the dilemma raised above?

235 The Gemara suggests: Come and hear a solution from a baraita (Tosefta 2:3): An ox does not become forewarned until witnesses testify against it in the presence of its owner and in the presence of a court. If they testified against it in the presence of a court but not in the presence of its owner, or in the presence of its owner but not in the presence of a court, it does not become forewarned until they testify against it in the presence of a court and in the presence of its owner.

[236] Furthermore, if two witnesses testified against the ox concerning its first incident of goring, and two other witnesses testified against it concerning the second incident, and two other witnesses testified against it concerning the third incident, there are three separate testimonies here, but they are considered as one with regard to rendering their statements as conspiring testimony.

[237] Therefore, if the first set of witnesses is determined to be conspiring witnesses, there are two testimonies remaining here that claim that the ox gored, and the owner must pay for half the cost of the damage in each case. But the owner of the ox is exempt from having to pay the full cost of the damage, and the conspiring witnesses are exempt from paying the owner what he would have had to pay were their testimony accepted and his ox deemed forewarned, as they testified only concerning the first incident of goring, and the ox would not have been deemed forewarned on the basis of this testimony alone. And similarly, if the second set of witnesses was also determined to be conspiring witnesses, there is one testimony remaining here that claims that the ox gored, the third. At this point too, the owner of the ox is exempt from having to pay the full cost of the damage and the conspiring witnesses are exempt from having to pay the owner the full cost of the damage.

[238] If the third group of witnesses was also determined to be conspiring witnesses, all the witnesses become liable. The third group is liable to pay the owner of the animal the payment for half the cost of the damage they tried to make him pay for the third incident of goring, and all three groups must share in the payment of the other half of the damage for the final incident that they tried to charge him for by classifying his ox as forewarned. And concerning this it is stated: “And you shall do unto him as he had conspired to do unto his brother” (Deuteronomy 19:19).

[239] The Gemara clarifies: If you say that the purpose of the testimony is to render the ox forewarned, the halakha presented in this baraita works out well, as according to this opinion it can be said that all of the witnesses came on the same day at the behest of the alleged victim of the third incident, and therefore they were all certainly aware of each other’s testimony. Consequently, the first set of witnesses shares in the responsibility for the testimony of the last group, as they are all co-witnesses in the effort to have the ox rendered forewarned.

[240] But if you say that the witnesses came to forewarn the man, to caution him to safeguard his animal from causing harm, then they must have come on three separate days. And if so, let these first witnesses say: Did we know that after three days these other witnesses were going to come to testify about the animal? Therefore, it must be that the case in the baraita is one where the three groups of witnesses all came on the same day, and if that is so, the purpose of the testimony must be to render the ox forewarned.

[241] Rav Ashi said: I recited this halakha before Rav Kahana and he replied to me in response to this proof: And does it work out well to say that they are coming to render the ox forewarned? Even in a case where all of the witnesses arrive in court on the same day, let these last witnesses say: From where were we to know that all those standing in court came to testify about the ox? We came to make this person liable to pay for half the cost of the damage his animal allegedly caused, but we are not responsible for the attempt to make him pay the full cost of the damage for the third incident.

[242] The Gemara answers: It must be that the case concerns a situation where the different groups of witnesses were observed signaling to each other, and therefore it is clear that they were aware of each other’s testimony and that they came to the court for this purpose. Rav Ashi said: The case is one

where they all came in succession, one following the other, and therefore it is clear that the latter witnesses are aware of the former.

243 Ravina said: In this case the witnesses said that they were acquainted with the owner of the goring ox but they were not familiar with the ox itself. This indicates that they were coming to court to render the ox forewarned, as the witnesses are not able to identify the goring ox and they would not be able to hold its owner liable to pay for half the cost of the damage, as this payment is paid only from the proceeds of the sale of the animal. Therefore, the only purpose of their testimony would be to hold the owner liable to pay the full cost of the damage for the third incident, as this payment is made from the owner's superior-quality land.

244 The Gemara asks: But if they were not familiar with the ox, how could they render it forewarned? The Gemara answers: They said to the animal's owner: You have a goring ox among your cattle, and therefore you need to safeguard all of the cattle.

245 § A dilemma was raised before the Sages: In the case of one who incites another's dog against another, i.e., a third person, and he is injured, what is the halakha? The one who incited the animal against him is certainly exempt, since he did not cause the damage directly and neither did his property; but what is the halakha with regard to the owner of the dog? The Gemara explains the different sides of the question: Do we say that the owner of the dog can say to the injured party: What did I do to the dog? Or perhaps we say to him: Since you were aware that if others incite your dog it is prone to being affected by the incitement and attacking, you ought not to have kept it in your possession. Since you did, you are liable for the damage and the injuries it causes.

246 Rabbi Zeira said: Come and hear a solution from the baraita: And an ox reverts to its former innocuous status if children pet it and nevertheless it does not gore. It can be inferred from this that if it gores when the children pet it, the owner would be liable to pay for the damage. An ox that gores because children pet it can be likened to one that gores because it was incited to do so, and nevertheless the mishna holds the owner liable. Abaye said: Is it taught in the baraita that if it gored the owner is liable? Perhaps that is not what the baraita means. It merely means that if it gored it does not revert to innocuous status; but the owner is not liable for any of the damage caused by that goring because the children incited the animal to do so, and therefore nothing can be conclusively demonstrated from the baraita.

247 The Gemara attempts to prove this point from another source: Come and hear a solution from a mishna (Sanhedrin 76b): If one incited a dog against another person, or incited a snake against another person, he is exempt. What, is it not that the one who incited the dog against him is exempt, but the owner of the dog is liable? The Gemara rejects this: No, say that even the one who incited the animal against him is exempt, as well as the owner.

248 Rava said: Even if you say that one who incites the dog of another against yet another person is liable, nevertheless if he incited the dog against himself, i.e., the dog bit the one who was inciting it to attack, he is exempt. What is the reason for this? Due to the principle that with regard to anyone who deviates from normative behavior in his actions, if another came along afterward and deviates from the norm with regard to the action the first has done and thereby causes damage to him, the one who causes the damage is exempt from liability. Since this individual deviated from the normative behavior and incited the dog against himself, the owner of the dog is not responsible for any damage the dog causes to him as a result, although generally speaking any time a dog bites it is in and of

itself a deviation from its typical behavior and something for which its owner would normally be held liable.

249 Rav Pappa said to Rava: It was stated in the name of Reish Lakish in accordance with your opinion, that if anyone deviates from normative behavior in his actions, if another came along afterward and deviates from the norm with regard to the action the first has done and thereby causes damage to him, the one who causes the damage is exempt from liability. As Reish Lakish says: If there were two cows in the public domain, one prone in the street and the other one walking, if the walking cow kicked the prone cow, its owner is exempt from liability. But if the prone cow kicked the walking cow, its owner is liable. The rationale for this is that since it is typical behavior for cows to walk in the public domain and the prone cow deviated from this behavior, even if the walking cow also acted atypically and kicked the prone cow, the owner is exempt from liability.

250 Rava said back to Rav Pappa: That is not in accordance with my opinion, as I would have held the owner of the walking cow liable in that case, because in my opinion we say to him on behalf of the prone cow: It is true that you have the right to tread on me in the public domain but you do not have the right to kick me, and therefore Rava's and Reish Lakish's opinions are not exactly the same.

251 MISHNA: And what is the case of the ox that causes damage while on the property of the injured party, mentioned in an earlier mishna (15b) that listed animals that are forewarned? If the animal gored, pushed, bit, squatted upon, or kicked another animal in the public domain, the owner is liable to pay half the cost of the damage if the ox was innocuous, but if it acted while on the property of the injured party, Rabbi Tarfon says: He must pay the full cost of the damage, and the Rabbis say: He must pay half the cost of the damage, as in any other case classified as Goring.

252 Rabbi Tarfon said to the Rabbis: If in a place where the Torah was lenient with regard to damage classified as Eating and with regard to Trampling, specifically in the public domain, as the owner is exempt from liability, nevertheless the Torah was strict with regard to these forms of damage if they occurred on the property of the injured party, requiring him to pay the full cost of the damage, then in a place where the Torah was strict with regard to cases of damage classified as Goring, specifically in the public domain, requiring the owner to pay for half the cost of the damage, is it not right that we should be strict with regard to this form of damage if it occurs on the property of the injured party to likewise require the owner of the animal to pay the full cost of the damage?

253 The Rabbis said to him: Although there is an a fortiori inference being applied here, still it is sufficient for the conclusion that emerges from an a fortiori inference to be like its source, meaning that the halakha cannot be stricter with the inference than it is with the case that serves as the source of the inference. Therefore, just as one is liable to pay half the cost of the damage classified as Goring in the public domain, so too, for damage classified as Goring on the property of the injured party he is liable to pay only half the cost of the damage.

254 Rabbi Tarfon said to them: If that is your opinion, then I as well

255 will not derive an inference with regard to Goring from a different case of Goring. I will instead derive an inference with regard to Goring from Trampling: And if in a place where the Torah was lenient with regard to damage classified as Eating and Trampling, specifically in the public domain, as the owner is exempt from liability, nevertheless the Torah was strict with regard to damage classified as Goring, requiring him to pay half the cost of the damage, then in a place where the Torah was strict with regard to damage classified as Eating and Trampling, specifically on the

property of the injured party as the animal's owner is obligated to pay the full cost of the damage, is it not right that we should be equally strict with regard to damage classified as Goring and require payment of the full cost of the damage in this case as well?

256 The Rabbis said to him: Here as well, it is sufficient for the conclusion that emerges from an a fortiori inference to be like its source, and therefore, just as one is liable to pay half the cost of the damage classified as Goring in the public domain, so too, for damage classified as Goring on the property of the injured party he will be liable to pay only half the cost of the damage, as ultimately your inference still depends on the fact that for Goring in the public domain one pays half the cost of the damage.

257 GEMARA: And is it true that Rabbi Tarfon does not accept the principle of: It is sufficient for the conclusion that emerges from an a fortiori inference to be like its source? But that cannot be, as the principle that begins with: It is sufficient, is an aspect of Torah law, as it is taught in a baraita: The Sages said that one of the ways in which the Torah may be interpreted is by an a fortiori inference. How is this so? It is written (Numbers 12:14): "And the Lord said to Moses: If her father had but spit in her face, should she not hide in shame seven days? Let her be shut up seven days outside the camp, and after that she shall be brought in again," and therefore, using an a fortiori inference it can be derived that if the Divine Presence reprimanded her, she should hide in shame for fourteen days. Why was Miriam banished for only seven days? Rather, it is because it is sufficient for the conclusion that emerged from the a fortiori inference to be like the source of the inference. Consequently, this principle is mandated by the Torah itself.

258 The Gemara answers: When Rabbi Tarfon does not accept the principle: It is sufficient, it is where this principle completely refutes the a fortiori inference, leaving no halakha derived from it. But where it does not completely refute the a fortiori inference, Rabbi Tarfon accepts the principle: It is sufficient. Consequently, there, with regard to Miriam, the seven days during which she deserved to be banished from the camp due to the rebuke of the Divine Presence were not written, so the a fortiori inference came and brought those days plus additional days, adding up to a total of fourteen, and then the principle: It is sufficient, came and removed seven days and left seven days intact. Consequently, the a fortiori inference was effective with regard to the seven days during which she was banished from the camp.

259 But here, payment for half the cost of the damage is written explicitly in the Torah with regard to the halakha of Goring in the public domain, and the a fortiori inference comes and brings an additional payment for half the cost of the damage, forming a payment of the full cost of the damage. If you interpret the halakha employing the principle: It is sufficient, to reduce the payment to half the cost of the damage, this completely refutes the a fortiori inference, as no halakha would be derived from the inference; the initial payment for half the cost of the damage was written explicitly in the Torah. Consequently, in this case, Rabbi Tarfon does not employ the principle: It is sufficient.

260 The Gemara asks: And how do the Rabbis understand this matter? How do they respond to Rabbi Tarfon's reasoning? The Gemara answers: In their opinion, the seven days during which Miriam had to be banished due to the reprimand she received from the Divine Presence are in fact written in the Torah: "Let her be shut up seven days." This indicates that the a fortiori inference is not required to teach the halakha of the seven days she was banished, as it would have added only the extra seven

days. This means that according to the Rabbis, there is a source in the Torah that the principle: It is sufficient, is employed even when it refutes the a fortiori inference completely.

261 The Gemara asks: And what would Rabbi Tarfon say about that reasoning? The Gemara answers: He would say that this verse: “Let her be shut up seven days,” is necessary to teach us the basic fact that we interpret the halakha according to the principle: It is sufficient for the conclusion that emerges from an a fortiori inference to be like its source.

262 The Gemara asks: And what would the Rabbis say in response? The Gemara answers: They would point out that a different verse is written about Miriam: “And Miriam was shut up outside the camp seven days” (Numbers 12:15). The Gemara asks: And how would Rabbi Tarfon respond to that? The Gemara answers: That verse teaches that we interpret the halakha according to the principle: It is sufficient, even generally, and not only in this specific case. And this point is necessary so that you do not say: Here the principle: It is sufficient, is employed due to respect for Moses, but generally that is not done. This verse therefore teaches us that this is not so.

263 Rav Pappa said to Abaye: Is the fundamental principle: It is sufficient for the conclusion that emerges from an a fortiori inference to be like its source, actually accepted by all authorities? But there is this tanna, who does not interpret the halakha in accordance with the principle: It is sufficient, even though it is a case where the principle does not refute the a fortiori inference completely. As it is taught in a baraita: From where is it derived that the semen of a man who experiences a gonorrhea-like discharge [zav] imparts ritual impurity by someone carrying it as well as by coming into contact with it, just as the actual gonorrhea-like discharge does? It is a logical derivation from an a fortiori inference: Just as spittle, which is ritually pure when coming from a person who is ritually pure, is impure when coming from someone like a zav who is impure, is it not logical that semen, which is impure when coming from someone who is pure, should be impure when coming from someone who is impure?

264 And the tanna brings this derivation and applies it whether discussing ritual impurity imparted by contact or whether discussing impurity imparted by carrying. And why is this the case? Let us say: The a fortiori inference is effective in teaching that the semen of a zav imparts ritual impurity by contact alone, as is the halakha with regard to the semen of a pure man, and the principle: It is sufficient, is effective by limiting the scope of the a fortiori inference to exclude the semen of a zav from imparting ritual impurity by carrying. Since the tanna does not formulate his derivation in this manner, it appears that he rejects the principle: It is sufficient, in all situations.

265 And if you would say that the a fortiori inference was not necessary to teach that the seminal emission of the zav imparts ritual impurity by contact, as it is certainly no less impure than if it had come from a man who was pure, so the inference was necessary only to teach that the semen of a zav imparts impurity by carrying, this is not correct. In fact, it was necessary to teach this point, as it may enter your mind to say that since it is written in the verse: “If there be among you any man that is not clean because of something that happens to him by night” (Deuteronomy 23:11), this means that a seminal emission is ritually impure if it came from someone who had something happen to him, and this causes him to experience the emission, but the verse is excluding this zav, who did not have something happen to him to cause him to experience the emission, but rather another matter, i.e., his gonorrhea-like condition, caused him to experience the emission. Consequently, it teaches us that this is incorrect.

[266] Abaye responded: In the verse “something that happens to him by night,” is it also written: But not another matter? This limiting clause is not written in the verse, and therefore the halakha that the semen of a zav imparts ritual impurity by contact can be understood from the explicit verse in the Torah, and there is no need to derive it from an a fortiori inference. Therefore, the only function of the a fortiori inference is to teach the halakha that the semen of a zav imparts impurity by carrying. Applying the principle: It is sufficient, would refute the a fortiori inference completely, so there is no proof that the tanna would apply the principle in all circumstances.

[267] Once the Gemara raised the issue, it clarifies: And who is the tanna about whom you heard that he said: Semen of a zav imparts ritual impurity by carrying? It was not Rabbi Eliezer and not Rabbi Yehoshua. As we learned in a baraita: Semen of a zav imparts ritual impurity by contact but it does not impart ritual impurity by carrying; this is the statement of Rabbi Eliezer. And Rabbi Yehoshua says: It also imparts ritual impurity by carrying, as it is impossible for semen to emerge without small drops of gonorrhea-like discharge [ziva] accompanying it.

[268] Rabbi Yehoshua says there that the semen of a zav imparts ritual impurity by carrying only because it is impossible for semen to emerge without small drops of ziva accompanying it. This indicates that if not for this reason, the semen would not impart ritual impurity by carrying, according to the opinions of both Rabbi Yehoshua and Rabbi Eliezer. The Gemara explains: Rather, it must be that this tanna is the one who holds the opinion that the semen of a zav imparts ritual impurity by carrying, as we learned in a mishna listing the sources of ritual impurity (Kelim 1:3): Of a greater degree than the ritual impurities listed previously in the mishna, i.e., the impurity of a creeping animal, semen, and one who contracted ritual impurity from a corpse,

[269] are the ziva of a zav, and his spittle, and his semen, and his urine, and the blood of a menstruating woman, all of which impart impurity both by touching and by carrying.

[270] The Gemara questions this assertion: But perhaps here too the reason for the severity of ritual impurity of the semen is indeed because it is impossible for it to emerge without small drops of ziva accompanying it, but it is not due to the impurity of the semen itself. The Gemara rejects this opinion: If that would be so, let the tanna of the mishna teach it in the list of bodily fluids along with, meaning list it immediately following, his ziva. What is different about semen that he teaches it along with: His spittle? Rather, it is because its halakha comes from, i.e., it is derived from, that of his spittle, and therefore the semen itself imparts impurity by carrying, even if there would not be small drops of ziva accompanying it.

[271] The Gemara returns to the primary discussion concerning the principle: It is sufficient for the conclusion that emerges from an a fortiori inference to be like its source. Rav Aḥa of Difti said to Ravina: But there is this tanna who does not apply the principle: It is sufficient, at all, even though such application would not refute the entire a fortiori inference. As it is taught in a baraita: From where is it derived that a thick mat can contract ritual impurity from a corpse? It is a logical derivation based on an a fortiori inference: And just as small clay vessels, into which even a finger cannot be inserted because of their narrow opening and which remain ritually pure despite contact with a zav, nevertheless become impure if present under one roof with a corpse, then is it not right that a mat, which can become impure due to contact with a zav, will similarly become impure if present under one roof with a corpse?

[272] And the tanna cites this a fortiori inference both to derive the halakha that the mat becomes ritually impure with impurity that lasts until nightfall, as it would if it were to come into contact with a zav, and to derive that the mat becomes ritually impure with impurity that lasts for seven days, as would any vessel that contracted ritual impurity from a corpse. And why does he do so? Say instead that the a fortiori inference is effective in deriving the halakha that the mat can contract ritual impurity from a corpse, but only with regard to rendering it impure until nightfall, and also say that the principle: It is sufficient, is effective by limiting the scope of the a fortiori inference to exclude the possibility that the mat would be rendered impure for seven days.

[273] Ravina said to Rav Aḥa: This question was already raised by Rav Naḥman bar Zekharya to Abaye, and Abaye said to him in response: This tanna does not derive the halakha with regard to the mat through an a fortiori inference from the case of a zav. Rather, he derives it from the halakha of a mat that came into contact with the carcass of a creeping animal, and this is what he is saying: The first derivation is as follows: From where is it derived that a mat is susceptible to impurity imparted by the carcass of a creeping animal? And it is a logical derivation based on an a fortiori inference: And just as small vessels, which remain pure despite contact with a zav, nevertheless become impure from contact with the carcass of a creeping animal, is it not right that a mat, which becomes impure from the impurity of a zav, will likewise become impure from contact with the carcass of a creeping animal?

[274] The second derivation is as follows: But from where is it derived that a mat contracts impurity from a corpse? It is derived through a verbal analogy. With regard to impurity imparted by the carcass of a creeping animal, it is stated: “Or a garment or leather” (Leviticus 11:32), and with regard to impurity imparted by a corpse it is stated: “A garment, or anything made of leather” (Numbers 31:20). Just as with regard to the terms “garment” and “leather” stated with regard to a creeping animal, a mat becomes impure from it, so too with regard to the terms “garment” and “leather” stated with regard to a corpse, a mat becomes impure from it.

[275] The Gemara notes: It must be that the words “garment” and “leather” are free, i.e., those terms must be extraneous in their contexts, and the Torah included them for the express purpose of establishing the verbal analogy, as a verbal analogy that is based on otherwise extraneous terms cannot be logically refuted. Because if these terms are not free, the verbal analogy can be refuted: What is unique about a creeping animal? It is unique in that it renders items impure even by means of contact with a lentil-bulk of a creeping animal. Shall you also say that this is the case with regard to a corpse, whose halakhot are less strict in that it does not render items impure by means of contact with a lentil-bulk of a corpse but rather by means of contact with an olive-bulk? Unless the terms are free, the analogy can be refuted.

[276] The Gemara affirms: Indeed, the terms are free. The Gemara proves that the terms “garment” and “leather” are extraneous in their context. Now, since ritual impurity imparted by contact with a creeping animal is juxtaposed to ritual impurity imparted by contact with semen, as it is written: “And one who comes into contact with anyone impure with impurity imparted by a corpse, or a man from whom semen is emitted” (Leviticus 22:4), and juxtaposed to that verse is the verse: “Or a man who touches any creeping animal which makes him impure, or a person who may make him impure with any impurity that he has” (Leviticus 22:5); and it is written with regard to the impurity of semen: “And every garment and all leather that has semen on it shall be washed with water and will

be impure until evening” (Leviticus 15:17), since the verses appear next to each other, the halakhot of each can be derived from the other.

277 Consequently, why do I need the words “garment” and “leather” that the Merciful One wrote with regard to a creeping animal? The relevant halakha could be derived from the halakhot of seminal impurity. Consequently, learn from it that “garment” and “leather” were mentioned to render them free, i.e., extraneous, but the Torah included them for the express purpose of establishing the verbal analogy.

278 The Gemara comments: And still, the terms “garment” and “leather” are free only from one side of the verbal analogy, because although the terms “garment” and “leather,” stated with regard to ritual impurity imparted by a creeping animal, are extraneous in their context, as the relevant halakha could have been derived in another manner, those terms stated with regard to impurity imparted by a corpse are not extraneous in their context. This works out well according to the one who says that with regard to a verbal analogy that is free from only one side, one can derive from it and one cannot refute it logically; it is well. But according to the one who says that one can derive a halakha from a verbal analogy of this kind and one can also refute it logically, what can be said? It has already been established that the carcass of a creeping animal is stricter in some senses than a corpse.

279 The Gemara answers: The terms “garment” and “leather,” as stated with regard to impurity imparted by a corpse, are also free. Since the impurity of a corpse is juxtaposed with that of semen, as it is written: “And one who comes into contact with anyone impure with impurity imparted by a corpse, or a man from whom semen is emitted” (Leviticus 22:4), and it is written with regard to semen: “And every garment and all leather that has semen on it” (Leviticus 15:17), why do I need the terms “garment” and “leather” that the Merciful One wrote with regard to impurity imparted by a corpse? Learn from it that they are mentioned in order to render them free, and therefore it is free from both sides.

280 The Gemara questions this from a different angle: This works out well according to the one who says: Infer the halakha from it and interpret it according to its new place. This would mean that the halakha that a mat becomes impure from a corpse is derived from the halakha that a mat becomes impure from semen, but the details of that impurity, i.e., the length of the time it is impure, are interpreted according to the halakhot of impurity imparted by a corpse, for seven days. But according to the one who says: Infer the halakha from it and infer the details of the halakha from it as well, which would mean that the details of the impurity would also be interpreted according to the halakhot of impurity imparted by semen, what can be said? According to the latter opinion, it should be concluded that just as the impurity imparted to a mat by the carcass of a creeping animal lasts only until nightfall, so too, a mat rendered impure by a corpse remains impure only until nightfall.

281 In response to this, Rava said: This opinion does not lead to that conclusion, as there is a Torah edict indicating otherwise. The verse states (Numbers 31:24): “And you shall wash your garments on the seventh day.” This teaches that any ritually impure items that you render impure due to contact with a corpse must remain impure for a period of no less than seven days. Therefore, since it has been inferred that the mat is susceptible to the impurity imparted by a corpse, it automatically falls into the same category of other items similarly rendered impure by a corpse and must remain impure for a period of at least seven days.

282 § Up to this point, the Gemara discussed how to properly apply the principle: It is sufficient for the conclusion that emerges from an a fortiori inference to be like its source. It now returns to discussing the main subject of the mishna, which is the various views concerning Goring, the primary category of damage. The Gemara suggests: And let one be held liable for Eating and Trampling if these take place in the public domain. This can be inferred via an a fortiori inference, as follows: And if with regard to damage classified as Goring, for which, if it took place on the property of the injured party, according to the Rabbis one is liable to pay only half the cost of the damage, yet the owner of the animal is nevertheless liable for damage caused in the public domain, then with regard to damage classified as Eating and Trampling, whose halakhot are more strict, as one pays the full cost of the damage caused on the property of the injured party, is it not right that one should be liable for damage caused in the public domain?

283 The Gemara rejects this: The verse states with regard to Eating or Trampling (Exodus 22:4): "And it consumed in the field of another," meaning that one's liability for this form of damage is limited to damage caused on the property of the injured party, but not for damage caused in the public domain.

284 The Gemara asks: Are we saying that based on the a fortiori inference one should have to pay the full cost of the damage caused in the public domain for Eating and Trampling? That would be false, as the verse indicating one's liability to pay the full cost of the damage limits the application to damage caused in "the field of another." We are saying only that he should be liable for half the cost of the damage there, just as with regard to Goring.

285 The Gemara rejects this as well: This is also incorrect, as the verse states with regard to the payment of half the damages: "And divide its monetary value" (Exodus 21:35). The use of the expression "its monetary value," and not "the monetary value," emphasizes that it is specifically the price of this ox that caused damage classified as Goring whose money will be divided, i.e., the owner of the ox will be obligated to pay half the cost of the damage, but not the price of another, i.e., not in other cases of damage caused by one's ox.

286 The Gemara suggests a derivation from a different inference: And let one be held liable to pay only half the cost of the damage caused by Eating and Trampling even if the incident took place on the property of the injured party. This can be inferred via an a fortiori inference drawn from Goring, as follows: And if for damage classified as Goring, which is governed by a stricter halakha, as one is held liable for damage classified as Goring even if it occurs in the public domain, yet one nevertheless pays only half the cost of the damage caused on the property of the injured party, then with regard to damage classified as Eating and Trampling, which are governed by more lenient halakhot, as one is completely exempt from liability for damage caused in the public domain, is it not right that he should have to pay only half the cost of the damage caused on the property of the injured party?

287 The Gemara answers: The verse states with regard to Eating and Trampling: "The best of his field and the best of his vineyard he shall pay" (Exodus 22:4). The intent of the verse is to emphasize that the owner of the ox pays a proper, meaning complete, amount of payment, and not half the cost of the damage.

288 The Gemara suggests a derivation from a different inference: And let one not be held liable at all with regard to damage classified as Goring in the public domain. This can be inferred via an a fortiori

inference, as follows: And if for damage classified as Eating and Trampling, for which one is liable to pay the full cost of the damage for incidents that took place on the property of the injured party, one is completely exempt for damage caused in the public domain, then with regard to damage classified as Goring, which is governed by a more lenient halakha, as one is held liable for only half the cost of the damage caused on the property of the injured party, is it not right that one should be exempt in the public domain?

[289] Rabbi Yoḥanan said: The verse states in reference to an innocuous ox: “And the carcass they shall also divide” (Exodus 21:35), to indicate that there is no difference with regard to the payment of half the cost of the damage, whether the damage occurs in a public domain or whether it occurs on private property.

[290] The Gemara suggests a derivation from a different inference: And let a person who inadvertently kills another be liable to pay ransom. This can be inferred via an a fortiori inference, as follows: And if the owner of an ox, who is not liable to pay the four types of indemnity, i.e., pain, medical costs, loss of livelihood, and humiliation, if his ox injures a person, is nevertheless liable to pay ransom if it killed someone, then with regard to a person, who is liable to pay the four types of indemnity if he injures another, is it not right that he should be liable to pay ransom if he were to kill him?

[291] The Gemara answers: The verse states with regard to an ox killing a person: “He shall give for the redemption of his life whatever is imposed upon him” (Exodus 21:30). “Upon him”: This means upon the owner of an ox who kills a person, but not upon a person who kills another.

[292] The Gemara suggests the reverse derivation: And let the owner of an ox that injured a person be liable to pay the four types of indemnity. This can be inferred via an a fortiori inference, as follows: And if a person, who is not obligated to pay ransom if he kills someone, is nevertheless liable to pay four types of indemnity if he injures another, then with regard to the owner of an ox, who is liable to pay ransom, is it not right that he should also be liable to pay the four types of indemnity?

[293] The Gemara answers: The verse states with regard to this matter: “And if a man maims another” (Leviticus 24:19), from which it can be derived that this halakha applies when a man harms another person but not when an ox harms another person.

[294] § A dilemma was raised before the Sages: With regard to Trampling, in the case of an animal that tramples a child in the courtyard of the injured party and kills the child, what is the halakha with regard to the liability of the owner of the animal to pay ransom? The Gemara explains the different sides of the question: Do we say that this halakha is just as it is with regard to Goring? Accordingly, just as with regard to Goring, once an animal has gored two or three times this becomes defined as its usual manner and therefore it is deemed forewarned and the owner must pay ransom in the event that it kills a person by an act classified as Goring, here too it is not different, as with regard to the category of Trampling the owner is deemed forewarned from the start and he must therefore pay ransom.

[295] Or perhaps, should we say that the halakha with regard to Goring is more stringent, as Goring requires the animal’s intent to cause damage, and that is why the owner must pay ransom in the event of a death; but in a case of Trampling, where there is no intent to cause damage, the owner would be exempt from paying ransom?

[296] The Gemara suggests: Come and hear a solution to this dilemma from a baraita: If one brought his ox into the courtyard of a homeowner without his permission, and it gored the homeowner and he died, the ox is killed by stoning and the owner of the ox is obligated to pay the full amount of the ransom, regardless of whether the animal was innocuous or forewarned. This is the statement of Rabbi Tarfon.

[297] The Gemara proceeds to clarify: From where does Rabbi Tarfon derive that with regard to an innocuous ox the owner must also pay the full amount of the ransom? Is it not because he holds in accordance with the opinion of Rabbi Yosei HaGelili, who says that the owner of an innocuous ox that killed a person pays half the ransom if the incident took place in the public domain? And he derived this ruling via an a fortiori inference from the halakhot of Trampling: And if in a case of Trampling, for which one is exempted entirely from liability when it occurs in the public domain, one must nevertheless pay the full ransom if the incident took place on the property of the injured party, with regard to Goring, for which one must pay half the ransom when it occurs in the public domain, is it not right that one should be obligated to pay full ransom for an incident that took place on the property of the injured party? Evidently, it is clear that there is a ransom payment in the case of Trampling.

[298] Rav Shimi of Neharde'a said: It is possible to explain that the tanna derived his a fortiori inference from damage caused by Trampling: And if in a case of Trampling, for which one is completely exempt from liability when it happens in the public domain, one pays the full cost of the damage done on the property of the injured party, with regard to Goring, for which one must pay half the ransom payment if the ox kills a person in the public domain, is it not right that one would certainly be obligated to pay the full ransom if the person was killed on his own property? According to this reasoning there is no indication that one pays a ransom payment in the case of a child that was killed by Trampling.

[299] The Gemara asks: But if this is the basis for Rabbi Tarfon's opinion, let the Gemara refute it in this way: What can be learned about ransom from damage caused by Trampling? These same halakhot apply to Fire; nevertheless, there is no obligation to pay ransom when a person is killed by Fire, as was stated explicitly in a baraita above (10a). Consequently, the attempt to derive an a fortiori inference about ransom from Trampling is obviously flawed. The Gemara answers: The a fortiori inference can be based on the damage to concealed articles caused by Trampling on the property of the injured party. One would be exempt for damage such as this if it were caused by Fire.

[300] The Gemara responds to this challenge with a different one: What is notable about damage to concealed articles caused by Trampling? It is notable in that these same halakhot apply to the category of Pit, but nevertheless there is no ransom paid if a person is killed by a pit. Consequently, an attempt to derive an a fortiori inference about ransom from this halakha is obviously flawed. The Gemara answers: The a fortiori inference can be based on damage caused to vessels by Trampling on the property of the injured party. One would be exempt for damage of this nature if it were caused by a pit.

[301] The Gemara rejects this as well: What is notable about damage caused to vessels by Trampling? It is notable in that these same halakhot apply to the category of Fire. The Gemara answers: The a fortiori inference can be based on damage caused to concealed vessels by Trampling. In this case, one would be liable for Trampling but exempt from liability for both Fire and Pit, so this can be the

basis for the ransom payment, via the a fortiori inference stated by Rav Shimi of Neharde’a. The Gemara rejects this as well: What is notable about damage caused to concealed vessels by Trampling? It is notable in that these same halakhot apply to the category of Man, as a person is liable for damage to these items but does not pay ransom if he inadvertently kills another person.

302 Rather, isn’t it correct to conclude from it that since the halakhot of the ransom payment with regard to Goring cannot be deduced from the halakhot of damages with regard to Trampling, the tanna derived his a fortiori inference based on the halakhot of ransom in a case of Trampling, and therefore it may be concluded that apparently there is ransom in a case of Trampling? The Gemara affirms: Conclude from it that this is so. Consequently, in the case of a child trampled to death by Trampling while on his parents’ property, the owner of the animal must pay ransom.

303 Rav Aḥa of Difti said to Ravina: So too, it is reasonable to say that there is an obligation to pay ransom in a case of Trampling, as, if it enters your mind to say that there is no obligation to pay ransom in a case of Trampling, and the tanna derived his a fortiori inference from damage caused by Trampling, let the Gemara refute it in this way: What is notable about damage caused by Trampling? It is notable in that these same halakhot apply to Trampling, while there is no obligation to pay ransom in a case of Trampling. In other words, it would be possible to derive the obligation to pay a full ransom where a person was killed by the Goring of an innocuous ox while on the property of the victim only if there is also an obligation to pay ransom where the person was killed by Trampling.

304 Rather, isn’t it correct to conclude from it that an a fortiori inference must be based on the obligation to pay ransom in a case of Trampling, and therefore it may be concluded that evidently, there is an obligation to pay ransom in a case of Trampling? The Gemara affirms: Conclude from it that this is so.

305 MISHNA: The legal status of a person is always that of one forewarned. Therefore, whether the damage was unintentional or intentional, whether he was awake while he caused the damage or asleep, whether he blinded another’s eye or broke vessels, he must pay the full cost of the damage.

306 GEMARA: The Gemara infers: It teaches in the mishna: He blinded another’s eye, and presumably this is similar to the other example: Broke vessels. From this it can be inferred that just as there, in the case of the broken vessels, yes, one must pay for the damage he caused but he does not pay the four types of indemnity, so too, in a case where he blinds another, yes, he must pay for the damage he caused, but he does not pay the four types of indemnity, since he caused the injury while asleep or unintentionally.

307 With regard to the halakha that one must pay the full cost of the damage in a case where there was no intent to cause damage, the Gemara asks: From where are these matters derived? Ḥizkiyya says, and similarly, the school of Ḥizkiyya taught: The verse states: “Wound for wound [petza taḥat patza]” (Exodus 21:25). This phrase is superfluous, as the Torah states elsewhere (see Leviticus 24:19) that one is liable to pay compensation when injuring another. This verse serves to render him liable to pay for the unintentional damage just as he pays for the intentional damage; and he pays for damage caused by accident just as he pays for damage caused willingly.

308 The Gemara asks: But this verse is necessary in order to indicate that one must pay compensation for pain, even in a case where he pays compensation for damage caused by the injury. Consequently, it seems that that verse cannot also be the source of the principle derived by the school of Ḥizkiyya. The Gemara answers: If it is so that the superfluous phrase is intended to teach only that, then let the

verse write: Petza befatza, which carries the same meaning. What, then, is meant by the superfluous word taḥat in the phrase “petza taḥat patza”? It indicates that we must derive two conclusions from it: That one is liable to pay for pain even in a case where he pays compensation for damage, and that he is liable for unintentional damage as he is for intentional damage, and for damage caused by accident as for damage caused willingly.

309 § Rabba says: If there was a stone lying in one’s lap and he was unaware of it, and he arose and it fell and caused damage, with regard to damages he is liable to pay the full cost of the damage caused by the stone. With regard to the four types of indemnity, he is exempt. With regard to Shabbat, if the falling stone caused him to violate one of the prohibited categories of labor; for example, if the stone fell from a private domain to the public domain, he is exempt. The reason is that the Torah prohibited only planned, constructive labor on Shabbat, and he did not plan to perform this labor. With regard to exile, the punishment prescribed for one who unintentionally but negligently kills another, were this stone to kill someone he is exempt, as the incident is deemed accidental.

310 With regard to a Canaanite slave whose tooth was destroyed or eye was blinded by the stone, potentially enabling the slave to earn his freedom (see Exodus 21:26–27), this is the subject of a dispute between Rabban Shimon ben Gamliel and the Rabbis, as it is taught in a baraita (Tosefta 9:25): If the master was a doctor and the slave said to him: Paint the lid of my eye in order to heal it, and the master blinded it during the procedure, or if the slave requested from his master: Scrape my tooth in order to heal it, and the master knocked out the tooth while scraping it, the slave has mocked the master, as he is emancipated due to the act of the master himself.

311 By contrast, Rabban Shimon ben Gamliel says: The slave is not emancipated in these cases because the verse states: “And destroy it” (Exodus 21:26), from which it is derived that the slave is emancipated only in a case where the master intends to destroy the eye or the tooth, but not if he intended to heal the slave. So too, in the case where a stone fell and accidentally blinded a slave’s eye or knocked out his tooth, according to the Rabbis the slave would be emancipated and according to Rabban Shimon ben Gamliel he would not. All of the above cases relate to situations where the individual did not know the stone was in his lap.

312 If he was initially aware of it but forgot about it and he arose and it fell, with regard to damages he is certainly liable, being that he is liable even if he was unaware of the stone. With regard to the four types of indemnity, here too he is exempt, as he did not intend to cause injury. With regard to exile he is liable, as the verse states: “One who unwittingly strikes a person mortally” (Numbers 35:11), indicating by inference that the assailant had some previous awareness, and in this case he was in fact previously aware of the stone in his lap. The term “unwittingly” is employed to describe someone who possessed knowledge of the potential transgression then forgot about it. With regard to Shabbat he is exempt, as this was not a planned, constructive labor. With regard to a slave, the same dispute between Rabban Shimon ben Gamliel and the Rabbis applies.

313 In a case where he intended to throw the stone, and he intended to throw it for a distance of only two cubits but instead he threw it a distance of four cubits, as it went farther than he wanted it to go, with regard to damages he is liable. With regard to the four types of indemnity he is exempt. With regard to Shabbat he is exempt, as we require planned, constructive labor as a condition for liability. With regard to exile he is liable, as the Merciful One states in the Torah: “If a man lie not in wait” (Exodus 21:13), which serves to exclude from the death penalty a situation where one intended to

throw the stone for two cubits but he actually threw it for four cubits, as he did not intend to kill, so he is exiled. With regard to a slave, the same dispute between Rabban Shimon ben Gamliel and the Rabbis applies.

[314] And if he intended to throw the stone four cubits but instead he threw it eight cubits, with regard to damages he is liable. With regard to the four types of indemnity he is exempt. With regard to Shabbat, if he said to himself when he threw the stone that he would be satisfied wherever it may land, then yes, he is liable, as he intended to throw it a distance of four cubits, which is the minimum necessary to violate the prohibited labor of carrying in the public domain. If he did not throw the stone aimlessly but rather had selected a target that was four cubits away, then he is not liable as he did not perform the precise planned, constructive labor that he had intended. With regard to exile, the Torah states: “If a man lie not in wait” (Exodus 21:13), which serves to exclude from the death penalty a situation where one intended to throw it four cubits but he actually threw it eight cubits, as he did not intend to kill, so he is exiled. With regard to a slave, the same dispute between Rabban Shimon ben Gamliel and the Rabbis applies.

[315] § Since the Gemara cited Rabba’s comments about various actions for which the perpetrator is liable with regard to certain matters but exempt with regard to others, the Gemara cites similar rulings: And Rabba says: If one threw a vessel, such as an earthenware jug, from a roof and another came along and broke it with a stick during its descent, the latter is exempt from liability. What is the reason? It is because he broke a broken vessel, meaning that once the vessel was thrown from the roof it was clear that it would be broken upon landing, and therefore it is considered as if it were already broken and the one who broke it while it was still in the air is not liable.

[316] And Rabba says: If one threw a vessel from a roof and there were cushions or blankets below so that if the vessel would land on them it would not break, and then another came and removed the cushions or blankets, or if the individual who threw the vessel went quickly before it landed and removed the cushions or blankets himself, and as a result the vessel shattered, the one who threw the vessel is exempt from liability even though the vessel broke as a consequence of his actions. What is the reason? At the time that he threw the vessel, his arrows were stopped, i.e., what he did at the time he threw the vessel, which is an act comparable to the shooting of an arrow, did not have the capacity to break the vessel. Therefore, he is not viewed as having broken the vessel, and is exempt.

[317] And Rabba says: If one threw a child from a roof and another came along and impaled him on his sword and the child died, the question of who is liable to receive the death penalty for killing the child is dependent upon the dispute between Rabbi Yehuda ben Beteira and the Rabbis. As it is taught in a baraita: If ten people beat a victim with ten sticks, whether they did so simultaneously or sequentially, they are all

[318] exempt, as it is impossible to sentence any one of them to death since no one person killed the victim and there is no death penalty for partially killing a person. Rabbi Yehuda ben Beteira says: If they beat him sequentially the last one to beat him is liable for the death of the victim, because he brought the victim’s death closer. So too, in this case, although the first one threw the child, the one to impale him on his sword was the one to hasten his death, and therefore according to Rabbi Yehuda ben Beteira he would be liable to receive the death penalty.

[319] The Gemara discusses a similar scenario: If one threw a child from a roof and a forewarned ox came along and impaled the child on its horns and the child died, the question of whether or not the

owner of the ox is liable to pay ransom is dependent upon the dispute between Rabbi Yishmael, son of Rabbi Yoḥanan ben Beroka, and the Rabbis. As it is taught in a baraita: The verse: “He shall give for the redemption of his life” (Exodus 21:30), indicates that he must pay the value of the injured party, i.e., the one who was killed. Rabbi Yishmael, son of Rabbi Yoḥanan ben Beroka, says: He must pay the value of the one responsible for the damage. Since the child that was thrown off the roof had no monetary value at the time he was gored by the ox, as it was as if he were already dead, the Rabbis would exempt the owner of the ox from paying ransom. According to Rabbi Yishmael, son of Rabbi Yoḥanan ben Beroka, the owner of the ox must pay his own value to the family of the victim.

320 § Rabba says another similar halakha: If a man fell from a roof and while falling was inserted into a woman due to the force of the fall, but he did not have the intention to engage in sexual intercourse, he is liable to pay the four types of indemnity. And if this woman was his yevama waiting for him to perform levirate marriage, he has not acquired her as his wife through this act of intercourse. This is true even though a levirate marriage is ordinarily effected through sexual intercourse, even if unintentional, i.e., if he thought she was someone else. Nevertheless, since in this case he did not intend to engage in intercourse at all, the levirate marriage is not effected.

321 The Gemara explains: What are the four types of indemnity that he is liable to pay? He is liable to pay for the damage, for the pain, for the medical costs, and for the loss of livelihood. But he is not liable to pay compensation for humiliation, as we learned in a mishna (86a): One is not liable to pay compensation for humiliation unless he intends to humiliate the injured party, and that was certainly not the case in this situation.

322 And Rabba says another, similar halakha: If one fell from a roof due to an atypical wind, such that it could not have been anticipated in advance that he would fall, and while falling he caused damage and humiliated the injured party, he is liable for the damage but exempt from paying the four types of indemnity, as he did not intend to fall. If he fell due to a typical wind and caused damage and humiliated the injured party while falling, he is liable to pay the four types of indemnity, as his fall was caused by negligence. But he is nevertheless exempt from paying compensation for humiliation, as he did not intend to fall. But if he tumbled while falling so he could fall on this person in order to protect himself from the impact with the ground, he is liable to pay compensation for humiliation as well, because although he did not intend to cause shame he did intend to land on the person.

323 The halakha that one is exempt from paying compensation for humiliation unless he intended to strike his victim is as it is taught in a baraita: From the fact that it is stated: “And she extended her hand” (Deuteronomy 25:11), do I not know that she took hold of something? Consequently, what is the meaning when further on in the verse it states: “And she took him by his genitals”? It is to teach you that one who intends to cause damage, even if he does not intend to humiliate the injured party, is nevertheless liable to pay compensation for humiliation.

324 And Rabba says: If one placed a hot coal over another’s heart and the latter was burnt and died, the one who placed the coal is exempt because the victim should have removed the coal from himself, and the one who placed it there did not need to assume that the victim might not remove it. If he placed the coal on the other’s garment and the garment was burnt, he is liable to pay for the damage, as it is possible that the one whose garment was burnt thought to sue the one who placed the coal on his clothes for the cost of the garment, and that is why he did not bother to remove it.

325 Rava said: We have learned both of these rulings through intimation in mishnayot elsewhere. With regard to the case of the coal placed over his heart, the halakha is as we learned in a mishna (Sanhedrin 76b): If one held another in a fire or in water, and the victim is unable to extricate himself from there and he dies as a result, the one who attacked him is liable to receive the death penalty as a murderer. If he pushed him into fire or into the water, and the victim is able to extricate himself from there but he dies anyway, the one who attacked him is exempt from the death penalty. The case of one who places a coal on another's chest is similar to the one where he pushes the victim into the fire or the water in a situation where the victim has the ability to escape.

326 With regard to the case of one who placed a coal on the garment of another, it is as we learned in a mishna (92a): If one said to another: Tear my garment, or: Break my jug, and the other person does so, the latter is liable for the damage. But if one said to another: Tear my garment on the condition that you will be exempt from all liability, he is exempt. It is therefore clear that even when one is granted permission by the owner of an item to damage it, that does not grant him an exemption from liability for the damage caused unless that exemption was stated explicitly. Consequently, in a case where the owner did not grant permission, the one who caused the damage is certainly liable.

327 Rabba raises a dilemma in summation of this discussion: If he placed a coal over the heart of another's Canaanite slave and the slave died as a result, what is the halakha? Is the body of the slave comparable to the body of any other person and therefore the assailant would be exempt from liability, or is it comparable to other property owned by the master and therefore the assailant would be liable? Furthermore, if you say that the body of the slave is comparable to the body of any ordinary person, as the slave had the ability to remove the coal from himself and therefore the assailant would be exempt, what is the halakha in a case where he placed the coal on the other's ox?

328 After raising the dilemma Rabba then resolves it: The body of the slave is comparable to the body of any other person, as the slave possesses an intellect and should have the sense to remove the coal from himself, whereas the ox is comparable to other property.

## Chapter 3

1 MISHNA: In the case of one who places a kad, a type of vessel, in the public domain and another person comes and stumbles on it and breaks it, the other person is exempt from paying for what he broke. And if the one who stumbled incurred damage by it, the owner of the ḥavit, a type of vessel, is liable to pay restitution for his damage.

2 GEMARA: The mishna began its presentation of the case in reference to a kad, stating: In the case of one who places a kad, and ended it in reference to a ḥavit, stating: The owner of the ḥavit is liable.

3 And we learned this interchanging of the words kad and ḥavit in a mishna (31b) as well: If two people were walking down the street, this one coming with his ḥavit and that one coming with his cross beam, and this one's kad was broken by that one's cross beam, the one holding the beam is exempt. Here too the mishna changed its wording, as it began its statement in reference to a ḥavit and ended it in reference to a kad.

4 And we learned this in another mishna (115a) as well: If this person came with his ḥavit of wine and that person came with his kad of honey, and the ḥavit of honey, which is more valuable, cracked,

and this person poured out his wine and saved the honey by collecting it into his vessel, he receives reimbursement only for his trouble, and he cannot claim the value of the wine that he poured out since the owner of the honey did not tell him to do so. Here too the mishna changed its wording, as it began its statement in reference to a kad of honey and ended it in reference to a ḥavit of honey.

[5] Rav Pappa said: These examples show that a kad is the same as a ḥavit, and the two words are used interchangeably. With regard to what does this make a difference? This makes a difference for buying and selling. If a customer asks for a ḥavit, intending a large vessel, and the seller gives him a kad, which is a smaller vessel, the buyer cannot claim that he did not receive the item he asked for.

[6] The Gemara asks: What are the circumstances where this is relevant? If we say that it is with regard to a locale where people do not refer to a kad as a ḥavit, nor do they refer to a ḥavit as a kad, and a ḥavit is understood to be referring to a larger vessel, clearly one who asks for a ḥavit does not wish to buy a kad, as people do not call it that.

[7] The Gemara answers: No, it is necessary to teach that they are equivalent terms with regard to a locale where most people call a kad a kad and a ḥavit a ḥavit, i.e., most people use the term kad for the smaller vessel and the term ḥavit for the larger one, and there are also those who call a ḥavit a kad and a kad a ḥavit, not distinguishing between the two terms. Lest you say that the halakha follows the majority and the seller and the buyer must accept this distinction,

[8] the mishna teaches us that the court does not follow the majority with regard to monetary matters, and in cases of uncertainty the burden of proof rests upon the claimant.

[9] § The mishna teaches concerning the vessel placed in the public domain: If another person came and stumbled on it and broke it, he is exempt. The Gemara asks: Why is he exempt? Although this happened in the public domain, he should examine the road and then continue walking.

[10] The Sages of the school of Rav said in the name of Rav: The ruling of the mishna is taught with regard to one who placed not just one barrel in the road, but rather filled the entire public domain with barrels, blocking the path. Since the public domain belongs to everyone, a pedestrian is entitled to traverse the road even if it necessitates breaking the vessels. Shmuel says: The ruling of the mishna is taught with regard to a case where he broke it in the dark. Therefore, he could not have avoided breaking the barrel by examining the road in front of him. Rabbi Yoḥanan says: The ruling of the mishna is taught with regard to a case where the barrel was placed at the corner of the road, and so the pedestrian could not have seen it, as he rounded the corner, before stumbling on it.

[11] Rav Pappa said: The mishna is precise only according to either the explanation of Shmuel or that of Rabbi Yoḥanan, but not that of Rav. As, if the mishna is explained in accordance with the explanation of Rav, what is the reason it refers specifically to a case where one stumbled on the barrel? Even if he broke the barrel intentionally he should not be liable to pay, as the owner of the barrel had no right to block the public road.

[12] Rav Zevid said in the name of Rava in defense of Rav’s explanation: The same is true even if he broke the barrel intentionally. And as for this fact, that the tanna of the mishna teaches a case where he stumbled, it is because he wants to teach in the last clause: And if he incurred damage due to the vessel, the owner of the ḥavit is liable to pay for his damage. As this ruling applies specifically when he stumbled, but if he broke the barrel intentionally and incurred damage in the process, the owner of the barrel is not required to compensate him. What is the reason for this? Although the pedestrian had

the right to break the barrel, it is he who damaged himself, by not being careful while breaking it. Therefore, in the first clause the mishna teaches a case where he stumbled. Accordingly, the mishna's wording is precise according to Rav's explanation as well.

13 Rabbi Abba said to Rav Ashi that this is what they say in the West, Eretz Yisrael, in the name of Rabbi Ulla, in explanation of the mishna: Even if the barrel is clearly visible, one who stumbles on it is exempt from liability because the typical manner of people is not to examine the roads, as they assume that the road is unobstructed. Therefore, one who breaks an item placed in the road as a result of not watching is not liable to pay restitution.

14 The Gemara relates: There was an incident in Neharde'a where a pedestrian stumbled on a jug in an open area and broke it, and Shmuel deemed him liable to pay for the damage. A similar incident took place in Pumbedita, and Rava deemed the person liable to pay.

15 The Gemara asks: Granted, Shmuel ruled in accordance with his halakhic opinion that the exemption stated in the mishna refers specifically to a case where one stumbles in the dark, as otherwise he is liable for breaking the barrel, since he should have examined the road. But with regard to Rava, shall we say that he holds in accordance with Shmuel's opinion that one who breaks an item in the public domain is exempt from paying for it only if it was dark?

16 Rav Pappa said: That inference is not necessary, as this incident was at the corner where there was an olive press [de'atzera], where it is known that people put their jugs down while waiting for oil. Consequently, since they were acting with permission, a pedestrian should examine the road and then continue walking.

17 § Rav Ḥisda sent the following question to Rav Naḥman: The Sages said that when one strikes another, humiliating him, the judges determine liability according to the following formula: For kneeing [rekhuva] him, he must pay three sela; for kicking, five; and for punching [velisnokeret] him, thirteen. The Gemara asks: If so for hitting him with the handle of a hoe [demara] and for hitting him with the top [ulkofina] of a hoe, what amount is one liable to pay him?

18 Rav Naḥman sent him the following response: Ḥisda, Ḥisda, are you collecting a fine for humiliation in Babylonia, where judges are not authorized to collect fines? Tell me how the incident itself transpired.

19 Rav Ḥisda sent him in response: There is a certain cistern belonging to two people whose arrangement was to alternate its use so that every day one of them would draw from it in turn. It happened that one of them came and was drawing water on a day that was not his turn. His co-owner said to him: This is my day to draw, not yours. His colleague did not pay attention to him. The person whose turn it was therefore took the handle of a hoe and struck the person who was stealing his water, who then sued for damages.

20 Rav Naḥman said to him: In that case, he was right to do so, and he should have hit him even a hundred times with the hoe. Even according to the one who says that a person may not take justice into his own hands but should go to court, in a case where there would be a loss involved if no immediate action is taken, a person may take justice into his own hands.

21 This is as it was stated, that Rav Yehuda says: A person may not take justice into his own hands, whereas Rav Naḥman says: A person may take justice into his own hands.

[22] Where there is an imminent loss that will be suffered if the injured party does not take action, everyone agrees that a person may take justice into his own hands. They disagree only when there is no imminent loss that will be suffered. Rav Yehuda says that a person may not take justice into his own hands, because since there is no loss, he should go before the judge to have him enforce the law. Rav Naḥman says that a person may take justice into his own hands. Since he is acting lawfully, as he is clearly in the right, he need not trouble himself to go before the judge to have him enforce the law.

[23] Rav Kahana raises an objection to Rav Yehuda's opinion based on a baraita: Ben Bag Bag says: Do not enter another person's courtyard secretly to take what is rightfully yours without permission, lest you appear to him as a thief trying to steal his property. Rather, break his teeth, i.e., take it by force, and say to him: I am taking what is mine. Evidently one may take justice into his own hands.

[24] Rav Yehuda said to him:

[25] You can keep this question to yourself, as it poses no difficulty at all. Ben Bag Bag states an individual opinion in this regard, and the Rabbis disagree with him.

[26] Rabbi Yannai says an alternative response to Rav Kahana's objection: What does the baraita mean by the phrase: Break his teeth? It means sue him in judgment.

[27] The Gemara asks: If so, the subsequent statement in the baraita: And say to him, is inaccurate. It should have stated: And they, the court, say to him. Likewise, the wording: I am taking what is mine, is inaccurate. Since it is the court who makes this statement, the baraita should have stated: He is taking what is his. The Gemara concludes: Indeed, this poses a difficulty for Rav Yehuda's version of the response.

[28] The Gemara suggests: Come and hear an alternative proof for Rav Naḥman's opinion. It is stated in a baraita: With regard to an ox that climbed on the back of another ox to kill it, and the owner of the ox on the bottom came and removed his ox, and the ox on top consequently fell and died, the owner of the ox on the bottom is exempt from paying for the dead ox. What, is this ruling not stated with regard to a case where the attacker is a forewarned ox, where there is no loss to the owner of the bottom ox, since even if the owner of the ox on the bottom does not remove his ox, he will eventually receive full restitution from the owner of the belligerent ox? Yet he is exempt from paying restitution for causing the death of the belligerent ox. Evidently, he had the right to take justice into his own hands.

[29] The Gemara rejects this proof: No, the ruling is with regard to a case where the attacker is an innocuous ox, where there is a loss for the owner of the ox on the bottom if he does not save it, since the owner of an innocuous ox pays for only half the damages resulting from his ox's attack.

[30] The Gemara asks: If so, say the latter clause of that baraita: If, instead of removing his own ox, the owner of the ox on the bottom pushed the one on top and it died, he is liable. And if it is referring to an innocuous ox, why is he liable? He is defending his property so as not to incur a loss.

[31] The Gemara answers: He is liable because he should have removed his ox from underneath the belligerent ox, and he did not remove it. Instead, he pushed the belligerent ox and caused it to die. Although one may take justice into his own hands, if he damages another person's property when he could have protected his own property in a harmless manner he is liable.

[32] The Gemara suggests: Come and hear a proof for Rav Naḥman's opinion from a baraita: With regard to one who fills another's courtyard with jugs of wine and jugs of oil, the owner of the courtyard may break his way through them and exit his courtyard or he may break his way through them and enter his courtyard. Since the one who put the jugs there had no right to do so, the owner of the courtyard may take justice into his own hands. This is apparently the ruling even where there is no loss involved to the owner of the courtyard.

[33] Rav Naḥman bar Yitzḥak said in response that the baraita can be explained as follows: The owner of the courtyard may break the jugs and exit to court, and he may break the jugs and enter his house to bring proof of his rights, i.e., documents proving that the courtyard belongs to him. Since by refraining from doing so he would sustain a loss, he may break the jugs when exiting and entering. He may not take justice into his own hands beyond this extent. Therefore, no proof for Rav Naḥman's opinion can be inferred from this baraita.

[34] The Gemara suggests: Come and hear an alternative proof from a baraita: From where is it derived with regard to a Hebrew slave who had his ear pierced with an awl to extend his tenure as a slave, but whose days of servitude have now ended with the arrival of the Jubilee Year; and his master is urging [mesarhev] him to leave but he insists on remaining; and the master injured the slave and inflicted an injury on him in the process of forcing him out, that the master is exempt from paying for this injury?

[35] To counter this, the verse states: "You shall take no ransom…that he should return" (Numbers 35:32). Although this verse is referring to the prohibition against an unintentional killer paying a ransom instead of going to a city of refuge, this verse is also interpreted to mean that you shall take no ransom for a Hebrew slave who is obligated to return to his family. In other words, if the slave refuses to return to his family and is injured in the process of his eviction, he does not receive compensation. This seems to indicate that the master may take justice into his own hands even for a matter that involves no loss to him.

[36] The Gemara responds to this proof: With what are we dealing here? We are dealing with a slave who is a thief, and consequently, if he remains a slave, his master will sustain a loss. Therefore, it is permitted for the master to take justice into his own hands and evict the slave by force.

[37] The Gemara questions this explanation: Until now he did not steal, and now he will begin to steal? Why would the master be worried about this just when the slave's tenure ends? The Gemara answers: Until now, while he was still a slave, the awe of his master was upon him, so he did not steal from him. Now that he may go free he does not have the awe of his master upon him, and the master is therefore worried that he might steal from him.

[38] Rav Naḥman bar Yitzḥak said an alternative explanation: The baraita is referring to a slave whose master provided a Canaanite maidservant to him as a wife and he wishes to remain with her. Until now, it was permitted for him to engage in sexual intercourse with her, but now that he is free, it is prohibited for him to do so. In this case, his master may evict him forcefully, assuming the role of an emissary of the court, to prevent him from violating the prohibition. Therefore, this is not considered taking justice into his own hands.

[39] The Gemara suggests a proof for Rav Yehuda's opinion from the mishna. Come and hear: In the case of one who places a jug in the public domain and another person comes and stumbles on it and breaks it, he is exempt. It may be inferred that the reason he is exempt is that he stumbled on it. But

if he broke it intentionally, he is liable. This indicates that one may not take justice into his own hands.

40 Rav Zevid said in the name of Rava: That is not a proof, as the same is true even if he broke the barrel intentionally. And as for this fact that the tanna of the mishna teaches a case where he stumbled, it is because he wants to teach in the last clause: And if he incurred damage due to the vessel, the owner of the ḥavit is liable to pay for his damages. As this ruling applies specifically when he stumbled, but if he broke the barrel intentionally and incurred damage in the process, the owner of the barrel is not required to compensate him. Although the pedestrian had the right to break the barrel, it is he who damaged himself, by not being careful while breaking it. Therefore, in the first clause the mishna teaches a case where he stumbled.

41 The Gemara suggests: Come and hear a proof from a baraita, which relates to the case of a woman who, during a fight between her husband and another man, grabs the other man's genitals: The verse that states: "Then you shall cut off her hand" (Deuteronomy 25:12), should not be taken literally; rather, it is referring to monetary restitution. What, is it not referring to a case where she cannot save her husband from his attacker by a means other than grabbing the attacker's genitals, and nevertheless she is punished? This indicates that one may not take justice into his own hands. The Gemara answers: No, the verse is referring to a case where she can save him by other means. Otherwise she is exempt from paying restitution.

42 The Gemara asks: But if she cannot save him by other means, is it possible that she is exempt? If so, instead of teaching in the latter clause of that baraita that the expression mentioned in the previous verse: "And extended her hand" (Deuteronomy 25:11), excludes an emissary of the court, who is authorized to act in this manner and is therefore exempt from paying restitution, let the baraita distinguish and teach within the case under discussion in the verse itself, as follows: In what case is this statement that the wife is liable said? It is in a case where she can save her husband by another means. But if she cannot save him by other means, she is exempt.

43 The Gemara answers: That is also what the baraita is saying: In what case is this statement said? It is said in a case where she can save him by other means. But if she cannot save him by other means, her hand is rendered like an emissary of the court, and she is exempt.

44 The Gemara suggests: Come and hear a proof for Rav Yehuda's opinion from a mishna (Bava Batra 99b): In a case where a public thoroughfare would pass through one's field, and he appropriated it and instead gave the public an alternative route on the side of his property, the halakha is that the route that he has given is the route that he gave them, and they may use it. But his property, which he appropriated, has not reached him, i.e., he cannot appropriate it for his personal use since it was already in public use.

45 And if you say that a person may take justice into his own hands, why does the owner of the field not have the right to close the thoroughfare? Since it is his property and he gave the public an alternative route, let him take a stick [pazra] in his hand and sit by the side of the road, preventing the public from passing through.

46 Rav Zevid said in the name of Rava: It is a rabbinic decree, lest he give them a circuitous route. Since the public has the right to pass through his field, as the Gemara will soon explain, the owner cannot appropriate their thoroughfare without giving the public a similar alternative route. Therefore,

the Sages decreed that he cannot appropriate it without their consent, lest he provide an inadequate route.

[47] Rav Mesharshiyya said: The mishna is referring to a case where he actually gave them a circuitous route. If one in fact gives the public a straight path, he need not surrender his rights, and he may take justice into his own hands by blocking the original thoroughfare.

[48] Rav Ashi said: Any route on the side that the property owner might give them is necessarily 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 for others.

[49] The Gemara asks: If so, why has his property not reached him? If he cannot make the change, why can he not reclaim the path that he intended to turn over to the public? Let him say to them: Take your original route and give me back my property, so that he will not lose both pieces of land.

[50] The Gemara answers that he cannot reclaim it due to Rav Yehuda's statement, as Rav Yehuda says: With regard to a path that the masses established as a public thoroughfare, it is prohibited to destroy it for them. Therefore, since the public already began using the alternative route, the owner cannot appropriate it from them.

[51] The Gemara suggests: Come and hear an alternative proof from a baraita: With regard to the owner of a field who left produce in the corner of the field, which is given to the poor [pe'a], on one side of the field, and poor people came and took from another side, this produce and that produce are both considered pe'a. And if you say that a person may take justice into his own hands, why are this and that both considered pe'a? Let him take a stick and sit in his field on the side from which the poor people are taking produce without his permission, and let him warn them to take only from the side that he allocated.

[52] Rava said: In terms of monetary law he can prevent them from taking pe'a from the side that he did not allocate. What is meant by the ruling of: This produce and that produce are both considered pe'a? It means that they are considered pe'a with regard to exempting both portions of produce from tithes. Just as the portion that the poor people took is exempt from tithes, so is the portion that he allocated initially.

[53] This is as it is taught in a baraita: In the case of one who renounces ownership of his vineyard and arose early in the morning before anyone else took possession of it and harvested it, the one who renounces ownership is obligated in the mitzva of individual fallen grapes left for the poor [peret], and in the mitzva of incompletely formed clusters of grapes left for the poor [olelot], and in the mitzva of forgotten clusters of grapes left for the poor, and in the mitzva of pe'a, the four gifts to the poor that the Torah requires one to give from a vineyard (see Leviticus 19:9–10). But he is exempt from the mitzva to tithe his produce, because this requirement does not apply to an ownerless field. Likewise, in the above case the portion of the field that was allocated for pe'a is exempt from tithes even after the owner reclaims it, as pe'a is considered ownerless property in this regard.

[54] MISHNA: If one's jug broke in the public domain and another person slipped in the water from the jug and was injured from the fall, or if he was injured by the shards of the broken jug, the owner of the jug is liable. Rabbi Yehuda says: In a case where the owner of the jug acted with intent, he is liable, and in a case where he acted without intent, he is exempt.

[55] GEMARA: Rav Yehuda says that Rav says: They taught that the owner of the jug is liable only when the clothes of the one who slipped were soiled by the dirty water.

[56] But if the person himself was injured, the owner of the jug is exempt, as it is the ground that caused his injury, not the jug or the water.

[57] Rav Yehuda continued: When I stated this ruling of Rav before Shmuel, he said to me: After all, we derive the cases of damage caused by leaving one's stone, one's knife, or one's load in the public domain from the case of one's pit, and I therefore read, i.e., apply, with regard to all of them the inference of the Sages from the verse: "And an ox or a donkey fall therein" (Exodus 21:33), that the one who dug the pit is liable only if what incurred damage is an ox, but not a person, or a donkey, but not vessels.

[58] And this statement applies with regard to a situation where the person is killed, i.e., if one fell into a pit and was killed, the person who dug it is exempt from paying restitution, since the verse refers exclusively to an animal that was killed. But with regard to damage, the digger of the pit is liable to pay restitution for injury to a person, but exempt from paying restitution for damage to vessels, for which no distinction between death and injury can be applied. Therefore, the ruling in the case of the jug that broke in the public domain should be the opposite. The owner of the jug is liable to pay restitution for injury caused to another, as Shmuel holds that he is liable even if the injury is caused by the impact with the ground, but that he is exempt from paying restitution for the damage done to the clothes of the one who slipped.

[59] The Gemara asks: And how would Rav answer this difficulty? The Gemara answers: This presumption that liability for damage caused by one's stone, knife, or load is derived from the category of Pit, thereby exempting him from payment for damage to vessels, applies only in a case where he renounced ownership of them. But in a case where he did not renounce ownership of them, it is considered to be like any other case where his property causes damage. Therefore, he is liable to pay for damage caused to the vessels.

[60] Rav Oshaya raises an objection from a baraita discussing Pit: It is derived from the verse: "And if a man shall open a pit, or if a man shall dig a pit and not cover it, and an ox or a donkey fall therein" (Exodus 21:33), that the digger is liable to pay restitution only if what incurred damage is an ox but not a person, or a donkey but not vessels. From here the Sages stated that if an ox with its equipment fell into a pit, and the ox was wounded and the equipment broke; or if a donkey with its equipment fell in, and the donkey was wounded and the equipment tore, then the one who dug the pit is liable to pay restitution for any injury sustained by the animal but exempt from paying restitution for the damaged equipment. To what case is this similar? It is similar to the case of his stone, or his knife, or his load that he left in the public domain, and they caused damage.

[61] The Gemara questions the wording of the baraita: On the contrary, it should have stated: What is similar to this, since the cases of one's stone, knife, or load are not mentioned in the Torah, but are derived from the case of Pit. Rather, the wording should be emended as follows: What is similar to this? It is the case of his stone, or his knife, or his load that he left in the public domain, and they caused damage.

[62] The baraita continues: Therefore, if one dropped his flask on a stone that was left in the public domain, breaking the flask, the owner of the stone is liable.

[63] The first clause of this baraita is difficult according to the opinion of Rav, since it compares the cases of a stone, a knife, and a load to the case of Pit, and it does not distinguish between a situation in which he renounced ownership of them or one where he did not. And the last clause of the baraita, which deems the owner of a stone in the public domain liable to pay restitution for the damage to the broken flask, is difficult according to the opinion of Shmuel. According to him, the owner should be liable only for causing injury and not for damaging vessels.

[64] The Gemara responds to this objection: And according to your reasoning, the baraita itself should pose a difficulty for you, since the first clause states that one is exempt from liability for damage to vessels, and the last clause states that he is liable.

[65] Rather, Rav resolves the contradiction according to his line of reasoning, and Shmuel resolves it according to his line of reasoning.

[66] Rav resolves it according to his line of reasoning as follows: In what case is this statement said? Concerning what case does the baraita rule that a stone, a knife, and a load are analogous to Pit, exempting their owner from liability for breakage to vessels caused by them? It is where he renounced ownership of them. But if he did not renounce ownership of them he is liable. Therefore, if one dropped his flask on a stone belonging to another person in the public domain, the owner of the stone is liable to pay for the damage to the flask.

[67] And Shmuel resolves the contradiction according to his line of reasoning: Now that you said that the cases of one's stone, one's knife, and one's load are similar to one's pit, then according to Rabbi Yehuda, who deems one liable to pay for damage caused to vessels by falling into a pit that he dug, one is therefore liable in a case where someone dropped his flask on a stone belonging to him, and the flask broke.

[68] § Rabbi Elazar says: They taught that the owner of the stone is liable only in a case where the pedestrian stumbled on the stone and the flask scraped against the stone and broke. But if he stumbled on the ground, not the stone, and the flask consequently fell and scraped against the stone, causing the flask to break, the owner of the stone is exempt from liability for the damage.

[69] In accordance with whose opinion is this statement? It is not in accordance with the opinion of Rabbi Natan, who maintains that if damage is caused by two people and one of them is exempt from paying compensation, the other must pay the entire amount. Similarly here, since there is no liability for damage caused by stumbling on the ground, compensation should be collected from the owner of the stone.

[70] There are those who say an alternative version of this discourse: Rabbi Elazar says: Do not say that it is only in a case where the pedestrian stumbled on the stone and the flask scraped against the stone, causing the flask to break, that he is deemed liable, but that if he stumbled on the ground and the flask scraped against the stone, causing the flask to break, he is exempt. Rather, even if the pedestrian stumbled on the ground and the flask scraped against the stone, causing the flask to break, he is liable. In accordance with whose opinion is this statement? It is in accordance with the opinion of Rabbi Natan.

[71] § The mishna teaches that if someone's jug broke in the public domain and one slipped in the water from the jug and was injured from the fall, or if he was injured by the shards of the broken jug, the owner of the jug is liable. Rabbi Yehuda says: In a case where the owner of the jug acted with

intent, he is liable, and in a case where he acted without intent, he is exempt. The Gemara asks: What are the circumstances in which it is considered that he acted with intent?

[72] Rabba says: Even where he just intends to lower the jug off his shoulder and accidentally breaks it, he is liable to pay for the damage he causes, according to Rabbi Yehuda. Abaye said to him: By inference, does Rabbi Meir, who is the anonymous first tanna of the mishna, deem him liable even if the jug cracked by itself? Rabba said to him: Indeed, Rabbi Meir would deem him liable even if he were holding the handle of the jug in his hand, the optimal manner for holding it, and the handle snapped, causing the jug to fall and break, an accident clearly beyond his control.

[73] The Gemara asks: Why is this so? Isn't he the victim of circumstances beyond his control? And the Merciful One exempts a victim of circumstances beyond his control from punishment, as it is written with regard to a betrothed young woman who is raped: "But to the young woman you shall do nothing" (Deuteronomy 22:26).

[74] And if you would say that this matter applies only with regard to exemption from the death penalty, but with regard to damages one is liable even for circumstances beyond his control, but isn't it taught in a baraita: If one's jug broke and he did not remove its shards, or if his camel fell and he did not stand it up, Rabbi Meir deems him liable to pay for any damage they cause, and the Rabbis say that

[75] he is exempt according to human laws but liable according to the laws of Heaven.

[76] The Gemara comments: And the Rabbis concede to the opinion of Rabbi Meir in the cases of one's stone, one's knife, or one's load, that if he placed them on top of his roof and they fell as a result of being blown off by a typical wind, i.e., one of ordinary force, and they caused damage, that he is liable. And Rabbi Meir concedes to the opinion of the Rabbis in the case of one who puts pitchers [kankanin] on the roof in order to dry them, and they fell as a result of being blown off by an atypical wind, i.e., one of unusual force, and they caused damage, that he is exempt. Evidently, even Rabbi Meir concedes that if one's property causes damage due to circumstances completely beyond his control, he is exempt.

[77] Accordingly, Abaye rejects Rabba's explanation of Rabbi Yehuda's statement, that he deems the owner of the jug liable even if he merely attempted to take it off his shoulder and it broke, and offers another explanation. Rather, Abaye said that Rabbi Meir and Rabbi Yehuda disagree with regard to two different situations. They disagree with regard to a situation where the damage was caused at the time of the person's fall, and they disagree with regard to a situation where the damage was caused after the person's fall.

[78] They disagree in a situation where the damage was caused at the time of the person's fall, with regard to whether or not one who stumbles, thereby causing his jug to break, is considered negligent. One Sage, Rabbi Meir, holds that one who stumbles is considered negligent, as his carelessness caused him to stumble. Therefore, he is liable to pay for damage caused by the shards of the jug, which broke as result of his stumbling. And one Sage, Rabbi Yehuda, holds that one who stumbles is not considered negligent.

[79] They disagree in a situation where the damage was caused after the person's fall, with regard to one who renounces ownership of his hazardous property. Presumably, the owner of the jug has no interest in keeping the shards, and it is considered as though he renounced his ownership of them.

One Sage, Rabbi Meir, holds that one who renounces ownership of his hazardous property is liable to pay restitution for damage caused by it, despite the fact that it no longer belongs to him. And one Sage, Rabbi Yehuda, holds that he is exempt from paying restitution, as it does not belong to him anymore.

[80] And from where is this interpretation derived? It is derived from the fact that the mishna teaches two possible cases of damage, stating: Another person slipped in the water or was injured by the shards. This case, slipping in the water, is seemingly identical to that case, injured by the shards. Rather, is it not necessary to explain that this is what the mishna is saying: Another person slipped in the water at the time of the person's fall, or was injured by the shards after the person's fall?

[81] The Gemara infers: And since the dispute in the mishna is with regard to two situations, the dispute in the baraita between Rabbi Meir and the Rabbis must also relate to two situations, as there too, two cases are mentioned, a case where one's jug broke and a case where one's camel fell. Apparently, the dispute is with regard to damage caused both at the time of the fall and after the fall. Rabbi Meir holds that one who stumbles and breaks his jug, causing damage to others, is considered negligent and that one who renounces ownership of his hazardous property is liable, and the Rabbis disagree with regard to both issues.

[82] The Gemara asks: Granted, with regard to the case where one's jug broke, you find these circumstances either at the time of the fall or after the fall. But with regard to the case where his camel fell, granted, you find this circumstance after the fall, when he renounces his ownership of the carcass, not considering it worth keeping, but how can you find these circumstances at the time of the fall? How can the camel's falling be considered to be due to the owner's negligence, possibly rendering him liable to pay for injuries caused by it?

[83] Rav Aḥa said: For example, in a case where the camel crossed through water, through the inundation [serata] of a river that overflowed its banks, and it stumbled there, the owner was negligent, as he should not have gone this way.

[84] The Gemara asks: What are the circumstances? If there was another route, and he nevertheless chose this one, he is clearly negligent according to all opinions. And if there was no other route, he is a victim of circumstances beyond his control, and he is exempt from liability according to all opinions.

[85] Rather, you find this circumstance in a case where the owner stumbled and the camel then stumbled on him. In this case, the Sages engage in a dispute whether or not one who stumbles is considered negligent.

[86] The Gemara asks: According to Abaye's explanation that the dispute between Rabbi Meir and Rabbi Yehuda is with regard to a situation where the owner of the jug renounces ownership of his hazardous property after it falls, what is the meaning of Rabbi Yehuda's statement that if the owner of the jug acted with intent he is liable? What intention is there after the jug fell and broke?

[87] Rav Yosef said: It is a situation where he intends to acquire the shards of the broken jug, and he does not renounce his ownership of them. It is specifically in that case that Rabbi Yehuda holds him liable to pay for damage caused by the shards. And similarly, Rav Ashi said: It is a situation where he intends to acquire the shards.

[88] § Rabbi Elazar says: The dispute in the baraita is with regard to a situation where the damage occurred at the time of the person’s fall.

[89] The Gemara asks: But after the fall, according to this statement, what is the halakha? Does everyone agree that the owner of the jug is exempt from liability? But isn’t there Rabbi Meir, who deems him liable, since he did not remove the shards? Rather, what is the halakha? Does everyone agree that he is liable? But aren’t there the Rabbis, who deem him exempt?

[90] The Gemara answers: Rather, what is the explanation of the phrase: At the time of the person’s fall? It means even at the time of the person’s fall, and it teaches us that the dispute is referring to a situation where the damage occurred after the fall and also to a situation where it occurred at the time of the fall, in accordance with Abaye’s explanation of the mishna.

[91] And Rabbi Yoḥanan says: The dispute is with regard to a situation where the damage occurred after the fall.

[92] The Gemara asks: But at the time of the person’s fall, according to this statement, what is the halakha? Does everyone agree that the owner of the jug is exempt from liability? But from the fact that Rabbi Yoḥanan says later (31a), with regard to another mishna in this chapter: Do not say that the mishna is the opinion of Rabbi Meir, who says that one who stumbles is considered negligent, by inference it is clear that he holds that Rabbi Meir deems one who stumbles liable to pay damages. Evidently, it is not unanimously agreed upon that he is exempt.

[93] Rather, what is the halakha in this case? Does he say that everyone agrees that he is liable? But from the fact that Rabbi Yoḥanan says later: Do not say that the mishna is the opinion of Rabbi Meir, who says that one who stumbles is considered negligent, by inference it is clear that he holds that the Rabbis deem him exempt.

[94] The Gemara answers: Rather, this is what Rabbi Yoḥanan teaches us: That the circumstance in which the Rabbis deem one who renounces ownership of his hazardous property exempt is only the situation stated here, i.e., where he stumbled, as he is the victim of circumstances beyond his control. But in the general case of one who renounces ownership of his hazardous property, they deem him liable to pay for damage caused by it.

[95] § It was stated: With regard to one who renounces ownership of his hazardous property that he left in the public domain, there is a dispute between the amora’im Rabbi Yoḥanan and Rabbi Elazar. One said that he is liable, and one said that he is exempt.

[96] The Gemara suggests: Shall we say that the one who deems him liable holds in accordance with the opinion of Rabbi Meir, and the one who deems him exempt holds in accordance with the opinion of the Rabbis?

[97] The Gemara responds: No; in accordance with the opinion of Rabbi Meir, everyone agrees that one who renounces ownership over his hazardous property is liable. Rather, when they disagree it is in accordance with the opinion of the Rabbis. They disagree as to what the opinion of the Rabbis is. The one who deems him exempt holds that his opinion is in accordance with the opinion of the Rabbis. And the one who deems him liable could have said to you: I maintain that what I say is correct even according to the opinion of the Rabbis; the Rabbis deem one who renounces ownership over his hazardous property exempt only in the situation here, because he is a victim of

circumstances beyond his control. But in a general case of one who renounces ownership of his hazardous property, they deem him liable.

98 The Gemara suggests: It may be concluded that Rabbi Elazar is the one who says that he is liable, as Rabbi Elazar says in the name of Rabbi Yishmael: There are two entities that are not in a person's legal possession and nevertheless the verse rendered them as though they were in his possession with regard to certain halakhic responsibilities. And these are: A pit that he dug in the public domain and leavened bread remaining in his possession on the eve of Passover from six hours, i.e., noon, onward. Although deriving any benefit from the bread is prohibited, and it is therefore no longer in its owner's legal possession, nevertheless he is commanded to destroy it. The Gemara concludes: It may be concluded that Rabbi Elazar is the one who says that he is liable.

99 The Gemara asks: And did Rabbi Elazar actually say this, that one who renounces ownership of his hazardous objects is liable? But didn't Rabbi Elazar say the opposite? As we learned in a mishna (30a): In the case of one who turns over dung in the public domain and another person incurred damage due to it, he is liable to pay for his damage. And Rabbi Elazar says: They taught this ruling only in a case where the one who turned over the dung intended to acquire it, but in a case where he did not intend to acquire it he is exempt. Apparently, according to Rabbi Elazar, one who renounces ownership of his hazardous property is exempt, since he is liable only if he intends to take possession of the dung, even if he moved it significantly.

100 Rav Adda bar Ahava said: Rabbi Elazar was referring to a case where he returned the dung to its prior place. Therefore, he is exempt unless he intended to acquire it. Ravina said: This can be explained by means of a parable: To what is the statement of Rav Adda bar Ahava comparable? To one who finds an uncovered pit in the public domain and covers it, and then uncovers it again. Since he left the pit as he found it, he is exempt from paying damages, and the liability lies with the one who dug the pit.

101 Mar Zutra, son of Rav Mari, said to Ravina: Is this comparable? There, in the case of the pit, the result of the initial act of digging the pit was not removed, since even when he covered the pit, the pit itself still existed. But here, the result of the initial act was removed, since once the dung was moved from its prior place, there was no longer any hazardous object there. Therefore, by returning it to its place, the hazard is created anew.

102 Rather, it is comparable only to one who finds an uncovered pit and fills it with dirt and then digs it up again, as in this case the result of the initial act is removed, and the new pit therefore exists in his possession and he is liable. Likewise, one who moves dung in the public domain and then restores it to its prior place is deemed liable whether or not he intends to acquire it.

103 Rather, Rav Ashi said that Rabbi Elazar was referring to a case when he turned it over at a height of less than three handbreadths, which is not considered removal of the dung from its place.

104 The Gemara asks: But according to this explanation, what forced Rabbi Elazar to interpret the mishna as referring specifically to the unique case where he turned over the dung at a height of less than three handbreadths, and consequently the reason he is liable is that he intended to acquire it, but if he does not intend to acquire it he is not liable? Let him interpret the mishna as referring to a case where he turned over the dung at a height above three handbreadths, in which case even if he did not intend to acquire it, he is liable.

[105] Rava said: What forced him was that the mishna was difficult for him. Why does it state specifically that he turned over the dung? Let it teach that he lifted the dung. Rather, learn from the fact that the mishna does not use the term: Lifted, which generally is referring to the act of lifting an object three handbreadths for the purpose of acquisition, that whenever the term turned over is used, it is referring to an act in which the object is lifted to a height of under three handbreadths from the ground.

[106] The Gemara concludes: And from the fact that Rabbi Elazar was evidently the one who said that one who renounces ownership of his hazardous object in the public domain is still liable to pay for any damage it causes, Rabbi Yoḥanan is clearly the one who said he is exempt.

[107] The Gemara asks: And did Rabbi Yoḥanan actually say this, that if one renounces ownership of his object he is exempt from liability for any damage it causes? But didn't we learn in a mishna (30a): With regard to one who conceals a thorn or a piece of glass, or who puts up a fence of thorns, or who puts up a fence that subsequently fell into the public domain, and another person incurred damage due to any of these, he is liable to pay for this person's damage.

[108] And Rabbi Yoḥanan says: With regard to one who puts up a fence of thorns, they taught that he is liable only in a case where he projects the thorns out into the public domain, but in a case where he restricts them to his own property, he is exempt. The Gemara infers: In a case where he restricts them, what is the reason that he is exempt? Is it not because it is considered a pit on his own property? By inference, the liability in the category of Pit, according to Rabbi Yoḥanan, is in the public domain, where a pit generally does not belong to the one who dug it. Apparently, Rabbi Yoḥanan holds that one who renounces ownership of his hazardous property is liable.

[109] The Gemara answers: No, actually I could say to you that in principle, one who renounces ownership of his hazardous property is exempt. Nevertheless, one who puts up a fence of thorns is liable, because he does not renounce ownership of the thorns that protrude into the public domain. And in a case where he restricts the thorns to his own property, what is the reason he is exempt? The reason is not that he is not liable to pay for the damage of a pit in his own property, but rather because it was stated about this case that Rav Aḥa, son of Rav Ika, said: He is exempt because it is not the typical manner of people to rub against walls, but to keep a small distance from them. Therefore, if a pedestrian is injured by the thorns, it is considered an unusual accident, for which the owner of the fence is not liable.

[110] The Gemara asks: And did Rabbi Yoḥanan actually say that one who renounces ownership of his hazardous objects is exempt? But didn't Rabbi Yoḥanan say that in general, the halakha is in accordance with an unattributed mishna, and we learned in an unattributed mishna (50b): In the case of one who digs a pit in the public domain and an ox or a donkey fell into it and died, he is liable. This mishna is referring to one who digs a pit in the public domain, where it is not owned by the one who dug it, yet the mishna deems him liable.

[111] The Gemara concludes: Rather, Rabbi Yoḥanan is actually the one who said that one who renounces ownership of his hazardous objects is liable.

[112] The Gemara asks: And from the fact that Rabbi Yoḥanan said that he is liable, is it evident that Rabbi Elazar said that he is exempt? But doesn't Rabbi Elazar say

[113] in the name of Rabbi Yishmael that one is liable to pay for damage caused by a pit that he dug in the public domain, even if it is not his personal property?

[114] The Gemara answers: This is not difficult. This ruling, that he is exempt, is his own opinion, whereas that ruling, that he is liable, is the opinion of his teacher Rabbi Yishmael, and he disagrees with it.

[115] MISHNA: In the case of one who pours water in the public domain, and another person incurred damage due to it, the one who poured water is liable to pay for his damage. In the case of one who conceals a thorn or a piece of glass in his wall adjacent to the public domain, or one who puts up a fence of thorns, or one who puts up a fence that subsequently fell into the public domain, and others incurred damage due to any of these, he is liable to pay for their damage.

[116] GEMARA: With regard to the case of one who pours water in the public domain, Rav says: They taught that he is liable only when the clothes of one who slipped were soiled by the dirty water, but if the one who slipped himself was injured, the one who poured the water is exempt, as it is the impact with the ground that injured him, not the water.

[117] Rav Huna said to Rav: Why should he be exempt from paying restitution for the injury? Even if the water that he poured is considered only like his filth that he tossed in the public domain, he should be liable. Since the muddy ground caused the injury, and the mud belongs to him, as it results from the addition of his water to the dirt, he should be liable.

[118] Rav responded: Do you maintain that this is a case where the water was not absorbed into the ground? It is a case where the water was absorbed, leaving only moist dirt. Since there is no mud there that can be deemed as belonging to the one who spilled the water, he is exempt from liability.

[119] The Gemara asks: But if the mishna's ruling refers only to the soiling of the pedestrian's clothes, why do I need two mishnayot to state this halakha? According to Rav, this halakha was already addressed in the previous mishna, with regard to a jug that broke, causing a pedestrian to fall and his clothes to become soiled.

[120] The Gemara answers: One halakha was stated with regard to a case where this occurred in the summer, the dry season, and one with regard to a case where it occurred in the rainy season.

[121] As it is taught in a baraita: With regard to all those people who engage in activities that the Sages stated are permitted, i.e., those who open [potkin] their gutters and drain the sewage from their houses into the public domain, and those who flush out the water from their caves, where foul-smelling water was stored, into the public domain, during the summer they do not have permission to do so, while during the rainy season they have permission to do so, since the street is rained upon in any event and thereby washed. And although all these people perform their actions with permission, if they cause damage they are liable to pay for it. Because of the difference between the summer and the rainy season with regard to whether it is permitted for one to pour water into the public domain, both mishnayot are necessary, one for each season. This is in order to teach that even in the rainy season, when it is permitted to pour water into the public domain, one is nevertheless liable to pay for damage resulting from the water.

[122] § It is stated in the mishna that one who conceals a thorn or a piece of glass, or one who puts up a fence of thorns, is liable to pay for damage resulting from them. Rabbi Yoḥanan says: They taught that he is liable only in a case where he projects these obstacles into the public domain, but if he

restricts them to his own property, he is not liable. The Gemara asks: What is the reason that he is exempt? Rav Aḥa, son of Rav Ika, says: It is because it is not the typical manner of people to rub against walls, but to keep a certain distance from them. Therefore, if a pedestrian is wounded by the thorns, it is considered an unusual accident, for which the owner of the fence is not liable.

123 The Sages taught (Tosefta 2:6): With regard to one who conceals his thorns or his pieces of glass in another's wall, and the owner of the wall came and demolished his wall and it fell into the public domain, and the thorns or glass caused damage, the one who concealed them is liable.

124 Rabbi Yoḥanan says: They taught this only in the case of an unstable wall, since the one who concealed his items should have anticipated that the owner of the wall would soon demolish it, but in the case of a stable wall, the one who concealed his items is exempt, and the owner of the wall is liable.

125 Ravina says: That is to say that in the case of one who covers his pit with another's bucket, and the owner of the bucket came and took his bucket, and the pit causes damage, the owner of the pit is liable.

126 The Gemara asks: Isn't this obvious? This is exactly the same halakha as Rabbi Yoḥanan's statement with regard to one who conceals thorns in an unstable wall, i.e., that the hazardous item was likely to be revealed from the moment that it was concealed, and therefore its owner is liable to pay for any damage that it causes. What is the novel element in Ravina's statement?

127 The Gemara answers: It is necessary. Lest you say: It is only there, in the case of the thorns, that the owner of the wall is exempt, since he did not know who concealed the hazardous item in order to inform him that he should remove them, but here, since the owner of the bucket knew who dug the pit, he should have informed him that he was taking his bucket and is consequently liable to pay for damage caused by the pit, Ravina therefore, teaches us that he is not required to inform the owner of the pit, and he bears no responsibility for any damage caused.

128 The Sages taught: The early pious people would conceal their thorns and their pieces of glass in their fields, and would dig to the depth of at least three handbreadths in order to bury them, so that they would not obstruct the plow.

129 The Gemara relates: Rav Sheshet would toss his thorns into fire, so they would not cause damage to others. Rava would toss them into the Tigris [Diglat] River.

130 Rav Yehuda says: One who wants to be pious should observe the matters of tractate Nezikin, so as to avoid causing damage to others. Rava said he should observe the matters of tractate Avot. And some say he should observe the matters of tractate Berakhot.

131 MISHNA: In the case of one who takes out his straw [teven] and his hay [kash] to the public domain to use afterward as fertilizer and another person incurred damage due to them, he is liable to pay for his damage, and whoever takes possession of the hay and straw first acquires them for himself. Rabban Shimon ben Gamliel says: With regard to anyone who places obstacles in the public domain and they cause damage, he is liable to pay damages, and whoever takes possession of them first acquires them.

132 In the case of one who turns over dung in the public domain and another person incurred damage due to it, the former is liable to pay for his damage.

[133] GEMARA: Let us say that the ruling in the mishna that one is liable to pay for damage caused by straw or hay that he put in the public domain is not in accordance with the opinion of Rabbi Yehuda.

[134] As it is taught in a baraita that Rabbi Yehuda says: During the period when fertilizer is taken out, a person may take his fertilizer out to the public domain and let it accumulate there for a full thirty days, so that it gets trampled by people's feet and by animals' feet, as it was on this condition that Joshua bequeathed Eretz Yisrael to the Jewish people (see 80b). In other words, people do not have the right to prevent someone from taking out his straw to the public domain, since they received their portion of Eretz Yisrael following Joshua's conquest on this condition. Apparently, since one has the right to take out his straw, he is not held liable to pay for damage caused by it.

[135] The Gemara rejects this suggestion: You can even say that the mishna is in accordance with the opinion of Rabbi Yehuda, since Rabbi Yehuda possibly concedes that if the fertilizer caused damage, he is liable to pay for the damage it caused, although he acted within his rights.

[136] The Gemara asks: But didn't we learn in a baraita that Rabbi Yehuda says: If a pile of straw on the back of an animal that was passing through the public domain catches fire from a Hanukkah lamp that was placed outside a store, the owner of the lamp is exempt, since he put it there with permission (see 62b)? What, is it not because he put it there with the permission of the court and is therefore exempt from paying for damage caused by it?

[137] The Gemara answers: No, it is because he put it there with the permission granted to those performing a mitzva. Permission of the court is not sufficient to exempt him from paying damages, unless, in addition, permission was granted for the purpose of performing a mitzva. As it is taught in a baraita: Rabbi Yehuda says that if it caught fire from a Hanukkah lamp he is exempt because he had permission to put it there in order to perform a mitzva.

[138] Come and hear an alternative proof from a baraita: With regard to all these cases in which the Sages said that it is permitted for people to place obstacles in the public domain, if they caused damage, these people are liable to pay, and Rabbi Yehuda exempts them. Evidently, according to Rabbi Yehuda, if one has the permission of the court to put an item in the public domain, he is exempt from paying damages.

[139] Rav Naḥman said: The mishna is referring to a case where one put his fertilizer outside not during the period when fertilizer is taken out. Therefore, he did not have permission to do so. And it is in accordance with the opinion of Rabbi Yehuda, who holds that one is liable only if he acts without permission.

[140] Rav Ashi said an alternative explanation of the mishna according to Rabbi Yehuda:

[141] What we learned in the mishna was specifically with regard to a case where one put out his straw and his hay, which are more likely to cause injury than fertilizer and other objects, because they are particularly slippery. Therefore, Rabbi Yehuda agrees that in this case he is liable to pay for damage they cause.

[142] § It is stated in the mishna that if one puts his straw and hay out in the public domain, whoever takes possession of them first acquires them. The Sages disagreed with regard to the extent of this acquisition. Rav says: He acquires them both with regard to the items themselves and with regard to the value of their enhancement, which took place while they were in the public domain. And Ze'eiri says: He acquires them with regard to the value of their enhancement but not with regard to the items

themselves, and he must pay the owner of the straw according to their value at the time he placed them in the public domain.

[143] With regard to what do they disagree? Rav holds that the Sages penalized the owner by revoking his ownership of the items themselves due to the value of their enhancement that he stands to earn by putting them in the public domain, whereas Ze'eiri holds that they did not penalize him by revoking his ownership of the items themselves due to the value of their enhancement. Rather, he loses only the increase in their value due to their enhancement.

[144] The Gemara attempts to prove that Ze'eiri's opinion is correct from a case where there is no enhancement at all. We learned in the continuation of the mishna that in the case of one who turns over dung in the public domain and another person incurred damage due to it, the former is liable to pay for his damage. But it does not teach in this clause that whoever takes possession of it first acquires it. Apparently the Sages did not revoke his ownership of the dung, as it has no enhanced value. This does not seem to accord with Rav's opinion.

[145] The Gemara answers: The halakha that whoever takes possession of it acquires it is taught in the first clause, with regard to one who puts out straw, and the same is true in the last clause, with regard to one who turns over dung. It is unnecessary to repeat it. Therefore, no support for the opinion of Ze'eiri can be derived from here.

[146] The Gemara asks: But isn't it taught in a baraita in that regard, i.e., a baraita that discusses the same cases as the mishna, that the hay and straw are forbidden due to the prohibition against robbery, which apparently means that one may not take possession of the dung, contrary to Rav's opinion?

[147] The Gemara answers: When it is taught in the baraita that they are forbidden due to the prohibition against robbery, it applies to the entire mishna, not just to this particular clause, and it is referring to taking the items from the one who came first and acquired them. In other words, once someone takes possession of them, it is forbidden for anyone else to take them from him, as that is considered robbery.

[148] The Gemara asks: But it is not taught in this manner elsewhere, as we learned in a baraita: In the case of one who takes out his straw and his hay to the public domain to use afterward as fertilizer and another person incurred damage due to them, he is liable to pay for his damage. And furthermore, whoever takes possession of them first acquires them, and is permitted to do so with regard to the prohibition against robbery. And in the case of one who turns over dung in the public domain and another incurred damage due to it, he is liable, but it is forbidden to take possession of it due to the prohibition against robbery.

[149] Rav Naḥman bar Yitzḥak said: Is it from the case of dung that you raise a contradiction to Rav's opinion that one may take possession of straw and hay in the public domain? With regard to an item that has added value due to enhancement over time as a result of lying in the public domain, Rav holds that the Sages penalized one who leaves it in the public domain, revoking his ownership of the item itself because of its added value due to enhancement, but with regard to an item that does not have added value due to enhancement by lying in the public domain, such as dung, perhaps Rav concedes that they did not penalize him in this manner.

[150] A dilemma was raised before the Sages: According to the statement of Rav, who says that they penalized him by revoking his ownership of the items themselves because of its added value due to

enhancement, do we impose this penalty immediately when he takes the straw out, allowing one to take possession of it even before it has time for its value to become enhanced, or do we impose the penalty only when its enhancement in value emerges?

151 Come and hear a proof that the penalty is imposed immediately from the fact that we spoke of a difficulty to Rav's opinion from the case of dung, whose value does not become enhanced, indicating that according to Rav the penalty is imposed before there is any enhancement.

152 The Gemara responds: And how can you understand this proof? When we spoke of dung, this was before Rav Naḥman bar Yitzḥak resolved the difficulty, explaining that perhaps Rav concedes that there is no penalty in this case. But after Rav Naḥman resolved it, is it at all possible to raise an objection to Rav's opinion from the case of dung? Therefore, no proof can be brought from there.

153 The Gemara suggests: Let us say that this dispute is parallel to a dispute between tanna'im, as it is stated in a baraita: With regard to a document in which a loan with interest is written, we penalize the lender, and he therefore collects neither the principal nor the interest; this is the statement of Rabbi Meir. And the Rabbis say: He collects the principal but not the interest. Shall we say that Rav stated his opinion in accordance with the opinion of Rabbi Meir, whose penalty applies to the value of the loan itself due to its enhancement, i.e., the interest, which is prohibited, and that Ze'eiri stated his opinion in accordance with the opinion of the Rabbis, who impose the penalty only on the interest?

154 The Gemara answers that Rav could have said to you: I stated my opinion even according to the opinion of the Rabbis. The Rabbis were saying there that the principal is not forfeited by the lender only because the principal was loaned in a permissible manner, as the prohibition applies only to the interest. But here, in the case of one who put his straw in the public domain, the principal, i.e., the hazardous object itself, causes damage. Therefore, the penalty should relate to the object itself.

155 And conversely, Ze'eiri could have said to you: I stated my opinion even according to the opinion of Rabbi Meir. The reason Rabbi Meir was saying there, in the case of a loan with interest, that the principal is also forfeited is only that the prohibition was already violated from the time of the writing of the document, by making an appraisal [shuma] of how much money is to be repaid, which included interest. But here, in the case of straw that one placed in the public domain, who can say that it will cause damage? Since the damage was not inevitable at the time that the straw was placed there, there is no justification for revoking the ownership of the straw itself.

156 The Gemara suggests alternatively: Let us say that the dispute between Rav and Ze'eiri is parallel to a dispute between these tanna'im, as it is stated in a baraita: In the case of one who takes his straw and his hay out to the public domain to use afterward as fertilizer, and another incurred damage due to them, he is liable to pay for his damage. And whoever takes possession of them first acquires them, but they are forbidden due to the prohibition against robbery. Rabban Shimon ben Gamliel says: In the case of anyone who places obstacles in the public domain and they cause damage, he is liable to pay. And whoever takes possession of them first acquires them and they are permitted to him with regard to the prohibition against robbery.

157 The Gemara clarifies: This matter itself is difficult. First you said that whoever takes possession of them first acquires them, and then it says that they are forbidden due to the prohibition against robbery, indicating that one may not take possession of them. Rather, is this not what the baraita is saying: This statement: And whoever takes possession of them first acquires them, is stated with

regard to the value of their enhancement. And this statement: But they are forbidden due to the prohibition against robbery, is stated with regard to the items themselves? And Rabban Shimon ben Gamliel came to say that even with regard to the items themselves, whoever takes possession of them first acquires them. Therefore, this tannaitic dispute apparently relates to whether the penalty applies to the items themselves or just to the value of their enhancement.

158 The Gemara comments: According to Ze’eiri, it is certainly a dispute between tanna’im, since Rabban Shimon ben Gamliel explicitly deems it permitted for one to take possession of the items. According to Rav, shall we say that it is a dispute between tanna’im?

159 The Gemara responds that Rav could have said to you: According to all opinions, the Sages imposed a penalty revoking his ownership of the items themselves due to the value of their enhancement. And here in the baraita the tanna’im disagree with regard to whether or not it is ruled that this is the halakha but a public ruling is not issued to that effect, as it was stated that amora’im disagreed as to whether the halakha revoking his ownership of the items themselves should be taught to the public. Rav Huna says that Rav says: This is the halakha, but a public ruling is not issued to that effect. In other words, although it is permitted for one to take possession of the straw, halakhic authorities should not publicly rule that people may do so, lest people become accustomed to taking items that belong to others. This is the opinion of the first tanna in the baraita. Rav Adda bar Ahava says: This is the halakha and a public ruling is issued to that effect. This, Rav could have said, is the opinion of Rabban Shimon ben Gamliel.

160 The Gemara asks: Is that so? But didn’t Rav Huna declare dried barley [ḥushelei] that people laid out in the public domain ownerless? Similarly, didn’t Rav Adda bar Ahava declare ownerless

161 residue from dates?

162 The Gemara comments: Granted, Rav Adda bar Ahava acted in accordance with his halakhic opinion that this is the halakha, and a public ruling is issued to that effect. But with regard to Rav Huna, shall we say that he retracted his prior opinion?

163 The Gemara answers: Those owners of the barley were forewarned to remove the barley from the public domain, and they did not comply. Therefore, they were penalized by Rav Huna declaring publicly that their barley was ownerless.

164 MISHNA: In the case of two potters carrying pots who were walking one after the other in the public domain, and the first stumbled on a bump and fell, and the second stumbled over the first and fell too, the first is liable to pay for the damage incurred by the second.

165 GEMARA: Rabbi Yoḥanan said: Do not say that the mishna is the opinion of Rabbi Meir, who says that one who stumbles is considered negligent and therefore liable. Rather, even according to the Rabbis, who say that one who stumbles is generally a victim of circumstances beyond his control and is consequently exempt, here, in the case in the mishna, he is liable, since after falling he had the opportunity to stand up, and he did not stand up.

166 Rav Naḥman bar Yitzḥak said: Even if you say that he did not have the opportunity to stand up, he had the opportunity to warn the person behind him, and he did not warn him.

167 And Rabbi Yoḥanan could have said in response that since he did not have the opportunity to stand up, he did not have the opportunity to warn the other person either, as he was busy trying to

stand up. Therefore, the mishna, which holds him liable, must be referring to a case where he could have stood up.

168 The Gemara attempts to prove that the opinion of Rav Naḥman bar Yitzḥak is correct. We learned in the next mishna (31b): If the owner of a cross beam was walking in the public domain carrying his beam first, and the owner of a barrel was walking with his barrel last, i.e., behind him, and the barrel was broken by the cross beam, the one who carried the cross beam is exempt. But if the owner of the cross beam stopped, he is liable, since the accident was caused by his stopping.

169 The Gemara asks: What, is it not referring to a situation where the one carrying the cross beam stopped in order to adjust the load on his shoulder, which is the normative behavior of one carrying a beam, and is not considered negligence? And nevertheless the tanna teaches that he is liable, as, although he had the opportunity to warn the person behind him that he was about to stop, he did not warn him. This supports the opinion of Rav Naḥman bar Yitzḥak.

170 The Gemara responds: No, it is referring to a situation where he stopped to rest, which could not have been anticipated by the person walking behind him. Consequently, he is liable.

171 The Gemara asks: But according to this interpretation, if he stopped to adjust the load on his shoulder, what is the halakha? Is he exempt? If so, rather than teaching in the latter clause of that mishna: But if he said to the owner of the barrel: Stop, he is exempt, let the tanna distinguish and teach within the former case itself, as follows: In what case is this statement, that he is liable, said? In a case when he stopped to rest. But in a case where he stopped to adjust the load on his shoulder, he is exempt.

172 The Gemara answers: The mishna is presented in this manner because it teaches us this novelty, that even if he stopped to rest, in a case when he says to the owner of the barrel: Stop, he is exempt.

173 Come and hear an alternative proof from what is taught in a baraita: With regard to potters and glaziers who were walking one after the other, and the first stumbled and fell, and the second stumbled over the first, sustaining damage, and the third stumbled over the second, also falling and sustaining damage, in this case, the first person is liable to pay for the damage of the second, and the second is liable to pay for the damage of the third. But if they all fell because of the first, the first is liable to pay for the damage of them all. And if they warned each other, i.e., each one warned the next, they are all exempt. The Gemara concludes: What, is it not a case where they did not have the opportunity to stand up, and they are nevertheless liable to pay for not warning the people behind them, in accordance with the opinion of Rav Naḥman bar Yitzḥak?

174 The Gemara answers: No, it is a case where they had the opportunity to stand up and they did not do so.

175 The Gemara asks: But according to this interpretation, if they did not have the opportunity to stand up, what would be the halakha? Would they be exempt? If so, rather than teaching in the latter clause of the baraita: If they warned one another, they are exempt, let the tanna distinguish and teach within the former case itself, as follows: In what case is this statement, that they are liable, said? It is a case where they had the opportunity to stand up, but if they did not have the opportunity to stand up, they are exempt.

[176] The Gemara answers: The baraita is presented in this manner because it teaches us this novelty, that even if they had the opportunity to stand up, in a case when they warned each other they are exempt.

[177] § With regard to this halakha, Rava said: The first one who stumbled is liable to pay for the damage of the second, both for damage caused to the second person by his body and for damage caused to him by his property. By contrast, the second is liable to pay for the damage of the third only with regard to damage caused by his body as result of the fall, and not with regard to damage caused by his property.

[178] The Gemara questions Rava's statement: Whichever way you look at it, this is difficult to understand. If Rava maintains that one who stumbles is considered negligent, the second person should also be liable to pay for all forms of damage caused by his negligence. And if Rava maintains that one who stumbles is not considered negligent, even the first should be exempt from liability for the damage incurred by the second.

[179] The Gemara explains: The first is certainly considered negligent, and is therefore liable to pay for damage caused by both his body and his property. The second is deemed liable to pay for damage caused by his body, as he had the opportunity to stand up and he did not stand up. For damage caused by his property that was lying there and that caused the third person to stumble and fall, he is exempt, as he can say to him: I did not dig this pit, i.e., I did not cause this obstacle. Since it was the first person who stumbled and brought about the situation where the items of the second were lying on the ground, the second is not deemed liable.

[180] The Gemara raises an objection to Rava's statement from a baraita that comments on this case: All of them are liable to pay for damage caused by their bodies and exempt from paying restitution for damage caused by their property. What, does this not refer even to the first, indicating that even he is exempt from damage caused by his property?

[181] The Gemara answers: No, it is referring to all of them except for the first. The Gemara asks: But doesn't the baraita teach the term all of them, indicating that the first is also included? Rav Adda bar Ahava said: The term all of them refers only to those who incurred damage, and excludes the first one, who only caused damage to others.

[182] The Gemara questions this answer: What is this interpretation? Granted, if you say that the term includes even the first, this explanation is consistent with that which is taught: All of them. But if you say that it is referring to all of them except for the first, what is the reason that the misleading term: All of them is used? Let the baraita teach more accurately that those who incurred damage are liable in turn for the damage caused by their bodies, but are exempt from paying restitution for damage caused by their property.

[183] Rather, this entire explanation of Rava's statement should be rejected, and it should be explained as follows: Rava said that the first is liable both for injury caused to the body of the second and for damage caused to the property of the second, and the second is liable to pay for damage incurred by the third with regard to injury to his body but not with regard to damage to his property. What is the reason for the exemption in the last case? It is because after his fall, the body of the second person is effectively a pit, and we do not find that in the category of Pit one is liable to pay restitution for damage caused to vessels.

184 The Gemara asks: This works out well according to Shmuel, who says that any obstacle that was placed in the public domain constitutes a pit, i.e., the halakhot of a pit apply to it. But according to Rav, who says that if the one who placed it there renounces ownership of the hazardous object it is considered a pit, but if he does not renounce ownership of it then it is not considered a pit, what is there to say? The second one who fell obviously did not renounce ownership of his body, so why is he exempt from damage he caused to vessels as though he were a pit?

185 The Gemara answers: Actually, Rava's statement should be explained as he was understood to have said initially, i.e., that he distinguishes between damage caused by another's body and damage caused by his property. And as for your difficulty from the statement in the baraita that all of them are liable to pay for the damage caused by their bodies but exempt from paying restitution for the damage caused by their property, apparently including even the first one, contrary to Rava's opinion, Rav Adda bar Minyumi interpreted it before Ravina as referring to a case where vessels were damaged by vessels. In other words, it is not the body, but the vessels of the second that were damaged by the property of the first, and since the broken vessels of the first have the status of a pit, the owner is exempt from liability for damage caused to the vessels of others.

186 The Master said above: If they all fell because of the first, the first is liable to pay for the damage of them all. The Gemara asks: How did they all fall because of the first? Rav Pappa said: It is a case where he blocked the road like a skeleton [keshilda], filling the entire width of the road and causing the rest to stumble over different parts of his body. Rav Zevid said: He fell diagonally like a blind man's cane, and they all stumbled over him.

187 MISHNA: If this person came in the public domain with his barrel, and that person came from the opposite direction with his cross beam, and this one's jug was broken by that one's cross beam, the one carrying the cross beam is exempt, because this one had permission to walk in the public domain, and that one also had permission to walk there.

188 If they were walking in the same direction, so that the owner of the cross beam was walking first, in front, and the owner of a barrel last, behind him, and the barrel was broken by the cross beam, the owner of the cross beam is exempt, since the owner of the barrel saw him in front of him and should have been more careful.

189 But if the owner of the cross beam stopped, causing the barrel to collide with the beam and break, the former is liable, since the latter had no way of anticipating that he would stop. And if he said to the owner of the barrel: Stop, he is exempt from liability for breaking the barrel.

190 Conversely, if the owner of the barrel was walking first and the owner of the cross beam last, and the barrel was broken by the cross beam, the owner of the cross beam is liable. But if owner of the barrel stopped, the owner of the cross beam is exempt from liability for breaking the barrel. And if he said to the owner of the cross beam: Stop, the owner of the cross beam is liable. And similarly, these halakhot apply in a case where this one came with his lamp and that one came with his flax, and the lamp set fire to the flax.

191 GEMARA: Rabba bar Natan asked Rav Huna: With regard to one who causes injury to his wife during sexual intercourse, what is the halakha? Is he liable to pay damages? Is it reasoned that since he is acting in a permitted manner he is exempt, or perhaps he should pay attention and be more careful?

192 Rav Huna said to Rabba bar Natan: You learned this halakha in the mishna concerning one person walking with a cross beam and another with a barrel, which rules that the owner of the cross beam is exempt because this one had permission to walk and that one also had permission to walk. Similarly, since the husband has permission to engage in intercourse with his wife, if he injures her in the process he is exempt.

193 Rava disagreed with Rav Huna's opinion and said: The husband is liable due to an a fortiori inference from the halakha with regard to manslaughter, as it is stated in the Torah: "As when a man goes into the forest with his neighbor to chop wood…and the head slips off the helve, and finds his neighbor, and he dies; he shall flee to one of these cities and live" (Deuteronomy 19:5). And just as in the forest, where this person entered his domain and that person entered his domain, as it is the domain of the public, and nevertheless the one who kills unintentionally is considered like one who entered another's domain and is therefore liable to be exiled to a city of refuge, then with regard to this husband, who actually enters another's domain, all the more so is it not clear that he should be liable for the injury he causes her?

194 The Gemara raises an objection to Rava's opinion: But what of this mishna, which teaches that the owner of the cross beam is exempt, as this one had permission to walk and that one had permission to walk, and Rav Huna inferred from here that the husband is likewise exempt.

195 The Gemara answers: The two cases are different. There, in the case in the mishna, both sides were similarly walking, and the one who caused the damage is therefore exempt due to his right to walk there. By contrast, here, the husband is the only active participant in the intercourse. Therefore, since he is the one performing an action, he is liable even though he is acting with permission.

196 The Gemara asks: And is she not considered an active participant? But isn't it written with regard to forbidden sexual intercourse: "Even the souls that do them shall be cut off from among their people" (Leviticus 18:29), indicating that both the man and woman are considered to be performing an action?

197 The Gemara answers: The verse is referring to the fact that they both have pleasure from the act. The woman's pleasure is tantamount to active transgression, and she is therefore punished if she participates willfully. But with regard to a wife's injury, he is the one who is considered to be performing an action, and he is therefore liable.

198 § The mishna teaches: In a case where the owner of the cross beam was walking first and the owner of the barrel was walking behind him, if the barrel was broken by the cross beam, the owner of the cross beam is exempt. Reish Lakish says: If two cows were in the public domain, one of them prone and one walking, and the cow that was walking kicked the cow that was prone, its owner is exempt. If the prone cow kicked the cow that was walking, its owner is liable to pay.

199 Let us say that the mishna supports this statement, as it states: If the owner of the cross beam was first and the owner of the barrel was last, and the barrel was broken by the cross beam, he is exempt. But if the owner of the cross beam stopped, the owner of the cross beam is liable. The Gemara explains the proof: But here, it is clear that it is like a case where the prone cow kicked the cow that was walking, since the one carrying the barrel was walking and the one carrying the cross beam stopped in the public domain, causing damage to the former. And the mishna teaches in this case that the owner of the cross beam is liable.

200 The Gemara responds: And how can you understand that reasoning? You wanted to support the statement of Reish Lakish from the mishna. Not only does it not support Reish Lakish; it even raises a difficulty to his opinion. The reason Reish Lakish stated that the owner of the prone cow is liable is that it kicked the walking cow; but if the walking cow was damaged because by itself it collided with the prone cow, he would be exempt. But the mishna discusses a case where the one carrying the barrel ran into the cross beam by himself, without the one carrying the cross beam actively hitting it, and it teaches that the owner of the cross beam is nevertheless liable.

201 The Gemara explains: The mishna is referring to a case where the cross beam blocked the entire width of the road like a carcass. Since the one carrying the barrel could not avoid it, the one carrying the cross beam is liable although he did not actively break the barrel. By contrast, here, Reish Lakish's statement is referring to a case where the cow was lying down on one side of the public domain, and the other cow should have walked on the other, unobstructed side. Therefore, if the damage is caused only as a result of their collision, the owner of the prone cow is exempt.

202 The Gemara suggests: Rather, it is the latter clause of the mishna that supports Reish Lakish's statement, as it teaches: Conversely, if the owner of the barrel was walking first and the owner of the cross beam last, and the barrel was broken by the cross beam, the owner of the cross beam is liable. But if the owner of the barrel stopped, the owner of the cross beam is exempt from liability for breaking the barrel. But here, it is clear that it is like a case where the walking cow kicked the prone cow. And the mishna teaches that the owner of the cross beam is exempt, lending support to Reish Lakish's ruling.

203 The Gemara rejects this suggestion: The mishna exempts the one carrying the cross beam because he was walking in his normal manner when he hit the barrel. Here, perhaps the owner of the prone cow can say to the owner of the walking cow: Although you have permission to walk over me, i.e., for your cow to walk over my cow, you have no permission to kick me, i.e., for your cow to kick my cow.

204 MISHNA: With regard to two people who were walking in the public domain, or one who was running and another one who was walking, or who were both running, and they damaged one another, both of them are exempt.

205 GEMARA: The Gemara comments: The mishna is not in accordance with the opinion of Isi ben Yehuda. As it is taught in a baraita: Isi ben Yehuda says that one who runs in the public domain and causes damage is liable to pay for any damage he causes because his behavior is unusual in the public domain. And Isi concedes with regard to one who runs and causes damage at twilight on the eve of Shabbat that he is exempt, because he is running with permission.

206 Rabbi Yoḥanan says: The halakha is in accordance with the opinion of Isi ben Yehuda. The Gemara asks: And did Rabbi Yoḥanan actually say this, that if one runs and causes damage he is liable? But doesn't Rabbi Yoḥanan say, as a principle, that the halakha is in accordance with an unattributed mishna? And we learned in this mishna that if one was running and the other one was walking, or if they were both running, they are exempt.

207 The Gemara answers: The mishna, which exempts one who was running, is referring to twilight on the eve of Shabbat, when people are permitted to run in the public domain.

[208] The Gemara explains: From where is it inferred that the mishna is referring to twilight on the eve of Shabbat? It is inferred from the fact that it teaches: Or who were both running, they are exempt. Why do I need this case as well? Now that the mishna teaches that if one was running and the other one was walking, the one running is exempt, is it necessary to state that he is exempt when both of them were running? Rather, this is what the mishna is saying: If one was running and the other one was walking, he is exempt. In what case is this statement said? It is said with regard to twilight on the eve of Shabbat, when running in the public domain is permitted. But on a weekday, if one was running and the other one was walking, the one who was running is liable. If both were running, even on a weekday, they are exempt. This emendation explains the need to mention the case where both were running.

[209] The Master said above: And Isi concedes with regard to one who runs and causes damage at twilight on the eve of Shabbat that he is exempt, because he is running with permission. The Gemara asks: What is the reason that running at twilight on the eve of Shabbat is considered to be with permission?

[210] The Gemara answers: It is like that which Rabbi Ḥanina would say, as Rabbi Ḥanina would say at twilight on the eve of Shabbat:

[211] Come and let us go out to greet the bride, the queen. And some say that this is what he would say: Come and let us go out to greet Shabbat, the bride, the queen. Rabbi Yannai would wrap himself in his tallit and stand at the eve of Shabbat at twilight, saying: Come, bride; come, bride. Similarly, it is appropriate for one to run out in honor of Shabbat.

[212] MISHNA: With regard to one who was chopping wood in the public domain and a chip flew off and caused damage in the private property of another person, or one who was chopping wood in his private property and caused damage in the public domain, or one who was chopping wood in his private property and caused damage in the private property of another, in all these cases he is liable.

[213] GEMARA: The Gemara comments: And it is necessary for the mishna to teach that he is liable in all these cases because in each one there is a novel element. As if it had taught only the case of one who was chopping wood in his private property and caused damage in the public domain, it might have been reasoned that he is liable, despite the fact that he was working in his private property, because it is common for the multitudes to be there. But if a chip flew from the public domain to another person’s private property, where it is not common for the multitudes to be, one might say that he is not liable. Therefore, it is necessary to teach this case as well.

[214] And conversely, if it had taught that he is liable where the chip flew from the public domain to another’s private property, it might have been reasoned that he is liable because at the outset he was acting without permission by chopping wood in the public domain. But if it flew from his private property to the public domain, since he was acting with permission by chopping wood in his private property, one might say that he is not liable. Therefore, it is necessary to teach both cases.

[215] And if the mishna had taught only that he is liable in these two cases, it might have been reasoned that in this case, where the damage was caused in the public domain, he is liable because it is common for the multitudes to be there, and in that case, where he was chopping in the public domain, he is liable because he was acting without permission. But in the last case, where the chip flew from his private property to another’s private property, where neither of the above reasons applies, as it is not common for the multitudes to be in the place where the damage was caused and

he was acting with permission at the outset, one might say he is not liable. Therefore, it is necessary for the mishna to teach all these cases.

216 § The Sages taught (Tosefta 6:25): With regard to one who entered the workshop of a carpenter without the latter's permission, and a chip of wood flew off and hit him in the face and he died, the carpenter is exempt. But if he entered the shop with permission, the carpenter is liable.

217 The Gemara asks: What does the baraita mean when it rules that the carpenter is liable? Rabbi Yosei bar Ḥanina says: If the other person was injured, he is liable to pay four types of indemnity that one who injures another must pay. These are: Cost of the damage, pain, medical costs, and loss of livelihood. But if the one who entered was killed, he is exempt from exile.

218 The Gemara explains that he is exempt because this case is not similar to the case of a forest, which is the archetypal case stated in the Torah requiring one who kills unintentionally to be exiled, as it is written: "As when a man goes into the forest with his neighbor to chop wood, and his hand fetches a stroke with the axe to cut down the tree, and the head slips off the helve, and finds his neighbor, and he dies" (Deuteronomy 19:5). This is because in the case of the forest, both this one entered his domain and that one entered his domain, as anyone may use the public domain, whereas in this case, the victim entered another's property. Therefore, the carpenter is not exiled.

219 Rava said: On the contrary; it can be inferred a fortiori that he is exiled. And if in the case of the forest, where this one entered of his own accord and that one entered of his own accord, neither asking for the other's permission, nevertheless the victim is considered like one who entered with the other's consent and therefore the one who kills unintentionally is exiled, all the more so is it not clear that in this case, where the victim entered another's workshop with his consent, the carpenter should be exiled?

220 Rather, Rava said: What is the reason he is exempt from exile? As exile is not sufficient for him, and this is the reason of Rabbi Yosei bar Ḥanina, who exempts him from exile: Because it is an unintentional killing that is approaching intentional manslaughter. The purpose of exile is to atone for one who kills another completely unintentionally; if he was exceedingly negligent, exile is not sufficient to atone for him.

221 Rava raises an objection to his own explanation from a mishna: If one is sentenced to be flogged in court and the doctors assessed that he would be able to endure only a certain number of lashes, but the one administering the lashes added one lash to his punishment and he died, the agent of the court is exiled on account of him (Makkot 22b). But here, it is clear that it is a case of an unintentional killing that is approaching intentional manslaughter, as it should have entered his mind that people can die by one additional lash. And the tanna teaches that the agent of the court is exiled. Rav Shimi of Neharde'a said in response: It is a case where he erred in the counting, which is not considered approaching intentional manslaughter.

222 Rava slapped Rav Shimi on his sandal, a gesture of disparagement, and said to him: Is that to say that the one administering the lashes is the one who counts them? But isn't it taught in a baraita that the eldest of the judges recites the verses that are read to a person while he receives lashes, and the second judge counts, and the third says to the one administering the lashes: Strike him? Accordingly, it is not the one administering the lashes who erred in counting.

[223] Rather, Rav Shimi of Neharde’a said: It is a case where the judge himself erred in counting, and the one administering the lashes did not notice this error and meted out an extra lash, causing the person to die. It is therefore considered a completely unintentional killing. Consequently, he is exiled.

[224] The Gemara raises an objection from another mishna: With regard to one who throws a stone into the public domain and kills someone, he is exiled. But here, it is clear that it is a case of an unintentional killing that is approaching intentional manslaughter, as it should have entered his mind that people are commonly found in the public domain. And the tanna teaches that he is exiled.

[225] Rav Shmuel bar Yitzḥak said: It is not a case where one threw a stone into the public domain for no purpose, but rather where he demolishes his wall, which borders on the public domain, and stones fall into the public domain. Therefore, it is not considered to be approaching intentional manslaughter.

[226] The Gemara questions this assertion: Nevertheless, he should have paid attention to see if there was anyone there, and therefore it should be considered an unintentional killing that approaches intentional manslaughter. The Gemara answers: It is a case where he demolishes the wall at night.

[227] The Gemara asks: Even at night, he should also have paid attention to see if there was anyone there. The Gemara suggests an alternative interpretation: It is a case where he demolishes his wall during the day into a garbage dump, where people are not commonly found.

[228] The Gemara asks: What are the circumstances of this garbage dump? If it is a garbage dump where the multitudes are commonly found, it is considered intentional manslaughter. And if the multitudes are not commonly found there, he should be considered not only one who kills unintentionally, but a victim of circumstances beyond his control, since he could not have anticipated that someone would be there. Therefore, he should be exempt from exile.

[229] Rav Pappa said: This halakha is necessary only in the case of a garbage dump where people are given to relieve themselves at night and are not given to relieve themselves during the day, as it is near the public domain. But there are those who chance by and sit there for this purpose even during the day. On the one hand, he is not one who kills intentionally, as people are not given to relieve themselves there during the day. On the other hand, he is not a victim of circumstances beyond his control either, as there are those who chance by and sit there. Therefore, he is considered one who kills unintentionally and is liable to be exiled.

[230] Rav Pappa taught in the name of Rava that this aforementioned statement of Rabbi Yosei bar Ḥanina is in reference not to the latter clause of the baraita but is in reference to the first clause: With regard to one who enters the workshop of a carpenter without permission, and a chip of wood flies off and strikes him in the face and he dies, the carpenter is exempt. In reference to this clause Rabbi Yosei bar Ḥanina says: If the one who entered was merely injured, the carpenter is liable to pay four types of indemnity. But if the one who entered was killed, he is exempt from exile.

[231] The Gemara comments: With regard to the one who teaches this statement in reference to the last clause of the baraita, where one enters with permission, all the more so would he teach it in reference to the first clause, where one enters without permission. But the one who teaches this statement in reference to the first clause teaches it only in reference to that clause. But in the case of the last clause, since he entered with permission the carpenter is liable to go into exile.

232 The Gemara asks: But is he liable to go into exile when the victim had permission to enter? But isn’t it taught in a baraita that with regard to one who enters the workshop of a welder, and sparks [nitzotzot] fly off and strike him in his face and he dies, the welder is exempt, and this is the halakha even if the victim entered with permission?

233 The Gemara answers: With what are we dealing here, in this baraita? We are dealing with the welder’s apprentice who enters his workshop. The Gemara asks: Does the welder’s apprentice stand to be killed, i.e., is it permitted to kill him? The Gemara answers: It is a case where his mentor is urging him to leave, and he does not leave.

234 The Gemara asks: And because his mentor is urging him to leave, does he stand to be killed? The welder should be careful until his apprentice leaves. The Gemara answers: The welder thought that he had already left when the accident happened. The Gemara asks: If so, why establish that the baraita refers specifically to an apprentice? The welder would be exempt if it were any other person also.

235 The Gemara answers: Another person does not have awe of his mentor. Therefore, even if the welder urges another person to leave, he must ascertain that that person actually did so, and otherwise he is liable to be exiled. By contrast, this apprentice has awe of his mentor, and so the welder may assume that if he instructed him to leave, he certainly did. Therefore, if in reality the apprentice did not leave and is killed by the sparks, the welder is not liable to be exiled, as he is not held accountable.

236 Rav Zevid taught in the name of Rava that this aforementioned statement of Rabbi Yosei bar Ḥanina is in reference not to the above baraita but is in reference to this baraita: It is stated in the verse concerning one who kills unintentionally: “And the head slips off the helve, and finds his neighbor, and he dies” (Deuteronomy 19:5); this serves to exclude one who introduces himself into an area of danger, in which case the one who kills unintentionally is exempt from exile. From here Rabbi Eliezer ben Ya’akov says: With regard to one whom a stone departed from his hand, and another person stuck out his head and received a blow from it and died, the one who threw the stone is exempt from exile. It is in reference to this statement that Rabbi Yosei bar Ḥanina says: He is exempt from exile for killing him. But if the victim was merely injured, he is liable to pay four types of indemnity.

237 The Gemara comments: The one who teaches this statement in reference to this baraita, all the more so he would teach it in reference to the first baraita, where one entered the workshop of the carpenter. But the one who teaches it with regard to the first baraita teaches it only in reference to that baraita. But in this baraita he is entirely exempt from liability for injury, as one could claim that he is completely blameless.

238 § The Sages taught: With regard to salaried laborers who came into their employer’s courtyard to claim their wages from the homeowner, and the homeowner’s ox gored them, or the homeowner’s dog bit them, and a laborer died, the homeowner is exempt. Others say that he is liable, as salaried laborers are allowed to enter their employer’s property to claim their wages from the homeowner.

239 The Gemara asks: What are the circumstances? If the employer can be found in the city, what is the reason of the others, who hold him liable? The laborers could have met him in the city to claim their wages and did not need to enter his courtyard. If he can be found only at home, what is the reason of the first tanna, who exempts him? Clearly they are entitled to claim their wages.

240 The Gemara answers: No, these are not the circumstances under discussion. This halakha is necessary only with regard to a man who can sometimes be found in town and sometimes cannot be found in town, and the laborers called to him at the gate of his courtyard, and he said to them: Yes. One Sage, referred to as the others, holds that the term yes in this context indicates: Come in. Therefore, he is liable for their death. And one Sage, the first tanna, holds that the term yes in this context indicates: Stand in your place and I will come out to you. Since he did not give them permission to enter, he is exempt.

241 It is taught in a baraita in accordance with the opinion of the one who says that yes in this context indicates: Stand in your place. As it is taught in a baraita: With regard to a salaried laborer who entered his employer's courtyard to claim his wages from the homeowner, and the homeowner's ox gored him, or his dog bit him, the homeowner is exempt, although the laborer entered with permission. The Gemara asks: Why is he exempt if the laborer entered with permission? Rather, is it not because it is a case where the laborer called him at the gate, and he said to him: Yes? Conclude from it that yes in this context indicates: Stand in your place.

242 MISHNA: With regard to two innocuous oxen that injured each other, the respective damages are evaluated, and if one amount is more than the other, the owner pays half the damages with regard to the difference. In other words, the owner of the ox that caused the greater damage pays the other owner half the difference. If both oxen were forewarned, the owner of the ox that caused the greater damage pays the full cost of the damage with regard to the difference.

243 In a case where one of the oxen was innocuous and the other one was forewarned, if the forewarned ox caused greater damage to the innocuous ox than the reverse, the owner of the forewarned ox pays the full cost of the damage with regard to the difference. If the innocuous ox caused greater damage to the forewarned ox, its owner pays half the damage with regard to the difference.

244 And similarly, with regard to two people who injured each other, the one who did greater damage pays the full cost of the damage with regard to the difference, since one is always considered forewarned with regard to damage he causes.

245 If a person caused damage to a forewarned ox and the forewarned ox caused damage to the person, whichever side caused the greater damage pays the full cost of the damage with regard to the difference. In a case where a person caused damage to an innocuous ox and the innocuous ox caused damage to the person, if the person caused greater financial damage to the innocuous ox he pays the full cost of the damage with regard to the difference. If the innocuous ox caused greater damage to the person, its owner pays only half the damage with regard to the difference. Rabbi Akiva says: The owner of the innocuous ox that injured a person also pays the full cost of the damage with regard to the difference. Rabbi Akiva does not distinguish between an innocuous and a forewarned ox in a case where an ox injures a person.

246 GEMARA: With regard to the dispute between Rabbi Akiva and the Rabbis about a case where an ox injures a person, the Sages taught: It is derived from the verse: "Whether it has gored a son, or has gored a daughter, according to this judgment shall it be done to him" (Exodus 21:31), that as is the judgment concerning an ox that causes damage to an ox, so is the judgment with regard to an ox that causes damage to a person. Just as with regard to an ox that causes damage to an ox, if it is innocuous its owner pays half the cost of the damage and if it is forewarned he pays the full cost of

the damage, so too, with regard to an ox that causes damage to a person, if it is an innocuous ox its owner pays half the cost of the damage and if it is a forewarned ox the owner pays the full cost of the damage.

247 Rabbi Akiva says: It is derived from the phrase “according to this judgment” that the halakha with regard to an ox that gores a person is judged like the case that appears in the lower verse, i.e., the case of a forewarned ox, which appears in Exodus 21:29, and not like the case that appears in the upper verse, i.e., the case of an innocuous ox, which appears in Exodus 21:28.

248 One might have thought that since the case of an ox that gored a person is compared to the case of a forewarned ox, the owner also pays from his superior-quality property. Therefore, the verse states: “Shall it be done to him [lo],” indicating he pays restitution exclusively from the proceeds of the sale of the body of his belligerent ox and does not pay from his superior-quality property, as the word lo can also be understood as referring to the ox. In this manner the case of an innocuous ox that gores a person is compared to the halakha of an innocuous ox that gores another ox, whereas with regard to the amount of restitution, it is compared to the case of a forewarned ox.

249 The Gemara asks: And according to the opinion of the Rabbis, who do not differentiate between an ox that gores a person and one that gores an animal, inasmuch as the distinction between an innocuous and a forewarned ox applies in both cases, why do I need the seemingly superfluous word “this”? The Gemara answers: The word is stated to exempt him from the four types of indemnity that one who injures another person is liable to pay, thereby emphasizing the comparison to the case of an ox that gores an ox.

250 The Gemara asks: And from where does Rabbi Akiva derive the halakha exempting him from paying these four types of indemnity? The Gemara answers: He derives it from the verse: “And if a man maims his neighbor, as he has done, so shall be done to him” (Leviticus 24:19). Rabbi Akiva derives from here that only when a man injures his neighbor is he liable to pay these four types of indemnity, but not when an ox injures his neighbor.

251 The Gemara asks: And why do the Rabbis not derive this halakha from that verse? The Gemara answers: If it would have been derived from that verse, I would have said that he is exempt only from paying for pain, but for medical costs and loss of livelihood, I would say that he is liable to give him compensation. Therefore, the phrase “according to this judgment” teaches us that he is not liable to pay compensation for anything other than the damage itself.

252 MISHNA: With regard to an innocuous ox worth one hundred dinars that gored an ox worth two hundred dinars, and the carcass of the dead ox is not worth anything, its owner takes the entire ox that gored it, since it is worth half the value of the damage.

253 GEMARA: Whose opinion is expressed in the mishna, which rules that the injured party takes the ox immediately? It is the opinion of Rabbi Akiva, as it is taught in a baraita: After it gores another ox, the belligerent ox shall be appraised in court before it is taken by the injured party, this is the statement of Rabbi Yishmael. Rabbi Akiva says: The ox was already assigned to the owner of the dead ox as payment, and if the amount of damages is not contested by the owner of the goring ox, no further legal steps are required.

254 The Gemara explains: With regard to what principle do they disagree? Rabbi Yishmael holds that the owner of the dead ox is considered a creditor of the owner of the belligerent ox, and it is money

that he is claiming from him, but he has no ownership of the body of the belligerent ox. And Rabbi Akiva holds that they are partners, i.e., from the time the innocuous ox killed the other ox, the owner of the dead ox has a share of ownership in the belligerent ox.

255 And they disagree with regard to the meaning of this verse: “Then they shall sell the live ox, and divide its monetary value” (Exodus 21:35). Rabbi Yishmael holds that the Merciful One is commanding the court to evaluate the damages in this manner, and Rabbi Akiva holds that the Merciful One is commanding the injured party and the one liable for damage to split ownership of the live ox, without the involvement of the court.

256 The Gemara asks: What is the practical difference between the two opinions as to whether or not they are considered partners? The Gemara answers: There is a practical difference between them in a case where the injured party consecrated the ox to the Temple. According to the opinion of Rabbi Yishmael, until the court transfers the ox to the injured party, it still belongs to its owner, and therefore the injured party cannot consecrate it. According to the opinion of Rabbi Akiva, the injured party owns the ox from the time the damage was inflicted, and he can therefore consecrate it.

257 Rava asked Rav Naḥman: If the one liable for damage sold the ox, what is the halakha according to Rabbi Yishmael? Is it that since Rabbi Yishmael says that the injured party is considered a creditor, and it is merely money that he is claiming from him, it is sold? Or perhaps

258 does he say that since the ox is liened to the debt to the injured party, who will collect it should the ox’s owner not have sufficient funds, it is not in his power to sell it? Rav Naḥman said to him: It is not sold.

259 Rava asked him: But isn’t it taught in a baraita that if he sold it, it is sold? Rav Naḥman replied: Nevertheless, the injured party then collects it from the purchaser. The Gemara asks: Since the injured party then collects it from the purchaser, with regard to what matter is it sold? His right to collect it negates the effectiveness of the sale. The Gemara answers: It is sold for the purpose of plowing [ridya]. The purchaser may use the ox for plowing until the injured party collects it from him, and the purchaser is not required to reimburse the injured party for the use of his ox.

260 The Gemara asks: Should one conclude from this ruling that with regard to one who borrows money and then sells his movable property, the court can collect the debt from this property on behalf of the creditor, as according to Rabbi Yishmael the belligerent ox is only a lien for the debt owed to the injured party? The Gemara answers: There, in the case of the belligerent ox, it is different, as the owner of the ox is considered like one who rendered it designated payment of the debt, since the Torah specifies that the injured party collects damages from the ox. In general, however, movable property that is sold by a debtor cannot be collected by the creditor.

261 The Gemara asks: But doesn’t Rava say that if one rendered his slave as designated repayment for a debt and subsequently sold him, the creditor collects payment from the purchaser, whereas if one rendered his ox as designated repayment and then sold it, the creditor cannot collect it from the purchaser? This contradicts the previous statement that the belligerent ox is considered designated repayment, and therefore even if it is sold the injured party can collect it from the purchaser.

262 The Gemara answers: The distinction made in Rava’s statement answers this question. What is the reason that a slave who was rendered as designated repayment can be collected from the purchaser? It is because rendering a slave as designated repayment is not common and generates

publicity. The purchaser was therefore aware of this when he bought the slave. Similarly, with regard to this ox as well, since it gored an animal, it generates publicity, as it is publicly called a goring ox, and so the purchaser was aware of the lien attached to it. Therefore, the injured party can collect it from the purchaser.

[263] Rav Taḥalisa from the West, Eretz Yisrael, taught the following baraita with regard to the belligerent ox before Rabbi Abbahu: If he sold it, it is not sold, but if he consecrated it, it is consecrated.

[264] The Gemara asks: Who sold it? Is it the injured party or the liable party? If we say it is the one liable for the damage, whose opinion is it that if he sold it, it is not sold? It is the opinion of Rabbi Akiva, who says that the ox was already assigned to the injured party. But in the following statement of the baraita, that if he consecrated it, it is consecrated, we arrive at the opinion of Rabbi Yishmael, who says that the ox shall be appraised in court.

[265] If, rather, it is referring to the injured party selling it, whose opinion is it that if he sold it, it is not sold? It is the opinion of Rabbi Yishmael, who holds that the injured party has no share of ownership in the ox until it is transferred to him by the court. But in the statement that if he consecrated it, it is consecrated, we arrive at the opinion of Rabbi Akiva. The baraita does not seem to accord with either opinion.

[266] The Gemara answers: Actually, it is referring to the one liable for the damage, and everyone agrees with its ruling. The ruling that if he sold it, it is not sold is the halakha even according to the opinion of Rabbi Yishmael, as the ox is liened to the injured party, precluding the owner from selling it.

[267] The statement that if he consecrated it, it is consecrated, is the halakha even according to Rabbi Akiva, since it is not actually consecrated but is considered so only due to the statement of Rabbi Abbahu. As Rabbi Abbahu says that if one consecrates liened property, although the consecration does not take effect, nevertheless he is required to redeem it, due to a rabbinic decree lest people say that consecrated property can be removed from the ownership of the Temple treasury without redemption. Therefore, the ineffectiveness of the ox’s consecration notwithstanding, he is still required to redeem it, by means of minimal payment, so as not to cause the denigration of Temple property.

[268] § The Sages taught in a baraita: With regard to an innocuous ox that caused damage, if, before its owner stood trial, he sold it, it is sold. If he consecrated it, it is consecrated. If he slaughtered it or gave it as a gift, what he did is done, i.e., takes effect. By contrast, once he stood trial and is now obligated to pay the injured party, if he sold it, it is not sold; if he consecrated it, it is not consecrated; if he slaughtered it or gave it is a gift, he has done nothing.

[269] If creditors of the ox’s owner collected the ox first, whether he owed the creditors before his ox caused the damage or whether it caused the damage before he owed them, they have done nothing. Their collection is void, because compensation to the injured party is paid only from the body of the ox, as it was innocuous, and it is therefore designated exclusively for this compensation.

[270] The baraita continues: With regard to a forewarned ox that caused damage, whether its owner stood trial or whether he did not stand trial, if he sold it, it is sold; if he consecrated it, it is consecrated; if he slaughtered it or gave it as a gift, what he did is done. Likewise, if creditors

collected the ox first, whether he owed them before it caused the damage, or whether it caused the damage before he owed them, what they did is done. This is because the restitution is paid only from his superior-quality property, not from the body of the ox. Therefore, what he or his creditors do with the ox takes effect.

[271] The Gemara explains the baraita: The Master said above, with regard to an innocuous ox, that if he sold it, it is sold. As explained above, the sale is valid only with regard to the purchaser using the ox for plowing in the interim, until the injured party collects it.

[272] The statement that if he consecrated it, it is consecrated does not mean that it is actually consecrated, but rather that it must be redeemed through payment of a minimal sum, due to Rabbi Abbahu's statement mentioned above.

[273] With regard to the statement that if he slaughtered it or gave it as a present, what he did is done, the Gemara asks: Granted, if he gave it as a present, what he did is done with regard to the recipient's permission to use it for plowing. But if he slaughtered it, how does that affect the injured party's rights? Let him come and receive payment from the slaughtered ox's meat.

[274] This is as it is taught in a baraita: It is stated in the Torah: "Then they shall sell the live ox" (Exodus 21:35). I have derived only that the injured party receives a share of ownership if the belligerent ox is alive. From where do I derive that this applies even if the ox's owner slaughtered it? The verse states: "Then they shall sell the live ox," indicating that in any case, whatever the circumstances, the injured party is paid from proceeds of the sale of the belligerent ox.

[275] Rav Sheizevi said: This statement is necessary only with regard to the diminished value of the ox due to its slaughter. Although the value of the ox may no longer cover the damage, its owner is not liable to compensate the injured party beyond the ox's current value.

[276] Rav Huna, son of Rav Yehoshua, said: That is to say that one who causes damage to another's liened property is exempt from paying compensation, since the property does not actually belong to the one who holds the lien.

[277] The Gemara asks: Isn't this inference from the baraita obvious? The Gemara answers: Rav Huna, son of Rav Yehoshua, states this halakha lest you say that it is specifically there, in the case where one slaughters a liened ox, that he is exempt, as he can say to him: I have not detracted anything from what is yours, as he can say to him: I took only spirit from what is yours. He detracted only the life of the ox, not its physical body, and one who causes damage to another's liened property might be exempt from liability for this intangible damage. But generally one who causes damage to another's lien should be liable. Therefore, Rav Huna, son of Rav Yehoshua, teaches us that one is exempt from liability for all types of damage he causes to another's liened property.

[278] The Gemara challenges this explanation: Rabba stated this principle, as well, and there would be no need for Rav Huna, son of Rav Yehoshua, to state it. As Rabba says: One who burns another's documents, in which other people's debts to him are recorded, is exempt, although the owner of the documents can no longer collect payment from liened property.

[279] The Gemara answers: Rav Huna, son of Rav Yehoshua, states this principle lest you say that it is specifically there that he is exempt, as the perpetrator of the damage can say to the owner of the documents: I burned your mere paper, for which I am prepared to pay. But in a case where one dug pits, ditches, or caves on liened land, causing substantial damage, he should be liable to compensate

the one holding the lien. Therefore, Rav Huna, son of Rav Yehoshua, teaches us that even in a case of substantial damage he is exempt, as the case here, where the ox was slaughtered, is like one who dug pits, ditches, or caves, as slaughter is considered substantial damage, and the tanna said that in this case what he did is done.

[280] The Gemara continues to explain the baraita, which states: If creditors collected the innocuous ox first, whether its owner owed them before his ox caused damage or whether it caused damage before he owed them, they have done nothing, because restitution is paid only from the body of the ox.

[281] The Gemara asks: Granted, in the case where it caused damage before he owed them, the injured parties came first, and the ox is liened to the debt. But in the case where he owed them before it caused damage, the creditor collected it first, so why does he not have the preemptive right to the ox?

[282] Moreover, even if the ox caused damage before he owed them, nevertheless the creditor came first and seized what he rightfully deserved. Should one conclude from the baraita that if a later creditor collected a debt before an earlier creditor, his collection is not valid and payment should instead be given to the earlier creditor?

[283] The Gemara answers: No; actually, I could say to you that the collection of the later creditor is valid, and there, in the case where a creditor seized the belligerent ox, it is different, as the injured party can say to the creditor who seized the ox: If the ox was in your possession, would I not have collected it from you? The reason I would take it is that I am paid from this ox that caused me damage. Therefore, the creditor cannot collect the ox, even if the debt preceded the damage.

[284] § The Sages taught: With regard to an innocuous ox worth two hundred dinars that gored another ox worth two hundred dinars and injured it, reducing its value by fifty dinars [zuz], and the injured ox subsequently appreciated in value, and its value stood at four hundred dinars, while if the belligerent ox had not injured it, its value would have now stood at eight hundred dinars, in this case the owner of the belligerent ox gives him only twenty-five dinars, which is half the value of the damage according to its value at the time the injury occurred.

[285] If the injured ox depreciated in value and its worth is now less than at the time it was injured, the damage is evaluated according to the ox's worth at the time of standing trial. In other words, the owner of the belligerent ox must pay the difference between its value before it was injured and its current value.

[286] If the ox that caused the injury, from which the owner of the injured ox collects damages, appreciated in value, its owner gives the injured party a share of the ox according to its value at the time of the injury. If it depreciated in value, the owner gives him a share according to its value at the time of standing trial.

[287] The Gemara asks: The Master said in the first clause of the second half of the baraita that if the ox that caused the damage appreciated in value, its owner gives the injured party a share according to the ox's value at the time of the injury. In accordance with whose opinion is this ruling? It is apparently in accordance with the opinion of Rabbi Yishmael, who says that the injured party is considered a creditor, and it is money that he is claiming from him, as he has no share of ownership in the belligerent ox.

[288] The Gemara states a difficulty with this explanation: Say the latter clause of the second half of the baraita: If the belligerent ox depreciated in value, the owner gives the injured party a share

according to its value at the time of standing trial. Here we arrive at the opinion of Rabbi Akiva, who says that the owners of the two oxen are partners, i.e., the injured party has a share of ownership in the belligerent ox. How can it be that the first clause is in accordance with Rabbi Yishmael's opinion, and the latter clause follows the opinion of Rabbi Akiva?

289 The Gemara answers: No, it is all in accordance with the opinion of Rabbi Akiva that they are partners, and here, in the case where the belligerent ox appreciated in value, we are dealing with a case where the reason it appreciated is that its owner fattened it. Though the injured party has a share of ownership in the ox, he has no share in the appreciation in value, and his share is therefore calculated according to its value at the time of the injury.

290 The Gemara asks: If it is a case where the owner fattened it, say the first clause of the first half of the baraita, stated with regard to the injured ox: If it appreciated in value, and its value stood at four hundred dinars, the owner of the belligerent ox gives him compensation according to its value at the time of the injury. If this is referring to a case where its owner fattened it, need it be said that the owner of the belligerent ox is not exempt from compensation?

291 Rav Pappa said: You find the halakha stated in the first clause of the first half of the baraita to be true whether he fattened it or whether it appreciated in value by itself. And the tanna found it necessary to mention this halakha to teach us that even in a case where the ox appreciated in value by itself, the owner of the belligerent ox gives him compensation according to its value at the time of the injury and not at the time of the trial. By contrast, you find the halakha stated in the latter clause of the second half of the baraita, with regard to a case where the belligerent ox appreciated in value, only where its owner fattened it.

292 It is stated in the latter clause of the first half of the baraita that if the injured ox depreciated in value, it is evaluated according to its worth at the time of standing trial. The Gemara asks: Due to what did it depreciate in value? If we say that the ox depreciated in value due to labor for which it was used, let the liable party say to him: You reduced its value and I should therefore give you extra compensation?

293 Rav Ashi said: It is a case where it depreciated in value due to the continuous effect of the wound, as the injured party can say to him: The horn of your ox is buried in it, i.e., it is still losing value due to the wound.

294 MISHNA: With regard to an innocuous ox worth two hundred dinars that gored another ox worth two hundred, and the carcass is worth nothing, Rabbi Meir said: It is about this type of case that it is stated: "Then they shall sell the live ox, and divide its monetary value" (Exodus 21:35).

295 Rabbi Yehuda said to him: And that is the halakha, yet your interpretation of the verse is incorrect. You have upheld the clause: "Then they shall sell the live ox and divide its monetary value," which fits your interpretation of the case. But you have not upheld the latter clause of the verse: "And the dead they shall also divide," since in the case you mentioned the carcass is worthless. Rather, to which case is the verse referring? It is the case of an ox worth two hundred dinars that gored another ox worth two hundred dinars, and the carcass is worth fifty dinars. In this case, this party takes half the value of the living ox, one hundred dinars, and half the value of the dead ox, twenty-five dinars; and that party also takes half the value of the living ox and half the value of the dead ox.

[296] GEMARA: The Sages taught: With regard to an ox worth two hundred dinars that gored an ox worth two hundred dinars, and the carcass is worth fifty dinars, this party takes half the value of the living ox and half the value of the dead ox, and that party also takes half the value of the living ox and half the value of the dead ox, and this is the case of the belligerent ox stated in the Torah. This is the statement of Rabbi Yehuda.

[297] Rabbi Meir says: This is not the case of the ox stated in the Torah. Rather, it is the case of an ox worth two hundred dinars that gored an ox worth two hundred dinars, and the carcass is worth nothing. It is about this case that it is stated in the verse: “Then they shall sell the live ox, and divide its monetary value.” Rather, how do I realize the meaning of “And the dead they shall also divide”? This clause means that the diminished value of the dead ox that was diminished by its death is compensated for by dividing the value of the live ox between the two parties, while its owner does not receive a share in the carcass of the dead ox.

[298] The Gemara asks: Now, both Rabbi Meir and Rabbi Yehuda hold that in the case described by Rabbi Yehuda, where the carcass is worth fifty, this party takes one hundred and twenty-five, and that party takes one hundred and twenty-five. Rabbi Meir holds that the injured party keeps the carcass, worth fifty, and receives another seventy-five dinars, half the value of the damage, from the proceeds of the sale of the belligerent ox. Its owner is thereby left with one hundred and twenty-five dinars out of the two hundred that it is worth. Rabbi Yehuda maintains that the value of both oxen is split between the two parties, leaving each with one hundred and twenty-five. If so, what is the difference between the two tanna’im? Why does it matter in which manner the compensation is calculated?

[299] Rava said: There is a practical difference between them with regard to the diminishing value of the carcass. If the carcass depreciates in value between the ox’s death and the time it is sold, Rabbi Meir holds that the diminishing value of the carcass is sustained by the injured party. The one liable for the damage is not responsible for any depreciation in value that occurs after the loss caused by the attack has been evaluated. And Rabbi Yehuda holds that half of the diminishing value of the carcass is sustained by the one liable for damage, since he receives half of the dead ox.

[300] Abaye said to Rava: If so, we have found, according to Rabbi Yehuda,

[301] a case where the halakha with regard to an innocuous ox that causes damage is more stringent than with regard to a forewarned ox, since according to all opinions, in a case where a forewarned ox kills another ox, the carcass belongs exclusively to the injured party, and he sustains any subsequent decrease in its value.

[302] And if you would say that indeed, Rabbi Yehuda holds that the halakha with regard to an innocuous ox is more stringent than with regard to a forewarned ox, as we learned in a mishna that Rabbi Yehuda says: If a bailee did not safeguard an ox properly, and it escaped and caused damage, if it was an innocuous ox he is liable, and if it was a forewarned ox he is exempt (45b), that mishna cannot serve as proof for the issue under discussion. Say that you heard Rabbi Yehuda express this opinion, that the halakha with regard to an innocuous ox is more stringent, with regard to the halakhot of safeguarding, as verses are written in the Torah from which this halakha is derived. But with regard to compensation, did you ever hear him express this opinion?

[303] On the contrary; but isn’t it taught in a baraita that Rabbi Yehuda says: One might have thought that in the case of an ox worth one hundred dinars that gored an ox worth five sela, i.e., twenty dinars, and the carcass is worth one sela, i.e., four dinars, the halakha is that this party takes half the

living ox and half the dead ox, and that party takes half the living ox and half the dead ox. Accordingly, the injured party receives fifty-two dinars in value, which is much more than his ox was worth before it was killed.

[304] Instead, continues Rabbi Yehuda, you should say: For what purpose is the case of a forewarned ox singled out by the halakha? Is it to render it more stringent than the case of an innocuous ox, or to render it more lenient? Clearly, you must say that it is to render it more stringent. And therefore, if in the case of a forewarned ox, its owner pays only the value of what he damaged and no more, in the case of an innocuous ox, which is more lenient, all the more so is it not clear that the owner is not liable to pay more than the value of the damage? Evidently, Rabbi Yehuda does not allow for liability in the case of an innocuous ox to be more stringent than in the case of a forewarned ox.

[305] Rather, Rava's explanation, that Rabbi Meir and Rabbi Yehuda disagree with regard to a case where the carcass depreciated in value, should be rejected. Instead, their dispute should be explained according to what Rabbi Yoḥanan said, i.e., that the practical difference between them is with regard to the appreciation of the carcass in value after the ox's death; as one Sage, Rabbi Meir, holds that the entire increased value of the carcass belongs to the injured party, since the owner of the belligerent ox has no share in the carcass, and one Sage, Rabbi Yehuda, holds that half of the increased value belongs to the injured party and half goes to the one liable for the damage.

[306] And this explains what was difficult for Rabbi Yehuda in another baraita. Now that you say that the Merciful One has mercy on the one liable for damage, as he takes a share of the increased value of the carcass, can it be that in the case of an ox worth five sela, i.e., twenty dinars, that gored an ox worth one hundred dinars, and the carcass is worth fifty dinars, this party takes half the live ox and half the dead ox, and that party takes half the live ox and half the dead ox? Accordingly, the owner of the belligerent ox receives thirty-five dinars in value, which is more than his ox was worth.

[307] Rather, you should say: Where do we find a case where the one liable for damage gains from the damage, comparable to this case, where this owner of the belligerent ox gains, receiving more than the value of his ox? Clearly there is no such case, as one who is liable for damage does not gain from it. And in addition, it says: "He shall pay" (Exodus 21:36), indicating that the owner of the belligerent ox pays, and the owner does not take more than the amount his animal was worth at the time of the damage.

[308] The Gemara asks: For what reason was it necessary to add the claim: And it says: "He shall pay"? The Gemara answers: Lest you say that this matter, that the one liable for damage does not gain, applies specifically where there is a loss sustained by the injured party, as in this case, where the decrease in the ox's value is fifty dinars, and if the carcass is shared by the liable party, the injured party receives only thirty-five dinars, thereby sustaining a loss. But in a case where there is no loss sustained by the injured party, for example, the case of an ox worth five sela, i.e., twenty dinars, that gored another ox worth five sela, and the carcass appreciated in value and is now worth thirty dinars, more than the ox was worth when it was alive, in this case the one liable for damage also takes a share of the increased value, since the injured party ends up not having sustained any financial loss, as he receives a share of ten dinars in the belligerent ox and another fifteen in the carcass, gaining five dinars over the value of his ox.

309 It is to counter this claim that Rabbi Yehuda adds: And it says: “He shall pay,” indicating that the owner of the belligerent ox pays, and the owner does not take more than the amount his animal was worth at the time of the damage.

310 § With regard to Rabbi Yehuda’s opinion that the two owners split the value of both the belligerent ox and the dead ox between them, Rav Aḥa bar Taḥalisa said to Rava: If so, we find that according to Rabbi Yehuda, when an innocuous ox gores an ox that is worth less than it, its owner pays more than half the damage. But the Torah stated: “Then they shall sell the live ox, and divide its monetary value” (Exodus 21:35).

311 Rava answered him: Rabbi Yehuda also holds that only the diminished value of the dead ox that was diminished by its death is compensated for by dividing the live ox between the two parties. The liable party never pays more than half the damage.

312 The Gemara asks: From where does Rabbi Yehuda derive this halakha? Is it from the verse: “And the carcass they shall also divide” (Exodus 21:35), from which Rabbi Meir derived it? But didn’t Rabbi Yehuda already derive from this verse that this party takes the value of half the live ox and half the dead ox, and that party takes the value of half the live ox and half the dead ox?

313 The Gemara answers: If so, if that is the only halakha indicated by this clause, let the verse simply write: And the carcass they shall divide. What is the reason that the word “also” is added? It is added so that one may conclude two conclusions from the clause: That the carcass is also divided between the two parties, and that the liable party is never required to pay more than half the damage.

314 MISHNA: There are cases where one is liable for an act of damage caused by his ox, but exempt from liability for the same action if he performed it himself. Conversely, there are also cases where one is exempt from liability for the action of his ox, but liable for his own action.

315 How so? If his ox caused a person humilation, he is exempt from paying compensation, but if he himself humiliated another, he is liable. Similarly, if his ox blinded the eye of his slave or knocked out his slave’s tooth, he is exempt from having to emancipate the slave for this mutilation. But if he himself blinded his slave’s eye or knocked out his tooth, he is liable to emancipate him, as stated in the Torah (Exodus 21:26–27).

316 By contrast, if his ox injured the owner’s father or his mother, he is liable to pay damages, but if he himself injured his father or his mother, he is exempt from paying compensation. Similarly, if his ox set fire to a haystack on Shabbat, he is liable to pay damages. But if he himself set fire to a haystack on Shabbat, he is exempt from paying damages. He is exempt from payment in these cases due to the fact that he is liable to receive the death penalty for injuring his father or mother or for desecrating Shabbat.

317 GEMARA: Rabbi Abbahu taught the following baraita before Rabbi Yoḥanan: Anyone who performs labor destructively on Shabbat is exempt, except for one who injures another or kindles a fire. Rabbi Yoḥanan said to him: Go out and teach it outside; this baraita is not fit for discussion in the study hall. The opinion that deems one liable for injuring another or kindling a fire on Shabbat is not a mishna and should be ignored. And if you say that it is a mishna, one who injures another would be liable only in a case where he requires the blood to give to his dog, and one who kindles a fire would be liable only in a case where he requires its ashes. In these cases, the act is not purely destructive but has some constructive purpose.

[318] We learned in the mishna: If his ox set fire to a haystack on Shabbat, he is liable. But if he himself set fire to a haystack on Shabbat, he is exempt. And the mishna is presumably teaching a case where he set the fire in a scenario that is similar to the case where his ox did so. Just as in the case where his ox set the fire it clearly does not need the ashes, as an ox does not act with such intentions,

[319] so too, in the case where he set the fire, it is presumably a case where he does not need the ashes. And nevertheless, the mishna teaches that he is exempt because he is sentenced to death. Apparently, one who lights a fire on Shabbat is liable even if he does not need the ashes, contrary to the opinion of Rabbi Yoḥanan.

[320] The Gemara rejects this proof: No, the comparison is the other way around; the case where his ox set the fire is similar to the case where he set the fire. Just as the case where he is liable for lighting a fire on Shabbat is one where he needs the ashes, so too, the case of his ox setting fire to the haystack is one where it needs the ashes.

[321] The Gemara asks: In the case where his ox set the fire, how can you find these circumstances, where it did so because it needed the ashes? Rav Avya said to him: Here we are dealing with an intelligent ox that was bitten on its back and wants to burn down the haystack and then roll around [iggandar] in the ashes in order to heal the bite.

[322] The Gemara asks: And from where do we know that this is the reason that it set the fire? The Gemara answers: Because after the ox burned the haystack, it was rolling around in the ashes.

[323] The Gemara asks: And is there really a case like this? The Gemara answers: Yes, as a certain ox that was at the house of Rav Pappa had a toothache. It went inside, and broke the lid of a utensil, and drank the liquor inside and was cured. Evidently there are oxen with this level of intelligence.

[324] The Sages said before Rav Pappa: How can you say that the case involving his ox is similar to the case involving him? But doesn’t the mishna teach: If his ox caused a person humiliation, he is exempt, but if he humiliated someone, he is liable? If the case of his ox is understood to be similar to the case involving him, how can you find a case where the ox intended to humiliate the person? One is liable for humiliating someone only when he intends to do so, and an ox never has intention to humiliate.

[325] The Gemara answers: It is a case where the ox intended to cause injury. If it was the action of a person, he would be liable for the humiliation he caused as well, as the Master said: In a case where a person intended to cause injury, he is liable for humiliation even if he did not intend to humiliate his victim.

[326] Rava said a different solution with regard to the difficulty that the mishna poses to the opinion of Rabbi Yoḥanan: The mishna is referring to a case where one lit a fire on Shabbat unintentionally. Although he is not liable to receive the death penalty, nevertheless, since he performed a prohibited action that would carry the death penalty were it to be performed deliberately, he is still exempt from monetary restitution.

[327] The Gemara explains: This is in accordance with what the school of Ḥizkiyya taught, as the school of Ḥizkiyya taught: The verse states: “And he who kills an animal shall pay for it, and he who kills a man shall be put to death” (Leviticus 24:21), indicating that one who kills a man and one who kills an animal are comparable.

[328] This teaches that just as with regard to one who kills an animal, the Torah did not differentiate between whether he does so unintentionally or whether he does so intentionally, whether advertently or inadvertently, whether by way of descent or by way of ascent, and this was not to exempt him from paying monetary restitution in all these cases but rather to render him liable to pay monetary restitution, as one who kills an animal is liable in any event, similarly, with regard to one who kills a man, do not differentiate between whether he does so intentionally or unintentionally, whether advertently or inadvertently, whether by way of descent or by way of ascent, and this was not to render him liable to pay monetary restitution for the damage he causes in the process of killing him, but rather to exempt him from paying monetary restitution in any event. It is derived from here that one who commits a transgression carrying the death penalty is exempt from paying damages for his action, even if he is not in practice given the death penalty.

[329] The Sages said to Rava: Can you really interpret the mishna as referring to a case where the transgression was unintentional? But doesn't it teach that the transgressor is exempt because he is sentenced to death, which is only the case if the transgression was intentional?

[330] Rava answered that this is what the mishna is saying: He is exempt, since when this action is performed intentionally, the transgressor is liable to be sentenced to death. And what are the circumstances in which one is liable to receive the death penalty for deliberately lighting a fire on Shabbat? It is a case where he needs the ashes. Therefore, even now, when the transgression was unintentional, he is exempt from paying damages.

[331] MISHNA: With regard to an ox that was pursuing another ox, and the ox being pursued became injured, but there are no witnesses as to how it was injured, and this one, the owner of the injured ox, says to the owner of the pursuing ox: Your ox injured my ox, and you are liable to pay me damages, and that one, the owner of the pursuing ox, says in response: No; rather, it was hurt by a rock, and I am not liable, then in this case, the burden of proof rests upon the claimant. As long as the owner of the injured ox cannot prove that the injury was inflicted by the pursuing ox, the owner of the pursuing ox is not liable.

[332] In a case where two oxen, belonging to two different owners, were pursuing one ox belonging to a third person, and that ox was injured by one of the pursuing oxen, and this one, the owner of one of the pursuing oxen, says to the owner of the other: It was your ox that caused the injury, and that one, the owner of the other pursuing ox, says: No, it was your ox that caused the injury,

[333] the two of them are exempt, since each of them rejects the claim of the injured party that his ox caused the injury. If both oxen belonged to one person, both are liable, as will be explained in the Gemara.

[334] If the pursuing oxen both belonged to one person, and were both innocuous, so that restitution is paid exclusively from proceeds of the sale of the belligerent ox, and one was large and the other one small, in this case, if the injured party says that the large ox caused the damage, and he is therefore entitled to receive restitution for half the damage from the value of the large ox, but the one liable for damage says: No; rather, the small ox caused the damage, and half of its value is not sufficient to cover half the damage; or, similarly, in a case where one ox is innocuous and one is forewarned, and the injured party says: The forewarned ox caused the damage, and the injured party is therefore eligible to receive full damages, but the one liable for damage says: No; rather, the innocuous ox

caused the damage, in which case he is liable to pay only half the damage; in both of the above cases, the principle is that the burden of proof rests upon the claimant.

[335] If the injured animals were two oxen, one large and the other one small, and the ones that caused the damage were also two oxen, one large and one small, and the injured party says: The large one injured the large one and the small one injured the small one, and the one liable for damage says: No; rather, the small one injured the large one, in which case, if half the value of the belligerent ox does not cover half the damage, he is not required to pay more, and the large one injured the small one; or, similarly, if one of the belligerent oxen was innocuous and one forewarned, and the injured party says: The forewarned ox injured the large one, and the innocuous ox injured the small one, and the one liable for damage says: No; rather, the innocuous ox injured the large one and the forewarned ox injured the small one; here too, the burden of proof rests upon the claimant.

[336] GEMARA: The mishna rules that in a case where there is uncertainty with regard to whether it was the pursuing ox that caused the injury to the other ox, the burden of proof rests upon the claimant. Rabbi Ḥiyya bar Abba says: That is to say that the colleagues of Sumakhos, who says that property of uncertain ownership is divided, disagree with his opinion.

[337] Rabbi Abba bar Memel said to Rabbi Ḥiyya bar Abba: Does Sumakhos state this principle even in the case of a certain claim and a certain claim, i.e., where both parties maintain the certainty of their claims, as appears to be the case in the mishna? Rabbi Ḥiyya bar Abba said to him: Yes, Sumakhos says this even in a case of a certain claim and a certain claim.

[338] The Gemara asks: And from where is it inferred that the mishna is referring to a case of a certain claim and a certain claim? As it teaches that this one, the owner of the injured ox, says: Your ox injured my ox, and that one, the owner of the pursuing ox, says: No, rather etc., indicating that both make their claims with certainty.

[339] Rav Pappa objects to this interpretation of the case: From the suggestion that the case in the first clause of the mishna is one where there is a certain claim and a certain claim, it may be inferred that the latter clause, the subsequent clause in the mishna, also is referring to a case where there is a certain claim and a certain claim.

[340] If so, say the latter clause: If one was large and the other one small, and the injured party says that the large ox caused the damage, and the one liable for damage says: No; rather, the small ox caused the damage; or if one ox is innocuous and one is forewarned, and the injured party says: The forewarned ox caused the damage, but the one liable for damage says: No; rather, the innocuous ox caused the damage, the burden of proof rests upon the claimant.

[341] This indicates that if he does not bring proof, he takes compensation according to what the one liable for damage says. If it is a case where both parties maintain certainty of their claims, let us say that this mishna is a conclusive refutation of the statement of Rabba bar Natan, who says that if one claims that another owes him wheat, which he claims he deposited with him, and the other concedes that he owes him barley, which is less expensive than wheat, he is exempt from any payment, since he did not admit to what was claimed, and what he did admit was not claimed. Similarly, here, the injured party claims that it was the large ox that injured his ox, and the defendant admits that his small ox caused the injury, but not the large ox. His admission does not correspond to the claim. Yet, he is apparently liable to pay according to his admission, contrary to the ruling of Rabba bar Natan.

[342] Rather, this clause must be referring to a case where there is a certain claim and an uncertain claim, i.e., one party maintains certainty of his claim, while the other merely states his claim as a possibility.

[343] The Gemara asks: Who is the one who states a certain claim, and who is the one who states an uncertain claim? If we say that it is the injured party who states with a certain claim that the large ox caused the injury, and it is the one liable for damage who states an uncertain claim that it was the small one, let us still say that the mishna is a conclusive refutation of the opinion of Rabba bar Natan, since the defendant does not admit to the claim of the injured party, and nevertheless he is liable to pay compensation from the small one.

[344] Rather, it must be a case where the injured party states an uncertain claim that it was the large ox that caused the injury, and the one liable for damage states a certain claim that it was the small one. Since the claimant does not contradict the defendant's admission, the latter is liable to pay the amount that he admitted he owes.

[345] The Gemara notes: And from the fact that the latter clause of the mishna is referring to a case where the injured party states an uncertain claim and the one liable for damage states a certain claim, it may be inferred that the first clause is also referring to a case where the injured party states an uncertain claim that it was the defendant's ox that injured his ox, and the one liable for damage states a certain claim that it was injured by a stone. It is not referring to a case of two certain claims as inferred above.

[346] The Gemara asks: And does Sumakhos state his ruling that the disputed property is divided between the two parties even with regard to this case, where the claimant states an uncertain claim, so that it was necessary for the mishna to teach us that according to the other Rabbis it is not divided? Certainly Sumakhos would concede that in this case the burden of proof rests upon the claimant.

[347] The Gemara answers: No; although the latter clause is referring to a case where the injured party states an uncertain claim and the one liable for damage states a certain claim, the first clause is referring to a case where the injured party states a certain claim and the one liable for damage states an uncertain claim. It is with regard to this case that the Rabbis disagree with the opinion of Sumakhos that the property is divided.

[348] The Gemara questions this interpretation: But according to this interpretation, the first clause is not similar to the last clause. Why not explain the first clause as referring to a case of two certain claims?

[349] The Sages said in response: A case of a certain claim and an uncertain claim, and a case of an uncertain claim and a certain claim, are one matter. Therefore, the two clauses are congruent. By contrast, a case of a certain claim and a certain claim, and a case of an uncertain claim and a certain claim, are two matters. Therefore, the first clause of the mishna cannot be referring to a case of two certain claims.

[350] § The Gemara returns to discuss the matter itself that was mentioned above. Rabba bar Natan says: If one claims that another owes him wheat, and the other concedes that he owes him barley, the latter is exempt from payment. The Gemara asks: What novel element is this teaching us? We already learned it in a mishna: If one claims that another owes him wheat, and the other concedes that he owes him barley, he is exempt (Shevuot 38b).

[351] The Gemara answers: If it had been taught only from there, I would say the mishna means that he is exempt from payment of the value of the wheat but liable to pay the value of the barley, which he conceded that he owes. Therefore, Rabba bar Natan teaches us that the mishna means that he is completely exempt, even from paying for the barley.

[352] The Gemara raises an objection to this statement: We learned in the mishna here that if the injured animals were two oxen, one large and the other one small, and the ones that caused the damage were also two oxen, one large and one small, and the injured party claims that the large one injured the large one, and the small one injured the small one, and the liable party claims that the small one injured the large one, and the large one injured the small one, the burden of proof rests upon the claimant. This indicates that if the injured party does not bring proof for his claim, he takes compensation according to what the one liable for damage says. According to Rabba bar Natan's statement, why does he receive compensation at all? The case is parallel to the case of wheat and barley, and the defendant should be entirely exempt.

[353] The Gemara answers: The mishna does not indicate that the injured party receives compensation, rather, that it is fitting for him to take compensation. But in practice he does not receive any compensation.

[354] The Gemara asks: But isn't it taught in a baraita that the injured party receives payment for his small ox from the liable party's large ox, and for his large ox from the liable party's small ox? Evidently he does receive payment.

[355] The Gemara answers: The baraita is referring to a case where the injured party seized the defendant's ox, in which case the court allows it to remain in his possession, since his taking it was appropriate, although the court cannot compel the defendant to pay him ab initio.

[356] The Gemara raises an objection to Rabba bar Natan's statement from the last clause of the mishna as well: We learned in the mishna that if one of the belligerent oxen was innocuous and the other one was forewarned, and the injured party says: The forewarned ox injured the large one and the innocuous ox injured the small one, and the one liable for damage says: No; rather, the innocuous ox injured the large one and the forewarned ox injured the small one, in this case, the burden of proof rests upon the claimant. This indicates that if he does not bring proof for his claim, he takes compensation according to what the one liable for damage says. Why does he receive compensation at all? The case is parallel to the case of wheat and barley.

[357] The Gemara answers: The mishna does not indicate that the injured party receives compensation. Rather, it indicates that it is fitting for him to take compensation, but in practice he does not receive any compensation. The Gemara asks: But isn't it taught in a baraita that he receives payment for his small ox from the liable party's forewarned ox, and for his large ox from the liable party's innocuous ox? Evidently he does receive payment. The Gemara answers: This baraita is also referring to a case where the injured party seized the defendant's ox, in which case the court allows it to remain in his possession. The court cannot compel the defendant to pay him ab initio.

[358] § The mishna teaches: In a case where an ox was injured by one of two oxen that were pursuing it, if both oxen belonged to one person, both are liable. Rava of Parzika said to Rav Ashi: Should one learn from the fact that both are liable that in a case of innocuous oxen that caused damage, if the injured party wishes, he can collect damages from the proceeds from the sale of this ox, and if he wishes, he can collect from the sale of that ox?

[359] Rav Ashi rejected this inference: With what are we dealing here? We are dealing with forewarned oxen, in which case the injured party does not collect damages exclusively from the belligerent ox but rather from any of its owner’s property. Therefore, he can collect from either ox as compensation.

[360] Rava of Parzika replied: If the mishna is referring to forewarned oxen, say the latter clause of the mishna: If one of the belligerent oxen was large and the other one was small, and the injured party says that the large ox caused the damage, but the one liable for damage says: No; rather, the small ox caused the damage, the burden of proof rests upon the claimant. If this is referring to forewarned oxen, what difference does it make to him which one caused the injury? Ultimately, the liable party is required to pay the value of a full ox in any case.

[361] Rav Ashi said to him: The latter clause of the mishna is referring to innocuous oxen, and the first clause is referring to forewarned oxen.

[362] Rav Aḥa the Elder said to Rav Ashi: If it is referring to a case of forewarned oxen, where compensation is not collected specifically from the belligerent ox, why does the mishna state: They are liable, in the plural form? It should have stated: The man is liable. And furthermore, what is the word both in the statement: Both are liable, referring to?

[363] Rather, the first clause of the mishna is actually referring to innocuous oxen, and it is the opinion of Rabbi Akiva, who says that the injured party and the liable party are partners, as they share ownership of the belligerent ox. And therefore, the reason that the owner of the belligerent oxen is liable is that the two of them are available, so he cannot dismiss the injured party by claiming that this ox is not the one that caused the injury. But if the two of them are not available, e.g., if one died or was lost, he can say to the injured party: Go bring proof that it was this ox that caused you damage, and I will pay you compensation.

## Chapter 4

[1] MISHNA: With regard to an innocuous ox that gored four or five other oxen one after the other, its owner shall pay the owner of the last one of them half of the damages from the proceeds of the sale of the belligerent ox; and if there is surplus value left in his ox after he pays that owner, he shall return it to the owner of the previous ox that was gored; and if there is still surplus value left in his ox after he pays that owner, he shall return it to the one prior to the previous one. The principle is that the owner of the latest of the oxen gored in succession gains. This is the statement of Rabbi Meir.

[2] Rabbi Shimon says that the division of the compensation is as follows: With regard to an innocuous ox worth two hundred dinars that gored an ox worth two hundred dinars, thereby killing it, and the carcass is worthless, the injured party takes one hundred dinars, i.e., half the cost of the damage, from the proceeds of the sale of the belligerent ox, and the owner of the belligerent ox takes the remaining one hundred dinars.

[3] If the ox, after goring the first ox but before compensation had been paid, again gored another ox worth two hundred dinars, and the carcass is worthless, the owner of the last ox that was gored takes one hundred dinars, and with regard to payment for the previous goring, the owner of this ox that was gored takes fifty dinars, which is half the remaining value of the belligerent ox after one hundred

dinars were paid to the last injured party, and the owner of that belligerent ox takes the remaining fifty dinars.

[4] If the ox, after goring the first two oxen but before compensation had been paid, again gored another ox worth two hundred dinars, and the carcass is worthless, the last injured party takes one hundred dinars, the previous one takes fifty dinars, and the first two, i.e., the first injured party and the owner of the belligerent ox, divide the remainder, each receiving one gold dinar, which is worth twenty-five silver dinars.

[5] GEMARA: Whose opinion is expressed in the mishna? Apparently the mishna is neither in accordance with the opinion of Rabbi Yishmael, nor in accordance with the opinion of Rabbi Akiva (see 33a).

[6] The Gemara explains: If the mishna had been in accordance with the opinion of Rabbi Yishmael, who says that the owners of the gored oxen are considered creditors of the owner of the belligerent ox, then instead of stating this halakha that the owner of the latest of the oxen gored in succession gains, the mishna should have stated that the owner of the earliest of the oxen gored in succession gains, since the creditor to whom the ox is initially liened collects first. And if the mishna had been in accordance with the opinion of Rabbi Akiva, who says that the belligerent ox belongs to its owner and to the injured party, who are considered partners in the ownership of the ox, then instead of stating this ruling that if there is surplus value remaining in the ox after he pays that owner

[7] he shall return it to the owner of the previous ox, the mishna should have ruled that the surplus shall be returned to all of them, i.e., all the prior injured parties, since they all share joint ownership of the belligerent ox.

[8] Rava said: Actually, the mishna is in accordance with the opinion of Rabbi Yishmael, who says that all the injured parties are creditors. And as for the difficulty you pose, that instead of stating that the owner of the latest of the oxen gored in succession gains, the mishna should have stated that the owner of the earliest of the oxen gored in succession gains, that can be answered. With what are we dealing here? We are dealing with a case where the first injured party seized the ox to collect payment from it, and consequently became like a paid bailee with regard to damage it causes. Therefore, he is responsible for any subsequent attacks by the ox. Similarly, if the next injured party seizes the ox from the first as compensation, he becomes responsible for any subsequent attacks.

[9] The Gemara asks: If so, instead of the mishna stating that if there is surplus value left in his ox after he pays that owner, he shall return it to the owner of the previous ox that was gored, it should have stated that he shall return it to its owner, since half the value of the belligerent ox belongs to its owner, who is not responsible for any later damage it causes.

[10] Ravina said that this is what the mishna is teaching: If there is surplus value with regard to its damages, i.e., the latter injured party sustained less of a loss than the previous one, that injured party shall return this surplus value to the previous injured party.

[11] Similarly, when Ravin came from Eretz Yisrael, he related that Rabbi Yoḥanan said: The mishna touched on this topic with regard to a bailee’s negligence.

[12] The Gemara asks: In accordance with which opinion did you interpret the ruling in the mishna? Was it in accordance with the opinion of Rabbi Yishmael? If so, say the latter clause of the mishna: Rabbi Shimon says that the division of the compensation is as follows: With regard to an innocuous

ox worth two hundred dinars that gored an ox worth two hundred dinars, thereby killing it, and the carcass is worthless, the injured party takes one hundred dinars from the proceeds of the sale of the belligerent ox, and the owner of the belligerent ox takes the remaining one hundred dinars.

[13] If the ox, after goring the first ox but before compensation had been paid, again gored another ox worth two hundred dinars, and the carcass is worthless, the owner of the last ox that was gored takes one hundred dinars; and with regard to payment for the previous goring, the owner of this ox that was gored takes fifty dinars, which is half the remaining value of the belligerent ox after one hundred dinars were paid to the last injured party, and the owner of that belligerent ox takes the remaining fifty dinars. If the ox, after goring the first two oxen but before compensation had been paid, again gored another ox worth two hundred dinars, and the carcass is worthless, the last injured party takes one hundred dinars, the previous one takes fifty dinars, and the first two divide the remainder, each receiving one gold dinar, which is worth twenty-five silver dinars.

[14] The Gemara continues: In the ruling of Rabbi Shimon, we arrive at the opinion of Rabbi Akiva, who says that the ox belongs to its owner and to the injured party, who are considered partners in the ownership of the ox. Is it possible that the first clause is in accordance with the opinion of Rabbi Yishmael and the latter clause is in accordance with the opinion of Rabbi Akiva?

[15] The Sages said that yes, this is the case, as Shmuel said to Rav Yehuda: Shinnana, leave the presumption that the entire mishna follows one opinion and follow my interpretation: The first clause is in accordance with the opinion of Rabbi Yishmael and the latter clause is in accordance with the opinion of Rabbi Akiva.

[16] It was also stated that Rabbi Yoḥanan says: The practical difference between the opinions of Rabbi Meir and Rabbi Shimon in the mishna is with regard to a case where the injured party consecrated the ox. If he is a partner in the ownership of the ox, his consecration takes effect; if he is considered merely a creditor, the consecration is ineffective. Evidently, Rabbi Yoḥanan also holds that the dispute in the mishna corresponds to the dispute between Rabbi Yishmael and Rabbi Akiva.

[17] § With regard to the gold dinar mentioned in the mishna, we learned in another mishna there (90a): One who slaps [hatokea] another is liable to give him a sela as a compensatory fine. Rabbi Yehuda says in the name of Rabbi Yosei HaGelili: He is liable to give him one hundred dinars.

[18] The Gemara relates: There was a certain man who slapped another. Rav Toviya bar Mattana sent an enquiry before Rav Yosef, asking him whether the sela we learned about in the mishna is referring to a Tyrian sela, which is worth four dinars, or whether the sela we learned about in the mishna is referring to a provincial sela, worth only half of a dinar, or one-eighth of a Tyrian sela.

[19] Rav Yosef said to him: You learned this in a mishna: And the first two divide the remainder, each receiving one gold dinar, worth twenty-five silver dinars. And if it enters your mind that the tanna teaches monetary sums using a provincial sela in order to calculate compensation, let him further divide the value that the first two litigants receive and teach a case where the belligerent ox gored an additional ox, so that their shares decrease until they reach twelve dinars and one sela apiece, which are twelve and a half dinars. The fact that he does not do so indicates that the mishna does not use a provincial sela, whose value is less than one dinar, and therefore a gold dinar cannot be divided in a manner that leaves each party with whole coins.

[20] Rav Toviya bar Mattana said to him: This is not proof; should the tanna have continued teaching additional cases, exhausting all possibilities, like a peddler selling his wares, who advertises every item of his merchandise? The cases cited in the mishna suffice to illustrate the point.

[21] What halakhic conclusion was reached about this matter? The Sages resolved it based on that which Rav Yehuda says that Rav says: All references to coinage mentioned in the Torah refer to Tyrian coinage, whereas all mentions of coinage in the statements of the Sages refer to provincial coinage. Therefore, a person who slaps another is fined a provincial sela, worth half of a dinar.

[22] Following the verdict, that man who was slapped said to Rav Yosef: Since the fine is only half a dinar, I do not want it, as it is beneath me to collect such an amount. Instead, let him give it to the poor. Then he retracted his decision, and said to Rav Yosef: Let him give it to me, and I will go and sustain [ve'avri] myself with it.

[23] Rav Yosef said to him: Since you already committed to give it to charity, the poor have already acquired it and it now belongs to them. And although there are no poor people here to acquire it, we, the court, are the hand, i.e., the legal extension, of the poor. We represent them, as Rav Yehuda says that Shmuel says: Orphans

[24] do not require a document that prevents the Sabbatical Year from abrogating an outstanding debt [prosbol] by transferring the right of collection to the court. The reason that orphans do not require this document is because the court is legally considered to be their steward, and their debts are therefore transferred to the court automatically, even without a prosbol.

[25] Similarly, Rami bar Ḥama taught: Orphans do not require a prosbol, as Rabban Gamliel and his court were tantamount to the fathers of orphans, as they were vigilant to collect all of the debts owed to orphans. Subsequently, the courts in every generation have this status.

[26] The Gemara relates: Ḥanan the wicked slapped a certain man. He then came before Rav Huna for judgment. Rav Huna said to him: Go give him a half-dinar, which is the fine imposed for such an act. Ḥanan the wicked had a clipped dinar, and wanted to give him a half-dinar from it, but there was no one who wanted to take it from him to give him smaller coins for it. Ḥanan the wicked then gave him another slap, rendering himself liable to pay an additional fine of half a dinar, and gave him the clipped dinar as payment.

[27] MISHNA: With regard to an ox that is forewarned with regard to its own species, as it already gored other oxen three times, but is not forewarned with regard to other species; or an ox that is forewarned with regard to people, but is not forewarned with regard to animals; or one that is forewarned with regard to small specimens of a species, but is not forewarned with regard to large specimens of that species; in all these cases, if the ox gores the type of animal or person with regard to which it is forewarned, its owner pays the full cost of the damage, and if it gores an animal or person with regard to which it is not forewarned, he pays half the cost of the damage.

[28] The Sages said before Rabbi Yehuda: What would be the halakha if this ox is forewarned with regard to Shabbatot but is not forewarned with regard to weekdays? He said to them: For damage it causes on Shabbatot its owner pays the full cost of the damage, and for damage it causes on weekdays, he pays half the cost of the damage.

[29] When is it rendered innocuous again after being forewarned with regard to Shabbat? It reverts to its innocuous status when its behavior reverts to normal, i.e., when it refrains from goring for three days of Shabbat, i.e., Shabbat in three successive weeks.

[30] GEMARA: It was stated that Rav Zevid said: The version of the mishna that we learned states: With regard to an ox that is forewarned with regard to its own species but is not forewarned with regard to other species, referring to an ox that is proven to be innocuous with regard to other species, if it gores another species, its owner pays only half the cost of the damage. Rav Pappa said: The version of the mishna that we learned states: An ox that is forewarned with regard to its own species is not forewarned with regard to other species. Accordingly, the mishna is teaching that the fact that it is forewarned with regard to goring one species does not render it forewarned with regard to goring other species, until it is proven otherwise.

[31] The Gemara explains: Rav Zevid said that the version of the mishna that we learned states: With regard to an ox that is forewarned with regard to its own species but is not forewarned with regard to other species, indicating that it is referring specifically to an ox that is proven to be innocuous with regard to other species. This implies that in an ordinary case, where there is no such proof, the ox is considered forewarned with regard to all species. Rav Pappa, by contrast, said that the version of the mishna that we learned states: An ox that is forewarned with regard to its own species is not forewarned with regard to other species, meaning that in an ordinary case, the ox is not considered forewarned with regard to other species.

[32] Rav Zevid inferred his opinion from the latter clause of the mishna, whereas Rav Pappa inferred his opinion from the former clause.

[33] Rav Zevid inferred his opinion from the latter clause, as it teaches: An ox that is forewarned with regard to small specimens of a species, but is not forewarned with regard to large specimens of that species. Granted, if you say that the mishna teaches in the first clause: With regard to an ox that is forewarned with regard to its own species but is not forewarned with regard to other species, indicating that in an ordinary case the ox is considered forewarned with regard to all animals, this clause of the mishna teaches us that even from being forewarned with regard to small specimens of a species, in an ordinary case the ox is thereby considered forewarned with regard to large specimens of that species, which is a more far-reaching statement, as an ox is less likely to gore large animals.

[34] But if you say that the mishna teaches: An ox that is forewarned with regard to its own species is not forewarned with regard to other species, meaning that in an ordinary case, where there is no proof to the contrary, the ox is not considered forewarned with regard to other species, there is a difficulty with the latter clause of the mishna.

[35] The Gemara explains: Now that it can be said that from being forewarned with regard to small oxen, in an ordinary case, the ox is not thereby considered forewarned with regard to small animals in general, need it be said that from being forewarned with regard to small specimens of a species it is not thereby considered forewarned with regard to large specimens of that species? It must be that the mishna reads: But is not forewarned, indicating that only when the ox is proven to be innocuous with regard to other species and then it gores another species is its owner liable to pay only half the cost of the damage. Otherwise, he must pay the full cost of the damage.

[36] And Rav Pappa could have said to you in response that even if the mishna reads: An ox that is forewarned with regard to its own species is not forewarned with regard to other species, the latter

clause is necessary, as otherwise it might enter your mind to say that since it breached the norm by attacking one of that species, it is considered to have breached the norm entirely with regard to that species, and there is no difference with regard to large members of the species and there is no difference with regard to small members of it, as the ox is now likely to gore any of them. Therefore, this clause of the mishna teaches us that it is not considered forewarned with regard to the large animals of that species.

[37] As stated previously, Rav Pappa inferred his opinion from the former clause of the mishna. As the mishna teaches: An ox that is forewarned with regard to people is not forewarned with regard to animals. Granted, if you say that we learned that the mishna states: An ox that is forewarned with regard to its own species is not forewarned with regard to other species, which would indicate that in an ordinary case, where there is no proof to the contrary, it is not considered forewarned with regard to other species, then the mishna, in the next clause, teaches us this, that even from being forewarned with regard to people, in an ordinary case, the ox is not considered forewarned with regard to animals. The ox is considered innocuous with regard to animals, although it is more common for an ox to gore an animal than a person.

[38] But if you say that the mishna teaches in the first clause: With regard to an ox that is forewarned with regard to its own species but is not forewarned with regard to other species, indicating that in an ordinary case it is considered forewarned with regard to other species, then there is a difficulty with the following clause of the mishna. Now that it can be said that even from being forewarned with regard to one species of animal, in an ordinary case, it is thereby considered forewarned with regard to other species of animals, need it be said that from its being forewarned with regard to people it is also considered forewarned with regard to animals?

[39] And Rav Zevid could have said to you in response: The former clause in the mishna relates to the ox reverting to its innocuous status, i.e., a case where the ox was forewarned with regard to man and forewarned with regard to animals, and reverted to its innocuous status with regard to animals, as it stood in close proximity to an animal three times and did not gore. Lest you say that since it did not demonstratively revert to its innocuous behavior toward people, as it did not refrain from goring people, its reversal with regard to animals is not considered a reversal, the mishna teaches us that its reversal with regard to animals is nevertheless considered a reversal, and it no longer has the status of a forewarned ox with regard to goring animals.

[40] The Gemara raises an objection to Rav Zevid's opinion from a baraita: Sumakhos says: An ox that is forewarned with regard to people is considered forewarned with regard to animals, due to an a fortiori inference: If it is forewarned with regard to people, is it not clear all the more so that it is forewarned with regard to animals? The Gemara elaborates: By inference, the first tanna, i.e., the tanna of the mishna, is saying that the ox is not considered forewarned with regard to animals, in accordance with the opinion of Rav Pappa.

[41] The Gemara answers: Rav Zevid could have said to you that Sumakhos's statement can be interpreted as relating to the ox reverting to its innocuous status, and this is what he is saying to the first tanna: Contrary to what you are saying, that the ox's reversal with regard to animals is considered a reversal although it has not yet reversed its behavior toward people, I maintain that its reversal with regard to animals is not considered a reversal, due to an a fortiori inference from the halakha of an animal forewarned with regard to people: If the ox has not reverted to its innocuous

behavior toward people, is it not clear all the more so that it has not truly reverted to its innocuous behavior toward animals?

[42] Rav Ashi said: Come and hear a proof for Rav Zevid's opinion from the mishna: The Sages said before Rabbi Yehuda: What would be the halakha if this ox is forewarned with regard to Shabbatot but is not forewarned with regard to weekdays? He said to them: For damage it causes on Shabbatot its owner pays the full cost of the damage, and for damage it causes on weekdays, he pays half the cost of the damage.

[43] Granted, if you say that the mishna teaches: But was not forewarned with regard to weekdays, they were asking him about the halakha in that case, and likewise, he was answering them with a ruling. But if you say that it teaches: This ox that is forewarned with regard to Shabbatot is not forewarned with regard to weekdays, the mishna would be understood as saying that an ox that is forewarned with regard to Shabbat is not considered forewarned with regard to weekdays. Is it possible that the Sages were teaching him this halakha? And furthermore, what was he responding to them? They had already stated themselves that the ox is not considered forewarned with regard to weekdays.

[44] Rav Yannai said: Rav Zevid's opinion can be inferred from the former clause of the mishna as well, as it teaches: If the ox gores an animal or person with regard to which it is forewarned, its owner pays the full cost of the damage, and if it gores an animal or person with regard to which it is not forewarned, he pays half the cost of the damage.

[45] Granted, if you say that the mishna teaches in the first clause: With regard to an ox that is forewarned with regard to its own species but is not forewarned with regard to other species, this clause is explaining the halakha in that case, i.e., if the ox is forewarned only with regard to its species, its owner is liable to pay the full cost of the damage only if it gores another ox.

[46] But if you say that the mishna teaches: An ox that is forewarned with regard to its own species is not forewarned with regard to other species, and the halakha was already determined at the beginning of the mishna, namely, that the ox is not considered forewarned with regard to other species, then what need is there for the mishna to further state: If the ox gores an animal or person with regard to which it is forewarned, its owner pays the full cost of the damage, and if it gores an animal or person with regard to which it is not forewarned, he pays half the cost of the damage? Has the mishna not taught us until now that for an innocuous ox its owner pays half the cost of the damage and for a forewarned ox he pays the full cost of the damage?

[47] The Gemara comments: And even if you say that Rav Pappa's opinion, which says that an ox that is forewarned with regard to its own species is not considered forewarned with regard to other species, is accepted, nevertheless, if an ox gored an ox, a donkey, and a camel, it is thereby rendered forewarned with regard to all of them. The ox is rendered forewarned with regard to all three species, regardless of the fact that it did not gore each individual species three times.

[48] § The Sages taught: If an ox saw an ox and gored it, and subsequently saw another ox but did not gore it, again saw an ox and gored it and then saw an ox but did not gore it, and a third time saw an ox and gored it and saw an ox and did not gore it, in this case it is rendered forewarned with regard to alternate oxen. The ox is considered forewarned with regard to goring every other ox that it sees and is considered innocuous with regard to the oxen in between. If it then gores two oxen in a row, the owner of the ox is liable for only half the cost of the damage for the second ox.

[49] The Sages taught: If an ox saw an ox and gored it, and then saw a donkey but did not gore it, and saw a horse and gored it, then saw a camel and did not gore it, and saw a mule and gored it, and then saw a wild donkey [arod] and did not gore it, in this case it is rendered forewarned with regard to alternate animals of all species.

[50] A dilemma was raised before the Sages: If an ox gored

[51] an ox, another ox, and a third ox, and then a donkey and a camel, with regard to what is it considered forewarned?

[52] The Gemara presents the possibilities: With regard to this last ox that was gored together with the donkey and the camel, do we place it together with the previously gored oxen, and accordingly the belligerent ox was still rendered forewarned only with regard to oxen, whereas with regard to other species it was not rendered forewarned? Or perhaps we place this last ox together with the donkey and the camel, and it was rendered forewarned with regard to all of the species it gored.

[53] The Gemara adds a similar dilemma: If an ox gored a donkey and a camel, and then an ox, an ox, and another ox, what is the halakha? The Gemara presents the possibilities: With regard to this first ox that it gored, do we place it together with the camel and donkey, and the belligerent ox was accordingly rendered forewarned with regard to all species? Or perhaps we place it together with the two oxen that it gored afterward, and accordingly, it was still rendered forewarned only with regard to oxen, whereas it was not rendered forewarned with regard to other species.

[54] Similarly, if it gored on Shabbat, on Shabbat, and on Shabbat, i.e., on three consecutive Shabbatot, and then on Sunday and on Monday, what is the halakha? With regard to this last Shabbat, do we place it together with the previous Shabbat, and the ox was still rendered forewarned only with regard to Shabbat, whereas with regard to weekdays it was not rendered forewarned? Or perhaps we place it together with the goring on Sunday and Monday, and it was thereby rendered forewarned with regard to all days of the week.

[55] If an ox gored on Thursday, and Friday, and Shabbat, and then the next Shabbat and the next Shabbat after that, what is the halakha? With regard to this first Shabbat, do we place it together with Thursday and Friday, and thereby hold that the ox was rendered forewarned with regard to all days of the week? Or perhaps we place this first Shabbat together with the other Shabbatot, and the ox is rendered forewarned only with regard to Shabbatot?

[56] These dilemmas shall stand unresolved.

[57] § If an ox gored on the fifteenth day of this month, and subsequently gored on the sixteenth day of the month after that, and then on the seventeenth day of the month after that, the halakha is subject to a dispute between Rav and Shmuel with regard to a parallel discussion concerning a woman whose menstrual cycle begins on a different day each month.

[58] As it was stated: If a woman saw menstrual blood on the fifteenth day of this month, and on the sixteenth day of the month after that, and on the seventeenth day of the month after that, Rav says: She has thereby established her menstrual cycle [veset], i.e., a month and one day. And Shmuel says: Her menstrual cycle is not established until she skips a day three times. According to Shmuel, the cycle is established in this case not by the date per se, but rather by the pattern of one additional day every month. Only when this occurs for three consecutive months, i.e., when she menstruates in the fourth month, is this pattern established.

[59] § Rava said: If an ox heard the sound of a shofar and gored, and again heard the sound of a shofar and gored, and a third time heard the sound of a shofar and gored, it is rendered forewarned with regard to the sound of shofarot.

[60] The Gemara asks: Isn't this obvious? The Gemara answers: Lest you say that this first shofar merely startled [siyyuta] the ox, prompting it to gore, and that consequently it should not count for the purpose of rendering the ox forewarned, Rava teaches us that since the ox repeatedly gored upon hearing the sound of a shofar, this sound is considered a consistent impetus for its goring.

[61] MISHNA: With regard to an ox of a Jew that gored a consecrated ox, and conversely, a consecrated ox that gored a non-sacred ox, i.e., an ox owned by a Jew, the owner of the ox is exempt from paying compensation, as it is stated: "And if one man's ox hurts the ox of another" (Exodus 21:35). It is derived from the phrase "the ox of another" that one is liable only if it is a non-sacred ox, but not if it is a consecrated ox, which belongs to the Temple treasury, regardless of whether the latter was the ox that gored or the ox that was gored.

[62] With regard to an ox of a Jew that gored the ox of a gentile, the owner of the belligerent ox is exempt from liability. But with regard to an ox of a gentile that gored the ox of a Jew, regardless of whether the goring ox was innocuous or forewarned, the owner of the ox pays the full cost of the damage.

[63] GEMARA: The mishna is not in accordance with the opinion of Rabbi Shimon ben Menasya, as it is taught in a baraita: With regard to a non-sacred ox that gored a consecrated ox, or a consecrated ox that gored a non-sacred ox, the owner of the ox is exempt from liability, as it is stated: "The ox of another," indicating: But not a consecrated ox. Rabbi Shimon ben Menasya says: With regard to a consecrated ox that gored a non-sacred ox, the Temple treasury is exempt from liability; but with regard to a non-sacred ox that gored a consecrated ox, whether it was innocuous or forewarned, the owner pays the full cost of the damage.

[64] The Sages said: What does Rabbi Shimon ben Menasya hold? Why does he distinguish between a consecrated ox that gored a non-sacred ox and a non-sacred ox that gored a consecrated ox? If the phrase "of another" is meant in a precise manner, then even with regard to a non-sacred ox that gored a consecrated ox the owner of the belligerant ox should be exempt from liability, as the victim is not the ox of another, but belongs to the Temple treasury. And if the phrase "of another" is not meant in a precise manner, but rather, includes all oxen, then a consecrated ox that gored a non-sacred ox should render the Temple treasury liable as well.

[65] And if you would say that actually Rabbi Shimon ben Menasya holds that "of another" is meant in a precise manner, and accordingly, if a consecrated ox gores a non-sacred ox the Temple treasury is exempt from liability; but nevertheless, when a non-sacred ox gores a consecrated ox, this is the reason its owner is liable: Because Rabbi Shimon ben Menasya infers it a fortiori from the case of a non-sacred ox, as follows: If in the case of a non-sacred ox that gores another non-sacred ox the owner of the belligerent ox is liable, is it not clear all the more so that when it gores a consecrated ox the owner of the ox is liable?

[66] If this is Rabbi Shimon ben Menasya's reasoning, then his ruling that the owner of the ox pays the Temple treasury the full cost of the damage, whether his ox was innocuous or forewarned, is problematic, as it is sufficient for the conclusion that emerges from an a fortiori inference to be like its source. In other words, a halakha derived by means of an a fortiori inference cannot be more

stringent than the halakha of the source from which it is derived. Therefore, just as there, in a case where an individual's innocuous non-sacred ox gores another non-sacred ox, the owner pays only half the cost of the damage, here too, if an innocuous non-sacred ox gores a consecrated ox, its owner should be liable to pay only half the cost of the damage.

[67] Rather, Reish Lakish said that Rabbi Shimon ben Menasya's reasoning is as follows: In principle, all cases of damage were included among those in which the owner pays the full cost of the damage. The halakha that in a case of an innocuous ox the owner pays only half the cost of the damage is an exception to the rule, and when the verse specified the term "of another" with regard to an innocuous ox, it intended that it is specifically when one's innocuous ox gores the ox of another that the owner pays only half the cost of the damage. And by inference, if it gores a consecrated ox, whether the belligerent ox is innocuous or forewarned its owner pays the full cost of the damage.

[68] Because if so, if one whose ox gores a consecrated ox is exempt from liability, let the verse write this phrase: "Of another," with regard to the case of a forewarned ox. One could then infer that the owner is exempt from liability in the case of an innocuous ox as well, as the liability with regard to an innocuous ox is less severe than with regard to a forewarned ox. The stating of this exemption specifically in the context of an innocuous ox indicates that the exemption is only concerning the leniency stated in the verse, that if the gored ox belongs to another person, the owner of the belligerent ox is liable to pay only half the cost of the damage.

[69] § The mishna teaches: With regard to an ox of a Jew that gored the ox of a gentile, the owner of the belligerent ox is exempt from liability; whereas if a gentile's ox gores a Jew's ox, the owner is liable to pay the full cost of the damage. The Sages said: This statement is difficult whichever way you look at it. If the phrase "of another" is meant in a precise manner, and therefore the liability applies only if his ox gores the ox of another Jew, when a gentile's ox gores that of a Jew he should also be exempt from liability. And if the phrase "of another" is not meant in a precise manner, then even when a Jew's ox gores that of a gentile the owner of the belligerent ox should be liable.

[70] Rabbi Abbahu said that the reason for this ruling is that the verse states: "He stood and shook the earth; He beheld, and made the nations tremble [vayyatter]" (Habakkuk 3:6). This is homiletically interpreted to mean that God saw the seven mitzvot that the descendants of Noah accepted upon themselves to fulfill, and since they did not fulfill them, He arose and permitted [vehittir] their money to the Jewish people, so that in certain cases Jews are not liable for damage caused to gentiles.

[71] Rabbi Yoḥanan said that the source for this halakha is from here: It is stated in reference to the giving of the Torah: "The Lord came from Sinai and rose from Seir unto them; He appeared from Mount Paran" (Deuteronomy 33:2), which is homiletically interpreted to mean: From the time God came from Mount Paran, when giving the Torah, the money of the gentile nations appeared, i.e., it was revealed and granted to the Jewish people.

[72] This is also taught in a baraita: With regard to an ox of a Jew that gored the ox of a gentile, the owner of the belligerent ox is exempt from liability. By contrast, with regard to an ox of a gentile that gored the ox of a Jew, whether it was innocuous or forewarned, the owner of the belligerent ox pays the full cost of the damage, as it is stated: "He stood and shook the earth; He beheld, and made the nations tremble." And another verse states: "He appeared from Mount Paran."

[73] The Gemara asks: What is the reason the baraita adds: And another verse states, indicating that the first verse is not a sufficient source?

[74] The Gemara explains that this is how the baraita is to be understood: And if you would say that this verse: “He stood and shook the earth” is necessary to express that which Rav Mattana and Rav Yosef derived from the verse, come and hear another source: “He appeared from Mount Paran,” meaning: From Paran their money appeared to the Jewish people. What is Rav Mattana’s exposition? It is as Rav Mattana says: “He stood and shook the earth.” What did He see? He saw the seven mitzvot that the descendants of Noah were commanded but did not fulfill, and He arose and exiled them from their land on account of their transgressions.

[75] And from where may it be inferred that this term vayyatter is a term of exile? It is written here: “And made the nations tremble [vayyatter]” (Habakkuk 3:6), and it is written there: “Lenatter upon the earth” (Leviticus 11:21), which is translated into Aramaic as: “To leap upon the earth.” Apparently, the root nun, tav, reish, common to both words, indicates uprooting from one place to another.

[76] What is Rav Yosef’s exposition? It is as Rav Yosef says: “He stood and shook the earth; He beheld.” What did He see? He saw the seven mitzvot that the descendants of Noah accepted upon themselves and did not fulfill, so He arose and permitted their prohibitions to them.

[77] The Gemara asks: Did they thereby profit, in that their prohibitions became permitted to them? If so, we have found a transgressor who is rewarded. Mar, son of Rabbana, says: This is not to say that for them to transgress their mitzvot is no longer a sin; rather, it is to say that even if they fulfill them, they do not receive reward for fulfilling them.

[78] The Gemara asks: But do they not receive reward for fulfilling those mitzvot? But isn’t it taught in a baraita that Rabbi Meir says: From where is it derived that even a gentile who engages in Torah is considered like a High Priest? The verse states with regard to the mitzvot: “Which if a person does, he shall live by them” (Leviticus 18:5). It is not stated: Which if priests and Levites and Israelites do, they shall live by them, but rather: A person, indicating that all people are included. You have therefore learned that even a gentile who engages in Torah study is considered like a High Priest.

[79] The Sages said in response: Rav Yosef meant that they do not receive the reward as does one who is commanded to perform a mitzva and performs it, but as does one who is not commanded to perform a mitzva and performs it anyway. As Rabbi Ḥanina says: One who is commanded and performs a mitzva is greater than one who is not commanded and performs it.

[80] The Sages taught the following story in the context of the aforementioned halakha: And the Roman kingdom once sent two military officials [sardeyotot] to the Sages of Israel, and ordered them in the name of the king: Teach us your Torah. The officials read the Torah, and repeated it, and repeated it again, reading it for the third time. At the time of their departure, they said to the Sages: We have examined your entire Torah and it is true, except for this one matter that you state, i.e., that with regard to an ox of a Jew that gored the ox of a gentile, the owner is exempt from liability, whereas with regard to the ox of a gentile that gored the ox of a Jew, whether it was innocuous or forewarned, the owner pays the full cost of the damage.

[81] The officials’ reasoning was that this halakha is difficult whichever way you look at it. If the phrase “of another” is meant in a precise manner, that the owners of both oxen must both be Jewish, then even when the ox of a gentile gores the ox of a Jew the owner of the ox should be exempt from liability. And if the phrase “of another” is not meant in a precise manner, and the oxen of all are included, then even when the ox of a Jew gores the ox of a gentile the owner should be liable. They

added: But we will not inform this matter to the kingdom; having acknowledged that the entire Torah is true, we will not reveal this ruling, as it will displease the kingdom.

[82] § Incidentally, it is related that the daughter of Rav Shmuel bar Yehuda died. The Sages said to Ulla: Arise; let us go console him. Ulla said to them: What business do I have with the consolation of Babylonians, which is actually heresy? As, they say while consoling mourners: What can be done? This seems to suggest that if it were possible to do something, acting against the Almighty's decree, they would do so, which is tantamount to heresy. Therefore, Ulla declined to accompany the Babylonian Sages.

[83] Ulla therefore went to console Rav Shmuel bar Yehuda by himself, and said to him: The verse states: "And the Lord said to me, do not be at enmity with Moab, neither contend with them in battle" (Deuteronomy 2:9). What entered Moses's mind, that God had to warn him not to undertake a particular action? Did it enter his mind to wage war with the Moabites without permission? Rather, Moses reasoned an a fortiori inference by himself, saying: And if with regard to the Midianites, who came only to help the Moabites harm the Jewish people (see Numbers, chapter 22), the Torah said: "Harass the Midianites and smite them" (Numbers 25:17),

[84] with regard to the Moabites themselves, is it not clear all the more so that they should be attacked?

[85] To counter this, the Holy One, Blessed be He, said to him: That which has entered your mind has not entered Mine, because I have two virtuous fledglings [feridot], i.e., girls, to extract from them: Ruth the Moabite, who will be the foremother of the dynasty of David, and Naamah the Ammonite, Solomon's wife, from whom the continuation of that dynasty will emerge. For the sake of these women, the Moabites and Ammonites must not be destroyed.

[86] Ulla continued: And are these matters not inferred a fortiori? If for the sake of two virtuous fledglings the Holy One, Blessed be He, had pity on two large nations and did not destroy them, then if the daughter of my teacher, Rav Shmuel bar Yehuda, was righteous, and she had the potential for something good to emerge from her, it is all the more so clear that she would have lived.

[87] § Having mentioned the Moabites and Ammonites, the Gemara cites that Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: The Holy One, Blessed be He, does not deprive any creature of its reward. He rewards every person for his good deeds, and provides reward even for using pleasant speech by using euphemisms.

[88] As with regard to the descendants of the elder of the two daughters of Lot, who said that the name of her son, whom she conceived with her father, would be Moab, meaning: From father, the Holy One, Blessed be He, said to Moses: "Do not be at enmity with Moab, neither contend with them in battle," indicating that specifically a full-fledged battle was not authorized but that the Jewish people could impose forced labor [angarya] on them.

[89] By contrast, with regard to the descendants of the younger daughter, who said her son's name would be ben Ami, meaning: Son of my nation, merely alluding to the fact she conceived him through an incestuous union, the Holy One, Blessed be He said to Moses: "And when you come near against the children of Ammon, do not harass them, nor contend with them" (Deuteronomy 2:19). In other words, do not contend with them at all; do not even impose forced labor on them. This additional prohibition was a reward for her employing a euphemism when naming her son.

[90] And with regard to the daughters of Lot, Rabbi Ḥiyya bar Abba says that Rabbi Yehoshua ben Korḥa says: A person should always hasten to perform a mitzva, as due to the one night by which the elder daughter of Lot preceded the younger daughter, with the intention of performing a mitzva by bringing children into the world, she preceded her by four generations in having her descendants enter into the Jewish people. They are: Obed, son of Ruth the Moabite, Yishai, David, and Solomon. Whereas, the descendants of the younger daughter did not join the Jewish people until Rehoboam, Solomon's son, was born, as it is written: "And his mother's name was Naamah the Ammonite" (I Kings 14:31).

[91] § The Sages taught: With regard to the ox of a Jew that gored the ox of a Samaritan, the owner is exempt from liability. But with regard to the ox of a Samaritan that gored the ox of a Jew, if the Samaritan's ox was innocuous he pays half the cost of the damage, and if it was forewarned, he pays the full cost of the damage. Accordingly, the halakha with regard to Samaritans is not identical to that of a gentile, who is liable to pay the full cost of the damage even for the act of an innocuous ox.

[92] Rabbi Meir says: With regard to the ox of a Jew that gored the ox of a Samaritan, the owner of the ox is exempt from liability. And with regard to the ox of a Samaritan that gored the ox of a Jew, whether it was innocuous or forewarned, the owner pays the full cost of the damage, like a gentile.

[93] The Gemara asks: Is this to say that Rabbi Meir holds that Samaritans are converts who had converted due to fear of lions, i.e., the original conversion of the Samaritans was under duress and consequently meaningless, and therefore he assigns to them the same status as gentiles with regard to liability for damages?

[94] And the Gemara raises a contradiction to this suggestion from a mishna (Nidda 56b): All bloodstained clothes, presumably from menstrual blood, that come from the city of Rekem are ritually pure, since most of the residents there are gentiles, and the bloodstains of gentile women are not ritually impure. Nevertheless, Rabbi Yehuda deems them impure because, in his opinion, the inhabitants of Rekem are converts who are mistaken, i.e., they converted, and they do not observe the mitzvot because they have forgotten Judaism. He holds that since they are halakhically Jewish, their blood is ritually impure.

[95] Bloodstained clothes that come from among gentiles are considered pure. With regard to bloodstained clothes that come from among Jews or from among Samaritans, Rabbi Meir deems them impure, as he suspects them of not taking care to keep impure clothes out of the public domain. And the Rabbis deem them pure, as Jews and Samaritans are not suspected of not being careful about their bloodstains.

[96] Apparently, Rabbi Meir holds that Samaritans are true converts; otherwise the halakha concerning them would be the same as for gentiles, whose bloodstains are not impure at all. This being the case, why does Rabbi Meir regard them as gentiles with regard to liability to pay damages?

[97] Rabbi Abbahu says: They are true converts, and are therefore considered Jews by Torah law inasmuch as in the event that a Jew's ox causes damage to them, the owner of the ox is liable to pay damages, and if an innocuous ox belonging to them gores a Jew's ox, the owner pays only half the cost of the damage. Nevertheless, Rabbi Meir imposed a monetary fine on them, giving them the status of gentiles, so that Jews would not assimilate with them.

[98] Rabbi Zeira raises an objection to this answer from a mishna (Ketubot 29a): And these are the cases of young women for whom there is a fine paid to their fathers by one who rapes them. Not only is one who rapes a Jewish young woman of unflawed lineage liable to pay this fine, but so is one who engages in intercourse with a mamzeret, or with a female Gibeonite, or with a female Samaritan. Rabbi Zeira states his objection: And if it enters your mind that Rabbi Meir imposed a monetary fine on them to render them like gentiles, so too, let us fine a female Samaritan who is raped, by rendering her ineligible to receive the fine for rape, so that people will not consider them regular Jews and will not assimilate with them.

[99] Abaye said: According to Rabbi Meir, the reason the Sages did not revoke this fine is in order

[100] that the sinner, i.e., the rapist, should not be rewarded.

[101] The Gemara suggests: But if that is the reason, let him give the fine to the poor instead of to the Samaritan who he raped, to prevent assimilation. Rav Mari said: This is not done, because it is money that has no claimants. Since one would not be liable to give it to a specific poor person, the rapist could evade payment by responding to any claimant that he wants to give it to a different poor person. The Sages upheld the Torah law as it stands, and the fine is given to the Samaritan so that the sinner will not benefit.

[102] MISHNA: If an ox of a halakhically competent person gored an ox of a deaf-mute, an imbecile, or a minor, all of whom are not considered halakhically competent, the owner is liable for damages. But if an ox of a deaf-mute, an imbecile, or a minor gored an ox of a halakhically competent person, the owner of the ox is exempt from liability.

[103] If an ox belonging to a deaf-mute, an imbecile, or a minor gored another ox and caused damage, the court appoints a steward for them and warns them with regard to the ox that gored in the presence of the steward. The ox is thereby rendered a forewarned ox, since the steward is considered its owner with regard to the requirement of the verse: “And warning has been given to its owner” (Exodus 21:29).

[104] If, after the ox was rendered forewarned in this manner, the deaf-mute regained his hearing, the imbecile became halakhically competent, or the minor reached the age of majority, the ox has thereby reverted to its status of innocuousness. This is the statement of Rabbi Meir, who maintains that the ox had the status of a forewarned ox only while it was under the custody of the steward. Rabbi Yosei says: It retains its previous status of being forewarned.

[105] If a stadium [ha’itztadin] ox, i.e., one that is trained to fight in a stadium, gores and kills a person, it is not liable to be put to death, as it is stated: “And if an ox gores a man or a woman” (Exodus 21:28). This is referring only to an ox that gores on its own initiative, but not to the case of an ox where others induced it to gore. Therefore, the owner of a stadium ox, which is trained to gore, is exempt from liability if it does.

[106] GEMARA: The Gemara comments: This matter itself is difficult. First the mishna said: If an ox of a deaf-mute, an imbecile, or a minor gored an ox of a halakhically competent person, the owner of the ox is exempt from liability. Apparently, the court does not appoint a steward for the owner of an innocuous ox for the purpose of collecting damages from the proceeds of the sale of its body. But say the latter clause of the mishna: If an ox belonging to a deaf-mute, an imbecile, or a minor gored another ox and caused damage, the court appoints a steward for them and warns them with regard to

the ox that gored in the presence of the steward. Apparently, the court appoints a steward for the owner of an innocuous ox for the purpose of collecting damages from its body.

[107] Rava said that this is what the mishna is teaching: A steward is not appointed to enable collection of compensation from the bodies of innocuous oxen, but if they have acquired the reputation of being habitually goring oxen, as this was not an isolated incident, the court appoints a steward for the owners, and warns them in the presence of the steward, and thereby renders the oxen forewarned. This is so that when one of the oxen gores again, the owner will be liable to pay compensation from his superior-quality property, and not only from the proceeds of the sale of the goring ox.

[108] The Gemara asks: From whose superior-quality property is compensation collected for damage caused by a forewarned ox belonging to minor orphans? Rabbi Yoḥanan says: From the superior-quality property of the orphans. Rabbi Yosei bar Ḥanina says: From the superior-quality property of the steward.

[109] The Gemara asks: But did Rabbi Yoḥanan actually say this? But doesn't Rav Yehuda say that Rav Asi says: The court does not attend to the property of orphans to have them pay a debt unless interest is eroding their estate. In other words, in a case where the orphans' father borrowed money from a gentile with interest, the court ensures that the debt is paid from the orphans' property, since if they wait to pay the debt, it will grow dramatically. Apparently, in other cases the court does not collect from their property.

[110] And Rabbi Yoḥanan says: The court collects from them either to pay a debt recorded in a document that has the payment of interest stipulated in it, in order to ensure that the interest does not diminish the value their estate, or for the payment of a woman's marriage contract, due to their interest in not paying for her sustenance. A widow can claim her marriage contract from her deceased husband's property, and as long as she does not receive it, her husband's heirs are responsible for providing her sustenance. In a case where the heirs are minor orphans, the court collects payment of the marriage contract from the orphans' property, so that they will not have to pay for her sustenance in the interim. Evidently, Rabbi Yoḥanan holds that with the exception of these two cases, the court does not collect debts from the property of orphans.

[111] The Gemara answers: Reverse the opinions. Rabbi Yoḥanan is the one who says that payment for damage caused by forewarned oxen is collected from the superior-quality property of the steward, and Rabbi Yosei bar Ḥanina is the one who says that it is collected from the superior-quality property of the orphans.

[112] Rava said in response: Due to the difficulty created by the contradiction between the statement of Rabbi Yoḥanan here and the statement of Rabbi Yoḥanan there, you render Rabbi Yosei bar Ḥanina mistaken, by attributing an opinion to him that is not the halakha? Wasn't Rabbi Yosei bar Ḥanina a judge who delved into the complexities of the halakha?

[113] Rather, one can resolve the contradiction in another manner: Actually, do not reverse the opinions. And the resolution to the contradiction is that although Rabbi Yoḥanan holds that debts are not collected from the property of minor orphans, the halakha with regard to one who causes damage to another by not safeguarding his animal is different. Rabbi Yoḥanan says that compensation is collected from the superior-quality property of the orphans, because if you say that it should be collected from the superior-quality property of the steward,

[114] people will refrain from becoming stewards, fearing that they would incur a financial loss by having to pay for damage caused by the orphans' animals. By contrast, Rabbi Yosei bar Ḥanina says that it is collected from the superior-quality property of the steward, and there is no concern that people will refrain from becoming stewards, because if they pay for the orphans they are subsequently repaid by the orphans when they grow up.

[115] The Gemara notes: And the matter of whether or not the court appoints stewards for the halakhically incompetent owners of an innocuous ox for the purpose of collecting damages from the sale of its body if it gores is subject to a dispute between tanna'im.

[116] As it is taught in a baraita: With regard to an ox whose owner became a deaf-mute, or whose owner became an imbecile, or whose owner went overseas, if the ox gores, Yehuda ben Nakosa said that Sumakhos said: It retains its status of innocuousness until the court renders it forewarned in the presence of the owner. And the Rabbis say: The court appoints stewards for them, and the ox is rendered forewarned in the presence of the stewards.

[117] If the deaf-mute regained his hearing, or the imbecile became halakhically competent, or the minor reached majority, or its owner came back from overseas, Yehuda ben Nakosa said that Sumakhos said: The ox has reverted to its previous status of innocuousness, until it is rendered forewarned in the presence of the owner. Rabbi Yosei said: The ox retains its status of being forewarned.

[118] The Sages said: What did Sumakhos mean by saying that it retains its status of innocuousness? If we say that he meant that it is not rendered forewarned at all, and is still considered innocuous, from the fact that Sumakhos himself teaches in the latter clause of the baraita that the ox has reverted to its previous status of innocuousness, it is clear by inference that previously it was rendered forewarned.

[119] Rather, what did Sumakhos mean by saying that it retains its status of innocuousness [betammuto]? He meant that it retains its completeness [bitmimuto], as we do not reduce its owner's share of it by collecting compensation from the sale of its body. Rather, the injured party must wait until the owner becomes competent or returns. Apparently, the court does not appoint a steward for the owner of an innocuous ox to enable the injured party to collect damages from its body. And the Rabbis, who disagree with Sumakhos, say that the court appoints a steward for the owner and renders the ox forewarned in the presence of the steward. Apparently, they hold that the court does appoint a steward for the owner of an innocuous ox to enable the injured party to collect damages from its body.

[120] The Gemara asks: And in the latter clause of the baraita, with regard to what principle do they disagree? The Gemara answers: The difference between them is with regard to whether a change of custody changes the status of the ox. Sumakhos holds that a change of custody changes the status of the ox, whereas Rabbi Yosei holds that a change of custody does not change it; rather, it is determined by the actions of the ox itself, regardless of its custody.

[121] § The Sages taught in a baraita: With regard to an ox that gored that belonged to a deaf-mute, an imbecile, or a minor, Rabbi Ya'akov pays half the cost of the damage.

[122] The Gemara asks: What did Rabbi Ya'akov do that he should pay for the damage? Rather, emend the baraita and say: Rabbi Ya'akov says that he pays half the cost of the damage.

[123] The Gemara asks: With what are we dealing? If it is with regard to an innocuous ox, isn't this obvious? Everyone else also holds that one pays half the cost of the damage caused by their ox that gored, so what is the novel element of Rabbi Ya'akov's statement? And if it is with regard to a forewarned ox it is unclear why the owner pays half the cost of the damage, as if it is a case where he provided adequate safeguarding for it he is not required to pay at all, and if it is a case where he did not provide adequate safeguarding for it he is required to pay the entire cost of the damage.

[124] Rava said: Actually, Rabbi Ya'akov stated his ruling with regard to a forewarned ox, and here we are dealing with a case where he provided reduced safeguarding and did not provide superior safeguarding for it.

[125] And Rabbi Ya'akov holds in accordance with the opinion of Rabbi Yehuda, who says that when an ox is rendered forewarned the liability for its element of innocuousness remains in place. In other words, with regard to half of the damages, it is treated like an innocuous ox, and it is treated as a forewarned ox only with regard to the other half of the damages. Therefore, half the cost of the damage is still collected from the proceeds of the sale of its body. And furthermore, with regard to another issue Rabbi Ya'akov holds in accordance with the opinion of Rabbi Yehuda, who says that although superior safeguarding is necessary for an innocuous ox, reduced safeguarding is sufficient for a forewarned ox. Consequently, one who safeguards his forewarned ox in this manner is exempt from paying the additional half that he would be liable to pay due to the ox's forewarned status. He is liable with respect to the half that he pays due to its remaining element of innocuousness.

[126] And Rabbi Ya'akov also holds in accordance with the opinion of the Rabbis, who say that the court appoints a steward for the owner of an innocuous ox to enable the injured party to collect damages from its body. Therefore, Rabbi Ya'akov rules that in the case in the baraita, where a forewarned ox owned by a halakhically incompetent person is safeguarded in a reduced fashion, half the cost of the damage must be paid from the proceeds of the sale of its body.

[127] Abaye said to Rava: But do Rabbi Yehuda and Rabbi Ya'akov not disagree with regard to this matter? But isn't it taught in a baraita that with regard to an ox of a deaf-mute, an imbecile, or a minor, that gored, Rabbi Yehuda deems the owner liable, and Rabbi Ya'akov says that he pays only half the cost of the damage? Rabba bar Ulla says: There is no disagreement here; Rabbi Ya'akov merely explained what Rabbi Yehuda deems him liable to pay.

[128] The Gemara asks: And according to Abaye, who says that Rabbi Ya'akov and Rabbi Yehuda disagree, with regard to what principle do they disagree?

[129] The Gemara answers: Abaye could have said to you that here we are dealing with a forewarned ox whose owner did not safeguard it at all and that is consequently liable for the full cost of the damage.

[130] And Rabbi Ya'akov holds in accordance with the opinion of Rabbi Yehuda with regard to one issue and disagrees with him with regard to one issue. He holds in accordance with the opinion of Rabbi Yehuda with regard to one issue, as Rabbi Yehuda holds that when an ox is rendered forewarned its element of innocuousness remains in its place, and Rabbi Ya'akov agrees. And he disagrees with him with regard to one issue, as Rabbi Yehuda holds that the court appoints a steward for the owner of an innocuous ox to enable the injured party to collect damages from its body, whereas Rabbi Ya'akov holds that the court does not appoint a steward. Therefore, the owner is

exempt from paying the half for which he would be liable due to the ox’s element of innocuousness, and pays only the half damages he is liable to pay due to its forewarned status.

[131] Rav Aḥa bar Abaye said to Ravina: Granted, according to Abaye, who says that they disagree, the explanation works out well. But according to Rava, who says that they do not disagree, instead of interpreting the baraita as referring to a forewarned ox, he should have interpreted it as referring to an innocuous ox.

[132] There are two scenarios in which the baraita could be interpreted as referring to an innocuous ox. If one wants to interpret it in accordance with the opinion of Rabbi Yehuda, it can be discussing a case where he provided reduced safeguarding for it and did not provide superior safeguarding for it. If one wants to interpret it in accordance with the opinion of Rabbi Eliezer ben Ya’akov, it can be discussing a case where he did not provide safeguarding for it at all.

[133] As it is taught in a baraita: Rabbi Eliezer ben Ya’akov says: With regard to both an innocuous ox and a forewarned ox whose owner provided reduced safeguarding for them, he is exempt. The owner is liable only if he did not safeguard them at all. And accordingly, Rabbi Ya’akov teaches us this, that the court appoints stewards for the owners of an innocuous ox to enable the injured party to collect damages from the proceeds of the sale of its body.

[134] Ravina said to him that this is what Rava was saying by interpreting Rabbi Ya’akov’s statement with regard to a forewarned ox: Rabbi Ya’akov stated one matter containing two elements of reasoning [ta’ama] in accordance with Rabbi Yehuda’s opinion, namely, that a forewarned ox retains its element of innocuousness, and that reduced safeguarding is sufficient for a forewarned ox.

[135] Ravina himself said a different explanation of the baraita: The practical difference between Rabbi Yehuda and Rabbi Ya’akov is with regard to whether a change of custody changes the status of the ox. For example, in a case where the ox was forewarned while in the custody of the steward and subsequently the deaf-mute regained his hearing, or the imbecile became halakhically competent, or the minor reached majority, and the ox returned to its owner’s custody. Rabbi Yehuda holds that it is still in its previous status, the change of custody notwithstanding, and that therefore the owner is liable for the full cost of the damage. By contrast, Rabbi Ya’akov holds that the change of custody changes the status of the ox, which reverts to innocuousness, and so the owner pays only half the cost of the damage.

[136] § The Sages taught in a baraita: Stewards are liable to pay from their superior-quality property for damage caused by forewarned oxen under their custody, but they do not pay a ransom if the oxen killed a person.

[137] The Gemara asks: Who is the tanna who taught that the purpose of ransom is atonement for the owner of the ox, and that therefore a minor orphan’s steward is exempt from liability to pay it, as orphans are not subject to the obligation of atonement since they are not morally responsible?

[138] Rav Ḥisda said: It is Rabbi Yishmael, son of Rabbi Yoḥanan ben Beroka. As it is taught in a baraita: The verse: “If a ransom is imposed upon him, then he shall give for the redemption of his life” (Exodus 21:30), is referring to the monetary value of the injured party. Rabbi Yishmael, son of Rabbi Yoḥanan ben Beroka, says: The ransom corresponds to the monetary value of the one liable for the damage.

[139] What, do they not disagree with regard to this very issue? In other words, the Rabbis hold that ransom is monetary restitution for the damage caused, and therefore the heirs of the victim must be paid the monetary value of the victim. And Rabbi Yishmael, son of Rabbi Yoḥanan ben Beroka, holds that ransom is atonement for causing the death of a person. Accordingly, the amount of the ransom is the monetary value of the one liable, since, from the perspective of his moral responsibility for the incident, he deserves to pay with his life. Although the court does not impose capital punishment, his atonement is through payment of his own value.

[140] Rav Pappa said: No, it is possible that according to everyone ransom is atonement, and here they disagree with regard to this issue: The Rabbis hold that we evaluate the amount that is appropriate for atonement according to the monetary value of the injured party, and Rabbi Yishmael, son of Rabbi Yoḥanan ben Beroka, holds that we evaluate it according to the value of the one liable for the damage. All agree that the purpose of the ransom is atonement.

[141] The Gemara elaborates: What is the reasoning of the Rabbis? Imposing is stated in the later verse: “If ransom is imposed upon him” (Exodus 21:30), and imposing is stated in the earlier verse, concerning a person who injures a pregnant woman, causing her to miscarry: “He shall be punished as the husband of the woman shall impose upon him” (Exodus 21:22). This verbal analogy indicates comparison of the two halakhot: Just as there, with regard to compensation for causing miscarriage, the evaluation is according to the monetary value of the injured party, i.e., the fetus, so too here, the ransom is according to the value of the injured party.

[142] And Rabbi Yishmael, son of Rabbi Yoḥanan ben Beroka, holds that the fact that it is written: “And he shall give for the redemption of his life,” indicates that the ransom is redemption of the life of the ox’s owner, and its amount should accordingly be the owner’s monetary value.

[143] And the Rabbis would respond to this reasoning that indeed, the phrase: “For the redemption of his life,” is written, indicating that the purpose of the ransom is redemption of his life. Nevertheless, when we evaluate the amount he is liable to pay, we evaluate it according to the value of the injured party.

[144] § Rava was praising Rav Aḥa bar Ya’akov before Rav Naḥman, saying that he is a great man. Rav Naḥman said to him: When he happens to come to you, bring him to visit me.

[145] When Rav Aḥa bar Ya’akov eventually came to him, Rav Naḥman said to him: Ask me something. Rav Aḥa bar Ya’akov asked him: If an ox belonging to two partners kills a person, how do they pay the ransom?

[146] If this partner pays the ransom in full and that partner also pays the ransom in full, it would seem incorrect, as the Merciful One states that one ransom shall be paid, but not two ransoms. If this partner pays half the ransom and that partner pays half the ransom, it would also seem incorrect, as the Merciful One states that a full ransom shall be paid, but not half a ransom.

[147] While Rav Naḥman was sitting and pondering this question, Rav Aḥa bar Ya’akov asked him another question. He said to him: We learned in a mishna: The court repossesses property from those liable to pay their valuations who are delaying their payments. But the court does not repossess property from those liable to bring sin-offerings and guilt-offerings; they are relied upon to bring their offerings of their own initiative, as it is assumed they want to atone for their transgressions (Arakhin 21a). In light of this mishna, what is the halakha with regard to those liable to pay ransom?

[148] Should it be reasoned that since it is atonement, it is similar to the cases of a sin-offering and a guilt-offering, which a person treats seriously, as it is in his interest to achieve atonement, and therefore the court does not need to repossess property from him? Or perhaps it should be reasoned that since he is required to give the ransom to another person, he considers it a financial liability and does not consider it an obligation toward the Most High, and consequently he does not treat it seriously enough; and therefore the court needs to repossess property from him, as he might not pay it.

[149] Alternatively, it could be reasoned that since he himself did not sin but rather it is his property, i.e., his ox, that caused the damage, he does not treat the matter seriously enough, and therefore the court needs to repossess property from him to ensure payment.

[150] Rav Naḥman said to him: Leave me alone. I am still stuck on the first question and have no solution, so you must not raise further difficult questions.

[151] The Sages taught: Even though one who borrows an ox from another is generally responsible for damage that it causes, if he borrowed it on the presumption that it was innocuous and it gored and caused damage, and it was then found to be forewarned, the owner pays half the cost of the damage and the borrower pays half the cost of the damage.

[152] If the ox was rendered forewarned in the house of the borrower, i.e., it gored three times while in his possession, and he was warned in court, and he then returned it to the owner and it subsequently gored, the owner pays half the cost of the damage, as with regard to him it is still considered innocuous, having become forewarned while not in his custody, and the borrower is exempt from paying any compensation, since the ox is no longer in his custody.

[153] The Master said in the baraita: If one borrowed the ox on the presumption that it was innocuous and it was found to be forewarned, the owner pays half the cost of the damage and the borrower pays half the cost of the damage. The Gemara asks: But why should the borrower pay at all? Let him say to the owner: I borrowed an ox; I did not borrow a lion. I did not accept responsibility for safeguarding a forewarned ox, which behaves violently like a lion.

[154] Rav said: Here we are dealing with a case where the borrower was aware at the time he borrowed it that it was a goring ox and liable to cause damage.

[155] The Gemara asks: But if that is the case, let him say to the owner: Even though I knew that it was a goring ox, nevertheless, I borrowed an innocuous ox. I did not intend to borrow a forewarned ox and thereby accept responsibility for safeguarding an ox for which one must pay the full cost of its damage.

[156] The Gemara answers that the borrower is liable because the owner can say to him: Ultimately, even if it was innocuous, you would be required to pay half the damages. Therefore, now too, go pay half the damages.

[157] The Gemara asks: But if that is the case, let the borrower say to the owner: If it was innocuous, the damages would be paid from the proceeds of the sale of the body of the ox, not from my property.

[158] The Gemara answers: The borrower cannot say this, because the owner can say to him: Ultimately, would you not have been required to pay me back the full value of my ox? As a borrower you are obligated to return the ox to me in the same condition that you borrowed it. Even if compensation was collected from the proceeds of its sale you would still have been required to return

its full value to me. Therefore, in any event you would effectively be paying for the damage, so you are not losing anything from the fact that the ox is forewarned.

159 The Gemara asks: But if that is the case, let the borrower say to him:

160 If the ox was innocuous, I would have admitted my liability and would thereby have been exempt. A fine is imposed only as result of the testimony of two witnesses; if the offender admits his liability, no fine is imposed. Therefore, since the liability to pay half the cost of the damage for the act of an innocuous ox is a fine, the borrower could have rendered himself exempt from liability through admission.

161 And even according to the one who says that payment of half the damage is considered monetary restitution, not a fine, and therefore his admission would not have rendered himself exempt from liability, let the borrower say to him: If the ox was innocuous, I would have smuggled it out to the marsh [agma] so that the injured party would not find it in my possession. He would then be unable to collect damages from me, since he can collect payment only from the proceeds of the sale of the ox. By contrast, compensation for damage caused by a forewarned ox can be collected from all of the owner's property, and the borrower had no way of rendering himself exempt from liability. Therefore, it is unclear why the borrower is liable to pay half the cost of the damage.

162 The Gemara answers: Rather, here we are dealing with a case where the court seized the ox first, before the borrower had the chance to admit his liability or to smuggle the ox to the marsh. Therefore, the borrower cannot claim that he would have been able to render himself exempt from liability.

163 The Gemara asks: If so, why does the owner pay half the cost of the damage? Let him say to the borrower: You let my ox be seized by the court, with whom I cannot engage in litigation in an attempt to reach a compromise; the court collects full payment, and you are responsible for this situation. Therefore, you should pay the entire amount. The Gemara answers that the owner is liable to pay because the borrower can say to him: If I would have returned it to you, would the court not have taken it from you?

164 The Gemara asks: But if that is the case, let the owner say to him in response: If you would have returned it to me I would have smuggled it to the marsh, and the court would not have been able to seize it. The Gemara answers: The owner cannot say this, because the borrower can say to him: Ultimately, would the injured party not then have received payment from your superior-quality property, as is the halakha in the case of a forewarned ox, where the compensation paid is not only from the proceeds of the sale of the belligerent ox?

165 The Gemara comments: This explanation works out well in a case where the owner has other property from which compensation can be collected, besides the ox. But where he does not have other property, what is there to say? In that case, the borrower has in fact caused him loss.

166 The Gemara answers: The reason the borrower is exempt is because he can say to the owner: Just as I am indebted to you, to return your ox to you, so too, I am indebted to that injured party to whom you owe compensation. This is due to the ruling of Rabbi Natan.

167 As it is taught in a baraita that Rabbi Natan says: From where is it derived that if one is owed one hundred dinars by another, and the other person, i.e., the debtor, is owed one hundred dinars by another person, the court appropriates payment from that latter debtor and gives the money directly

to this first creditor, without going through the middleman, who is both the first debtor and the second creditor? The verse states, with regard to returning stolen property: “And he gives it to the one with regard to whom he is guilty” (Numbers 5:7), indicating that there is a situation where the liable party pays a third party to whom his creditor owes money in turn.

[168] It is stated at the end of the baraita cited earlier (40a): If the ox was rendered forewarned in the house of the borrower, and the borrower then returned it to the owner and it subsequently gored, the owner pays half the cost of the damage and the borrower is exempt from paying any compensation.

[169] The Gemara asks: The last clause of that baraita indicates that a change of custody changes the status of the ox; if it was rendered forewarned while in the borrower’s possession and was then returned to its owner, the owner pays only half the cost of the damage for any subsequent damage it might cause, as it is no longer considered forewarned. By contrast, the first clause of the same baraita, which teaches that the ox retains its status as forewarned even after being borrowed, indicates that a change of custody does not change the status of the ox.

[170] Rabbi Yoḥanan said: This baraita is disjointed [tavra]. The tanna who taught this clause did not teach that clause.

[171] Rabba said: From the fact that the first clause follows the opinion that a change of custody does not change the status of the ox, it is inferred that the last clause also follows the opinion that a change of custody does not change its status. And this is the reason that in the last clause the ox reverts to its status of innocuousness: It is because the owner can say to the borrower: It is not in your power to render my ox forewarned, as I did not give it to you with that intention and it was your negligence that caused the change in its status. Therefore, the owner is not liable to pay additional compensation that results from the status the ox acquired under the custody of the borrower.

[172] Rav Pappa said: From the fact that the last clause follows the opinion that a change of custody changes the status of the ox, it is inferred that the first clause also follows the opinion that a change of custody changes its status. And this is the reason that in the first clause the ox is considered forewarned even when in the custody of the borrower: It is because wherever it goes, the name of its owner is upon it. Since it was rendered forewarned under its owner’s custody, with whom it remains identified, it is not considered to have undergone a change of custody.

[173] § The mishna teaches that a stadium ox is not liable to be put to death, since it was trained to gore. A dilemma was raised before the Sages: If an ox kills a person it may not be brought as an offering, even if it is not put to death. If a stadium ox kills a person, what is the halakha with regard to sacrificing it on the altar?

[174] Rav says that it is fit to be brought as an offering, and Shmuel says that it is disqualified. Rav says that the ox is fit because it acted due to circumstances beyond its control, as goring is what it was trained to do; and Shmuel says that it is disqualified as, in any event, a transgression was committed through it.

[175] The Gemara raises an objection from a baraita that interprets the verse: “You shall bring your offering from the cattle, even from the herd or from the flock” (Leviticus 1:2). The phrase “from the cattle” is mentioned to exclude an animal that engaged in bestiality and an animal that was the object of bestiality from eligibility to be brought as an offering. The phrase “from the herd” is mentioned to exclude an animal that had been worshipped as a god. “From the flock” is mentioned to exclude an

animal that had been set aside for idol worship. The additional conjunction “or,” in the phrase “or from the flock” is mentioned to exclude an animal that gores a person, killing him.

176 The baraita continues: Rabbi Shimon said: If it is stated that an animal that engaged in bestiality is disqualified from being brought as an offering, why is it stated that an animal that gores is disqualified? And if it is stated that an animal that gores is disqualified, why is it stated that an animal that engaged in bestiality is disqualified?

177 He explains: It is because there is a stringency pertaining to an animal that engaged in bestiality that does not pertain to one that gores, and, conversely, there is a stringency pertaining to an animal that gores that does not pertain to an animal that engaged in bestiality.

178 He clarifies: With regard to an animal that engaged in bestiality, the Torah renders a case where it is a victim of circumstances beyond its control like a case where it acted willfully, as it is disqualified in either case. By contrast, with regard to an animal that gores, the Torah does not render a case where it is a victim of circumstances beyond its control like a case where it acted willfully. Conversely, with regard to an animal that gores, its owner pays the ransom; whereas the owner of an animal that engaged in bestiality does not pay a ransom. Therefore, the Torah had to state that an animal that engaged in bestiality is disqualified and had to state that an animal that gores is disqualified.

179 The Gemara explains the objection: In any event, the baraita teaches that with regard to an animal that engaged in bestiality, the Torah renders a case where it is a victim of circumstances beyond its control like a case where it acted willfully. By contrast, with regard to an animal that gores, the Torah does not render a case where it is a victim of circumstances beyond its control like a case where it acted willfully. With regard to what halakha is this stated? Is it not with regard to the animal’s eligibility to be brought as an offering? Accordingly, a stadium ox, which is considered a victim of circumstances beyond its control, is fit to be brought as an offering, contrary to Shmuel’s opinion.

180 The Gemara answers: No, it is with regard to the animal being put to death, i.e., the ox is not killed if it is a victim of circumstances beyond its control.

181 So too, it is reasonable, as if you say that the ruling of the baraita is with regard to the animal’s eligibility to be brought as an offering, how can the baraita state the following: By contrast, with regard to an animal that gores, the Torah does not render a case where it is a victim of circumstances beyond its control like a case where it acted willfully. Neither are circumstances beyond its control written in that context, nor is its willingness written; the issue is not mentioned in the Torah at all. Rather, is the ruling of the baraita not stated with regard to the animal being put to death, where this distinction is indicated in the Torah? The mishna interprets the phrase: “And if an ox gores” (Exodus 21:28), as indicating that the ox is not put to death in a case where it is induced to gore; therefore, this distinction is mentioned in the Torah with regard to the animal being put to death. Accordingly, the baraita does not address the topic of dispute between Rav and Shmuel.

182 § The Master said in the same baraita: With regard to an animal that gores, its owner pays the ransom, whereas the owner of an animal that engaged in bestiality does not pay a ransom. What are the circumstances under which the owner of an animal that engaged in bestiality is not liable to pay the ransom? If we say that it is when the animal engaged in bestiality with a woman and killed her in the process, what is the difference to me whether it killed her with its horn, and what is the difference to me whether it killed her through bestiality?

183 And rather, if the baraita is referring to a case where the animal engaged in bestiality with her but did not kill her, in that case, this halakha that he does not pay a ransom is simply due to the fact that it did not kill her, so paying ransom is irrelevant; it is not a feature associated with the halakhot of an animal that engaged in bestiality.

184 Abaye said: Actually, it is referring to a case where the animal engaged in bestiality with her but did not kill her, and it is still noteworthy that its owner is not liable to pay ransom, as the woman was brought to court, and they executed her for her transgression. Lest you say

185 that the ox should be considered like one that killed her, as it was the reason for her execution, and therefore its owner should be liable to pay a ransom, the baraita teaches us that this is not the case.

186 Rava said: Actually, it is a case where the animal engaged in bestiality with her and killed her in the process. And as for the difficulty you pose: What is the difference to me whether it killed her with its horns, and what is the difference to me whether it killed her through bestiality, the answer is that in that case of an animal killing with its horn, its intention is to cause injury, whereas in this case of killing through bestiality its intention is to achieve its own pleasure.

187 The Gemara asks: With regard to what other case would Abaye and Rava disagree? They disagree with regard to a case where an ox trampled a child with its foot, killing it, in the courtyard of the injured party. According to Abaye, the owner pays the ransom, as he holds that ransom is paid even if the animal's objective was not to cause injury or death. According to Rava, he does not pay the ransom.

188 It is taught in a baraita in accordance with the opinion of Rav: A stadium ox that killed a person is not liable to be put to death and is fit to be sacrificed as an offering on the altar, because it is as though it was compelled to behave in this manner.

189 MISHNA: With regard to an ox that gored a person and the person died, if the ox was forewarned its owner pays ransom, but if it was innocuous he is exempt from paying the ransom. And both this forewarned ox and that innocuous ox are liable to be put to death for killing a person. And the same halakha applies in a case where the animal killed a boy and the same applies in a case where it killed a girl. If the ox gored and killed a Canaanite slave or a Canaanite maidservant, its owner gives the victim's master thirty sela, whether he was a slave worth one hundred maneh, i.e., one hundred silver dinars, or worth only one dinar.

190 GEMARA: The Gemara asks: But since we kill the ox for killing a person when it is still considered innocuous, how can you find a case of a forewarned ox killing a person?

191 Rabba said: Here we are dealing with a case where in three instances of attacking people, the court assessed that had the people not escaped, the ox would certainly have killed them. Therefore, despite the fact that the ox did not kill anyone, it now has the status of a forewarned ox.

192 Rav Ashi said: Such an assessment is not worth anything. Since the ox did not actually kill them, it is not rendered forewarned even if it intended to kill. Rather, here we are dealing with a case where it endangered the lives of three people by goring them, and they all died only after the third goring. Therefore, the ox had not been put to death.

193 Rav Zevid said: The mishna is discussing a case where it killed three animals, which is sufficient to render the ox forewarned but for which it is not put to death.

194 The Gemara asks: But is an animal that is forewarned with regard to animals considered forewarned with regard to people as well? Certainly it is not. Rather, Rav Shimi said: The mishna is discussing a case where it killed three gentiles, for which the animal is not put to death.

195 The Gemara asks: But is an animal that is forewarned with regard to gentiles considered forewarned with regard to Jews as well? Rather, Rabbi Shimon ben Lakish said: The mishna is discussing a case where it killed three people who had wounds that would have caused them to die within twelve months [tereifa]. Since they were on the verge of dying anyway, the ox is not put to death for killing them. Nevertheless, it is rendered forewarned with regard to its future goring and killing of people.

196 The Gemara asks: But is an animal that is forewarned with regard to a tereifa considered forewarned with regard to an intact person, i.e., one who is not a tereifa? Rather, Rav Pappa said: The mishna is discussing a case where it killed a person and fled to the marsh, then killed again and fled to the marsh, and then killed again and fled to the marsh, so the court was not able kill it before it had killed three times, rendering it forewarned.

197 Rav Aḥa, son of Rav Ika, said: The mishna is discussing a case where the witnesses who had rendered the witnesses who testified to the three incidents of goring as conspiring witnesses, resulting in the animal not being put to death, were themselves subsequently proven to be conspiring witnesses by other witnesses. Consequently, the testimonies of the witnesses who testified about the incidents of goring were reinstated, rendering the ox forewarned.

198 The Gemara asks: This explanation works out well if it is assumed that the purpose of testifying to the ox's goring is because we wish to establish the ox as forewarned; once the testimony concerning the incidents of goring is reinstated, it is established that the ox gored three times. But if we wish to warn the man who owns the ox by testifying that the animal gored, he could say to the judge, after it is established that his ox was forewarned: I did not know that my ox was forewarned, since the witnesses had previously been rendered conspiring witnesses. The Gemara answers: This is a case where the witnesses say: Each time his ox killed a person he was standing by it, so that he cannot claim ignorance.

199 Ravina said: The mishna is discussing a case where the witnesses recognized the owner of the ox but did not recognize the ox itself. Therefore, with regard to the first incidents of goring, they testified that it was his ox that gored, but they did not testify with regard to the ox itself. That is why the ox was not put to death. Only afterward did they realize that this was the ox that had gored three times previously.

200 The Gemara asks: If so, why is the ox rendered forewarned? What could the owner have done to prevent it from goring again, as he did not know which of his oxen had gored? The Gemara answers that it is rendered forewarned because the court effectively said to him: You have a habitually goring ox in your herd, so you must safeguard your entire herd.

201 § The mishna teaches: And both this forewarned ox and that innocuous ox are liable to be put to death. The Sages taught: We learn by inference from that which is stated with regard to an ox that killed a person: "And if an ox gores a man or a woman, that they die, the ox shall be stoned, and its flesh shall not be eaten; but the owner of the ox shall be clear" (Exodus 21:28). Don't I know from this verse that the stoning makes it an unslaughtered animal carcass, and it is prohibited to eat an unslaughtered animal carcass? What is the meaning when the verse states: "Its flesh shall not be

eaten”? The verse is telling you that even if one slaughtered the ox after its verdict had been reached but before it was stoned, it is still prohibited to eat it.

[202] I have derived only that one is prohibited to eat it; from where is it derived that one is prohibited from deriving benefit from the ox as well? The verse states: “But the owner of the ox shall be clear.”

[203] The Gemara asks: What is the inference? How is this halakha derived from the statement that the owner shall be clear? Shimon ben Zoma says: This is like a person who says to his friend: So-and-so was left clear of his property, and has no benefit from it at all. Similarly, “but the owner of the ox shall be clear” means that he may not derive benefit from the ox.

[204] The Gemara asks: And from where is it known that this phrase: “Its flesh shall not be eaten,” serves to teach a halakha with regard to a case where he slaughtered the ox after its verdict was reached, but before it was stoned, and is teaching that one is prohibited to eat it? Why not say that it is permitted to eat the ox if he slaughtered it after its verdict had been reached. And this phrase: “Its flesh shall not be eaten,” serves to teach a halakha with regard to a case where they had already stoned it, but not to teach a prohibition against eating it, as that is already known due to the fact that it was stoned. Rather, it serves to prohibit deriving benefit from the ox, and that would be in accordance with the statement of Rabbi Abbahu.

[205] As Rabbi Abbahu says that Rabbi Elazar says that wherever it is stated: “It shall not be eaten”; or “you,” singular, “shall not eat”; or “you,” plural, “shall not eat”; both a prohibition against eating and a prohibition against deriving benefit are indicated. This is so unless the verse specifies for you that one may derive benefit, in the manner that it specified for you with regard to an animal carcass, from which the verse explicitly permits one to derive benefit.

[206] The Gemara continues: This is so unless the verse specifies for you that one may derive benefit, in the manner that it specified for you with regard to an animal carcass, from which the verse explicitly permits one to derive benefit, as it states: “You may sell it to a foreigner” (Deuteronomy 14:21). Accordingly, it is permitted to transfer an unslaughtered animal carcass to a ger toshav, i.e., a gentile who resides in Eretz Yisrael and observes the seven Noahide mitzvot, through giving it to him as a gift, and to any other gentile through selling it to him. Apparently, without this explicit permission, it would be prohibited to derive any benefit from a carcass, due to the prohibition: “You shall not eat.” Here, too, with regard to the ox that is stoned, the phrase: “Its flesh shall not be eaten,” may serve to teach that one may not derive benefit from the stoned ox.

[207] The Sages said in response: That statement applies where both the prohibition of eating and the prohibition of deriving benefit are derived from a verse using an expression such as: “It shall not be eaten.” But here, where the prohibition of eating is derived from the statement: “The ox shall be stoned,” if it enters your mind that this expression: “Its flesh shall not be eaten,” is stated only in reference to the prohibition of deriving benefit, let the Merciful One write explicitly: Benefit shall not be derived from it. Alternatively, let the verse simply state: “It shall not be eaten”; why do I require the specific term: “Its flesh”? Clearly, the intention of the verse is to teach that even if he has rendered it like kosher flesh by properly slaughtering it after the verdict, one is still prohibited to eat it.

[208] Mar Zutra objects to this: Say that this statement applies

[209] only in a case where he checked a sharp piece of flint, and, seeing that it did not have any defects, slaughtered the ox with it. In that case, one could say that by slaughtering it with a stone, he performed the equivalent to stoning. Therefore, it is prohibited to eat it. But in a case where he slaughtered it with a knife made of metal, one is not prohibited from eating it.

[210] The Sages said in response: Is that to say that it is written in the Torah that slaughter must performed specifically with a knife, which would justify a distinction between slaughtering with a stone and a knife? But didn't we learn in the mishna (Ḥullin 15b): With regard to one who slaughters with a hand-sickle, with a piece of flint, or with a reed, if these implements were suitable to be used for slaughter, his slaughter is valid?

[211] The Gemara asks: And according to Rabbi Abbahu, now that he derives the prohibition of eating and the prohibition of deriving benefit from the verse "Its flesh shall not be eaten," why do I require the statement: "The owner of the ox shall be clear"? The Gemara answers: This is stated to prohibit deriving benefit from its hide after it has been killed; as it could enter your mind to say that it is specifically its flesh from which it is prohibited to derive benefit, as the verse states: "Its flesh shall not be eaten," but deriving benefit from its hide will be permitted. Therefore, the Torah teaches us that the owner of the ox shall be clear, to indicate it is prohibited to derive benefit from any part of the ox.

[212] The Gemara asks: And according to those tanna'im who expound this verse: "The owner of the ox shall be clear," for another interpretation, as we wish to state below, from where do they derive this prohibition against deriving benefit from the ox's hide?

[213] The Gemara answers: They derive it from the wording: "Its flesh may not be eaten [velo ye'akhel et besaro]." The verse could have been formulated: Velo ye'akhel besaro, which already means: And its flesh shall not be eaten. The addition of the word "et" teaches that the prohibition applies also to that which is secondary to the flesh. And what is that? That is its hide.

[214] The Gemara adds: And this tanna, who derives it from the statement: "The owner of the ox shall be clear," does not interpret the word "et" as a means to derive new halakhot. He considers the word "et" to be an ordinary part of the sentence structure and not a source for exegetical exposition.

[215] As it is taught in a baraita: Shimon HaAmasoni, and some say that it was Neḥemya HaAmasoni, would interpret all occurrences of the word "et" in the Torah, deriving additional halakhot with regard to the particular subject matter. Once he reached the verse: "You shall fear the Lord your God" (Deuteronomy 6:13), which is written with the added word "et," he withdrew from this method of exposition, as whose fear could be an extension of the fear of God? His students said to him: Our teacher, what will be with all the occurrences of the word "et" that you interpreted until now? He said to them: Just as I received reward for the exposition, so I received reward for my withdrawal from using this method of exposition.

[216] The word "et" in this verse was not explained until Rabbi Akiva came and expounded: "You shall fear the Lord your God": The word "et" serves to include Torah scholars, i.e., that one is commanded to fear them just as one fears God. In any event, Shimon HaAmasoni no longer derived additional halakhot from the word et.

[217] § The Sages taught with regard to the verse: "But the owner of the ox shall be clear," that Rabbi Eliezer says: It means that he shall be clear from paying half a ransom. Although the owner of an

innocuous ox that causes damage is liable to pay half the cost of the damage, if an ox kills a person its owner is not liable to pay any ransom.

[218] Rabbi Akiva said to him: Why is it necessary for the verse to teach this? But isn't compensation for damage caused by an innocuous ox itself anyway paid only from the value of its body? Here too, its owner can say to the claimant: Bring it to court and it will pay you, i.e., you will be paid from its value. Since the ox is stoned, there is nothing from which he can receive payment. Therefore, according to your interpretation, the verse does not introduce any halakha that could not have been inferred by logic, and is therefore superfluous.

[219] Rabbi Eliezer said to him: Is this how I appear in your eyes, that my derivation from the verse is in reference to this case, that of an ox that is liable to be put to death? Obviously no verse would be required to teach this halakha in such a case. My derivation is only with regard to a case where the assumption that the ox killed a person is based on the testimony of one witness, or is based on the admission of the owner. Such proof is not sufficient for the ox to be put to death by stoning, but one might have thought that it is sufficient to require its owner to pay ransom.

[220] The Gemara asks: If it is based on the admission of the owner, he clearly would not be liable to pay ransom, since he would be admitting to an act that results in a fine, in which case a person is exempt from paying the fine; so why would it be necessary for the verse to state this exemption?

[221] The Gemara answers: Rabbi Eliezer holds that ransom is for the purpose of atonement, and is not considered a fine. Accordingly, one might have assumed that even in a case where there is not conclusive testimony, the owner must pay ransom to atone for the killing. Therefore, the verse states that in the case of an innocuous ox, the owner is not liable to pay half a ransom.

[222] It is taught in another baraita that Rabbi Eliezer said to him: Akiva, is this how I appear in your eyes, that my derivation from the verse is in reference to this case, that of an ox that is liable to be put to death? My derivation is only with regard to a case where the ox intended to kill an animal but killed a person instead; or where it intended to kill a gentile but killed a Jew; or where it intended to kill a non-viable baby but killed a viable person. An ox is not put to death if it intended to gore in a manner which would not render it liable to be put to death, even if it did gore in such a manner. In such a case, the owner of the ox must pay ransom. Therefore, the verse states that if it is an innocuous ox, the owner is exempt from paying half a ransom.

[223] These two baraitot cite different responses that Rabbi Eliezer gave Rabbi Akiva. Which one of these explanations did he say to him first? Rav Kahana said in the name of Rava: He first said to him the explanation referring to the ox's intention to kill someone for which it would not be liable to be put to death, and subsequently gave him the second explanation with regard to the testimony of a single witness, or the owner's admission. Rav Tavyumei said in the name of Rava: He first said to him the explanation that it is a case where the assumption that the ox killed was based on one witness or its owner's admission.

[224] The Gemara explains the reasoning behind the two opinions: Rav Kahana said in the name of Rava that first he said to him the explanation involving the ox's intention, since this opinion is preferable to the other one, against which a difficulty was raised earlier. This is analogous to a fisherman pulling fish from the sea.

225 When he finds big ones he takes them, and when he finds small ones he takes them as well. Here too, although Rabbi Eliezer's first explanation was sufficient, he added an additional response, despite the fact that it was not as good as the first.

226 By contrast, Rav Tavyumei said in the name of Rava that he first said to him the explanation involving inconclusive testimony asserting that the ox killed, since this is analogous to a fisherman pulling fish from the sea, who finds small ones and takes them, and when he then finds big ones, he discards the small ones and takes only the big ones. Here too, once Rabbi Eliezer thought of a better response to Rabbi Akiva's question, he suggested it instead of the first.

227 § It is taught in another baraita with regard to the verse: "The owner of the ox shall be clear," that Rabbi Yosei HaGelili says: It means he shall be clear from paying compensation for miscarried offspring. In other words, if an innocuous ox causes a woman to miscarry, the owner is not liable to pay half the compensation for the miscarried offspring.

228 Rabbi Akiva said to him: It is unnecessary for the verse to teach this. Doesn't it say with regard to paying compensation for miscarried offspring: "If men struggle and hurt a pregnant woman and her offspring emerge, and there is no tragedy, he shall be punished as the husband of the woman shall impose upon him and he shall give as the judges determine" (Exodus 21:22); from which it is inferred that men who cause a woman to miscarry are liable to pay compensation for the offspring, but the owner of oxen who cause a woman to miscarry is not liable?

229 The Gemara comments: Rabbi Akiva is saying well; he states a reasonable objection. What would Rabbi Yosei HaGelili have responded to him?

230 Rav Ulla, son of Rav Idi, said: It was necessary for the verse to teach this exemption, as otherwise it might enter your mind to say that this inference should be limited, as follows: Men are liable to pay compensation for miscarried offspring, but the owner of oxen that are comparable to men is not liable. Only some oxen are excluded from this halakha. Just as men are categorically considered forewarned, so too the oxen, which are contrasted with men in this case, are considered forewarned as well. But in the case of miscarriage caused by an innocuous ox, its owner would be liable to pay compensation for miscarried offspring. Therefore, the Merciful One wrote with regard to an innocuous ox: "The owner of the ox shall be clear," to teach us that he is exempt from liability.

231 Rava said, in objection to this answer: The native is on the ground and the stranger is in the heavens! The aforementioned suggestion contradicts the principle that the halakha of a forewarned ox is more stringent than that of an innocuous ox.

232 Rather, Rava said a different way for Rabbi Yosei HaGelili to counter Rabbi Akiva's objection: It was necessary for the verse to teach this exemption, as otherwise it might enter your mind to say that only men are liable to pay for miscarried offspring, but the owner of oxen that are comparable to men is not liable. Just as men are categorically considered forewarned, so too the oxen, which are contrasted with men in this case, are considered forewarned as well. And for miscarriage caused by innocuous oxen, their owners are also exempt due to an a fortiori inference. The Merciful One then wrote that the owner of the innocuous ox shall be clear, indicating that only for an innocuous ox is one exempt from paying compensation for miscarried offspring, but for a forewarned ox the owner is liable.

[233] Abaye said to him: If that is so, then with regard to compensation for humiliation, which is derived from the verse: “When men struggle together, a man and his brother, and the wife of one drew near to deliver her husband from the hand of the one who smites him, and extended her hand, and grabbed his genitals” (Deuteronomy 25:11), let us say this as well: Only men are liable to pay for humiliation, but the owner of oxen that are comparable to men is not liable. Just as men are categorically considered forewarned, so too the oxen, which are contrasted with men in this case, are considered forewarned as well. And for humiliation caused by innocuous oxen, their owners are also exempt due to an a fortiori inference. The Merciful One then wrote that the owner of the innocuous ox shall be clear, indicating that only for an innocuous ox is one exempt from paying compensation for humiliation, but for a forewarned ox the owner is liable.

[234] And if you would say that indeed that is the halakha according to Rabbi Yosei HaGelili, if so, let the baraita teach that with regard to the verse: “The owner of the ox shall be clear,” Rabbi Yosei HaGelili says: He is exempt both from paying compensation for miscarried offspring and from paying compensation for humiliation.

[235] Rava then retracted this explanation of Rabbi Yosei HaGelili’s opinion. Rather, Abaye and Rava both say that Rabbi Akiva’s inference is correct, according to Rabbi Yosei HaGelili, but with regard to the continuation of the verse: “But if any harm follows, you shall give life for life” (Exodus 21:22). With regard to men, if there is no harm caused to the woman, i.e., she is not killed, they shall be punished financially and are liable to pay compensation for miscarried offspring. But if there is harm caused to the woman and she dies, they shall not be punished financially, as they are liable to receive court-imposed capital punishment. This distinction applies only with regard to men but not with regard to oxen, as even if there is harm caused to the woman, the owners shall be punished financially. In order to preclude this inference, the Merciful One then wrote: “The owner of the ox shall be clear,” to teach that he is exempt from paying compensation for miscarried offspring.

[236] Rav Adda bar Ahava objects to this: Is that to say that the issue of financial liability is dependent on whether or not there was harm caused to the woman? Clearly, the issue is dependent on the intent to strike the woman.

[237] Rather, Rav Adda bar Ahava said a different inference: With regard to men, in a case where they intended to strike each other, even if there is harm caused to the woman, i.e., she dies, they shall be punished financially, and are liable to pay compensation for miscarried offspring. But when they intended to strike the woman herself they shall not be punished financially, as they are liable to receive court-imposed capital punishment. But this distinction does not apply with regard to oxen, as even if they intended to strike the woman herself, their owners shall be punished. In order to preclude this inference, the Merciful One wrote: “The owner of the ox shall be clear,” to teach that the owners are exempt from paying compensation for miscarried offspring.

[238] And similarly, when Rav Ḥaggai came from the South, he came and brought a baraita in his hand that interprets the verse in accordance with the explanation of Rav Adda bar Ahava.

[239] § It is taught in another baraita with regard to the verse “The owner of the ox shall be clear” that Rabbi Akiva says: This statement teaches that if an innocuous ox kills a Canaanite slave, its owner shall be clear from paying compensation for the slave, unlike the case of a forewarned ox that killed a Canaanite slave, where the ox’s owner is liable.

[240] The Gemara asks: But let Rabbi Akiva say to himself the same objection that he raised against Rabbi Eliezer’s interpretation of the verse, that the owner of an innocuous ox is exempt from paying half a ransom (see 41b): Why is it necessary for the verse to teach this? But isn’t compensation for damage caused by an innocuous ox itself paid only from the value of its body? Therefore, its owner can say to the slave’s owner: Bring it to court and you will be paid from it. Since the ox was stoned, there is nothing from which he can collect payment.

[241] Rav Shmuel bar Rav Yitzḥak said: Rabbi Akiva’s interpretation is applicable in a case where its owner slaughtered it first, before it was sentenced to stoning. Lest you say that the slave’s owner should be paid from the value of the flesh, the verse teaches us that since the ox was subject to be killed, although its owner slaughtered it, the slave’s owner should not be paid from it.

[242] The Gemara asks: If so, why did Rabbi Akiva raise this objection against Rabbi Eliezer’s interpretation? According to Rabbi Eliezer as well, it could be explained as referring to a case where its owner slaughtered it first.

[243] The Gemara answers: Indeed, Rabbi Eliezer’s interpretation could also be explained in this manner. And the reason Rabbi Akiva raised this objection was because he reasons: Perhaps Rabbi Eliezer has another explanation that is better than this one, and will state it. Rabbi Eliezer did in fact respond with another explanation.

[244] The Gemara asks: But let Rabbi Eliezer also answer him that the owner slaughtered it first. Why did he offer a different explanation? The Gemara answers that Rabbi Eliezer could have said to you: Specifically there, in the case Rabbi Eliezer referred to in his explanation, namely, where the ox intended to kill another animal but killed a person instead, since the ox was not subject to be killed at all, it might enter your mind to say that he should be liable to pay half a ransom from the ox’s body. Therefore, the verse is necessary to exclude the owner from liability to pay half a ransom. But here, since the ox was initially subject to be killed, a verse is not necessary to teach that the owner is exempt from paying half a ransom even if he slaughtered it.

[245] The Gemara asks: But according to Rabbi Akiva also, certainly it is so, that a verse is not necessary to teach that if the owner slaughters the ox before its verdict he is exempt from liability.

[246] Rather, Rav Asi said: The above explanation of Rabbi Akiva’s interpretation should be rejected, as I heard this following statement from a great man, and who is he? He is Rabbi Yosei, son of Rabbi Ḥanina. This is what he said: It might enter your mind to say that since Rabbi Akiva says in the mishna (33a) that in a case where a person and an innocuous ox damaged each other concurrently, the owner of an innocuous ox that injured a person also pays the full cost of the damage with regard to the difference between the two valuations of the damage, as there is no distinction between an innocuous ox and a forewarned ox with regard to injuries caused to a person, compensation for the slave is also paid from his superior-quality property, not from the body of the ox; just as in a case where a forewarned ox kills a slave. Therefore, its owner cannot say: Bring it to court and you will be paid from it. To counter this possibility, the Merciful One wrote: “The owner of the ox shall be clear,” indicating that he is exempt from this liability.

[247] Rabbi Zeira said to Rav Asi: But didn’t Rabbi Akiva already break the force of his fist, i.e., qualify this opinion of his? As it is taught in a baraita that Rabbi Akiva says: One might have thought that the owner of an innocuous ox that injured a person pays compensation from his superior-quality property, the same as the owner of a forewarned ox. Therefore, the verse states: “According to this

judgment shall be done to him [lo]” (Exodus 21:31), indicating that he pays restitution exclusively from the body of the ox but he does not pay from his superior-quality property, as the word lo also means: To it. This negates Rav Asi’s explanation of Rabbi Akiva’s interpretation.

248 Rather, Rava said a different explanation of Rabbi Akiva’s statement: The verse is necessary because it might enter your mind to say that since I, referring to the Torah, am more stringent with regard to a forewarned ox that kills a person in the case of a Canaanite slave than in the case of a freeman; as in the case of a freeman who was worth one sela the owner of the ox gives one sela in ransom, and if he was worth thirty sela he gives thirty; but in the case of a Canaanite slave the Torah imposes a fixed amount, so even if he was worth only one sela the owner gives thirty sela, therefore, since the Torah is more stringent in the case of a slave, payment for the slave should also be paid from the owner’s superior-quality property. To counter this, the Merciful One writes: “The owner of the ox shall be clear,” indicating that payment is not required in a case where an innocuous ox kills a slave.

249 It is taught in a baraita in accordance with the explanation of Rava to Rabbi Akiva’s statement. The baraita states that with regard to the verse “The owner of the ox shall be clear,” Rabbi Akiva says: He shall be clear from payment for a Canaanite slave.

250 Rabbi Akiva discusses this interpretation: And could this halakha not be derived through logical inference, without the verse? Since the Torah deemed him liable to pay for the killing of a slave and deemed him liable for the killing of a freeman as well, just as when the Torah deemed him liable for a freeman you distinguished between an innocuous ox and a forewarned ox, as no ransom is paid in the case of an innocuous ox, so too, when the Torah deemed him liable for a slave, let us distinguish between an innocuous ox and a forewarned ox.

251 Furthermore, this halakha could be proven through an a fortiori inference: If, in the case of a freeman, where he, the owner, gives his full value, you distinguished between an innocuous ox and a forewarned ox, with regard to a slave, where he gives only thirty sela and not more, even if the slave was worth more, is it not logical that we should distinguish between an innocuous ox and a forewarned ox, and exempt him from liability for an innocuous ox?

252 Rabbi Akiva rejects this opinion: No, one could disagree and say the opposite: I, referring to the Torah, am more stringent with regard to the case of a slave than with regard to that of a freeman; as for a freeman worth one sela, the ox’s owner gives only one sela, and if he is worth thirty sela he gives thirty. But in the case of a slave, even if he was worth only one sela, he gives thirty sela. Therefore, one might have thought that he should be liable to pay for a slave killed by his innocuous ox. To counter this, the verse states: “The owner of the ox shall be clear,” indicating that he shall be clear from paying compensation for a slave.

253 § The Sages taught: The verse states with regard to a forewarned ox: “But if the ox was a goring ox in time past and warning has been given to its owner, and he has not secured it; and it killed a man or a woman; the ox shall be stoned” (Exodus 21:29). Rabbi Akiva said: And what does this come to teach us? If it is to deem the owner liable for the killing of a woman just as for the killing of a man, this is already stated with regard to an innocuous ox, where it is stated: “When an ox gores a man or a woman, and they die, the ox shall be stoned” (Exodus 21:28).

[254] Rather, the verse is stated to compare a woman to a man with regard to another issue: Just as with regard to a man, payment for his injuries is paid to his heirs, so too, with regard to a woman, payment for her injuries is paid to her heirs, and not to her husband.

[255] The Gemara asks: And does Rabbi Akiva hold that a husband does not inherit from his wife? But isn't it taught in a baraita: The verse states: "And he shall inherit it [otah]" (Numbers 27:11). From here it is derived that the husband inherits from his wife, as otah also means: Her. This is the statement of Rabbi Akiva.

[256] Reish Lakish said: Rabbi Akiva says that her heirs and not her husband receive the payment only with regard to ransom, since it is paid only posthumously and is therefore considered property due to her; and the husband does not take in inheritance the property due to the deceased as he does the property she possessed. For instance, an inheritance that would have gone to the woman had she been alive is not awarded to the husband, but rather, to her other heirs.

[257] What is the reason for the assumption that even if it is clear that the victim is about to die, the husband is not owed ransom? The verse states: "And it killed a man or a woman; the ox shall be stoned, and its owner also shall be put to death. If a ransom is laid on him, then he shall give for the redemption of his life whatsoever is laid on him" (Exodus 21:29–30), indicating that the owner's liability to pay ransom is dependent on the ox's liability to be stoned, which, in turn, applies only after the death of the victim.

[258] The Gemara asks: And with regard to damages, did Rabbi Akiva not say that damages due to a wife are paid to her heirs and not to her husband, just as with regard to ransom?

[259] But isn't it taught in a baraita: If an assailant struck the woman and her offspring emerged due to miscarriage, he gives compensation for damage and pain to the woman and compensation for miscarried offspring to the husband. If the husband is not alive, he gives the compensation for the offspring to his heirs. If the woman is not alive, he gives the payment owed to her to her heirs. If she was a Canaanite maidservant and then she was emancipated,

[260] and subsequently married a Canaanite slave who had also been emancipated, and became pregnant from him, or if she was a convert who became pregnant from a male convert, and both the husband and wife died without heirs, the assailant gains by not having to pay, since there are no heirs. In any event, it is explicitly stated in the baraita that the beneficiary of the compensation due to her, including that which she would have received during her lifetime, is not her husband but rather her heirs.

[261] Rabba said: This baraita relates to a divorcée; since they got divorced, the husband does not inherit from her. Likewise, Rav Naḥman said: The baraita relates to a divorcée.

[262] The Sages said in response: If she is a divorcée, she should also share in the compensation for the miscarried offspring. Why should her ex-husband receive the full payment?

[263] Rav Pappa said: The Torah awarded the payment of compensation for miscarried offspring to the husband, even if he is not actually her legal husband but rather engaged in licentious sexual intercourse with her. Although he has no rights to her property, the damages for the miscarried offspring belong to him alone, as he is the father of the offspring. What is the reason? The verse states: "As the husband [ba'al] of the woman shall impose upon him" (Exodus 21:22), indicating that

damages are not collected by the woman, but by the man who engaged in intercourse [ba’al] with her, impregnating her. Therefore, if they got divorced, the ex-husband receives the payment.

[264] The Gemara asks: Why do Rabba and Rav Naḥman explain this baraita as referring to a divorcée? They could have answered, in accordance with their own opinions elsewhere (Bava Batra 124b), that it is referring to payments that are not considered to have been in the woman’s possession during her lifetime, but rather are considered property due to the woman, which her husband does not inherit. Let us establish this baraita, according to Rabba, as referring to a case where they collected money for the damage and pain, and according to Rav Naḥman, where they collected land.

[265] As with regard to the right of a firstborn to receive a double portion of the inheritance of his father, he receives a double portion only of the property possessed by his father, not of the property due to him. In a case where money was owed to the father, Rabba says: If the heirs collected the debt from land, the firstborn has the right to a double portion, since it is considered property that was already in the father’s possession. If they collected money, he does not have a double portion, as it is considered property due to the father. And Rav Naḥman says: If they collected money, he has a double portion, and if they collected land, he does not have a double portion.

[266] The Gemara answers: That statement applies according to the residents of the West, i.e., Eretz Yisrael, in accordance with the opinion of the Rabbis, who limit the rights of a firstborn to his father’s property to the extent that they hold he does not receive a double portion of any appreciation in the property occurring after his father’s death.

[267] By contrast, when they state that this baraita here relates to a divorcée, it is in accordance with the opinion of Rabbi Yehuda HaNasi that the firstborn receives a double portion even in the appreciation of the property occurring after the father’s death. According to this opinion, clearly everything due to the father is considered to be in his possession, whether he receives his compensation in money or in land. The same applies to a husband, who inherits the rights to inherit compensation for damage and pain inflicted on his wife. That is why Rabba and Rav Naḥman had to interpret this baraita as relating to a divorcée.

[268] § Rabbi Shimon ben Lakish says: With regard to an ox that killed a Canaanite slave unintentionally, the owner is exempt from paying the fine of thirty shekels, as it is stated: “He shall give to their master thirty shekels of silver, and the ox shall be stoned” (Exodus 21:32). It is derived from the verse that the liability to pay thirty shekels is dependent on the stoning of the ox; whenever the ox is liable to be killed by stoning, the owner pays thirty shekels as compensation for the damage. If the ox is not liable to be killed by stoning, e.g., if it killed unintentionally, the owner does not pay thirty shekels.

[269] Similarly, Rabba says: With regard to an ox that killed a freeman unintentionally, its owner is exempt from paying ransom; as it is stated: “The ox shall be stoned, and its owner also shall be put to death. If a ransom is laid on him” (Exodus 21:29–30). This indicates that whenever the ox is liable to be killed by stoning the owner pays ransom; and if the ox is not liable to be killed by stoning the owner does not pay ransom.

[270] Abaye raised an objection to Rabba’s statement from a mishna: If a person admits: My ox killed so-and-so, or: My ox killed the ox of so-and-so, this owner pays based on his own admission (Ketubot 41a). This cannot be referring to the payment of a fine, as a person who admits his responsibility for an act incurring a fine is exempt from paying the fine. Clearly, it must be referring

to a payment for which one can render himself liable through admission. What, is it not referring to the payment of ransom? If so, this proves that payment of ransom is not dependent on whether the ox is liable to be killed by stoning, as the ox cannot be killed based on its owner’s admission alone.

271 The Gemara answers: No, it is referring to payment of the monetary value of the victim. Although he is not liable to pay ransom, as the ox is not killed, nevertheless, since by his own admission his ox caused damage, he is liable to pay damages.

272 Abaye challenged this answer: If it is referring to the value of the victim, say the latter clause of that mishna: If a person admits: My ox killed the Canaanite slave of so-and-so, he does not pay based on his own admission. And if, as you claim, the mishna is referring to the value of the victim, not to the thirty-shekel fine, why should he not pay?

273 Rabba said to Abaye: I could have answered you by saying that the former clause, which discusses an ox killing a freeman, is referring to the value of the victim, and the latter clause, which relates to an ox that gored a slave, is referring to payment of the thirty-shekel fine. But I will not answer you with a forced answer. Instead, I will answer as follows: Both this clause and that clause refer to the value of the victim;

274 but there is a distinction between the two cases. With regard to an ox killing a freeman, there is a scenario where the owner pays ransom based on his own admission. And what are the circumstances? If witnesses came and testified that the ox killed a freeman and is therefore liable to be killed by stoning, but they did not know whether it was innocuous or if it was forewarned, and its owner said that it was forewarned. In this case, the owner pays ransom based on his own admission, since the ox is liable to be killed, and the ransom is for atonement and does not constitute a fine. Therefore, even where there are no witnesses, and the ox is therefore not liable to be killed by stoning for killing a person, nevertheless, the owner at least pays the monetary value of the victim based on his admission.

275 By contrast, with regard to an ox killing a slave, there is a scenario where one does not pay the fine of thirty shekels based on his own admission. And what are the circumstances where one would be liable to pay this fine due to his own admission? If witnesses came and testified that the ox killed a slave, but they did not know whether it was innocuous or if it was forewarned, and its owner said that it was forewarned. In this case, even though the ox is liable to be killed, the owner does not pay the fine based on his own admission, due to the principle that one does not pay a fine based on his own admission. Therefore, in a case where there are no witnesses, he does not even pay the value of the victim based on his own admission.

276 Rav Shmuel bar Rav Yitzḥak raises an objection from a baraita that states a principle: In any scenario where a person is liable for his ox killing a freeman, he is liable for his ox killing a Canaanite slave, whether with regard to liability to pay ransom or with regard to the ox being put to death.

277 The wording of the baraita is unclear: Is there a ransom to be paid in the case of a slave? Ransom is paid only for the killing of a freeman. Rather, is it not referring to payment of the value of the victim? This poses a difficulty for Rabba’s opinion that one is not liable to pay the value of the victim for admitting to his ox’s killing of a slave.

[278] There are those who say that he, Rav Shmuel bar Rav Yitzḥak, raised the objection and he resolved it, and there are those who say it was Rabba who said to him in response, that this is what the baraita is teaching: In any scenario where a person is liable to pay ransom for his ox killing a freeman, e.g., where it gored intentionally based on the testimony of witnesses, he is liable to pay a fine for his ox killing a slave. And in any scenario where one is liable to pay the value of the victim for his ox killing a freeman, e.g., where it gored unintentionally based on the testimony of witnesses, for a slave too, one is liable to pay the value, namely, where it gored unintentionally based on the testimony of witnesses. Accordingly, one does not pay the value of a slave based on his own admission, although he does pay the value of a freeman if he admits that his ox killed him.

[279] Rava said to Rabba: If that is so, that one is liable to pay the value of the victim in cases where he is exempt from paying ransom, then if a person burns another to death unintentionally with his fire, and the proof is based on the testimony of witnesses, he should, likewise, at least pay the value of the victim.

[280] The Gemara asks: And from where does Rava know that he does not pay the value of the victim if he started the fire unintentionally?

[281] If we say that it is from what we learned in a mishna (61b): If one ignites a heap of grain and there was a goat bound to an item adjacent to it, and there was also a slave adjacent to it but not bound, and they were burned together with the heap of grain, he is liable to pay for the heap of grain and for the goat. If the slave was bound to it in such a way that he was unable to flee from the fire, and the goat was adjacent to it, and they were burned with it, he is exempt from liability. Apparently, there is no liability even if he unintentionally burned the slave to death.

[282] The Gemara comments: If this is Rava's source, there is no proof from here. Didn't Reish Lakish say that the mishna is referring to a case where he ignited the body of the slave directly, in which case he is exempt from paying damages because he receives the greater punishment of them? Since he is liable to receive court-imposed capital punishment for killing the slave, he is not liable to pay damages. Therefore, this does not serve as proof that one is not liable to pay the value of a fire victim.

[283] And if Rava's proof is rather from that which is taught in a baraita (10a): The stringency that applies to Fire as opposed to Pit is that the one responsible for Fire is considered forewarned with regard to its consuming both something that is fitting for it and something that is not fitting for it, i.e., both flammable and non-flammable items. This is not so with regard to Pit, as damages are not paid for everything that can be damaged by a pit. But the baraita does not teach: That with regard to Fire, one is liable to pay the value of the victim even if the fire was ignited unintentionally. This is not so with regard to Pit. This would seem to support Rava's opinion that one is not liable to pay the value of an unintentional victim of fire.

[284] The Gemara comments: If this is Rava's source, there is no proof from here. Perhaps the baraita taught one distinction and omitted another; it simply did not enumerate all the differences.

[285] Rather, Rava's statement should not be understood as an objection to Rabba's opinion, as Rava himself had a dilemma with regard to the matter: If a person burns another to death unintentionally with his fire, does he pay the value of the victim or not?

[286] The Gemara elaborates on the question: Do we say that it is specifically with regard to death caused by one's ox, where if it was done intentionally he pays ransom and where it was done unintentionally he pays the victim's monetary value instead; but with regard to death caused by his fire, where even if it was done intentionally he does not pay ransom, if it was done unintentionally he does not pay the value either? Or perhaps, since with regard to the case where his ox gored unintentionally, although there is no liability to pay ransom, nevertheless, he at least pays the value of the victim. One should say that with regard to his fire too, even though in a case where it was done intentionally he does not pay ransom, when it was done unintentionally, he should pay the value in any event.

[287] The Gemara concludes: And we do not know the solution to this dilemma, which shall stand unresolved.

[288] § With regard to Rabba's statement that for an ox that killed a person unintentionally one is exempt from paying ransom, the Gemara relates that when Rav Dimi came from Eretz Yisrael, he reported that Rabbi Yoḥanan says: It would have been sufficient for the verse to state: "A ransom is laid on him." What is the meaning when the verse states: "If a ransom is laid on him" (Exodus 21:30)? It is to include liability to pay ransom in a case where the ox killed unintentionally, just as one is liable to pay ransom when it killed intentionally, in contrast to Rabba's opinion.

[289] Abaye said to Rav Dimi: If Rabbi Yoḥanan's interpretation is so, it should be implemented with regard to the fine for a Canaanite slave as well, and it would have been sufficient for the verse to state: The ox gores a slave or a maidservant, he shall give to their master thirty shekels of silver. What is the meaning when the verse states: "If the ox gores a slave" (Exodus 21:32)? It is to include liability in a case where the ox killed a Canaanite slave unintentionally, just as when it killed a slave intentionally. And if you would say that indeed this is the halakha, but doesn't Reish Lakish say that for an ox that killed a slave unintentionally its owner is exempt from paying the thirty shekels?

[290] Rav Dimi said to Abaye: Are you setting the statement of one man against the statement of another man? It could be that although Reish Lakish maintains that he is exempt, Rabbi Yoḥanan holds that he is liable.

[291] When Ravin came from Eretz Yisrael, he confirmed that this is the opinion of Rabbi Yoḥanan, as he says that it would have been sufficient for the verse to state: "The ox gores a slave." What is the meaning when the verse states: "If the ox gores a slave"? It is to include liability in a case where the ox killed a slave unintentionally, just as when it killed a slave intentionally.

[292] The Gemara suggests: And according to Reish Lakish, let us say similarly that from the fact that he does not interpret the difference between the terms "a slave" and "if a slave" to derive an additional halakha, it may be inferred that he does not interpret the difference between the terms "a ransom" and "if a ransom" either, and holds that ransom is not paid if the incident was unintentional.

[293] The Sages said: No, that is not a valid comparison. Although Reish Lakish does not interpret the difference between the terms "a slave" and "if a slave," he does interpret the difference between the terms "a ransom" and "if a ransom."

[294] And what is different between the two verses? The terms "a slave" and "if a slave" are not written where the liability for payment is stated, but rather in the presentation of the case: "If the ox gores a slave." Therefore, the use of the word "if" is warranted. By contrast, the terms "a ransom" and "if a

ransom” are written where the liability for payment is stated, where it would have been sufficient for the verse to state: “A ransom is laid on him.” Therefore, the superfluous word “if” lends itself to interpretation to include liability to pay ransom even in a case where the killing was unintentional.

[295] § The mishna teaches: And the same halakha applies in a case where the ox killed a boy or in a case where it killed a girl. The Sages taught: The verse states: “Whether it has gored a son or has gored a daughter” (Exodus 21:31), to deem the owner liable for the death of minors just as for adults.

[296] The baraita asks: And could this not be derived through logical inference? Since the Torah renders a person liable to receive court-imposed capital punishment for killing another person, and, similarly, renders an ox liable to be killed for killing a person, it should be derived that just as when the Torah renders a person liable for killing a person the Torah makes no distinction between killing minors and killing adults, so too, when it renders an ox liable to be killed for killing a person, do not differentiate with regard to it between minors and adults.

[297] And furthermore, it could be inferred a fortiori: If in the case of a person killing a person the Torah does not render minors entirely like adults with regard to this act, inasmuch as minors are exempt from liability for killing, but nevertheless it renders a person liable for killing minors as well as adults,

[298] then in the case of an ox killing a person, where the Torah renders small oxen like large ones with regard to this act, as a young calf that kills a person is killed just as an adult ox that kills a person, is it not logical that the Torah renders it liable for killing minors, i.e., a boy or a girl, just as for killing adults? Why is it necessary for the verse to teach this halakha?

[299] The Gemara rejects this claim: No, this cannot be derived by logic alone. If you say that a person who kills a person is liable even when the victim is a minor, this may be due to the extra severity in the case of a human assailant, as he is liable to pay four types of indemnity for causing injury; pain, humiliation, medical costs, and loss of livelihood, in addition to payment for the actual damage. Shall you also say that this is the halakha with regard to an ox, whose owner is not liable to pay these four types of indemnity? Clearly, this halakha cannot be derived merely through logical comparison between the two cases. Therefore, the verse states: “Whether it has gored a son or has gored a daughter,” to render it liable for minors as well as adults.

[300] And I have derived this halakha only with regard to forewarned oxen; from where do I derive that in the case of an innocuous ox, it is killed if it kills a boy or a girl?

[301] The baraita asks: Could this not be derived through logical inference? Since the Torah renders an ox liable to be killed for killing a man or a woman, and likewise renders it liable to be killed for killing a boy or a girl; then just as when it renders it liable to be killed for killing a man or a woman you do not differentiate between an innocuous ox and a forewarned ox, as both are stoned, so too, when it renders an ox liable to be killed for killing a boy or a girl do not differentiate between an innocuous ox and a forewarned ox.

[302] And furthermore, it can be inferred a fortiori: If with regard to a man or a woman, whose power is diminished with regard to damages because adults who cause damage are liable to pay, but nevertheless you do not differentiate between an innocuous ox and a forewarned ox that kills them; then with regard to a boy or girl, whose power is enhanced with regard to damages because they are

not liable to pay for damage they cause, is it not logical that you should not differentiate between an innocuous ox and a forewarned ox that kills them?

303 The baraita answers that you could say in response: But does one derive the halakha of a lenient matter from a stringent matter in order to be more stringent with regard to it? If the Torah is stringent with regard to the case of a forewarned ox, which is a stringent matter, rendering it liable to be killed for killing a minor, does that mean that you should be stringent with regard to an innocuous ox, which is a relatively lenient matter?

304 And furthermore, there is another reason to reject the earlier opinion: If you say that an innocuous ox is liable to be killed for killing a man or a woman, as they are obligated to observe the mitzvot, which gives them importance, does that mean that you should say the same with regard to a boy or a girl, who are exempt from the mitzvot?

305 Since this halakha could not have been derived through logic alone, the verse states: “Whether it has gored a son or has gored a daughter,” stating the phrase “has gored” twice, to teach that it is referring both to the goring of an innocuous ox and to the goring of a forewarned ox, and both to goring that causes death and to goring that causes injury. In all these cases the owner of the ox is liable even if the ox gores a minor.

306 MISHNA: If an ox was rubbing against a wall, and as a result the wall fell on a person and killed him; or if the ox intended to kill another animal but killed a person; or if it intended to kill a gentile but killed a Jew; or intended to kill a non-viable baby but killed a viable person; in all these cases the ox is exempt from being killed.

307 GEMARA: Shmuel says: The ox is exempt from being put to death, since it did not intend to kill, but its owner is liable to pay ransom. And Rav says: They are exempt from this liability and from that liability.

308 The Gemara asks about Shmuel’s opinion: And why is he liable to pay ransom? Isn’t the ox innocuous with regard to this action? The Gemara answers: As Rav says in a different context, it is referring to an ox that was forewarned with regard to falling on people in pits. Here too, it is referring to an ox that was forewarned with regard to rubbing against walls, causing them to fall on people.

309 The Gemara asks: If so, if it was forewarned with regard to this behavior, it clearly intended to kill the person and is therefore subject to being put to death, contrary to the ruling in the mishna. The Gemara explains: Granted there, in the case where the ox was forewarned with regard to falling on people in pits, it could be that it saw a vegetable on the edge of the pit and subsequently fell in, without any intention to kill. But here, where it rubbed against a wall, causing it to fall on a person, and was forewarned with regard to this behavior, what is there to say in its defense?

310 The Gemara answers: Here also the case is where it rubbed against the wall for its pleasure and not in order to kill. The Gemara asks: And from where do we know that it did not intend to kill? The Gemara answers: Because even after the wall fell it was still rubbing against it, which proves that this was its intention.

311 The Gemara asks: But still, is it not a case of pebbles? Is this case not analogous to damage caused by pebbles inadvertently propelled from under the feet of an animal while it is walking, which is not considered damage caused directly by the ox, but rather, damage caused indirectly? Ransom is not imposed for such indirect killing. Rav Mari, son of Rav Kahana, said: It is a case where the wall

gradually gave way under the pressure applied by the ox, and so while the ox was still pushing the wall it collapsed and killed the person.

312 It is taught in a baraita in accordance with the opinion of Shmuel, and this baraita is a conclusive refutation of the opinion of Rav: There are cases where the ox is liable to be put to death and the owner is liable to pay ransom, and there are cases where the owner is liable to pay ransom but the ox is exempt from being put to death, and there are cases where the ox is liable to be put to death but the owner is exempt from paying ransom, and there are cases where they are exempt from this punishment and from that one.

313 How so? In a case where a forewarned ox kills a person intentionally, the ox is liable to be put to death and the owner is liable to pay ransom; if a forewarned ox kills unintentionally, the owner is liable to pay ransom but the ox is exempt from being put to death; if an innocuous ox kills intentionally, the ox is liable to be put to death but the owner is exempt from paying ransom; and if an innocuous ox kills unintentionally, they are exempt from this punishment and from that one. The baraita states explicitly that although a forewarned ox that kills a person unintentionally is exempt from being put to death, its owner is liable to pay ransom, in accordance with Shmuel's opinion, and in contrast with Rav's opinion.

314 The baraita adds: And for injuries caused by an ox unintentionally, from which the victim is not killed, Rabbi Yehuda deems the owner liable to pay for the injury and Rabbi Shimon exempts him.

315 The Gemara asks: What is the reason for the opinion of Rabbi Yehuda? The Gemara answers: He derives the halakha with regard to injury caused by the ox from the halakha with regard to its owner's ransom payment. Just as with regard to its owner's ransom payment he is liable even if the ox gores unintentionally, so too, with regard to injuries he is also liable even if it gores unintentionally.

316 And Rabbi Shimon derives his opinion from the halakha of the putting to death of an ox by the court: Just as with regard to its being put to death, if it kills a person unintentionally it is exempt, so too, if it causes injuries unintentionally its owner is exempt from payment.

317 The Gemara questions the above explanation: And let Rabbi Yehuda also derive the halakha concerning an ox unintentionally causing injury from the halakha of its being put to death. The Gemara answers: In his opinion, we can derive a halakha with regard to payment for injury from the halakha of ransom, which is another halakha with regard to payment. But we cannot derive a halakha with regard to payment from a halakha concerning death.

318 Conversely, the Gemara asks: And let Rabbi Shimon also derive the halakha here from the halakha concerning its owner's ransom payment. The Gemara answers: We can derive a halakha with regard to the liability of an ox from a halakha with regard to the liability of an ox, to the exclusion of the payment of ransom, which is the liability of the owner. Compensation for injury is considered the ox's liability, as it is the ox that caused the injury, whereas the ransom paid is for the owner's atonement. Therefore, the halakha concerning injury cannot be derived from the halakha of ransom, as they are dissimilar.

319 § The mishna teaches that if an ox intended to kill another animal but killed a person, or if it intended to kill a person for whom it would not be liable to be put to death but killed a person for whom it would be liable, it is exempt. The Gemara infers: If the ox intended to kill this person, for

whom it would be liable, but killed that person instead, it is still liable. Accordingly, the mishna is not in accordance with the opinion of Rabbi Shimon, as it is taught in a baraita that Rabbi Shimon says: Even if the ox intended to kill this person but killed that person, it is exempt.

320 The Gemara asks: What is the reason for the opinion of Rabbi Shimon? The Gemara answers that it is because the verse states: “The ox shall be stoned, and its owner also shall be put to death” (Exodus 21:29); the juxtaposition of the ox and its owner indicates that as the death of the owner, i.e., a person, for killing another person, so is the death of the ox for killing a person. In other words, the two halakhot are applied in the same circumstances. Specifically, just as the owner, i.e., a person, is not liable to receive court-imposed capital punishment unless he intends to kill the person whom he ultimately kills, so too, an ox is not put to death either, unless it intends to kill the one whom it ultimately kills.

321 The Gemara asks: And with regard to the owner himself, from where do we derive that he is not liable unless he killed the one whom he intended to kill? It is as the verse states: “And he lay in wait for him, and rose against him, and struck him mortally and he died” (Deuteronomy 19:11). From the term “for him,” Rabbi Shimon derives that the killer is not liable unless he intends to kill him, i.e., the one whom he ultimately killed.

322 The Gemara asks: And what do the Rabbis, who deem the killer liable in that case and who therefore disagree with Rabbi Shimon’s opinion, do with this phrase: “And he lay in wait for him”? How do they interpret it? The Gemara answers that the Sages of the school of Rabbi Yannai say that this phrase excludes from liability one who throws a stone into an area where there are several people, some of whom are people for whom he would not be liable to receive court-imposed capital punishment, e.g., gentiles, and a stone killed a person for whom he would receive court-imposed capital punishment.

323 The Gemara asks: What are the circumstances of this case? If we say that there are nine gentiles in the crowd and one Jew among them, even without the verse derive the exemption from the fact that a majority of them are gentiles. Alternatively, even if half the people are gentiles and half are Jews, derive the exemption from the principle that when there is uncertainty concerning capital law, the halakha is to be lenient.

324 The Gemara answers: No, the verse is necessary in a case where there are nine Jews and one gentile. Although a majority of them are Jews, the thrower is exempt from liability because there is one gentile among them who is considered fixed in his place, and the legal status of any item fixed in its place is like that of an uncertainty that is equally balanced; and when there is uncertainty concerning capital law the halakha is to be lenient. This is what the Rabbis derive from the phrase: “And he lay in wait for him.”

325 MISHNA: With regard to an ox belonging to a woman, and similarly an ox belonging to orphans, and an ox belonging to orphans that is in the custody of their steward, and a desert ox, which is ownerless, and an ox that was consecrated to the Temple treasury, and an ox belonging to a convert who died and has no heirs, rendering the ox ownerless; all of these oxen are liable to be put to death for killing a person. Rabbi Yehuda says: A desert ox, a consecrated ox, and an ox belonging to a convert who died are exempt from being put to death, since they have no owners.

326 GEMARA: The Sages taught: In the passage discussing an ox that kills a person (Exodus 21:28–32), the Torah states: “An ox,” “an ox,” repeating this word seven times, to include an

additional six cases, in addition to the classic case of an ox goring and killing a person. They are: An ox belonging to a woman, an ox belonging to orphans, an ox belonging to orphans that is in the custody of a steward, a desert ox, a consecrated ox, and an ox belonging to a convert who died and has no heirs. Rabbi Yehuda says: A desert ox, a consecrated ox, and an ox belonging to a convert who died and has no heirs are all exempt from being put to death, since they have no owners.

327 Rav Huna says: Rabbi Yehuda would deem the ox exempt even if it gored and killed and its owner ultimately consecrated it, or if it gored and he ultimately renounced his ownership over it, since at the time of the trial in court the ox does not have an owner.

328 The Gemara asks: From where did Rav Huna derive this assertion? From the fact that Rabbi Yehuda teaches two cases, a desert ox and an ox belonging to a convert who died and has no heirs. What is the legal status of an ox belonging to a convert who died? Since he has no heirs it is considered to be an ownerless ox. Accordingly, the case of a desert ox is the same as the case of an ox belonging to a convert who died and has no heirs, and it does not seem necessary for the baraita to state both cases. Rather, does it not teach us this: That even if the ox gored and he ultimately consecrated it, or, if it gored and he ultimately renounced ownership over it, it is exempt, just as in a case where a convert's ox gores and subsequently the owner dies? The Gemara concludes: Indeed, conclude from the baraita that this is the opinion of Rabbi Yehuda.

329 This assertion is also taught in a baraita: Moreover, Rabbi Yehuda said that even if it gored and he ultimately consecrated it, or if it gored and he ultimately renounced ownership over it, the ox is exempt, as it is stated: "And warning has been given [vehuad] to its owner…and it killed…the ox shall be stoned" (Exodus 21:29). It is derived from here that the owner of the ox is exempt unless the ox's status as the owner's property at the time of the death of the victim and at the time of the owner's standing trial is the same, i.e., that the ox has an owner.

330 The Gemara asks: But don't we require that the ox's status be the same at the time of the verdict as well? And isn't the phrase "the ox shall be stoned" also referring to the verdict? Rather, emend the statement and say that the owner of the ox is exempt unless the ox's status as the owner's property at the time of the death of the victim and at the time of the owner's standing trial and at the time of the verdict are identical as one.

331 MISHNA: With regard to an ox that is leaving court to be stoned for killing a person and its owner then consecrated it, it is not considered consecrated, i.e., the consecration does not take effect, since deriving benefit from the ox is prohibited and the ox is therefore worthless. If one slaughtered it, its flesh is forbidden to be eaten and it is prohibited to derive benefit from it. But if its owner consecrated it before its verdict the ox is considered consecrated, and if he slaughtered it its flesh is permitted.

332 If the owner of an ox conveyed it to an unpaid bailee, or to a borrower, or to a paid bailee, or to a renter, and it caused damage while in their custody, they enter into the responsibilities and liabilities in place of the owner. Therefore, if it was forewarned the bailee pays the full cost of the damage, and if it was innocuous he pays half the cost of the damage.

333 GEMARA: The Sages taught: With regard to an ox that killed a person, if its owner sold it before its verdict,

[334] it is considered legally sold and belongs to the purchaser for all purposes. Similarly, if he consecrated it, it is halakhically consecrated, and all the halakhot of consecrated property apply to it. If he slaughtered it, one is permitted to eat its meat. If a bailee charged with safeguarding it returned it to its owner's house before the verdict it is considered to be returned, and the owner has no further claim against the bailee.

[335] By contrast, once its verdict has been issued, if the owner sells it, it is not considered sold, since the ox is no longer his. Similarly, if he consecrates it, it is not considered consecrated. If he slaughters it, its meat is forbidden. If a bailee returns it to its owner's house it is not considered to have been returned, since the ox is considered to have been killed. Rabbi Ya'akov says: Even once its verdict has been issued, if the bailee returns it to its owner it is considered to have been returned.

[336] The Gemara suggests: Let us say that they disagree about this: The Rabbis hold that with regard to items from which it is prohibited to derive benefit one does not say: That which is yours is before you, and no compensation is required. Once the deposited item was rendered forbidden, the bailee cannot return it as is to its owner, claiming that since it has not been physically damaged he has fulfilled his obligation to return it and therefore the owner has no further claims against him. And Rabbi Ya'akov holds that one does say, with regard to items from which it is prohibited to derive benefit: That which is yours is before you.

[337] Rabba said: Clearly, according to everyone, one says with regard to items from which it is prohibited to derive benefit: That which is yours is before you; as, if this was the subject of disagreement, let them dispute this matter with regard to leavened bread on Passover, which is a more common case of an item from which it is prohibited to derive benefit.

[338] Rather, here they disagree with regard to the matter of issuing the verdict for an ox in its absence. The Rabbis hold that the verdict for an ox can be issued only in its presence. Therefore, the bailee is not exempt by returning it after the verdict, as the owner could say to him: If you had returned the ox to me before the verdict I would have smuggled it to the marsh, and the court would not have been able to sentence it to stoning. Now you have let my ox be seized by the court, with whom I cannot engage in litigation.

[339] And Rabbi Ya'akov holds that the verdict for an ox can be issued in its absence. Therefore, the bailee is exempt, as he can say to the owner in response to his claim: Ultimately, they would have issued the verdict anyway, so I did not cause your ox to be stoned by not returning it to you before the verdict.

[340] According to this explanation, what is the reason for the opinion of the Rabbis that the ox's verdict can be issued only in its presence? The verse states: "The ox shall be stoned, and its owner also shall be put to death" (Exodus 21:29), indicating that as the death of the owner, i.e., a person, for killing another person, so is the death of the ox for killing a person. Just as the owner is sentenced to death only in his presence, so too, an ox is sentenced to death only in its presence.

[341] And Rabbi Ya'akov holds that the owner and the ox cannot be compared. Granted, the owner must be present when the verdict is issued, as people are able to present claims in their defense; but as for an ox, is it capable of presenting claims? Consequently, it makes no difference whether or not the verdict is issued in its presence.

342 § The mishna teaches: If the ox’s owner conveyed it to an unpaid bailee, or to a borrower, or to a paid bailee, or to a renter, they enter into the responsibilities and liabilities in place of the owner. The Sages taught: There are four people who enter into the responsibilities and liabilities in place of the owner, and they are: An unpaid bailee, and a borrower, a paid bailee, and a renter. If the oxen killed people while in the possession of one of these people, if the oxen were innocuous at the time they killed, they are killed and the bailees are exempt from paying ransom. If they were forewarned, they are killed and the bailees pay ransom. And regardless if they were innocuous or forewarned, the bailees are liable to return the value of the ox to its owner, with the exception of an unpaid bailee.

343 The Sages said: What are the circumstances in which the bailees are liable, with the exception of an unpaid bailee? If he safeguarded the ox appropriately but the ox killed a person anyway, all of the other bailees should also be exempt from reimbursing the owner for the ox and not just an unpaid bailee, as they did everything that was required of them. And if he did not safeguard it properly, even the unpaid bailee should be liable, as he was also required to safeguard it.

344 The Sages said in response: Here we are dealing with a case where the bailee provided reduced safeguarding and did not provide superior safeguarding. In this case the unpaid bailee has fulfilled his safeguarding duties; since he does not receive anything in exchange this level of safeguarding is sufficient. Those other bailees, who have a greater responsibility, have not fulfilled their required level of safeguarding.

345 The Sages said, in clarification of the baraita: In accordance with whose opinion is this baraita? If it is in accordance with the opinion of Rabbi Meir,

346 who says that a renter is considered like an unpaid bailee with regard to his responsibility for the rented item, let it teach that bailees are liable to compensate the owner, with the exception of an unpaid bailee and a renter.

347 And if it is in accordance with the opinion of Rabbi Yehuda, who says that a renter is considered like a paid bailee, let it teach: With the exception of an unpaid bailee, as it in fact states; but it should also state that in a case where the oxen are forewarned, all of them are exempt with regard to ransom, as Rabbi Yehuda says in the next mishna that a forewarned ox requires only a reduced level of safeguarding. Therefore, this baraita does not appear to be in accordance with the opinion of either tanna.

348 Rav Huna bar Ḥinnana said: In accordance with whose opinion is this baraita? It is in accordance with the opinion of Rabbi Eliezer, who says that an ox has no sufficient safeguarding at all other than slaughtering it with a knife; i.e., there is no degree of safeguarding that exempts the ox’s owner, or in the context of the baraita, the bailee, from liability if the ox causes damage or kills. And with regard to a renter, the baraita holds in accordance with the opinion of Rabbi Yehuda, who says that a renter is considered like a paid bailee.

349 Abaye said: Actually, the baraita is in accordance with the opinion of Rabbi Meir; and it is as Rabba bar Avuh reversed the two opinions and taught: How does a renter pay? In other words, what is his degree of responsibility? Rabbi Meir says: Like a paid bailee. Rabbi Yehuda says: Like an unpaid bailee.

350 § Rabbi Elazar says: If the owner conveyed his ox to an unpaid bailee, if the ox caused damage, the bailee is liable to pay damages; but if the ox was injured, he is exempt.

351 The Sages said: What are the circumstances? If Rabbi Elazar was referring to a bailee who accepted responsibility upon himself for guarding it from causing damage, even if the ox was injured he should be liable. And if he was referring to a bailee who did not accept responsibility for guarding it from causing damage, even if it causes damage he should be exempt from payment.

352 Rava said: Actually, Rabbi Elazar was referring to a case where he accepted responsibility upon himself for guarding it from causing damage; but here we are dealing with a case where the bailee recognized that the ox was a goring ox, and in that case the normal way of things is that the bailee accepted upon himself responsibility for safeguarding it so that it would not go and injure others, since he knew that it was dangerous. But it presumably did not enter his mind that other oxen would come and injure it. Therefore, he did not accept responsibility for safeguarding against such an occurrence.

353 MISHNA: If the ox's owner tied it with reins to a fence or locked the gate before it in an appropriate manner, but nevertheless the ox emerged and caused damage, whether the ox is innocuous or forewarned the owner is liable, since this is not considered sufficient precaution to prevent damage; this is the statement of Rabbi Meir.

354 Rabbi Yehuda says that if the ox is innocuous the owner is liable even if he safeguarded it appropriately, since the Torah does not limit the required safeguarding for an innocuous ox. But if the ox is forewarned, the owner is exempt from paying compensation for damage, as it is stated in the verse describing damage by a forewarned ox: "And the owner has not secured it" (Exodus 21:36), and this ox that was tied with reins or behind a locked gate was secured.

355 Rabbi Eliezer says: An ox has no sufficient safeguarding at all other than slaughtering it with a knife; there is no degree of safeguarding that exempts the ox's owner from liability.

356 GEMARA: What is the reason for the opinion of Rabbi Meir? He holds that ordinary oxen are not presumed to be under safeguarding, as their owners do not ordinarily safeguard them; and the Merciful One stated in the Torah that one will be liable even for damage caused by an innocuous ox inasmuch as it requires at least a reduced level of safeguarding, such as with reins. The Merciful One then stated with regard to a forewarned ox: "And the owner has not secured it," to indicate that it is not sufficient to provide it with only a reduced level of safeguarding, as it requires superior safeguarding. And Rabbi Meir derives this requirement with regard to an innocuous ox from a verbal analogy between the term goring stated with regard to an innocuous ox and the term goring stated with regard to a forewarned ox. In both cases superior safeguarding is required; otherwise the owner is liable.

357 By contrast, Rabbi Yehuda holds that ordinary oxen are presumed to be under some reduced level of safeguarding. Since the Merciful One stated nevertheless that even for damage caused by an innocuous ox the owner will pay, it may be inferred that it requires superior safeguarding. The Merciful One then states with regard to a forewarned ox: "And the owner has not secured it," emphasizing again that one must provide it with superior safeguarding. This constitutes one amplification following another amplification, and the principle is that an amplification following an amplification is stated only in order to restrict its extent. Accordingly, the verse excludes the requirement of superior safeguarding with regard to a forewarned ox, and therefore reduced safeguarding is sufficient to exempt the owner from liability.

[358] And if you would say that through the verbal analogy between the term goring stated with regard to an innocuous ox and the term goring stated with regard to a forewarned ox the Torah compares their halakhot, nevertheless, the Merciful One restricted this halakha by emphasizing: “And the owner has not secured it,” referring specifically to it, a forewarned ox, and not to the other, i.e., innocuous, ox.

[359] The Gemara asks: But isn’t this phrase necessary for the negative [lav] statement that if the owner does not provide superior safeguarding he is liable? The Gemara answers: If that is so, let the Merciful One write: And the owner has not secured. What is the purpose of the added emphasis: “And the owner has not secured it”? It is to indicate that the restriction of this halakha relates specifically to it, a forewarned ox, and not to the other, i.e., innocuous, ox.

[360] It is taught in a baraita that there is a fourth opinion. Rabbi Eliezer ben Ya’akov says: In the cases of both an innocuous ox and a forewarned ox in which its owner provided reduced safeguarding, he is exempt from liability.

[361] The Gemara asks: What is the reason for his opinion? He holds in accordance with the opinion of Rabbi Yehuda, who says that reduced safeguarding is sufficient for a forewarned ox, and he derives from the verbal analogy between the term goring stated with regard to an innocuous ox and the term goring stated with regard to a forewarned ox that just as reduced safeguarding is sufficient for a forewarned ox, it is sufficient for an innocuous ox as well.

[362] Rav Adda bar Ahava said: Rabbi Yehuda deemed only the forewarned element of the ox exempt. Rabbi Yehuda’s ruling that reduced safeguarding is sufficient to exempt the owner of a forewarned ox relates only to the additional half of the damage that is paid for a forewarned ox beyond the half of the damage that one is liable to pay for an innocuous ox. But the liability for its element of innocuousness remains in place. Therefore, if the owner did not provide superior safeguarding for the forewarned ox he is still liable to pay half the cost of the damage as he would if it were innocuous.

[363] Rav says: If an ox is forewarned with regard to goring with its right horn, it is not thereby forewarned with regard to goring with its left horn.

[364] The Sages said: In accordance with whose opinion is Rav’s statement made? If it is in accordance with the opinion of Rabbi Meir, doesn’t Rabbi Meir say that both an innocuous ox and a forewarned ox require superior safeguarding? If it is in accordance with the opinion of Rabbi Yehuda, why did he state that the ox still has an innocuous element specifically with regard to the left horn? Even with regard to the right horn itself it has both elements; it has an element of innocuousness and it also has a forewarned element.

[365] The Sages said: Actually, Rav’s statement is in accordance with the opinion of Rabbi Yehuda, and he does not hold in accordance with the opinion of Rav Adda bar Ahava that the ox’s innocuous element remains. And this is what he is saying: You find an element both of innocuousness and of a forewarned status in the same ox specifically in a case like this, where an ox is forewarned with regard to one horn but not with regard to the other.

[366] But if an ox is entirely rendered forewarned, you do not find an element of innocuousness with regard to it at all. If it is forewarned with regard to goring with either horn, its status of innocuousness is completely revoked.

[367] § The mishna teaches that Rabbi Eliezer says: An ox has no sufficient safeguarding at all other than slaughtering it with a knife. Rabba said: What is the reason for the opinion of Rabbi Eliezer? It is as the verse states with regard to a forewarned ox: “And the owner has not secured it” (Exodus 21:36), meaning that once it is rendered forewarned the owner no longer has any sufficient manner of safeguarding this animal, and the owner is responsible for all damage it causes.

[368] Abaye said to Rabba: If that is so, does that which is written with regard to a pit: “And if a man shall open a pit, or if a man shall dig a pit and not cover it” (Exodus 21:33), also mean that once a pit has been dug the owner no longer has any adequate way of covering this pit, which would exempt its owner from paying damages?

[369] And if you would say that indeed that is the halakha, but didn’t we learn in a mishna (52a) that if he covered the pit appropriately, and an ox or a donkey fell into it and died, he is exempt? Evidently, a pit can be covered adequately.

[370] Rather, Abaye rejected Rabba’s explanation of Rabbi Eliezer’s opinion, and said that this is the reason for the opinion of Rabbi Eliezer: As it is taught in a baraita that Rabbi Natan says: From where is it derived that one may not raise a vicious dog in his house, and that one may not set up an unstable ladder in his house? As it is stated: “You shall not bring blood into your house” (Deuteronomy 22:8), which means that one may not allow a hazardous situation to remain in his house. Similarly, a person should not keep a forewarned ox in his possession, as it is dangerous. This is why Rabbi Eliezer rules that no level of safeguarding is sufficient for it; the ox should be slaughtered so that it will not cause damage.

## Chapter 5

[1] MISHNA: 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 gave birth before the ox gored it and the fetus’s death is unrelated to the goring or whether it gave birth after the ox gored it and the fetus died on account of the goring, the owner of the ox pays half the cost of the damage for the cow and one-quarter of the cost of the damage for the offspring. Since it is uncertain whether the ox was responsible for the death of the fetus, in which case he would pay half the damages, its owner pays only half the amount for the fetus that he would ordinarily be required to pay, i.e., one-quarter.

[2] And likewise, there is uncertainty in the case of an innocuous cow that gored an ox, and the cow’s newborn offspring was found at its side dead or alive, and it is not known whether the cow gave birth before it gored the ox or whether the cow gave birth after it gored. When damage is caused by an innocuous animal, the liability of the owner is limited to the value of the animal that gored. Therefore, half the cost of the damage is paid from the value of the cow, as in the standard case of an innocuous animal. And if that does not suffice to pay for half the cost of the damage, one-quarter of the cost of the damage is paid from the offspring. Since it is uncertain whether the offspring was part of the cow at the time the cow gored, the owner pays only half of what he would pay if it were certain that it was part of the cow.

[3] GEMARA: Rav Yehuda says that Shmuel says: This ruling in the mishna is the statement of Sumakhos, who says: Property of uncertain ownership is divided by the two parties. But the Rabbis

say that this is the significant principle of monetary law: The burden of proof rests upon the claimant, and the disputed sum is not divided. According to the Rabbis, in the cases of uncertainty in the mishna, no payment is made for the fetus or from the offspring, respectively.

[4] The Gemara asks: Why do I need for the Rabbis to say the words: This is the significant principle of monetary law? Why not just state the principle? The Gemara answers: It was necessary to say them because even in a case where the injured party states: I am certain that such and such occurred, and the one liable for the damage says: Perhaps it was otherwise, without definitively refuting the claim against him, the burden of proof rests upon the claimant. Although the injured party claims with certainty that he is correct and the defendant's claim is only speculative, the definite claim still does not render the defendant liable to pay, absent proof.

[5] Alternatively, the phrase: This is the significant principle of monetary law, was necessary for instances such as this, as it was stated: In the case of one who sells an ox to another and the ox is found to be one that habitually gores, Rav says that this is considered to be a mistaken transaction, since the purchaser can claim that he bought the ox specifically for labor, and an ox that gores is not suitable for such tasks. And Shmuel says: The seller can say to him: I sold it to you for slaughter, and the fact that it gores is immaterial.

[6] The Gemara asks: Why are Rav and Shmuel speculating about the purpose of the sale? But let us simply see if the purchaser is a person who buys oxen for plowing or a person who buys oxen for slaughter. The Gemara answers: No, it is necessary for them to engage in a dispute in the case of a person who buys oxen for both this and for that reason, and in this instance it was unclear for which purpose it was intended.

[7] The Gemara asks: But let us see what the purchase price was: If he paid the price of an ox fit for plowing, which is a large amount of money, then it can be assumed it was intended for plowing. But if he paid the price of an ox for slaughtering, which is a much smaller amount, it can be assumed that it was sold for slaughtering.

[8] The Gemara answers: No, it is necessary for them to engage in a dispute in a case where the cost of meat rose and an ox purchased for slaughtering stands at the same price as an ox purchased for plowing. In that case, Rav and Shmuel dispute whether the purchaser can claim that the transaction was made in error, or whether the seller can claim that he sold it to be slaughtered and the purchaser must provide proof for his claim.

[9] The Sages said:

[10] But if the loss to the purchaser cannot be reimbursed from the purchasing money by returning it, e.g., if the seller spent it already, let the purchaser take the ox itself in lieu of the money, as people say: Allow yourself to be repaid by your debtors even in bran, since anything may be used as payment for a debt. In the event that the seller has no money with which to reimburse the purchaser, even if it is a mistaken transaction the result may be that the purchaser keeps the ox in lieu of having his money returned. Accordingly, there would be no practical difference between the opinions of Rav and Shmuel.

[11] The Gemara answers: No, it is necessary for them to engage in a dispute in a case where the seller does have sufficient funds from which to repay the purchaser, and the purchaser demands that his money be returned as opposed to keeping the ox as payment.

[12] The Gemara now explains the logic of Rav and Shmuel: Rav says that this is a case of a mistaken transaction, due to the principle: Follow the majority, and the majority of people buy oxen for plowing. And Shmuel says that the seller can say to him: I sold it to you for slaughtering, and we do not follow the majority in this case. When do we follow the majority according to Shmuel? Only in determining the prohibited or permitted status of an item. But in monetary matters such as this, we do not follow the majority. Rather, the operative principle is that the burden of proof rests upon the claimant.

[13] That which Rav Yehuda stated above, that the mishna follows the opinion of Sumakhos, is also taught in a baraita: In the case of an ox that gores a cow, and its fetus is found dead at its side, and he does not know whether it gave birth before the ox gored it or it gave birth after the ox gored it, the owner of the ox pays half the cost of the damage for the cow and one-quarter of the cost of the damage for the offspring; this is the statement of Sumakhos. The Rabbis say: The burden of proof rests upon the claimant.

[14] Rabbi Shmuel bar Naḥmani said: From where is it derived that the burden of proof rests upon the claimant? As it is stated in the Torah when Moses appointed Aaron and Hur to judge the people: “Whoever has a cause, let him come near [yiggash] to them” (Exodus 24:14). This is interpreted to mean that whoever has a claim against another should submit [yaggish] proof to them. According to this interpretation, this verse demonstrates clearly that the claimant is responsible for supplying the proof.

[15] Rav Ashi objects to this: Why do I need a verse to derive this? It is based on logical reasoning that one who suffers from pain goes to the doctor. Just as here the individual with the problem has the responsibility to resolve it, so too, someone with a claim against another must bring a proof to corroborate his claim.

[16] Rather, the verse is needed for that which Rav Naḥman says that Rabba bar Avuh says, as Rav Naḥman says that Rabba bar Avuh says: From where is it derived that a court first attends only to the arguments of the claimant and only afterward attends to the counterclaims of the defendant and discusses them? As it is stated: “Whoever has a cause, let him come near [yiggash] to them,” which is interpreted to mean that whoever has a claim against another should submit [yaggish] his claim to them first before the defendant.

[17] The Sages of Neharde’a say that despite this principle, sometimes a court attends to the defendant first and listens to his defense before discussing the arguments of the claimant. What are the circumstances where this occurs? This occurs in a case where his assets are depreciating because of the claim against him. In that situation, the court allows him to present his arguments first so that he can sell his assets at their true price.

[18] § The mishna teaches: And likewise, in the case of a cow that gored an ox, and the cow’s newborn offspring was subsequently found at its side, half the cost of the damage is paid from the cow and one-quarter of the cost of the damage is paid from the offspring. The Gemara asks: The mishna’s wording indicates that the owner of the cow pays half the cost of the damage and an additional one-quarter of the cost of the damage, thereby amounting to three-quarters of the cost of the damage. This is difficult to understand, as he is required to pay only half the cost of the damage, since the ox is innocuous. If the mishna states that he pays three-quarters of the cost of the damage, what is its purpose?

[19] Abaye said: The phrase: Half the cost of the damage, actually means one-fourth of the cost of the damage. Since there are two animals that may have accomplices in the incident, the owner of the cow pays only half of the normal amount from the value of the cow, i.e., one-quarter of the cost of the damage. The other half of the payment, which is one-quarter of the cost of the damage, should be paid from the value of the newborn, who is the accomplice of the cow. Yet, due to the uncertainty of whether it was born before the goring or afterward, only half of that amount is paid from it, which is one-eighth of the cost of the damage. Therefore, the owner of the ox receives a total of three-eighths of the cost of the damage.

[20] The Gemara asks: But if the cow and the offspring are owned by one person, the injured party can indeed say to the owner of the cow: Whichever way you look at it, give me half the cost of the damage, either from the value of the cow or the newborn, which both belong to you. Why is it necessary to give half of the payment specifically from the cow and half from the newborn? Rather, this ruling of the mishna is not necessary except for the case where the cow belongs to one person and the offspring to another, and so each can claim that he is only partially responsible for the damage.

[21] The Gemara asks: But even in this case, if the injured party came forward and claimed payment from the owner of the cow first, he can indeed say to the owner of the cow: Your cow certainly caused damage to my property, so bring me a proof that you have a partner. The owner of the cow would then have to prove that the newborn calf was still a fetus at the time and therefore a partner in the incident, in order to exempt himself from paying the entire payment of half the cost of the damage.

[22] Rather, the case of the mishna is one where he claimed payment from the owner of the offspring first, as in this case the owner of the cow can say to him: Since you claimed payment from the owner of the newborn, you thereby disclosed your opinion on the matter, that I have a partner who is responsible for part of the damage. Therefore, I am not prepared to pay the full amount required, i.e., half the cost of the damage, but only half of that amount, i.e., one-quarter.

[23] There are those who say: Even though the injured party came forward and claimed payment from the owner of the cow first, the latter can dismiss his claim, as he can say to him: I know that I have a partner in this matter, i.e., the owner of the newborn calf.

[24] Rava said, in challenging Abaye’s explanation: Is that to say that the mishna teaches: One-quarter of the cost of the damage and one-eighth of the cost of the damage? The mishna teaches half the cost of the damage and one-quarter of the cost of the damage. Rather, Rava said: Actually, the mishna is referring to a case where the cow and its offspring belong to one person, and this is what we are saying: The halakha is that with regard to damage caused by an innocuous animal, restitution is paid only from the money realized by selling the belligerent animal. Therefore, if the cow is here, half the cost of the damage is paid from the value of the cow itself;

[25] if the cow is not here, e.g., it went astray, only one-quarter of the cost of the damage is reimbursed from the offspring.

[26] The Gemara infers: According to Rava, the reason for paying only one-quarter of the cost of the damage is that we do not know if the offspring was with it, as a fetus, when the cow gored or whether it was not. But if it is obvious to us that the offspring was with it as a fetus when it gored,

the full amount of half the cost of the damage may be reimbursed from the offspring if the cow is not there.

[27] The Gemara comments: In this respect, Rava conforms to his line of reasoning, as Rava says: In the case of a cow that caused damage while pregnant, the injured party collects compensation from its offspring, i.e., the offspring that had been a fetus at the time of the goring. What is the reason? It is because it is considered an integral part of its body and therefore may be used to collect payment. By contrast, in the case of a hen that caused damage, the injured party does not collect compensation from its egg. Payment can be collected only from the body of the hen. What is the reason? The egg is simply a secretion and not an integral part of the hen's body.

[28] § And Rava also says: When assessing the damage inflicted by a goring ox on a cow whose newborn calf is found dead by its side, the court does not appraise the damage to the cow by itself and the damage to the offspring by itself. Rather, the court appraises the offspring together with the cow and evaluates the overall damage inflicted on the pregnant cow, which will be slightly less than it would be with two separate evaluations. The reason for this is that if you do not say this, you will be found to have ultimately weakened the one liable for damage by inflicting a loss on him, as the market value of a newborn calf is greater than the difference in market value between a pregnant cow and one that is not pregnant.

[29] And similarly, you find this principle in a case where someone severed the hand of another's slave. The difference in value between a slave with a hand and a slave without a hand is assessed, rather than determining how much money the owner would request in exchange for allowing the hand of his slave to be cut off. And similarly, you also find this principle in a case of one who causes damage to part of another's field. The court appraises not the garden bed that was eaten or trampled, but the depreciation in value of the bed as part of the surrounding area. This results in a smaller payment, as the damage appears less significant in the context of a larger area.

[30] Rav Aḥa, son of Rava, said to Rav Ashi: The main reason invoked by Rava is that otherwise you will be found to have ultimately weakened the one liable for damage. But if this is the halakha of assessing the damage, then let the one liable for damage be weakened by losing money.

[31] Rav Ashi answered: This is because the one liable for damage can say to him: I caused damage to you through injuring a pregnant cow, and so I am assessing the value of a pregnant cow for you. Therefore, it is not correct to evaluate separately the damage to the cow and the damage to the offspring.

[32] The Gemara raises a question: It is obvious that in a case where the cow belonged to one person and the offspring belonged to another that the compensation for the cow's loss of fat is paid to the owner of the cow. The additional value that the cow had due to the fact that it was fatter due to the pregnancy is paid to the owner of the cow. The question is: What is the halakha concerning the cow's bulk? There is an increase in value of a pregnant cow that is attributed to its improved appearance, which results from its carrying a fetus. Who is considered the injured party with regard to that sum? Rav Pappa said: This too belongs to the owner of the cow, whereas Rav Aḥa, son of Rav Ika, said: They divide the restitution. And the halakha is that they divide the restitution.

[33] MISHNA: In the case of a potter who brought his pots into a homeowner's courtyard without permission, and the homeowner's animal broke the pots, the homeowner is exempt. If the owner's

animal was injured by the pots, the owner of the pots is liable. But if the potter brought them inside with permission, the owner of the courtyard is liable if his animal caused damage to the pots.

[34] Similarly, if someone brought his produce into the homeowner’s courtyard without permission, and the homeowner’s animal ate them, the homeowner is exempt. If his animal was injured by them, e.g., if it slipped on them, the owner of the produce is liable. But if he brought his produce inside with permission, the owner of the courtyard is liable for the damage caused by his animal to them.

[35] Similarly, if one brought his ox into the homeowner’s courtyard without

[36] permission, and the homeowner’s ox gored it or the homeowner’s dog bit it, the homeowner is exempt. If it gored the homeowner’s ox, the owner of the goring ox is liable. Furthermore, if the ox that he brought into the courtyard without permission fell into the owner’s pit and contaminated its water, the owner of the ox is liable to pay compensation for despoiling the water. If the homeowner’s father or son were inside the pit at the time the ox fell and the person died as a result, the owner of the ox pays the ransom. But if he brought the ox into the courtyard with permission, the owner of the courtyard is liable for the damage caused.

[37] Rabbi Yehuda HaNasi says: The homeowner is not liable in any of the cases in the mishna, even if he gave his permission for the items to be brought into his premises, unless he explicitly accepts responsibility upon himself to safeguard them.

[38] GEMARA: From the first case of the mishna, it can be inferred that the reason the potter is liable is that he brought his pots into another’s courtyard without permission. But if he brought them in with permission, the potter would not be liable for damage caused to the courtyard owner’s animal; and we do not say that the potter accepted responsibility for the safeguarding of the courtyard owner’s animal from his own pots.

[39] Whose opinion is this? It is that of Rabbi Yehuda HaNasi, who says at the conclusion of the mishna that any case where permission is granted to allow an item into one’s premises without specification, i.e., without an explicit agreement as to who is responsible for safeguarding the item, it is assumed that with regard to each party, he has not accepted upon himself the responsibility of safeguarding the item. Therefore, the potter who received permission to bring his pots into the owner’s courtyard similarly did not accept responsibility to safeguard against damage to the property of the owner of the courtyard.

[40] But say the latter clause: If the potter brought them into the courtyard with permission, the owner of the courtyard is liable. In this case, we arrive at the opinion of the Rabbis, who disagree with Rabbi Yehuda HaNasi and say that, even in a case where permission is granted to allow an item into one’s premises without specification, where the owner merely said he could bring them into the courtyard, the homeowner accepts upon himself responsibility for safeguarding the items to ensure that they are not damaged, as well.

[41] And furthermore, the end of the mishna states: Rabbi Yehuda HaNasi says that the owner of the courtyard is not liable in any of the cases in the mishna, even if he gave his permission for the items to be brought into his premises, unless the homeowner explicitly accepts responsibility upon himself to safeguard them. Therefore, it emerges that the first clause and the last clause of the mishna are in accordance with the opinion of Rabbi Yehuda HaNasi, but the middle clause of the mishna is in accordance with the opinion of the Rabbis. Is this a reasonable way to read the mishna?

[42] The Gemara answers that Rabbi Zeira said: This mishna is disjointed and doesn't follow a single opinion. Rather, the one who taught this clause of the mishna did not teach that clause of the mishna. Rava said: The beginning of the mishna is entirely in accordance with the opinion of the Rabbis. In the case where the potter received permission to place his pots there, the owner of the courtyard accepted responsibility upon himself for the safeguarding of the pots, and even to the extent that if the pots broke due to the wind, he would be liable. The owner of the pots, by contrast, did not accept any responsibility to ensure that his items would not cause damage.

[43] § The mishna teaches: If he brought his produce into the homeowner's courtyard without permission, and the owner's animal was injured by the produce, he is liable. Rav says: They taught this halakha only in a case where the animal slipped on it and fell, but if it ate from the produce and was injured, he is exempt. What is the reason? The animal should not have eaten it, and it was not the owner of the fruit who acted improperly but the animal itself.

[44] Rav Sheshet said: I say that Rav stated this halakha while dozing and lying down, and it is not entirely precise, as it is taught in a baraita: One who places poison before another's animal is exempt according to human laws but liable according to the laws of Heaven. From the above statement, it may be inferred that it is specifically where he put poison before the animal that he is exempt, since it is not suitable for eating. But if he put produce before it, which is suitable for eating, and the animal dies from eating it, he is also liable according to human laws. The Gemara analyzes this ruling: But why is he liable? Here also Rav's logic can be invoked, that the animal should not have eaten it. Therefore, this baraita poses a difficulty for Rav.

[45] In order to explain Rav's statement, the Sages said: The same is true, that even if the animal was injured by eating the produce, he would also be exempt according to human laws, and this baraita teaches us this, that even in the case of poison, which is not suitable for eating, the one who placed the poison before the animal is liable according to the laws of Heaven.

[46] And if you wish, say instead that the case where the baraita exempts from liability according to human laws the one who placed poison before the animal is referring to an item suitable for eating as well, such as afrazta, a type of herb that appears edible for animals but is actually poisonous. Therefore, this herb is halakhically equivalent to any other produce for which he is exempt from liability according to human laws, since, as Rav explained, the animal should not have eaten it.

[47] The Gemara raises an objection to Rav's statement from a baraita: In the case of a woman who entered the house of a homeowner without permission in order to grind wheat, and the homeowner's animal ate the wheat, he is exempt. Moreover, if the homeowner's animal was injured by the wheat, the woman is liable. Now according to Rav's explanation, why is she liable? Let us say here as well that the animal should not have eaten it.

[48] In order to explain Rav's statement, the Sages said: What is the difficulty here? Is this baraita preferable to the mishna that we interpreted as a scenario where the animal slipped on the produce? Similarly, the baraita is also referring to a case where the animal was injured by slipping on the wheat, not by eating it.

[49] The Gemara asks: And he who asked it, why did he ask it? This answer seems obvious. The Gemara answers: The questioner could have said to you: Granted, the mishna that teaches: If it is injured by them [bahen], is referring to a case where the animal slipped on them [bahen]. But here in the baraita it teaches the phrase: If it is injured, and it does not teach the additional term: Bahen.

Since this case is immediately preceded by the case of: And the owner’s animal ate them, it is reasonable to surmise that when the baraita teaches the case of the animal being injured, the injury is due to eating.

[50] The Gemara notes: And the other one, i.e., the one who provided the answer, could have said to you in response: There is no difference whether it states: It was injured, or: It was injured by them, as in both cases the injury can be explained as resulting from slipping and not from eating.

[51] Come and hear a proof from a baraita: If one brought his ox into a homeowner’s courtyard without permission, and the ox ate wheat belonging to the homeowner and consequently was stricken with diarrhea and died, then the homeowner is exempt. But if the ox’s owner brought it into the courtyard with permission, the owner of the courtyard is liable. The Gemara comments: Why, in the latter case, is the owner liable for the damage to the ox? Shouldn’t the assertion: The ox shouldn’t have eaten it, be invoked, and any injury that follows is the responsibility of the ox’s owner?

[52] Rava said in response: Are you raising a contradiction from a case with permission and applying it against a case without permission? There is no difficulty here, since in the case where the ox’s owner brought the ox into the courtyard with permission, the homeowner thereby accepted responsibility upon himself for safeguarding against any damage to the other’s ox. And even if the ox strangled itself, he would still be liable.

[53] § A dilemma was raised before the Sages: In a case where the owner of the courtyard accepted upon himself responsibility for safeguarding the items entering his premises, what is the halakha? Did he accept upon himself only the responsibility of safeguarding himself and his animals from causing damage? Or, perhaps he even accepted responsibility upon himself for safeguarding against all forms of damage that originate from the outside.

[54] Come and hear a solution based on that which Rav Yehuda bar Simon taught in the tractate of Nezikin from the school of Karna: If one brought his produce into a homeowner’s courtyard without permission, and an ox came from elsewhere and ate it, he is exempt. But if one brought the produce into the courtyard with permission, he is liable. The Gemara clarifies: Who is the phrase: He is exempt, referring to, and who is the phrase: He is liable, referring to? Does it not mean that the owner of the courtyard is exempt and the owner of the courtyard is liable? This would indicate that by granting permission for the produce to be brought in, he accepts responsibility to safeguard against other damage as well, such as that caused by another ox entering from the outside.

[55] In response, they said that this interpretation should be rejected: No, it means that the owner of the ox that causes damage is exempt, and the owner of the ox is liable.

[56] The Gemara asks: But if it is referring to the owner of the ox,

[57] what reason is there to rule one way where the produce is brought in with permission, and what reason is there to rule another way where the produce is brought in without permission? With regard to damage done by the ox of a stranger, it should not make any difference.

[58] The Sages said in response: If he brought in the produce with permission, it is a case of damage under the category of Eating (see 2a), in the domain of the injured party, since, with respect to the produce, the courtyard is treated as belonging to its owner, and the halakha is that if an animal causes damage categorized as Eating in the domain of the injured party, the ox’s owner is liable. But if he brought it into the courtyard without permission, it is a case of damage under the category of Eating

in the public domain, and if an animal causes damage categorized as Eating in the public domain, the ox’s owner is exempt. Given this explanation, the answer to the question of what type of safeguarding the courtyard owner accepted cannot be derived from the baraita.

59 Come and hear a proof from another baraita: If one brought his ox into a homeowner’s courtyard without permission, and an ox from elsewhere comes and gores it, he is exempt. But if he brought it into the courtyard with permission, he is liable. The Gemara clarifies: Who is exempt and who is liable? Is it not the owner of the courtyard who is exempt and the owner of the courtyard who is liable? If so, this proves that the owner of the courtyard accepted responsibility for all damage occurring on his premises.

60 The Gemara responds: No, the owner of the ox that gored is exempt, and the owner of the ox that gored is liable. The Gemara asks: If so, what significance is there to specifying the case of with permission, and what significance is there to specifying the case of without permission with regard to this ox? For damage categorized as Goring (see 2b), the owner of the animal is liable wherever the goring occurred, even in the public domain.

61 The Sages said in response: In accordance with whose opinion is this? It is in accordance with the opinion of Rabbi Tarfon, who says: The halakha of damage categorized as Goring in the courtyard of the injured party is different, and the owner of the goring animal pays the full cost of the damage. According to this opinion, the baraita should be interpreted as follows: If the injured party brought his ox into the courtyard with permission, it is a case of damage categorized as Goring in the property of the injured party, and the owner of the Goring animal pays the full cost of the damage. But if he brought it in without permission, it is a case of damage categorized as Goring in the public domain, and he pays only half the cost of the damage.

62 § The Gemara relates that there was a certain woman who entered a certain house to bake. Subsequently, a goat belonging to the owner of the house came and ate the woman’s dough, and as a result it became overheated and died. Rava deemed the woman liable to pay compensation for the goat.

63 The Gemara suggests: Shall we say that Rava disagrees with the opinion of Rav, as Rav says that in a case where someone brings in his produce to another’s courtyard without permission, and the latter’s animal is injured by eating it, the owner of the produce is nevertheless exempt, since the animal should not have eaten it.

64 The Sages said in response: How can these cases be compared? There, in the case where someone brought in his produce without permission, he did not accept responsibility upon himself for safeguarding against the produce causing damage, whereas here, where the woman brought in the dough with permission, the woman did accept responsibility upon herself for safeguarding against the dough causing damage.

65 The Gemara asks: And in what way is it different from the case of the baraita mentioned previously: In the case of a woman who entered the house of a homeowner without permission in order to grind wheat, and the homeowner’s animal ate the wheat, he is exempt? And moreover, if the homeowner’s animal was injured by the wheat, the woman is liable. The Gemara infers: The reason she is liable is specifically that she entered without permission, but if she entered with permission, she would be exempt.

[66] The Sages said in response: If she entered the house to grind wheat, since she does not require any privacy, the owners of the courtyard do not need to absent themselves from there, and the responsibility for safeguarding against damage therefore rests upon them. But if she enters to bake, since she requires privacy for this, as the process of kneading involves exposing her elbows, the owners of the courtyard absent themselves from there to allow her to bake. Therefore, the responsibility for safeguarding against damage to anything in the courtyard rests upon her.

[67] § The mishna teaches: If one brought his ox inside the homeowner's courtyard without permission and the homeowner's ox gored it or the homeowner's dog bit it, the homeowner is exempt. Rava says: If one brought his ox into a homeowner's courtyard without permission, and the ox dug pits, ditches, or caves in it, the owner of the ox is liable for the damage caused by his animal to the courtyard, but the owner of the courtyard is liable for any damage caused by the pit if someone falls inside.

[68] Even though the Master says that when the verse states: "And if a man shall open a pit" (Exodus 21:33), it limits the liability for the pit to a person who digs a pit, but not an ox that digs a pit, in which case the owner of the courtyard should be exempt, nevertheless, here, in Rava's statement, since this owner of the courtyard should have filled the pit with earth and he did not fill it, he is considered like someone who actually dug the pit.

[69] And similarly, Rava says: In the case of one who brought his ox into a homeowner's courtyard without permission, and the ox injured the homeowner, or the homeowner stumbled and was injured by it, the owner of the ox is liable. If the ox crouched [ravatz], and by doing so caused damage, the ox's owner is exempt.

[70] The Gemara asks: And is he exempt because the animal caused damage when it crouched? Rav Pappa said: What is the meaning of the term ravatz? It means that it dropped feces [hirbitz] on the ground, and subsequently the clothes of the homeowner were soiled. Consequently, the feces constitute a pit, and we do not find a case of damage categorized as Pit that one is liable for causing damage to utensils. Therefore, the owner of the animal is exempt.

[71] The Gemara asks: This works out well according to the opinion of Shmuel, who says: Any obstruction is categorized as Pit, and the same halakha exempting the one responsible for the pit from damage to utensils applies to them as well. But according to the opinion of Rav, who says that one's property is not categorized as Pit until he renounces ownership of it, what is there to say?

[72] The Sages said in response: The animal's owner usually renounces ownership of ordinary feces, and so they are categorized as Pit even according to the opinion of Rav.

[73] And Rava says: In the case of a person or an animal that entered the courtyard of a homeowner without permission and injured the homeowner, or the homeowner was injured by stumbling on the intruder, the person or owner of the animal is liable. Moreover, if the homeowner damages the person or animal, he is exempt.

[74] Rav Pappa said: We said this only when the homeowner did not know of his presence. But if he knew of his presence, even if he entered without permission, then if the homeowner injured him, the homeowner is liable. What is the reason? It is due to the fact that the injured party can say to the owner of the courtyard: Although you have the right to eject me from your courtyard, you do not have the right to injure me.

[75] The Gemara comments: And Rava and Rav Pappa, who hold that one who enters without permission is liable if damage is caused, follow their lines of reasoning, as Rava says, and some say it was Rav Pappa who said it:

[76] In a case of two people who were both somewhere with permission, or two people who were both somewhere without permission, if they injure each other directly, they are both liable. If they were injured by one another through stumbling over one another, they are exempt. From this statement, it may be inferred that the reason both are liable if either damages the other is specifically that the two of them were both there with permission or the two of them were both there without permission. But if one, i.e., the homeowner, was there with permission, and the other entered without permission, then the one who was there with permission is exempt if he injured the other, but the one who entered without permission is liable if he injured the homeowner, in accordance with the opinion of Rava and Rav Pappa.

[77] § The mishna teaches: If the ox that he brought into the courtyard without permission fell into the owner's pit and contaminated its water, the owner of the ox is liable. Rava says: They taught this halakha only in a case where the ox contaminated the water at the time of the fall. But if it contaminated the water after the fall, e.g., the animal died there and the decomposing carcass despoiled the water, he is exempt. What is the reason? The ox, in this case, is considered as a pit, and the water has the status of utensils that fall into a pit, and we have not found a case of damage categorized as Pit that renders one liable for causing damage to utensils. Therefore, he is exempt.

[78] The Gemara asks: This works out well according to the opinion of Shmuel, who says: Any obstruction is categorized as Pit, and the same halakha exempting the one responsible for the pit from damage to utensils applies to them as well. But according to the opinion of Rav, who says that one's property is not categorized as Pit until he renounces ownership of it, what is there to say? Presumably, the owner did not renounce ownership of the ox or even of the carcass.

[79] Rather, if this statement was stated, it was stated like this: Rava says that they taught this halakha only in the case where the ox contaminated the water with its body, i.e., its carcass. But if it contaminated the water with its stench, the owner is exempt. What is the reason? It is because the damage is caused merely by an indirect action. Although the ox's owner was initially responsible for his animal falling into the pit, the stench did not result directly from this action. It subsequently occurred on its own, and one is not liable for damage that is caused merely by an indirect action.

[80] § The mishna teaches: If the homeowner's father or son were inside the pit at the time the ox fell and the person died as a result, the owner of the ox pays the ransom. The Gemara asks: But why does he pay a ransom? Isn't the ox innocuous, in which case its owner is not liable to pay a ransom? Rav says: Here we are dealing with an ox that is forewarned for falling on people in pits.

[81] The Gemara asks: If so, the ox is liable to be put to death, because if it is forewarned for this behavior, it is considered to have acted intentionally. Rav Yosef said in response: This is a case where it saw some grass that it intended to eat on the edge of the pit, and fell in the pit instead. Since there was no intention to cause damage by falling, the ox is not liable to be put to death, but since it was forewarned for this behavior, its owner still pays ransom.

[82] Shmuel said: This ox mentioned in the mishna is innocuous, and in accordance with whose opinion is this? It is the opinion of Rabbi Yosei HaGelili, who says: The owner of an innocuous ox

that caused damage pays half a ransom. Therefore, when the mishna states that he pays a ransom, it means that he pays half a ransom.

[83] Ulla said: The mishna is in accordance with the opinion of Rabbi Yosei HaGelili, who maintains that payment of a ransom is applicable even in the case of an innocuous ox, but he states his ruling in accordance with the opinion of Rabbi Tarfon, who says: For damage categorized as Goring that is carried out by an innocuous ox in the courtyard of the injured party, the ox's owner pays the full cost of the damage. So too, he pays a full ransom despite the fact that the ox is innocuous.

[84] The Gemara asks: Granted, according to Ulla, this explanation is consistent with that which the mishna teaches: If his father or his son were inside the pit at the time the ox fell and the person died as a result, the owner of the ox pays the ransom. The mishna thereby provides a case of damage categorized as Goring in the courtyard of the injured party. But according to Shmuel's explanation, why mention his father or his son specifically? Even if the injured party were another person, not a close relative of the owner of the property, the owner of the animal would be required to pay half a ransom, and even if it was in the public domain.

[85] The Gemara answers: Indeed, that is the case, and the mishna is simply teaching this ruling by means of the typical scenario, that presumably it was someone from the family of the one who owns the property containing the pit that was inside the pit.

[86] § The mishna teaches: But if he brought the ox into the courtyard with permission, the owner of the courtyard is liable for the damage caused. Rabbi Yehuda HaNasi says: The homeowner is not liable in any of the cases in the mishna, even if he gave his permission for the items to be brought onto his premises, unless he explicitly accepts responsibility upon himself to safeguard them. It was stated that the Sages disagreed with regard to the halakha in this dispute: Rav said that the halakha is in accordance with the opinion of the first tanna, and Shmuel said that the halakha is in accordance with the opinion of Rabbi Yehuda HaNasi.

[87] The Sages taught a case similar to that of the mishna: If the owner of the courtyard said to the owner of the ox: Bring your ox into my courtyard and safeguard it, then if the ox caused damage to the property of the owner of the courtyard, the animal's owner is liable. And if the ox was injured, the owner of the courtyard is exempt. If he said to him: Bring your ox in and I will safeguard it, then if the ox was injured, the owner of the courtyard is liable; if the ox caused damage, its owner is exempt.

[88] The Gemara asks: This matter itself is difficult: You said in the first clause that if the courtyard's owner said to him: Bring your ox into my courtyard and safeguard it, then if the ox caused damage, its owner is liable. And if it was injured, the owner of the courtyard is exempt.

[89] The Gemara infers: The reason that the owner of the ox is liable and the owner of the courtyard is exempt is specifically that the owner of the courtyard said to the owner of the ox: Safeguard it. One can infer that if he granted permission for the ox to enter without specifying that the owner of the animal safeguard it, the owner of the courtyard is liable if the ox was injured, and the owner of the ox is exempt if it caused damage. The reason the owner of the courtyard is liable is that the tanna of this baraita holds that in an unspecified case, where the obligation to safeguard the animal was not mentioned, the owner of the courtyard implicitly accepts upon himself responsibility for safeguarding the ox.

[90] The Gemara continues its analysis of the baraita: Say the latter clause: If he said to him: Bring your ox in and I will safeguard it, then if the ox was injured, the owner of the courtyard is liable; if the ox caused damage, its owner is exempt.

[91] The Gemara infers: The reason that the owner of the courtyard is liable and the owner of the ox is exempt is specifically that the homeowner said to the owner of the ox: And I will safeguard it. One can infer that if the owner of the courtyard granted permission for the ox to enter without specifying that the owner of the animal safeguard it, the owner of the ox is liable if it damages the property of the owner of the courtyard, and the owner of the courtyard is exempt if the ox is damaged. The reason the owner of the courtyard is not liable is that the tanna of this baraita holds that in an unspecified case, where the obligation to safeguard the animal was not mentioned, the owner of the courtyard does not accept upon himself responsibility for safeguarding the ox.

[92] The Gemara concludes its analysis: We come to the opinion of Rabbi Yehuda HaNasi, who says that unless the homeowner explicitly accepts upon himself responsibility for safeguarding, he is not liable. Based on this understanding, the first clause of the baraita is in accordance with the opinion of the Rabbis, and the latter clause is in accordance with the opinion of Rabbi Yehuda HaNasi.

[93] Rabbi Elazar said: Indeed, the baraita is disjointed, and the one who taught this clause did not teach that clause. Rava said: The entire baraita is in accordance with the opinion of the Rabbis, and no inference should be drawn from the extra words: And I will safeguard it, in the latter clause. Since the first clause mentions that the owner of the courtyard instructed: Safeguard it, the latter clause also teaches that he said: And I will safeguard it, to maintain symmetry. The same halakha applies even when granting permission to enter without specification, since, according to the Rabbis, granting permission to enter includes an implicit acceptance of responsibility for safeguarding.

[94] Rav Pappa said: The entire baraita is in accordance with the opinion of Rabbi Yehuda HaNasi, who holds that if no specification was made, the owner of the courtyard does not accept responsibility, as inferred from the latter clause of the baraita. And as for the inference drawn from the first clause, he holds in accordance with the opinion of Rabbi Tarfon, who says: For damage categorized as Goring that is carried out by an innocuous ox in the courtyard of the injured party, the ox’s owner pays the full cost of the damage.

[95] Therefore, if the owner of the courtyard said to the owner of the ox: Safeguard it, he is clearly not transferring the rights to any portion of the courtyard to him, as evident from the fact that the owner of the ox must safeguard it and may not treat the courtyard as if it were his own. Consequently, if the ox gored, it is a case of damage categorized as Goring in the courtyard of the injured party, and one responsible for damage categorized as Goring in the courtyard of the injured party pays the full cost of the damage.

[96] By contrast, if the owner of the courtyard did not say to the owner of the ox: Safeguard it, then by granting him permission to bring the ox onto his courtyard, he effectively transfers rights to an area within the courtyard. Therefore, with regard to damages, it becomes a courtyard of partners, and the one responsible for damage categorized as Goring in the courtyard of partners pays only half the cost of the damage.

[97] MISHNA: In the case of an ox that was intending to gore another ox but struck a pregnant woman, and her offspring, i.e., the fetuses, emerged due to miscarriage, the owner of the ox is exempt from paying compensation for miscarried offspring. But in the case of a person who was

intending to injure another but struck a pregnant woman instead, and her offspring emerged due to miscarriage, he pays compensation for miscarried offspring.

98 How does he pay compensation for miscarried offspring, i.e., how is their value assessed? The court appraises the value of the woman by calculating how much she would be worth if sold as a maidservant before giving birth, and how much she would be worth after giving birth. He then pays the difference in value to the woman's husband. Rabban Shimon ben Gamliel said:

99 If so, the consequences would be absurd, as when a woman gives birth her value increases. Rather, the court appraises how much the offspring are worth, and the one liable for the damage gives that amount to the husband. And if she does not have a husband, e.g., her husband died, he gives the money to his heirs.

100 If the pregnant woman was a Canaanite maidservant and then she was emancipated, or a convert, and she was married to an emancipated Canaanite slave or to a convert who died without any heirs, the one who caused the damage is exempt from paying compensation for miscarried offspring. This is because this payment is made specifically to the husband, not to the woman.

101 GEMARA: The first clause of the mishna indicates that the reason the owner is exempt from paying compensation for the offspring when an ox unintentionally gores a pregnant woman is specifically that it was intending to gore another ox. By inference, if it was intending to gore the woman, the owner pays compensation for miscarried offspring. Shall we say that this should be a conclusive refutation of the opinion of Rav Adda bar Ahava, as Rav Adda bar Ahava says: With regard to oxen that intended to gore a woman and then did so, the owners are exempt from paying compensation for miscarried offspring?

102 The Gemara answers that Rav Adda bar Ahava could have said to you: The same is true, that even if the oxen intended to gore the woman, the owners are also exempt from paying compensation for miscarried offspring. As for that which is taught in the mishna: An ox that was intending to gore another ox, it is taught this way since it wants to teach the latter clause: A person that was intending to injure another person, as this case is written explicitly in the verse: "And if men struggle and hurt a pregnant woman and her offspring emerge" (Exodus 21:22). In the case in the verse, the assailant intended to injure another person but injured the woman instead. Therefore, the mishna also teaches the first clause in that style: An ox that was intending to gore another ox.

103 Rav Pappa says: In the case of an ox that gored a Canaanite maidservant, and her offspring emerged due to miscarriage, the owner pays compensation for miscarried offspring. What is the reason? The ox injured a mere pregnant donkey. With regard to the matter of compensation for offspring, who would be the property of the master were they to be born, a Canaanite slave is considered property of the master. As the verse states that Abraham addressed Eliezer, who was a Canaanite, by saying: "You remain here with [im] the donkey" (Genesis 22:5), on which the Sages expound that he was alluding to the idea that Eliezer is of a people [am] that is similar to a donkey. Therefore, the case of an ox goring a Canaanite maidservant is not included in the Torah's exemption from paying compensation for miscarried offspring.

104 § The mishna teaches: How does he pay compensation for miscarried offspring? The court appraises how much the value of the woman increased due to the offspring. The Gemara asks: Would this be a correct interpretation of the term: Compensation for miscarried offspring? If this is how the sum is calculated, the mishna should have stated: How does he pay the increase in value due to the

offspring? The Gemara answers: That is also what the tanna is saying: How does he pay compensation for miscarried offspring and the increase in value due to the offspring? In other words, apart from evaluating the compensation for the miscarried offspring, the court also appraises the value of the woman by calculating how much she would be worth if sold as a maidservant before giving birth, and how much she would be worth after giving birth.

105 § The mishna teaches: Rabban Shimon ben Gamliel said: If so, the consequences would be absurd, as when a woman gives birth her value increases. The Gemara asks: What is Rabban Shimon ben Gamliel saying? Rabba said: This is what he is saying: But is the monetary value of a woman higher before she gives birth than after she gives birth? But isn't the opposite true, that the monetary value of a woman is higher after giving birth than before giving birth, since the concern for her dying during childbirth, which lowers her monetary value prior to giving birth, is no longer a concern? Rather, the court appraises the value of the fetuses and gives that amount to the husband.

106 This explanation of Rabban Shimon ben Gamliel's statement is also taught in a baraita: But is the monetary value of a woman higher before she gives birth than after she gives birth? But isn't the opposite true, that the monetary value of a woman is higher after giving birth than before giving birth? Rather, the court appraises the value of the fetuses and gives that amount to the husband.

107 Rava said: This is what Rabban Shimon ben Gamliel is teaching: But is the value of the woman higher only for the one for whom she gives birth, i.e., her husband, and she herself does not have any increase in value at all due to the offspring? A pregnant woman's monetary value is increased on account of her pregnancy, beyond the monetary value of the offspring. Rather, the court appraises the value of the offspring and gives it to the husband. And in addition, the husband and wife divide the increase in her value due to the offspring.

108 This explanation of Rabban Shimon ben Gamliel's opinion is also taught in a baraita: Rabban Shimon ben Gamliel said: But is the value of the woman higher only for the one for whom she gives birth, i.e., her husband, and she herself does not have any increase in value at all due to the offspring? Rather, the court appraises damage by itself and pain by itself, and appraises the value of the offspring and gives it to the husband, and the husband and wife divide the increase in her value due to the offspring.

109 The Gemara asks: The opinion of Rabban Shimon ben Gamliel in the first baraita, that the woman's value decreases because of pregnancy, poses a difficulty for that of Rabban Shimon ben Gamliel in the second baraita, that it increases.

110 The Gemara answers: This is not difficult, since each baraita is referring to a different case: Here, the first baraita, which stated that the woman's value increases after giving birth, is referring to a woman giving birth to her firstborn. Her value decreases prior to birth out of concern that she might die in childbirth. There, the second baraita, which stated that her value increases due to pregnancy, is referring to a woman who is not giving birth to her firstborn.

111 The Gemara asks: And what is the reason of the Rabbis in the second baraita, who say: The increase in her value due to the offspring is also given to the husband? The Gemara answers: They derive it from a redundancy in a verse, as we learned in a baraita: The verse states: "And hurt a pregnant woman and her offspring emerge" (Exodus 21:22). From the fact that it is stated: "And her offspring emerge," don't I know by inference that she was pregnant? If so, what is the meaning when

the verse states: “A pregnant woman,” and not just “a woman”? To inform you that even the increase in her value due to the pregnancy is given to the husband.

112 The Gemara asks: And what halakha does Rabban Shimon ben Gamliel expound on this extra word “pregnant”? The Gemara answers: He requires it for that which is taught in a baraita: Rabbi Eliezer ben Ya’akov says that one who injures a woman is never liable to pay compensation for miscarried offspring unless he strikes her opposite the womb, i.e., on the abdomen. Rav Pappa said: Do not say that it must be literally opposite the womb. Rather, he is liable if she was struck anywhere that the wound’s impact could reach the offspring, i.e., any part of the torso, to exclude a wound to her hand or foot, for which he is not liable, since it could be argued that it was not the wound to the hand or foot that caused the miscarriage.

113 § The mishna teaches: If the pregnant woman was a maidservant and then she was emancipated, or a convert, he is exempt from the payment of damages for miscarried offspring. Rabba says: They taught this halakha only in a case where one injured her during the lifetime of the convert, i.e., her husband, and the convert died before the payment was given. The reason for this is that since the assailant injured her during the lifetime of the convert, the convert acquires the money, although it is still in the possession of the one liable for the damage. And once the convert dies without heirs, the money is ownerless. Therefore, the assailant acquires it from the convert. Since anyone can assume ownership of ownerless property, the assailant, who already possesses the money, becomes the owner. But if he injured her after the convert had died, she acquires the money, and he must pay the woman herself.

114 Rav Ḥisda said in amazement: Master of this ruling! Is that to say that compensation for the offspring is like bundles of money, and she acquires them when her husband dies? Rabba seems to understand that the pregnant woman assumes ownership of the offspring by virtue of being in possession of them when the husband dies, and therefore has the right to compensation for them. That is not the case. Rather, if the husband is present, the Merciful One grants compensation for the offspring to him, but if the husband is not alive, the Torah does not grant compensation to anyone else.

115 The Gemara raises an objection against the opinion of Rabba from the following: If the assailant struck the woman and her offspring emerged due to miscarriage, he gives compensation for damage and pain to the woman and compensation for miscarried offspring to the husband. If the husband is not alive, he gives the compensation for the offspring to his heirs. If the woman is not alive, he gives the payment owed to her to her heirs. If she was a maidservant and then she was emancipated, or a convert, the assailant acquires the money. This indicates that if the husband is no longer alive, the woman doesn’t receive anything.

116 The Sages said in response to this: But is the baraita preferable to the mishna, which we interpreted as referring to a case where he injured her during the lifetime of the convert, and the convert then died? Here also, it must be explained that he injured her during the lifetime of the convert, and the convert then died. And if you wish, say instead that he injured her even after the death of the convert.

117 And as for the expression in the baraita: He acquires, referring to the one who causes the damage, teach: She acquires.

[118] The Gemara suggests: Let us say that the dispute between Rabba and Rav Ḥisda is parallel to a dispute between tanna’im: With regard to a Jewish woman who was married to a convert, and she became pregnant from him, and someone injured her, causing her to miscarry: If this was during the lifetime of the convert, the assailant gives compensation for miscarried offspring to the convert, i.e., her husband. If this was after the death of the convert, it is taught in one baraita that the assailant is liable, and it is taught in one baraita that the assailant is exempt. What, is it not a dispute between tanna’im? The Gemara clarifies: According to the opinion of Rabba, it is certainly a dispute between tanna’im. His opinion does not accord with the second baraita. But according to the opinion of Rav Ḥisda, shall we say that it is a dispute between tanna’im?

[119] This is not necessarily so, as Rav Ḥisda could say that both baraitot are in accordance with his opinion. As for the difference between them, that is not difficult. They can be explained as referring to the increase in the woman’s value due to the offspring, which is subject to dispute in the mishna, rather than referring to the payment of compensation for miscarried offspring. This baraita, which taught that he is exempt, is in accordance with the opinion of the Rabbis, who maintain that the increase in her value on account of the offspring belongs to the husband. That baraita, which taught that he is liable, is in accordance with the opinion of Rabban Shimon ben Gamliel, who maintains that the woman has a share in her increase in value due to pregnancy, and this is paid even if the incident occurred after the husband’s death.

[120] The Gemara asks: If it is in accordance with the opinion of Rabban Shimon ben Gamliel, why state specifically that it occurs after the death of the husband? Even during the husband’s lifetime, she also has a half share, as explained earlier in the discussion. The Gemara answers: While he is alive, she has a half share, but after his death, all of it belongs to her.

[121] And if you wish, say instead that both this baraita and that baraita are in accordance with the opinion of Rabban Shimon ben Gamliel, but they refer to different payments. Here, the baraita that taught that he is liable, is referring to the increase in her value due to the offspring, which belongs partly to the woman, and if the husband dies, she acquires the rights to all of it. By contrast, there, the baraita that taught that he is exempt, is referring to compensation for miscarried offspring, which belongs exclusively to her husband. Since he is a convert, the one liable for damage is exempt after his death.

[122] The Sages said, in questioning this answer: Why is there a difference between the two cases? From the halakha that after the husband’s death the woman acquires his share of the increase in her value due to the offspring, let it be derived that according to the opinion of Rabban Shimon ben Gamliel she also acquires the rights to the compensation for miscarried offspring if she was wounded after his death. Moreover, from the opinion of Rabban Shimon ben Gamliel, let us derive that this is also the opinion of the Rabbis, since there is no dispute between them with regard to the payment of compensation for miscarried offspring.

[123] In response, the Sages said: No, the first assumption is untenable, since with regard to the increase in her value due to the offspring, in which she has a share from the outset, she acquires all of it after her husband’s death. By contrast, with regard to the compensation for miscarried offspring, in which she does not have a share from the outset, she does not acquire the rights to it at all, since she has no greater claim to this than any other individual does.

[124] § Rav Yeiva the Elder raises a dilemma to Rav Naḥman: With regard to one who takes possession of the documents of a convert, what is the halakha after the death of the convert? On the one hand, it can be argued that one who takes possession of the document takes possession with the intention of acquiring the land that the document states is under lien, and since he did not take possession of the land itself, he also does not acquire the document. This is because he had no intention to acquire the document, but just the property specified in the document. Therefore, since the convert has died, perhaps the lien is canceled and can no longer be collected, or perhaps his intention is also to acquire the document, and the paper on which it is written belongs to him.

[125] Rav Naḥman said to him: Answer this, my Master: Does he need to acquire the document to use as paper to cover the opening of his flask? Why would he want the document if it does not grant him ownership of the land described therein? Rav Yeiva the Elder said to him: Indeed, his intention is even to cover the flask and to cover it with the paper, albeit a mundane purpose.

[126] Rabba says: In a case where the collateral of a Jew was in the possession of a convert who lent him money, and the convert died, and another Jew came and took possession of it, then, since the convert has no heirs, the court appropriates it from his possession and returns it to its owner. What is the reason? Since the convert died, his lien on the property is abrogated. Therefore, the deposit automatically returns to its owner, and no one else has the right to take it.

[127] By contrast, if the collateral of a convert is in the possession of a Jew who lent him money and the convert died, and another Jew came and took possession of it, this one, i.e., the one owed money, acquires a share of the collateral corresponding to the money owed to him by the convert, and that one, i.e., the one who took possession of it, acquires the rest.

[128] The Gemara asks: But why doesn’t the creditor acquire the entire collateral? If it is in his possession, let his courtyard effect acquisition for him, as doesn’t Rabbi Yosei bar Ḥanina say: A person’s courtyard effects acquisition for him even without his knowledge?

[129] The Sages said in response: Here we are dealing with a case where the creditor is not standing next to the courtyard. Anywhere that he is present, next to the collateral, so that if he wants to acquire it he could pick it up and acquire it himself, his courtyard also effects acquisition for him. But anywhere that he is not present, next to the collateral, so that if he wants to acquire it he could not acquire it, his courtyard also does not effect acquisition for him.

[130] The Gemara concludes: And the halakha is that where the creditor is not present in his courtyard, he does not acquire the rest of the collateral.

[131] MISHNA: One who digs part of a pit on private property and opens its entrance in the public domain, or digs a pit in the public domain and opens its entrance on private property, or digs a pit on private property and opens its entrance on another person’s private property, is liable for damage caused by the pit in each case.

[132] GEMARA: The Sages taught in a baraita: One who digs a pit on private property and opens its entrance in the public domain, or who digs a pit in the public domain and opens its entrance on private property is liable, and this is the case of Pit that is stated in the Torah; this is the statement of Rabbi Yishmael. Rabbi Akiva says: With regard to one who renounced ownership of his property but did not renounce ownership of his pit located in the property, this is the case of Pit that is stated in the Torah.

[133] In explanation of this dispute, Rabba says: With regard to a pit that a person digs or opens into the public domain, everyone agrees that he is liable for damage that occurs as a result. What is the reason? The verse states: “And if a man shall open a pit,” and it also states: “If a man shall dig a pit” (Exodus 21:33), which raises the question: If one is liable for opening a pit by removing the cover of a pit that has already been dug, then is it not all the more so obvious that he should be liable for digging a new pit? What, then, does the latter phrase add? Rather, the interpretation of the verse must be that the responsibility for the pit comes to him by engaging in opening the pit and by engaging in digging the pit. Although he does not own the area itself, he is liable for creating a public hazard. They disagree only

[134] in the case where one dug the pit on his own property and then renounced ownership of the surrounding area. Consequently, the entire area except for the pit is now open to public passage. In this case, Rabbi Akiva maintains that one who digs a pit on his own property is also liable, not only when the pit is located in the public domain, as it is written: “The owner of the pit shall pay” (Exodus 21:34). Clearly, the Merciful One is referring to a pit that has an owner. Therefore, the owner of the pit pays even if it is located on private property.

[135] And Rabbi Yishmael maintains that “the owner of the pit” means that the one responsible for the hazard is liable even if he dug the pit in the public domain and then renounced ownership of it. But one who digs a pit on his own property is not liable.

[136] The Gemara asks: Rather, according to Rabba’s explanation, what is meant by the clause: This is the case of Pit that is stated in the Torah, in reference to digging a pit on one’s property, that Rabbi Akiva states? According to him, one is liable for damage in all cases, including digging in the public domain. The Gemara answers: It means that this is the pit with which the verse initially introduces the subject of compensation for damage caused. In that context, the Torah states: “The owner of the pit shall pay” (Exodus 21:34), indicating that even a pit owned on one’s private property renders one liable.

[137] And Rav Yosef said that one can explain the dispute between Rabbi Yishmael and Rabbi Akiva differently: With regard to one who dug a pit on his private property and then renounced ownership of the property aside from the pit, everyone agrees that he is liable. What is the reason? Since the Merciful One states: “The owner of the pit,” it indicates that we are dealing with a pit that has an owner.

[138] When they disagree, it is in a case where the pit was dug in the public domain. Rabbi Yishmael maintains that one is also liable for a pit dug in the public domain, as it is written: “And if a man shall open a pit,” and: “If a man shall dig a pit” (Exodus 21:33), which raises the question: If he is liable for opening a pit by removing the cover of a pit that has already been dug, then is it not all the more so obvious that he should be liable for digging a new pit? Rather, the verse means that the responsibility for the pit comes to him by engaging in opening the pit and by engaging in digging the pit. Although he does not own the area itself, he is liable for creating a public hazard.

[139] And Rabbi Akiva, by contrast, holds that one is liable only in the case of a pit located on private property, where he renounced ownership of the property aside from the pit, and one cannot derive otherwise from any extraneous phrases. This is because these phrases are necessary, for if the Merciful One wrote only: “If a man shall open a pit” (Exodus 21:33), I would say that it is specifically when one opens the covering of a pit that has already been dug that it is sufficient for

him to place a covering on it to absolve himself of responsibility for damage it causes. This is the case where the Torah states: “And not cover it” (Exodus 21:33). But if one actually digs a pit, it would not be sufficient to place a covering on it, and one would not be exempt from damages unless he completely packs it.

140 And conversely, if the Merciful One had written only: “If a man shall dig,” I would say that it is specifically in a case of digging that a covering is required to exempt one from liability, because he performed an action of creating the pit. But for merely opening it, where one has not performed an action, say that he does not require a covering to absolve him of liability. Therefore, the Torah teaches us that he is liable for damage caused by a pit in both cases, and one should interpret the verse that states: “The owner of the pit” (Exodus 21:34), in its plain sense, i.e., that he is the owner of the pit because it is located on his private property. Accordingly, one would not be liable for a pit dug in the public domain.

141 The Gemara asks: But rather, according to Rav Yosef’s explanation, what is meant by the clause: This is the case of Pit that is stated in the Torah, in reference to digging a pit in the public domain, that Rabbi Yishmael states? Isn’t one liable for any pit, including one dug on his own property? The Gemara answers: It means that this is the pit with which the verse initially introduces the subject of damage caused by Pit, as explained by Rabbi Yishmael above. Only afterward does it state: “The owner of the pit shall pay,” referring to a pit dug on one’s own property.

142 The Gemara raises an objection from a baraita: One who digs a pit whose hollow space is in the public domain and then opens its entrance into private property is exempt, and this is the halakha even though he does not have permission to do so. The reason he does not have permission to do so is that one may not create a hollow space under the public domain.

143 One who digs pits, ditches, and caves on private property and then opens their entrances into the public domain is liable. In addition, one who digs pits on private property that is adjacent to the public domain but not actually located in the public domain itself, such as these people who dig foundations [ushin] for their houses or walls, is exempt. But Rabbi Yosei, son of Rabbi Yehuda, deems one liable even for damage caused by pits made to lay foundations, unless he builds a partition that is ten handbreadths high in front of the pits, or unless he distances them by four handbreadths from the area where pedestrians walk and from the area where animals walk.

144 The Gemara infers: The reason for the exemption is that one digs for the purpose of foundations, which is the usual and accepted practice, but if he did not dig for the purpose of foundations, he is liable. Although he did so on his own property, he is nevertheless liable, since people walk there.

145 The Gemara clarifies: In accordance with whose opinion is this baraita? Granted, according to Rabba, the first clause, where one is seemingly exempt for opening a pit onto private property even if he subsequently renounced ownership of the area, can be established in accordance with the opinion of Rabbi Yishmael, and the last clause can be established in accordance with the opinion of Rabbi Akiva, who maintains that one is liable for a pit dug on his own property if it is open to public traffic.

146 But according to Rav Yosef’s explanation, granted, with regard to the last clause, all agree that this is the halakha. But with regard to the first clause, which exempts one who digs a pit on his own property, in accordance with whose opinion is this? It appears to be neither that of Rabbi Yishmael nor that of Rabbi Akiva, since Rav Yosef explained that both of them maintain that one is liable for a pit on his own property, even if he subsequently renounces ownership of the area.

[147] The Gemara answers that Rav Yosef could have said to you: Everyone agrees with the entire passage. As for the first clause, which exempts one who digs a pit under the public domain and opens it onto his own property, it is referring to a case where one did not renounce ownership of either his property or his pit. This certainly is not included in the category of Pit with regard to damages, and the owner is therefore exempt.

[148] Rav Ashi said: Now that you have interpreted Rav Yosef's explanation of the baraita as being in accordance with all opinions, then also according to Rabba, you are not required to establish it as a dispute between tanna'im.

[149] Rather, one can say that since the first clause is in accordance with the opinion of Rabbi Yishmael, who exempts one who renounces ownership of his property but not the pit, the last clause can also be explained in accordance with the opinion of Rabbi Yishmael. And it was previously inferred that the reason for the exemption when digging on one's private property adjacent to the public domain is that one digs to lay foundations. But if it is not to lay foundations, one is liable. For instance, in a case where one widened the pit unnecessarily, extending it into the public domain, he has effectively dug a pit in the public domain itself.

[150] The Gemara raises an objection from a baraita: One who digs a pit on private property and opens it into the public domain is liable. But if he dug it on private property that was adjacent to the public domain, he is exempt. Granted, according to Rabba, this mishna is entirely in accordance with the opinion of Rabbi Yishmael, who does not hold one liable for digging on his own property. But according to Rav Yosef, granted, the first clause works out well in accordance with the opinion of Rabbi Yishmael, who holds one liable even for digging in the public domain, but whose opinion is the latter clause? It appears to be neither that of Rabbi Yishmael nor that of Rabbi Akiva.

[151] The Gemara answers that Rav Yosef could have said to you: The latter clause of this baraita is referring to one who digs to lay foundations, and therefore all agree with the ruling.

[152] § The Sages taught: If someone dug or opened a well and transferred it to the public for their use, he is exempt from damage caused by the well. If he dug or opened a well and did not transfer it to the public, he is liable. And this was the practice of Neḥunya the digger of pits, ditches, and caves, who would dig, open, and transfer them to the public so that there would be wells of water for public use. When the Sages heard about the matter, they said: This individual has fulfilled this halakha. The Gemara asks: Only this halakha and no more? Isn't it well known that Neḥunya was a great man? Rather, say: He fulfilled even this halakha and did not forget to transfer the wells to the public.

[153] Having mentioned the deeds of Neḥunya, the Gemara relates that the Sages taught: An incident occurred involving the daughter of Neḥunya the ditchdigger, where she fell into a large cistern and no one could extricate her from it. They came and informed Rabbi Ḥanina ben Dosa so that he would pray on her behalf. When the first hour had passed from the time of her fall, he said to them: She is at peace and unharmed. After the second hour, he said to them: She is at peace. After the third hour, he said to them: She has ascended from the well, and indeed this was the case.

[154] They said to her: Who brought you up out of the well? She said to them: A male sheep, i.e., a ram, happened to come to me, and a certain old man, i.e., Abraham, was leading it, and he pulled me out. They said to Rabbi Ḥanina ben Dosa: Are you a prophet? How did you know she had ascended? Rabbi Ḥanina ben Dosa said to them: "I am no prophet, neither am I a prophet's son" (Amos 7:14),

but this is what I said to myself: Shall the offspring of Neḥunya stumble by means of the very matter which distressed that righteous man?

155 Rabbi Aḥa says: Although Neḥunya ensured that others would have water, even so, his son died of thirst, fulfilling that which is stated: “And around Him it storms [nisara] mightily” (Psalms 50:3). This teaches that the Holy One, Blessed be He, is scrupulous with those around Him, i.e., the righteous, even to the extent of a hairsbreadth [hasa’ara], so that even minor transgressions elicit a severe punishment. Rabbi Neḥunya says: The same idea may be learned from here, in the following verse: “A God dreaded in the great council of the holy ones, and feared by all those that surround Him” (Psalms 89:8), indicating that God is most careful and exacting with those that surround Him, i.e., the righteous.

156 Rabbi Ḥanina says: Anyone who states that the Holy One, Blessed be He, is forgiving [vateran] of transgressions, his life will be relinquished [yivatru], as it is stated: “The Rock, His work is perfect, for all His ways are justice” (Deuteronomy 32:4). In other words, God does not waive heavenly justice. Rabbi Ḥana says, and some say that Rabbi Shmuel bar Naḥmani says: What is the meaning of that which is written

157 in the verse that recounts the thirteen attributes of mercy: “Long-suffering [erekh appayim]” (Exodus 34:6), using the plural form, and it is not written as erekh af, in the singular? In order to teach that He is long-suffering for both the righteous and for the wicked and does not punish them immediately for their transgressions.

158 § The Sages taught: A person should not throw stones from his property into the public domain. An incident occurred involving a certain individual who was throwing stones from his property into the public domain, and a certain pious man found him. The latter said to him: Lowlife [reika], for what reason are you throwing stones from property that is not yours into your property? The man mocked him, as he did not understand what he meant, as the property from which he was throwing stones was his.

159 Some days later, he was forced to sell his field from which he had thrown the stones. And he was walking in the same public domain into which he had thrown them, and he stumbled on those same stones. He said: That pious man said it well to me when he said: For what reason are you throwing stones from property that is not yours into your own property, since that property no longer belongs to me, and only the public domain remains mine to use.

160 MISHNA: In the case of one who digs a pit in the public domain and an ox or a donkey fell into it, he is liable. The halakha is the same for one who digs either a pit; a ditch, which is narrow and long; or a cave, which is rectangular and roofed; trenches and water channels. In all these cases he is liable. If so, why is the verse stated as referring to a pit, as it states: “And if a man shall open a pit” (Exodus 21:33)? To teach that just as a pit that has sufficient depth to cause death when falling into it is at least ten handbreadths deep, so too, any other excavations that have sufficient depth to cause death may be no less than ten handbreadths. If any of the types of excavations were less than ten handbreadths deep, and an ox or a donkey fell into one of them and died, the digger of the excavation is exempt. But if it was injured in it, not killed, he is liable to pay damages.

161 GEMARA: Rav says: Damage by Pit for which the Torah obligates one to pay is referring specifically to damage caused by the pit’s lethal fumes, i.e., suffocation, but not to damage caused by the impact of hitting the ground, for which the digger of the pit is exempt from paying compensation.

The Gemara continues to explain: Apparently, it can be inferred that Rav maintains that with regard to the impact of hitting the bottom of the pit, it is merely the ground that injures him. The digger of the pit does not own the ground, so it is not a case where his property caused damage. Therefore, he does not bear responsibility for the damage.

[162] And Shmuel says: The Torah renders one liable for damage caused by its lethal fumes, and all the more so for damage resulting from the impact. Shmuel adds: And if you say that the Torah spoke only about liability for its impact and not for its lethal fumes, one could respond that the Torah testifies about a pit without specifying for which type of pit one is liable, and this includes even a pit full of woolen sponges [sefogin], which would completely absorb the impact.

[163] The Gemara asks: What is the difference between the opinions of Rav and Shmuel, given that falling into any pit involves injury due to both the lethal fumes and the impact? The Gemara answers: The practical difference between them is in the case where one fashioned a mound with a height of ten handbreadths in the public domain without digging, and an animal fell from this raised platform and died. According to Rav, the one who fashioned the mound is not liable for damage by Pit in the case of a mound, since there are no fumes, as the animal fell to the level ground. By contrast, according to Shmuel, he is also liable for damage by Pit in the case of a mound, since there is nevertheless an impact when hitting the ground.

[164] The Gemara asks: What is the source for the reasoning of Rav, that one is not liable in that case? The Gemara answers: Since the verse states: “And an ox or a donkey fall therein” (Exodus 21:33), indicating that there is no liability for damage by Pit unless the animal falls in the normal manner of falling, but not where it first climbed onto an elevated surface and then fell from there to the level ground. And according to Shmuel, the term: “And an ox or a donkey fall,” indicates any manner of falling, regardless of whether the animal fell into a hole or fell to the ground from an elevated surface.

[165] The Gemara challenges Rav’s opinion: We learned in the mishna: If so, why is the verse stated as referring to a pit, as it states: “And if a man shall open a pit” (Exodus 21:33)? To teach that just as a pit that has sufficient depth to cause death when falling into it is at least ten handbreadths deep, so too, any other excavations that have sufficient depth to cause death may be no less than ten handbreadths. Now, granted that according to Shmuel, the term: So too, any other, serves to include the case where the animal fell from a height of ten handbreadths, in which case the one who fashioned the mound would also be liable. But according to Rav, who exempts him in that case, what does the term: So too, any other, add?

[166] The Gemara answers: According to Rav, it serves to include trenches and water channels. The Gemara asks: But trenches and water channels are explicitly taught in the mishna. Why does the mishna then allude to them again? The Gemara answers: It first teaches the halakha about them and then explains its source in the Torah.

[167] Having mentioned these details, the Gemara asks: And why do I need all these cases that are taught by the mishna? The Gemara answers: They are necessary, for had it taught only the case of a pit, I would say that it is specifically a pit of ten handbreadths that contains lethal fumes, because it is constricted and round. Therefore, this measurement suffices to cause death. But concerning a ditch, which is long, say that in a case where it is ten handbreadths deep, there are no lethal fumes and there is no liability. Therefore, the mishna teaches both the case of a pit and a ditch.

[168] And furthermore, had the mishna taught the case of a ditch in addition to the pit, I would say that it is specifically a ditch of ten handbreadths that contains the necessary lethal fumes, because it is narrow. But concerning a cave, which is rectangular and not narrow, say that in a case where it is ten handbreadths deep, there are no lethal fumes and there is no liability. Therefore, the mishna teaches the case of a cave as well.

[169] And furthermore, had the mishna taught the case of a cave in addition to the previous two, I would say that it is specifically a cave of ten handbreadths that contains lethal fumes, because it is covered. But concerning trenches, which are not covered, say that at a depth of ten handbreadths, there are no lethal fumes and there is no liability. Therefore, the mishna also teaches the case of trenches.

[170] And finally, had the mishna taught the case of trenches in addition to the previous three, I would say that it is specifically trenches of ten handbreadths that contain lethal fumes, since they are no wider at the top than at the bottom. But with regard to channels, which are wider at the top than at the bottom, say that at a depth of ten handbreadths there are no lethal fumes and there is no liability. Therefore, the mishna teaches us the case of channels as well, and each subsequent case listed contains a novel aspect.

[171] The Gemara raises a further challenge from that which we learned in the mishna: If any of the types of excavations were less than ten handbreadths deep, and an ox or a donkey fell into one of them and died, the digger of the excavation is exempt. But if it was injured, not killed, he is liable to pay damages. What is the reason for the ruling of: If an ox or a donkey fell into it and died, he is exempt? Is it not because at this height there is not sufficient impact, although there are lethal fumes?

[172] The Gemara responds: No, he is exempt because there are no lethal fumes. The Gemara challenges this: If that is so, that a pit less than ten handbreadths deep lacks sufficient lethal fumes, why is the one who dug it liable if the animal is injured; but there are no lethal fumes? The Gemara answers: There are not sufficient fumes to cause death, but there are sufficient fumes to cause damage.

[173] The Gemara relates: There was a certain ox that fell into a water channel [la’arita dedala’ei] whose depth was one cubit, i.e., six handbreadths. Because it suffered the impact of the fall, its owner assumed it would die and slaughtered it first, in order to eat the meat. Rav Naḥman, who was concerned that its organs were crushed by the fall, deemed it an animal with a condition that will cause it to die within twelve months [tereifa], which it is prohibited to consume.

[174] Furthermore, Rav Naḥman said: If the owner of this ox had taken a kav of flour to bake into bread to eat instead of slaughtering his animal for its meat, and gone and learned in the study hall that although an ox that falls and hits the ground is considered tereifa if slaughtered immediately, if the animal remained alive for twenty-four hours and is then slaughtered, it is fit to eat, he would not have lost his ox that was worth several kav of flour. The Gemara notes: Apparently, Rav Naḥman maintains that there is an impact caused even by a pit that is less than ten handbreadths, as Rav Naḥman was concerned in this case that its organs were crushed and it was fatally wounded.

[175] Rava raised an objection to the opinion of Rav Naḥman from the mishna: If any of the types of excavations were less than ten handbreadths deep, and an ox or a donkey fell into one of them and died, he is exempt. What is the reason for this? Is it not because there is no significant impact capable of causing death? If so, why is this animal deemed a tereifa?

[176] Rav Naḥman responds: No, he is exempt here because there are not sufficient fumes to cause death, in accordance with the opinion of Rav. Nevertheless, the impact from hitting the ground is sufficient to cause death, and therefore an ox that fell into a water channel is suspected of being a tereifa. Rava again challenges him: If so, then how is the statement: If the animal was injured by it, he is liable, to be explained? There are not sufficient fumes? Rav Naḥman said to him: There are not sufficient fumes to cause death, but there are sufficient fumes to cause injury.

[177] Rava raised an objection to the opinion of Rav Naḥman from a mishna (Sanhedrin 45a): The structure from which the punishment of stoning was implemented was a height of two people, and it is taught in that regard in a baraita: When the two-person height of the structure is combined with his height, i.e., the height of the one being stoned, there is a total height equal to that of three people. Rava explains his objection: And if it enters your mind that there is an impact capable of causing death in a pit less than ten handbreadths deep, why do I need all of this height?

[178] Rav Naḥman answered him: And according to your reasoning, let us make the structure a minimal ten handbreadths. Why must it have a height of two people? Rather, no proof can be brought from here, since the reason is in accordance with the opinion of Rav Naḥman, as Rav Naḥman says that Rabba bar Avuh says that the verse states: “And you shall love your fellow as yourself” (Leviticus 19:18), teaching that even with regard to a condemned prisoner, select a good, i.e., a compassionate, death for him. Therefore, the structure used for stoning is constructed sufficiently high that he dies quickly, without any unnecessary suffering.

[179] The Gemara asks: If so, let us raise the structure even more, so that his death will be even less painful. The Gemara answers: This is not done, because if he fell from a greater height, his organs would be crushed and he would become completely disfigured, which is certainly not a way one would prefer to die.

[180] Rava again raised an objection to the opinion of Rav Naḥman: The Torah requires constructing a parapet on the roof of one’s house to prevent anyone from falling to his death, as the verse states (Deuteronomy 22:8): “You shall not bring blood upon your house, if any man falls from it.” The term “from it” teaches that liability exists only for falling from the roof of the house, but not onto the roof of a house.

[181] How is this so? If an area in the public domain was ten handbreadths higher than a private house and the owner did not construct a fence between his house and the public domain, and someone fell from inside the public domain onto the house, the owner of the house is exempt. By contrast, if the public domain was ten handbreadths lower than the house, and the owner did not construct a fence on his roof, and someone fell from the roof of the house into the public domain, he is liable.

[182] And if it enters your mind that there is a sufficiently strong impact to cause death even at a height of less than ten handbreadths, why do I need the roof to be ten handbreadths high for there to be a requirement to construct a parapet? Rav Naḥman said to him: The halakha of the parapet for the roof of a house is different, since any structure less than ten handbreadths is not classified as a house, and only a house requires a parapet.

[183] Rava objects: If that is so, i.e., if the requirement to build a parapet is limited to a house that is ten handbreadths high, then also now, where the house is ten handbreadths higher than the public domain when measured from the outside, remove the height of the ceiling and the plaster, which is an additional layer on top of the ceiling. When measured from the inside in this manner, its height is not

ten. According to you, then, it is not classified as a house. Rav Naḥman said to him: It is a case where he hollowed out an extra space inside in the floor of the house so that its height would be ten handbreadths.

184 Rava challenges him: If so, in a situation where the house is not ten handbreadths from the outside as well, you can find a scenario where it is ten handbreadths from the inside, such as where he hollowed out extra space in the floor, thereby transforming it into a house with the required height. Why, then, would a person be exempt in this case?

185 The Gemara answers: Rather, the previous explanation must be entirely rejected, and this is the reasoning of Rav Naḥman when he ruled that one must suspect that the ox's organs were crushed upon falling into the water channel. He maintains the following argument: How far is the distance from the stomach of the ox to the ground? It is four handbreadths. How deep is the water channel? It is six handbreadths. This totals ten handbreadths. Therefore, it transpires that when the ox hits the ground, it is from a height of ten handbreadths that it hits the ground, since it landed on its stomach and not on its feet.

186 The Gemara asks: But with regard to the mishna, which teaches: Just as a pit that has sufficient depth to cause death when falling into it is at least ten handbreadths deep, so too, any other excavations that have sufficient depth to cause death may be no less than ten handbreadths deep, why not say that a pit with six handbreadths would also be sufficient?

187 The Sages said in reply: The mishna is referring to a case where the animal rolled into the pit, in which case the pit would be required to have a depth of ten handbreadths. By contrast, if it fell while walking, the extra height from the ground to its stomach is included in calculating the ten handbreadths.

188 MISHNA: If a pit belonging to two partners was uncovered and the first partner passed by it and did not cover it, and then the second passed by it and did not cover it, the second is liable for any damage caused by means of the pit.

189 GEMARA: The Sages say: How can you find such a case of a pit belonging to two partners? This works out well if we hold in accordance with the opinion of Rabbi Akiva, who says that one who digs a pit on his own property and then declares the property, but not the pit, ownerless, is liable for damage. According to him, you find such a case where the courtyard belongs to both of them and the pit belongs to both of them, and they renounced ownership of their property but did not renounce ownership of their pit. In that case, both are responsible for any damage caused.

190 But if we hold that one who digs a pit on his own property and then declares the property, but not the pit, ownerless, is exempt from liability for damage caused, how can you find a case of a pit for which a person is liable? It can only be a case where it is located in the public domain, and how can you find a case of a pit belonging to two partners in the public domain?

191 If they both jointly appointed an agent and said to him: Go dig a pit for us, and he went and dug a pit for both of them, then neither is liable. This is because there is no agency for transgression, and the digger is solely responsible. And if this partner dug a pit five handbreadths deep and this partner dug five further handbreadths deep, the significance of the initial act of digging performed by the first partner has been removed. Now all responsibility rests with the second partner, who deepened

the pit to ten handbreadths, which is the minimum depth for which one is liable for an animal's death. Therefore, this is also not treated as a jointly owned pit.

[192] The Gemara notes: This works out well according to the opinion of Rabbi Yehuda HaNasi, and you find in a case of damage that both would be liable, as the Gemara will soon explain. Therefore, it qualifies as a case of a pit belonging to two partners. But according to the opinion of Rabbi Yehuda HaNasi, the first partner is not held liable at all in a case where the pit causes an animal's death; and according to the opinion of the Rabbis, the first partner is not held liable both in a situation where it causes death and in a situation where it merely causes damage. If so, how, can you find an instance of a pit belonging to partners?

[193] Rabbi Yoḥanan says: This is referring to a case where they both extracted a chunk of earth from the bottom of the pit simultaneously, and thereby completed it to a depth of ten handbreadths. This, then, would constitute a pit belonging to both of them.

[194] Having mentioned the dispute between Rabbi Yehuda HaNasi and the Rabbis, the Gemara inquires: What is the opinion of Rabbi Yehuda HaNasi, and what is the opinion of the Rabbis? As it is taught in a baraita: With regard to one who digs a pit nine handbreadths deep, and another person came and completed the digging to a depth of ten handbreadths, the latter individual alone is liable for an injury or death caused by the pit. Rabbi Yehuda HaNasi says: One follows the latter for restitution for death caused by the pit. The latter is solely liable, since only a pit of ten handbreadths renders a person liable for an animal's death. And one follows both of them for restitution for damage caused by the pit.

[195] The Gemara explains: What is the reason for the opinion of the Rabbis? As the verse states: "If a man shall open a pit, or if a man shall dig a pit" (Exodus 21:33), it raises the question: If he is liable for opening a covered pit that has already been dug, then is it not all the more so that he should be liable for digging a new pit? What, then, does that latter phrase add? Rather, the verse serves to include the case of one person who begins to dig a pit and after he does so, a second person continues to dig. By subsequently stating: "If a man shall dig a pit," the Torah teaches that a new pit is effectively created by the second digger, whose digging removed, i.e., rendered irrelevant, the action of the first digger and who bears full responsibility for the pit.

[196] And Rabbi Yehuda HaNasi could have said to you: These two clauses in the verse are both necessary, and the second clause cannot serve to teach the halakha of the sole liability of the second digger. The reason they are necessary is as we said earlier (50a), where interpretations were cited according to both Rabbi Yishmael and Rabbi Akiva. The Gemara asks: And don't the Rabbis also agree that they are necessary for those interpretations? If so, what is the source of their opinion that responsibility for the pit rests solely with the second partner?

[197] Rather, the previous explanation must be rejected, and this is the reason of the Rabbis: The verse states: "If a man shall dig a pit," indicating that one person is liable, but not two. Therefore, if two people jointly created the pit, the second bears responsibility and not the first.

[198] The Gemara asks: And how does Rabbi Yehuda HaNasi understand the phrase "if a man shall dig a pit"? The Gemara answers: He requires that phrase to teach another halakha. The phrase "if a man shall dig a pit" indicates that a person who digs a pit is liable, but one is not liable if his ox digs a pit.

[199] The Gemara asks: And from where do the Rabbis derive this halakha? The Gemara answers that the combination of words: Man and pit, is written twice: “If a man shall open a pit, or if a man shall dig a pit.” From one phrase, the halakha is derived that a person must do the digging, and not an animal. From the second phrase, the halakha is derived that one person bears responsibility for the damage, and not two people.

[200] The Gemara asks: And what does Rabbi Yehuda HaNasi derive from this repetition? The Gemara answers: In his opinion, since the Torah wrote this first clause using this wording, it similarly wrote this second clause in the same fashion. The repetition is for stylistic reasons, and is not meant to teach a new halakha.

[201] The Gemara continues to ask about the opinion of the Rabbis: And even if they derive from the verse that only one person is liable for damage caused through the pit, from where do they know that the Torah intends to render specifically the latter one liable for the damage? Perhaps it is to render the first one who started the digging liable for the damage.

[202] The Gemara answers: It should not enter your mind to suggest this, since the verse states: “And the carcass shall be for him” (Exodus 21:34). This indicates that it is the one who causes the death, i.e., the second one, who is liable, and not the first. This is because it is the second one who completed digging the necessary depth for causing death, and not the first.

[203] The Gemara asks: But isn’t this clause: “And the carcass shall be for him,” necessary for that which Rava states? As Rava says: With regard to a disqualified consecrated ox that fell into a pit, the pit’s owner is exempt, as it is stated: “And the carcass shall be for him.” Evidently, the verse is stated with regard to a case where the carcass belongs to him. This ox, which was consecrated and subsequently disqualified, does not fully belong to anybody, since its use is restricted. Since this verse serves to teach Rava’s ruling, it cannot serve to teach about the liability of the second digger.

[204] The Sages said in response: And can’t you learn from the words and emphasis of the verse by itself that we are dealing with the one who caused the animal’s death, even if these words are also used to derive Rava’s ruling? Therefore, the verse can serve as a source for both rulings.

[205] On a similar subject, the Sages taught: In a case of one who digs a pit to a depth of ten handbreadths, and another comes and completes the depth to twenty handbreadths by digging an additional ten handbreadths, and another comes and completes it to thirty, they are all liable for any damage caused by this pit. The Gemara comments: And one can raise a contradiction against this from a baraita: In a case of one who digs a pit to a depth of ten handbreadths, and another came and plastered it and cemented [vekhiyyeid] it, the latter is liable for damage, and not the first.

[206] Shall we say that this baraita, which teaches that they are all liable, is in accordance with the opinion of Rabbi Yehuda HaNasi, who holds both liable for digging, and this baraita, which holds the latter liable, is in accordance with the opinion of the Rabbis, who hold only the last one liable?

[207] Rav Zevid said: Both this baraita and that baraita are in accordance with the opinion of the Rabbis. The way the first baraita accords with their opinion is that the Rabbis say that the last one is liable only where the first one did not make the pit of sufficient measurement to cause death, but dug less than ten handbreadths. But where the first one made a pit of sufficient measurement to cause death, such as in this case, where the first one dug ten handbreadths himself and it was subsequently deepened further by others, even the Rabbis concede that they are all liable.

[208] The Gemara asks: But in the second baraita, where he plastered and cemented it, the first made a pit of sufficient measurement to cause death, and nevertheless, the baraita teaches that the last person is liable. They said in response: There it is referring to a case where the pit did not have fumes capable of leading to death, since it was very wide. And then the other came, and by narrowing it with plaster and cementing it, he added to it the characteristic of having fumes capable of leading to death.

[209] There are those who say that this is what Rav Zevid said: Both this baraita and that baraita are in accordance with the opinion of Rabbi Yehuda HaNasi. This first baraita, which teaches: They are all liable, fits well with his opinion. That second baraita, which teaches: The last one alone is liable, is referring to a case where the pit did not have sufficient fumes in it that were capable of leading to either death or damage, and then another person came and by narrowing it with plaster and cementing it, he added to it the characteristic of having fumes capable of leading to both death and damage.

[210] Elaborating on this subject, Rava says: With regard to one who placed a stone at the opening of a pit less than ten handbreadths deep and brings the pit to a depth of ten handbreadths by raising the ground next to the opening of the pit, we have arrived at the dispute between Rabbi Yehuda HaNasi and the Rabbis concerning whether only the second or both are responsible for damage caused.

[211] The Gemara asks: Isn’t this obvious? This is precisely the case they are disputing, so what does Rava’s statement add to this? The Gemara answers: Lest you say that there is a distinction between a person deepening a pit at the bottom, in which case it is his lethal fumes that he caused that kill the animal, but if he added to the pit at the top, where it is not his lethal fumes that kill the animal, say that he would not be liable. Rava’s statement teaches us that the last one is liable, and this case is subject to dispute between Rabbi Yehuda HaNasi and the Rabbis as to whether only the last one or both are liable.

[212] Rava raises the following dilemma: If someone dug another handbreadth in a pit that was nine handbreadths deep, so that it reached a depth of ten handbreadths, and subsequently closed up that handbreadth inside the pit, or if he removed his stones that he had placed at the opening of the pit so that the depth of the pit was reduced to less than ten handbreadths, what is the halakha? Do we say that what he did to increase the depth of the pit to ten handbreadths, he has removed, and restored the initial situation that existed before he dug the extra handbreadth, causing responsibility for damage to revert solely to the original digger?

[213] Or perhaps, by closing it up, he removed the action of the first digger, since he has removed the ability of the pit to cause death? If so, it moves entirely into his possession and he now assumes full responsibility for the pit of nine handbreadths. The Gemara concludes: The question shall stand unresolved.

[214] § Rabba bar bar Ḥana says that Shmuel bar Marta says: With regard to a pit that is eight handbreadths deep and two handbreadths of it contain water, one is liable for it. What is the reason? Each handbreadth of water is like two handbreadths of dry space. Therefore, the pit is effectively ten handbreadths in depth and contains a sufficient quantity of lethal fumes to render its owner liable.

[215] A dilemma was raised before the Sages: If a pit is nine handbreadths deep, and from that measurement, one handbreadth contains water, what is the halakha? Is this case equivalent to the previous one? Do we say that since there is not as large a quantity of water as in the case stated by

Rabba bar bar Ḥana, the pit does not have a sufficient quantity of lethal fumes to render the digger liable? Or perhaps it can be argued that since the pit is deeper than the one in the previous case, it does have lethal fumes, despite containing less water?

216 Similarly, the following question can be raised: What is the halakha if a pit is seven handbreadths deep and three of the handbreadths contain water? Do we say that since there is a much larger quantity of water in this case, it is equivalent to a pit of ten handbreadths and therefore has lethal fumes, or perhaps since it is not as deep, it does not have a sufficient quantity of lethal fumes to render the digger liable? The Gemara concludes: The question shall stand unresolved.

217 Rav Sheizevi asked the following question of Rabba: If one widened the opening of a pit that was already ten handbreadths deep, what is the halakha? Rabba said to him: By doing so, he has actually reduced the lethal fumes and has not worsened the situation. Therefore, he should not be liable. Rav Sheizevi said to him: On the contrary, by widening the opening of the pit, he has brought the potential for damage closer to an animal that might fall inside.

218 Rather, Rav Ashi said concerning this question: Let us see: If the animal died because of the lethal fumes, the one who widened the pit should be exempt, since he reduced the lethal fumes. But if the animal died because of the impact, he should be liable, since he has brought the potential for damage closer to it. There are those who say that Rav Ashi said: Let us see: If the animal fell on that side that he widened, then his action has brought the potential for damage closer, and so he should be liable. But if the animal fell on the other side, he should bear no responsibility, since he reduced the lethal fumes.

219 It was stated: With regard to a pit whose depth is equal to its width, Rabba and Rav Yosef both say a ruling in the name of Rabba bar bar Ḥana, who says it in the name of Rabbi Mani, but each present it differently. One of them says: A pit always contains a quantity of lethal fumes sufficient for liability, unless its width is greater than its depth. Therefore, when they are equal, the digger is liable. And one says: A pit never contains a quantity of lethal fumes sufficient for liability, unless its depth is greater than its width. Consequently, when they are equal, the digger is exempt.

220 § The mishna teaches that if the first partner passed by the pit and did not cover it, and then the second also passed by it and did not cover it, the second is liable. The Gemara asks: And from what point is the first exempt from responsibility for the pit? Rabba and Rav Yosef both say a ruling in the name of Rabba bar bar Ḥana, who says it in the name of Rabbi Mani, but each one presents it differently: One says: From the time he leaves the other partner using it, and one says: The first is absolved of responsibility only when he conveys to him his bucket, with which he will draw water from the pit.

221 The Gemara notes: This dispute is like a dispute between tanna’im, as it is taught in a baraita: With regard to one who draws water from a cistern, and his friend comes and says to him: Leave me and I will draw water, once the first person leaves the second person while the second is using the cistern, the first is now exempt if he did not cover it. Rabbi Eliezer ben Ya’akov says: The first person is not absolved of responsibility until the time when he conveys his bucket to the second person.

222 The Gemara clarifies the dispute: With regard to what principle do they disagree? Rabbi Eliezer ben Ya’akov maintains that there is a legal concept of designation. According to this principle, a situation in which certain aspects were not initially clearly defined can become clarified retroactively

after a certain action or event occurs. The halakha treats all the aspects as being clearly defined and identifiable from the outset.

[223] In this case, the water is considered divided between the partners even before they draw it. When they do draw it, it is treated as if this one were filling from his part, the location of which has now been determined retroactively, and this one were filling from his part. Therefore, as long as the first partner has not conveyed his bucket to the second, he, as an owner of a defined part of the water, has not absolved himself of responsibility for the cistern. And by contrast, the Rabbis maintain that there is no designation and they both have the right to draw water from the cistern. Therefore, as soon as the second partner is left alone to draw water, he is responsible for the cistern and all the water it contains, even without conveying the bucket.

[224] Ravina said: And in this regard, they follow their lines of reasoning in an analogous case, as we learned in a mishna (Nedarim 45b): With regard to the case of partners that vowed not to derive any benefit from each other, it is prohibited for them to enter their jointly owned courtyard, as this would violate their vows. Rabbi Eliezer ben Ya’akov says: It is permitted for them to enter the courtyard, since this one enters into his portion of the courtyard and that one enters into his portion.

[225] The Gemara explains: With regard to what principle do they disagree? Rabbi Eliezer ben Ya’akov maintains that there is retroactive designation, and retroactively the section of the courtyard that each one enters becomes the portion that belongs to him. Therefore, this one enters his part, and that one enters his part. By contrast, the Rabbis maintain that there is no retroactive designation, and each portion of the courtyard belongs jointly to both.

[226] § Having mentioned this halakha concerning conveying a bucket to transfer responsibility for the pit, the Gemara cites that which Rabbi Elazar says: With regard to one who sells a cistern to another, once the seller conveys his bucket to the buyer for drawing water from the cistern, the buyer acquires the cistern. The Gemara asks: What are the circumstances? How does conveying the bucket serve to effect acquisition of the cistern? If he is acquiring the cistern by means of paying money, let him acquire it with money that he paid. If he is acquiring the cistern by means of taking possession, then let him acquire it by taking possession, which is accomplished by using it.

[227] The Gemara answers: Actually, the case is where the cistern was acquired through taking possession, and in that case, the seller usually must say to him: Go, take possession, and thereby acquire it for yourself. And in this case, when he conveys his bucket to him, he is like one who says to him: Go, take possession, and thereby acquire it. Therefore, once he begins drawing water from the cistern, he has acquired it through taking possession.

[228] The Gemara cites a related ruling: Rabbi Yehoshua ben Levi says: If one sells a house to another,

[229] once he has conveyed the key to him, he has acquired it.

[230] Here too, the Gemara asks: What are the circumstances involving this sale? If it was a transaction by payment of money, then let him acquire it by paying money. If it was by taking possession of it, let him acquire it by taking possession. What is the significance of transferring the key? The Gemara answers: Actually, the transaction occurred by taking possession, and in that case, the seller usually must say to him: Go, take possession, and thereby acquire it for yourself. And in this case, once he conveys the key to him, he is considered like one who says to him: Go, take possession, and thereby acquire it.

231 Similarly, Reish Lakish says in the name of Rabbi Yannai: With regard to one who sells a flock of sheep to another, once he conveys the mashkukhit to the buyer, he has acquired the flock.

232 The Gemara asks: What are the circumstances of this case? If the transaction occurred by pulling the flock into his possession, then let the buyer acquire it by pulling. If it was by conveying it, let the buyer acquire it by the seller conveying it. The Gemara answers: Actually, it was a transaction by pulling, and in that case, the seller usually must say to him: Go, pull it and acquire it for yourself. And in this case, once he conveys the mashkukhit to him, he is like one who says to him: Go, pull it and acquire it.

233 The Gemara asks: What is this mashkukhit? Here, in Babylonia, they translate it as a bell [karkashta] that the shepherd rings and whose sound the flock follows. Rabbi Ya'akov says: It is referring to the goat that goes at the front of the flock that they follow. The Gemara notes: This explanation of Rabbi Ya'akov is similar to that which a certain Galilean taught in the presence of Rav Ḥisda concerning this goat: When a shepherd is angry with his flock, he renders the goat leading [lenaggada] them, i.e., the mashkukhit, blind. Similarly, when God is angry with the Jewish people, he appoints unsuitable leaders for them.

234 MISHNA: The mishna lists several halakhot that pertain to damage classified as Pit: In the case of a pit that the first person who passed by covered after using it, and then the second came to use it and found it uncovered after the cover fell off or was damaged, and he did not cover it, the second one is liable for damage caused by the pit. If the owner covered the pit appropriately and an ox or a donkey fell into it and died, he is exempt. If he did not cover the pit appropriately and an ox or a donkey fell into it and died, he is liable.

235 If a man was digging or widening a pit, and an ox passing by fell forward into it in fright due to the sound of the digging, he is liable. If it fell backward into the pit due to the sound of the digging, he is exempt.

236 If an ox and its accoutrements, i.e., the vessels it was carrying, fell into the pit and the vessels were broken, or if a donkey and its accoutrements fell in and the accoutrements were torn, the owner of the pit is liable for damage to the animal caused by the pit, but he is exempt from liability for damage caused to the vessels, by Torah edict.

237 If an ox that was impaired by being deaf, or an ox that was an imbecile, or an ox that was very young fell into the pit, he is liable. If a boy or a girl, a Canaanite slave or a Canaanite maidservant fell in, he is exempt, since there is a Torah edict that the digger of a pit is liable only for damage caused to an animal.

238 GEMARA: With regard to the first case in the mishna, the Gemara asks: And until when is the first person exempt if the pit is later uncovered? Rav says: He is exempt from liability for the time necessary for him to become aware that it became uncovered. Once this time has passed, he bears responsibility. And Shmuel says: He is exempt for the time necessary for others to realize that the pit is uncovered and inform him. And Rabbi Yoḥanan says: He is exempt for the time necessary for others to inform him that the cover has fallen down and for him to hire workers and cut cedar trees to make a suitable cover and cover it. After this period of time has passed, the first bears responsibility.

239 § The mishna teaches: If he covered the pit appropriately and an ox or a donkey fell inside and died, he is exempt. The Gemara asks: Since he covered the pit appropriately, how did it fall in? Rabbi

Yitzḥak bar bar Ḥana says: This is a case where the cover rotted from the inside, and he could not have known that the cover was damaged. Therefore, he is not responsible for damage caused as a result.

240 A dilemma was raised before the Sages: If he covered it with a cover that is able to withstand the weight of oxen but cannot withstand the weight of camels, which are heavier, and camels came and weakened it, and subsequently oxen came and broke the weakened cover and fell into the pit, what is the halakha? The Sages said in response: What are the circumstances? If camels are commonly found there, he is negligent, since he should have constructed the cover suitably for camels as well. And if camels are not commonly found there, then he is a victim of circumstances beyond his control if by chance they did come and weaken the cover.

241 The Gemara answers: No, it is necessary in a case where camels come occasionally, in which case the question effectively becomes: Do we say that since they come occasionally, he is considered negligent, since he should have anticipated their coming? Or perhaps since now, in any event, there are no camels, he is a victim of circumstances beyond his control.

242 Come and hear a possible proof from the mishna: If he covered the pit appropriately, and an ox or a donkey fell into it and died, he is exempt. Now what are the circumstances? If we say that he covered it appropriately for oxen and appropriately for camels, then how did they fall in? Rather, is it not the case that he covered it with a covering that was appropriate for oxen

243 but not appropriate for camels? In this case, the following must be clarified: If it is a location where camels are commonly found, why is he exempt? He is negligent. And if camels are not commonly found there, it is obvious that he is exempt, since he is clearly a victim of circumstances beyond his control. Rather, is it not the case that this is a location where camels come occasionally, and camels came and weakened the covering, after which oxen came and fell into it? And with regard to this case, it teaches that he is exempt. Apparently, since now, in any event, the camels are not there, he is considered a victim of circumstances beyond his control.

244 They said in reply: No; actually, the scenario is where he covered it appropriately for oxen and appropriately for camels, and as for what was difficult for you to explain: How did they fall? Rabbi Yitzḥak bar bar Ḥana says: It is where the cover rotted from the inside, and so nothing can be derived from here with regard to the question posed above with regard to the camels.

245 The Gemara suggests: Come and hear a different proof from the mishna: If he did not cover the pit appropriately, and an ox or a donkey fell in and died, he is liable. Now, what are the circumstances? If we say that he did not cover it appropriately for oxen and he did not cover it appropriately for camels, and they fell in, it is obvious. Does it need to be said that he is liable in that case? Rather, is it not referring to a case where he covered it appropriately for oxen but not appropriately for camels? And if this is the case, the following point must be clarified: What are the circumstances? If camels are commonly found there, he is clearly negligent, but if camels are not commonly found there, he is a victim of circumstances beyond his control.

246 Rather, is it not referring to a case where camels come occasionally, and camels came and weakened it, and subsequently oxen came and fell into it? And in this case, it teaches that he is liable. Apparently, since they do come occasionally, he is considered negligent, since he should have anticipated that they would come.

[247] The Gemara responds: Actually, it is possible that he covered it appropriately for oxen but not appropriately for camels, and camels are commonly found there. And as for what was difficult for you to explain: In such a case he is considered negligent and should be liable, rendering the ruling in the mishna superfluous, one may answer that since the tanna needs to cite the first clause with regard to the halakha if he covered it appropriately, he cites the latter clause as well, with regard to the halakha that if he did not cover it appropriately, he is liable.

[248] There are those who say that the discussion is as follows: With regard to this also we certainly did not raise the dilemma, because since they occasionally come, he is considered negligent, as he should have anticipated this possibility.

[249] When we raised the dilemma, this is the dilemma that we raised: He covered it with a cover that is able to withstand the presence of oxen but is unable to withstand the presence of camels, and camels are commonly found in that location. What actually transpired was that the cover rotted from the inside. In this case, what is the halakha? Do we say: Since he was negligent concerning camels, he is considered negligent also concerning the rotting? Or perhaps we do not say that since he was negligent concerning camels he is considered negligent concerning rotting, and since in practice he is not to blame for the incident, he is not held liable?

[250] The Gemara suggests: Come and hear a proof from the mishna: If he covered the pit appropriately and an ox or a donkey fell into it and died, he is exempt. And it was stated with regard to this that Rabbi Yitzḥak bar bar Ḥana says: This halakha applies where the cover rotted from the inside. The Gemara clarifies: What are the circumstances? If we say that it is referring to where he covered it in a manner appropriate for oxen and appropriate for camels and it rotted from the inside, isn’t it obvious that he is exempt? Being unaware of this, what should he have done?

[251] Rather, is it not referring to a case where he covered it appropriately for oxen but not appropriately for camels, and camels are commonly found in that location? And the strength of the cover vis-à-vis oxen and camels is not relevant to the halakha here because the cover rotted from the inside. And the mishna teaches that he is exempt. Apparently, we do not say that since he is considered negligent concerning camels, he is also considered negligent with regard to the rotting.

[252] The Gemara rejects this: No; actually, the case is where the cover was appropriate for camels and appropriate for oxen, and it rotted from the inside. And as for what was difficult for you to explain: When it rotted from the inside, what should he have done, and shouldn’t he be exempt? There is, nevertheless, a novelty in this ruling: It is necessary lest you say that he should have gone and knocked on the covering to ensure it was not hollow on the inside. Therefore, the mishna teaches us that he is not required to check to this extent.

[253] The Gemara suggests: Come and hear a proof from the continuation of the mishna: If he did not cover the pit appropriately and an ox or a donkey fell into it and died, he is liable. The Gemara clarifies: What are the circumstances? If we say that it is referring to where he did not cover it appropriately for oxen and did not cover it appropriately for camels, does it need to be said that he is liable?

[254] Rather, is it not a case where he covered it appropriately for oxen but not appropriately for camels? In this case, the following point needs clarification: If camels are commonly found there, he is negligent and should be liable. And if camels are not commonly found there, he is a victim of circumstances beyond his control. Rather, is it not a case where camels are commonly found there,

and it rotted from the inside, and the mishna teaches that he is liable? Apparently, we do say that since he is negligent concerning the camels, he is considered negligent concerning the rotting, and he is therefore liable.

[255] They said in response: No; actually it is referring to where he covered the pit appropriately for oxen but not appropriately for camels; and camels are commonly found there, and camels came and weakened the cover. And, subsequently, oxen came and fell in. And as for what was difficult for you to explain: It is obvious that he is liable, since he is clearly negligent, so what novelty is being introduced? The answer is that since he needs to cite the first clause of the mishna, i.e., where he covered the pit appropriately, he therefore cites the latter clause as well, i.e., where he did not cover it.

[256] The Gemara suggests: Come and hear a different proof from a baraita: With regard to an ox that was impaired by being deaf, or an ox that was an imbecile, or an ox that was very young, or a blind ox, or an ox that is walking at night and unable to see, if it fell into the pit, he is liable. If the ox was of standard intelligence for its species and was walking in the day, the owner of the pit is exempt, since the ox should have been aware of the pit. The Gemara asks: But why is he exempt? Let us say that since he is considered negligent concerning a deaf ox, he is also negligent concerning an ox of standard intelligence. Rather, is it not correct to conclude the following principle from here: We do not say that since he is negligent with regard to one matter, it is also considered negligence with regard to another matter, but he is held liable only for the damage actually attributable to his negligence? The Gemara affirms: Yes, conclude from the mishna that this is so.

[257] § The mishna teaches: If a man was digging or widening a pit, and an ox passing by fell forward into it in fright due to the sound of the digging, he is liable. If it fell backward into the pit due to the sound of the digging, he is exempt. Rav says: The term forward means literally forward, and the term backward means literally backward,

[258] and both this and that refer to where it fell into the pit itself, but nevertheless if it fell backward, he is exempt.

[259] The Gemara notes: Rav conforms to his line of reasoning, as Rav says: Damage classified as Pit for which the Torah obligates him to pay is referring specifically to damage caused by the pit's lethal fumes, such as if an animal suffocates inside it, but not to damage caused by the impact of hitting the ground, for which he is exempt from paying compensation. Since the ox in this case fell backward on its back, the owner of the pit is exempt from paying compensation, as the ox wasn't killed by the lethal fumes of the pit, but by the impact of the fall.

[260] And Shmuel says: If the ox fell into the pit, whether it fell forward or whether it fell backward, he is liable.

[261] The Gemara notes: Shmuel conforms to his line of reasoning, as Shmuel says: With regard to damage classified as Pit, the Torah holds one liable for damage caused by its lethal fumes, and all the more so for damage resulting from the impact of the fall. The Gemara asks: But according to Shmuel, what are the circumstances concerning which the mishna stated that if the ox fell backward into the pit due to the sound of the digging that one is exempt? The Gemara answers: This applies, for example, where the ox stumbled on the pit, and then fell behind the pit and was injured outside the pit.

[262] The Sages raised an objection to the opinion of Rav from a baraita: With regard to an animal that fell into a pit, whether it fell in forward or whether it fell in backward, he is liable. This constitutes a conclusive refutation of Rav.

[263] Rav Ḥisda said in explanation of how Rav's opinion could accord with the baraita: Rav concedes in the case of a pit on his own property that a person is liable even if the animal fell backward, because the owner of the animal can say to the owner of the pit: Whichever way you look at it, you are liable. If my animal died due to the lethal fumes, these are your lethal fumes. If it died on account of the impact, this is the impact of your land, and not the impact of land in the public domain, which is the typical case of Pit.

[264] Rabba said that this is how the baraita should be explained according to Rav: Here we are dealing with where the animal tumbled, i.e., where it began to fall on its face, and afterward tumbled and continued to fall on its back. In this case, he is liable because the lethal fumes, which were effective in injuring the animal, were also effective in killing it.

[265] Rav Yosef said: Here, in this baraita, we are dealing with damage to the pit that is caused by the ox. And what is the damage? The damage is that it contaminated the water in the pit, in which case the baraita states that it makes no difference if the animal fell forward and it makes no difference if it fell backward, since he is liable either way.

[266] Rav Ḥananya taught a baraita in support of the opinion of Rav: The verse states with regard to damage caused by a pit to an animal: "And an ox or a donkey fall therein" (Exodus 21:33), which is interpreted to mean that one is not liable unless the animal falls in the usual manner of falling. From here the Sages stated that if it fell forward due to the sound of the digging, he is liable, but if it fell backward due to the sound of the digging, he is exempt, and both this case and that case refer to damage by a pit.

[267] § The Master said in the mishna: If it fell forward due to the sound of the digging, he is liable. The Gemara asks: But why is this so? Let us say that it is the sound of the digger that caused the animal to fall, and not the pit itself. The Gemara answers that Rav Shimi bar Ashi said: In accordance with whose opinion is this? It is in accordance with the opinion of Rabbi Natan, who says: The owner of the pit causes the damage by his digging, and anywhere that it is not possible to collect payment from this one who caused the fall, i.e., the digger, payment is collected from that one, i.e., the owner of the pit. This is because in any event, he bears responsibility for the hazard he created.

[268] As it is taught in a baraita: With regard to an ox that pushed another ox into a pit, the owner of the first ox is liable, and the owner of the pit is exempt. Rabbi Natan says: The owner of the first ox pays half the amount, and the owner of the pit pays half the amount.

[269] The Gemara clarifies Rabbi Natan's opinion: But isn't it taught in a baraita that Rabbi Natan says: If an ox pushed another ox into a pit, the owner of the pit pays three-quarters, and the owner of the first ox pays one-quarter? The Gemara resolves the contradiction: This is not difficult, as this second baraita is referring to an innocuous ox that pushed the second ox. Therefore, the owner of the ox that caused damage pays only one-quarter of the cost of the damage, which is half of the half for which he is responsible. By contrast, that other baraita is referring to a forewarned ox that pushed a second ox. Consequently, the owner of the forewarned ox pays the full amount for which he is responsible, i.e., half the value of the total damage.

270 The Gemara asks: And with regard to an innocuous ox, what does Rabbi Natan hold as to why this person pays one-quarter and the owner of the pit pays three-quarters? If he holds that this one, i.e., the ox, performed all the damage and the other, i.e., the pit, performed all the damage, then he should have ruled that this one pays half and that one pays half, since they are both fully responsible. Although the ox was innocuous, the owner is still liable to pay half the cost of the damage, as that is the liability incurred for an act of damaging by an innocuous ox.

271 And if Rabbi Natan holds that this one, i.e., the owner of the ox, performed half the damage, and that one, i.e., the owner of the pit, performed half the damage, then the owner of the pit should pay half of the amount for which he is responsible, i.e., half the cost of the damage, and the owner of the innocuous ox should pay only one-quarter, which is half the amount for which he is responsible. As for the other remaining quarter, the injured party has no recourse to claim it, and loses it. Why, then, does Rabbi Natan hold that the owner of the pit pays for three-quarters of the damage?

272 Rava said: Rabbi Natan is a judge and has plumbed the full depths of the halakha. Actually, he holds that this one performed all of the damage and that one performed all of the damage. And as for your difficulty, that this one should pay half and that one should pay half, that is not difficult. The owner of the ox pays only one-quarter, because the owner of the ox can say to the owner of the pit: How did my partnership with you in this situation help me? Even if my ox caused all the damage and none of the damage was caused by the pit, I would be required to pay only half the cost of the damage. Therefore, as we are partners in this situation, I should pay half of what I should have paid, which is one-quarter. You should pay the other half of what I should have paid, in addition to your share, since you would have had to pay full damages.

273 The Gemara adds: If you wish, say instead a different explanation: Actually, Rabbi Natan maintains that this one performed half the damage and that one performed half the damage. As for your difficulty with the fact that the owner of the pit should pay half and the owner of the ox should pay one-quarter, and the injured party loses the other remaining quarter, that is not difficult. This is because the owner of the killed ox can say to the owner of the pit: I found my ox in your pit. Consequently, I am assuming that you killed it. Therefore, concerning that portion of the payment that I can receive from the other, i.e., the owner of the damaging ox, I will receive it. Concerning that portion that I am unable to receive from the other individual, I will receive it from you.

274 On the same subject, Rava says: If one left a stone at the opening of a pit belonging to another person, and an ox came and stumbled on it and fell into the pit, we have arrived at the dispute between Rabbi Natan and the Rabbis concerning the division of responsibility between them. The Gemara asks: Isn’t this obvious, since what is the difference whether the ox fell into the pit due to another ox pushing it or due to the stone?

275 The Gemara answers: This ruling needed to be stated explicitly, lest you say that only there the owner of the pit can say to the owner of the ox who was responsible for the damage: If not for my pit, your ox would have killed the second ox anyway, in which case my pit was not the cause of the damage, but here, the owner of the stone can say to the owner of the pit: If not for your pit, what would my stone have done? If the ox would have stumbled on it, it would have simply fallen and gotten up, and I should be exempt. Therefore, Rava teaches us that this claim is not a valid one, because the owner of the pit can say in response to the owner of the stone: If not for your stone, the ox would not have fallen into the pit in the first place.

276 § It was stated:

277 There is a dispute with regard to a case of an ordinary innocuous ox and a disqualified consecrated ox that gored another ox together. What is this case of an ox that was consecrated and disqualified? It is a firstborn ox that became blemished and was consequently disqualified as an offering. Nevertheless, its initial consecration remains, and therefore it may not be redeemed. Consequently, the priest in possession of it is not liable to pay damages, since it is not classified as: The ox of another, as its status is not that of a non-sacred ox belonging to a person. Given this background, what is the liability of the owner of the non-sacred ox that gored together with it? Abaye says: He pays half the cost of the damage, whereas Ravina says: He pays one-quarter of the cost of the damage.

278 The Gemara explains the dispute: Both this one, Abaye, and that one, Ravina, refer to a case where the ordinary ox was innocuous. This opinion stated by Ravina is in accordance with the opinion of the Rabbis that each party is responsible for only half the damage. Since the non-sacred ox was innocuous, its owner pays half the cost of the damage for which he is responsible, i.e., one-quarter of the total. And that opinion stated by Abaye is in accordance with the opinion of Rabbi Natan that each party in turn is responsible for all the damage. Consequently, since the non-sacred ox is innocuous, its owner pays half the total amount.

279 If you wish, say instead that there is no dispute, and that both this one, Abaye, and that one, Ravina, state their opinions in accordance with the opinion of the Rabbis. This one, Ravina, is referring to where the non-sacred ox is innocuous, and so its owner pays half of a half, and that one, Abaye, is referring to where the non-sacred ox is forewarned, so its owner pays his entire share, i.e., half the total damage.

280 There are those who say that there was another version of this dispute: Abaye says that he pays half the cost of the damage, and Ravina says: He pays the full cost of the damage. The Gemara explains their reasoning: Both this one and that one are referring to where the ox was forewarned. This one, Abaye, holds in accordance with the opinion of the Rabbis, that each one is responsible for half the damage, and so he pays his share of half the total cost of the damage. And that one, Ravina, holds in accordance with the opinion of Rabbi Natan, that each one is fully responsible for the damage, and when one perpetrator of the damage is exempt from payment, such as this case, the entire amount is collected from the other.

281 If you wish, say instead that there is no dispute, and that both this one and that one hold in accordance with the opinion of Rabbi Natan. This one, Ravina, is referring to where the ox was forewarned and the owner pays the full cost of the damage, and that one, Abaye, is referring to an innocuous ox, for which only half the cost of the damage is paid.

282 § Rava says: With regard to an ox and a person that push a person or animal into a pit, then concerning the damage that they caused, they, i.e., the man who pushed the person or animal, the owner of the ox, and the owner of the pit, are all liable to pay the indemnity of damage. Concerning the four additional types of indemnity, which are loss of livelihood, pain, medical costs, and humiliation, and also with regard to the compensation for miscarried offspring, the person who pushed is liable, and the owner of the ox and the owner of the pit are exempt, since the Torah did not impose any obligation on them to pay these payments.

283 With regard to the payment of ransom if it was a person who was pushed and killed, and also concerning the thirty shekels paid for a Canaanite slave who was killed, the owner of the ox is liable, and the man who did the pushing and the owner of the pit are exempt. With regard to vessels and a disqualified consecrated ox that fell into the pit, the man who did the pushing and the owner of the ox are liable, and the owner of the pit is exempt.

284 Rava explains: What is the reason that the owner of the pit is exempt from liability for damage caused to a disqualified consecrated ox? Since the verse states with regard to a pit: “And the carcass shall be for him” (Exodus 21:34), it teaches that the obligation to pay damages is imposed only on the one to whom the carcass subsequently belongs, thereby excluding this case of a disqualified consecrated ox, where the carcass does not belong to him. In this case, it is prohibited to sell the carcass. The owner of the pit cannot derive benefit from it, and it no longer belongs to anyone, so the conditions written in the verse are not in effect.

285 The Gemara asks: Is this to say that this matter was obvious to Rava? Is it not a dilemma that was already raised by Rava, as Rava asked: What is the halakha with regard to a disqualified consecrated ox that fell into a pit? Is this verse: “And the carcass shall be for him,” referring to the one to whom the carcass belongs, i.e., the owner of the pit, excluding this case where the carcass does not belong to him, and therefore the owner is exempt from paying for it? Or perhaps the verse “And the carcass shall be for him” comes to teach that the owner of the animal attends to, i.e., retains ownership of, the carcass, and the perpetrator of the damage pays him the difference?

286 The Gemara answers: Initially, Rava was in doubt about the matter, but after he raised the dilemma, he then resolved it and concluded that the verse imposes liability for the cost of damage only on a person to whom the carcass belongs, excluding the case of a disqualified consecrated ox.

287 The Gemara asks: Rather, from where does he derive the halakha that the owner attends to the animal carcass? The Gemara answers: He derives it from the verse: “And the carcass shall be for him” (Exodus 21:36), stated with regard to Ox. The Gemara asks further: What did you see to determine that from the verse “And the carcass shall be for him,” stated with regard to Ox, you derive from it the halakha that the owner of the dead ox attends to the carcass, and from the verse “And the carcass belongs to him,” stated with regard to Pit, you derive from it the halakha that only the one to whom the carcass belongs pays damages? Why can’t I reverse the derivations from each verse and say the opposite?

288 The Gemara answers: It is reasonable that the exemption applies to the verse stated with regard to Pit, since the Torah also exempts one from paying for damage classified as Pit caused to vessels that fall into it and break. The Gemara challenges this answer: On the contrary, one could claim that the exemption applies to the verse stated with regard to Ox, since the Torah also exempted the owner from half the cost of the damage in the case of an innocuous ox. The Gemara responds: In any event, we do not find that the owner of the ox is exempt from compensation for the full cost of damage. By contrast, with regard to Pit, there are certain items for which a person is not liable at all. Therefore, it is logical to conclude that the Torah is more lenient in cases of Pit than of Ox.

289 § The mishna teaches: If an ox and its accoutrements, i.e., the vessels it was carrying, fell into the pit and the vessels were broken, or if a donkey and its accoutrements fell in and the accoutrements were torn, the owner of the pit is liable for damage to the animal caused by the pit, but he is exempt from liability for damage caused to the vessels, by Torah edict. The Gemara notes: The mishna is not

in accordance with the opinion of Rabbi Yehuda, as it is taught in a baraita: Rabbi Yehuda obligates a person to pay for damage caused to vessels in cases of Pit.

290 The Gemara explains: What is the reasoning of the Rabbis? Since the verse states: “And an ox or a donkey fall therein” (Exodus 21:33), it is inferred that it is specifically an ox, but not a person, for whose death the owner of the pit is liable. Moreover, one is liable for a donkey, but not vessels. By contrast, Rabbi Yehuda expounds the word “or” in the expression “an ox or a donkey” to include vessels. The Gemara asks: And how do the Rabbis explain the word “or”?

291 The word “or” is necessary to separate the cases of the ox and donkey. This indicates that if either falls in individually, the owner of the pit is liable. And how does Rabbi Yehuda derive the halakha to separate the cases in the verse? He derives it from the use of the singular form of the verb: “And an ox or donkey fall [venafal],” indicating that he is liable if even one animal falls. And the Rabbis maintain that the term and fall can also indicate many animals, as the use of the singular form of a verb does not prove that the subject is necessarily singular.

292 The Gemara now challenges both opinions: Say that the term “and fall” is a generalization, whereas the phrase “an ox or a donkey” is a detail. According to the principles of halakhic exegesis, when the Torah presents a generalization and a detail, the generalization includes only what is contained in the detail. Therefore, an ox and a donkey are indeed included, but anything else is not included.

293 The Sages said in response: The following verse: “The owner of the pit shall pay” (Exodus 21:34), means that it then generalized again. The verses are structured according to the principle of halakhic exegesis of: A generalization, and a detail, and a generalization. According to this principle, you may deduce that the verses are referring only to items that are similar to the detail. In this case, just as the explicit detail is referring to animals, so too, all items included in the generalization must be animals.

294 The Gemara now challenges this answer: If so, just as the explicit detail, i.e., the ox and donkey, is referring to items whose carcass renders a person ritually impure by contact or by carrying, so too, all items, i.e., all animals, whose carcass renders a person ritually impure through contact or by carrying, should be included in the halakhot of damage classified as Pit. But birds, whose carcasses do not render a person impure through contact or by carrying, would not be included.

295 The Gemara answers: If so, let the Merciful One write only one detail, from which the exclusion of birds could be derived. The Gemara asks: Which detail should the Torah write? If it writes only an ox, I would say that an item that is sacrificed on the altar, such as an ox, indeed renders the owner of the pit liable, whereas an item that is not sacrificed on the altar does not render him liable. And if the Merciful One writes only a donkey, I would say: Those animals whose firstborn is sanctified, such as a donkey, as described in the Torah (Exodus 13:13), do indeed render their owners liable, but animals whose firstborn is not sanctified do not render them liable. Therefore, the Torah states both an ox and a donkey.

296 The original difficulty therefore resurfaces: Why is the verse not expounded as a generalization, a detail, and a generalization, thereby excluding birds? Rather, the previous method of deriving liability for a pit must be rejected, and instead it should be derived as follows: The verse states: “And the carcass shall be for him” (Exodus 21:34), from which it may be inferred that anything subject to death is included.

[297] The Gemara asks: If this is the basis for liability for a pit, then both according to the Rabbis, who exclude vessels from liability based on another verse, and according to Rabbi Yehuda, who has amplified the halakha to include vessels, one could ask: Are vessels subject to death? Clearly, vessels cannot be subject to death. Why, then, is a separate source necessary to derive their halakhic status? The Sages said in reply: Vessels may also be considered subject to death in the sense that their shattering is tantamount to their death.

[298] The Gemara continues to challenge this explanation: But according to Rav, who says: With regard to Pit, for which the Torah deems a person liable, it is only for damage caused by its lethal fumes, but not for damage caused by the impact of the fall, the following question may be raised both according to the Rabbis and according to Rabbi Yehuda: Are vessels capable of being broken by the lethal fumes, such that a verse is necessary to exclude them? The Sages said in reply: There is such a case concerning new vessels, which crack from the fumes.

[299] The Gemara asks further: But isn't this verse: "And the carcass shall be for him," necessary for that which Rava ruled, as Rava says: With regard to a disqualified consecrated ox that fell into a pit, the owner of the pit is exempt, as it is stated: "And the carcass shall be for him." It is referring to a person to whom the carcass belongs, thereby excluding this person, to whom the carcass does not belong. Once a halakha has already been derived from this verse, it cannot be used as the basis for deriving a second halakha.

[300] Rather, the halakhot of liability for Pit must be derived from another source. The verse states concerning Pit: "He shall recompense money to its owners" (Exodus 21:34), thereby including any item that has an owner within the scope of liability. The Gemara challenges this answer: If so, then even vessels and people should be included as well, which presents a difficulty for all opinions.

[301] The Gemara answers: This is why the verse states: "An ox," but not a person; "a donkey," but not vessels. The Gemara asks: And according to Rabbi Yehuda, who amplifies the scope of liability to include vessels, granted that the term "an ox" is necessary, as he excludes people based on it, for which he is not liable. But with regard to the term "a donkey," what does he exclude based on it?

[302] Rather, Rava said: The term "donkey" stated with regard to Pit, according to the opinion of Rabbi Yehuda, and the term "sheep" (Deuteronomy 22:1), stated with regard to a lost item, according to the opinion of everyone (see Bava Metzia 27a) are difficult. There is no explanation for why they are stated.

[303] § The mishna teaches: If a ḥeresh ox or a shoteh ox or a katan ox fell into the pit, the owner of the pit is liable. The Gemara clarifies: What is meant by the phrase: A ḥeresh ox or a shoteh ox or a katan ox? If we say that it means: An ox belonging to a deaf-mute [ḥeresh], an ox belonging to an imbecile [shoteh], or an ox belonging to a minor [katan], then it can be inferred that if it was an ox belonging to a halakhically competent adult, the owner of the pit would be exempt. What would be the reason for this exemption?

[304] Rabbi Yoḥanan says: Instead, it should be interpreted as: An ox that is impaired by being deaf, or an ox that is an imbecile, or an ox that is very young.

[305] The Gemara asks: But can it be inferred that if an ox that is of standard intelligence fell into a pit, the owner of the pit would be exempt?

306 Rabbi Yirmeya said: The mishna is speaking utilizing the style of: It is not necessary, and should be understood as follows: It is not necessary to state that if an ox that is of standard intelligence fell into a pit, that the pit's owner is liable. But with regard to an ox that is deaf, an imbecile, or very young, say that it was not due to the pit alone that it fell in, but its deafness caused it to fall in or its young age caused it to fall in, and the owner of the pit should be exempt. Therefore, it teaches us that he is liable in these cases as well.

307 Rav Aḥa said to Ravina: But isn't it taught in a baraita: If a living being that is mentally competent fell into a pit, the owner is exempt. What, is it not referring to an ox that is mentally competent? Ravina said to him: No, it is referring to a person. Rav Aḥa challenges this response: If that is so, you should then infer that it is only for the injuries of a person who is mentally competent that he is exempt, but if one is not mentally competent, is the halakha that he would be liable? But the term "an ox" is written in the Torah as causing liability, and not a person.

308 Rava responded to Rav Aḥa: Rather, what does the term mentally competent mean? It is referring to a species that is mentally competent, and thereby includes all humans in the exemption from liability. Rav Aḥa said to him: But isn't it taught in a baraita: If an ox that was mentally competent fell inside it, he is exempt.

309 Rather, Rava said that Rabbi Yirmeya's explanation should be rejected, and the mishna is referring specifically to an ox that is deaf, an ox that is an imbecile, and an ox that is very young, for which he is liable; but for an ox that is of standard intelligence, he is exempt. What is the reason? The reason is that the ox should have looked carefully while walking. If it did not, it is responsible for its own injury. The Gemara notes: That idea is also taught in a baraita: With regard to an ox that is deaf, an imbecile, or very young, blind, or that is walking at night and unable to see, if it fell into a pit, the pit's owner is liable. But if the ox is of standard intelligence and is walking during the day, the pit's owner is exempt, since normal behavior for oxen is that, ordinarily, they watch where they are going and avoid pits.

310 MISHNA: The halakha is the same whether concerning an ox or whether concerning any other animal with regard to liability for falling into a pit, and with regard to keeping its distance from Mount Sinai at the time of the receiving of the Torah, when it was forbidden for any animal to ascend the mountain, and with regard to the payment of double the principal by a thief, and with regard to the mitzva of returning a lost item, and with regard to unloading its burden, and with regard to the prohibition of muzzling it while threshing, and with regard to the prohibition of diverse kinds, and with regard to the prohibition against its working on Shabbat.

311 And similarly, undomesticated animals and birds are subject to the same halakhot as domesticated animals. If so, why are all of the above halakhot stated in the Torah only in reference to an ox or a donkey? Rather, the reason is that the verse speaks of a common scenario, from which the other cases may be derived.

312 GEMARA: The Gemara explains the sources for all of the halakhot enumerated in the mishna that apply to all animals. With regard to falling into a pit, it is written: "He shall recompense money to its owners" (Exodus 21:34), which means that any animal that has owners is included, as we mentioned (see 54a). With regard to the requirement that animals keep their distance from Mount Sinai before the giving of the Torah, this is derived from the verse: "Whether it be animal or person,

it shall not live” (Exodus 19:13), and an undomesticated animal [ḥayya] is also included in the term animal [behema]. In addition, the word “whether” serves to include birds.

313 With regard to the double payment of a thief, it is as we say in a halakhic exegesis of the verse: “For any matter of trespass” (Exodus 22:8), that it is a general statement which includes any matter of negligence. With regard to the mitzva of returning a lost item, the verse states comprehensively: “For every lost thing of your brother” (Deuteronomy 22:3). With regard to the halakha of unloading a burden, derive it from a verbal analogy from the context of Shabbat, as the word donkey is employed in the context of unloading a burden (see Exodus 23:5), and the word donkey is employed in the context of the prohibition against having one’s animal perform labor on Shabbat (see Deuteronomy 5:14), and that verse is clearly referring to any animal.

314 With regard to the prohibition against muzzling an animal, mentioned in the verse: “You shall not muzzle an ox while it is threshing” (Deuteronomy 25:4), derive it from a verbal analogy from the context of Shabbat, as the word “ox” is employed in the context of muzzling, and the word “ox” is employed in the context of the prohibition against having one’s animal perform labor on Shabbat (see Deuteronomy 5:14), and that verse is clearly referring to any animal.

315 With regard to the prohibition of diverse kinds, if it is referring to the prohibition against using diverse kinds for plowing, due to which it is forbidden to plow with an ox and a donkey together (see Deuteronomy 22:10), derive it from a verbal analogy from the context of Shabbat, as the word “ox” is employed in the context of plowing with diverse kinds, and the word “ox” is employed in the context of the prohibition against having one’s animal perform labor on Shabbat (see Deuteronomy 5:14), and that verse is clearly referring to any animal.

316 If it is referring to the prohibition of diverse kinds for crossbreeding, derive it from a verbal analogy from the context of Shabbat, as the term “your cattle” is employed in the context of crossbreeding animals (see Leviticus 19:19), and the term “your cattle” is employed in the context of the prohibition against having one’s animal perform labor on Shabbat (see Exodus 20:10), and that verse is clearly referring to any animal.

317 The Gemara asks: And from where do we derive concerning Shabbat itself that the words “ox” and “donkey” are referring to all types of animals? As it is taught in a baraita: Rabbi Yosei says in the name of Rabbi Yishmael: In the first version of the Ten Commandments it is stated: “Your manservant, your maidservant, nor your cattle” (Exodus 20:10), whereas in the second version of the Ten Commandments it is stated: “Nor your ox, nor your donkey, nor any of your cattle” (Deuteronomy 5:14). Now, aren’t an ox and a donkey already included in the category of: All animals, which are included in the term “cattle”? Why, then, were they specified? To teach you that just as with regard to the terms ox and donkey that are stated here, undomesticated animals and birds have the same halakha as them, so too, everywhere that an ox and donkey are mentioned, all types of undomesticated animals and birds have the same halakha as them.

318 The Gemara asks: But why not say that the verses be expounded as follows: The term “cattle” used in the first version of the Ten Commandments is a generalization, and the phrase “your ox and your donkey” used in the latter version of the Ten Commandments is a detail. In the case of a generalization and a detail, the principles of halakhic exegesis dictate that the generalization includes only what is specified in the detail. Therefore, with regard to this subject, an ox and a donkey should indeed be included, but anything else should not be included.

[319] The Sages said in reply: In the phrase “nor any of your cattle” stated in the latter version of the Ten Commandments following the phrase “your ox and your donkey,” it then generalized again. Therefore, the verse is structured as a generalization, and a detail, and a generalization. According to the principles of halakhic exegesis, you may deduce that the verse is referring only to items similar to the detail. Consequently, just as the items mentioned in the detail are clearly defined as animals, so too, all items included in the general term must be animals.

[320] The Gemara challenges the answer: But say instead that just as the items mentioned in the detail are clearly defined as an item, i.e., an animal, whose carcass renders a person ritually impure through contact or through carrying, so too, all items whose carcass renders a person ritually impure through contact or through carrying should be included. But birds, whose carcasses do not render one impure through contact or through carrying, should not be included.

[321] The Sages said in reply: If so, let the Merciful One write only one detail from which this could be derived. The Gemara asks: Which detail should the Merciful One write? If the Merciful One writes only an ox, I would say: An animal that is sacrificed on the altar, such as an ox, indeed renders the owner of the pit liable, whereas an animal that is not sacrificed on the altar does not render him liable. And if the Merciful One writes only a donkey, I would say: An animal whose firstborn is sanctified, such as a donkey, as described in the Torah (Exodus 13:13), does indeed render him liable, but an animal whose firstborn is not sanctified does not render him liable. Therefore, the Merciful One writes both an ox and a donkey.

[322] Consequently, there is no redundancy, and each detail is required for correctly deriving other halakhot. If so, the previous question resurfaces: Why are the verses not expounded such that the prohibition does not include birds? Rather, the term: “Nor any [vekhol] of your cattle,” should be understood as an amplification, encompassing any item that is even partially similar to the detail.

[323] The Gemara asks: But is it the case that anywhere that the Merciful One states the word “any [kol]” it is intended as an amplification? But concerning tithes, where it is written “any [kol],” and yet we expound the verses with the method of a generalization and a detail, rather than using the method of amplification and restriction.

[324] This is as it is taught in a baraita concerning second-tithe money brought to Jerusalem: The verse states: “And you shall give the money for anything [bekhol] your soul desires” (Deuteronomy 14:26), which is a generalization, followed by: “For oxen, or for sheep, or for wine, or for strong drink,” which is a detail, and concludes with: “Or for anything [uvkhol] your soul asks of you,” where it then generalized again.

[325] Therefore, the verse is structured as a generalization, and a detail, and a generalization. According to the principles of halakhic exegesis, you may deduce that the verse is referring only to items similar to the detail. Consequently, just as the items mentioned in the detail are clearly defined as produce of produce, i.e., they grow from a parent organism, such as agricultural produce or animals, and they are grown from the ground, i.e., their sustenance comes from the ground, so too, it includes all things that are the produce of produce and are grown from the ground. It is evident from here that the method of a generalization and a detail is used in connection with the term “kol,” as opposed to interpreting it as an amplification.

[326] The Sages said in response: A distinction may be drawn between the term: “For anything [bekhol],” which is a generalization, and the term “any [kol],” as in: “Any of your cattle,” which is

an amplification. And if you wish, say instead that the word “any [kol]” is a generalization as well, in addition to “for anything [bekhol].” But this word “any,” written here, is an amplification. This is the case since it could have written: And your cattle, as it is written in the first version of the Ten Commandments, and instead it writes: “Nor any of your cattle.” Learn from this that it is an amplification and encompasses other animals as well.

327 The Gemara continues to analyze this matter: Now that you have said that the term “any [kol]” is an amplification, why do I need the words “your cattle,” stated in the first version of the Ten Commandments, and the terms “an ox or a donkey,” stated in the latter version of the Ten Commandments? The phrase “and any of your cattle” already includes any animal.

328 The Sages said in response: Each of these terms is required. The term “ox” can be used to derive the halakha with regard to the prohibition against muzzling, as the word “ox” is employed in the context of muzzling, and the word “ox” is employed in the context of the prohibition against having one’s animal perform labor on Shabbat.

329 The term “donkey” can be used to derive the halakha with regard to the halakha of unloading a burden, as the word “donkey” is employed in the context of unloading a burden (see Exodus 23:5), and the word “donkey” is employed in the context of the prohibition against having one’s animal perform labor on Shabbat (see Deuteronomy 5:14).

330 The term “your cattle” can be used to derive the halakha with regard to the prohibition of diverse kinds, as the term “your cattle” is employed in the context of crossbreeding animals (see Leviticus 19:19), and the term “your cattle” is employed in the context of the prohibition against having one’s animal perform labor on Shabbat (see Exodus 20:10).

331 The Gemara asks: If so, that this redundancy is the source for extending the prohibition of diverse kinds, then it should be prohibited even for a person to plow together with an ox or another animal. Why, then, did we learn in a mishna (Kilayim 8:6): It is permitted for a person to plow and pull with any of them, indicating that the prohibition relates only to animals?

332 Rav Pappa said: The Sages of Paphunya know the reason for this matter, and who are these Sages? Rav Aḥa bar Ya’akov, who resided in Paphunya. The reason is that the verse states: “You shall not perform any labor, neither you, your son, your daughter, your slave, your maidservant, your ox, your donkey, any of your animals, or the stranger residing within your city gates, that your manservant and your maidservant may rest as well as you” (Deuteronomy 5:14), as if to say: I have equated people with animals only concerning resting on Shabbat, but not with regard to another matter.

333 Having discussed some differences between the two versions of the Ten Commandments, the Gemara now discusses a related matter: Rabbi Ḥanina ben Agil asked Rabbi Ḥiyya bar Abba: For what reason is the word good not stated in the first version of the Ten Commandments, whereas in the latter version of the Ten Commandments,

334 in the context of the mitzva to honor one’s parents, the word good is stated there: “In order that it shall be good for you” (Deuteronomy 5:16)? Rabbi Ḥiyya bar Abba said to him: Before you ask me why the word good is stated, ask me if the word good is actually stated there or not, since I am not sufficiently proficient in my knowledge of the biblical verses to remember the precise wording, and I do not know if the word good is stated there or not. Go to Rabbi Tanḥum bar Ḥanilai, who was

commonly found at the academy of Rabbi Yehoshua ben Levi, who was an expert in aggada. Perhaps he heard something from him on this matter and can answer your question.

[335] Rabbi Ḥanina ben Agil went to him and asked him. Rabbi Tanḥum said to him: I did not hear anything on this matter from Rabbi Yehoshua ben Levi himself. But this is what Shmuel bar Naḥum, the brother of the mother of Rav Aḥa, son of Rabbi Ḥanina, said to me, and some say it was the father of the mother of Rav Aḥai, son of Rabbi Ḥanina: It does not mention the word good in the first tablets, since they were ultimately destined to be broken after the Jews made the Golden Calf.

[336] The Gemara asks: And even if it had mentioned the term good, and they were ultimately destined to break, what of it? Rav Ashi said: If this term had been mentioned in the first tablets, all good would have, God forbid, ceased from Israel once they were broken. Therefore, only the second version, which was written after the breaking of the tablets, contains the word good, so that there would always be good for the Jewish people.

[337] Rabbi Yehoshua says: If one sees the letter tet in his dream, it is a good sign for him. The Gemara asks: What is the reason? If we say that it is because the word good [tov] is written in the Torah and begins with the letter tet, then one could say instead that it is an allusion to the verse: “And I will sweep it with the broom [vetetetiha bemate’ateh] of destruction” (Isaiah 14:23), which also contains the letter tet several times but is referring to punishment. The Gemara answers: We mean that when someone sees one tet in his dream, it is a good sign, but this latter verse contains several.

[338] The Gemara asks: This latter statement is problematic, as even according to this explanation, one can say that a single letter tet alludes to the verse: “Her filthiness [tumatah] is in her skirts” (Lamentations 1:9), which begins with the letter tet. The Gemara answers: We mean that when one sees the letter tet together with the letter bet in his dream, it is a good sign for him, as the word tov is written with both. The Gemara asks further: According to this, say that it alludes to the verse: “Her gates are sunk [tave’u] into the ground” (Lamentations 2:9), which begins with the letter tet followed by the letter bet.

[339] Rather, it is not merely because it is the first letter of the word good [tov] that it is considered a good omen. Since the Torah initially introduces the letter tet in a context of good, with the word good [tov] itself, it is a good omen. As from the word bereshit, the first word in the Torah, until the verse: “And God saw that the light was good [tov]” (Genesis 1:4), the letter tet is not written anywhere.

[340] And Rabbi Yehoshua ben Levi says: If one sees a eulogy [hesped] in his dream, it is an allusion that in Heaven they had pity [ḥasu] on him and saved him [peda’uhu] from actually being eulogized. The Gemara notes: This statement applies specifically when he actually saw the word: Eulogy [hesped], in writing.

[341] § The mishna teaches: And similarly, undomesticated animals and birds are subject to the same halakhot as domesticated animals. Reish Lakish says: Here Rabbi Yehuda HaNasi taught a ruling from the Tosefta that illustrates the statement that birds and undomesticated animals are also subject to the prohibition of diverse kinds: A cock, a peacock [tavvas], and a pheasant [ufasyonei] are diverse kinds with respect to each other, since this halakha applies to birds as well.

[342] The Gemara asks: Isn’t this obvious; what novelty is stated here? Rav Ḥaviva said: The novelty here is because they are reared together. Lest you say: Since they are reared together, they are

essentially one species, and not considered diverse kinds. Therefore, it teaches us that they are actually separate species, and the halakhot of diverse kinds do apply to them.

343 Following the discussion of the prohibition of diverse kinds as it relates to birds, Shmuel says: The domestic goose and the wild goose are diverse kinds with respect to each other and are not one species. Rava bar Rav Ḥanan objects to this: What is the reason? If we say it is because the beak of this one is long and the beak of that one is short, if that is so, then with regard to a Persian camel and an Arabian camel, where the neck of this one is thick and the neck of that one is thin, they should indeed be considered diverse kinds with respect to one another. Clearly, though, the camels are in fact two variants of a single species.

344 Rather, Abaye says: That is not the reason, but rather another difference exists between the domestic goose and the wild goose, concerning the male: With regard to this type, i.e., the wild goose, its testicles are visible from the outside, and with regard to that one, i.e., the domestic goose, its testicles are inside. Rav Pappa said that another difference exists between them, concerning the female: This one, i.e., the wild goose, releases only one egg in its ovary and later releases another, and that one, i.e., the domestic goose, releases several eggs at once in its ovary. Consequently, they are not considered to be the same species.

345 In connection with the prohibition of diverse kinds, Rabbi Yirmeya says that Reish Lakish says: One who crossbreeds two species of creatures that live in the sea is flogged for transgressing the prohibition of crossbreeding diverse kinds. The Gemara asks: What is the reason, i.e., where is there an allusion to this in the Torah? Rav Adda bar Ahava said in the name of Ulla: It is derived from a verbal analogy between the term: “According to its species [leminehu]” (Genesis 1:21), referring to animals living on dry land, and the same term: “According to its species [leminehu]” (Genesis 1:25), referring to sea creatures. In the same way that the former may not be crossbred, similarly, the latter may not be crossbred.

346 The Sage Raḥava raises a dilemma: With regard to one who drives a wagon on the seashore with a goat and a shibbuta, a certain species of fish, together, pulled by the goat on land and the fish at sea, what is the halakha? Has he violated the prohibition against performing labor with diverse kinds, in the same way that one does when plowing with an ox and a donkey together, or not? The two sides of the question are as follows: Do we say that since the goat does not descend into the sea and the shibbuta does not ascend onto the land, they are not working together at all, and so he has not done anything forbidden? Or perhaps, since in any event, he is now driving the wagon with both of them, he thereby transgresses the prohibition?

347 Ravina objects to this: But if that is so that one is liable, then if a person joined wheat and barley together in his hand and sowed the wheat in Eretz Yisrael and the barley outside of Eretz Yisrael, where the prohibition of diverse kinds does not apply to seeds, so too he should be liable. Clearly, however, they are two distinct regions, and the seeds are not considered to be mixed together.

348 The Sages said in response to this objection: How can these cases be compared? There, in the case of planting diverse kinds of seeds, it is specifically Eretz Yisrael that is the location subject to this obligation, whereas outside of Eretz Yisrael is not a location subject to this obligation. Here, by contrast, in the case of the person driving a wagon, both this location, i.e., the land, and that location, i.e., the sea, are locations subject to this obligation. Consequently, if one works together two different species either on the land or in the sea, he is liable. Therefore, the question is a valid one.

## Chapter 6

[1] MISHNA: In the case of one who brought his flock of sheep into the pen and locked the door before it in a manner that is appropriate, and despite this sheep went out and caused damage in another person’s field by eating produce or trampling it, the owner is exempt, since he safeguarded the animals appropriately. If he did not lock the door before the sheep in a manner that is appropriate, and sheep went out and caused damage, the owner is liable, since his negligence led to the damage.

[2] If the owner locked the door appropriately but the wall of the pen was breached at night, or bandits breached it, and sheep subsequently went out and caused damage by eating or trampling, the owner of the sheep is exempt from liability. If the bandits themselves took the sheep out of the pen and the animals subsequently caused damage, the bandits are liable.

[3] If the owner left the animal in the sun, causing it to suffer, or if he conveyed it to a deaf-mute, an imbecile, or a minor, who are not able to safeguard it, and the animal went out and caused damage, the owner is liable because he was negligent.

[4] If the owner conveyed the animal to a shepherd to care for it, the shepherd enters in his place and is responsible for the damage.

[5] If the animal fell into a garden and derives benefit from produce there, its owner pays for the benefit that it derives and not for other damage caused. If the animal descended into the garden in its usual manner and caused damage there, its owner pays for what it damaged. How does the court appraise the value of the damage when the owner pays for what it damaged? The court appraises a large piece of land with an area required for sowing one se’a of seed [beit se’a] in that field, including the garden bed in which the damage took place. This appraisal includes how much it was worth before the animal damaged it and how much is it worth now, and the owner must pay the difference. The court appraises not only the garden bed that was eaten or trampled, rather the depreciation in value of the bed as part of the surrounding area. This results in a smaller payment, as the damage appears less significant in the context of a larger area.

[6] Rabbi Shimon says: This principle of appraisal applies only in a case where the animal ate unripe produce; but if it ate ripe produce, the owner pays the value of the ripe produce. Therefore, if it ate one se’a of produce, he pays for one se’a, and if it ate two se’a, he pays for two se’a.

[7] GEMARA: The Gemara clarifies the definition of locking the door in a manner that is appropriate. The Sages taught: What is considered locking in a manner that is appropriate, and what is considered locking in a manner that is not appropriate? If one locked the door such that it is able to withstand a typical wind without collapsing or opening, this is considered a manner that is appropriate, whereas if he locked the door such that it is unable to withstand a typical wind, this is considered a manner that is not appropriate.

[8] Rabbi Mani bar Patish said: Who is the tanna who taught with regard to animals that are forewarned that it is sufficient for the owner to provide only reduced safeguarding? Since the mishna deals with damage categorized as Eating or Trampling, for which all animals are considered forewarned, it must be in accordance with the opinion of Rabbi Yehuda, as we learned in a mishna (45b): If the owner of an ox tied it with reins to a fence or locked the gate before it in a manner that is appropriate, but nevertheless the ox went out and caused damage, whether the animal is innocuous or

forewarned the owner is liable because this is not considered sufficient precaution to prevent damage; this is the statement of Rabbi Meir.

9 The mishna continues: Rabbi Yehuda says that if the ox is innocuous the owner is liable even if he safeguarded it appropriately, since the Torah does not limit the required safeguarding for an innocuous animal. But if the ox is forewarned, the owner is exempt from payment of damages, as it is stated in the verse describing the liability for damage caused by a forewarned animal: "And the owner has not secured it" (Exodus 21:36), and this ox that was tied with reins or behind a locked gate was secured. Rabbi Eliezer says: A forewarned ox has no sufficient safeguarding at all other than slaughtering it with a knife. According to this mishna, only Rabbi Yehuda maintains that reduced safeguarding is sufficient to render exempt from liability the owner of an ox that is forewarned.

10 The Gemara answers: You can even say that the mishna is in accordance with the opinion of Rabbi Meir, who holds that the owner of a forewarned ox is liable even if he provides only reduced safeguarding. Although animals are considered forewarned with regard to Eating and Trampling, one cannot apply to them a halakha stated with regard to an animal that is forewarned with regard to Goring. The halakha is different with regard to Eating and Trampling since the Torah limited the required standard of safeguarding for them. As the amora Rabbi Elazar says, and some say it was taught in a baraita: There are four matters for which the Torah limited their required standard of safeguarding, and these are: Pit, and Fire, Eating, and Trampling.

11 Where does the Torah limit the required standard of safeguarding with regard to the category of Pit? As it is written: "If a man shall open a pit, or if a man shall dig a pit and not cover it, and an ox or a donkey fall therein, the owner of the pit shall pay" (Exodus 21:33). One can infer: But if he covered it, he is exempt from liability, even though it is possible that the pit would become uncovered in the future.

12 Where does the Torah limit the required standard of safeguarding with regard to the category of Fire? As it is written: "The one who kindled the fire shall pay compensation" (Exodus 22:5), which is interpreted to mean that one is exempt from liability unless he acts in a manner that is similar to actively kindling the fire in another's property by being negligent.

13 Where does the Torah limit the required standard of safeguarding with regard to the category of Eating? As it is written: "If a man causes a field or vineyard to be eaten, and he set his animal loose, and it feed [uvi'er] in the field of another" (Exodus 22:4). This indicates that the owner does not bear liability unless he acts in a manner that is similar to causing his animal to feed there, by being negligent.

14 Where does the Torah limit the required standard of safeguarding with regard to the category of Trampling? As it is written: "If a man causes a field or vineyard to be eaten, and he set his animal loose [veshilaḥ], and it feed in the field of another" (Exodus 22:4). This indicates that the owner is not liable unless he acts in a manner that is similar to setting his animal loose.

15 And it is taught in a baraita: With regard to the term veshilaḥ: This is referring to damage by Trampling, and similarly, the verse states: "That send forth [meshaleḥei] the feet of the ox and the donkey" (Isaiah 32:20). With regard to the term uvi'er: This is referring to damage by Eating, and similarly, the verse states: "As one consumes with the tooth, until it be all gone" (I Kings 14:10).

[16] Evidently, the reason for the owner’s liability is specifically that he acted in a manner that is similar to setting the animal loose or causing it to feed. One can infer: But if he did not act in such a manner, even if he provided only reduced safeguarding, he is not liable.

[17] Rabba said: The wording of the mishna is also precise, as it taught the halakha specifically with regard to sheep. This raises the question: Since we have been dealing with cases involving an ox in all the previous mishnayot, then let this mishna also teach the halakha with regard to an ox. What is different in this mishna that it teaches the case of sheep? Is it not because the Torah limited its requirements specifically with regard to the safeguarding against damage that is more likely to be caused by sheep, i.e., caused by Eating and Trampling, since sheep are unlikely to gore? If so, the wording of the mishna is in accordance with the opinion of Rabbi Meir, who holds that a reduced level of supervision is sufficient only with regard to Eating and Trampling, but not Goring.

[18] The Gemara rejects this: One can not necessarily derive from the wording of the mishna that it is in accordance with the opinion of Rabbi Meir. Perhaps the mishna specifically uses the case of sheep to teach the opinion of Rabbi Yehuda, because if it would have used an example of an ox here, one might have thought that it also includes damage caused by Goring, about which it is not written in the Torah that reduced supervision is sufficient. Therefore, the mishna specifically uses the example of sheep, to indicate damage caused by Eating and Trampling, about which it is written that reduced supervision is sufficient. And it teaches us that only with regard to Eating and Trampling, for which animals are considered forewarned from the outset, is reduced supervision sufficient according to the opinion of Rabbi Yehuda. The Gemara concludes that this is a valid reading of the mishna and one may learn from it that the mishna may even be in accordance with the opinion of Rabbi Yehuda.

[19] § It is taught in a baraita that Rabbi Yehoshua said: There are four matters in which one who commits an offense concerning them is exempt from liability according to human laws but liable according to the laws of Heaven and it would be proper for him to pay compensation, and the cases are as follows: One who breaches a fence that stood before another’s animal, thereby allowing the animal to escape; and one who bends another’s standing grain before a fire so that it catches fire; and one who hires false witnesses to testify; and one who knows testimony in support of another but does not testify on his behalf.

[20] The Gemara clarifies each of the cases listed in the baraita. The Master says: With regard to the case of one who breaches a fence that stood before another’s animal, what are the circumstances? If we say it is speaking of a stable wall that would not have fallen by itself, the one who breached it should also be liable according to human laws, at least for the damage caused to the wall. Rather, here

[21] the baraita is speaking of an unstable wall that was about to fall and break in any event, and so his action did not actually cause any loss to the owner.

[22] The Master says: With regard to the case mentioned in the baraita of one who bends another’s standing grain before a fire, what are the circumstances? If we say that the baraita is referring to a case where the fire would reach the bent grain in a typical wind, let him also be liable for the damage according to human laws. Rather, it must be a case where the fire could reach the bent grain only in an atypical wind. Therefore, he is exempt according to human laws, and, since the grain was destroyed due to his action, he is liable according to the laws of Heaven.

[23] And Rav Ashi offered an alternative explanation and said: The baraita was stated in the case of a concealed item; in other words, this person did not bend the grain toward the fire but bent it over another item in order to conceal it. One is not liable to pay restitution for concealed items damaged by fire. Therefore, when this person bent the grain over an item, he caused indirect damage to the owner of that item because he made it into a concealed item that was subsequently damaged by fire, and the owner cannot reclaim his loss.

[24] The Master says: With regard to the case mentioned in the baraita of one who hires false witnesses, what are the circumstances? If we say that he hired them for his own benefit, in order to extract payment from another, he is required to reimburse that person with money, and he is liable according to human laws for receiving money under false circumstances. Rather, the case is one where he hired false witnesses for the benefit of another. In such a case the injured party cannot sue the other litigant, since the latter did not hire the witnesses, nor can he sue the person who hired them, since that person received no personal benefit.

[25] The baraita teaches: And one who knows testimony in support of another but does not testify on his behalf is exempt from liability according to human laws but liable according to the laws of Heaven. With what circumstances are we dealing? If we say that the case involves two people who could testify, and their evidence would render the other party liable to pay, it is obvious that each of them is liable according to the laws of Heaven; he has committed a transgression by Torah law: “If he does not utter it, then he shall bear his iniquity” (Leviticus 5:1). Therefore, it is unnecessary for the baraita to mention this case.

[26] Rather, the case of the baraita concerns a single witness, whose testimony is not sufficient to render another liable, and to which the transgression of Torah law consequently does not apply. Nevertheless, a litigant can be forced to take an oath based on the testimony of a single witness, and refusal to take this oath would obligate the litigant to pay. Therefore, the witness has caused an indirect loss and is liable according to the laws of Heaven.

[27] The Gemara asks: And is there nothing else, i.e., is there no other case in which one is exempt according to human laws but liable according to the laws of Heaven? But there is such a case. And before citing several cases that are not written in the baraita the Gemara presents a mnemonic device: One who performs; with poison; and an agent; another; is broken. The Gemara returns to the first case: One who performs labor with water of purification, which was meant to be used to purify one rendered ritually impure by a corpse, thereby rendering the water unfit for use, or who performs labor with the red heifer of purification, invalidating the animal for use as an element of the purification ritual, is exempt according to human laws, since the damage he caused is not evident, but liable according to the laws of Heaven, as he caused a financial loss.

[28] The Gemara adds: But there is the following halakha: With regard to one who places poison before another’s animal, and the animal eats it and dies, he is exempt according to human laws, since the animal caused its own death, but liable according to the laws of Heaven.

[29] The Gemara adds: But there is the case of one who sends an exposed flame in the hand of a deaf-mute, an imbecile, or a minor, and the fire spreads, causing damage; he is exempt according to human laws but liable according to the laws of Heaven.

[30] The Gemara adds: But there is the case of one who frightens another without touching him, but causes him injury; he is exempt according to human laws but liable according to the laws of Heaven.

[31] The Gemara adds: But there is the case of one whose jug broke in the public domain and he did not remove the broken pieces, or one whose camel fell and he did not stand it up again. Rabbi Meir deems the owner of jug or of the camel liable for the damage thereby caused to others, and the Rabbis say that he is exempt according to human laws but liable according to the laws of Heaven. Since there are so many other cases, why did Rabbi Yehoshua claim in the baraita that there are only four cases when one is exempt according to human laws but liable according to the laws of Heaven?

[32] The Gemara answers: Yes, there are, in any event, many other cases, but Rabbi Yehoshua held that it was necessary for him to state the halakha of these four cases. The reason he stated them is lest you say that in these cases one should not be liable even according to the laws of Heaven. Therefore, Rabbi Yehoshua teaches us that in these cases one is liable according to the laws of Heaven.

[33] The Gemara explains why one might have thought that there is no liability at all for each case in the baraita: Rabbi Yehoshua taught that one who breaches a fence that stood before another's animal, thereby allowing the animal to escape, is liable according to the laws of Heaven, lest you say: Since the fence is about to collapse even without this person's intervention, what did he really do? Based on that logic, one might have thought that he should not be liable even according to the laws of Heaven. Therefore, Rabbi Yehoshua teaches us that in such a case he is liable according to the laws of Heaven.

[34] Rabbi Yehoshua taught that one who bends another's standing grain is liable according to the laws of Heaven, lest you say: Let the one who bent the grain say to the owner: Did I know that an atypical wind would come and cause the fire to spread? Based on that logic, one might have thought that he should not be liable even according to the laws of Heaven. Therefore, Rabbi Yehoshua teaches us that in such a case he is liable according to the laws of Heaven.

[35] And according to Rav Ashi, who said that Rabbi Yehoshua's ruling was stated with regard to the case of a concealed item, Rabbi Yehoshua mentioned liability according to the laws of Heaven lest you say that the one who concealed the item could say: I covered it for you in order to protect it from the fire. Based on that logic, one might have thought that he should not be liable even according to the laws of Heaven. Therefore, Rabbi Yehoshua teaches us that in such a case he is liable according to the laws of Heaven.

[36] And Rabbi Yehoshua taught that there is liability also in the case of one who hires false witnesses, lest you say: Let the one who hired them say: If the witnesses hear the statement of the teacher, i.e., God, Who prohibited giving false testimony, and the statement of the student, i.e., the one who hired them, to whose statement should they listen? Although the one who hired them encouraged these witnesses to sin, ultimately it was they who transgressed by not adhering to the instructions of God. And based on this logic one might have thought that he should not be liable even according to the laws of Heaven. Therefore, Rabbi Yehoshua teaches us that in such a case he is liable according to the laws of Heaven.

[37] Finally, Rabbi Yehoshua taught that one who knows testimony in support of another but does not testify on his behalf is liable according to the laws of Heaven, lest you say that the witness could claim: Who says that had I come forward and testified on behalf of one litigant, the other litigant would admit liability? Perhaps he would have chosen to take a false oath and absolve himself. Based on that logic one might have thought that he should not be liable even according to the laws of

Heaven. Therefore, Rabbi Yehoshua teaches us that in such a case he is liable according to the laws of Heaven.

38 § The mishna teaches: If the pen was breached at night, or bandits breached it, and sheep subsequently went out and caused damage, the owner of the sheep is exempt. Rabba says: And this first instance of a pen that was breached is referring specifically to a case where the animal tunneled under the wall of the pen and by doing so caused the wall to collapse. In that case, the owner is completely blameless and therefore exempt from liability for any damage that ensues.

39 The Gemara asks: But if the animal did not tunnel under the wall, what is the halakha? Would the owner be liable? What are the circumstances? If we say that the pen had a stable wall, then even if the animal did not tunnel, why is the owner liable? What should he have done? Clearly, he cannot be held liable for the damage. Rather, the pen had an unstable wall. The Gemara asks: Even if the animal tunneled under the wall and knocked it down, why is he exempt? The damage in this case is initially through negligence and ultimately by accident.

40 This works out well according to the one who said that in any case of damage that is initially through negligence and ultimately by accident, he is exempt from liability, since the ultimate cause of the damage was not his fault. But according to the one who says that in any case of damage that is initially through negligence and ultimately by accident he is liable, as even without the accident his negligence could have caused damage, what is there to say?

41 Rather, the case of the mishna concerns a stable wall, and even if the animal did not tunnel under the wall the owner is exempt. And when the statement of Rabba was stated, it was stated with regard to the latter clause of the mishna that says: If the owner left the animal in the sun or conveyed it to a deaf-mute, an imbecile, or a minor, and the animal went out and caused damage, the owner is liable. Concerning this Rabba stated: And the owner is liable even if the animal tunneled its way out under the wall of the pen.

42 The Gemara explains: It is not necessary for the mishna to mention the case where the animal did not tunnel its way out. In that case the owner is clearly liable, since the entire incident occurred due to his negligence of leaving the animal in the sun, thereby causing it distress and leading it to attempt escape by any possible means. But even if the animal tunneled its way out, the owner is liable, and this is the novelty in this ruling: Lest you say that this is a case of damage that is initially through negligence and ultimately by accident, because animals do not typically tunnel their way out of a pen, the mishna teaches us that it is considered as though the entire damage resulted from the owner’s negligence.

43 What is the reason that the owner is liable? It is that the one who suffered the damage can say to the owner of the sheep: You should have known that since you left it in the sun, it would utilize any means [tatzdeka] available for it to use and it would escape, so you are ultimately responsible for the damage.

44 § The mishna teaches: If the bandits themselves took the sheep out, the bandits are liable.

45 The Gemara questions the need for this ruling: It is obvious that this is the halakha, as once they removed the animal, it is now in their custody for all purposes, including responsibility for any ensuing damage.

[46] The Gemara answers: No, this statement is necessary in a case where they stood before the animal and encouraged it to leave the enclosure but did not lead it out directly. This case is like the case in this statement that Rabba says that Rav Mattana says that Rav says: With regard to one who stands another's animal near a third person's standing grain, and the animal eats the grain, he is liable. The Gemara asks: If he stands the animal there, isn't it obvious that he is liable? The Gemara answers: No, this ruling is necessary in a case where one stood before the animal and encouraged it to go toward the grain without leading it, and he is nevertheless liable.

[47] Abaye said to Rav Yosef: You told us when explaining the statement of Rav Mattana in the name of Rav that it is referring to a case where he hit the animal with a stick, and similarly, the mishna can also be explained as referring to a case where the bandits hit it with a stick and did not lead it.

[48] § The mishna teaches that if the owner conveyed the animal to a shepherd to care for it, the shepherd enters in his place and is responsible for all damage. The Sages say in clarification: The shepherd enters in place of whom? If we say that the shepherd is in place of the owner of the animal, didn't we already learn on one occasion in a mishna (44b): If the owner conveyed his animal to an unpaid bailee, or to a borrower, to a paid bailee, or to a renter, they all enter into the responsibilities and liabilities in place of the owner. What novelty is there in stating that the responsibility now lies with the shepherd to whom the owner conveyed the animal? Rather, it means that the shepherd enters in place of a bailee to whom the owner conveyed the animal, who is no longer liable once he conveys the animal to a shepherd.

[49] The Gemara asks: If so, this mishna indicates that the first bailee exempts himself completely by conveying the sheep to a shepherd, the second bailee, and he bears no further responsibility. Shall we say that mishna is a conclusive refutation of the ruling of Rava, as Rava says: A bailee who conveyed the deposit to another bailee nevertheless remains liable?

[50] The Gemara answers: Rava could say to you in response: What does the mishna mean when it states: He conveyed it to a shepherd? It is referring to a shepherd who conveyed the animal to the shepherd's assistant, as it is the typical manner of a shepherd to convey animals in his charge to his assistant. Therefore, anyone who gives his animal to a shepherd understands that the shepherd's assistant may also care for the animal, and it is not a violation of the terms of his assignment for the shepherd to convey it to his assistant. Consequently, this mishna does not refute Rava's opinion.

[51] There are those who say the same answer in a similar manner: From the fact that the mishna teaches the case using the expression: He conveyed it to a shepherd, and does not teach it using the less specific expression: He conveyed it to another, conclude from it that what it means by: He conveyed it to a shepherd, is that the shepherd conveyed it to his assistant, as it is the typical manner of a shepherd to convey an animal to his assistant. But if the shepherd conveyed it to another to care for it in his place, the mishna does not rule that the other person enters in his place.

[52] The Gemara suggests: Let us say that the wording of the mishna therefore supports Rava's opinion, as Rava says: A bailee who conveyed the deposit to another bailee remains liable. The Sages say in rejection of that suggestion: No, one cannot infer from the wording of the mishna that it is referring specifically to a shepherd conveying the animal to his assistant, since perhaps it teaches the matter in the manner in which it typically occurs, but the same is true even if the shepherd conveyed the animal to another. Therefore, no support can be brought from here for Rava's opinion.

[53] § It was stated that there is a dispute between amora’im concerning the following issue: With regard to one who is safeguarding a lost item that he has not yet returned, what level of responsibility does he bear? Rabba said: He is considered to be like an unpaid bailee, whereas Rav Yosef said: He is considered to be like a paid bailee.

[54] Their respective opinions are explained: Rabba said that he is considered to be like an unpaid bailee because what benefit comes to him through safeguarding it? Therefore, he is just like any unpaid bailee. Rav Yosef said that he is considered to be like a paid bailee on account of the benefit that he is not required to give bread to a poor person while looking after the lost item, since one who is engaged in one mitzva is exempt from performing another. Consequently, since there is some benefit involved in looking after the lost item, he is considered to be like a paid bailee.

[55] This is one interpretation, whereas there are those who explain like this: Rav Yosef said that he is considered to be like a paid bailee. Once the Merciful One obligates him against his will to look after lost items, the Torah presumably imposes the high standard of safeguarding on him. Therefore, he is considered to be like a paid bailee.

[56] The Gemara presents a mnemonic device for the halakhot and difficulties to be discussed: He returned it, always, returned, Ḥiyya, you say, breaks, payment.

[57] Rav Yosef raised an objection to the opinion of Rabba from that which is taught in a baraita:

[58] If one found a lost item and he returned it to a place where its owner will see it, he is no longer responsible to deal with it. If the item was stolen or lost, the finder bears financial responsibility to compensate for the loss.

[59] Rav Yosef states his objection: What is meant by the expression: Was stolen or lost? Does it not mean that it was stolen from the finder’s house or lost from his house before he returned it? Since he is liable for theft or loss, it appears that he has the same status as a paid bailee.

[60] Rabba rejects this challenge: No, it means that it was stolen or lost from the place where the finder returned it, in which case even an unpaid bailee is liable on the grounds of negligence.

[61] Rav Yosef challenges Rabba’s response: But the baraita teaches that the finder is no longer responsible to deal with it, indicating that failing to deal with it is not negligence, and the finder has no further responsibility for it.

[62] Rabba said to him: With what are we dealing here, at the end of the baraita, where it teaches that the finder is liable? We are dealing with a case where he returned it at midday, which is a time when the owner of the lost item is not typically present. Therefore, the finder has not returned the item properly, and if it is then stolen or lost, he bears responsibility even if he is an unpaid bailee.

[63] And the baraita is teaching two separate halakhot, and this is what it is teaching: If the finder returned it in the morning, when people are typically present, to a place where the owner of the lost item will see it, and the owner typically enters and exits and it is likely that he will see it, the finder is no longer responsible to deal with it, nor does he bear responsibility if it is then stolen or lost. By contrast, if the finder returned it at midday to a place where the owner will see it, since it is a time when the owner does not typically enter and exit and will not see it, if it is then stolen or lost the finder bears financial responsibility for the loss.

[64] Rav Yosef again raised an objection to the opinion of Rabba from that which is taught in the continuation of the baraita: The finder of the lost item always bears responsibility if the item is stolen

or lost until he returns it to the owner’s property. What does the word always add? Is it not teaching that even if the lost item was stolen from the finder’s house, he is liable? If so, learn from this that one who finds a lost item is considered like a paid bailee.

[65] Rabba said to Rav Yosef in reply: I concede to you in a case of one looking after lost animals that he is liable if they are stolen or lost. The reason is that since the animals have already taken to the habit of walking out of their usual path and not behaving in their typical manner, they require extra safeguarding, corresponding to that required of a paid bailee. But with regard to other items that are lost, those that do not move by themselves, the finder bears no greater responsibility to secure them than does an unpaid bailee.

[66] Rabba raised an objection to the opinion of Rav Yosef: The verse states in the context of returning lost items: “Return them” (Deuteronomy 22:1), repeating the verb “hashev teshivem.” The Sages expounded as follows: From the word “hashev” I have derived only that one may return the item to the house of the owner of the lost article. From where do I derive that even if one returns it to his garden or to his ruin, i.e., an unused structure on his property, he has discharged his obligation and is no longer responsible for the item that he found? For this, the verse states: “Teshivem,” repeating the verb for emphasis, to teach that he fulfills the mitzva by returning the item to any place belonging to the owner.

[67] What is the meaning of the phrase in the baraita: To his garden or to his ruin? If we say that the finder returned the lost item to the garden of the owner that is secured, i.e., properly enclosed, or to his ruin that is secured, it would be unnecessary to state this, as it is the same as his house, since these spaces are secured in the same way as his house. Rather, it is obvious that it means that he returned them to his garden that is not secured, or to his ruin that is not secured, and nevertheless, the finder is no longer liable for subsequent damage or theft of the found item. Conclude from it that a finder is like an unpaid bailee in terms of his liabilities, and this reduced level of safeguarding when returning the item is sufficient.

[68] Rav Yosef said to him: Actually, one can explain that the baraita is referring to a case where the finder placed it in the owner’s garden that is secured, or his ruin that is secured; and with regard to that which poses a difficulty to you, that this is the same as his house, there is nevertheless a novelty in this ruling: This teaches us that in this case we do not require the owner’s knowledge that the article has been returned, and this is in accordance with the opinion of Rabbi Elazar.

[69] As Rabbi Elazar says: All those who are obligated to return items to their owners, e.g., a bailee or a thief, require the owner’s knowledge that they are returning it except for one fulfilling the mitzva of returning a lost item. This is because the Torah included many permitted ways of returning lost items by employing the double expression “hashev teshivem,” which serves to permit the return of the lost item without the knowledge of the owner.

[70] Abaye said to Rav Yosef: And you, do you not hold that one safeguarding a lost item is like an unpaid bailee? But doesn’t Rabbi Ḥiyya bar Abba say that Rabbi Yoḥanan says: With regard to one who finds a lost item but falsely states the claim that a thief stole the item from him and takes an oath to that effect, he must pay a double payment, i.e., twice the value of the item. And if it enters your mind that the finder of a lost item is considered to have the same status as a paid bailee, why in such a case must he pay a double payment? He should be required to pay only the principal, since a paid

bailee is liable in any event if the article is stolen or lost, and he did not stand to benefit from the claim that the item was stolen.

[71] Rav Yosef said to him: With what are we dealing here? It is with a case where the finder took a false oath stating the claim that the deposit was taken by an armed bandit, and in such a case even a paid bailee is exempt. Consequently, his claim would have absolved him from liability, and if the item is subsequently found in his possession, he is liable to pay double for his false claim that it was stolen.

[72] Abaye said to him: But an armed bandit has the status of a robber and not of a thief, so according to this explanation, why did Rabbi Yoḥanan state that it was stolen by a thief?

[73] Rav Yosef said to him: The reason that only a thief pays the double payment and not a robber is that a thief denigrates God by exhibiting fear of people by stealing surreptitiously while not exhibiting fear of Heaven. This is in contrast to a robber, who robs openly. Accordingly, the reason that I say that an armed bandit is considered as a thief, is since he hides from people rather than stealing openly. Although he in fact does steal openly, since he does so by employing a weapon he also exhibits fear of people, and is akin to a thief. Therefore, armed bandits are liable to pay a double payment as is a thief, and a claim that the deposit was seized by armed bandits is considered to be the same as a claim that it was stolen by thieves. Consequently, since a paid bailee is absolved by means of such a claim, if it is determined that his claim was false he must pay double.

[74] Abaye raised an objection to the opinion of Rav Yosef from that which is taught in a baraita:

[75] No, if you say that this is the halakha with regard to an unpaid bailee, who pays a double payment, shall you also say that this is the case with regard to a paid bailee, who does not pay a double payment?

[76] Abaye states his objection: And if it enters your mind to say that an armed bandit is considered like a thief, it turns out that there is a case where a paid bailee pays a double payment, and it is when he states the claim that the deposit was taken by an armed bandit.

[77] Rav Yosef said to him: This is what the baraita is saying: No, if you say that this is the halakha with regard to an unpaid bailee, who pays a double payment for any claim that he makes concerning the theft of the item if he is subsequently found to be lying, shall you also say that this is the case with regard to a paid bailee, who pays a double payment for a false claim only when he states the claim that the deposit was taken by an armed bandit.

[78] Abaye raised an objection to the opinion of Rav Yosef from that which is taught in another baraita: The Torah states with regard to a case where one borrows an object or an animal from another: “And it breaks or dies, he shall pay restitution [shalem yeshalem]” (Exodus 22:13). I have derived only that the borrower is liable in a case where the object or animal breaks or dies; but from where do I derive that he is also liable if it was stolen or lost? You can state the following a fortiori inference: And just as a paid bailee, whom the Torah rendered exempt in a case where the item breaks or dies, is nevertheless liable for a case of theft or loss, then with regard to a borrower, who is liable even if the item breaks or dies, is not it logical that he is liable for theft or loss? And this is an a fortiori inference that has no refutation.

[79] And if it enters your mind to say that an armed bandit is considered like a thief, why is this an argument that has no refutation? It can be refuted as follows: What is notable about a paid bailee? He

is notable in that he pays double payment if he states the claim that the deposit was taken by an armed bandit, whereas a borrower does not pay double in such a case, but only the principal amount.

[80] Rav Yosef said to him: This tanna holds that the requirement of a borrower to pay the principal without having the option to exempt himself by taking an oath is stricter than the requirement of a paid bailee to pay the double payment when claiming that it was stolen by an armed bandit, as this obligation is in effect only where he took an oath. Therefore, this doubled payment pertaining to a paid bailee cannot be used as a refutation of the a fortiori inference.

[81] The Gemara asks: Let us say that the following baraita supports Rav Yosef's opinion: In the case of one who rents a cow from another and it is stolen, and this renter says: I will pay for it and I am not taking an oath that the cow was stolen, since I do not wish to take an oath, and afterward the thief is found, the thief pays the double payment to the renter and not to the owner.

[82] The Gemara notes: The Sages who sought to use that baraita to support Rav Yosef's opinion assumed that the baraita is in accordance with the opinion of Rabbi Yehuda, who says: A renter is like a paid bailee and is liable for theft or loss, but from the fact that it teaches: And he said: I will pay for it and I am not taking an oath that the cow was stolen, one can learn by inference that if the renter wants, he can exempt himself from payment by taking an oath.

[83] The Gemara clarifies: What are the circumstances? Is it not a case where the renter states a claim that the item was taken by an armed bandit, in which case, as a paid bailee, he does not bear liability? And despite this, the baraita teaches: And if afterward the thief was found, the thief pays the double payment to the renter. Conclude from it that an armed bandit is considered like a thief.

[84] The Gemara says in rejection of this proof: Do you maintain that this baraita is in accordance with the opinion of Rabbi Yehuda, who says that a renter is considered like a paid bailee? Perhaps this tanna holds in accordance with the opinion of Rabbi Meir, who says that a renter is considered like an unpaid bailee, and on account of that he is absolved of responsibility even if he claimed it was a regular theft.

[85] Alternatively, if you wish, say that the baraita is referring to an unarmed bandit and is in accordance with the opinion of Rabba bar Avuh, who reversed the opinions and teaches as follows: How does a renter pay? Rabbi Meir says he has the same liability as a paid bailee, whereas Rabbi Yehuda says he has the same liability as an unpaid bailee. Therefore, even if this baraita is in accordance with the opinion of Rabbi Yehuda, it does not provide support for Rav Yosef's opinion.

[86] Rabbi Zeira said: Even without reversing the opinions, it is possible to explain that the baraita does not provide support for Rav Yosef's opinion by saying as follows: With what are we dealing here? We are dealing with a case where the renter states the claim that the deposit was taken by an armed bandit, and so he could have absolved himself by taking an oath, but afterward it is found that it was stolen by an unarmed bandit. On account of this, the bandit pays the double payment to the renter. No conclusive proof is brought as to whether one who found a lost item has the status of a paid or unpaid bailee.

[87] § The mishna teaches: If the animal fell into a garden and derives benefit, the owner pays for the benefit that it derives. Rav says: This is referring to a case where the vegetables softened the impact of striking the ground, and the owner pays for this benefit of the animal being saved from injury.

[88] The Gemara comments: This statement of Rav indicates that the owner pays only for what occurred while the animal landed, but if the animal then ate from the garden, the owner is not required to pay even for the benefit that the animal derives. Shall we say that Rav conforms to his standard line of reasoning? As Rav says that in a case where one placed his produce in the courtyard of another without permission, and an animal belonging to the owner of the courtyard ate the produce and was sickened thereby, the owner of the produce is not liable, as he can claim: The animal should not have eaten it. Similarly, here the owner of the animal can say: This animal fell through no fault of mine, and so it is not my fault that it ate.

[89] The Sages of the Gemara say: How can these cases be compared? One could say that Rav said there that the animal should not have eaten the produce. This claim is relevant where the animal itself was injured by eating another's produce, because the owner of the produce can say: I will not pay, because the animal should not have eaten. This is a claim to exempt the owner of the produce from paying the owner of the animal. Did Rav say that when the animal causes damage to another's produce, the owner can exempt himself from paying the owner of the produce by stating this claim?

[90] Rather,

[91] one cannot make such an inference from Rav's statement. Rav is speaking utilizing the style of: It is not necessary, and this is how to understand his statement: It is not necessary to state that if the animal fell into the garden and ate from its produce, that the owner pays for the benefit that it derives. But if the produce softened the blow of striking the ground and thereby the animal avoided injury, one might say that the owner of the animal should not pay, on the grounds that the owner of the garden may be viewed, analogously, to one who repels a lion from another's property. In such a case, although the latter benefited from his action, he is not obligated to pay for it. Similarly in this case, one might think that the owner of the animal does not pay even for the benefit that the animal derived. For this reason Rav teaches us that the owner of the animal must pay for this benefit as well.

[92] The Gemara asks: But why not say that this is indeed the halakha, and the owner of the animal should be exempt for paying for the benefit of his animal not being injured?

[93] The Gemara answers: One who repels a lion from another's property does so with intent, knowing that he would be ineligible for payment. By contrast, this owner of the garden did not act with intent and would have preferred for the incident not to have happened. Alternatively, one could say that one who repels a lion from another's property does not thereby have any loss himself. By contrast, this owner of the garden has a loss, in that his produce is damaged.

[94] The Gemara asks: How did the animal fall? In which case does this halakha apply? Rav Kahana says: It slipped on its own urine. Rava says: Another animal belonging to the same owner pushed it, causing it to fall there.

[95] The Gemara explains: Rava, the one who says that the mishna is referring to a case where another animal pushed it, in which case the owner pays only for the benefit that the animal derived and is exempt from paying for the damage caused, holds that all the more so this halakha would apply in a case where it slipped on its urine, which is beyond the owner's control. But Rav Kahana, the one who says that the mishna is referring to a case where the animal slipped on its urine, holds that if, however, another animal pushed it, this indicates that the owner was negligent and should have prevented this happening. Therefore, in such a case, the owner pays for what his animal damaged,

since the owner of the garden can say to the owner of the animal: You should have led your animals across one by one, so that they would not be able to push each other.

96 Rav Kahana says: They taught only that the owner pays for the benefit that it derives in the same garden bed into which it fell, but if it went from one garden bed to another garden bed and ate from that one, the owner pays for what it damaged. And Rabbi Yoḥanan says: Even if the animal goes from one garden bed to another garden bed and eats, and even if the animal continues going from one bed to another and eating for the entire day, the owner pays only for the benefit that the animal derived and not for what it damaged, unless it leaves the garden entirely and returns with the owner's knowledge.

97 Rav Pappa said, explaining Rabbi Yoḥanan's statement: Do not say this means: Unless the animal leaves with the owner's knowledge and returns with his knowledge; rather, once it leaves the garden with the owner's knowledge, even if it returned without his knowledge, the owner is liable to pay for what it damaged. What is the reason for this? It is that the owner of the garden can say to the owner of the animal: Since the animal has now learned that the garden is there with food to eat, every time it strays it will run to there.

98 § The mishna teaches: If the animal descended into the garden in its usual manner and caused damage there, the owner pays for what it damaged. Rabbi Yirmeya asks: If the animal descended in its usual manner and gave birth to a calf there and damaged the produce with amniotic fluid, what is the halakha? Does the owner of the animal have to pay for this damage?

99 The Gemara clarifies Rabbi Yirmeya's question: Do not raise the dilemma in accordance with the opinion of the one who says that one is liable in a case of damage that is initially through negligence and ultimately by accident, since in this case the owner was negligent in allowing the animal to enter another person's courtyard, although the actual causing of the damage was ultimately by accident. When should you raise this dilemma? Raise it in accordance with the opinion of the one who says that one is exempt in a case that is initially through negligence and ultimately by accident. What is the halakha in this case?

100 The two sides of the question are as follows: Do we say that, since this case is initially through negligence and ultimately by accident, he is exempt from liability? Or perhaps here, in this case, it is entirely due to his negligence; since he saw that the animal was close to giving birth, he should have safeguarded it adequately

101 and taken care of it, and he bears responsibility for failing to do so. The dilemma shall stand unresolved.

102 § The mishna teaches: How does the court appraise the value of the damage when the owner pays for what it damaged? The court appraises a large piece of land with an area required for sowing one se'a of seed [beit se'a] in that field, including the garden bed in which the damage took place, it appraises how much it was worth before the animal damaged it and how much is it worth now, and the owner must pay the difference. The Gemara asks: From where are these matters derived?

103 Rav Mattana says: As the verse states: "And it feed in another field [uvi'er bisde aḥer]" (Exodus 22:4). This teaches that the court appraises the damage relative to another field, i.e., relative to the damaged field as a whole and not an appraisal of only the specific garden bed that was damaged.

[104] The Gemara asks: But this phrase: “Uvi’er bisde aḥer,” can be understood as meaning: “And it feed in another’s field,” and accordingly, is necessary to teach that the owner is not liable unless it was a field with an owner, to exclude damage caused by an animal in the public domain, for which the owner is not liable.

[105] The Gemara answers: If so, if this was the sole intention of the verse, let the Merciful One write in the Torah: And it feed in a field belonging to another [uvi’er bisde ḥaveiro], or alternatively, let it write: And it consume another field [sedeh aḥer].” What is conveyed by the particular expression: “In another field [bisde aḥer]”? It is to teach that the court appraises the damage relative to another field.

[106] But why not say that this verse comes entirely for this purpose, i.e., to teach that the court appraises the damage relative to another field? And in that case, from where do we derive the exclusion of liability for damage by Eating in the public domain?

[107] The Gemara answers: If it is so that the verse was referring solely to the method of appraising the damage, the Merciful One should have written this in the Torah in the context of payment, as follows: His best-quality field and the best quality of his vineyard he shall pay in another field (see Exodus 22:4), thereby adding the term: In another field, and, by extension, the directive concerning how the damage is appraised, to the verse discussing payment. Why do I need the Merciful One to write it in the context of the act of damaging, in the verse: “And it feed in another field”? Conclude two conclusions from it: The verse is referring to both the place where the damage occurred and the method by which the damage is appraised.

[108] § The Gemara asks: How do we, the court, appraise the value of the damage? Rabbi Yosei bar Ḥanina says: The court appraises the value of an area required for sowing one se’a of seed [beit se’a] relative to an area required for sowing sixty se’a of seed, and according to this calculation determines the value of the damage. Rabbi Yannai says: The court appraises each tarkav, equivalent to half a beit se’a, relative to an area of sixty tarkav. Ḥizkiyya says: The court appraises the value of each stalk eaten relative to sixty stalks.

[109] The Gemara raises an objection from a baraita: If an animal ate one kav or two kav, the court does not say that the owner pays compensation according to their value, i.e., the value of the actual damage; rather, they view it as if it were a small garden bed and evaluate it accordingly. What, is it not that this means that the court evaluates that garden bed according to what it would cost if sold by itself, which contradicts all the previous explanations?

[110] The Gemara rejects this interpretation: No, it means that the court appraises the value in relation to an area sixty times greater.

[111] The Sages taught: When appraising the damage, the court does not appraise it based on an area of a beit kav, because doing so enhances his position, and they also do not appraise it relative to an area of a beit kor, equivalent to the area in which one can plant thirty se’a of seed, because this weakens his position.

[112] The Gemara asks: What is this baraita saying? Rav Pappa said: This is what the baraita is saying: The court does not appraise the value of one kav relative to an area of sixty kav, which, being too large for an individual but too small for a trader, is always sold in the market at a lower price, because that would enhance the position of the one liable for damage. Conversely, the court does not appraise the value of a kor relative to an area of sixty kor, an area so large that it is purchased only by

a person with a specific need and therefore for a high price, because that would weaken the position of the one liable for damage.

113 Rav Huna bar Manoaḥ objects to this: According to this interpretation, this term employed by the baraita: And they also do not appraise it relative to an area of a beit kor, is imprecise. According to the explanation of Rav Pappa, the baraita should have said: And they also do not appraise it relative to a kor, to parallel the term in the previous clause: A kav.

114 Rather, Rav Huna bar Manoaḥ said in the name of Rav Aḥa, son of Rav Ika, that this is what the baraita is teaching: The court does not appraise a kav by itself, because that would enhance the position of the injured party, nor does the court appraise a kav as one part of a beit kor, because that would weaken the position of the injured party, since damage inside such a large area is insignificant. Rather, the court appraises the damage in relation to an area sixty times greater than the area that was damaged.

115 § The Gemara relates: There was a certain man who cut down a date palm [kashba] belonging to another. The latter came with the perpetrator for arbitration before the Exilarch. The Exilarch said to the perpetrator: I personally saw that place where the date palm was planted, and it actually contained three date palms [talata] standing together in a cluster, growing out of a single root, and they were worth altogether one hundred dinars. Consequently, since you, the perpetrator, cut down one of the three, go and give him thirty-three and one-third dinars, one third of the total value. The perpetrator rejected this ruling and said: Why do I need to be judged by the Exilarch, who rules according to Persian law? He came before Rav Naḥman for judgment in the same case, who said to him: The court appraises the damage in relation to an area sixty times greater than the damage caused. This amount is much less than thirty-three and one-third dinars.

116 Rava said to Rav Naḥman: If the Sages said that the court appraises damage caused by one’s property, such as his animal, relative to an area sixty times greater, would they also say that the court appraises damage relative to an area sixty times greater even for direct damage caused by one’s body?

117 Abaye said to Rava: With regard to damage caused by one’s body, what is your opinion? Are you basing your opinion on the following, as it is taught in a baraita: If one destroys the vineyard of another while the grapes are budding [semadar], the court views how much the vineyard was worth before he destroyed it, and how much it is worth afterward. Abaye states the inference: Whereas, the method of appraising one part in sixty is not taught. Is the basis of your ruling the fact that in this baraita that discusses damage caused directly by a person, the method of appraising one part in sixty is not mentioned?

118 Abaye continued: Is that to say that with regard to damage caused by an animal it is not taught in a mishna or baraita without mentioning the method of appraising one part in sixty like this case? But this is not so, as it is taught in a baraita: If an animal broke down a sapling that had not yet borne fruit, Rabbi Yosei says: Those who issue decrees in Jerusalem say that the damages are determined based on a fixed formula: If the sapling was in its first year, the owner of the animal pays two pieces of silver; if the sapling was two years old, he pays four pieces of silver. If the animal ate unripe blades of grain used for pasture, Rabbi Yosei HaGelili says: It is judged according to what remains of it, i.e., the court waits until the rest of the field ripens and then appraises the value of what was

previously eaten. And the Rabbis say: The court views how much the field was worth before he destroyed it, and how much it is worth now.

119 If the animal ate the grapes while they were in the budding stage, Rabbi Yehoshua says: The court views the grapes that were damaged as if they were grapes about to be picked, and appraise the damage based on this. And the Rabbis say: The court views how much the vineyard was worth before the animal ate the grapes, and how much it is worth now. Rabbi Shimon ben Yehuda says in the name of Rabbi Shimon: In what case is this statement, that the court appraises the vineyard or group of trees that were damaged, said? It is when the animal ate young branches [lulevei gefanim] of vines or shoots of fig trees, but where it ate unripe figs or unripe grapes, the court views them and appraises them as if they were grapes ready to be picked.

120 Abaye continues: In any event, it teaches that the Rabbis say: The court views how much the vineyard was worth before the animal ate the produce and how much it is worth now, and it does not teach that the court appraises the damage relative to an area sixty times greater.

121 Rather, what have you to say? You must say that the wording employed by the baraita is to be understood to mean that the court appraises the damage relative to an area sixty times greater, so here too, in the baraita dealing with one who himself causes damage, the wording is to be understood to mean that the damage is valued relative to an area sixty times greater.

122 Abaye said: Rabbi Yosei HaGelili and Rabbi Yishmael both said the same thing. They are of the same opinion that the appraisal for damages is based on the value of the produce remaining in the field once it ripens.

123 The opinion of Rabbi Yosei HaGelili is this that we stated above in the baraita, i.e., that the damages paid for an animal eating unripe grain are assessed according to what remains of the grain.

124 The opinion of Rabbi Yishmael is as it is taught in a baraita: The verse states: “The best of his field and the best of his vineyard he shall pay” (Exodus 22:4), which means he must pay according to the best-quality field of the injured party or the best-quality vineyard of the injured party. This is the statement of Rabbi Yishmael. Rabbi Akiva says: The verse comes only to allow injured parties to collect compensation from the superior-quality land of the one liable to pay for the damage, and by an a fortiori inference it is derived that this applies to consecrated property. Compensation for damaging consecrated property is paid from one’s best-quality assets.

125 And do not say that Rabbi Yishmael’s statement should be interpreted in accordance with the opinion of Rav Idi bar Avin, as Rav Idi bar Avin says: Here it concerns a case where the animal ate the produce of one garden bed from among several garden beds, but we do not know whether the garden bed it ate from was lean or choice. Therefore, the verse says to the owner of the animal: Arise and pay choice land, equivalent to the best-quality land that there is now remaining, and the court does not assume that the animal ate produce from the lesser-quality garden bed, as we do not say this.

126 What is the reason that Rabbi Yishmael does not hold in accordance with the opinion of Rav Idi bar Avin? It is because he accepts the principle that the burden of proof rests upon the claimant; without such proof, the owner of the animal pays only the value of a lesser-quality garden bed. Rather, Rabbi Yishmael interprets the Torah’s expression “the best of his field” as requiring payment with the best-quality land before him, and what is this? It is that which remained in the field and subsequently sprouted, and the compensation is based on the value of this.

127 The Gemara examines the baraita. The Master said: Rabbi Shimon ben Yehuda says in the name of Rabbi Shimon: In what case is this statement that the court appraises the vineyard or group of trees that were damaged said? It is when the animal ate young branches of vines or shoots of fig trees. The Gemara comments: This indicates that if the animal ate budding grapes the court views them and appraises them as if they were grapes ready to be picked. But say, and try to explain accordingly, the latter clause of the baraita, which teaches that if the animal ate unripe figs or half-ripe grapes, that is where the court views them as if they were grapes ready to be picked, indicating that if the animal ate the grapes in the budding stage, the court views how much the vineyard was worth before the animal ate them and how much it is worth now. Therefore, the two clauses of the baraita appear to be contradictory.

128 Ravina said: Bind them together and teach them as a single statement, as follows: In what case is this statement said that the court appraises how much the field was worth when the animal ate from it? It is said in a case when the animal ate young branches of vines or shoots of fig trees. But if it ate grapes in the budding stage, unripe figs, or half-ripe grapes, the court views them and appraises them as if they were grapes ready to be picked.

129 The Gemara asks: If so, the opinion of Rabbi Shimon ben Yehuda is identical to the opinion of Rabbi Yehoshua with regard to grapes in the budding stage. Why would the mishna state their opinions separately?

130 The Gemara answers: There is a difference between them with regard to the weakening of the vine. A vine is weakened by the grapes growing on it, as they draw nutrients from the roots and branches. Now that the grapes have been eaten, the vine is no longer weakened. Therefore, according to one opinion, the court takes into consideration this reduction of the weakening of the vine, and that amount is deducted when calculating the damages, whereas according to the other opinion, the court does not take this into account. But their respective opinions are not defined, and it is not clear which tanna takes this weakening into account and which does not.

131 Abaye said: Their respective opinions are certainly defined, and it is possible to know which Sage held which opinion, since who is the tanna who is concerned for the weakening of the vine? It is Rabbi Shimon ben Yehuda, as it is taught in a baraita: Rabbi Shimon ben Yehuda says in the name of Rabbi Shimon ben Menasya: With regard to the indemnity payments that a rapist must pay his victim, who had been a virgin, he does not pay compensation for the pain caused by the rape. This is due to the fact that she will ultimately suffer the same pain during her first act of sexual intercourse with her husband when she marries. The Rabbis said to him: The pain of a woman who has intercourse willingly is not comparable to the pain of a woman who has intercourse by rape. Rabbi Shimon ben Yehuda considers future pain when considering payment of damages, and similarly, he considers the reduced weakening of the vine.

132 Abaye said: These tanna’im following and Rabbi Shimon ben Yehuda said the same thing concerning this matter. Rabbi Shimon ben Yehuda said this ruling that we said with regard to the case of rape and the case of the vine. As to these other tanna’im, what is the case about which they gave a similar ruling?

133 This is as it is taught in a baraita concerning the halakha of one who injured a pregnant woman, thereby causing her to miscarry, for which the Torah holds him liable to pay her husband compensation. Rabbi Yosei says: The court appraises the compensation for the miscarried offspring

and deducts the amount they would have paid for a midwife. Since she miscarried, the husband no longer has to pay for a midwife, so that is deducted from the compensation. Ben Azzai says: The court deducts the value of the extra sustenance the husband would have been required to provide for his pregnant wife.

[134] The one who says that the court appraises the compensation for the miscarried offspring less the amount they would have paid for a midwife would all the more so concede that the appraisal is less the value of the extra sustenance. But the one who says that the appraisal is less the value of the extra sustenance does not necessarily hold that the court appraises the compensation for the miscarried offspring less the money they would have paid for a midwife, since the husband can say to the assailant: My wife is capable and does not require a midwife to assist her when giving birth.

[135] Returning to the discussion of the appraisal of compensation for damage, the Gemara relates: Rav Pappa and Rav Huna, son of Rav Yehoshua, acted in accordance with the opinion of Rav Naḥman and appraised a damaged date palm relative to an area sixty times greater than the particular area where the tree was standing.

[136] A different version of this halakha is also stated: Rav Pappa and Rav Huna, son of Rav Yehoshua, appraised the damage caused to a date palm relative to the assessment of the patch of land where the tree stood, i.e., how much it was worth with the tree and how much it was worth without it.

[137] The Gemara concludes: And the halakha is in accordance with the opinion of Rav Pappa and Rav Huna, son of Rav Yehoshua, with regard to an Aramean date palm, i.e., one of lesser quality, and it is assessed relative to the land, but the halakha is in accordance with the opinion of the Exilarch with regard to a Persian date palm, as they are of higher quality and each one is valuable, and it is not assessed relative to the land.

[138] The Gemara relates: Eliezer Ze’eira

[139] was wearing black shoes, unlike the Jewish custom of that time, and standing in the market of Neharde’a. Officials of the house of the Exilarch found him and said to him: What is different about you that causes you to wear these shoes? He said to them: I am wearing them because I am in mourning over the destruction of the Temple and Jerusalem, and so I wear black shoes, as is the custom of mourners. They said to him: Are you a man of such importance to publicly mourn over Jerusalem? They thought that it was simply presumptuousness on his part. Since he was acting against the prevalent Jewish custom, they brought him to the prison and incarcerated him.

[140] Eliezer Ze’eira said to them: I am a great man, a scholar, and it is fitting for me to mourn publicly over the destruction of Jerusalem. They said to him: How do we know that you are a scholar? He said to them: Either you ask of me a matter of halakha and I will answer you, or I will ask you a matter of halakha and you will answer me. They said to him: You ask.

[141] He said to them: With regard to one who cuts a cluster of flowers on the stem of a date palm belonging to another, what is he required to pay? They said to him: He pays the value of the date stem. He said to them: But ultimately they will become ripe dates, which are worth more. They said to him: If so, he pays the value of the future dates. He said to them: But he did not take ripe dates from the other person, so how can the court obligate him to pay for damage that he did not cause?

[142] They said to Eliezer Ze’eira: You tell us the correct appraisal for the date stem. He said to them: The court appraises the damage relative to a similar piece of land sixty times the size. They said to

him: Who says an opinion as you do, so that you can prove you are correct? He said to them: Shmuel is alive and his court exists; you can ask him. They sent the question before Shmuel, together with the ruling of Eliezer Ze'eira. Shmuel said to them: He is saying well to you, because the halakha is as he says; the appraisal is relative to an area sixty times greater. Upon hearing this, the officials of the Exilarch realized that he was a great man and they released him.

143 § The mishna (55b) teaches that Rabbi Shimon says: If the animal ate ripe produce, the owner pays the value of the ripe produce eaten. What is the reason for Rabbi Shimon's opinion? This that the Merciful One states in the Torah: "And it feed in another's field" (Exodus 22:4), which teaches that the court appraises the damage relative to another field, this statement applies specifically with regard to produce that requires a field to grow. For one's animal eating this produce, which do not require the field in order to ripen further, the animal's owner must pay their value as they are.

144 Rav Huna bar Ḥiyya says that Rabbi Yirmeya bar Abba says: Rav judged a practical halakha on a certain issue in accordance with the opinion of Rabbi Meir, despite the fact that in general the halakha is not in accordance with his opinion. And furthermore, he ruled that the halakha is in accordance with the opinion of Rabbi Shimon, even though in that case his was a minority opinion.

145 Rav Huna bar Ḥiyya explains: Rav judged a practical halakha in accordance with the opinion of Rabbi Meir, as it is taught in a baraita: In the case of a field designated by its owner as a lien for his wife's marriage contract, which he subsequently wants to sell, if he wrote a document of sale to a first buyer, but his wife did not sign for him to endorse the sale, and subsequently the husband wrote a document of sale to a second buyer, and his wife signed for him, she thereby loses the lien of her marriage contract, since the sale is effective and she can no longer collect from this field; this is the statement of Rabbi Meir. Rabbi Yehuda says that she can say: I did it only to please my husband, but I did not mean it and never intended to forgo my rights. What claim do you, the purchasers, have against me? Therefore, the lien is still in effect. Rav judged a case in accordance with the opinion of Rabbi Meir.

146 And Rav ruled that the halakha is in accordance with the opinion of Rabbi Shimon, as we learned in the mishna: Rabbi Shimon says: If one's animal ate ripe produce, the owner pays the value of ripe produce eaten. Therefore, if it ate one se'a of produce, he pays the value of one se'a of produce, and if it ate two se'a, he pays for two se'a. Although Rabbi Shimon's opinion is the minority one, Rav ruled in accordance with it.

147 MISHNA: In a case of one who stacks his produce in another's field without permission from the owner of that field, and an animal belonging to the owner of the field eats the produce, the owner of the field is exempt. And if the animal is injured by the produce, the owner of the stack is liable. But if he stacked them in that field with permission, the owner of the field is liable for damage caused to the produce.

148 GEMARA: The Gemara asks: Shall we say that that which we learned in the mishna is not in accordance with the opinion of Rabbi Yehuda HaNasi? As, if the mishna were in accordance with the opinion of Rabbi Yehuda HaNasi, doesn't he say: A homeowner who gives another permission to bring items into his courtyard is not responsible for them unless the homeowner accepts on himself to safeguard them? The mishna does not mention any such acceptance of responsibility. Rav Pappa said: Here we are dealing with the supervisor of the threshing floors, to whom people would entrust

their produce. As, since the supervisor says to the owner of the produce: Bring it in and stack it, it is as though he had said to him: Bring it in and I will supervise it for you.

149 MISHNA: One who sends a fire, i.e., places a burning object, in the hand of a deaf-mute, an imbecile, or a minor is exempt for any damage later caused by the fire according to human laws but liable according to the laws of Heaven. If he sent it in the hand of a halakhically competent person, the halakhically competent person is liable, not the one who sent him.

150 If one person brought the fire, and one other person subsequently brought the wood, causing the fire to spread, the one who brought the wood is liable for any damage caused. Conversely, if one person first brought the wood, and subsequently one other person brought the fire, the one who brought the fire is liable, since it was he who actually kindled the wood.

151 If another came and fanned the flame, and as a result the fire spread and caused damage, the one who fanned it is liable, since he is the proximate cause of the damage. If the wind fanned the flames, all the people involved are exempt, since none of them actually caused the damage.

152 GEMARA: Reish Lakish says in the name of Ḥizkiyya: They taught that one who sends fire in the hand of a deaf-mute, an imbecile, or a minor is exempt only when he conveyed to him a glowing coal and one of these people fanned it himself and set it alight. But if one conveyed a torch to a deaf-mute, imbecile, or minor, the one who gave it to him is liable. What is the reason for this halakha? The action of the one who gave it to him directly caused the fire to spread.

153 And Rabbi Yoḥanan says: Even if he conveyed a torch to him, he is exempt. What is the reason? It is the tongs of the deaf-mute that caused the damage, since torches do not cause fires on their own. And the one who gives dangerous objects to a deaf-mute is not rendered liable for the damage caused, unless he conveys branches [gavza] to him

154 of thin wood and a candle [sheraga], since in that case his own action, i.e., that of the one who sent the flame, definitely caused the fire to spread.

155 The mishna teaches that if one sent a fire in the hand of a halakhically competent person, the halakhically competent person is liable…If another came and fanned the flame the one who fanned it is liable. Rav Naḥman bar Yitzḥak says with regard to the correct text of the mishna: The one who teaches it using the word fanned [libba] is not mistaken, and the one who teaches it using the word blew [nibba] is not mistaken.

156 Rav Naḥman explained: The one who teaches using the word fanned [libba] is not mistaken, as it is written: “With a flame [belabbat] of fire” (Exodus 3:2), and the one who teaches using the word blew [nibba] is not mistaken, as it is written: “He creates the fruit [niv] of the lips” (Isaiah 57:19), which can be interpreted as referring to the breath of the lips.

157 § The mishna teaches: If the wind fanned the flames, all the people involved are exempt, indicating that even if one fanned the fire at the same time that the wind was blowing he is exempt. The Gemara cites a baraita in which the Sages taught the same idea explicitly: In a case where one fanned the flame and at the same time the wind fanned it, if his fanning has sufficient strength by itself to fan the flames, he is liable for damage caused by the fire, since even without the wind the fire would have spread. But if his fanning alone was not sufficient, he is exempt.

158 The Gemara asks: Why is he exempt if his fanning is not sufficient? Let it be the same halakha as the case of one who winnows grain on Shabbat by throwing it into the air, and the wind assists him

by separating the chaff from the grain. In such a case he is liable for desecrating Shabbat, despite the fact that without the assistance of the wind he would not have been able to winnow the grain.

159 Abaye said: With what are we dealing here? We are dealing with a case where he fanned the fire from one side and the wind fanned it from the other side, and the fire was blown in the direction the wind was blowing. Therefore, it is clear that his fanning did not help the fire spread, so he is exempt. Rava says: We are dealing with a case where he fanned it along with a typical wind, and this was not sufficient to cause the fire to spread, and suddenly an atypical wind came and fanned it. Therefore, he is exempt since he could not have anticipated this. Rabbi Zeira said: We are dealing with a case where he only heated [detzamera tzamurei] the fire by breathing on it, rather than fanning it properly.

160 Rav Ashi said: When we say that one is liable in a case where he winnows and the wind assists him, this statement applies with regard to the halakhot of Shabbat. With regard to Shabbat, the principle is that the Torah prohibited planned, constructive labor. The primary consideration is that his objective is accomplished, even if he did not perform the entire act of labor. But here, in the context of damages, he is considered to have caused damage merely through indirect action, and one who causes damage through indirect action is exempt.

161 MISHNA: If one sends forth a fire, i.e., allows it to escape, and it consumes wood, or stones, or earth, he is liable, as it is stated: “If a fire breaks out, and catches in thorns, so that a stack of grain, or standing grain, or the field, is consumed, the one who kindled the fire shall pay compensation” (Exodus 22:5), which teaches that he is liable also for destroying the field itself.

162 GEMARA: With regard to the verse cited in the mishna, Rava says: Why do I need the Merciful One to write in the Torah all of these terms: “Thorns,” “a stack of grain,” “standing grain,” and “field,” which seem to be redundant?

163 Rava explains: All the terms are necessary, because if the Merciful One had written only “thorns” in the Torah, I would say that it is specifically thorns for which the Merciful One renders one liable, because it is common for fire to be near them, and it is common that one is negligent. But with regard to a stack of grain, with regard to which it is not common for fire to be near it, as grain is valuable, so one keeps it out of harm’s way, and it is not common that one is negligent in allowing it to catch fire, I would say that he should not be liable. And if the Merciful One had written only: “A stack of grain,” I would say that it is specifically for such a stack that the Merciful One renders him liable, because it involves a substantial financial loss. But with regard to thorns, which involve only a minimal loss, I would say that he should not be liable. Therefore, the verse teaches that he is liable for damage to thorns as well.

164 Why do I need the Torah to state the term “standing grain”? It is in order to teach that just as standing grain is exposed, so too, one is liable only for damage caused by fire for all items that are exposed. One is exempt from liability for damage to items that are concealed.

165 The Gemara asks: And according to the opinion of Rabbi Yehuda, who deems one liable for a concealed article damaged by a fire, why do I need the Torah to state the term: “Standing grain”? The Gemara answers: The term serves to include all items that have stature, i.e., trees and animals, and not only produce. The Gemara asks: And according to the opinion of the Rabbis, who derive the halakha of concealed articles from the term “standing grain,” from where do they derive that all items that have stature are included? The Gemara answers: They derive it from the term: “Or standing grain,” since the additional word “or” is an inclusive term.

166 The Gemara asks: And what does Rabbi Yehuda derive from the additional word “or”? The Gemara answers: He requires the word “or” to divide the terms, i.e., to teach that one is liable for damage to any one of the items listed, and not only where the fire burned all of them together. The Gemara then asks: And from where do the Rabbis derive the halakha to divide the terms so that one is liable for damage to each one independently? The Gemara answers: They derive it from the second instance of the word “or,” as the verse states: “Or the field.”

167 The Gemara asks: And what does Rabbi Yehuda derive from the phrase “or the field”? The Gemara answers: Since the Merciful One wrote in the Torah: “Or standing grain,” He also wrote: “Or the field,” for stylistic consistency, but no additional halakha may be derived from this term.

168 Rava continues to elaborate on the different terms in the verse: And why do I need the word “field” in the verse? It serves to include liability for damage in a case when the flames licked a plowed field and charred its stones. The Gemara asks: But let the Merciful One write only the term “field,” and then it would not require all these other terms. If one is liable for damage to a field, which is not totally destroyed by the fire, he is certainly liable for damage to other items that are completely destroyed. The Gemara answers: It is necessary to write the other terms as well, because if the Merciful One had written only “field,” I would say that for what is in the field, yes, one is liable, but for anything else, no, one is not liable. Therefore, it teaches us that one is liable for any damage caused by fire.

169 § The Gemara cites an aggadic midrash based on this verse: Rabbi Shmuel bar Naḥmani says that Rabbi Yonatan says: Calamity befalls the world only when wicked people are in the world, but the calamity begins only with the righteous first, as it is stated in the verse: “If a fire breaks out, and catches in thorns, so that a stack of grain, or standing grain, or the field, is consumed” (Exodus 22:5). When does the fire, i.e., calamity, emerge? At a time when the thorns, i.e., the wicked, are found with it. But calamity begins only from the righteous first, as it is stated in the continuation of the verse: “And a stack of grain is consumed [vene’ekhal].” It is not stated: If a fire breaks out, and catches in thorns, and consumes [ve’akhal] the stack of grain; rather, it states: “A stack of grain is consumed,” meaning that the stack, i.e., the righteous, has already been consumed before the thorns.

170 Rav Yosef taught a baraita: What is the meaning of that which is written with regard to the plague of the firstborn: “And none of you shall go out of the opening of his house until the morning” (Exodus 12:22)? If the plague was not decreed upon the Jewish people, why were they not permitted to leave their homes? Once permission is granted to the destroyer to kill, it does not distinguish between the righteous and the wicked. And not only that, but it begins with the righteous first, as it is stated in the verse: “And will cut off from you the righteous and the wicked” (Ezekiel 21:8), where mention of the righteous precedes the wicked.

171 Rav Yosef cried and said: Are all these righteous people also compared to nothing when calamity strikes? Abaye said to him: It is goodness for the righteous that they die first, as it is written: “The righteous is taken away because of the evil to come” (Isaiah 57:1), so that he will not have to endure the suffering that will befall the people.

172 Rav Yehuda says that Rav says:

173 A person should always enter an unfamiliar city at a time of good, i.e., while it is light, as the Torah uses the expression “It is good” with regard to the creation of light (see Genesis 1:4). This goodness is manifest in the sense of security one feels when it is light. And likewise, when one

leaves a city he should leave at a time of good, meaning after sunrise the next morning, as it is stated in the verse: “And none of you shall go out of the opening of his house until the morning” (Exodus 12:22).

174 § The Sages taught: If there is plague in the city, gather your feet, i.e., limit the time you spend out of the house, as it is stated in the verse: “And none of you shall go out of the opening of his house until the morning.” And it says in another verse: “Come, my people, enter into your chambers, and shut your doors behind you; hide yourself for a little moment, until the anger has passed by” (Isaiah 26:20). And it says: “Outside the sword will bereave, and in the chambers terror” (Deuteronomy 32:25).

175 The Gemara asks: What is the reason for citing the additional verses introduced with the term: And it says? The first verse seems sufficient to teach the principle that one should not emerge from one’s house when there is a plague. The Gemara answers: And if you would say that this matter, the first verse that states that none of you shall go out until morning, applies only at night, but in the day one may think that the principle does not apply, for this reason the Gemara teaches: Come and hear: “Come, my people, enter into your chambers, and shut your doors behind you.”

176 And if you would say that this matter applies only where there is no fear inside, which explains why it is preferable to remain indoors, but where there is fear inside, one might think that when he goes out and sits among people in general company it is better, therefore, the Gemara introduces the third verse and says: Come and hear: “Outside the sword will bereave, and in the chambers terror.” This means that although there is terror in the chambers, outside the sword will bereave, so it is safer to remain indoors.

177 At a time when there was a plague, Rava would close the windows of his house, as it is written: “For death is come up into our windows” (Jeremiah 9:20).

178 The Sages taught: If there is famine in the city, spread your feet, i.e., leave the city, as it is stated in the verse: “And there was a famine in the land; and Abram went down into Egypt to sojourn there” (Genesis 12:10). And it says: “If we say: We will enter into the city, then the famine is in the city, and we shall die there; and if we sit here, we die also, now come, and let us fall unto the host of the Arameans; if they save us alive, we shall live; and if they kill us, we shall but die” (II Kings 7:4).

179 What is the reason for citing the second verse, introduced with the term: And it says? And if you would say that this matter, the principle of leaving the city, applies only where there is no uncertainty concerning a life-threatening situation, but where there is uncertainty concerning a life-threatening situation this principle does not apply, come and hear: “Come, and let us fall unto the host of the Arameans; if they save us alive, we shall live; and if they kill us, we shall but die.”

180 The Sages taught: If there is a plague in the city, a person should not walk in the middle of the road, due to the fact that the Angel of Death walks in the middle of the road, as, since in Heaven they have given him permission to kill within the city, he goes openly in the middle of the road. By contrast, if there is peace and quiet in the city, do not walk on the sides of the road, as, since the Angel of Death does not have permission to kill within the city, he hides himself and walks on the side of the road.

181 The Sages taught: If there is a plague in the city, a person should not enter the synagogue alone, as the Angel of Death leaves his utensils there, and for this reason it is a dangerous place. And this

matter, the danger in the synagogue, applies only when there are no children learning in the synagogue, and there are not ten men praying in it. But if there are children learning or ten men praying there, it is not a dangerous place.

182 The Sages taught: If the dogs in a certain place are crying for no reason, it is a sign that they feel the Angel of Death has come to the city. If the dogs are playing, it is a sign that they feel that Elijah the prophet has come to the city. These matters apply only if there is no female dog among them. If there is a female dog nearby, their crying or playing is likely due to her presence.

183 § Rav Ami and Rav Asi sat before Rabbi Yitzḥak Nappaḥa. One Sage said to Rabbi Yitzḥak Nappaḥa: Let the Master say words of halakha, and the other Sage said to Rabbi Yitzḥak Nappaḥa: Let the Master say words of aggada. Rabbi Yitzḥak Nappaḥa began to say words of aggada but one Sage did not let him, so he began to say words of halakha but the other Sage did not let him.

184 Rabbi Yitzḥak Nappaḥa said to them: I will relate a parable. To what can this be compared? It can be compared to a man who has two wives, one young and one old. The young wife pulls out his white hairs, so that her husband will appear younger. The old wife pulls out his black hairs so that he will appear older. And it turns out that he is bald from here and from there, i.e., completely bald, due to the actions of both of his wives.

185 Rabbi Yitzḥak Nappaḥa continued and said to them: If so, I will say to you a matter that is appropriate to both of you, which contains both halakha and aggada. In the verse that states: “If a fire breaks out, and catches in thorns” (Exodus 22:5), the term “breaks out” indicates that it breaks out by itself. Yet, the continuation of the verse states: “The one who kindled the fire shall pay compensation,” which indicates that he must pay only if the fire spread due to his negligence. The verse can be explained allegorically: The Holy One, Blessed be He, said that although the fire broke out in the Temple due to the sins of the Jewish people, it is incumbent upon Me to pay restitution for the fire that I kindled.

186 I, God, kindled a fire in Zion, as it is stated: “The Lord has accomplished His fury, He has poured out His fierce anger; and He has kindled a fire in Zion, which has devoured its foundations” (Lamentations 4:11). And I will build it with fire in the future, as it is stated: “For I, says the Lord, will be for her a wall of fire round about; and I will be the glory in her midst” (Zechariah 2:9).

187 There is a halakha that can be learned from the verse in Exodus, as the verse begins with damage caused through one’s property: “If a fire breaks out,” and concludes with damage caused by one’s body: “The one who kindled the fire.” This indicates that when damage is caused by fire, it is considered as though the person who kindled the fire caused the damage directly with his body. That serves to say to you that the liability for his fire damage is due to its similarity to his arrows. Just as one who shoots an arrow and causes damage is liable because the damage was caused directly through his action, so too, one who kindles a fire that causes damage is liable because it is considered as though the damage were caused directly by his actions.

188 § The Gemara continues with another statement of aggada on a related topic: The verse states: “And David longed, and said: Oh, that one would give me water to drink of the well of Bethlehem, which is by the gate! And the three mighty men broke through the host of the Philistines, and drew water out of the well of Bethlehem, that was by the gate, and took it, and brought it to David; but he would not drink it, but poured it out to the Lord” (II Samuel 23:15–16). The Sages understood that

David was not simply asking for water, but was using the term as a metaphor referring to Torah, and he was raising a halakhic dilemma.

189 What is the dilemma that David is raising? Rava says that Rav Naḥman says: He was asking about the halakha with regard to a concealed article damaged by a fire. He wanted to know whether the halakha is in accordance with the opinion of Rabbi Yehuda, who holds that one is liable to pay for such damage, or whether the halakha is in accordance with the opinion of the Rabbis, who hold that one is exempt from liability for damage by fire to concealed articles. And the Sages in Bethlehem answered him what they answered him.

190 Rav Huna stated a different explanation of the verse: There were stacks of barley belonging to Jews in which the Philistines were hiding, and David wanted to burn down the stacks to kill the Philistines and save his own life. He raised the dilemma: What is the halakha? Is it permitted to save oneself by destroying the property of another?

191 They sent the following answer to him: It is prohibited to save oneself by destroying the property of another. But you are king, and a king may breach the fence of an individual in order to form a path for himself, and none may protest his action, i.e., the normal halakhot of damage do not apply to you since you are king.

192 The Rabbis, and some say that it was Rabba bar Mari, give an alternative explanation of the dilemma and said: The stacks of barley belonged to Jews, and there were stacks of lentils belonging to the Philistines. David needed barley to feed his animals. And David raised the following dilemma: What is the halakha? I know that I may take the lentils belonging to a gentile to feed my animals, but is it permitted to take a stack of barley belonging to a Jew, to place before one's animal for it to consume, with the intent to pay the owner of the barley with the stacks of lentils belonging to the Philistines?

193 The Sages of Bethlehem sent the following reply to him: "If the wicked restore the pledge, give back that which he had taken by robbery, walk in the statutes of life, committing no iniquity; he shall surely live, he shall not die" (Ezekiel 33:15). This verse teaches that even though the robber repays the value of the stolen item, he is nevertheless considered to be wicked, and is described as such in the verse, and a commoner would not be allowed to act as you asked. But you are king, and a king may breach the fence of an individual in order to form a path for himself, and none may protest his action.

194 The Gemara discusses the different explanations: Granted, according to the one who says that David was asking whether he could take the stacks of barley and exchange them, i.e., repay the owners of the barley, with stacks of lentils, this is as it is written in one verse: "And the Philistines were gathered together into a troop, where was a plot of ground full of lentils; and the people fled from the Philistines" (II Samuel 23:11), and it is written in one other verse: "He was with David at Pas Dammim, and there the Philistines were gathered together to battle, where was a plot of ground full of barley; and the people fled from before the Philistines" (I Chronicles 11:13). This apparent contradiction can be reconciled by saying that there were two fields, one of barley and one of lentils.

195 But according to Rav Huna, the one who says that David's question was asked because he wanted to burn the stacks of barley, for what purpose does he require these two verses? How does he explain this contradiction? Rav Huna could have said to you that there were also stacks of lentils belonging to Jews, inside which the Philistines were hiding.

196 Granted, according to the one who says that David asked his question because he wanted to burn the stacks, this is as it is written in the following verse with regard to David: “But he stood in the midst of the plot, and saved it, and slew the Philistines; and the Lord performed a great victory” (II Samuel 23:12). But according to the one who says that David’s question was asked with regard to exchanging the lentils for the barley, what is the meaning of the phrase: “And saved it”?

197 The Rabbis answer that David saved it in that he did not permit them to exchange the value of the barley with the lentils.

198 Granted, according to both of these two opinions, this is as it is written in two distinct verses, one describing the field of lentils and one describing the field of barley.

199 But according to Rava, who cited Rav Naḥman, the one who says that David asked with regard to the halakha of a concealed article damaged by a fire, for what purpose does he require the two verses that describe a field of lentils and a field of barley? Rav Naḥman could have said to you that David was asking both about concealed articles damaged by a fire and one of these other two dilemmas.

200 Granted, according to the one who says one of these two explanations, that David was asking either about repaying barley with lentils or burning the stacks of barley, this is as it is written of David: “But he would not drink it” (II Samuel 23:16). David said to himself: Since there is a prohibition involved in this action, it is not satisfactory to me to act in this manner, even though technically it is permitted for a king. But according to the one who says that David was raising a dilemma with regard to the halakha of a concealed article damaged by a fire, since they sent him an answer that was a tradition with regard to the halakha, what is the meaning of: “But he would not drink it”?

201 The Gemara answers: This means that he did not say the halakha in their names. He did not transmit the ruling in the name of those who went in the time of battle to ask the Sages what the halakha is. David said to himself: This is the tradition that I received from the court of Samuel of Rama: With regard to anyone who hands himself over to die for the sake of words of Torah, the Sages do not say a matter of halakha in his name, so that others will not follow this ruling and endanger their lives.

202 The Gemara asks another question: The verse states: “He poured it out to the Lord” (II Samuel 23:16), which indicates that David acted stringently and did not rely on the lenient ruling that he received. Granted, according to the one who says either of these two explanations, that David asked either about burning the stacks of barley or about replacing their value with lentils, he poured out the water to God due to the fact that he acted for the sake of Heaven and did not rely on the lenient ruling he had received. But according to the one who says that David asked about a concealed article damaged by a fire, what is the reason that he poured out the water to the Lord? The Gemara answers: The reason is that they said this halakha in the name of the tradition, without associating it with any specific individual.

203 MISHNA: If one kindled a fire that crossed a fence that is four cubits high, or if the fire crossed the public thoroughfare, or if the fire crossed a river, and in each case it caused damage on the other side, he is exempt from liability.

204 GEMARA: The Gemara asks: But isn’t it taught in a baraita that if a fire crossed a fence that is four cubits in height, the one who kindled the fire is liable? This appears to contradict the mishna.

[205] Rav Pappa said: There is no dispute between the tanna of the mishna and the tanna of the baraita; there is merely a difference of how they stated their rulings. The tanna of our mishna counts downward from above to below. In other words, if the fire crossed a fence six cubits high, the one who kindled the fire is exempt; if it crossed a fence five cubits high, he is exempt; and this is the halakha until the fire crosses a fence of a minimum of four cubits high, where the one who kindled the fire is still exempt. Conversely, the tanna of the baraita counts up from below to above. The meaning is that if the fire crossed a fence two cubits high, the one who kindled the fire is liable; if the fire crossed a fence three cubits high, he is liable; and this is the halakha until the fire crosses a fence of a maximum of four cubits high, where the one who kindled the fire is still liable. Accordingly, there is no contradiction between the mishna and the baraita.

[206] § Rava says: When they said in the mishna with regard to a fire crossing a fence four cubits high that the one who kindled the fire is exempt, this is even in a field of thorns. Rav Pappa says: And Rava's statement is referring to a case where the height of the fence is four cubits counting from above the upper limit of the thorns.

[207] Rav says: They taught in the mishna that one is exempt from liability if the fire crosses a public thoroughfare only in a case where the flame blazes high [bekolaḥat]. But in a case where the flame blazes low [benikhpefet] and therefore spreads easily along the ground, the one who kindled the fire is liable even if the space that the fire crossed was up to one hundred cubits. And Shmuel said: The mishna exempts one from liability if the fire crosses a public thoroughfare in a case where the flame blazes low, but in a case where the flame blazes high, even any minimal gap between where the fire was kindled and where it caused damage renders the one who kindled the fire exempt.

[208] It is taught in a baraita in accordance with the opinion of Rav: In what case is this statement said that one is exempt if the fire crosses a public thoroughfare? It is in a case where the flame blazes high. But in a case where the flame blazes low and there is wood to keep it burning, one is liable even if it causes damage at a distance of up to one hundred mil. If the fire crossed a river or a pool [shelulit] of water that is eight cubits wide, he is exempt from paying for the damage caused, regardless of whether the fire blazed high or low.

[209] § The mishna teaches: If the fire crossed the public thoroughfare, he is exempt. The Gemara asks: Who is the tanna who holds this opinion? Rava said: It is Rabbi Eliezer, as we learned in a mishna (61b) that Rabbi Eliezer says: One is liable up to a distance of sixteen cubits, like the width of the public domain. By inference, one is exempt if a fire crosses a greater distance, i.e., across a public thoroughfare.

[210] The mishna teaches: Or if the fire crossed a river, he is exempt. Rav says: The term stream means an actual river. And Shmuel says: This term means a water channel.

[211] The Gemara explains their dispute: The one who says that it is referring to an actual river, Rav, deems exempt one whose fire crosses a riverbed even when there is no water in it, since it is sufficiently deep and wide to prevent a typical fire from crossing it. But the one who says that it is referring to a water channel, Shmuel, holds that if the fire crosses a water channel that has water in it, yes, the one who kindled the fire is exempt. But if the fire crosses a water channel that does not have water in it, he is not exempt.

212 We learned in a mishna elsewhere (Pe’a 2:1): And these, the following list of features, divide a field for the purpose of pe’a, i.e., it is no longer considered a single field, but instead pe’a must be given from each separate section: A stream, a shelulit, a private road, and a public thoroughfare.

213 The Gemara asks: What is a shelulit? Rav Yehuda says that Shmuel says: It is a place where rainwater gathers [sholelin]. Rav Beivai says that Rabbi Yoḥanan says: It is a water channel that distributes its spoils [shalal] to its banks, since the water spreads to the adjacent cisterns.

214 The Gemara points out that according to the one who says that it means a place where rainwater gathers, Shmuel, since gathered rainwater divides a field, all the more so does a water channel, which is both larger and permanent, divide a field. But according to the one who says that only a water channel divides a field, Rabbi Yoḥanan, he holds that only that divides a field, but a place where rainwater gathers does not divide the field, since these

215 are simply called pools of the land, and are not considered significant enough to divide the field.

216 MISHNA: In a case of one who kindles a fire on his own premises, up to what distance may the fire travel within his property for him to still bear liability for damage caused? Rabbi Elazar ben Azaria says: The court views his location where he kindled the fire as if it were in the center of a beit kor. Therefore, if the fire spreads and causes damage farther away than half a beit kor, the one who kindled the fire is exempt, since he could not anticipate that the fire would spread so far. Rabbi Eliezer says: One is liable up to a distance of sixteen cubits, like the width of a public thoroughfare. Rabbi Akiva says: One is liable up to a distance of fifty cubits. Rabbi Shimon says: The verse states: “The one who kindled the fire shall pay [shallem yeshallem] compensation” (Exodus 22:5), to teach that everything is according to the fire.

217 GEMARA: Rabbi Shimon appears to hold that there is no maximum distance which would exempt one from liability for the spreading of a fire. The Gemara asks: But isn’t Rabbi Shimon of the opinion that there is a maximum limit concerning liability for a fire, beyond which one is exempt?

218 But didn’t we learn in a mishna (Bava Batra 20b): A person may not stand an oven inside the house unless there is a height of four cubits to the ceiling above it, out of concern that the ceiling might catch fire. Similarly, if he stood it in the attic, he should not do so unless there is plaster [ma’aziva] underneath it, above the ceiling of the floor below, three handbreadths in thickness, out of concern that the floor might catch fire. And in the case of a stove, which is smaller and does not reach temperatures as high as those of an oven, a thickness of one handbreadth is sufficient. And even though he may place his oven or stove in this manner, if the fire from the oven or stove causes damage, he must pay for what it damaged.

219 The mishna continues: Rabbi Shimon says: These measurements were stated only to teach that if the fire from the oven or stove causes damage after the owner takes these precautions, he is exempt from paying compensation. Evidently, Rabbi Shimon does have a maximum distance beyond which one is not liable for fire.

220 Rav Naḥman says that Rabba bar Avuh says: This is how Rabbi Shimon’s statement in the mishna should be understood: Everything is according to the height of the fire he initially kindled. If it was a small fire he is not liable to pay for damage caused by it if it traveled far, whereas if he started a large fire, he is liable even if it traveled a great distance.

221 Rav Yosef says that Rav Yehuda says that Shmuel says: The halakha is in accordance with the opinion of Rabbi Shimon. And so Rav Naḥman says that Shmuel says: The halakha is in accordance with the opinion of Rabbi Shimon.

222 MISHNA: With regard to one who kindles a stack of wheat or barley and there were vessels concealed inside the stack and they caught fire and burned together with the stack, Rabbi Yehuda says: The one who kindled the fire also pays compensation for what was inside the stack, but the Rabbis say: He pays compensation only for the stack of wheat or barley, as the case may be, and he is not responsible for that which was concealed within it.

223 If there was a goat tied to the stack of grain, and there was a Canaanite slave nearby who was not tied to it, and both the goat and the slave were burned together with the stack and killed, the one who kindled the fire is liable to pay compensation for both. Conversely, if the slave was tied to the stack and there was a goat nearby that was not tied to it, and they were both burned together with it, the one who kindled the fire is exempt from payment for damage because he is liable to receive capital punishment for murder, and he is punished only for the greater transgression.

224 And the Rabbis, who disagree with Rabbi Yehuda and exempt one from payment for vessels concealed inside the stack in the field, concede to Rabbi Yehuda that if one sets fire to a building, he pays compensation for everything that was burned inside it, since it is the normal way of people to place items in houses.

225 GEMARA: Rav Kahana says: This dispute between the Rabbis and Rabbi Yehuda concerning vessels concealed in a stack is referring specifically to a case where one kindled a fire on his own premises and the fire spread and consumed the stack on another’s property. In that case, Rabbi Yehuda deems the one who kindled the fire liable for damage to concealed articles damaged by a fire, but the Rabbis exempt him. But in a case of one who kindles a fire on another’s premises, all agree that he pays compensation for everything that is contained within it.

226 Rava said to him: If so, that the Rabbis concede to Rabbi Yehuda in the case of one who kindles the fire on the premises of another, then rather than teaching the latter clause that states: The Rabbis concede to Rabbi Yehuda that if one sets fire to a building he pays compensation for everything that was burned inside it, since it is the normal way of people to place items in houses, let the tanna instead distinguish and teach the concession of the Rabbis in the context of the same case of one setting fire to a stack: In what case is this statement said? It is said in a case where he kindled the fire on his own premises and it spread and consumed a stack on the premises of another. But if he kindled the fire on property belonging to another, all agree that he pays compensation for everything that was contained within it. Since the mishna is not worded in this manner, it seems that this is not the opinion of the Rabbis.

227 Rather, Rava said that the Rabbis and Rabbi Yehuda disagree with regard to two issues: They disagree with regard to the case of one who kindles a fire on his own premises and it then spreads and consumes a stack on property belonging to another, as Rabbi Yehuda deems him liable even for a concealed article damaged by a fire, but the Rabbis hold that he is not liable. And they disagree also in the case of one who kindles a fire on premises belonging to another, as Rabbi Yehuda holds that he must pay compensation for everything within it, even a purse of money if it was concealed within the stack, but the Rabbis hold that it is only for vessels that are typically concealed inside a stack, such as

threshing tools or yokes for cattle, that he must pay compensation, but for vessels or other items that are not typically concealed inside a stack he is not liable to pay compensation.

228 The Sages taught: With regard to one who kindles a stack and there were vessels inside it that were burned, Rabbi Yehuda says: The one who kindled the fire pays compensation for everything that was inside it, but the Rabbis say: He pays compensation only for the value of a stack of wheat or a stack of barley, and he does not pay compensation for the vessels. And the court views the place where the vessels were as if it were filled with grain, and calculates the amount of compensation accordingly.

229 In what case is this statement said? It is in a case where one kindled a fire on his premises and the fire spread and burned items in premises belonging to another. But with regard to one who kindles a fire on premises belonging to another that destroys a stack of wheat, all agree that he pays compensation for everything that was inside the stack.

230 And Rabbi Yehuda concedes to the Rabbis that in a case where one lends space to another in his field to stack grain, and this person stacked grain in the field and concealed items inside the stack, if the owner of the field causes the stack to be burned down, he pays compensation for the stack alone, since the other person did not have permission to conceal items inside his stack. Similarly, if one received permission to stack wheat in the field of another and he stacked barley; or conversely, if he received permission to stack barley and he stacked wheat; or similarly, if he stacked wheat and covered the stack with barley, or stacked barley and covered the stack with wheat, in all these cases, Rabbi Yehuda concedes that he pays compensation for the barley alone, which is less than the value of wheat.

231 § Rava says: With regard to one who gives a gold dinar to a woman for safekeeping and says to her: Be careful with this dinar because it is made of silver, if she herself damaged the dinar, she must pay compensation for the value of a gold dinar. This is because he can say to her: What business did you have damaging it? If she was negligent and it was lost or stolen, she pays as compensation only the value of a silver dinar, since she can say to him: I undertook to safeguard only a silver dinar, but I did not undertake to safeguard a gold dinar.

232 Rav Mordekhai said to Rav Ashi: You teach this halakha as a statement of Rava, but for us this halakha is obvious from the baraita that taught: If one stacked wheat and covered the stack with barley, or stacked barley and covered the stack with wheat, the one responsible for the fire pays compensation for the barley alone. Evidently, the one who kindled the fire can say to the owner of the stack: I undertook to safeguard a stack of barley but not a stack of wheat. Here too, in the case of a golden dinar presented as a silver dinar, the woman can say to him: I did not undertake to safeguard a gold dinar.

233 § Rav said: I heard a halakhic matter in connection with Rabbi Yehuda’s opinion in the mishna but I do not know what it is. Shmuel said: And does Abba, which was Rav’s name, really not know what he heard? This is the statement that he heard: According to the opinion of Rabbi Yehuda, who deems one liable for concealed articles damaged by a fire, the Sages applied the ordinance of a robbery victim to one whose concealed items are damaged by his fire. Just as the Sages instituted an ordinance that a robbery victim can take an oath as to what was stolen from him and the robber must repay him accordingly, similarly, according to Rabbi Yehuda the owner of the stack can take an oath

that certain items were inside the stack, and the one responsible for the fire must pay compensation for them.

234 Ameimar asks: Did they apply this ordinance of a robbery victim in the case of an informer who causes another person’s property to be confiscated by the gentile authorities, or not? The question is clarified: According to the opinion of the one who says that we do not judge cases of liability for damage caused by indirect action, do not ask the question, as according to that opinion we also do not judge cases of liability for informers who cause indirect damage.

235 Rather, when you ask this question, it is in accordance with the opinion of the one who said that we judge cases of liability for damage caused by indirect action, and the question is: Did the Sages apply the ordinance of a robbery victim to one whose items were taken due to an informer, meaning that the victim can take an oath to support his claim with regard to what was taken and take this amount in compensation, or not? No conclusion was reached about this, and the dilemma shall stand unresolved.

236 An incident was related about a certain man who kicked a safe belonging to another, sending it flying into the river. The owner of the safe came to court and said: I had such and such inside it. Rav Ashi sat and was investigating the question: In a case like this, what is the halakha? Does the court believe the claimant or not?

237 Ravina said to Rav Aḥa, son of Rava, and some say that Rav Aḥa, son of Rava, said to Rav Ashi: Is this not identical to the case of the mishna, as we learned in the mishna: And the Rabbis concede to Rabbi Yehuda that if one sets fire to a building, he pays compensation for everything that was burned inside it, since it is the normal way of people to place items in houses? Similarly, it is the normal way of people to place money in a safe, and the court should rely on the claim of the victim.

238 Rav Ashi said to him: If the claimant were to claim that there were coins in the safe, this ruling would apply here also. But with what are we dealing here? We are dealing with a case where the claimant claims that there was a pearl [marganita] in the safe. What is the halakha? Do people typically place pearls in a safe, in which case he should be believed, or not? The dilemma shall stand unresolved.

239 Rav Yeimar said to Rav Ashi: If the one whose home was burned by the fire were to claim that he had, among other items, a silver goblet in the building, what is the halakha? Is he believed or not? Rav Ashi said to him: We view his situation. If he is a wealthy person, who would typically have a silver goblet, or alternatively, if he is a trustworthy person with whom people entrust valuable items, he can take an oath that this is what he had and take compensation according to his claim. But if he is not such a person, it is not in his power to be believed in such a claim.

240 § Rav Adda, son of Rav Avya, said to Rav Ashi: Concerning two terms used to describe those who take another’s property against his will, a gazlan and a ḥamsan, what is the difference between them? Rav Ashi said to him: A ḥamsan gives money for the article that he takes from its owner, albeit against the owner’s will, whereas a gazlan does not give money.

241 Rav Adda was puzzled by this response and said to him: If he gives money, do you still call him a ḥamsan? Since he pays money for it, he acquires it lawfully, despite the fact that its owner did not sell it voluntarily. But doesn’t Rav Huna say: If one was strung up so that another could coerce him to sell a certain item, and he sold it, his sale is a valid sale. This indicates that a sale under duress is

considered a valid sale. Rav Ashi answered: This is not difficult. This case, where the sale under duress is legally considered to be a sale, is referring to a case where he eventually says: I want to sell the item, despite having been forced. By contrast, in that case, where the sale is invalid, he did not say: I want to sell the item.

242 MISHNA: In the case of a spark that emerged from under the hammer of a blacksmith and started a fire, causing damage, the blacksmith is liable for the damage caused.

243 In the case of a camel that was laden with flax and was passing through the public domain, and its flax extended into a store and the flax caught fire from a lamp in the store belonging to the storekeeper, and as a result of the burning flax the camel set fire to the building together with all its contents, the owner of the camel is liable. But if the storekeeper placed his lamp outside, thereby causing the flax on the camel to catch fire, and consequently the building was set on fire, the storekeeper is liable. Rabbi Yehuda says: In a case where the lamp placed outside was a Hanukkah lamp, the storekeeper is exempt, since it is a mitzva for a Hanukkah lamp to be placed outside.

244 GEMARA: Ravina said in the name of Rava: Conclude from Rabbi Yehuda's statement that the mitzva is to place the Hanukkah lamp within a height of ten handbreadths from the ground as, if it enters your mind to say that the mitzva can also be fulfilled by placing it above ten handbreadths, why did Rabbi Yehuda say that in the case of a Hanukkah lamp placed outside, the storekeeper is exempt? Let the owner of the camel say to the storekeeper: You should have placed the lamp above the height of a camel and its rider so that the flax would not catch fire. Rather, must one not conclude from here that Rabbi Yehuda's opinion is that the mitzva is to place it within ten handbreadths of the ground and not higher?

245 The Sages say in response: No, there is no proof from here. Actually, I could say to you that one may place a Hanukkah lamp even above a height of ten handbreadths, and as for what you said, that the owner of the camel can claim: You should have placed the lamp above the height of a camel and its rider, in response to this one can say: Since the store owner is performing a mitzva by placing his Hanukkah lamp outside, the Sages did not trouble him to such an extent to have him place his lamp at a height that would be inconvenient for him to reach.

246 Further on the subject of the height of a Hanukkah lamp, Rav Kahana says that Rav Natan bar Minyumi taught in the name of Rabbi Tanḥum: A Hanukkah lamp that is placed higher than twenty cubits from the ground is unfit to be used for the mitzva, since people do not generally look up to such a height, and the main purpose of the Hanukkah lamp is for it to be seen by others. In this regard, the halakha of the height of a Hanukkah lamp is like the halakha of the height of a sukka and the halakha of the height of a cross beam at the entrance to an alleyway, which are unfit for their respective purposes if they are higher than twenty cubits.

## Chapter 7

1 MISHNA: The principle of double payment applies more broadly than the principle of fourfold or fivefold payment, as the principle of double payment applies both to the theft of something that is alive and to the theft of something that is not alive, but the principle of fourfold or fivefold payment

applies only to the theft of an ox or a sheep, as it is stated: “If a man steal an ox or a sheep, and slaughter it or sell it, he shall pay five oxen for an ox and four sheep for a sheep” (Exodus 21:37).

[2] Having stated a limitation to the halakha of fourfold and fivefold payment, the mishna mentions a further limitation, which applies to all three types of payments. One who steals an item after a thief has already stolen it, i.e., one who steals a stolen item, does not pay the double payment to the thief or to the prior owner, nor does one who slaughters or sells an ox or a sheep after a thief has already stolen it pay the fourfold or fivefold payment. Rather, he pays only the principal, i.e., the value of the item he stole.

[3] GEMARA: The mishna teaches one particular difference between double payment and fourfold or fivefold payment, while it does not teach this difference between them: The principle of double payment applies both in the case of a thief and in the case of a bailee who falsely states the claim that a thief stole the deposit entrusted to him and who takes an oath to that effect. But the principle of fourfold or fivefold payment applies only in the case of a thief, not in the case of one who falsely claims that a deposit was stolen.

[4] The fact that the mishna does not teach the latter distinction supports the opinion of Rabbi Ḥiyya bar Abba, as Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: In the case of one who falsely states the claim that a thief stole a deposit from him, and it is discovered that he himself is the thief, he pays double payment. And if the stolen item is an ox or sheep and he slaughtered or sold it, he pays the fourfold or fivefold payment. According to Rabbi Ḥiyya bar Abba, there is no difference between the applications of double payment and fourfold or fivefold payment in this case.

[5] There are those who say a different version of this discussion: Let us say that the mishna supports the opinion of Rabbi Ḥiyya bar Abba, as Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: In the case of one who falsely states the claim that a thief stole a deposit from him, and it is discovered that he himself is the thief, he pays double payment. And if the stolen item is an ox or sheep, and he slaughtered or sold it, he pays the fourfold or fivefold payment.

[6] The Gemara rejects the inference: Does the mishna teach that there is no difference between double payment and fourfold or fivefold payment except for the one mentioned in the mishna? It teaches merely that the principle of double payment applies more broadly than the principle of fourfold or fivefold payment, and it provides an example of this statement. This does not mean that this is the only difference, and it is possible that the tanna taught this one case and omitted others.

[7] § The mishna teaches that the principle of double payment applies both to the theft of something that is alive and to the theft of something that is not alive. The Gemara asks: From where are these matters derived? It is as the Sages taught in a baraita with regard to the verse that discusses double payment: “For any matter of trespass, whether it be for an ox, for a donkey, for a sheep, for a garment, or for any manner of lost thing about which one shall say: This is it, the claims of both of them shall come before the judges, the one whom the judges convict shall pay double to his neighbor” (Exodus 22:8). “For any matter of trespass” is a generalization; “whether it be for an ox, for a donkey, for a sheep, for a garment” is a detail. And when the verse states: “Or for any manner of lost thing,” it then generalizes again.

[8] Consequently, this verse contains a generalization, and a detail, and a generalization, and one of the thirteen rules of exegesis states that in such a case you may deduce that the verse is referring only to items similar to the detail. Therefore, just as each of the items mentioned in the detail is clearly

defined as an item that is movable property and has intrinsic monetary value, so too double payment is practiced with regard to any item that is movable property and has intrinsic monetary value.

[9] Land is excluded, as it is not movable property. Canaanite slaves are excluded, as they are compared to land in many areas of halakha. Financial documents are excluded, as, although they are movable property, they do not have intrinsic monetary value. The value of the material on which the document is written is negligible; documents are valuable only because they serve as proof for monetary claims. Finally, consecrated property is excluded because it is written in the verse that the one found liable shall pay double to "his neighbor," i.e., to another person, rather than to the Temple treasury.

[10] The Gemara asks: If the halakha of double payment is limited to cases similar to the details mentioned in the verse, it should also be derived that just as each of the items mentioned in the detail is clearly defined as an item whose carcass transmits impurity through contact and carrying, so too any item whose carcass transmits impurity through contact and carrying it is subject to double payment. But birds, whose carcasses do not transmit impurity through contact or carrying, should not be subject to double payment.

[11] The Gemara objects to the question: But how can you say this? But isn't "garment" written in the list of specified items (Exodus 22:8)? It is impossible to speak of the impurity of carcasses with regard to clothing. The Gemara responds: Say, in response to this objection: We are speaking specifically of animals, and this is the question that was asked: Why not say that with regard to animals, an animal whose carcass transmits impurity through contact and carrying, yes, it is subject to double payment, whereas an animal whose carcass does not transmit impurity through contact and carrying, such as a bird, no, a thief would not pay double payment for stealing it?

[12] This line of reasoning is correct, because we expound each one of the listed items in the generalization, and detail, and generalization by itself. Each item is treated individually as representing a category, but the different items are not grouped together into one broad category. Since several animals are listed, it is concluded that if the stolen item is an animal it must resemble the listed animals. But since birds do not transmit impurity through contact or carrying, they are not subject to double payment.

[13] The Gemara rejects this: If so, let the Merciful One write just one detail, i.e., animal, and that would have been enough to teach that animals are subject to double payment only if they transmit impurity through contact and carrying, so birds are excluded. Since the Torah listed several animals, birds are included.

[14] The Gemara questions this assertion: Which individual animal should the Merciful One have written? If the Merciful One had written only "ox," I would say that only an animal that is similar to an ox, in that it is sacrificed on the altar, yes, it is subject to double payment. But an animal that is not sacrificed on the altar, no, it is not subject to double payment. And if the Merciful One had written only "donkey," I would say that only an animal that is similar to a donkey, in that its firstborn male offspring is sacred with the sanctity of a firstborn, yes, it is subject to double payment. But an animal that is not sacred with the sanctity of a firstborn, no, it is not subject to double payment. The principle of double payment would then include cattle, sheep, goats, and donkeys, but not other animals (see Exodus 13:13 and Deuteronomy 15:19).

15 The Gemara responds: Say in answer to this question: If so, if the Torah had wished to limit double payment to cases where cattle, sheep, goats, or donkeys were stolen, let the Merciful One write just “ox” and “donkey”; why do I need the verse to mention “sheep”? Conclude from it that the Torah intends to include even animals that do not meet these criteria, e.g., birds.

16 The Gemara asks further: But say that the verse mentions sheep in order to include only kosher birds, which are similar to the sheep listed in the verse, in that a carcass of these birds renders both the one who eats it and his garments ritually impure when it passes through his esophagus, as the carcass of a sheep also transmits ritual impurity. But non-kosher birds, whose carcasses do not have ritual impurity at all, as they do not render either the one who eats them or his garments impure when they pass through his esophagus, no, they are not subject to double payment. The Gemara answers: The word “any [kol],” in the phrase “for any [kol] matter of trespass” is an amplification, and serves to include even non-kosher birds in the principle of double payment.

17 The Gemara asks: But is it so that anywhere that the Torah wrote the word kol it is an amplification? But isn’t it so that with regard to second tithe, the word kol is written in the verse: “And you shall bestow the money for whatever [bekhol] your soul desires, for oxen, or for sheep, or for wine, or for strong drink, or for whatever your soul asks of you” (Deuteronomy 14:26)? And yet we expound that verse as a generalization, and a detail, and a generalization.

18 As it is taught in a baraita: “And you shall bestow the money for whatever your soul desires,” is a generalization, as no particular type of food is specified. “For oxen, or for sheep, or for wine, or for strong drink,” is a detail, as specific types of food are mentioned. When the verse concludes with “or for whatever your soul asks of you,” it has generalized again. Since the verse is formulated as a generalization, and a detail, and a generalization, you may deduce that the verse is referring only to items similar to the detail. This indicates that just as each of the items mentioned in the detail is clearly defined as the produce of produce, i.e., they grow from a parent organism, e.g., agricultural produce or animals, and they are grown from the ground, i.e., their sustenance comes from the ground, so too the category of items one may purchase with second-tithe money includes all items that are the produce of produce and are grown from the ground.

19 The Gemara responds: Say in answer to this question that the term bekhol is a generalization, whereas the term kol is an amplification. And if you wish, say an alternate answer: The word kol is usually a generalization. But the word kol that is written here, in the verse concerning double payment (Exodus 22:8), is an exception. It is regarded as an amplification, as the Gemara will explain.

20 After all, there is another generalization, and a detail, and a generalization written at the beginning of this passage, as it is written: “If a man gives his neighbor money or vessels to safeguard and it was stolen from the house of the man, if the thief shall be found he shall pay double” (Exodus 22:6). “If a man gives his neighbor” is a generalization. “Money or vessels” is a detail. When the verse concludes “to safeguard,” it has generalized again.

21 And if it enters your mind to say that this later verse: “For any matter of trespass” (Exodus 22:8), is also coming to state a generalization, and a detail, and a generalization, let the Merciful One write these details, i.e., ox, donkey, sheep, and garment, which are cited in the later verse, together with that previous generalization, and detail, and generalization. Why do I need the latter verse beginning

with “for any matter of trespass”? Conclude from it that the word kol is an amplification in this instance, and it includes all animals.

[22] The Gemara asks: Now that you said that the word kol is an amplification, why do I need all these details listed in the verse, i.e., ox, donkey, sheep, and garment? The Gemara answers: As for the three animals listed, one is mentioned to exclude land, one to exclude Canaanite slaves, and one to exclude financial documents. The example of a garment is mentioned to exclude an item that is not clearly delineated in size or quantity. “Or for any manner of lost thing” is written to teach that which Rabbi Ḥiyya bar Abba says, as Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: With regard to one who falsely states the claim that a thief stole

[23] a lost item that he had found, which he had been obligated to safeguard until it could be returned to its owner, he pays double payment, as it is stated: “For any manner of lost thing about which one shall say: This is it…the one whom the judges convict shall pay double to his neighbor” (Exodus 22:8).

[24] § We learned in a mishna elsewhere (108b) about a case where an owner of an item said to the bailee: Where is my deposit? The bailee said to him: It was lost. The owner said: I administer an oath to you that it was actually lost, and the bailee said: Amen, thereby accepting the oath; and subsequently the witnesses testify about the bailee that he himself consumed the deposit. In this case, the bailee pays the principal, i.e., the value of the deposit, to the owner. If the bailee admitted on his own that he stole the deposit before any witnesses testified to this effect, he pays the principal and an additional one-fifth of the principal amount to the owner, and he brings a guilt-offering to atone for his sin (see Leviticus 5:20–26).

[25] The mishna continues with another case: The owner said to the bailee: Where is my deposit? The bailee said to him: It was stolen. The owner said: I administer an oath to you, and the bailee said: Amen; and the witnesses testify about the bailee that he stole the deposit. In this case, the bailee pays double payment. If he admitted his theft on his own, he pays the principal and an additional one-fifth to the owner, and he brings a guilt-offering to atone for his sin.

[26] The Gemara says: In any event, the mishna teaches that in the case of a bailee who falsely states the claim that a thief stole the deposit, he pays double payment, but in the case of a bailee who falsely claims that a deposit was lost, he does not pay double payment. And it also teaches that even with regard to one who falsely states the claim that a thief stole the deposit, it is only by taking an oath to substantiate his claim that he pays double payment, but for simply lying without taking an oath he does not pay double payment.

[27] From where are these matters derived? As the Sages taught in a baraita: The Torah states: “If a man gives his neighbor money or vessels to safeguard and it was stolen from the house of the man, if the thief shall be found he shall pay double” (Exodus 22:6). The verse is speaking of a bailee who falsely states the claim that a thief stole.

[28] The baraita continues: Do you say that the verse is speaking about one who falsely claims that a deposit was stolen, or is it speaking only about the thief himself, teaching that if the actual thief is caught he must pay double payment? When the Torah says in the following verse: “If the thief shall not be found…the one whom the judges convict shall pay double to his neighbor” (Exodus 22:7–8), the verse is speaking of one who falsely states the claim that a thief stole the deposit, as it states that

no other thief was found. Since the latter verse is speaking of one who falsely claims that a deposit was stolen, it stands to reason that the earlier verse is speaking of this case as well.

[29] It is taught in another baraita: When the Torah states: “If the thief shall be found he shall pay double” (Exodus 22:6), the verse is speaking of the thief himself. Do you say that it is speaking about the thief himself, or is it speaking only about one who falsely states the claim that a thief stole? If so, then when the verse then says: “If the thief shall not be found…the one whom the judges convict shall pay double to his neighbor” (Exodus 22:7–8), the case of one who falsely states the claim that a thief stole the deposit is already stated. How, then, do I realize the first verse about paying double: “If the thief shall be found,” so that it not be superfluous? It must be that the first verse is speaking of the thief himself.

[30] The Gemara comments: Although the two baraitot disagree about the meaning of the earlier verse, in any event everyone agrees that the latter verse, which states: “If the thief be not found [im lo yimmatze hagannav]…shall pay double to his neighbor,” is referring to a bailee who falsely states the claim that a thief stole the deposit. From where is this interpretation inferred from the verse? Rava said that the verse should be understood as follows: If it is not found [im lo yimmatze] to be as he said, i.e., if his claim that the deposit was stolen is found to be untrue, but he himself stole it, he shall pay double to his neighbor.

[31] The Gemara turns its attention to another facet of this halakha: And from where do we derive that this double payment of one who falsely claims that the deposit was stolen applies only when the bailee has taken an oath that it was stolen?

[32] The Gemara answers: As it is taught in a baraita with regard to the verse: “If the thief shall not be found, the homeowner shall approach the judges to determine if he laid his hand [shalaḥ yado] on his neighbor’s goods” (Exodus 22:7). This means that he shall come to court for the purpose of taking an oath. Do you say he comes to court for the purpose of taking an oath, or is it only for the purpose of facing judgment? The meaning may be determined by means of a verbal analogy. Laying the hand [shliḥut yad], referring to misappropriation, is stated later, in the verse: “The oath of the Lord shall be between them both, to see whether he has not laid his hand [shalaḥ yado] on his neighbor’s goods” (Exodus 22:10), and laying the hand is stated above, i.e., Exodus 22:7. Just as laying the hand later is referring explicitly to an oath, so too laying the hand here is referring to an oath.

[33] The Gemara analyzes the two baraitot cited earlier: Granted, according to the one who says in the second baraita that one verse about double payment is speaking about the thief and one verse is speaking about a bailee who falsely states the claim that a thief stole the deposit, this is why two verses are written, as each verse teaches a different halakha. But according to the one who says in the first baraita that both of the verses are speaking about a bailee who falsely states the claim that a thief stole the deposit, why do I need two verses? One verse should be sufficient.

[34] The Sages say: Both verses are necessary because one verse serves to exclude from double payment the case of one who falsely states the claim that the item has been lost. Double payment is paid only when the bailee falsely claims that the item under his care was stolen.

[35] The Gemara asks: And according to the one who says that one verse is speaking about the thief and one verse is speaking about a bailee who falsely states the claim that a thief stole the deposit, so that there is no superfluous verse, from where does he learn to exclude from double payment a bailee who falsely states the claim that the item has been lost? The Gemara answers: He derives it from the

fact that the verse could have stated: If a thief [gannav] shall not be found, but it states instead: “If the thief [hagannav] shall not be found.”

[36] The Gemara asks: And since according to the one who says that both verses are speaking about a bailee who falsely states the claim that a thief stole the deposit one of the verses excludes the case of a bailee who falsely claims that the deposit was lost, what does he derive from the fact that the verse did not state: If a thief shall not be found, but it states instead: “If the thief shall not be found”?

[37] The Gemara answers: He could have said to you that this terminology is necessary to teach what Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says, as Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: One who falsely states the claim that a thief stole the deposit pays double payment, and if the deposit was an ox or sheep and he slaughtered or sold it, he pays the fourfold or fivefold payment.

[38] The Gemara notes: According to the one who says that one verse is speaking about a thief and one verse is speaking about a bailee who falsely states the claim that a thief stole the deposit, who employed this change in terminology, i.e., the fact that the verse could have stated: If a thief shall not be found, but states instead: “If the thief shall not be found,” to exclude the case of a bailee who falsely states the claim that the deposit was lost, there seems to be no source to teach the halakha stated by Rabbi Ḥiyya bar Abba. Accordingly, from where does he derive the halakha taught by Rabbi Ḥiyya bar Abba, that if the bailee slaughtered or sold the animal he pays a fourfold or fivefold payment?

[39] The Gemara answers: He could have said to you: It is a juxtaposition, as liability for double payment for a thief and for a bailee who falsely claims that the deposit was stolen are juxtaposed to each other. Therefore, just as a thief pays a fourfold or fivefold payment if he slaughtered or sold the animal, so must the bailee. And although these two cases are not entirely comparable, this derivation cannot be refuted on that basis, as there is a principle that one cannot refute a derivation based on juxtaposition by drawing distinctions between the two juxtaposed cases.

[40] The Gemara asks further: Granted, according to the one who says that one verse is speaking about the thief and one verse is speaking about a bailee who falsely states the claim that a thief stole the deposit, it is well. But according to the one who says that both verses are speaking about a bailee who falsely states the claim that a thief stole the deposit, from where does he derive that a thief himself must pay double payment for stealing?

[41] And if you would say: Let it be derived by an a fortiori inference from the case of the bailee who falsely states the claim that a thief stole the deposit, because if one is obligated to pay double payment for falsely claiming that a deposit was stolen, which constitutes passive theft, all the more so must a thief himself pay double payment, this derivation is not possible. The reason is that it is sufficient for the conclusion that emerges from an a fortiori inference to be like its source. In other words, a halakha derived by means of an a fortiori inference cannot be more stringent than the halakha of the source from which it is derived. Consequently, on the basis of this a fortiori inference, it would have to be concluded that just as there, in the source case, the double payment is required only when the guilty party took an oath, so too here, when the thief himself pays double, it is only when he took an oath that he did not steal it.

[42] The Gemara responds: He derives the obligation of a thief to pay double payment without having taken an oath from a third verse: “If the theft shall be found in his possession alive, whether it is an

ox, or a donkey, or a sheep, he shall pay double” (Exodus 22:3). The double payment in this verse applies to all items, as is derived from what the school of Ḥizkiyya taught. As the school of Ḥizkiyya taught: Let the verse state only “ox” and “theft,” and all items would be included. Why was it necessary to also mention “donkey” and “sheep”?

[43] Had the verse had been written this way I would have said: Just as the item mentioned in the detail is clearly defined as an item that is sacrificed on the altar, so too everything that is sacrificed on the altar is subject to double payment, but other items are not. What else is there for you to include in this category? Sheep, which, like oxen, can be sacrificed on the altar.

[44] When the verse states “sheep,” a sheep is thereby stated explicitly. Therefore, the detail of “ox” cannot be written to include specifically items that can be sacrificed on the altar, e.g., a sheep. How then do I realize the meaning of the word “theft,” i.e., what is the category of items derived from the detail and generalization? It must be that it serves to include all types of items in the requirement of double payment.

[45] The baraita continues to analyze the verse: Let the verse state only “ox,” “sheep,” and “theft,” and in that manner everything would be included. Why is it necessary to write “donkey”? Had the verse been written in this manner, without “donkey,” I would have said: Just as the items mentioned in the detail, “ox” and “sheep,” are clearly defined as items that are subject to being sacred with the sanctity of the firstborn, so too any item that is subject to being sacred with the sanctity of the firstborn is subject to double payment, but not other items.

[46] What is there for you to include in this category? A donkey. When the verse says “donkey,” a donkey is thereby stated explicitly. Therefore, the details of “ox” and “sheep” cannot be written to include specifically items that are subject to being sacred with the sanctity of the firstborn, e.g., a donkey. How then do I realize the meaning of the word “theft,” i.e., what is the category of items derived from the detail and generalization? It must be that it serves to include all types of items in the requirement of double payment.

[47] The baraita continues to analyze the verse: Let the verse state only “ox,” and “donkey,” and “sheep,” and “theft,” and in that manner all items would be included. Why is it necessary to write the word “alive”? Had the verse been written in this manner, I would say: Just as the items mentioned in the detail, “ox,” “sheep,” and “donkey,” are clearly defined as items that are animals, so too all animals are subject to double payment, but not inanimate objects.

[48] What is there for you to include in this category that is not already listed? Animals other than oxen, sheep, and donkeys. When the verse states the term “alive,” animals are thereby stated explicitly. Therefore, the details of “ox,” “sheep,” and “donkey” cannot be written to include animals. How then do I realize the meaning of “theft,” i.e., what is the category of items derived from the detail and generalization? It must be that it serves to include all types of items in the requirement of double payment. This is the end of the baraita.

[49] There are several puzzling elements of the halakhic exposition of the verse in this baraita. The Gemara now seeks to explain it in detail. The Master said in the baraita above: Let the verse state only “ox” and “theft.” The Gemara objects: Are “ox” and “theft” written in the verse in this order, as a generalization and a detail? No, it is “theft” and then “ox” that is written. Consequently, the verse contains a generalization and a detail, in which case the generalization is understood to refer only to that which is specified in the detail.

[50] And if you would say that the baraita is saying that this would be the case had the verse stated the words in this manner, i.e.: Had the verse stated “ox” and then “theft,” all items would have been included; how can you then proceed to say: Just as the item mentioned in the detail, “ox,” is clearly defined as an item that can be sacrificed on the altar, so too everything that can be sacrificed on the altar is subject to double payment? “Ox” is a detail and “theft” is a generalization, and according to the rules of hermeneutics, in such a case the generalization adds to the detail, and all items are included, not just items that resemble the detailed item.

[51] Rather, the baraita must be saying that the verse should be analyzed as it is actually written: First “theft” and then “ox.” Accordingly, how can you then proceed to say that all items would be included, or: Just as the item mentioned in the detail is clearly defined as an item that can be sacrificed on the altar, as the baraita states? This analysis is applicable only when there is a generalization, and a detail, and a generalization. In this verse “theft” is a generalization and “ox” is a detail. The rules of hermeneutics state that when there is only a generalization and a detail, there is nothing included in the generalization other than what is listed in the detail. In this case, one would necessarily conclude that if one steals an ox, yes, he is liable to pay the double payment for stealing it, but if one steals anything else, no, there is no double payment.

[52] Rava stated an explanation of the baraita: When the tanna suggested: Let the verse say “ox” and “theft,” and similar suggestions, he was relying on the word “alive” at the end of the phrase. He considered this word an additional generalization after the detailed items, and therefore he was saying that the phrase is to be treated as a generalization, and a detail, and a generalization. Consequently, it should have been sufficient for the verse to state merely “theft,” followed by “ox,” followed by “alive.” Why does the Torah specify further items?

[53] The Gemara questions this explanation: But the latter generalization is not similar to the first generalization. The first generalization, “theft,” is so general that it includes all items, whereas the latter generalization, “alive,” includes only animals. Consequently, the rule of a generalization, and a detail, and a generalization should not apply. The Gemara responds: This tanna, the author of this baraita, is of the school of Rabbi Yishmael, who expounds generalizations and details in a case like this. Even if the first generalization and the latter generalization are dissimilar, he interprets the verse as a generalization, and a detail, and a generalization.

[54] Rava continues his explanation of the baraita: And this is what the tanna found difficult at the end of the baraita: Why do I need the beginning of the verse to state: “If the theft shall be found [himmatze timmatze],” with the verb repeated? Rava now explains the entire baraita, from the beginning: Let the verse say “ox” and “theft” and “alive,” and all items would be included, in accordance with the rules of a generalization, and a detail, and a generalization. Why did the verse include other details?

[55] The baraita answers this by saying: Had the verse been written in this manner, I would have said: Just as the item mentioned in the detail, “ox,” is clearly defined as an item that is sacrificed on the altar, so too everything that is sacrificed on the altar is subject to double payment, but not other items. What else is there for you to include in this category? A sheep. When the verse states “sheep,” a sheep is thereby stated explicitly. Therefore, the detail of “ox” cannot be written to include specifically items that can be sacrificed on the altar, e.g., a sheep. How then do I realize the meaning

of the word “theft,” i.e., what is the category of items derived from the detail and generalization? It must be that it serves to include all types of items in the requirement of double payment.

56 The baraita continues: Let the verse say only “theft,” and “ox” and “sheep” and “alive,” and all items would be included. Why is it necessary to write “donkey”? The baraita answers: Had the verse been written in this manner, without “donkey,” I would have said: Just as the items mentioned in the detail, “ox” and “sheep,” are clearly defined as items that are subject to being sacred with the sanctity of the firstborn, so too any item that is subject to being sacred with the sanctity of the firstborn is subject to double payment, but not other items.

57 What is there for you to include in this category? A donkey. When the verse says “donkey,” a donkey is thereby stated explicitly. Therefore, the details of “ox” and “sheep” cannot be written to include specifically items that are subject to being sacred with the sanctity of the firstborn, e.g., a donkey. How then do I realize the meaning of the word “theft,” i.e., what is the category of items derived from the detail and generalization? It must be that it serves to include all types of items in the requirement of double payment.

58 The baraita then asks: Let the verse say only “theft,” and “ox,” and “sheep,” and “donkey” and “alive,” and in that manner all items would be included. The baraita answers: Had the verse been written in this manner, I would say: Just as the items mentioned in the detail, “ox,” “sheep,” and “donkey,” are clearly defined as items that are animals, so too all animals are subject to double payment, but not inanimate objects.

59 What is there for you to include in this category that is not already listed? Animals other than oxen, sheep, and donkeys. When the verse states “alive,” animals are thereby stated explicitly. Therefore, the details of “ox,” “sheep,” and “donkey” cannot be written to include animals. How then do I realize the meaning of “theft,” i.e., what is the category of items derived from the detail and generalization? It must be that it serves to include all types of items in the requirement of double payment. If so, why do I need the phrase “if the theft shall be found [himmatze timmatze]”? This is the conclusion of the baraita as explained by Rava.

60 The Gemara asks: If so, if this is how the baraita is to be understood, the difficulty it posed is valid, as the baraita ends with an unanswered question: Why do I need the phrase: “If the theft shall be found”?

61 The Gemara answers: This phrase is necessary because there is a refutation for the derivation cited in the baraita, as follows: From where in the verse does the tanna derive that it means to include all types of items? From the latter generalization of “alive.” But in the latter generalization itself the word “alive” is written.

62 What does the principle of a generalization, and a detail, and a generalization accomplish, i.e., what does it include in the halakha of double payment? If it is written to include all types of items, this cannot be, as the word “alive” is written in the verse, indicating that if one steals animals, yes, he is liable to pay double payment, but if he steals something else, i.e., inanimate objects, no, he is not liable to pay double payment. Due to this reason, it was necessary for the Torah to include the phrase: “If the theft shall be found [himmatze timmatze],” which includes all items, through the principle of a generalization, and a detail, and a generalization.

[63] The Sages state an objection: But these repeated verbs are two generalizations that are adjacent to each other in the verse, and the details follow both of the generalizations. Consequently, it is not a case of a generalization, a detail, and a generalization, but rather of a generalization, a generalization, and a detail. Ravina said: It is as they say in the West, Eretz Yisrael: Any place in the Torah where you find two generalizations adjacent to each other, place the detail between them and then treat them as a generalization, and a detail, and a generalization.

[64] The Gemara applies this principle to the verse: Place the first detail, "ox," between "himmatze" and "timmatze," and treat the verse as a generalization, a detail, and a generalization, so that other items that resemble the detail are included. To include what? If it serves to include animals, this is not necessary, as animals are derived from the word "alive" later in the verse. Rather, it serves to include an item that is not an animal, i.e., inanimate objects, and this is how you should expound the verse: Just as the items mentioned in the detail are clearly defined as movable property and are items that have intrinsic monetary value, so too anything that is movable property and has intrinsic monetary value is included, to the exclusion of land and financial documents.

[65] And furthermore, following this method, place the next detail, "donkey," between himmatze and timmatze, and treat it as a case of a generalization, a detail, and a generalization, so that other items that resemble the detail are included. To include what? If it serves to include an item that is not an animal, this is not necessary, as it already was derived from the word "ox." Rather, it serves to include an object that is clearly delineated, to the exclusion of objects that are not clearly delineated in size or quantity.

[66] The Gemara asks: If that is so, if this is the correct way to analyze the verse, why do I need the verse to state "sheep"? There is nothing left to include. Rather, this whole approach must be rejected, and a new method of analysis applied, as follows: It is not treated as a case of a generalization, and a detail, and a generalization; rather, it is treated as a verse that amplified, restricted, and amplified, as the school of Rabbi Yishmael taught.

[67] As the school of Rabbi Yishmael taught, concerning the verse: "These may you eat of all that are in the waters: Whatever has fins and scales in the waters, in the seas, and in the rivers" (Leviticus 11:9), as follows: The verse states: "In the waters," "in the waters," two times and only afterward lists the details of seas and rivers. This is not expounded as a generalization, and a detail, and a generalization, because the detail does not appear between the generalizations. Rather, the verse amplified, and then restricted, and then amplified, and thereby amplified the general category "waters" to include everything except for "seas" and "rivers," the specific matter excluded in the restriction. Here too, since the two generalizations are written before the details, it is expounded as an amplification, a restriction and an amplification.

[68] What do the generalizations himmatze and timmatze include? Do they include all items? If so, why do I need all these details of ox, sheep, and donkey? One detail serves to exclude land, and one serves to exclude Canaanite slaves, and one serves to exclude financial documents. The words "theft" and "alive [ḥayyim]" do not serve to exclude further items from double payment, but to indicate the halakha taught by Rav, who says: If one stole an item, and it deteriorated or its value decreased, he must revive [aḥayah] the principal to the value it had as of the time when he stole it, i.e., he must repay the owner according to the value of the item at the time it was stolen.

69 § Until this point, the Gemara has been discussing the source of the obligation of a thief to pay double payment according to the baraita (63b) that maintains that both verses (Exodus 22:6–7) are referring to a bailee who falsely claims that a deposit was stolen from him. The Gemara asks: And according to the one who says that one of the two verses is speaking about a thief and one verse is speaking about a bailee who falsely states the claim that a thief stole from him, and he derives that a thief himself must pay double payment from the phrase “if the thief shall be found” (Exodus 22:6), what does he derive from this verse: “If the theft shall be found” (Exodus 22:3)?

70 The Gemara answers: He requires this verse for the halakha of Rava bar Ahilai, as Rava bar Ahilai says: What is the reason for the halakha of Rav, who says: One who admits he is liable to pay a fine is exempt, even if afterward witnesses come and testify to his liability? As it is written: “If the theft shall be found [himmatze timmatze],” which indicates that if it is found [himmatze] through witnesses that he is liable to pay the fine of double payment, it will be found [timmatze] that the fine will be enforced by judges. This excludes from double payment the case of one who incriminates himself by admitting his liability before any witnesses testify concerning him, and the same is applied to all cases that involve fines.

71 The Gemara asks: And according to the one who says that both verses are speaking about a bailee who falsely states the claim that a thief stole the deposit, who applies this verse: “If the theft shall be found,” to the thief himself, from where do we derive that one who incriminates himself is exempt from paying double payment or any other fine? The Gemara answers: He derives it from the verse: “The one whom the judges convict shall pay double to his neighbor” (Exodus 22:8), which indicates that only one who is convicted by the judges on the basis of testimony must pay double, but not one who incriminates himself.

72 The Gemara continues its line of questioning: And according to the one who says that one verse is speaking about a thief himself and one verse is speaking about a bailee who falsely states the claim that a thief stole the deposit, who derives from: “If the theft shall be found” that one who incriminates himself is exempt from payment of the fine, what does he expound from this verse: “The one whom the judges convict shall pay double to his neighbor”? He could have said to you: That verse is necessary to teach that one who admits his liability to pay a fine is exempt from payment if witnesses never come to testify against him. “If the theft shall be found” indicates that even if witnesses do come after he admitted his liability, he is exempt from paying the fine.

73 The Gemara continues: And the one who says that both verses are speaking about a bailee who falsely states the claim that a thief stole the deposit, and, as explained previously, derives from “if the theft shall be found” that a thief is required to pay double payment, holds that in the case of one who admits that he is liable to pay a fine, and afterward witnesses came and testified to his liability, he is obligated to pay the fine, contrary to the opinion of Rav.

74 The Gemara asks: And according to the one who says that one verse is speaking about a thief himself and one verse is speaking about a bailee who falsely states the claim that a thief stole the deposit, who derives the halakha of double payment for a thief from there, i.e., from the verse “if the thief shall be found” (Exodus 22:6), there is a difficulty. Granted, the phrase “if the theft shall be found” is required for teaching the halakha of Rava bar Ahilai. But why do I need all these details, “ox,” “donkey,” “sheep,” and “alive”? All the items excluded from double payment, such as land and slaves, are already derived from a different source.

[75] The Gemara answers: This may be explained in accordance with what the school of Rabbi Yishmael taught. As the school of Rabbi Yishmael taught: Any passage that was stated in the Torah and was then repeated, was repeated only for the sake of a matter that was introduced for the first time in the repeated passage. That is, sometimes the Torah repeats an entire passage just for the sake of a single new detail. The single new detail derived from this passage is the halakha that one who admits that he is liable to pay a fine is exempt from paying the fine, which is derived from the words: "If the theft shall be found."

[76] The Gemara asks: But since the two cases of a thief and a bailee who falsely claims the deposit was stolen are juxtaposed, as their obligations to pay double payment are expressed in consecutive verses, say that a thief himself is not obligated to pay double payment unless he falsely confirms his innocence with an oath, just as a bailee is liable to pay double payment only under these circumstances.

[77] The Gemara answers: This cannot enter your mind, as it is taught in a baraita: Rabbi Ya'akov says that the phrase "if the theft shall be found…he shall pay double" indicates that a thief pays double even without taking an oath. Rabbi Ya'akov elaborates: Do you say the verse obligates every thief, even without his taking an oath? Or perhaps it is speaking only of a thief who falsely confirms his innocence with an oath? You must say: This second possibility was not the Torah's intent.

[78] The Gemara asks: What is the meaning of the phrase: This was not the Torah's intent? What is the proof that the Torah could not have meant that only a thief who falsely confirms his innocence with an oath pays double payment? Abaye said: If this was the Torah's intent, let the Merciful One not write "he shall pay double" with regard to a thief at all, and let it be derived through an a fortiori inference from the case of a bailee who falsely states the claim that a thief stole the deposit, as follows: If, in the case of a bailee who falsely states the claim that a thief stole the deposit, for whom the deposit initially came into his possession in a permitted fashion, the verse states that he must pay double, then in the case of a thief himself, for whom the stolen object came into his possession in a prohibited manner from the start, is it not clear all the more so that he must pay double payment?

[79] But then why do I need the words "he shall pay double," which the Merciful One wrote concerning a thief himself? It must be that the verse adds to the requirement of double payment for a thief and indicates that he must pay double even without having taken an oath.

[80] The Gemara asks: And does this verse, which states "if the theft shall be found" and concludes "he shall pay double," come for this purpose? Isn't it required for that which is taught in a baraita: The verse states: "If the theft shall be found in his possession." From the term "in his possession [yado],"

[81] I have derived only a case where the stolen item is found in his hand [yado]. From where do I derive that the same halakha applies if it is found on his roof, in his yard, or in his enclosure [vekarpeifo]? The verse states the repetitive phrase "if the theft shall be found [himmatze timmatze]," to indicate that the same halakha applies in any case, i.e., in any location that the stolen item is found.

[82] The Gemara answers: If so, if this is all the phrase is coming to teach, let the verse state the identical word twice: Himmatze himmatze, or: Timmatze timmatze. From the fact that the verse varied its wording, one may conclude two halakhot from it: That one is liable to pay double payment regardless of where the stolen item was found, and that a thief pays double payment even if he did not take an oath.

[83] § The Gemara returns to the matter itself. Rav says: When a thief makes his payments, the principal is paid according to the value as of the time when he stole it, whereas the double payment and the fourfold or fivefold payment are calculated according to the value at the time of standing trial.

[84] The Gemara asks: What is the reason, i.e., the source, for this ruling of Rav? The Gemara answers: The verse states: “If the theft shall be found in his possession alive, whether it is an ox, or a donkey, or a sheep, he shall pay double” (Exodus 22:3). Why is the Merciful One saying “alive [ḥayyim]” in the context of this theft? This juxtaposition serves to teach: When making payment, revive [aḥayah] the principal to the value it had as of the time when he stole it.

[85] Rav Sheshet said: I say that when Rav was sleepy and lying down to rest, he said this halakha. Rav Sheshet meant that this is a careless ruling, as it is contrary to a baraita. As it is taught in a baraita: If the animal was stolen when it was lean and the thief fattened it, he pays the double payment and the fourfold or fivefold payment according to the value of the animal as of the time when he stole it. This shows that the double payment and the fourfold and fivefold payment are applied in accordance with the value of the item at the time of the theft, not its value at the time of trial, as claimed by Rav.

[86] The Sages say in response: This baraita is not a refutation of Rav’s opinion, because the thief could say to the owner of the animal: I fattened the animal myself, and will you take for yourself the added value from its fattening? In this particular case, Rav would agree that all payments are in accordance with the value of the item at the time of the theft.

[87] The Gemara asks further: Come and hear another baraita that apparently contradicts Rav’s ruling. If the animal was stolen when it was fat and the thief caused it to become lean, he pays the double payment and the fourfold or fivefold payment according to the value of the animal as of the time when he stole it. The double and fourfold and fivefold payments are not paid in accordance with the value at the time of the trial, as claimed by Rav.

[88] The Gemara answers: There too, there is a reason for this exception, because we say of the thief: What is it to me if he killed the animal entirely, and what is it to me if he killed it partially? By causing the animal to become lean, the thief is considered to have started to put it to death. Consequently, when he ultimately kills the animal, he pays the fourfold or fivefold payment according to its value when he first began to weaken it, i.e., at the time of the theft. When Rav says his ruling, he is saying it only with regard to cases of appreciation in value and depreciation in value, not to changes in the animal’s physical state.

[89] What are the circumstances of the case referred to by Rav? If we say that initially the stolen item was worth one dinar and in the end it was worth four dinars, and Rav teaches that the thief pays the principal according to the value of the animal as of the time when he stole it, which is one dinar, shall we say that Rav disagrees with this ruling of Rabba? As Rabba says: With regard to this one who robbed another of a barrel of wine, if it was initially worth one dinar and ultimately it was worth four dinars, and after its appreciation the robber broke the barrel or drank the wine, he pays four dinars. If the barrel broke by itself, he pays one dinar. Rabba holds that even the principal is paid according to the time when he broke the barrel.

[90] The Sages say in response that Rav agrees with Rabba with regard to the above case. When Rav says his halakha he is referring to a case where, for example, the item was initially worth four dinars

and ultimately was worth one dinar. In this situation, Rav maintains that the thief does not profit from the decrease in the value of the principal. Rather, he pays the principal according to its value as of the time when he stole it, and the double payment and the fourfold or fivefold payment are paid according to the value at the time of standing trial.

[91] Rabbi Ḥanina teaches a baraita in support of Rav: In the case of a homeowner acting as a bailee, who falsely stated the claim that a thief stole the deposit, and subsequently took an oath as to the truth of his claim, and then admitted that he was lying and that he in fact took the item himself, and at some point witnesses came and testified that the bailee himself had the item, if he admitted his guilt before the witnesses came and testified, he pays the principal and an additional one-fifth, and he must also bring a guilt-offering. But if he admitted his guilt after witnesses came and testified, he pays the double payment and brings a guilt-offering, and his additional one-fifth is covered by his double payment that he pays; this is the statement of Rabbi Ya'akov.

[92] And the Rabbis say: It is written concerning a bailee who falsely claims innocence with regard to a deposit entrusted to him: "He shall restore it according to its principal, and shall add its fifth part to it" (Leviticus 5:24). This verse teaches that with regard to monetary restitution that is paid precisely according to the principal, one adds one-fifth, but for monetary restitution that is not paid precisely according to the principal, as is the case here, where the bailee pays double the principal value, one does not add one-fifth. Rabbi Shimon ben Yoḥai says: Neither the additional one-fifth nor the guilt-offering is paid in a case where there is double payment. This concludes the baraita.

[93] Rabbi Ḥanina explains: In any event, the baraita teaches: His payment of the additional one-fifth is covered by his double payment; this is the statement of Rabbi Ya'akov. What are the circumstances of this case? If we say that the stolen item was initially worth four dinars and ultimately, at the time of trial, was still worth four dinars, how could he say: His payment of the additional one-fifth is covered by his double payment?

[94] This statement is inaccurate in this case, as the double payment, i.e., the penalty included in the double payment, is four dinars, and the additional one-fifth is one dinar. When the Torah states "fifth" it means one-fifth of the total payment of the one-fifth and the principal together, i.e., one-quarter of the principal. For the additional one-fifth to be covered by the double payment, the two must be exactly equal, which is not the case here. Rather, is it not referring to a situation where initially it was worth four dinars and at the end it was worth one dinar, as the penalty component of the double payment is one dinar and the additional one-fifth is also one dinar?

[95] Apparently, the principal, as well as the additional one-fifth, is paid according to the value as of the time when he stole, whereas the double payment and the fourfold or fivefold payment is according to the value at the time of standing trial, as claimed by Rav.

[96] The Gemara refutes this analysis. Rava said: Actually, the baraita could be referring to a case in which initially it was worth four dinars and now, at the time of trial, it is also worth four dinars. And as for what is difficult with this case, namely that the double payment is four dinars and the additional one-fifth is one dinar, this problem can be resolved as follows: With what are we dealing here? It is a case where the bailee took an oath that the deposit was stolen from him, and he again took the same oath, and so on four times, and after each oath he admitted afterward that he had lied. And the Torah said: "And shall add its fifth part [ḥamishitav] to it" (Leviticus 5:24).

[97] Rava continues: The term ḥamishitav is in the plural, which indicates that the Torah included the possibility of many payments of an additional one-fifth for a single principal. In other words, each time the bailee takes a false oath he becomes obligated to pay an additional one-fifth, despite the fact that each oath concerns the same item. Since he did so four times, and the one-fifth is actually one-quarter of the principal, the total amount of payments of the additional one-fifth is equal to the principal, which is the same as the penalty component of the double payment.

[98] § The Master said in the baraita: And the Sages say: "He shall restore it according to its principal, and shall add its fifth part to it" (Leviticus 5:24). This verse teaches that for monetary restitution that is paid precisely according to the principal, one adds one-fifth. But for monetary restitution that is not paid precisely according to the principal, one does not add one-fifth. The Gemara infers: He does not add one-fifth, but he is obligated to bring a guilt-offering.

[99] The Gemara asks: What is different about the additional one-fifth in that case, that he does not have to pay it? As it is written: "He shall restore it according to its principal, and shall add its fifth part to it." This indicates that the additional one-fifth is linked to the payment of the precise amount of the principal amount. If so, with regard to the guilt offering as well, he should not have to pay, i.e., bring it, as it is written: "He shall restore it according to its principal, and shall add its fifth part to it…and his guilt-offering [ve'et ashamo] he shall bring to the Lord" (Leviticus 5:24–25). The verse links the guilt-offering to the payment of the precise amount of the principal, just like it does the additional one-fifth.

[100] The Gemara answers: The Sages would say to you in response: The superfluous word "et" in the phrase "and his guilt offering [ve'et ashamo]" divides the verse. Therefore, only the additional one-fifth payment, but not the guilt-offering, is linked to the payment of the precise amount of the principal.

[101] The Gemara asks: And Rabbi Shimon ben Yoḥai, who maintains that this bailee is exempt from a guilt-offering as well, how would he respond to the Sages' argument concerning "et"? He would point out that the term in question is actually "ve'et," consisting of the word et preceded by the letter vav, meaning "and." The conjunction joins the clauses of the verse. Therefore, both the additional one-fifth payment and the guilt-offering are linked to the payment of the precise amount of the principal. And the Rabbis would respond to Rabbi Shimon ben Yoḥai's claim and say to you: If the Torah had intended that the two issues should be joined together, let the Merciful One write neither the vav nor "et."

[102] And Rabbi Shimon ben Yoḥai could have said to you in response to this argument: It is not possible for the verse to have not written "et," as this term is necessary to separate between property belonging to the Most High, i.e., the guilt-offering, and non-sacred property, i.e., that of a Jew. Therefore, as the verse had to use "et" to indicate this difference, the vav comes and joins the clauses of the verse.

[103] § The Gemara discusses other cases in which an object undergoes a change after it has been stolen. Rabbi Ile'a says: If one stole a lamb and it subsequently became a ram, or if he stole a calf and it subsequently became a bull, the stolen item has undergone a change while in the thief's possession, and he has therefore acquired it as his own property. Consequently, his obligation of restitution consists of monetary payment rather than giving back the stolen item itself. If he

subsequently slaughtered or sold the animal, it is in effect his own animal that he slaughters, or it is his own animal that he sells, and he is not obligated in the fourfold or fivefold payment.

[104] Rabbi Ḥanina raised an objection to Rabbi Ile’a from a baraita: If one stole a lamb and it subsequently became a ram, or if he stole a calf and it subsequently became a bull, he pays the double payment and the fourfold or fivefold payment according to the animal’s value as of the time when he stole it. And if it enters your mind that in a case of this kind the thief has acquired the animal as his own property by virtue of the physical change the animal underwent when it matured, why does he pay the fourfold or fivefold payment? After all, it is his own animal that he slaughters, or it is his own animal that he sells.

[105] Rabbi Ile’a said to him: Rather, what would you conclude from the baraita? That this physical change in the stolen animal does not serve to acquire it for the thief and render it his property? If so, why should he pay according to the animal’s value as of the time when he stole it? Let him pay according to the animal’s value now, i.e., at the time of the slaughter or sale.

[106] Rabbi Ḥanina said to him: This is the reason that he does not pay in accordance with the animal’s value now: It is because the thief can say to the animal’s owner: Did I steal a bull from you, or: Did I steal a ram from you? No; I stole only a calf or a lamb, and therefore I will pay you the value of the animal when I stole it. Rabbi Ile’a said to Rabbi Ḥanina: May the Merciful One save us from this opinion of yours! Rabbi Ḥanina said back to him: On the contrary, may the Merciful One save us from your opinion!

[107] Rabbi Zeira objects to this: But even if an animal’s natural growth is not considered a physical change, let the thief acquire it through its change in name, i.e., its change of classification, as the animal was originally called a calf or a lamb and now it is considered a bull or ram.

[108] Rava says: There is in fact no change in name here, as even a day-old bull is called a bull, and even a day-old ram is called a ram. A day-old bull is called a bull, as it is written: “When a bull, or a sheep, or a goat is born” (Leviticus 22:27).

[109] A day-old ram is called a ram, as can be derived from Jacob’s statement to Laban, as it is written: “And the rams of your flock I have not eaten” (Genesis 31:38). Now, did Jacob mean that he did not eat any of Laban’s rams, but younger lambs he did eat? This is certainly not the meaning of this verse, as this would mean he was a thief. Rather, must one not conclude from this verse that a day-old ram is called a ram?

[110] In any case, the baraita cited earlier by Rabbi Ḥanina is difficult for the opinion of Rabbi Ile’a, as it states that the thief must pay the fourfold or fivefold payment despite the fact that the slaughter or sale of the animal took place after it matured from a calf to a bull or from a lamb to a ram. To resolve the difficulty, Rav Sheshet said: In accordance with whose opinion is this baraita? It is in accordance with the opinion of Beit Shammai, who say: An item, even if it has undergone a physical change, remains in its place, i.e., a stolen item remains in the possession of its owner, and a thief does not acquire it even if it undergoes a change.

[111] As it is taught in a baraita: If one gave wheat to a prostitute for her payment, i.e., the hire of her services, and she made the wheat into flour; or if he gave her olives and she made them into oil; or if he gave her grapes and she made them into wine, it is taught in one baraita that it is prohibited to bring these products as an offering in the Temple, in accordance with the verse: “You shall not bring

the hire of a harlot…into the house of the Lord your God for any vow” (Deuteronomy 23:19). And it is taught in one baraita that these products are permitted, as the physical change renders them into new items. And Rav Yosef says that Guryon of Asporak teaches in a baraita: Beit Shammai prohibit these products and Beit Hillel permit them. If so, these two baraitot reflect a dispute between Beit Shammai and Beit Hillel.

112 The Gemara clarifies the source of these two opinions. What is the reason of Beit Shammai for prohibiting these products? As it is written: “You shall not bring the hire of a harlot, or the price of a dog, into the house of the Lord your God for any vow; for even both of these are an abomination to the Lord your God” (Deuteronomy 23:19). The apparently superfluous word “even” serves to include their changed status. And Beit Hillel, who permit these items after they have undergone a physical change, maintain that the term “these” in the phrase “both of these” teaches that this prohibition applies only to the original items, but not to their changed form.

113 And Beit Shammai would reply: That term,

114 “these,” comes to teach that this halakha applies only to the animals given as payment to the prostitute but not to their offspring. The Gemara asks: And from where do Beit Hillel derive this halakha? They would say that one should conclude two conclusions from this term: “These” items are disqualified, but not when they are in their changed form, and “these” are disqualified, but not their offspring. The Gemara asks: And according to the opinion of Beit Hillel, isn’t it written “even”? Since Beit Hillel reject the halakha that Beit Shammai derive from this term, what do they learn from it? The Gemara states: Indeed, the word “even” is difficult according to the opinion of Beit Hillel.

115 In any event, they disagree only with regard to this particular issue: One Sage, Beit Hillel, holds that a physical change in a stolen item causes the thief to acquire it, and one Sage, Beit Shammai, holds that a physical change in a stolen item does not cause the thief to acquire it. But with regard to the payment of the thief, everyone agrees that he pays according to the initial value of the item, at the time of the theft, as it teaches in the baraita cited above: He pays the double payment and the fourfold or fivefold payment according to the animal’s value as of the time when he stole it.

116 The Gemara suggests: Shall we say that this baraita constitutes a conclusive refutation of the opinion of Rav? As Rav says: When a thief makes his payments, he pays the principal according to the value as of the time when he stole it, whereas the double payment and the fourfold or fivefold payment are calculated according to the value at the time of standing trial. Rava said in resolution of this difficulty: If one stole lambs that subsequently became rams or were fattened, he pays the double payment and the fourfold or fivefold payment according to the initial state of the animal, as claimed by both Beit Shammai and Beit Hillel. If there was a change in the animal’s value due to fluctuation of the monetary value of animals, he pays according to the animal’s worth now, at the time of standing trial.

117 § Rabba said: The principle that a change in a stolen item causes the thief to acquire it is written in the Torah, and we learned it in a mishna as well. It is written in the Torah: “Then it shall be, if he has sinned, and is guilty, that he shall restore the item that he robbed” (Leviticus 5:23). What is the meaning when the verse states the seemingly superfluous phrase “that he robbed”? This serves to teach that if the item is the same as it was when he stole it, he must return the stolen item itself. But if it is not the same as it was then, he is required to pay only money, while the stolen item remains his to keep.

[118] We learned this halakha in a mishna as well, as it is taught (93b): In the case of one who robs another of wood and fashions it into vessels, or one who robs another of wool and fashions it into garments, he pays the robbery victim according to the value of the goods at the time of the robbery, and keeps the altered materials for himself.

[119] Alternatively, another mishna can serve as the source for this principle (Ḥullin 135a): If one did not manage to give the first of the sheared wool of his sheep to a priest until after he dyed it (see Deuteronomy 18:4), he is exempt from giving it to the priest. This mishna indicates that an item that has undergone a change is no longer considered the same item as it had been. Apparently, a physical change in a stolen item causes the thief to acquire it.

[120] § Rabba continues to discuss the ways in which a thief acquires ownership of a stolen item: With regard to the owner's despair over ever recovering the stolen item, the Sages say that this too causes the thief to acquire the stolen item. However, we do not know if this halakha applies by Torah law or by rabbinic law.

[121] Rabba elaborates on the two possibilities he has just mentioned: If it applies by Torah law, this is just as it is with regard to one who finds a lost item. Is it not the case with regard to one who finds a lost item that once the owner of the item despairs of recovering it, before the item came into the finder's possession, the finder acquires it and may keep it for himself? The same principle applies to this thief as well: Once the owner of the item despairs of recovering it, the thief acquires it for himself and need no longer return it. Apparently, then, the despair of the owner causes the thief to acquire the stolen item.

[122] Or perhaps the case of a stolen item is not comparable to the case of a lost item, as it is only with regard to a lost item that the owner's despair enables the finder to acquire the item, because the item came into his possession in a permitted manner. But in this case of the thief, since the item came into his possession in a prohibited manner, this case cannot be derived from the halakha of a lost item. If so, the ruling that despair effects acquisition in a case of theft applies not by Torah law but by rabbinic law.

[123] Why would this halakha have been instituted by rabbinic law? As, the Sages said that a thief should acquire the stolen item in this manner, due to an ordinance instituted for the penitent. To encourage thieves to repent and repay their victims, the Sages instituted that they need not return the stolen item after the owner despairs of recovering it. Rather, they can reimburse the owner for the monetary value of the item.

[124] And Rav Yosef says: Despair on the part of the owner over the possibility of recovering his item does not cause the thief to acquire that item at all, and this is the halakha even by rabbinic law.

[125] Rav Yosef raised an objection to Rabba from a mishna (96b): If one robbed another of leavened bread and Passover elapsed in the meantime, so that deriving benefit from it is prohibited,

[126] the robber may nonetheless return the worthless bread to the owner and say to him: That which is yours is before you, and no compensation is required. Rav Yosef states his objection: But in this case, once the time of the prohibition of leavened bread arrives, the owner certainly despairs of recovering his now-worthless bread. And if it enters your mind to say that the owner's despair causes the robber to acquire the stolen item, why can he say to him: That which is yours is before you? He should be

required to pay the owner full-fledged money rather than return the worthless food, as the bread now belongs to the robber.

[127] Rava said to him in response: When I say that the thief acquires the stolen item upon the owner's despair of recovery it is when this owner despairs, and that thief wants to acquire the item. In this case, this one despairs but that one does not wish to acquire the worthless bread.

[128] Abaye raised an objection to Rabba from a baraita. The verse: "If his offering is a burnt-offering of the herd" (Leviticus 1:3), indicates that one's offering must be "his offering," but not an animal stolen from another. What are the circumstances of the case referred to by the baraita? If we say it is dealing with a stolen animal that the robber consecrates and sacrificed before the owner's despair of recovery, why do I need a verse to teach this? It is obvious that this is disqualified, as one cannot even consecrate an animal that does not belong to him.

[129] Rather, is it not referring to one who seeks to consecrate and sacrifice a stolen animal after the owner's despair? And yet the baraita teaches that the animal cannot be consecrated by the thief. Conclude from the baraita that the owner's despair of recovering a stolen item does not cause the thief to acquire it, as if it belonged to him he would be able to consecrate and sacrifice it.

[130] Rava said to Abaye in refutation of this proof: And according to your reasoning, consider that which is taught in a baraita: It is written with regard to a zav, a man who experiences a gonorrhea-like discharge: "And whoever touches his bedding shall wash his clothes and bathe himself in water and be impure until the evening" (Leviticus 15:5). This indicates that bedding on which a zav lies can become ritually impure and impart impurity only if it is "his bedding," but not if it is stolen bedding.

[131] What are the circumstances of the case discussed in the baraita? If we say that he robbed another of wool and made it into bedding, is there anyone who says that a physical change that results from an action performed to a stolen item does not cause the thief to acquire it? Rather, what have you to say? The baraita must be speaking of a case in which the zav robbed another of bedding. So too, the previous baraita is dealing with one who robbed another of an offering, already consecrated. The reason this animal does not atone for the thief is that a consecrated animal cannot be stolen and become the thief's property, as it belongs to the Temple treasury wherever it is located.

[132] Abaye raised an objection to Rav Yosef from a mishna (Kelim 26:8): With regard to hides belonging to a homeowner, one's thought renders them susceptible to contracting ritual impurity. Hides and leather are susceptible to contracting impurity only if they are in a finished state. If a private individual uses a piece of hide or leather for a certain purpose, e.g., as a cot or a table top, and decides that this will be its fixed purpose, it is considered a finished product and is susceptible to contracting impurity.

[133] But with regard to hides belonging to a leatherworker, thought does not render them susceptible to ritual impurity. Since this individual sells leather to others, when he uses a piece of leather for a household purpose and decides that this will be its fixed purpose, this is not considered a finished state, as he is likely to change his mind and sell the leather to one who will process it further and put it to a different use.

[134] The mishna continues: If the hides are those of a thief, who has stolen them from another, the thief's thought renders them susceptible to ritual impurity. If they are those of a robber his thought does not render them susceptible to ritual impurity, because he is not considered the owner of the

hide. The difference is that unlike the case of a thief, who steals items stealthily, the identity of a robber, who takes the item openly, is known to the owner, and the owner harbors hope of finding the robber and getting the item back. Consequently, he does not despair of recovering his property.

[135] Rabbi Shimon says that the matters are reversed: In the case of a robber, the robber's thought renders them susceptible to ritual impurity. If the hides are those of a thief, thought does not render them susceptible to ritual impurity, because the owners have not despaired of recovering them and the thief has not acquired the hide. Rabbi Shimon's reasoning is that a robber, who seizes items brazenly, is a more difficult criminal to apprehend and bring to justice than a thief.

[136] And although the two tanna'im of the mishna disagree as to which situation involves an owner's despair of recovery, whether robbery or theft, in any event one can conclude from this mishna that the despair of the owner causes the thief or robber to acquire the item, as otherwise the perpetrator's thoughts about the hide would have no effect on its status with regard to ritual impurity. Rav Yosef said to Abaye in response: With what are we dealing here in this mishna? It is a case where the thief or robber trimmed the leather by cutting it. Although trimming a piece of leather is not a sufficient change to constitute an act of acquisition by itself, it is effective in conjunction with the owner's despair.

[137] Rabba bar Rav Ḥanan objects to this answer: But is it not the case that they taught this mishna here with regard to a leather table top [itzba]? And a leather table top does not require trimming, either due to the fact that its edges are not seen or because it is merely ornamental. Since it does not require trimming, this action should not be considered an act of acquisition at all.

[138] As we learned in the previous mishna (Kelim 26:7): Wherever there is no work lacking for an item to be considered finished, one's thought renders it susceptible to ritual impurity; when there is still some work lacking for the item to be considered finished, thought does not render it susceptible to ritual impurity, except for the case of a leather table top. Although further work is required to smooth out the edges, one's thought can render it susceptible to impurity because people do not care if this leather table top has uneven edges. It is with regard to this case of a table top that the mishna distinguishes between a homeowner and a leatherworker. Therefore, Rav Yosef's explanation is rejected.

[139] The Gemara suggests a different answer. Rather, Rava said that this matter was a difficulty posed by Rabba to Rav Yosef for twenty-two years, and it was not resolved until Rav Yosef sat as the head of the yeshiva and resolved it in the following manner: A change in name of an item, representing a change in status, is similar to a physical change brought about by an action.

[140] What is the reason that a physical change through an action causes the thief to acquire the item? It is because there the stolen items were initially just wood, and now they are vessels. The same can be said for a change in name as well: Initially they called it a hide, and now they call it a table top [abrazin].

[141] The Gemara asks a question with regard to changes in name: But what about the case of a beam, where there is a change in name, as initially, when it was stolen, it was called a beam, and now, after it has been placed in a building, it is called a joist [telala], and yet we learned in a mishna (Gittin 55a): With regard to a stolen beam that a robber had built into a large building, the court ruled that the owner should receive its value in money rather than demand that the robber demolish the house

to return the beam itself, because of an ordinance instituted for the penitent, i.e., to encourage robbers to admit their crime and reimburse the owner of the stolen item.

142 This mishna indicates that the only reason the robber does not have to return the beam itself is because of this ordinance instituted for the penitent.

143 One can infer: But if were not for this decree, the beam would have to be returned to the owner as is, notwithstanding its change in name. Rav Yosef said: This is not a genuine change in name, as a beam retains its name even after it is inserted into a building. As it is taught in a baraita with regard to two obscure terms: The verse states: “And there were narrow windows and palm trees on the one side and on the other side, on the sides of the porch; there were also the tzalot of the house, and the ubbim” (Ezekiel 41:26). “Tzalot of the house”; these are the casings [hamaltetin]. “And the ubbim”; these are the beams [hamerishot]. This shows that a beam can retain its name even after it has been built into a house.

144 Rabbi Zeira said a different answer: With regard to a change in name, a change in which the item can revert to its original state is not considered enough of a change for the thief to acquire the stolen item. Since the joist can be removed and revert to being called a beam, it is not considered a true change of name.

145 The Gemara asks: And is a change in name in which the item does not revert to its original state really considered a change? But there is the case of a water duct, where it was initially called a log [ketzitzta] and now it is called a duct, and it is 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.

146 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.

147 The Gemara states its question: And if you say that a change in name is considered a matter of significance, i.e., it is considered a real change in the item, then even if one attached the log first and afterward hollowed it out, the ritual bath should also be invalid. Since hollowing out the log leads to a change in name, it should be considered a new vessel at that point.

148 The Gemara answers: The halakha that drawn water may not be used for a ritual bath is different, as it applies by rabbinic law, and consequently the Sages were lenient in this case. The Gemara asks: If so, then even in the first clause, where the log was hollowed out before being attached, it should be permitted as well. The Gemara answers: There is a difference between the two cases. There, in the first clause, the log had the status of a vessel while it was still detached. Here, in the second case, it did not have the status of a vessel while it was detached, but only after it became attached to the ground, and therefore the Sages were lenient.

149 The Gemara raises an objection against Rav Yosef’s opinion that the owner’s despair that he will recover his stolen items does not effect acquisition for the thief, from a baraita: With regard to a thief, a robber, and one who forces people to sell him items against their will, their consecration of the items they obtained in these manners is a valid consecration; and the teruma that they separate from

the produce they obtained in these manners is valid teruma; and the tithes that they separate from those foods are valid tithes. Consecrations, terumot, and tithes must be performed by the owner of the item in question. Since there was no physical change in these items, this shows that the thief is considered the new owner merely by virtue of the owner's despair of recovery.

[150] The Sages say, in answer to this question: There, in those cases involving consecrations, terumot, and tithes, there is a change in name of the stolen item, as initially the stolen food was called untithed produce, i.e., produce from which teruma and tithes have not been separated, and now it is called teruma or tithe. With regard to consecration, it was initially called non-sacred property, and now it is called consecrated property.

[151] Rav Ḥisda says that Rabbi Yonatan says: From where is it derived that a change in a stolen item causes the thief to acquire it? As it is stated: "And he shall return the stolen item that he took by robbery" (Leviticus 5:23). What is the meaning when the verse states the seemingly superfluous phrase "that he took by robbery"? It teaches that only if the item is in the same state as when he took it by robbery it he must return it. But if not, he is required to pay only money; the stolen item remains his to keep.

[152] The Gemara asks with regard to this derivation: But this phrase: "That he took by robbery," is required to exclude the case of an item stolen by one's father, i.e., that when a son returns an item or money that his father had stolen, he does not add one-fifth to the principal amount of that which his father stole. The passage in question addresses one who stole and took a false oath. This individual is obligated to add one-fifth to the amount he stole (see Leviticus 5:21–24). The apparently redundant phrase "that he took by robbery," teaches that the requirement to add one-fifth applies only to the sinner himself, not to his heirs (see 104b).

[153] The Gemara answers: If so, if the verse teaches only that halakha, let the Merciful One write merely: And he shall return his stolen item, as from that phrase alone it could be derived that an heir does not have to add one-fifth. Why do I need the Torah to write the expression "that he took by robbery"? One may therefore conclude two conclusions from this verse: A son need not add one-fifth, and a change in a stolen item effects acquisition for the thief.

[154] And there are those who say a different version of the above statement: Rav Ḥisda says that Rabbi Yonatan says: From where is it derived that a change in a stolen item does not cause the thief to acquire it? As it is stated: "And he shall return the stolen item that he took by robbery" (Leviticus 5:23), from which it may be inferred that he must return it in any case, even if it has undergone a change. The Gemara asks: But it is written "that he took by robbery," which indicates that, on the contrary, the item need be returned only if it is in a similar state to when it was stolen. The Gemara answers: That phrase is required to teach another halakha: One adds one-fifth upon returning his own stolen item concerning which he had taken a false oath, but he does not add one-fifth upon returning something stolen by his father.

[155] Ulla says: From where is it derived that the owner's despair of recovering his stolen item does not cause the thief to acquire it? As it is stated in the criticism of the Jewish people for bringing inferior animals as offerings: "And you have brought that which is stolen, and the lame, and the sick" (Malachi 1:13). From the juxtaposition of these cases it may be derived that a stolen animal is similar to a lame animal: Just as a lame animal has no rectification at all with regard to its disqualification as an offering,

[156] so too a stolen animal has no rectification for its disqualification. There is no difference whether one is dealing with a stolen animal before the owner's despair of recovering it, and there is no difference if it is after the owner's despair. In either case, it is disqualified. This shows that the owner's despair does not effect acquisition for the thief.

[157] Rava said: This halakha may be derived from here, a baraita: The verse: "If his offering is a burnt-offering of the herd" (Leviticus 1:3), indicates that one's offering must be "his offering," but not an animal stolen from another. When, i.e., in which circumstances, is it necessary to teach this halakha? If we say it is dealing with a stolen animal that the robber consecrated and sacrificed before the owner's despair of recovery, why do I need a verse to teach this? It is obvious that it is disqualified, as one cannot even consecrate an animal that does not belong to him.

[158] Rather, is it not referring to one who seeks to consecrate and sacrifice a stolen animal after the owner's despair? And yet the baraita teaches that the animal cannot be consecrated by the thief. Conclude from the baraita that the owner's despair of recovering a stolen item does not cause the thief to acquire it, as if it belonged to him he would be able to consecrate and sacrifice it. The Gemara affirms: Conclude from the baraita that it is so.

[159] The Gemara asks: But Rava was the one who said that this proof can be refuted, as the baraita can be interpreted as dealing with one who robbed another of an offering that was already consecrated. Rava apparently contradicts himself. The Gemara answers: If you wish, say that Rava retracted one of these two statements. And if you wish, say instead that Rav Pappa, not Rava, said one of these two statements.

[160] § The Gemara returns to the mishna, which teaches: But the principle of fourfold or fivefold payment applies only to the theft of an ox or a sheep, as it is stated: "If a man steal an ox or a sheep, and slaughter it or sell it, he shall pay five oxen for an ox and four sheep for a sheep" (Exodus 21:37).

[161] The Gemara asks: But why is the fourfold and fivefold payment limited to oxen and sheep? Let us derive otherwise by a verbal analogy of the term "ox" in this verse and "ox" from a passage dealing with Shabbat, where it is stated: "And the seventh day is Sabbath to the Lord your God, you shall not perform any labor, you, your son, and your daughter, and your slave, and your maidservant, and your ox, and your donkey, and all your animals, and the gentile that is within your gates" (Deuteronomy 5:13). Just as there, with regard to Shabbat, the halakha stated with regard to an ox is not limited to oxen, as undomesticated animals and fowl are similar to oxen in that they too are included in this prohibition, as the verse states: "Nor any of your animals," so too here, in the case of theft, one can say that undomesticated animals and fowl are similar to oxen in that the fourfold or fivefold payment is incurred for their theft.

[162] Rava said: The verse dealing with theft states "ox" and "sheep," "ox" and "sheep" twice. This repetition indicates that for an ox and a sheep, yes, there is a fourfold or fivefold payment, and for other items, no, there is no fourfold or fivefold payment.

[163] The Gemara says, with regard to Rava's assertion that one of the instances of "ox" and "sheep" is superfluous: Which instance of the word "ox" or "sheep" is the superfluous one? If we say that the instance of "ox" and "sheep" at the end of the verse is superfluous, due to the following consideration: Let the Merciful One write: If one steal an ox or a sheep, and slaughter it or sell it, he shall pay five oxen for it and four sheep for it, without repeating the words "ox" and "sheep," this is

not possible. If the Merciful One had written the verse like this, I would say that the thief is required to pay nine animals, five oxen and four sheep, for each and every animal stolen.

164 And if you would say that this interpretation is not possible, as the suggestion is that the verse would have written: For it, for it, twice, whereas if a payment of nine animals were required for each stolen animal the verse would have written: For it, only once; then one mention of: For it, is superfluous, to teach us that it is five for an ox and four for a sheep.

165 The Gemara rejects this: That repetition of: For it, is required for another interpretation, and cannot teach that it is five for an ox and four for a sheep. As it is taught in a baraita: One might have thought that if one stole an expensive ox worth one hundred dinars he may pay for it with lean, inferior animals [negidin]. To counter this, the verse states: “For the ox” and “for the sheep,” which indicates that the oxen and sheep used for payment must be similar to the stolen animal in quality. Since one might have erred and understood that the thief is required to pay nine animals, five oxen and four sheep, for each and every animal stolen, that suggested version of the verse is not a possibility. The words “ox” and “sheep” at the end of the verse could not have been omitted, so they are not superfluous.

166 The Gemara suggests: Rather, the words “ox” and “sheep” in the first part of the verse are superfluous, due to the following consideration: Let the Merciful One write: If a man steal, and slaughter it or sell it, he shall pay five oxen for the ox, and four sheep for the sheep, without mentioning “ox” or “sheep” at the beginning of the verse.

167 The Gemara objects: It is not possible for the verse to have been written this way, as if the Merciful One had written it in this manner I would say: A thief is not required to pay the fourfold or fivefold payment unless he steals two animals, an ox and a sheep, and slaughters them both. The Gemara responds: One could not interpret the verse in this manner, as it is written: “And slaughter it.” The singular pronoun “it” is referring to the slaughter of only one animal.

168 The Gemara asks: But one could say that a thief is not required to pay the fourfold or fivefold payment unless he steals both of these animals, an ox and a sheep, and sells them both. The Gemara rejects this suggestion in a similar manner: This interpretation is also not possible, as it is written: “Or sell it,” which is referring to the sale of only one animal.

169 The Gemara further asks: But one could say a different interpretation: I would say that a thief is not required to pay the fourfold or fivefold payment unless he steals two animals, an ox and a sheep, and slaughters one of them and sells the other one. The Gemara rejects this suggestion as well: This interpretation is impossible, as it is written: “And slaughter it or sell it.” The term “or” indicates that only one of these two actions results in paying the penalty.

170 The Gemara asks: But still, had the verse been worded without mentioning an ox or sheep at the start, I would say: A thief does not pay the fourfold or fivefold payment unless he steals two animals, an ox and a sheep, and slaughters one of them and leaves the other one, or sells one and leaves the other one. It is therefore impossible to omit the words “ox” and “sheep” in the beginning of the verse, which means that these words are not superfluous.

171 The Gemara gives its final explanation of Rava’s statement: Rather, “ox” at the end of the verse and “sheep” in the first part of the verse are superfluous, due to the following consideration: Let the Merciful One write: If a man steal an ox and slaughter it or sell it, he shall pay five oxen for it, and

four sheep for a sheep. Why do I need the word “ox” at the end of the verse and the word “sheep” in the first part of the verse? Conclude from these apparently superfluous words that for an ox and a sheep, yes, a thief is obligated to pay the fourfold or fivefold payment, but for stealing other items, no, he is not.

[172] § The mishna teaches: One who steals an item after a thief has already stolen it, i.e., one who steals a stolen item, does not pay the double payment to the thief or to the prior owner. Rather, he pays the principal amount alone. Rav says: They taught this halakha only in a case where the second thief stole from the first thief before the owner’s despair of recovering his item. But if the second thief stole it after the owner’s despair, the first thief had acquired the stolen item for himself as a result of the owner’s despair, and the second thief pays the double payment to the first thief, who at the time of the second theft was its legal owner.

[173] Rav Sheshet said: I say that when Rav was sleepy and lying down to rest he said this halakha, i.e., he did not give it enough thought. This ruling is incorrect, as it is taught in a baraita that Rabbi Akiva said: For what reason did the Torah say that if a thief slaughtered or sold a stolen ox or sheep he pays the fourfold or fivefold payment? It is because by selling or slaughtering the animal the thief becomes more deeply entrenched in sin. Rav Sheshet analyzes Rabbi Akiva’s statement: When did this sale of the stolen animal take place? If we say it occurred before the owner’s despair of recovering his property,

[174] is it possible to say that there is any entrenchment in sin? The sale does not take effect, as it occurred before the owner despaired, which means that the thief did not in fact deepen his sin by selling the animal. Rather, it must be that the sale occurred after the owner’s despair. And if it enters your mind that the owner’s despair causes the thief to acquire the animal, why does he pay the fourfold or fivefold payment? Since the animal belongs to him after the owner’s despair, in effect he slaughters his own animal or sells his own animal.

[175] The Sages say: It is possible to explain the term: Entrenched in sin, in accordance with what Rava said: The thief is liable because he repeated his sin, i.e., he sinned a second time by going through the motions of the sale, regardless of the fact the sale was not legally binding. Here too, one can say that the thief is liable because he repeated his sin.

[176] The Gemara suggests: Come and hear a proof from a baraita: It is written: “If a man steal an ox or a sheep, and slaughter it or sell it” (Exodus 21:37). Just as slaughter is an act that cannot be undone, so too the selling referred to here is an act that cannot be undone.

[177] The Gemara analyzes the baraita: Now, when is a sale irreversible? If we say this sale occurred before the owner’s despair of recovering his stolen animal, why can it not be undone? Since the thief’s sale of the animal before the owner’s despair is ineffective, the sale is easily undone. Rather, the baraita must be speaking about a case where the thief sold the animal after the owner’s despair. And if it enters your mind that a thief acquires a stolen item after the owner’s despair, why does he pay the fourfold or fivefold payment for slaughtering or selling the animal at this point? He slaughters his own animal or he sells his own animal. Apparently, a thief does not acquire the stolen item after the owner’s despair.

[178] The Gemara rejects this proof: The explanation for this baraita is as Rav Naḥman said in reference to a different baraita. Rav Naḥman said that when that baraita speaks of a sale that cannot be undone, this excludes one who transferred ownership of the animal to another in a temporary

manner, e.g., for thirty days. Here too, one can answer in the same way, that it excludes one who transferred ownership of the animal for thirty days. Accordingly, if one sold the animal permanently, even if the sale was performed before the owner despaired and is therefore not legally binding, he is nevertheless required to pay the fourfold or fivefold payment.

179 The Gemara raises an objection from another baraita: If one stole an animal, and another person subsequently came and stole it from him, the first thief pays double payment to the owner, and the second thief pays only the principal to the first thief. This is because one who steals from a thief does not pay the double payment, as the mishna teaches.

180 If one stole an animal and sold it, and another individual came and stole it from the purchaser, the first thief pays the fourfold or fivefold payment to the owner, and the second thief pays the double payment to the purchaser, who has become the new owner of the animal. If one stole an animal and slaughtered it, and another person came and stole the slaughtered animal, the first thief pays the fourfold or fivefold payment to the owner, and the second thief does not pay the double payment but only the principal, in accordance with the halakha that one who steals from a thief does not pay the double payment.

181 The Gemara analyzes this baraita: In any event, the baraita teaches in the middle clause: If one stole an animal and sold it, and another came and stole it from the purchaser, the first thief pays the fourfold or fivefold payment to the owner, and the second thief pays the double payment to the purchaser.

182 When did this sale occur? If we say it happened before the owner’s despair, why does the second thief pay the double payment to the purchaser? Is there anyone who says that a change in possession of a stolen item, i.e., when it leaves the possession of the thief and enters the possession of another, without the additional factor of the owner’s despair, causes the one who has it to acquire the item? There is no such opinion. Therefore, the so-called purchaser of the animal does not become its owner, as the sale is invalid. This should be considered as a case of one who steals from a thief, and consequently there should be no double payment.

183 Rather, it is obvious that the sale occurred after the owner’s despair. And if it enters your mind that a thief acquires a stolen item after the owner’s despair, why should the first thief pay the fourfold or fivefold payment? After all, it is his own animal that he sold, having acquired it immediately upon the owner’s despair.

184 And furthermore, consider that which the baraita teaches in the first clause: If one stole an animal, and another subsequently came and stole it from him, the first thief pays the double payment to the owner, and the second thief pays only the principal to the first thief.

185 Now, in this baraita we are dealing with a situation after the owner’s despair, as the Gemara just established. And if it enters your mind that the owner’s despair causes the thief to acquire the item, why does the second thief pay only the principal? After the owner has despaired of recovering his item, the thief becomes the owner of the item, and the second thief should have to pay him double payment for stealing his property. Rather, must one not conclude from the baraita that the owner’s despair does not cause the thief to acquire the item? And this presents a difficulty to the opinion of Rav.

[186] Rava said: And can you understand that the text of this baraita is accurate? But consider that which it teaches in the last clause: If one stole an animal and slaughtered it, and another came and stole the slaughtered animal, the first thief pays the fourfold or fivefold payment to the owner, and the second thief pays only the principal to the first thief. And is there anyone who says that a physical change brought about by an action does not cause the thief to acquire the item? There is no such opinion; the thief certainly becomes the owner of the animal after slaughtering it. Consequently, the second thief should have to pay the double payment to the thief for stealing his slaughtered animal. It must therefore be concluded that the text of the baraita has been corrupted and must be reformulated.

[187] Rather, actually the entire baraita is referring to the stage before the owner's despair. And you must reverse the halakha stated in the last clause with that stated in the middle clause, and reverse the halakha stated in the middle clause with that stated in the last clause, and say like this: If one stole an animal and sold it, and another came and stole it from the purchaser, the first thief pays the fourfold or fivefold payment to the owner, and the second thief pays only the principal to the purchaser, as a change in possession without the additional factor of owner's despair does not cause one to acquire the item.

[188] If one stole an animal and slaughtered it, and another came and stole the slaughtered animal, the first thief pays the fourfold or fivefold payment to the owner, and the second thief pays the double payment to the first thief, as the first thief acquired it through the physical change brought about by an action, i.e., slaughter.

[189] Rav Pappa said: Actually, do not reverse the middle and last clauses of the baraita. With regard to the difficult last clause, it is in accordance with the opinion of Beit Shammai, who say: Even if an item has undergone a physical change, it remains in its place, i.e., a stolen item remains the property of the owner. A thief never attains ownership of it, even if it undergoes a physical change.

[190] The Gemara asks: If so, if the baraita is not reversed, and if it is referring to the stage after the owner's despair, then the first clause and the middle clause of the baraita present a difficulty to the opinion of Rav, who maintains that after the owner's despair the item belongs entirely to the thief.

[191] Rav Zevid said: Actually, the entire baraita is dealing with the stage before the owner's despair. And with what are we dealing here, in the middle clause of the baraita? We are dealing with a case where the owners despaired of recovering the item when it was already in the possession of the purchaser, but they had not yet despaired when the item was in the possession of the thief. The purchaser is considered the owner because after the despair occurred, there were two factors in play, both the owner's despair and a change in possession. The combination of these two factors effects acquisition of the item on behalf of the purchaser.

[192] Rav Zevid continues: And do not say that in the middle clause the reason the owner's item is acquired by another is only because we require two factors, i.e., the owner's despair and change of possession. Rather, even in a case of the owner's despair by itself, the item is acquired by the thief, in accordance with Rav's opinion that despair alone effects acquisition on behalf of the thief.

[193] Nevertheless, the baraita chose a case in which both of these factors are present because you will not find a case in which both of them, the first thief and the second thief, pay a penalty except in such a case. The first thief pays the fourfold or fivefold payment, and the second thief pays the double payment. Had the owner despaired before the sale, the first thief would have been considered the owner and would therefore be exempt from the additional payment.

194 § It was stated: With regard to a thief who sells a stolen animal before the owner’s despair, Rav Naḥman says: He is liable to pay the fourfold or fivefold payment, despite the fact that the sale is invalid. Rav Sheshet says: He is exempt from this payment.

195 The two amora’im explain the reasons for their respective rulings. Rav Naḥman says: He is liable, because the Merciful One states with regard to the fourfold or fivefold payment: “And slaughter it or sell it” (Exodus 21:37), and he has sold it. There is no difference if the sale occurs before despair, and there is no difference if it takes place after despair. Rav Sheshet says: He is exempt, as his liability is in effect only if he sells the animal after the owner’s despair, when his action, i.e., the sale, is effective. But if he sells it before the owner’s despair, when his action is not effective, he is not liable, as we require that the sale be similar to the slaughter, as they are mentioned together, and when he slaughters the animal his action is effective.

196 Rav Sheshet said: From where do I say he is exempt? As it is taught in a baraita that Rabbi Akiva said: For what reason did the Torah say that a thief who slaughtered or sold a stolen animal pays the fourfold or fivefold payment? It is because he has become entrenched in sin by slaughtering or selling the animal he stole.

197 Rav Sheshet analyzes the baraita: When did this sale, referred to by Rabbi Akiva, occur? If we say that it happened before the owner’s despair, is it possible that there is any entrenchment in sin here? A sale before the owner’s despair is invalid, which means there is no deepening of his earlier sin. Rather, is it not the case that this is referring to a sale after the owner’s despair? Rava said: This is not a proof, as one can explain that the thief is entrenched in sin because he repeated his sin, i.e. sinned a second time, by his act of sale, regardless of the fact that the sale is invalid.

198 The Gemara suggests: Come and hear a proof for the opinion of Rav Sheshet from a different baraita: It is written: “And slaughter it or sell it” (Exodus 21:37). Just as slaughter is an act that cannot be undone, so too the selling referred to here is an act that cannot be undone. The Gemara analyzes this baraita: When did this sale take place? If we say that it happened before the owner’s despair of recovering his stolen item, why can it not be undone? The thief’s sale of the animal is invalid before the owner’s despair, and therefore the sale is easily undone. Rather, it must be referring to a sale that took place after the owner’s despair. And one can conclude from the baraita that there is liability to pay the fourfold or fivefold payment only if the animal is sold after the owner’s despair. Rav Naḥman rejected this proof, as he interpreted that baraita as serving to exclude one who transferred ownership of the animal temporarily, e.g., for thirty days.

199 The Gemara adds: And Rabbi Elazar also holds that the liability of a thief to pay the fourfold or fivefold payment applies if he sells it after the owner’s despair of recovering his stolen animal, as Rabbi Elazar says:

200 Know that an ordinary case of theft is assumed to result in the owner’s despair of recovering the stolen item. In other words, in the absence of evidence to the contrary, one may assume that the victim of theft has despaired of recovering his item.

201 The reason is that the Torah stated that if a thief slaughtered or sold the animal he had stolen, he pays the fourfold or fivefold payment. But why is this so? Perhaps the owner did not yet despair at the time the thief sold the animal, in which case the sale is invalid, and there should be no fourfold or fivefold payment. Rather, is it not because we say that an ordinary case of theft is assumed to result in the owner’s despair of recovering the stolen item? This concludes the statement of Rabbi Elazar,

which clearly indicates that there is no fourfold or fivefold payment if the animal is sold before the owner’s despair.

[202] The Gemara asks a question with regard to Rabbi Elazar’s assumption: But perhaps the Torah obligates the thief to pay the fourfold or fivefold payment even if the owner has not yet despaired at the time of the sale, despite the fact that the sale is invalid, as Rav Naḥman stated.

[203] In response to this question the Sages say: This cannot enter your mind, as Rabbi Elazar maintains that the juxtaposition of slaughtering and selling in the verse that states: “And slaughter it or sell it,” teaches that the thief’s sale of the animal is similar to his slaughter of it. Just as slaughter is a matter in which his action was effective, so too, the case of selling the animal is one in which his action was effective, i.e., the sale is valid. And if the sale occurred before the owner’s despair, in what sense were his actions effective?

[204] The Gemara asks another question with regard to Rabbi Elazar’s reasoning: But perhaps the Torah requires the fourfold or fivefold payment only in the specific case where the animal is sold after we heard that the owner despaired of its recovery. The Sages respond to this and say: This cannot enter your mind, since, as explained above, the thief’s sale of the animal must be similar to his slaughter of it. Therefore, just as the thief is liable to pay the fourfold or fivefold payment for slaughtering the animal even if he does so immediately, so too, the halakha that he pays the fourfold or fivefold payment for selling it applies even if he does so immediately, before it is known that the owner has despaired of recovering the animal.

[205] Rabbi Yoḥanan said to Rabbi Elazar: The case of stealing a human being, i.e., kidnapping, proves that your reasoning is incorrect. The Torah states: “And he who steals a man and sells him or if he is found in his hand, he shall be put to death” (Exodus 21:16). In this case there is no owner’s despair, as no one ever despairs of his own freedom. Consequently, the thief’s sale of the person he kidnapped is invalid, and yet the Torah states that he is liable to receive the death penalty for selling him. One can learn by inference from this question that Rabbi Yoḥanan holds that if the thief sells the stolen animal before the owner’s despair he is liable to pay the fourfold or fivefold payment.

[206] § The Gemara asks: If the thief sells the animal after the owner’s despair, what is the halakha? Rabbi Yoḥanan says: He is liable. And Reish Lakish says: He is exempt.

[207] The Gemara elaborates: Rabbi Yoḥanan says: He is liable, as the thief’s liability applies whether the animal is sold before the owner’s despair or after his despair. Reish Lakish says: He is exempt, as the thief’s liability is in effect only if he sells the animal before the owner’s despair, but after the owner’s despair there is no liability, because the thief has acquired the animal by virtue of the owner’s despair, and therefore it is his own animal that he slaughters or his own animal that he sells.

[208] Rabbi Yoḥanan raised an objection to the opinion of Reish Lakish from a baraita: If one stole an animal and consecrated it, and subsequently slaughtered it, he pays the double payment to the owner of the animal, but he does not pay the fourfold or fivefold payment. The Torah states: “The one whom the judges convict shall pay double to his neighbor” (Exodus 22:8). The word “neighbor” excludes the case of one who steals a consecrated item from the Temple treasury. Since there is no double payment to the Temple treasury there can be no fourfold or fivefold payment either, as the fourfold or fivefold payment is considered an addition to, not a replacement of, the double payment (see 75a). Therefore, a thief does not pay the fourfold or fivefold payment to the Temple treasury for slaughtering one of its animals.

[209] The Gemara analyzes the baraita: When did the events described in the baraita occur? If we say they happened before the owner's despair, is the animal consecrated at all? A thief cannot consecrate a stolen item before the owner despairs of recovering it, as the Merciful One states in the Torah: "And when a man shall sanctify his house to be holy unto the Lord" (Leviticus 27:14), from which it is derived: Just as one's house belongs to him, so too, anything that one consecrates must belong to him, and therefore a thief cannot consecrate a stolen item.

[210] Rather, it is obvious that the baraita is dealing with events that occurred after the owner's despair. And yet the only reason that he does not pay the fourfold or fivefold payment is that he consecrated the animal, on the grounds that when he slaughtered it he slaughtered consecrated property. But if he did not consecrate the animal before he slaughtered it he would pay the fourfold or fivefold payment. And if it enters your mind that the owner's despair serves to acquire the animal for the thief, why would he have to pay? At that point it is his own animal that he slaughters or his own animal that he sells.

[211] Reish Lakish said to Rabbi Yoḥanan: With what are we dealing here? The baraita is referring to a case that occurred before the owner's despair, and it is not the thief who consecrated the animal, as he cannot do so. Rather, we are dealing with a case where the owner consecrated the animal while it was in the thief's possession.

[212] The Gemara asks: And is the animal consecrated in this situation? But didn't Rabbi Yoḥanan say: If one stole an item and the owner has not yet despaired of recovering it, neither of them is able to consecrate it. This one, the thief, cannot consecrate the item, because it does not belong to him; and that one, the owner, cannot consecrate it, because it is not in his possession. The Sages state an answer on behalf of Reish Lakish: He stated his opinion in accordance with the opinion of the pious ones [tzenuin], who acted not in accordance with the opinion of Rabbi Yoḥanan.

[213] As we learned in a mishna (Ma'aser Sheni 5:1): The pious ones would set aside some coins and say: Anything that was picked from this vine by passersby shall be desacralized onto these coins. This mishna is referring to a grapevine in its fourth year after planting. The grapes on this vine must be either eaten in Jerusalem or redeemed with money that is then taken to Jerusalem and spent on food. The fruit may not be eaten outside Jerusalem without being redeemed. The pious ones were concerned that a passerby might help himself to some of their grapes, thereby transgressing a prohibition. Therefore, they would redeem any of their grapes that might be picked and eaten by passersby. Evidently, these pious ones were of the opinion that the owner of a stolen item can redeem it despite the fact that it is no longer in his possession. Likewise, they would say, contrary to the opinion of Rabbi Yoḥanan, that an owner of a stolen item can consecrate it even though it is no longer in his possession.

[214] The Gemara asks a question with regard to Reish Lakish's explanation of the baraita, that it is discussing a case where the owner of the animal consecrated it after it was stolen: But the principal amount, i.e., the stolen animal itself, has returned to the owner. By consecrating the animal, the owner has exercised his ownership of it, and it is therefore considered to have been returned to him at that point. The thief should therefore not be required to pay the double payment, as a thief is liable for double payment only when the stolen item is in his possession at the time of the trial, as it states: "The theft shall be found in his hand" (Exodus 22:3).

[215] The Gemara answers: The baraita is discussing a case where the thief stood in judgment and was found guilty of theft before the owner consecrated the animal. Consequently, the liability to pay the double payment preceded the owner’s consecration of his property.

[216] The Gemara raises a difficulty with regard to this answer: What are the circumstances of this trial of the thief? If it refers to a situation where the members of the court say to him: Go out and give the animal back to its owner, why does the baraita say that the thief is exempt from the fourfold or fivefold payment specifically because the owner consecrated the animal before it was slaughtered? Even if he did not consecrate it the thief should also not be liable to pay the fourfold or fivefold payment.

[217] The Gemara elaborates. As Rava says: If the court tells a thief: Go out and give the stolen animal back to the owner and instead the thief slaughtered or sold it, he is exempt from the fourfold or fivefold payment. What is the reason for this?

[218] Since the court has issued a definitive ruling in this matter, and he later slaughtered or sold the animal, he is considered a robber, and a robber does not pay the fourfold or fivefold payment. The difference between a thief, concerning whom the Torah prescribes the double payment and the fourfold or fivefold payment, and a robber, who does not incur these obligations, is that a thief acts stealthily, whereas a robber brazenly uses force to take an item from its owner. Once a court has obligated a thief to make restitution and he has defied this sentence, he is considered a robber, and therefore the fourfold or fivefold payment and its atonement are not applicable to him.

[219] Rava continues: But if the court says to the thief only: You are obligated to give the stolen animal back to its owner, without actually ordering him to pay, and he subsequently slaughtered or sold the animal, he pays the fourfold or fivefold payment. What is the reason for this? Since the court has not issued a definitive ruling in this matter, he is still considered a thief rather than a robber.

[220] The Gemara answers: No, this is not a challenge to the ruling of Reish Lakish. It is necessary for the baraita to state the halakha in a case where they say to him only: You are obligated to give the stolen animal back to its owner. Consequently, he remains categorized as a thief.

[221] § The Gemara returns to the matter itself. Rabbi Yoḥanan says: If one stole an item and the owner has not yet despaired of recovering it, neither of them is able to consecrate it. This one, the thief, cannot consecrate it because it does not belong to him, and that one, the owner, cannot consecrate it because it is not in his possession. The Gemara asks: And did Rabbi Yoḥanan actually say this? But doesn’t Rabbi Yoḥanan say: The halakha is invariably in accordance with the ruling of an unattributed mishna, i.e., a mishna that states a halakha without citing it in the name of a particular Sage?

[222] And there is a mishna of this kind (Ma’aser Sheni 5:1) that contradicts Rabbi Yoḥanan’s statement, as we learned in a mishna: With regard to a vineyard in its fourth year, they would demarcate it with clods of earth [bikzozot] placed around it on the ground, to alert people that they may not eat or derive any benefit from its grapes without redeeming them. The Gemara interrupts its quotation of the mishna to explain: This particular distinguishing mark of earth is used because a vineyard in its fourth year is like earth: Just as with regard to earth there is permission to derive benefit from it through its cultivation, so too, with this fruit, when it has been redeemed by means of coins, it is likewise permitted to benefit from it.

[223] The Gemara resumes its citation from the mishna: And a grapevine of orla is demarcated with potsherds [ḥarsit] placed around it, to alert people that its grapes may not be eaten nor may any benefit be derived from them at all (see Leviticus 19:23). The Gemara explains: This particular distinguishing mark is used because orla is like potsherds: Just as no benefit is derived from potsherd, so too, no benefit may be derived from this orla.

[224] The mishna continues: And an area of graves is demarcated with lime, to notify people that the demarcated area is ritually impure and will impart impurity to those who pass over it. The Gemara explains: The reason this particular distinguishing mark is used is that lime is white, like bones. The mishna further states: And one dissolves the lime in water and pours it out around the gravesite. The Gemara explains: This is performed in order that the lime should be whiter than in its non-dissolved form.

[225] The Gemara resumes the citation from the mishna. Rabban Shimon ben Gamliel said: In what case is this statement, that vineyards of the fourth year and of orla require demarcation, said? During the Sabbatical Year. The Gemara explains: The reason is that all fruit that grows during that year may be taken by anyone (see Leviticus 25:5–6), as in that year all fruit is considered to be ownerless property.

[226] The mishna continues: But during the other years of the Sabbatical cycle, when anyone who takes the grapes of another is guilty of theft, there is no requirement to demarcate these vineyards. This is in accordance with the adage: Feed it to the wicked man and let him die. That is, one is not required to take precautions to protect the wicked from the consequences of their own sins. Here too, there is no obligation to warn a thief that the grapes he is stealing are prohibited.

[227] The mishna continues: But the pious ones would set aside some coins and say: Anything that was picked from this vine by passersby shall be desacralized onto these coins. These pious ones maintain that the owner can desacralize the grapes despite the fact that they are no longer in his possession. Similarly, contrary to the opinion of Rabbi Yoḥanan, they would claim that an owner can consecrate a stolen item even though it is no longer in his possession. Since this opinion is cited in the mishna without being attributed to any particular Sage, Rabbi Yoḥanan should have accepted this ruling.

[228] And if you would say: Who is the tanna that taught this practice of the pious ones in the mishna? It is Rabban Shimon ben Gamliel, and Rabbi Yoḥanan did not say his principle that the halakha is always in accordance with an unattributed mishna when it follows an individual opinion; this suggestion does not alleviate the difficulty.

[229] The Gemara explains: But doesn’t Rabba bar bar Ḥana say that Rabbi Yoḥanan says: Wherever Rabban Shimon ben Gamliel taught a statement in the corpus of our Mishna, the halakha is in accordance with his opinion, except for the case of the responsibility of the guarantor (see Bava Batra 173b), 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). Consequently, even if the opinion of the pious ones was cited by Rabban Shimon ben Gamliel, Rabbi Yoḥanan should have accepted it as authoritative.

[230] The Sages say, in explanation of the opinion of Rabbi Yoḥanan: When quoting the declaration of the pious ones, do not say in the past tense: Anything that was picked from this vine by passersby shall be desacralized onto these coins. Rather, say: Anything that will be picked from this vine shall

be desacralized onto these coins. In other words, the desacralizing is performed before the fruit is picked, while it is still in the full possession of the owner of the vine.

231 The Gemara asks: And did Rabbi Yoḥanan actually say such a ruling? Could Rabbi Yoḥanan agree to this reformulation of the declaration of the pious ones? But doesn't Rabbi Yoḥanan say: The pious ones and Rabbi Dosa said the same thing, i.e., their opinions are equivalent? And Rabbi Dosa says that this declaration is formulated in the past tense, as: Anything that was picked.

232 As it is taught in a baraita that Rabbi Yehuda says: In the morning the homeowner, i.e., the owner of a field, stands and says: Anything that the poor will pick today that is not rightfully theirs shall hereby be considered ownerless property. The poor are entitled to glean leftover grain from a field after it is harvested (Leviticus 23:22). Yet there are many halakhot involved in determining what produce they are entitled to take, and not all poor people are learned enough to know these halakhot. Consequently, there will inevitably be poor people who will take a certain amount of grain to which they are not entitled. For this reason, the owner of the field should relinquish, in advance, ownership over whatever the poor might unlawfully take.

233 Rabbi Dosa says: This is not the correct practice. Rather, toward evening the owner should say: Anything that the poor picked today that is not rightfully theirs shall hereby be considered ownerless property. Since Rabbi Yoḥanan stated that the opinions of the pious ones and Rabbi Dosa are the same, this indicates that the declaration of the pious ones was in the past tense, which means that they permitted redemption of fourth-year produce after it was already stolen. If so, the question remains: Why did Rabbi Yoḥanan not accept the ruling of the pious ones as authoritative?

234 The Gemara answers: Reverse the opinion of Rabbi Yehuda with that of Rabbi Dosa, and that of Rabbi Dosa with that of Rabbi Yehuda. According to this new version of the baraita, Rabbi Dosa does not permit the owner of an item to exercise any control over it after it has been stolen from him. The Gemara asks: Why do you reverse the baraita to avoid a contradiction between the statements of Rabbi Yoḥanan? It is better to reverse the statement of Rabbi Yoḥanan himself, and say that he actually stated: The pious ones and Rabbi Yehuda said the same thing, and leave the baraita intact.

235 The Gemara says: There is no alternative, as one cannot do otherwise than to reverse the baraita, as that would mean that in this baraita it teaches that Rabbi Yehuda holds that there is a principle of retroactive designation. And we have heard elsewhere that Rabbi Yehuda generally does not accept the principle of retroactive designation, as we learned in a mishna (Demai 7:4):

236 In the case of one who purchases wine from among the Samaritans [Kutim], if there is reason to suspect that teruma and tithes were not separated, and he cannot separate them before the start of Shabbat, he acts as follows. If there are one hundred log of wine in the barrels, he says: Two log that I will separate in the future are teruma, as the mandated average measure of teruma is one-fiftieth; ten log are first tithe; and a tenth of the remainder, nine log, are second tithe. And he desacralizes the second tithe that he will separate in the future by transferring its sanctity onto money, and he may drink the wine immediately, relying on the separation that he will perform later. This is the statement of Rabbi Meir.

237 Rabbi Yehuda, Rabbi Yosei, and Rabbi Shimon prohibit one from doing so. The objection of these three Sages is presumably that this arrangement relies on the principle of retroactive designation, as at the time of the declaration the identity of the particular portions of wine that will be teruma and tithes is unknown, and these Sages do not accept this principle. It is apparent from this

mishna that Rabbi Yehuda does not accept retroactive designation, and therefore he cannot be the one who said that the owner of the field may issue his declaration of relinquishment in the morning.

[238] The Gemara says: Ultimately, why do you reverse the baraita that contains the opinions of Rabbi Yehuda and Rabbi Dosa? It is because there is a difficulty due to the contradiction between one statement of Rabbi Yehuda and another statement of Rabbi Yehuda. Now too, although you have reversed the baraita, a similar problem remains, as there is a difficulty due to the contradiction between one statement of Rabbi Yoḥanan and another statement of Rabbi Yoḥanan.

[239] As you said, according to the opinion of Rabbi Yoḥanan: Do not say that anything that was picked from this vine by passersby shall be desacralized onto these coins. Rather, say that anything that will be picked from this vine shall be desacralized onto these coins. Apparently, Rabbi Yoḥanan here accepts the principle of retroactive designation. But it is established that Rabbi Yoḥanan does not accept the principle of retroactive designation.

[240] As Rav Asi says that Rabbi Yoḥanan says: Brothers who divided property received as an inheritance are considered purchasers from each other, and as purchasers of land they must return the portions to each other in the Jubilee Year, at which point they may redistribute the property. This demonstrates that Rabbi Yoḥanan does not hold that it is retroactively clarified that each brother’s portion was designated for him directly upon their father’s death, but rather all the land was considered joint property until the brothers traded or bought their respective portions from each other at the time of the distribution of the estate.

[241] In light of this objection, the Gemara retracts its previous assertion that Rabbi Yoḥanan reformulated the declaration of the pious ones. Rather, the pious ones actually declared in the past tense: Anything that was picked from this vine by passersby shall be desacralized onto these coins, i.e., the desacralizing took place after the grapes were stolen. If so, the question remains: Why did Rabbi Yoḥanan not accept the opinion of the pious ones, but instead ruled that the owner of an item cannot consecrate it after it has been stolen?

[242] The Gemara answers: Rabbi Yoḥanan found a different unattributed mishna, which contradicts the opinion of the pious ones. As we learned in the mishna here (62b): One who steals an item after a thief has already stolen it, i.e., one who steals a stolen item, does not pay the double payment to the thief or to the prior owner. Why not? Granted that he does not pay to the first thief, as the verse states: “And it was stolen from the house of the man; if the thief shall be found he shall pay double” (Exodus 22:6), which indicates that the double payment applies in the case of an item “stolen from the house of the man,” i.e., from the owner’s jurisdiction, but not to an item stolen from the thief’s house. But let him pay the double payment to the owner, as it presumably still belonged to the owner when the second thief stole it.

[243] Rather, must one not conclude from this that a stolen item is not under the full jurisdiction of either the owner or the thief? It is not under the jurisdiction of this one, the first thief, because it does not belong to him, and it is not under the jurisdiction of that one, the owner, because it is not in his possession. Therefore, neither of them can consecrate the stolen item.

[244] The Gemara asks: Granted that this unattributed mishna disagrees with the mishna that cites the pious ones, but what did you see that led you to follow that unattributed mishna, the one that discusses the double payment? Let Rabbi Yoḥanan act, i.e., rule, in accordance with this unattributed

mishna, which states the practice of the pious ones. On what basis did he choose one mishna over the other?

245 The Gemara answers: Rabbi Yoḥanan followed the mishna that discusses the double payment because there is a verse that supports it: “And when a man shall sanctify his house to be holy to the Lord” (Leviticus 27:14), from which it is derived: Just as one’s house is in his possession, so too anything that one consecrates must be in his possession, excluding items that have been stolen from him.

246 § Abaye said: If Rabbi Yoḥanan had not said that the pious ones and Rabbi Dosa said the same thing, i.e., their rulings are identical, I would say that the pious ones accept the opinion of Rabbi Dosa, but Rabbi Dosa does not accept the opinion of the pious ones.

247 Abaye elaborates: The pious ones accept the opinion of Rabbi Dosa, for the following reason: And if the Sages instituted an ordinance for the sake of a thief, to prevent him from eating unredeemed fourth-year grapes, by allowing the owner to desacralize produce that is no longer in his possession, does it need to be said that they did so for the sake of innocent poor people, as Rabbi Dosa claimed? Conversely, Rabbi Dosa does not accept the opinion of the pious ones, as he says: It is for the sake of poor people that the Sages instituted an ordinance; but the Sages did not institute an ordinance for the sake of a thief, in line with the aforementioned principle: Feed it to the wicked man and let him die.

248 In a similar vein, Rava said: If Rabbi Yoḥanan had not said that the pious ones and Rabbi Dosa said the same thing, I would say that there is a fundamental difference between the cases of fourth-year produce and gleanings taken by the poor, as one could claim: Who is the tanna who taught the ruling of the pious ones? It is Rabbi Meir.

249 Doesn’t Rabbi Meir say that second tithe is property belonging to the Most High, rather than the possession of the one who separated it from his produce, and even so, with regard to redemption of the second tithe the Merciful One establishes it in his possession? As it is written concerning the second tithe: “And if a man will redeem any of his tithe, he shall add to it its fifth part” (Leviticus 27:31).

250 Although according to the opinion of Rabbi Meir, second tithe does not belong to the owner of the produce from which it was separated, nevertheless, with regard to redemption the Merciful One does distinguish between a stranger and one who separated it from his produce, as the Torah refers to the second tithe as “his tithe” and thereby decrees that he, the owner of the crop from which it is separated, can redeem it by adding one-fifth to its value, but no one else can do so. This indicates that although second-tithe produce is not in fact owned by the person, the Torah treats him as the owner of the produce.

251 With regard to a fourth-year vineyard as well, the Sages derive many of its halakhot from a verbal analogy between second tithe and fourth-year fruit, based on the use of the word “holy” in the context of fourth-year fruit and “holy” in the context of second tithe. It is written here, concerning fourth-year fruit trees: “And in the fourth year all its fruit shall be holy, for giving praise to the Lord” (Leviticus 19:24), and it is written with regard to second tithe: “And all the tithe of the land, whether of the seed of the land or of the fruit of the tree, is the Lord’s; it is holy” (Leviticus 27:30).

[252] From this analogy it is derived: Just as in the case of the term “holy” that is written in connection to second tithe, even though it is property belonging to the Most High, with regard to redemption the Merciful One establishes it in the jurisdiction of the one who separated it, so too in the context of the word “holy” that is written in connection to the fourth-year vineyard, even though it is not his property, as it belongs to the Most High, with regard to desacralizing the Merciful One establishes it in the vineyard owner’s jurisdiction.

[253] The effect of this determination is that even when the fruit is in his jurisdiction it is not his property, and yet he is able to desacralize it. And due to that reason the owner of the vineyard is able to desacralize the fruit even after a thief has taken it. Even in normal circumstances when one desacralizes his fourth-year fruit he is desacralizing fruit that does not belong to him. Consequently, there is no novelty in the ruling that one can desacralize fruit even after it has been taken by a thief.

[254] But with regard to gleanings of the poor, since the extra sheaves that the poor people inadvertently take are the property of the owner of the field, it may be claimed that only when those sheaves are in his possession, i.e., they have not been taken by anyone else, can he relinquish his ownership of them, whereas when they are no longer in his possession he cannot relinquish his ownership of them. Consequently, the pious ones, who permitted redemption of fourth-year produce after it had been stolen, would not necessarily agree with Rabbi Dosa, who allowed the relinquishment of stolen sheaves.

[255] In a similar vein, Ravina said: If Rabbi Yoḥanan had not said that the pious ones and Rabbi Dosa said the same thing, I would say: Who is the tanna who taught the opinion of the pious ones? It is Rabbi Dosa. I would have said this so that an unattributed mishna should not present a difficulty to the opinion of Rabbi Yoḥanan. And the reason why this would have resolved the difficulty is that Rabbi Yoḥanan

[256] did not say to apply his principle, that the halakha is always in accordance with an unattributed mishna, in a case where the mishna expresses the opinion of an individual Sage. According to this interpretation Rabbi Yoḥanan does not rule in accordance with the mishna, due to the fact that it represents the opinion of an individual Sage, Rabbi Dosa. Rather, he follows the majority opinion. Yet now that Rabbi Yoḥanan said that the pious ones and Rabbi Dosa said the same thing, it cannot be claimed that they are one and the same Sage. Consequently, the ruling of the mishna is evidently accepted by at least two Sages, and therefore the difficulty from the mishna cannot be resolved by assigning it to a single Sage.

[257] § The Sages of Neharde’a say: One cannot write a document of authorization [orakhta] to assign another to collect a debt or a deposit of movable property on his behalf. Rav Ashi said to Ameimar: What is the reason for this halakha? Ameimar said to him: It is due to a principle stated by Rabbi Yoḥanan.

[258] As Rabbi Yoḥanan says: If one stole an item and the owners have not yet despaired of recovering it, neither of them is able to consecrate it: This one, the thief, cannot consecrate the item because it does not belong to him, and that one, the owner, cannot consecrate it because it is not in his possession. The granting of authority to collect a debt involves the transfer of ownership of the item or money from the owner to the collector; otherwise the debtor could refuse to convey it to the collector. In the case of movable property, as it is being held by another, it is not in the possession of the owner; just as the owner cannot consecrate this item he cannot transfer ownership of it.

[259] There are those who state a different version of this halakha. The Sages of Neharde’a say: One cannot write a document of authorization for the collection of movable property that the bailee or debtor has denied owing. The Gemara infers: According to this version, the only reason the document cannot be written is that the bailee or debtor has denied owing the item, as a document written under these circumstances has the appearance of falsehood, since the purported owner is transferring ownership of an item over which his own ownership is in doubt. But it can be inferred that if the bailee or debtor did not deny owing the item, one can write a document of authorization.

[260] And the Sages of Neharde’a state another halakha with regard to this kind of document: A document of authorization in which it is not written: Go and take legal action against so-and-so and take possession of the owed property and collect it from him for yourself, has no substance, i.e., it is not a valid document. What is the reason for this? It is because the other party, the bailee or debtor, can say to the collector who presents a document without this clause: I am not legally answerable to you; I am willing to deal only with the person to whom the item is owed. To avoid this situation, the authorization document must transfer actual ownership of the item to the collector, who is now claiming it for himself.

[261] Abaye said: And if it is written in the document that the owner transferred ownership of only half of the item to the collector, or a third or a quarter of it, this is sufficient. The reason is that since the bailee or debtor must relate to the judgment, i.e., engage in litigation with the collector, over the half or third or quarter of the item that has been transferred to the collector, he must relate to the judgment concerning all of it.

[262] Ameimar said: If the collector who is empowered by the authorization seized the item he collected and kept it for himself, the court does not take it away from him, as the owner transferred ownership of the item to him in the document of authorization, as explained above. Rav Ashi disagreed with Ameimar and said: Since the owner wrote to the collector: I accept upon myself anything that develops as a result of this legal process, he has in effect rendered the collector an agent to act on his behalf, and therefore the agent cannot seize the item for himself.

[263] And there is another opinion that states: The owner renders the collector a partner in the collected item, transferring ownership of half of it to him while maintaining ownership over the other half. The Gemara asks: What is the practical difference between this opinion and that of Rav Ashi? The Gemara answers: The difference is whether the collector has the power to seize half of the collected item for himself. If he is merely an agent of the owner, he cannot seize anything; if he is a partner he can seize up to half. The Gemara concludes: And the halakha is that the owner renders the collector his agent, and therefore this agent may not seize any portion of the collected item for himself.

[264] MISHNA: The mishna lists a series of cases in which a thief is required to pay the fourfold or fivefold penalty. If one stole an animal, as established based on the testimony of two witnesses, and he subsequently slaughtered the animal or sold it, also based on the testimony of the same witnesses, or based on the testimony of two other witnesses, he pays the fourfold or fivefold payment.

[265] If one stole an animal and sold it on Shabbat, or if he stole it and sold it for idol worship, or if he stole it and slaughtered it on Yom Kippur, he pays the fourfold or fivefold payment. Although his sale or slaughter in these circumstances involved a sin, he is not liable to receive the death penalty for the sale and must consequently pay the fourfold or fivefold payment.

266 If one stole an animal of his father’s and then slaughtered it or sold it, and afterward his father died and he inherited his father’s estate either on his own or in partnership with his brothers, or if he stole an animal and slaughtered it and afterward he consecrated it, he pays the fourfold or fivefold payment.

267 In the case of one who stole an animal and slaughtered it, not for the purpose of eating its meat, but to use it for medicinal purposes or to feed the meat to dogs, and likewise a thief who slaughters the animal to eat its meat but it was found to be an animal with a condition that will cause it to die within twelve months [tereifa], or a thief who slaughters a non-sacred animal in the Temple courtyard, he pays the fourfold or fivefold payment.

268 Rabbi Shimon exempts the thief from the fourfold or fivefold payment in these last two cases, as he maintains that the legal status of an act of slaughter that is not fit for accomplishing its full ritual purpose is not considered an act of slaughter.

269 GEMARA: The mishna teaches that if two witnesses testify about the theft of an animal and two others testify about its slaughter or sale, the thief pays the fourfold or fivefold payment. The Gemara suggests: Let us say that the mishna is not in accordance with the opinion of Rabbi Akiva, in his exposition of the verse: “Based on the testimony of two witnesses or on the testimony of three witnesses shall a matter be established” (Deuteronomy 19:15).

270 The Gemara elaborates: As, if it is in accordance with the opinion of Rabbi Akiva, the thief would be exempt from the fourfold or fivefold payment, as doesn’t Rabbi Akiva say that this verse teaches that witnesses’ testimony must refer to an entire matter, and not part of a matter? In the case discussed by the mishna the second set of witnesses testifies only that this man slaughtered or sold an ox or sheep, not that he stole it, and therefore their testimony alone would not render the thief liable to pay anything.

271 As it is taught in the Tosefta (Bava Batra 2:4) that Rabbi Yosei said: When father Ḥalafta went to study Torah with Rabbi Yoḥanan ben Nuri, and some say that he said: When Rabbi Yoḥanan ben Nuri went to study Torah with father

272 Ḥalafta, he said to him the following in the course of their discussion of the halakhot of possession.

273 If one has been in possession of real estate for three years, this serves as proof of his claim that he is the legal owner. One who is able to prove uninterrupted possession for the necessary period is not required to produce documentary evidence of his legal title to the property. Rabbi Yoḥanan ben Nuri or father Ḥalafta asked: If one harvested and ate the produce of a field that he claims as his own the first year of the three years required for establishing possession of the land in the presence of two witnesses, and subsequently ate the produce of the second year in the presence of two other witnesses, and finally ate the produce of the third year in the presence of yet two other witnesses, what is the halakha? Can the three testimonies combine to establish full testimony that he ate the produce of three years, thereby confirming his ownership of the field?

274 Rabbi Ḥalafta said to Rabbi Yoḥanan ben Nuri, or vice versa: This is considered to establish presumptive ownership by the one who ate the produce. The other Sage said to him: I too say that this is so, but Rabbi Akiva disputes this matter, as Rabbi Akiva would say: The Torah requires that witnesses must testify with regard to a complete matter and not part of a matter. Since there must be

testimony concerning consumption of the produce over three years, and each set of witnesses establishes only that it took place for one year, their separate testimonies do not combine. If so, the mishna is apparently not in accordance with the opinion of Rabbi Akiva.

275 The Gemara rejects this assertion. Abaye said: You can even say that the mishna is in accordance with the opinion of Rabbi Akiva. Doesn't Rabbi Akiva concede that in a case where two witnesses say: So-and-so betrothed a certain woman, and two other witnesses say: Someone else subsequently engaged in sexual intercourse with that same woman, this is proof that the act of intercourse was adulterous?

276 The reason for this is that even though the witnesses testifying about the intercourse require the witnesses who testify about the betrothal, i.e., the testimony of the second set of witnesses is meaningless without the testimony of the first witnesses, nevertheless, since the witnesses testifying about the betrothal do not require the witnesses who testify about the intercourse, i.e., their testimony by itself establishes a halakhic status, we call the testimony of each pair a complete matter.

277 Here too, the same logic applies in the case of a thief who steals an animal and subsequently slaughters or sells it: Even though the witnesses who testify about the slaughter require the testimony of the witnesses about the theft in order for their testimony to have any halakhic significance, since the witnesses testifying about the theft do not require the testimony of the witnesses who testify about the slaughter, as their testimony alone establishes that person as a thief who is liable to pay the double payment, we call the testimony of each pair a complete matter.

278 The Gemara asks: And according to the opinion of the Rabbis, who disagree with Rabbi Akiva that the Torah stipulates that testimony must be about a matter and not half of a matter, the term "matter" (Deuteronomy 19:15) serves to exclude what? The Gemara answers: It serves to exclude a case involving testimony that a girl has reached majority, in which one witness says that he saw one hair on her lower back, and one witness says that he saw one hair on her lower abdomen. A girl is considered to have reached maturity when she has two pubic hairs. In this case, two witnesses separately testify that they have each seen one hair, and therefore each testimony is halakhically meaningless on its own. The Rabbis derive from the verse that these testimonies do not combine.

279 The Gemara raises a difficulty: In this case each testimony is obviously invalid, as it is half a matter and also half a testimony. Not only does each testimony refer to one hair, which is half a matter, it is submitted by one witness, which is half a testimony. Consequently, it is obvious that the girl is not considered of age in this case.

280 The Gemara therefore rejects this explanation. Rather, the Rabbis maintain that the term "matter" serves to exclude a case in which two witnesses say that they saw one hair on a girl's back, and two other witnesses say that they saw one hair on her lower abdomen. In this case the testimony of either set of witnesses concerns only one hair, and therefore these witnesses are essentially saying that she is still a minor and those witnesses are saying that she is still a minor. Therefore, each testimony concerns only half of a matter.

281 § The mishna teaches: If one stole an animal and sold it on Shabbat, he pays the fourfold or fivefold payment. The Gemara asks: But isn't it taught in a baraita that in this case he is exempt from the fourfold or fivefold payment?

[282] Rami bar Ḥama said: When it is taught in that baraita that he is exempt, this is referring to a case where the purchaser says to the thief: Pick off a fig for yourself from my fig tree on Shabbat, and through performing this act your stolen animal shall be acquired by me. Since the act of acquisition of the animal involved the type of Shabbat desecration for which one is liable to receive the death penalty, the thief is exempt from the monetary obligations he would ordinarily incur from this act, i.e., the fourfold or fivefold payment to the animal's prior owner. This is in accordance with the principle that one who commits two or more transgressions by means of a single act, both of which entail punishment, is exempt from the lesser punishment.

[283] The Sages say, questioning this explanation of the baraita: But since, if the purchaser would bring a legal claim against the thief before us, to force him to deliver the animal acquired by means of picking the fig, the court would not say to the thief: Go and pay him the animal you owe him, because the thief is liable to receive the death penalty for his desecration of Shabbat, this shows that the sale is not a valid sale at all. Therefore, the baraita would not call this exchange a sale and this interpretation of the baraita cannot be correct.

[284] Rather, Rav Pappa said: The baraita is discussing a case where the purchaser said to the thief: Throw your stolen animal from the public domain into my enclosed courtyard, and your stolen animal will thereby be acquired by me. One can acquire an item if it is placed on his property. In this case, when the thief places the animal on the purchaser's property he moves it from the public domain into the private domain, which is a desecration of Shabbat that entails the death penalty. Consequently, he is exempt from the fourfold or fivefold payment.

[285] The Gemara asks: If this is the correct explanation of the baraita, in accordance with whose opinion is the baraita taught? It is in accordance with the opinion of Rabbi Akiva, who says: An item in the airspace of a certain area is considered as though it were at rest in that area.

[286] As, if the baraita is in accordance with the opinion of the Rabbis, who hold that an item in the airspace of a certain area is not considered as though it were at rest in that area, once the animal reaches the airspace of the courtyard of the purchaser's house he has acquired it, as one can acquire items that are in the airspace of his courtyard just like those on its ground, whereas with regard to moving an item from one domain to another on Shabbat the thief is not liable for Shabbat desecration until it reaches the ground. Since the thief's monetary liability is not simultaneous with his incurring of the death penalty, he would not be exempt from payment.

[287] The Gemara answers: It is possible that the baraita is in accordance with the opinion of the Rabbis as well, as one can explain that it is speaking of a case in which the purchaser says to the thief: Your stolen animal shall not be acquired by me until it rests on the ground. In that case, the acquisition of the animal and the Shabbat desecration are simultaneous.

[288] Rava said: Actually, it is possible to explain the baraita as Rami bar Ḥama did, that the animal was acquired through the picking of a fig on Shabbat. And the objection raised earlier, that this act should not be considered a sale at all, is incorrect. This can be demonstrated by the fact that the Torah prohibits one to bring as an offering an animal given as the payment to a prostitute for services rendered (Deuteronomy 23:19). And this prohibition applies even if the man in question engaged in intercourse with his own mother, which is a capital offense. But if she would bring a legal claim before us, demanding the payment of the animal that was agreed upon as her fee, would we say to

him: Arise and pay her the animal? The court would not say this, as the monetary liability was incurred simultaneously with the commission of a capital crime.

[289] Rather, one must say that even though if she brings a legal claim against him demanding the payment of the animal that was agreed upon as her fee we do not say to him: Go and pay her, nevertheless, since if he does give it to her it is considered payment to a prostitute, it cannot be used as an offering. Here too, in the case of the acquisition of the animal through picking a fig, even though with regard to payment, if the purchaser would bring a legal claim before us against the thief, seeking to force him to deliver the animal, we would not say to him: Go pay,

[290] and even so, since the thief transfers ownership to the purchaser in this manner, it is considered a valid sale, and he is required to pay the fourfold or fivefold payment.

[291] § The mishna teaches: If one stole an animal and slaughtered it on Yom Kippur he pays the fourfold or fivefold payment. The Sages say, questioning this ruling: Why is he liable to pay it? Although there is no penalty of execution for slaughtering on Yom Kippur, nevertheless there is the penalty of lashes; and we maintain that one is not sentenced to be flogged and obligated to pay for the same act.

[292] The Sages say in response: In accordance with whose opinion is this mishna taught? It is taught in accordance with the opinion of Rabbi Meir, who says: One is sentenced to be flogged and obligated to pay for the same action.

[293] The Gemara asks: If the mishna is in accordance with the opinion of Rabbi Meir, then even if he slaughtered the animal on Shabbat, which is a capital offense, he should be obligated to pay the fourfold or fivefold payment, whereas the mishna (74b) states that in this case he is exempt. And if you would say that Rabbi Meir holds that one is sentenced to be flogged and obligated to pay for the same act, but he does not hold that one is sentenced to the death penalty and obligated to pay for the same act, this is incorrect.

[294] And is it correct to say that Rabbi Meir does not maintain that one can be sentenced to the death penalty and to pay for the same act? But isn’t it taught in a baraita: If one stole an animal and slaughtered it on Shabbat, or if he stole an animal and slaughtered it for idol worship, or if he stole an ox that is sentenced to be stoned, from which it is prohibited to derive any benefit, and he slaughtered it, he pays the fourfold or fivefold payment; this is the statement of Rabbi Meir. And the Rabbis exempt him from this payment. Apparently Rabbi Meir maintains that one can be held liable for monetary payment and for capital punishment for the same act, e.g., slaughtering on Shabbat or slaughtering for idol worship.

[295] The Sages say in response: Stand apart from this baraita, i.e., this baraita should not be understood in a straightforward manner, as it was stated concerning it: Rabbi Ya’akov says that Rabbi Yoḥanan says, and some say it was Rabbi Yirmeya who says that Rabbi Shimon ben Lakish says, and Rabbi Avin and Rabbi Ela and the entire group of disciples of Rabbi Yoḥanan also say in the name of Rabbi Yoḥanan: The baraita is speaking of a thief who slaughters the stolen animal through the agency of another person, i.e., he instructed another to slaughter it, and that agent did so on Shabbat or for idolatrous purposes. The thief pays the fourfold or fivefold payment because he himself did not commit a capital offense.

[296] The Gemara asks: How can it be that a thief is liable to pay the fourfold or fivefold payment if another person slaughters the stolen animal for him? But is it so that this one sins and that one becomes liable?

[297] The Gemara provides several reasons why in the case of fourfold or fivefold payment it is possible for the thief to be liable for another's actions. Rava said: It is different here, as the verse states: "And slaughter it or sell it" (Exodus 21:37), thereby juxtaposing the two acts of slaughtering and selling. It is derived that just as there is liability for the fourfold or fivefold payment through selling, which by definition is performed by means of another party, so too, there is liability for slaughtering when it is performed by means of another party.

[298] The school of Rabbi Yishmael teaches: The word "or" in the phrase: "And slaughter it or sell it," serves to include a case in which the agent slaughters or sells the animal at the behest of the thief. The school of Ḥizkiyya teaches: The separate word "for" [taḥat] in the phrase: "He shall pay five oxen for an ox, and four sheep for a sheep," which could have been avoided by using the mere prefix of the letter beit, serves to include a case in which the agent slaughters the animal on behalf of the thief.

[299] Mar Zutra objects to this explanation of the baraita: Is there anything with regard to which if one performs it himself he is not liable, and if his agent performs it on his behalf one is liable? How is it possible for an agent to have more power than the one who appointed him? Can it be that if the thief himself slaughtered the animal on Shabbat he would be exempt, whereas if he has it slaughtered by another he is liable?

[300] Rav Ashi said to him: There, in the case of the thief who slaughters a stolen animal on Shabbat, it is not because he is not liable that he does not pay the fourfold or fivefold payment; rather, he is liable but he is excused from payment because he receives the greater of the two punishments, i.e., execution, for desecrating Shabbat. When he appoints an agent he has no liability for desecrating Shabbat, and therefore he pays for the slaughter.

[301] The Gemara asks: But if the baraita is speaking about a thief who slaughters through the agency of another person, what is the reason of the Rabbis, who exempt the thief from payment? The thief did not himself do any act for which he is liable to receive the death penalty.

[302] The Sages say in explanation: Who are these Rabbis of the baraita? It is Rabbi Shimon, who said: The legal status of an act of slaughter that is not fit for accomplishing its full ritual purpose is not considered an act of slaughter. Since slaughtering on Shabbat or slaughtering for idolatrous purposes does not render the meat fit for consumption, Rabbi Shimon rules that there is no liability for the fourfold or fivefold payment.

[303] The Sages say, questioning this explanation: Granted, slaughtering for idol worship and slaughtering an ox that is sentenced to be stoned are cases of slaughter that is not fit, as in both of these cases it is prohibited to derive any benefit from the animal's flesh. But slaughtering on Shabbat is a fit slaughter. As we learned in a mishna (Ḥullin 14a): In the case of one who slaughters an animal on Shabbat or on Yom Kippur, although he is liable to receive the death penalty for desecrating Shabbat, his slaughter is valid and the meat may be eaten.

[304] The Sages say in response: Rabbi Shimon holds in accordance with the opinion of Rabbi Yoḥanan HaSandlar, who disagrees with that mishna and prohibits eating the meat of an animal slaughtered on Shabbat.

[305] As we learned in a mishna (Terumot 2:3): In the case of one who cooks food on Shabbat, if he acted unwittingly he may eat the food, but if he acted intentionally he may not eat it; this is the statement of Rabbi Meir. Rabbi Yehuda says: If he acted unwittingly he may eat the food only upon the conclusion of Shabbat, and if he acted intentionally he may not eat it ever, although others may partake of it.

[306] Rabbi Yoḥanan HaSandlar says: If he cooked the food unwittingly it may be eaten upon the conclusion of Shabbat by others only, but not by him; and if he acted intentionally it may not be eaten ever, neither by him nor by others. Slaughter, like cooking, is a desecration of Shabbat that entails the death penalty. It follows that Rabbi Yoḥanan HaSandlar maintains that the meat of an animal intentionally slaughtered on Shabbat may never be eaten. If so, this is a slaughter that does not render the meat fit for consumption, and therefore according to the opinion of Rabbi Shimon there is no fourfold or fivefold payment.

[307] The Gemara asks: What is the reason for the opinion of Rabbi Yoḥanan HaSandlar? The Gemara explains: This is as Rabbi Ḥiyya taught at the entrance to the house of the Nasi. It is written: “And you shall observe Shabbat, for it is holy [kodesh] to you; one who profanes it shall be put to death” (Exodus 31:14). Just as it is prohibited to eat a sacred item consecrated to the Temple [kodesh], so too is it prohibited to eat food produced though action that desecrates Shabbat.

[308] The Gemara asks: If so, perhaps the analogy should be extended: Just as it is prohibited to derive benefit from a sacred item, so too should it be prohibited to derive benefit from a product of an action that desecrates Shabbat. The Gemara answers: The verse states: “It is holy to you” (Exodus 31:14), indicating that it shall be yours for deriving benefit. Although food cooked on Shabbat may not be eaten, it is permitted to benefit from it in other ways.

[309] The Gemara further asks: Based on the analogy between a sacred item and the product of an action that desecrates Shabbat, one might have thought that even if the action were performed unwittingly it should be prohibited to consume the product, like a sacred item. To counter this, the verse states: “One who profanes it shall be put to death” (Exodus 31:14), indicating that it is with regard to one who desecrates Shabbat intentionally that I said this analogy to you, as the verse clearly is referring to one who is liable to receive the death penalty, but not one who desecrates Shabbat unwittingly, who is not executed.

[310] The Gemara comments: Rav Aḥa and Ravina disagree with regard to this matter. One said that the product of an action that constitutes a desecration of Shabbat is forbidden by Torah law, and one said that the product of an action that constitutes a desecration of Shabbat is forbidden by rabbinic law.

[311] The Gemara elaborates: The one who says it is forbidden by Torah law explains as we said, that the prohibition is based on the verse as interpreted by Rabbi Ḥiyya. And the one who says it is forbidden by rabbinic law would say that the verse states: “It is holy,” from which he infers: It, the day itself, is holy but the products of its prohibited actions are not holy, and therefore they are not compared to sacred items and may be eaten by Torah law.

[312] The Gemara asks: Granted, according to the one who said that products of a prohibited act are prohibited by Torah law, it is for

[313] this reason that the Rabbis exempt the thief from the fourfold or fivefold payment when he slaughters the animal on Shabbat, as slaughter on Shabbat does not render the meat permitted for consumption. But according to the one who says that the product of a prohibited act on Shabbat may be eaten by Torah law but is forbidden by rabbinic law, why do the Rabbis exempt the thief when he appoints an agent to slaughter the animal for him and the agent performs this action on Shabbat?

[314] The Gemara answers: When the Rabbis exempt him from the fourfold or fivefold payment, they are not referring to the case where the thief's agent slaughters the animal on Shabbat. Rather, they were speaking of the rest of the cases listed in the baraita, namely, an agent who slaughters the animal for idol worship and one who slaughters an ox that is sentenced to be stoned.

[315] The Gemara asks another question with regard to the interpretation of the baraita presented above: And with regard to Rabbi Meir, granted he maintains that the legal status of an act of slaughter not fit for accomplishing its full ritual purpose is nevertheless considered an act of slaughter. But why is the thief liable to pay the fourfold or fivefold payment when his agent slaughters the animal for idol worship?

[316] Once he slaughtered the animal a bit, at the very start of the act of slaughter, he has prohibited the animal, with regard to deriving benefit, as an animal sacrificed to idolatry. When he slaughters the other part it is already prohibited with regard to deriving benefit, which means that it is not an animal that belongs to its owner that he slaughters, and it is not an animal that belongs to him that he slaughters. Since deriving benefit from the animal is prohibited, it has no value; therefore, there is no ownership.

[317] Rava said: This is referring to one who says prior to the slaughter that only with the completion of the slaughter does he worship the idolatry. Therefore, the prohibition does not take effect until that stage, which is also when the liability to pay the fourfold or fivefold payment is incurred.

[318] The Gemara raises a question with regard to another of the cases of the baraita: An ox that is sentenced to be stoned is an item from which deriving benefit is prohibited. Consequently, when a thief or his agent slaughters this animal, it is not an animal that belongs to its owner that he slaughters, and it is not an animal that belongs to him that he slaughters. Why does Rabbi Meir obligate him to pay the fourfold or fivefold payment?

[319] Rava said: With what are we dealing here? This is a case where the owners entrusted the ox to a bailee and the ox fatally injured someone while in the bailee's house, and it was forewarned while in the bailee's house, and it was sentenced to be stoned while in the bailee's house, and the thief then stole it from the bailee's house and slaughtered it. Rava continues: And Rabbi Meir holds in accordance with the opinion of Rabbi Ya'akov, and he also holds in accordance with the opinion of Rabbi Shimon.

[320] He holds in accordance with the opinion of Rabbi Ya'akov, who says: Even after the ox was sentenced to be stoned, if the bailee returned it to its owners before it was killed, it is considered returned. Although the ox is now worthless, as no benefit may be derived from it, since the bailee returned a physically intact ox, the owner has no claim against him.

[321] And Rabbi Meir also holds in accordance with the opinion of Rabbi Shimon, who says: An item whose elimination causes financial loss is considered to have monetary value. With regard to an item that is otherwise worthless, if its elimination causes monetary loss due to the fact that it must be replaced, it is considered to be of value. In this case, although the ox is worthless in and of itself, when the thief slaughters it he prevents the bailee from returning it intact to the owner and causes him to be obligated to pay the owner the value of the ox before it was sentenced to be stoned. Consequently, the thief must reimburse the bailee, as the ox effectively has value for that bailee.

[322] As we learned in a mishna (74b): Rabbi Shimon says: In the case of sacrificial animals for which the owner bears financial responsibility to replace any of them with another animal if it is lost or it dies, the thief is obligated to pay the fourfold or fivefold payment if he slaughters the animal. Although one is generally not liable to pay the double payment for stealing consecrated items, Rabbi Shimon maintains that this case is different, since as a result of the animal's theft the owner sustains a loss by being required to substitute another animal for it. Since the animal's loss has financial ramifications for the owner apart from any inherent value it has, it has value for him. Apparently, Rabbi Shimon holds that an item whose elimination causes financial loss is considered to have monetary value.

[323] Rav Kahana said: I recited this halakha, according to which the mishna follows the opinion of Rabbi Meir, in front of Rav Zevid of Neharde'a, and I asked him: Is it correct to say that you can establish the mishna in accordance with the opinion of Rabbi Meir, and not in accordance with the opinion of Rabbi Shimon? But isn't it taught in the last clause of the mishna: Rabbi Shimon exempts the thief from the fourfold or fivefold payment in these last two cases. One can learn by inference that in all the rest of the cases in the mishna, apart from these two, Rabbi Shimon concedes that the thief pays the fourfold or fivefold payment.

[324] Rav Zevid said to him: No; that is not the correct inference from the mishna. Rather, by inference one can learn only that Rabbi Shimon concedes that the thief pays the fourfold or fivefold payment in the cases mentioned immediately prior to this one, specifically in a case where the thief slaughtered or sold the animal in order that it should be used for medicinal purposes or for feeding to dogs. Therefore, it can be correct to establish the mishna in accordance with the opinion of Rabbi Meir and not in accordance with the opinion of Rabbi Shimon.

[325] § The mishna teaches: If one stole an animal of his father's and then slaughtered or sold it, and afterward his father died, he pays the fourfold or fivefold payment to his father's other heirs. Rava raised a dilemma before Rav Naḥman: If one stole an ox belonging to two partners and slaughtered it, and subsequently admitted the theft to one of the partners, which means that he is exempt from paying the fourfold or fivefold payment to that partner, in accordance with the principle that one who admits his own guilt is exempt from fines, what is the halakha with regard to payment to the other partner?

[326] The Gemara explains the sides of the dilemma: The Merciful One states in the Torah: "He shall pay five oxen for an ox" (Exodus 21:37), which indicates five full oxen, but not five half-oxen. Or perhaps when the Merciful One states "five oxen," this means that even five half-oxen must be paid in a case of this kind. Rav Naḥman said to Rava: The Merciful One states: "Five oxen," which means five full oxen, but not five half-oxen.

[327] Rava raised an objection to him from the mishna: If one stole an animal of his father’s and then slaughtered or sold it, and afterward his father died, he pays the fourfold or fivefold payment. But here, since his father died and the thief has inherited part of the stolen animal himself, it is similar to the case of one who stole from two partners and went ahead and admitted the theft to one of them, i.e., to himself. In the case of the mishna he is exempt from paying the portion of the fine that is for himself, and yet the mishna teaches that he pays the other heirs their portion of the fourfold or fivefold payment.

[328] Rav Naḥman said to Rava: With what are we dealing here? With a case where his father stood against his son the thief in his trial, and the son was convicted for the theft and slaughter of his father’s animal. In this case, the liability to pay the fourfold or fivefold payment was established before the father’s death, and at that time the payment was five full oxen.

[329] Rava asked him: And if the thief had not yet stood trial before the father’s death, what would be the halakha, according to your opinion? Would he not be required to pay the fourfold or fivefold payment? If so, rather than teaching in the latter clause of the mishna (74b): If one stole his father’s animal and the father died, and afterward he slaughtered or sold it, he does not pay the fourfold or fivefold payment; let the mishna make a distinction within the same type of case, as follows: In what case is this statement, i.e., that the thief is required to pay the fourfold or fivefold payment, said? It is when the thief stood trial in his father’s lifetime; but if he did not stand trial in his father’s lifetime he does not pay the fourfold or fivefold payment.

[330] Rav Naḥman said to him: Indeed, the mishna could have mentioned that case. However, since the tanna of the mishna has to cite the first clause, which discusses one who stole an animal of his father’s and slaughtered or sold it, and afterward his father died, he cites the latter clause as well, by means of a similar case: If one stole his father’s animal and his father died, and afterward he slaughtered or sold the animal.

[331] This discussion between Rava and Rav Naḥman occurred in the evening. On the following morning, Rav Naḥman retracted his statement and said to Rava: The Merciful One states: “Five oxen,” and this means that even five half-oxen are included. Rav Naḥman explained his change of mind: And the reason that I did not say this to you last night

[332] is because I had not eaten ox meat. In other words, I was fasting yesterday and was unable to concentrate properly.

[333] Rava responded to him: But if the Torah requires even a partial payment of the fourfold or fivefold payment, what is different in the first clause, in which the son must pay, and what is different in the latter clause, where he is exempt?

[334] Rav Naḥman said to him: In the first clause, where the father’s animal was stolen and slaughtered in his lifetime, I read about this case the verse: “If a man steal an ox or a sheep, and slaughter it” (Exodus 21:37), which indicates that the thief slaughtered the ox or the sheep entirely in a prohibited manner. In the latter clause, where the animal was slaughtered after the father’s death, I do not read about this case the verse: “And slaughter it,” which describes a slaughter that was performed entirely in a prohibited manner, because the animal already partially belonged to him, and his own portion of the ox was slaughtered in a permitted manner.

[335] § The mishna teaches: A thief who slaughters the animal but it was found to be a tereifa, and likewise a thief who slaughters a non-sacred animal in the Temple courtyard, pays the fourfold or fivefold payment. Rav Ḥavivi of Meḥoza said to Rav Ashi: Conclude from the mishna that the act of slaughtering is considered to have been performed only at the end of the slaughtering process.

[336] Rav Ḥavivi of Meḥoza explains: As, if you say that the act of slaughtering lasts from beginning to end, i.e., the halakhic ramifications of slaughtering are in effect throughout the process, one could raise a question with regard to the case of one who slaughters a non-sacred animal in the Temple courtyard: Once he slaughtered the animal a bit, at the very start of the act of slaughter, he has prohibited the animal, with regard to deriving benefit, as a non-sacred animal slaughtered in the Temple courtyard. When he slaughters the other part, it is already prohibited with regard to deriving benefit, which means that it is not an animal that belongs to its owner that he slaughters. Since deriving benefit from the animal is prohibited, it has no value; therefore, there is no ownership.

[337] Rav Huna, son of Rava, said to Rav Ḥavivi in response: It is possible to explain the mishna even if one maintains that the halakhic ramifications of slaughtering are in effect throughout the slaughter. As, when does the thief become obligated to pay the fourfold or fivefold payment? It is when he performs that first bit of slaughter in the beginning, before the animal becomes forbidden. Rav Ashi said to Rav Huna: Do not dismiss Rav Ḥavivi's objection with this explanation. The verse: "If a man steal an ox or a sheep, and slaughter it" (Exodus 21:37), indicates that to impose liability to pay the fourfold or fivefold payment we require that the thief slaughtered it completely, and after having slaughtered it just a bit there is no complete slaughter yet.

[338] Rav Huna said to Rav Ashi: But if you are correct, the mishna is difficult according to the one who maintains that the halakhic ramifications of slaughtering are in effect throughout the slaughter. Rav Ashi said to Rav Huna: This is what Rav Gamda said in the name of Rava, concerning this question: The mishna is discussing a case where the thief slaughtered, i.e., severed, part of the two organs that must be severed in ritual slaughter, i.e., the trachea and the esophagus [simanin], outside the Temple, and finished slaughtering them inside the Temple. Therefore, the animal became prohibited with regard to deriving benefit only at the final stage of slaughter, concomitant with the liability to pay the fourfold or fivefold payment.

[339] There are those who teach that the preceding exchange took place with regard to the following dispute: Rabbi Shimon ben Lakish says in the name of Rabbi Levi the Elder: The act of slaughtering is considered to have been performed only at the end of the slaughtering process. And Rabbi Yoḥanan says: The act of slaughtering lasts from beginning to end. Rav Ḥavivi of Meḥoza said to Rav Ashi: Shall we say that Rabbi Yoḥanan holds that the prohibition against deriving benefit from non-sacred animals that were slaughtered in the Temple courtyard is not by Torah law?

[340] As, if it enters your mind that it is prohibited by Torah law the mishna here would be difficult, for as soon as he slaughtered the animal a bit, at the very start of the act of slaughter, he has prohibited the animal, with regard to deriving benefit, as a non-sacred animal slaughtered in the Temple courtyard. When he slaughters the other part it is already prohibited with regard to deriving benefit, which means that it is not an animal that belongs to its owner that he slaughters.

[341] Rav Aḥa, son of Rava, said to Rav Ḥavivi: It is possible to explain the mishna even according to the opinion that the halakhic ramifications of slaughtering are in effect throughout the slaughter, and even if one maintains that it is prohibited by Torah law to benefit from a non-sacred animal

slaughtered in the Temple. As, when does the thief become obligated to pay the fourfold or fivefold payment as well? It is when he performs that first bit of slaughter in the beginning, before the animal becomes forbidden. Rav Ashi said to Rav Huna: Do not dismiss Rav Ḥavivi's suggestion with this explanation. The verse: "If a man steal an ox or a sheep, and slaughter it" (Exodus 21:37), indicates that in order to impose liability to pay the fourfold or fivefold payment we require that the thief slaughtered it completely, and after having slaughtered it just a bit there is no complete slaughter yet.

342 Rav Huna said to Rav Ashi: But if you are correct, the mishna is difficult. Rav Ashi said to Rav Huna: This is what Rav Gamda said in the name of Rava: When does the mishna state that the thief is obligated to pay the fourfold or fivefold payment? It is in a case where the thief slaughtered part of the simanim outside the Temple, and finished slaughtering them inside the Temple. Therefore, the animal became prohibited with regard to deriving benefit only at the final stage of slaughter, concomitant with the liability to pay the fourfold or fivefold payment.

343 MISHNA: If one stole an ox or a sheep, as established based on the testimony of two witnesses, and he subsequently slaughtered the animal or sold it, also based on the testimony of the same witnesses, and these witnesses were found to be conspiring witnesses, these witnesses pay everything, i.e., not only the principal amount but also the fourfold or fivefold payment. This is in accordance with the Torah's decree with regard to conspiring witnesses: "You shall do to him as he had conspired to do to his brother" (Deuteronomy 19:19). Since these witnesses attempted to obligate the alleged thief to pay the fourfold or fivefold payment, they themselves must pay that full amount.

344 With regard to one who stole an ox or a sheep, as established based on the testimony of two witnesses, and he subsequently slaughtered the animal or sold it, based on the testimony of two other witnesses, if both these witnesses and those witnesses were found to be conspiring witnesses, the first set of witnesses, who testified about the theft of the animal, pay the alleged thief the double payment, which is what they had conspired to cause him to pay. And the last set of witnesses, who attested to the slaughter or sale of the animal, pay the alleged thief a twofold payment for a sheep or a threefold payment for an ox, which they had conspired to cause him to pay over and above the double payment.

345 If only the witnesses in the last set were found to be conspiring witnesses, while the testimony about the theft remains intact, the thief pays the double payment to the animal's owner and the second set of witnesses pay the alleged thief the twofold or threefold payment, the amount over and above the double payment, which is what they had conspired to cause him to pay.

346 If only one individual from the last set of witnesses was found to be a conspiring witness, the second testimony is nullified, as it was not submitted by two valid witnesses, whereas the first testimony remains intact. If one individual from the first set of witnesses is found to be a conspiring witness, the entire testimony concerning the thief is nullified. The reason is that if there is no theft established by reliable testimony there is no liability for slaughtering the animal and there is no liability for selling it.

347 GEMARA: One who is rendered a conspiring witness is barred from providing testimony in the future. The Gemara cites a fundamental dispute with regard to this disqualification. It was stated concerning a conspiring witness: Abaye says: He is disqualified retroactively, from when he provided his testimony. Any testimony he may have provided after that point in time is retroactively nullified.

Rava says: He is disqualified only from that point forward, i.e., from when he was established to be a conspiring witness, but not retroactively from when he provided his testimony.

348 The Gemara explains the reasons for the two opinions: Abaye says he is disqualified retroactively because it is from that time when he testified that he is considered a wicked man, and the Torah said: “Do not put your hand with the wicked to be an unrighteous witness” (Exodus 23:1), which is interpreted to mean: Do not allow a wicked man to serve as a witness.

349 Rava says that he is disqualified only from that point forward because the disqualification of a conspiring witness is a novelty, i.e., it is not based on logic. The reason is that this is a case of two witnesses against two other witnesses, in which case neither testimony should be accepted. What did you see that causes you to listen to the second set of witnesses, who testify that the first set were not at the scene of the purported event? You could instead listen to the first set of witnesses, who testify to the event, and disbelieve the second set. Yet the Torah teaches that the second set of witnesses is always deemed credible and the first set is subjected to punishment as conspiring witnesses.

350 Therefore, as the disqualification of the conspiring witnesses is an anomaly, you have the right to disqualify them only from the time of the novelty and onward, i.e., this counterintuitive disqualification is not applied retroactively.

351 There are those who say that Rava also holds like Abaye, who says that by rights a conspiring witness should be disqualified retroactively from when he provided his testimony, and here this is Rava’s reason for not disqualifying him retroactively:

352 It is due to the potential monetary loss for purchasers, whose acquisitions had been validated by these witnesses between the time of the witnesses’ first testimony and when they were rendered conspiring witnesses. If the disqualification of the witnesses were applied retroactively, as by right it should, all these transactions would be nullified, which would cause a loss to these purchasers.

353 The Gemara asks: What is the practical difference between these two explanations of Rava’s opinion? After all, according to both explanations Rava did not apply the disqualification of conspiring witnesses retroactively. The Gemara explains that there is a difference in a case where two witnesses testify about one of the witnesses that he was not at the scene of the supposed crime, and two other witnesses testify about the other one witness in a similar manner. Alternatively, there is a practical difference between the two explanations in a case where two witnesses disqualified the first set of witnesses by testifying that they had once committed robbery and are therefore unfit to give testimony.

354 The Gemara elaborates: According to this version in which you say that Rava’s rejection of retroactive disqualification was because it is a novelty, in these two circumstances there is no novelty, and therefore he would agree that the disqualification should be retroactive. According to that version in which you say that Rava’s concern was due to a potential loss for purchasers, in these two circumstances there is a concern for a potential loss for purchasers. Consequently, in these circumstances as well Rava would reject retroactive disqualification.

355 Rabbi Yirmeya of Difti related: Rav Pappa once took action, i.e., ruled in a case, in accordance with the opinion of Rava, and rejected retroactive disqualification of conspiring witnesses. Rav Ashi said: The halakha is in accordance with the opinion of Abaye with regard to retroactive disqualification of conspiring witnesses. The Gemara provides a principle: And in disputes between

Abaye and Rava the halakha is in accordance with the opinion of Rava, except for six cases in which the halakha is in accordance with the opinion of Abaye. They are: In the cases represented by the mnemonic yod-ayin-lamed kuf-gimmel-mem. These halakhot are the following: Unknown despair [ye’ush]; conspiring witness [eidim] who are disqualified retroactively; a side post [leḥi] standing alone; betrothal [kiddushin] that is not given to consummation; revealing intent with a bill of divorce [get]; and an apostate [mumar] who sins rebelliously.

[356] The Gemara asks a question with regard to Abaye’s opinion from that which we learned in the mishna: If one stole an ox or a sheep, as established based on the testimony of two witnesses, and he slaughtered the animal or sold it, also based on the testimony of the same witnesses, and these witnesses were found to be conspiring witnesses, these conspiring witnesses pay everything, including the fourfold or fivefold payment.

[357] The Gemara explains the question: What, is it not referring to a case in which the events occurred in the following sequence: The witnesses testified concerning the theft of the animal, and then testified concerning the animal’s slaughter. And subsequently they were rendered conspiring witnesses for their testimony concerning the theft, and then they were rendered conspiring witnesses for their testimony concerning the slaughter.

[358] And if it enters your mind to say, in accordance with the opinion of Abaye, that a conspiring witness is disqualified retroactively from the time he provided his testimony, then with regard to these witnesses, once they are rendered conspiring witnesses concerning the theft, the matter becomes clarified retroactively that when they testified concerning the slaughter they were disqualified to serve as witnesses. Consequently, that testimony should be rejected. Why, then, must they pay the fourfold or fivefold payment for their testimony concerning the animal’s slaughter?

[359] The Sages say in response: With what are we dealing here? We are dealing with a case where the events did not happen in this sequence. Rather, the witnesses were first rendered conspiring witnesses with regard to their testimony concerning the animal’s slaughter, and only afterward were they rendered conspiring witnesses with regard to the theft.

[360] The Sages say, in rejection of this answer: Ultimately, when they are subsequently rendered conspiring witnesses with regard to their testimony concerning the theft, the matter becomes clarified retroactively that when they testified concerning the slaughter they were disqualified from providing testimony. Why, then, must they pay the fourfold or fivefold payment for their testimony concerning the animal’s slaughter?

[361] The Gemara gives its final answer: And the halakha is in accordance with the opinion of Abaye, since the mishna can be explained as discussing a case where the witnesses testified concerning the theft of the animal and its slaughter at the same time, and afterward they were rendered conspiring witnesses with regard to testimony about both matters. Therefore, even if the disqualification of these witnesses is established retroactively, they were not disqualified when they provided their single testimony concerning the theft and the slaughter.

[362] The Gemara proposes: Let us say that the dispute between Abaye and Rava is parallel to a dispute between tanna’im. As it is taught in a baraita: In a case where there were two witnesses testifying against someone, claiming that he stole an animal, and they subsequently testify against him that he slaughtered the animal, and they were rendered conspiring witnesses only with regard to their testimony concerning the theft, the halakha is in accordance with the principle that testimony that

was partially invalidated is entirely invalidated. In other words, the testimony concerning the slaughter of the animal is null and void, as there is no longer any testimony that the animal was ever stolen. Therefore, the witnesses pay the double payment for having attempted to cause the alleged thief to pay that amount, while the accused is entirely exempt.

[363] But if they were rendered conspiring witnesses only with regard to their testimony concerning the slaughter, their testimony about the theft remains valid. Consequently, the thief pays the double payment, and the witnesses pay a twofold or threefold payment for having attempted to cause the thief to pay this amount, which is the fine for slaughter or sale beyond his double payment.

[364] The baraita continues: Rabbi Yosei said: In what case is this statement said? It is said when the theft and the slaughter were established by two separate testimonies. But if these matters were established by one single testimony, then even if they were rendered conspiring witnesses with regard to the testimony concerning the slaughter, the halakha is in accordance with the principle that testimony that was partially invalidated is entirely invalidated. When the testimony concerning the slaughter is invalidated the testimony concerning the theft is likewise negated, and the alleged thief is not required to pay the double payment. This concludes the baraita.

[365] The Gemara analyzes Rabbi Yosei's statement. What did Rabbi Yosei mean when he said: By two separate testimonies, and what did he mean when he said: By one single testimony? If we say that the phrase: By two separate testimonies, means literally by two separate testimonies, i.e., by two separate sets of witnesses, one of which testifies concerning the theft while the other testifies concerning the slaughter, this would mean that the expression: By one single testimony, means by one set of witnesses that testifies to both the theft and the slaughter, one matter after the other.

[366] And if so, when Rabbi Yosei then says that the facts are established by one testimony, he meant one set of witnesses testifying about both matters, one matter after the other, i.e., that they testify concerning the theft and then testify concerning the slaughter. Therefore, when they are rendered conspiring witnesses only with regard to the slaughter, the halakha is determined in accordance with the principle that testimony that was partially invalidated is entirely invalidated. And consequently Rabbi Yosei would maintain that they are considered to have been rendered conspiring witnesses concerning the theft as well. The Gemara asks: From where would this be derived? Why should the earlier testimony about the theft be negated by their status as conspiring witnesses from the later testimony concerning the slaughter?

[367] Rather, is it not the case that when Rabbi Yosei said: By two testimonies, he meant: By a single testimony that is similar to two testimonies. And what is that? It is one set of witnesses who testify about both the theft and the slaughter, one matter after the other, at two separate times. But if these matters were established by one single testimony, when the witnesses testified about both matters at the same time, Rabbi Yosei concedes that these are not considered two separate testimonies, despite the fact that they refer to two different events.

[368] The Gemara continues to analyze the dispute between Rabbi Yosei and the Rabbis: The amora'im discussing this matter assumed that according to everyone, i.e., both Rabbi Yosei and the Rabbis, if a witness pauses briefly in his testimony and then continues to testify, it is considered one long testimony. This is in accordance with the principle that the legal status of a pause or retraction within the time required for speaking a short phrase is like that of continuous speech. Therefore, the two

testimonies, the one concerning the theft and the one concerning the slaughter, are considered a single testimony.

[369] The Gemara asks with regard to the above: What, is it not with regard to this that Rabbi Yosei and the Rabbis disagree? As the Rabbis maintain, like Rava, that a conspiring witness is disqualified from here on, i.e., from when he is rendered a conspiring witness. And since it was only from that time, when the other witnesses testify about them, that they are rendered conspiring witnesses, it is only with regard to their testimony concerning the animal's slaughter that they are rendered conspiring witnesses, whereas concerning the theft itself they are not rendered conspiring witnesses.

[370] And Rabbi Yosei holds, like Abaye, that a conspiring witness is disqualified retroactively, from when he provided his testimony. And consequently, since they are disqualified immediately when they testify, if they are rendered conspiring witnesses concerning the slaughter they are rendered conspiring witnesses concerning the theft as well, as the legal status of a pause or retraction within the time required for speaking a short phrase is like that of continuous speech, i.e., the two testimonies are considered one unit.

[371] The Sages say, in rejection of this opinion: If it were accepted that the legal status of a pause or retraction within the time required for speaking a short phrase is like that of continuous speech, everyone would agree that the witnesses are disqualified retroactively, and their testimony with regard to the theft would also be negated. But here they disagree about that very issue, i.e., whether the legal status of a pause or retraction within the time required for speaking a short phrase is like that of continuous speech. The Rabbis maintain that if the pause is within the time required for speaking a short phrase, then the two aspects of the testimony provided by the witnesses

[372] are not like one testimony of continuous speech, but are considered separate testimonies, and therefore the testimony concerning the theft remains valid. And Rabbi Yosei maintains that the legal status of a pause within the time required for speaking a short phrase is like that of continuous speech, and therefore the testimony about the theft is disqualified together with the testimony concerning the slaughter.

[373] The Gemara asks: But does Rabbi Yosei really maintain that the legal status of a statement interrupted or retracted within the time required for speaking a short phrase is like that of continuous speech? But didn't we learn otherwise in a mishna (Temura 25b): If one designates an animal by saying: This animal is hereby a substitute for a burnt-offering, a substitute for a peace-offering, he has issued two contradictory statements and therefore this animal is considered a substitute for a burnt-offering, i.e., only the first part of his statement is accepted. This is the statement of Rabbi Meir.

[374] Rabbi Yosei says: If he intended this outcome from the outset, that the animal should serve both as the substitute of a burnt-offering and as the substitute of a peace-offering, since it is impossible for one to call it by two names at once, i.e., the only way he can make his intent known is by issuing these two apparently contradictory declarations consecutively, his statement stands, and the animal has the status of both a substitute for a burnt-offering and a substitute for a peace-offering. But if he said: This animal is a substitute for a burnt-offering and then changed his mind and said: A substitute for a peace-offering, it is a substitute for a burnt-offering.

[375] And we discussed this ruling: If he changed his mind before saying: A substitute for a peace-offering, it is obvious that he cannot remove the status he already applied to the animal, and the

animal certainly remains a substitute for a burnt-offering. Rabbi Yosei would not have issued such an obvious ruling.

376 And Rav Pappa said in response to this question: We are speaking of a case where the individual changed his mind within the time required for speaking a short phrase. Rabbi Yosei holds that when one adds to a statement after a pause, even if the addition was made within a short time, it is considered a separate statement, which does not reverse the initial declaration. This contradicts the explanation given for the baraita cited above, according to which Rabbi Yosei maintains that when one adds to an existing statement within the time required for speaking a short phrase it is considered continuous speech.

377 The Sages say in response: There are two time frames that are referred to as being within the time required for speaking a short phrase. One is the time required for a student to greet a rabbi, and the other one is the time required for the rabbi to greet a student. When does Rabbi Yosei hold that a statement added within the time required for speaking a short phrase is not considered continuous speech? When the words are added within the time required for a student to greet his rabbi using the phrase: Peace be upon you, my rabbi and teacher, as that is a long pause. By contrast, if the statement is added within the shorter time frame required for the rabbi to greet his student: Peace be upon you, Rabbi Yosei is of the opinion that the added words constitute speech that is continuous with the original statement.

378 § Rava says: Witnesses to a capital crime who were first contradicted by two other witnesses, and ultimately they, the first set of witnesses, were rendered conspiring witnesses, are killed, in accordance with the punishment for conspiring witnesses involved in a capital case, despite the fact that their testimony was already disqualified prior to the discovery of their conspiracy. The reason is that the contradiction of testimony is the start of determining that testimony is conspiring testimony, only the process has not yet been completed at the time of the contradiction.

379 Rava said: From where do I say that this is so? As it is taught in a baraita (Tosefta, Makkot 1:3) that if witnesses say: We testify with regard to so-and-so that he blinded his Canaanite slave’s eye and afterward knocked out his tooth, and therefore the master is obligated to pay him compensation for the value of his tooth, as that is what the master says, i.e., this testimony is advantageous to the master, and subsequently they were found to be conspiring witnesses, they pay the value of an eye to the slave.

380 Rava explains that the baraita as written is problematic: What are the circumstances of this case? If we say that it is exactly as it is taught in the baraita, i.e., that there is no other set of witnesses other than those whose statement is quoted in the baraita and the opposing set of witnesses who establish them as conspiring witnesses, several problems arise: First, why should they pay the value of an eye to the slave? After emancipating him by testifying that his master has blinded him, should they be required to pay him the value of his eye?

381 And furthermore, they should be required to pay the value of the entire slave to the master, as they intended to cause him to lose ownership of his slave through their false testimony. And furthermore, why does the baraita say: As that is what the master says, i.e., this testimony is advantageous to the master. Is it really satisfactory to the master that his slave be emancipated as a result of this testimony?

[382] Rather, it must be that this case involves another, competing, testimony that is not mentioned in the baraita. Is it not correct to say that the baraita is dealing with a case where prior to the testimonies mentioned in the baraita two other witnesses came and said: The master first knocked out the slave's tooth and then blinded his eye, in which case the master is required to emancipate the slave and also to give him the value of his eye; and then an intermediate set of two witnesses came and said the testimony quoted in the baraita, that first the master blinded the slave's eye and then knocked out his tooth? According to this account the master would still be required to emancipate the slave, but he would be required to give him only the value of his tooth, which is much less than the value of an eye. In this case the testimony of the first set of witnesses contradicts the testimony of the intermediate ones.

[383] And this is the meaning of the clause: As that is what the master says, i.e., this testimony is advantageous to the master. It means that what the intermediate witnesses say, i.e., that he owes the value of a tooth, is satisfactory to him, as according to the claim of the first set, he owes the value of an eye. Since there are now contradictory testimonies, the testimony stating the claim of a loss of lesser value is accepted, and in that case the master would have to pay the slave only for the value of his tooth, in addition to emancipating him. This judgment corresponds exactly to the testimony of the intermediate set of witnesses.

[384] And the baraita subsequently teaches: And then the intermediate set of witnesses were found to be conspiring witnesses, as a third set of witnesses testified that the intermediate set was not at the scene of the incident at all. Therefore, the intermediate set of witnesses pays the value of an eye to the slave less the value of a tooth, as this is the amount of monetary damage the slave stood to incur as a result of their testimony.

[385] Rava concludes his proof: Learn from the baraita that the contradiction of testimony is the start of determining that testimony is conspiring testimony. Although the testimony of the intermediate set of witnesses had already been contradicted before it was shown to be conspiring testimony, nevertheless, they can still be established as conspiring witnesses at that later stage, which means that they must pay an amount equivalent to the loss they were attempting to cause through their testimony.

[386] Abaye said: No. There is another possible interpretation for the baraita, which answers the questions raised above and yet does not serve as proof for Rava's opinion. According to this interpretation, the contradictory testimony was given after, not before, the testimony mentioned in the baraita.

[387] It is possible that the baraita is discussing a case where a second set of witnesses both reversed the order of events, by testifying that the tooth was knocked out before the blinding of the eye, and at the same time rendered the first set witnesses as conspiring witnesses, by testifying that those original witnesses were not at the scene of the supposed events they claimed to have witnessed. It can be argued, albeit in a far-fetched manner, that the testimony of the first set of witnesses is considered to be to the master's advantage even at this stage, because he knows what really happened, as reflected in the testimony of the later witnesses. Accordingly, Rava maintains that there are a total of three sets of witnesses in the case of the baraita, while Abaye says that there are only two sets.

[388] Abaye elaborates: From where do I say that my interpretation of the baraita is correct?

[389] From the fact that the latter clause of the baraita states a ruling with regard to a case in which the second set of witnesses both reverses the order of events and renders the first pair as conspiring witnesses, it may be inferred that the first case as well, in parallel fashion, states a ruling with regard to a case in which the second set of witnesses both reverses the order of events and renders the first pair as conspiring witnesses.

[390] This is as it teaches in the latter clause of the baraita, that if witnesses say: We testify with regard to so-and-so that he knocked out his Canaanite slave's tooth and afterward blinded his eye, which requires the master to emancipate him and compensate him for the value of his eye, as that is what the slave says, i.e., this testimony is advantageous to the slave, and subsequently they were found to be conspiring witnesses, they pay the value of an eye to the master.

[391] Abaye analyzes this clause of the baraita: What are the circumstances of this case? If it is speaking of a situation where the latter set of witnesses, who attested that the first set of witnesses were conspiring witnesses, do not concede that there was any injury at all inflicted on the slave by his master, then there is no testimony to confirm that those injuries were inflicted other than that given by the witnesses who were shown to be conspiring witnesses. Consequently, they should be required to pay the entire value of the slave to the master, as this is the amount of monetary damage the master stood to incur as a result of their false testimony.

[392] Rather, it is obvious that all of them, i.e., both the first set of witnesses and the latter set, concede with regard to the injury inflicted on the slave by the master. They both agree that the master both blinded the slave's eye and knocked out his tooth and therefore is obligated to emancipate him. They disagree concerning only the order of events. The first set of witnesses said that the tooth injury occurred first and the eye injury occurred afterward. Consequently, they sought to require the master to emancipate the slave and compensate him for the eye injury.

[393] And the second set of witnesses reversed the order of events in their testimony, saying that the eye injury took place first, and in the same testimony, they rendered the first pair conspiring witnesses, by testifying that they were not present when the events occurred. Since the latter clause of the baraita must be interpreted in this manner, it stands to reason that the first case should be explained similarly.

[394] The Gemara analyzes Abaye's interpretation of the baraita: And what are the circumstances of the case? The second set of witnesses, who are deemed credible, have established that the injuries did not take place on the date reported by the first set of witnesses. According to their testimony, when did the injuries take place? If the latter witnesses postdated the events, by testifying that the injuries were actually inflicted at a later stage than that mentioned by the first set of witnesses, the first set of witnesses should still be required to pay the full value of a slave to the master.

[395] The reason the first set of witnesses should be liable is that when they sought to impose liability upon the man, i.e., the master, this man was not yet burdened with any liability. When the first set of witnesses testified about the injuries, the master was not yet obligated to emancipate his slave or pay damages. Therefore, these conspiring witnesses should be required to pay these sums, which they had sought to impose on the master. Rather, it must be that the latter set of witnesses predated the time of the injuries, by testifying that they were inflicted at an earlier date than that attested to by the first set of witnesses.

[396] The Gemara continues to analyze the case: And if the baraita is referring to a case where the master had not yet stood trial for having injured his slave when the first set of witnesses submitted their testimony, those witnesses should still be required to pay the entire value of the slave to the master, as at the time of their testimony the man, i.e., the master, was not yet liable. The first set of witnesses sought to render the master liable at a time when he was exempt from liability, and therefore they should be obligated to pay him the full value of the slave.

[397] Rather, it must be that the master had already stood trial for having inflicted these injuries, and had been sentenced by the court to emancipate the slave for the first injury and pay him for the second injury. Then, the master evaded payment, and was subsequently brought before another court, where witnesses testified that the first court had established liability for knocking out the tooth first and then blinding the slave's eye. This testimony was subsequently rendered conspiring testimony by a second set of witnesses, who testified both that the first set of witnesses was not at the scene of the first trial and that the results of the trial were actually reversed, i.e., the master's liability was for blinding the eye first and then for knocking out the tooth. Since the first set of witnesses, who were rendered conspiring witnesses, sought to increase the master's liability payment from that of the value of a tooth to that of an eye, they must pay the value of an eye to the master.

[398] Rava sought to infer from this baraita to his opinion that contradiction of testimony is the start of determining that testimony is conspiring testimony. Rav Aḥa, son of Rav Ika, said to Rav Ashi: From which case in the baraita is the inference of Rava? If we say that his inference is from the first clause, this is difficult. In the case of the first clause, if it involves three sets of witnesses, as claimed by Rava, is the intermediate set of witnesses contradicted and rejected before they are established as conspiring witnesses? The first set of witnesses testified that the eye injury took place after the tooth injury, whereas the intermediate set of witnesses reversed the order. If so, the intermediate set of witnesses sought to lower the master's payment from the value of an eye to that of a tooth.

[399] Rav Aḥa continues: Since if the second set of witnesses would not have been rendered conspiring witnesses, the testimony would have been established in accordance with their statement, as the judgment would have been decided in accordance with their testimony. The reason their testimony would have determined the ruling is that one hundred dinars is subsumed within two hundred, i.e., testimony concerning a large sum includes testimony concerning a smaller sum.

[400] Rav Aḥa continues: Therefore, it is the first set of witnesses, who testified that the eye injury occurred last, whose testimony would be considered contradicted and rejected, whereas the testimony of the intermediate set of witnesses would not be considered contradicted at all, as it is accepted in full. If so, this is not a case of witnesses who were rejected due to contradiction and then subsequently rendered conspiring witnesses.

[401] Rav Ashi said to Rav Aḥa in response: Rava maintains that from the fact that the ruling of the first clause of the baraita is stated with regard to a case involving three sets of witnesses, it is logical to assume that the ruling of the latter clause is also stated with regard to a case involving three sets of witnesses, and Rava infers his ruling from the latter clause.

[402] Rava explains that the latter clause is referring to a case where two witnesses, i.e., the ones mentioned in the baraita, come and say: The master knocked out the slave's tooth and afterward blinded his eye, and the court ruled its judgment in accordance with their statement, obligating the master to emancipate his slave and compensate him for the value of his eye.

[403] And subsequently two other witnesses, who were not mentioned in the baraita, come and say that the events were reversed: First the master blinded his slave’s eye and then he knocked out his tooth, so that they contradict the testimony of those first witnesses. At this point the master is obligated to emancipate his slave and pay him only the value of his tooth, as this much was required of him according to both sets of witnesses. And then the first pair were found to be conspiring witnesses. Therefore, as the baraita states, the first set of witnesses pays the value of an eye to the master, less the value of a tooth.

[404] Rava reaches his conclusion based on the following reasoning: And if it enters your mind that the contradiction of testimony is not the start of determining that testimony is conspiring testimony, and witnesses who were first contradicted and then rendered conspiring witnesses are not punished as conspiring witnesses, why must these witnesses pay? They were already contradicted from the outset, before they were shown to be conspiring witnesses. Rather, conclude from the latter clause of the baraita that the contradiction of testimony is the start of determining that testimony is conspiring testimony.

[405] And how could Abaye, who disagrees with Rava, refute this proof? He could say to you: Granted, it is impossible to interpret the first clause without the supposition that there are three sets of witnesses involved. The reason is that it is taught with regard to that first clause: As that is what the master says, i.e., this testimony is satisfactory to the master. The only testimony recorded in the baraita is that the master blinded the slave’s eye and then knocked out his tooth. Why would this be considered satisfactory to the master? It must therefore be assumed that this testimony was preceded by another one that was even less advantageous to the master. That testimony confirmed the injuries but placed the eye injury after the tooth injury, which involves greater liability for the master. Finally, a third set of witnesses must have arrived and rendered the intermediate set as conspiring witnesses, so that there are a total of three sets of witnesses.

[406] But with regard to the latter clause, why do I need to explain it as referring to three sets of witnesses? If you say that it is because the baraita states concerning this case: As that is what the slave says, i.e., this testimony is satisfactory to the slave, this does not prove that there is another testimony, not mentioned in the baraita, that is less favorable to the slave than this one.

[407] The reason is that a slave would say anything, i.e., any form of testimony would be favorable to him, as it is satisfactory for him that he should be emancipated. The court’s acceptance of testimony confirming either order of events would result in his emancipation from slavery, and therefore both testimonies are satisfactory to him. Although there is a compelling reason to posit the existence of three sets of witnesses in the first clause, there is no justification to do so in the second clause, and therefore it should be explained as did Abaye, as discussing only two sets of witnesses.

[408] Rabbi Zeira objects to the basic assumption of the baraita that when a master inflicts two injuries upon his Canaanite slave he must indemnify the slave for the second injury. One can say instead that if the master blinded his slave’s eye,

[409] the slave should go free on account of his eye, and if he knocked out his tooth he should go free on account of his tooth, and if the master both blinded his eye and knocked out his tooth, the slave should go free on account of both his eye and his tooth, without the master having to pay damages for the loss of his tooth.

410 Abaye said to him in response: With regard to your claim, the verse states: “And if a man smites the eye of his slave or the eye of his maidservant and destroys it, he shall let him go free for his eye’s sake” (Exodus 21:26). The phrase “for his eye’s sake” indicates: But not for the sake of both his eye and his tooth. The same can be inferred from the subsequent verse: “And if he smites out his bondman’s tooth or his bondwoman’s tooth, he shall let him go free for his tooth’s sake” (Exodus 21:27). The phrase “for his tooth’s sake” indicates: But not for the sake of both his eye and his tooth.

411 The Gemara returns to Rava’s opinion that the contradiction of testimony is the start of determining that testimony is conspiring testimony. Rav Idi bar Avin said: We too can learn from the mishna that Rava’s claim is correct, as it teaches (72b): If one stole an ox or a sheep, as established based on the testimony of two witnesses, and he subsequently slaughtered the animal or sold it, also based on the testimony of the same witnesses, and these witnesses were found to be conspiring witnesses, these conspiring witnesses must pay everything, i.e., not only the principal amount but also the fourfold or fivefold payment.

412 What, is it not referring to a case where they testified concerning the theft and then testified concerning the slaughter, and they were subsequently rendered conspiring witnesses with regard to the theft and then were rendered conspiring witnesses with regard to the slaughter?

413 Rav Idi bar Avin states his inference: But once they were rendered conspiring witnesses with regard to the theft, their testimony with regard to the slaughter is in effect contradicted, i.e., nullified, as testimony concerning the slaughter of an animal without prior testimony establishing that the animal was stolen is meaningless. And yet the mishna teaches that the witnesses must pay everything. And if it enters your mind that the contradiction of testimony is not the start of determining that testimony is conspiring testimony, why should they pay a fine for lying about the slaughter? Their testimony concerning the slaughter was rendered irrelevant before it was established as conspiring testimony. Rather, must one not conclude from this mishna that the contradiction of testimony is the start of determining that testimony is conspiring testimony?

414 The Sages say in refutation of this inference: With what are we dealing here? We are dealing with a case where the witnesses were rendered conspiring witnesses with regard to the slaughter first, before they were rendered conspiring witnesses in their testimony concerning the theft itself. In this case, the testimony concerning the slaughter was not rendered irrelevant before it was rendered conspiring testimony.

415 And this is a matter in the dispute between other amora’im, before Rava and Abaye discussed it. As it was stated: With regard to witnesses to a capital crime who were first contradicted by two other witnesses and ultimately were rendered conspiring witnesses, this is a matter of dispute between Rabbi Yoḥanan and Rabbi Elazar. One said: These witnesses are killed, like all conspiring witnesses in a capital case, as the contradiction of testimony is the start of determining that testimony is conspiring testimony, and one said: They are not killed.

416 The Gemara suggests: It may be concluded that it is Rabbi Elazar who says they are not killed. As Rabbi Elazar says: Witnesses who were contradicted in a case involving the taking of a life, i.e., a capital case, are flogged for violating the prohibition: “You shall not bear false witness against your neighbor” (Exodus 20:13).

417 And if it enters your mind that it is Rabbi Elazar who says that witnesses to a capital crime who were first contradicted and ultimately found to be conspiring witnesses are killed, why are they

flogged in this case? There is always the possibility that they might be rendered conspiring witnesses, which would render them liable to receive court-imposed capital punishment. Consequently, this is a case of a prohibition given as warning of liability for court-imposed capital punishment, and there is a principle that one is not flogged for violating any prohibition given as warning of liability for court-imposed capital punishment.

418 Rather, isn't it correct to conclude from this statement that it is Rabbi Elazar who says that witnesses to a capital crime who were first contradicted and ultimately were found to be conspiring witnesses are not killed? The Gemara affirms: It may be concluded that this is so.

419 The Gemara asks a question with regard to Rabbi Elazar's opinion that witnesses who were contradicted in a capital case are flogged. Why are they flogged simply because their testimony was contradicted? They are two witnesses, and they are contradicted by two other witnesses. What did you see in the testimony of the second set of witnesses that leads you to rely on those witnesses to the extent that the first set of witnesses is flogged? You could just as well rely on these witnesses, i.e., the first witnesses. How can the court ever determine with certainty that a given testimony is false based merely on contradictory testimony?

420 Abaye said: The contradiction to which Rabbi Elazar is referring involves a case where the witnesses testified that they saw a certain person murdered, and subsequently the individual who was allegedly killed came to the court on his feet, conclusively disproving their testimony.

421 MISHNA: If one stole an ox or a sheep, as established based on the testimony of two witnesses, and he subsequently slaughtered or sold the stolen animal, as established based on the testimony of one witness or based on his own admission, i.e., he himself admitted that he performed these acts, without there being any witness testimony, he pays the double payment, but he does not pay the fourfold or fivefold payment.

422 If one stole an animal and slaughtered it on Shabbat, which is a capital offense, or if he stole an animal and slaughtered it for the purpose of idol worship, or if he stole his father's animal and subsequently his father died, and afterward he slaughtered or sold it, or if he stole an animal and subsequently he consecrated it as an offering and afterward he slaughtered or sold it, in all these cases the thief pays the double payment, but he does not pay the fourfold or fivefold payment.

423 Rabbi Shimon says: In the case of sacrificial animals for which the owner bears financial responsibility to replace with another animal if one of the original animals that one stole is lost or dies, the thief is obligated to pay the fourfold or fivefold payment if he slaughters one of the animals. If it is a sacrificial animal for which the owner bears no financial responsibility, the thief is exempt from the fourfold or fivefold payment.

424 GEMARA: The mishna teaches that if the fact that the thief slaughtered or sold the animal was established based on the testimony of one witness, he is exempt from the fourfold or fivefold payment. The Gemara asks: Isn't this obvious?

425 The Sages say in response: By stating this case, the mishna teaches us this halakha: The case of the thief slaughtering the animal established based on the testimony of one witness is similar to a case where it is established based on his own admission. Just as in the case where the slaughter is established based on the testimony of one witness, if one other witness comes and corroborates the testimony of the first, he joins together with the first witness and together their testimony is rendered

a valid testimony of two, and the thief becomes obligated to pay the fourfold or fivefold payment, so too, where the slaughter is established based on his own admission, if witnesses come after his admission he becomes obligated to pay the fourfold or fivefold payment.

[426] The Gemara comments: This interpretation of the mishna serves to exclude that which Rav Huna says that Rav says. As Rav Huna says that Rav says: One who admits he is liable to pay a fine is exempt from payment, even if afterward witnesses come and testify to his liability.

[427] Since Rav Huna's halakha was mentioned, the Gemara discusses in detail the matter itself. Rav Huna says that Rav says: One who admits he is liable to pay a fine is exempt from payment, even if afterward witnesses come and testify to his liability. Rav Ḥisda raised an objection to Rav Huna from a baraita: There was an incident involving Rabban Gamliel, who blinded the eye of his Canaanite slave Tavi, and he experienced great joy as a result. Rabban Gamliel had long wanted to emancipate Tavi, but it is generally prohibited to emancipate a Canaanite slave. The injury provided a fortuitous opportunity for Rabban Gamliel to emancipate his slave, as blinding the eye of one's slave results in his emancipation (see Exodus 21:27).

[428] Rabban Gamliel encountered Rabbi Yehoshua and said to him: Do you know that my slave Tavi was emancipated? Rabbi Yehoshua said to him: Why? What circumstances enabled you to emancipate him? Rabban Gamliel said to him: I was able to do so, as I blinded his eye. Rabbi Yehoshua said to Rabban Gamliel: Your statement is nothing, and is not grounds for his emancipation, as he has no witnesses who can testify that you did this to him. The principle is that one does not pay a fine based on his own admission. One pays a fine only based on the testimony of witnesses. The requirement to emancipate one's slave after injuring his eye is a type of fine.

[429] The Gemara infers from the baraita: But if Tavi had witnesses who could testify with regard to the injury, Rabban Gamliel would be obligated to emancipate him, even if they testify after Rabban Gamliel's admission. And we can learn from this that one who admits that he is liable to pay a fine is liable, even if afterward witnesses come and testify with regard to his liability.

[430] Rav Huna said to Rav Ḥisda: This case involving Rabban Gamliel is different, as he admitted to his actions when he was not in the presence of a court. An admission not in the presence of a court does not exempt the perpetrator from paying the relevant fine. The Gemara challenges: But Rabbi Yehoshua was the president of the court, so it is likely that the encounter took place in court.

[431] The Gemara answers: Nevertheless, Rabbi Yehoshua was not present in court when Rabban Gamliel encountered him.

[432] The Gemara asks a question from a different source: But isn't it taught in a baraita that Rabbi Yehoshua said to Rabban Gamliel: Your statement is nothing, as you have already admitted to inflicting the injury yourself? This indicates that even if witnesses would subsequently testify about the injury, Rabban Gamliel would not emancipate Tavi.

[433] The Gemara suggests: What, is it not the case that the difference between these two baraitot is a dispute between tanna'im? This tanna of the first baraita, who says that Rabbi Yehoshua's statement was: As you have no witnesses, holds that one who admits that he is liable to pay a fine is liable to pay the fine if afterward witnesses come and testify to his liability. And that tanna of the second baraita, who says that Rabbi Yehoshua's statement was: As you have already admitted, holds that one

who admits that he is liable to pay a fine is exempt from payment, even if afterward witnesses come and testify to his liability.

434 The Gemara rejects this suggestion: No; it is possible to understand the baraitot differently. Everyone agrees that one who admits he is liable to pay a fine is exempt, even if afterward witnesses come and testify to his liability. And they disagree with regard to the following: This tanna, who says that Rabbi Yehoshua said: As you have no witnesses, holds that Rabbi Yehoshua was outside the court when Rabban Gamliel encountered him, and therefore his admission is disregarded. And that tanna, who says that Rabbi Yehoshua said: As you have already admitted, holds that Rabbi Yehoshua was in the court when Rabban Gamliel met him, so Rabban Gamliel's admission is a valid admission.

435 The Gemara analyzes in detail the dispute alluded to above: It was stated with regard to one who admits that he is liable to pay a fine, and afterward witnesses come and testify to his liability, that Rav says he is exempt, and Shmuel says he is liable.

436 Rava bar Ahilai said: What is the reason for the ruling of Rav? With regard to theft, which is subject to a fine of double payment, the Torah states: "If the theft shall be found in his possession alive, whether it is an ox, or a donkey, or a sheep, he shall pay double" (Exodus 22:3). The verb for "shall be found" is doubled, as the verse states "himmatze timmatze." Rav derives from the repetition that there are two matters that are found: The double payment is imposed only if it is found [himmatze], i.e., it is revealed that he stole the item, through the testimony of witnesses, and the theft is found [timmatze], as determined through judges. This excludes one who incriminates himself through his own admission.

437 Rav asks: But why do I need the Torah to teach this here? This principle is already derived from a different source: "The one whom the judges convict shall pay double to his neighbor" (Exodus 22:8), which indicates that self-incrimination is insufficient to render one liable for double payment. Rather, conclude from the fact that there are two verses to serve as the source for this principle that one who admits he is liable to pay a fine is exempt from paying even if afterward witnesses come and testify to his liability. The second verse teaches this additional novelty.

438 And Shmuel would explain the double expression differently. He could have said to you: That verse is necessary to teach that a thief himself must pay double payment, i.e., the double payment is imposed not only upon a bailee who takes a false oath that the article entrusted to him was stolen, but it is also imposed upon a thief, as the school of Ḥizkiyya taught earlier in this chapter (63b).

439 Rav raised an objection to Shmuel from the following baraita: If a thief saw witnesses who were approaching with the intent to testify against him, and at that point he said: I admit that I stole an animal, but I did not slaughter or sell it, he pays only the principal. This indicates that even if those witnesses subsequently testify, the thief remains exempt from the double payment as well as the fourfold or fivefold payment. Shmuel said to him in response: With what are we dealing here in this baraita? With a case where the witnesses returned back, i.e., ultimately they did not testify.

440 Rav raised an objection: But this interpretation is impossible, as can be seen from the fact that the latter clause of the baraita teaches: Rabbi Elazar, son of Rabbi Shimon, says: Let the witnesses come and testify. This means that their testimony will be accepted and the thief will be required to pay the relevant fines. By inference it may be deduced that the first tanna holds that no, there is no point in the witnesses testifying, as the thief will be exempt in any case.

441 Shmuel said to Rav: Isn’t there the opinion of Rabbi Elazar, son of Rabbi Shimon, which stands in accordance with my opinion? When I said that one who admits that he is liable to pay a fine and afterward witnesses testified that he committed that act is deemed liable, I said this ruling in accordance with the opinion of Rabbi Elazar, son of Rabbi Shimon.

442 The Gemara comments: According to Shmuel, his opinion on this matter is certainly subject to a dispute between tanna’im, as he himself was forced to admit that his opinion is in accordance only with the opinion of Rabbi Elazar, son of Rabbi Shimon, not that of the first tanna of the baraita. But according to Rav, shall we say that his opinion too is necessarily subject to this dispute between tanna’im?

443 The Gemara explains: Rav could have said to you: I say my opinion in accordance with the rulings of both tanna’im of the baraita, even according to the opinion of Rabbi Elazar, son of Rabbi Shimon. Rabbi Elazar, son of Rabbi Shimon, says that the testimony of the witnesses obligates the thief to pay a fine even after his admission only there, in that specific case, because the thief admitted his guilt solely due to his fear of the impending testimony of the witnesses. But here, in an ordinary case of admission, where there is no impending testimony to incriminate him, and he admits his guilt of his own volition, even Rabbi Elazar, son of Rabbi Shimon, would concede that the thief is exempt from payment even if witnesses subsequently testify that he is liable.

444 Rav Hamnuna said: Rav’s statement is more reasonable in a case where the thief says: I stole an item, and subsequently witnesses came and testified that he stole that item. In that case it is logical that the thief is exempt from paying the fine despite the witnesses’ testimony, because he at least obligated himself to pay the principal amount via his admission.

445 But if he says: I did not steal anything, and witnesses came and testified that he did steal an animal, and subsequently the thief says: Yes, I did steal the animal, and I also slaughtered it, or I also sold it, and witnesses came and testified that he slaughtered or sold it, he is liable to pay the fourfold or fivefold payment. The reason he is liable is that through his admission he sought to exempt himself from any payment whatsoever. In order for an admission to exempt the perpetrator from a fine, it must include an admission that he is liable to pay some payment.

446 Rava said: In this case I have gotten the better [kipaḥti] of the elders of the school of Rav, which is a reference to Rav Hamnuna. The reason is that in the baraita that discusses Rabban Gamliel injuring his slave, he was seeking to exempt himself from any payment whatsoever through his admission, and yet earlier in the Gemara it was said that Rav Ḥisda stated this baraita to Rav Huna to challenge Rav Huna’s opinion, and Rav Huna did not answer him that Rabban Gamliel’s case was different because his admission served to exempt him entirely.

447 The Gemara notes: It was also stated that Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says the same opinion as Rav Hamnuna. If a thief says: I stole an item, and witnesses came and testified that he stole that item, the thief is exempt from paying the fine despite the witnesses’ testimony, because he at least obligates himself, through his admission, to pay the principal. But if he says: I did not steal anything, and witnesses came and testified that he did steal an animal, and subsequently the thief says: Yes, I did steal the animal, and I also slaughtered it, or I also sold it, and then witnesses came and testified that he slaughtered or sold it, he is liable to pay the fourfold or fivefold payment, as through his admission he was seeking to exempt himself from any payment whatsoever.

[448] Rav Ashi said: There is a mishna and a baraita that are also precisely formulated in accordance with this opinion. The mishna is as we learned (74b): If one stole an ox or a sheep, as established based on the testimony of two witnesses, and he subsequently slaughtered or sold the stolen animal, as established based on the testimony of one witness or based on his own admission, he pays the double payment, but he does not pay the fourfold or fivefold payment.

[449] Why do I need the mishna to teach in the beginning of this case: If one stole an ox or a sheep, as established based on the testimony of two witnesses? Let the mishna teach the case more simply: If one stole an animal and then slaughtered or sold it, as established based on the testimony of one witness or based on his own admission, he pays only the principal. This would serve to teach the same principle in a less complicated manner, without the need for two additional witnesses.

[450] Rather, is it not correct to say that by citing the more complicated case, this is what the mishna teaches us: It is only in this case, where it is established that the thief stole an animal based on the testimony of two witnesses, and it is established that he slaughtered or sold it based on the testimony of one witness or based on his own admission, and where he does not obligate himself through his admission to pay the principal, that he is obligated to pay the fine.

[451] The Gemara elaborates: In other words, it is only in that case, where the theft is established based on the testimony of two witnesses, that we say that liability based on his own admission is similar to the testimony of one witness, in that just as when the slaughter is established based on the testimony of one witness, if one other witness later comes he joins together with the first witness and together their testimony is rendered a valid testimony of two witnesses and the thief becomes liable to pay, so too, in a case when the slaughter is established based on his own admission, if witnesses subsequently come and testify, he becomes liable to pay the fine, as his admission would not have rendered him liable to pay any payment.

[452] But if it is established that the thief stole an animal and slaughtered or sold it, all based on the testimony of one witness or based on his own admission, in which case through his admission he obligates himself to pay the principal amount, we do not say that when witnesses testify subsequent to his own admission it is similar to when they arrive subsequent to the testimony of one witness, and he is liable to pay the fine in both cases. Rather, since in this case his admission would have rendered him liable to pay the principal due to the fact that the theft was not established based on the testimony of two witnesses, it is considered a proper admission, which exempts him from paying the fine.

[453] The baraita that supports Rav Hamnuna’s opinion is the one cited earlier, as it is taught: If a thief saw witnesses who were approaching with the intent to testify against him, and at that point he said: I admit that I stole an animal, but I did not slaughter or sell it, he pays only the principal. Why do I need the baraita to teach: And the thief said: I admit that I stole an animal but I did not slaughter or sell it? Let it teach a simpler case, in which the thief said either: I stole the animal, or: I slaughtered it, or: I sold it.

[454] Rather, by choosing the more complicated case, this is what the baraita teaches us: The only reason that the thief is exempt from payment is that he says: I stole the animal, as in that case he obligated himself to pay the principal. But if he says: I did not steal, and witnesses came and testified that he did steal an animal, and subsequently he changed his claim and says: I slaughtered it, or: I sold it, and then witnesses came and confirmed that he slaughtered or sold it, in which case the thief

did not obligate himself to pay the principal or any other payment, he would be liable to pay the fourfold or fivefold payment. Apparently, an admission to the slaughter of a stolen animal is not considered a valid admission, as such an admission does not obligate the perpetrator to pay a fine.

[455] The Gemara says, in rejection of this second proof: No, it is possible to explain the reason the tanna of the baraita chose to present this case in a different manner, as it teaches us this halakha itself: That once the thief says: I stole the animal, even if he also says: I did not slaughter or sell it, and later witnesses came and testified that he slaughtered or sold it, he is exempt from paying the fourfold or fivefold payment. What is the reason for this exemption?

[456] The reason is that the Merciful One states in the Torah that there is a payment of four sheep for a sheep and five oxen for an ox (see Exodus 21:37). This indicates that a thief can be rendered liable to pay, respectively, a fourfold or fivefold payment, but not a fourfold payment for an ox, nor a threefold payment for a sheep. In other words, one should not view the fines as independent of each other, that if the thief is found with the animal he pays as a fine the double payment, and if he slaughtered or sold it he pays a different fine, i.e., the fourfold or fivefold payment. Rather, the fourfold or fivefold payment comprises the principal, the double payment, and an additional two or three times the principal. By admitting to his act of theft, the thief exempts himself from the double payment, and the remaining fine for slaughtering a sheep would be a threefold payment, or a fourfold payment for an ox, which are not mandated by the Torah.

[457] The Gemara proposes: Let us say that the opinion of Rav Hamnuna and Rabbi Yoḥanan is the subject of a dispute between tanna’im. As it is taught in a baraita: If two witnesses testify that someone stole an animal, and two others testify against him that he slaughtered or sold the animal, and the witnesses who had testified concerning the theft were rendered conspiring witnesses, the thief is exempt from all payment, as testimony that was partially invalidated is entirely invalidated. If the testimony concerning the theft was undermined, the testimony concerning the slaughter or sale is thereby rendered irrelevant. Consequently, the alleged thief is exempt from any payment.

[458] If the witnesses who testified concerning the slaughter or sale were rendered conspiring witnesses, but the testimony concerning the theft remains credible, the thief pays the double payment, and the conspiring witnesses pay a threefold payment, as that is the loss they sought to impose on the thief. The Sages said in the name of Sumakhos: The witnesses pay the double payment, and the thief pays a threefold payment for an ox and a twofold payment for a ram. This concludes the baraita.

[459] The Gemara analyzes the statement of Sumakhos: To which clause in the baraita is Sumakhos referring? If we say that he is referring to the first clause, in which the testimony concerning the theft is invalidated, this is impossible. Doesn’t Sumakhos accept the principle that testimony that was partially invalidated is entirely invalidated, in this case rendering the testimony concerning the slaughter or sale irrelevant if there is no testimony concerning the theft?

[460] But rather, he must be referring to the latter clause of the baraita, in which the testimony concerning the slaughter or sale is invalidated. This, too, is impossible, as in this case the Rabbis, i.e., the first tanna of the baraita, say well, i.e., what they state is reasonable, and the thief pays the double payment and the witnesses pay a threefold payment. On what basis would Sumakhos dispute this ruling?

[461] Rather, it must be that Sumakhos is referring to a different case entirely, one that is not mentioned explicitly in the baraita, and a different matter is at the core of the dispute between them. Sumakhos is referring to a case where two people come and say to the thief: You stole an animal. The thief said to them in reply: Yes, I did steal the animal, and moreover, I slaughtered it, or: I sold it. But I did not steal it in your presence, and your testimony that you saw me steal it is false. And subsequently the thief brought new witnesses who rendered the original witnesses conspiring witnesses, by testifying that they were in a different place at the time they claimed that the theft occurred, thereby proving that the thief did not steal in their presence. And finally, the owner of the animal brought other witnesses who testified that the thief stole the animal and slaughtered or sold it.

[462] And Sumakhos and the Rabbis disagree over whether an admission to the slaughter of a stolen animal is a valid admission, even though it does not lead to liability to pay any payment. Both parties to the dispute agree that the admission of a perpetrator only in response to the testimony of witnesses is not a valid admission.

[463] The dispute between them is that the Rabbis maintain that even though the thief's admission concerning the theft itself is not a valid admission because it is due only to the witnesses who have testified against him that he admits his guilt, nevertheless, his admission concerning the slaughter of the animal is a valid admission, despite the fact it does not render the thief liable to pay a fine, and he is therefore exempt from the fourfold or fivefold payment. The conspiring witnesses must pay the double payment to the thief, since this is the amount of financial damage they sought to impose on him, while the thief pays the double payment to the owner, as valid witnesses ultimately testified that he stole the animal.

[464] And Sumakhos maintains that since the admission concerning the theft itself is not a valid admission because it was due only to the testimony of the witnesses that he admits his guilt, so too, the admission concerning the slaughter is not a valid admission, because it does not obligate him to pay a fine, as stated by Rav Hamnuna and Rabbi Yoḥanan.

[465] And consequently, those first witnesses to the theft, who were rendered conspiring witnesses, pay the double payment, as that is the amount of financial damage they sought to impose on him, and the thief pays the double payment to the owner of the animal, as valid witnesses ultimately testified that he stole it, and since his admission is invalid he must pay an additional threefold payment, for a total of a fivefold payment for an ox, or a twofold payment, for a total of a fourfold payment, for a ram. If this is their dispute, Sumakhos is in agreement with the opinion of Rav Hamnuna and Rabbi Yoḥanan, while the Rabbis disagree with this opinion.

[466] Rav Aḥa, son of Rav Ika, said: No; it is possible to explain the baraita differently, as follows: Everyone, i.e., both Sumakhos and the Rabbis, maintains that an admission concerning the slaughter of a stolen animal is not a valid admission, as it does not render the perpetrator liable to pay any payment.

[467] Rather, they disagree over the concept of testimony that you cannot render conspiratory testimony. Sumakhos and the Rabbis disagree with regard to a case where witnesses come and say to the thief: You stole an animal. And the thief said to them in response: I did steal an animal, and moreover, I slaughtered it, or: I sold it. But you are false witnesses, as it was not in your presence that I stole the animal, but in the presence of so-and-so and so-and-so. And the thief subsequently brought witnesses who established the first set of witnesses as conspiring witnesses by testifying that

the thief did not steal the animal in their presence. And finally, so-and-so and so-and-so, the two people mentioned by the thief, came and testified against the thief, saying that he stole the animal and also slaughtered or sold it.

[468] And it is with regard to this point that they disagree, that the Rabbis maintain that the testimony of so-and-so and so-and-so is testimony that you cannot render conspiratory testimony, as the thief himself admits that their testimony is true. And any testimony that you cannot render conspiratory testimony is not considered valid testimony. Their testimony is therefore discounted, which leaves only the thief's statement. The thief pays the money he admitted he owes, i.e., the principal of the theft, but he is exempt from paying a fine. Meanwhile, the first witnesses, who had been rendered conspiring witnesses, pay the thief the double payment.

[469] And Sumakhos maintains that testimony that you cannot render conspiratory testimony is nevertheless considered valid testimony. Therefore, the testimony of so-and-so and so-and-so is valid, and the thief must pay the fourfold or fivefold payment. Sumakhos states that the thief pays a threefold payment for an ox and a twofold payment for a ram. The reason is that the thief receives a double payment from the first, conspiring witnesses, which he gives to the owner of the animal, along with the remainder of the payment. This amounts to a threefold payment for an ox and twofold payment for a ram that he is required to pay from his own funds.

[470] The Gemara asks: But do we not maintain as an accepted principle that testimony that you cannot render conspiratory testimony is not valid testimony? It is not reasonable to suggest that Sumakhos would disagree with that principle. The Gemara answers: This statement applies in a case where witnesses say that they do not know on which day or at which time of day the events in question occurred, in which case no one could ever say to them: You were in a different place at that time, thereby rendering them conspiring witnesses. With regard to such a case one can say that in effect there is no testimony at all, as the vague statement of the witnesses does not allow them to be prosecuted as conspiring witnesses. But here the thief is supporting their testimony, which renders it more credible.

[471] The Master said in the baraita that the Sages stated in the name of Sumakhos: The witnesses pay the double payment. The Gemara asks: From the fact that the thief admits that he stole the animal, he is required to pay the principal amount regardless of any subsequent testimony provided by witnesses. Why, then, should the conspiring witnesses be required to pay a double payment, which includes the principal amount? Rabbi Elazar says in the name of Rav: Teach the baraita differently, and instead say that Sumakhos said that the witnesses are liable for

[472] the payment of the extra part of the double payment, i.e., the amount that exceeds the principal.

[473] § The mishna teaches: If one stole an animal and subsequently he consecrated it as an offering, and afterward he slaughtered or sold it, the thief pays the double payment but he does not pay the fourfold or fivefold payment. The Sages say: Granted, he is not liable to pay the fourfold or fivefold payment for the slaughter of the animal, as when he slaughtered it, he slaughtered an animal belonging to the Temple treasury, and he did not slaughter the animal belonging to its owner.

[474] But let him be liable to pay the fourfold or fivefold payment for having consecrated the animal in the first place, as what difference is it to me if he sold the animal to an ordinary person, and what difference is it to me if he sold it to Heaven by consecrating it? Consecration should be considered tantamount to a sale, as in either case ownership of the animal is transferred to another party.

475 The Gemara answers: In accordance with whose opinion is this mishna taught? It is in accordance with the opinion of Rabbi Shimon, who says that sacrificial animals for which the owner bears financial responsibility to replace with another animal if one of the original animals is lost or dies are considered to be in the possession of their owner (see 74b). The mishna is referring a case where the thief consecrated the animal in such a manner that he is obligated to replace it if it is lost or damaged before being sacrificed. One consequence of this potential financial loss is that the animal is considered to be in the thief's possession even after he consecrated it. Therefore, the animal's consecration is not tantamount to a sale to another party.

476 The Gemara rejects this answer: But from the fact that the latter clause of the mishna is in accordance with the opinion of Rabbi Shimon, it follows that the first clause of the mishna, which is stated before his opinion is introduced, is not in accordance with the opinion of Rabbi Shimon.

477 Rather, with what are we dealing here in the mishna? We are dealing with a case where the thief consecrated the animal as an offering of lesser sanctity, and the mishna is in accordance with the opinion of Rabbi Yosei HaGelili, who says that an offering of lesser sanctity is the property of its putative owner, and is considered in his possession. Therefore, its consecration is not tantamount to a sale to another party.

478 The Gemara rejects this answer as well: But what would be the halakha had the thief consecrated the animal as an offering of the most sacred order? Would he have to pay the fourfold or fivefold payment? If so, rather than teaching the following in the earlier clause of the mishna (70a), in the case that stands in opposition to this one: If he stole an animal and slaughtered it and afterward he consecrated it, he must pay the fourfold or fivefold payment, let the tanna distinguish and teach the opposing halakha within the same category itself.

479 The Gemara elaborates: The tanna could have taught: In what case is this statement, that the thief is exempt if he consecrated the stolen animal and then slaughtered or sold it, said? It is said only if he consecrated the animal as an offering of lesser sanctity; but if he consecrated it as an offering of the most sacred order he pays the fourfold or fivefold payment, as the consecration itself would be tantamount to a sale to another party.

480 Rather, the Gemara states that actually there is no difference whether the thief consecrates the animal as an offering of the most sacred order and there is no difference whether he consecrates it as an offering of lesser sanctity. And as for the matter that presented a difficulty for you, namely: What difference is it to me if he sold the animal to an ordinary person and what difference is it to me if he sold it to Heaven by consecration, one can answer as follows: If someone, e.g., Reuven, sold an ox to an ordinary person, e.g., Shimon, at the outset it was Reuven's ox and now, after the sale, it is Shimon's ox. By contrast, if he sold it to Heaven, i.e., he consecrated it as an offering, it is not considered to have been transferred into the possession of another party, as at the outset it was Reuven's ox and now, after consecration, it is still Reuven's ox.

481 § The mishna teaches: Rabbi Shimon says: In the case of sacrificial animals for which the owner bears financial responsibility to replace with another animal if one of the original animals that one stole is lost or dies, the thief is obligated to pay the fourfold or fivefold payment if he slaughters one of the animals. If it is a sacrificial animal for which the owner bears no financial responsibility, the thief is exempt from the fourfold or fivefold payment. At this stage the Gemara assumes that Rabbi Shimon requires the fourfold or fivefold payment as a fine for the act of consecration itself rather

than for the act of slaughtering the animal. The Gemara says: Although Rabbi Shimon holds that there is a logic of: What difference is it to me if he sold the animal to an ordinary person and what difference is it to me if he sold it to Heaven via consecration, nevertheless, he should have said the opposite.

482 The Gemara elaborates: He should have said that if they are sacrificial animals for which one bears financial responsibility, the thief is exempt from paying the fourfold or fivefold payment. In other words, if the thief stole a non-sacred animal and subsequently consecrated it as an offering in such a manner that he bears responsibility to replace it, he should be exempt from the fourfold or fivefold payment for the act of consecration. The reason is that the animal has not yet left his possession, and therefore this act of consecration should not be considered a sale.

483 By contrast, if they are sacrificial animals for which one does not bear financial responsibility, the thief should be liable to pay the fourfold or fivefold payment. If the thief stole a non-sacred animal and then consecrated it as an offering in such a way that he does not bear responsibility to replace it, he should be liable to pay the fourfold or fivefold payment for the act of consecration, as he has thereby removed the animal from his possession.

484 The Sages say in response: Rabbi Shimon is not discussing the issue of whether the consecration of an animal is tantamount to its sale. Rather, he is referring to a different matter, one that is not explicitly mentioned in the mishna.

485 And this is what the mishna is teaching: One who steals an animal after a thief has already stolen it, i.e., he steals it from the thief, does not pay the double payment, and if he slaughtered or sold the animal he does not pay the fourfold or fivefold payment. And similarly, one who steals consecrated property from the house of its owner is exempt from the double payment, and if it was a sacrificial animal and the thief slaughtered or sold it, he is exempt from the fourfold or fivefold payment.

486 What is the reason for this last ruling? The reason is as it is written: “If a man gives his neighbor money or vessels to safeguard and it was stolen from the house of the man, if the thief shall be found he shall pay double” (Exodus 22:6). The phrase “from the house of the man” indicates that a thief is obligated to pay the double payment only when they are stolen from a person, but not if the item in question was stolen out of the house of the Temple treasury.

487 Rabbi Shimon says: If the stolen items were sacrificial animals for which the owner bears financial responsibility, the thief who steals them is liable to pay the double payment, as well as the fourfold or fivefold payment if he slaughters or sells them. What is the reason for this? Since the owner must replace the animals, one applies to this case the phrase “and it was stolen from the house of the man.” But if the stolen animals are those for which the owner does not bear financial responsibility, the thief is exempt from the double payment and from the fourfold and fivefold payment, as one does not apply to this case the phrase “and it was stolen from the house of the man.”

488 Now, we have heard elsewhere concerning Rabbi Shimon that he said: An act of slaughter that is not fit for accomplishing its full ritual purpose is not considered an act of slaughter at all. And if the thief slaughtered the sacrificial animal he stole, this is also an act of slaughter that is not fit for accomplishing its full ritual purpose, as it does not render the animal’s meat fit for consumption, in light of the halakha that it is prohibited to eat a sacrificial animal slaughtered outside the Temple.

[489] When Rav Dimi came from Eretz Yisrael, he said that Rabbi Yoḥanan says: This is referring to a case where the thief slaughters the animal, unblemished, inside the Temple, for the sake of its owner. In this case, its meat may be eaten.

[490] The Gemara asks: But by slaughtering and sacrificing the sacrificial animal on behalf of the owner, it is as though the principal, i.e., the animal itself, has been returned to the owner, and the fourfold or fivefold payment should no longer apply. The owner had designated the animal as his offering, and it was in fact used for that purpose. Rabbi Yitzḥak bar Avin said in response: This is referring to a situation where the animal's blood was spilled before it could be sprinkled on the altar. Consequently, the owner did not achieve atonement through this offering, which is why it is not considered as though the animal has been returned to the owner.

[491] When Ravin came from Eretz Yisrael, he cited a different version of this answer, and said that Rabbi Yoḥanan says: This is referring to a case where the thief slaughters the animal, unblemished, inside the Temple, but not for the sake of its owner. The halakha in this case is that the animal's meat may be eaten but the owner has not fulfilled his obligation with this offering. In such a case, the slaughter of the animal does render its meat fit for consumption. Yet, it is not considered as though the animal has been returned to the owner.

[492] And Reish Lakish says yet another explanation as to why the principal has not been returned to the owner: This is referring to a case where the thief slaughters blemished animals outside the Temple. A blemished animal may be slaughtered outside the Temple and its meat may be eaten, provided that it is redeemed with money.

[493] Rabbi Elazar wondered about this discussion: According to the explanations attributed to Rabbi Yoḥanan, which are based on the assumption that this is referring to slaughtering a sacrificial animal inside the Temple, is it the slaughtering of the animal that renders it permitted for consumption? But isn't it the sprinkling of the blood that renders it permitted? It is prohibited to eat sacrificial meat immediately after the slaughter; only after the sprinkling of the blood is it permitted to consume the meat. As the slaughter itself does not render the animal's meat permitted, there should be no liability to pay the fourfold or fivefold payment.

[494] Rabbi Elazar continues: And according to the explanation of Reish Lakish, who states that the case is referring to the slaughter of a consecrated blemished animal outside the Temple, is it the slaughtering of the animal that renders it permitted for consumption? But isn't it the redemption of the animal that renders it permitted? Since the thief slaughtered a sacrificial animal, it is prohibited to eat its meat until its sanctity is removed by redeeming it with money. Once again, the slaughter itself does not render the meat permitted, and here too, there should be no liability to pay the fourfold or fivefold payment.

[495] The Gemara comments: Apparently, this following statement of Rabbi Shimon escaped Rabbi Elazar, who asked these questions. Rabbi Shimon holds that any blood that is ready to be sprinkled is considered as though it had already been sprinkled, and likewise, any animal that is ready to be redeemed is considered as if it had already been redeemed.

[496] The Gemara proves that Rabbi Shimon maintains these two opinions. Rabbi Shimon holds that any blood that is ready to be sprinkled is considered as though it had already been sprinkled, as it is taught in a baraita that Rabbi Shimon says: There are cases involving leftover sacrificial meat after the time allotted for its consumption [notar], in which the meat is susceptible to contracting ritual

impurity of food, and there are cases of leftover sacrificial meat in which the meat is not susceptible to contracting ritual impurity of food.

[497] How so? If sacrificial meat was disqualified due to the fact that it remained overnight, i.e., after the allotted time for that offering, before the sprinkling of its blood, it is not susceptible to contracting ritual impurity of food, as it was never fit for consumption. According to Rabbi Shimon, for an item to be susceptible to contracting ritual impurity of food it must have been permitted for consumption or benefit, either at present or at some point in the past. Sacrificial meat may not be consumed before the sprinkling of its blood, nor may it be consumed if it had been left over after a specific period of time, in most cases overnight. If it was disqualified by being left overnight before its blood had been sprinkled, there was never a time when the meat was permitted. By contrast, if the meat was disqualified by being left over after the sprinkling of the blood, it is susceptible to contracting ritual impurity of food, as it was permitted for consumption at some point after the sprinkling of the blood.

[498] And we maintain, as a result of a discussion recorded in tractate Menaḥot (101b): What is the meaning of: Before the sprinkling of the blood? It means before the blood became fit for sprinkling. And what is meant by: After the sprinkling of the blood? This means after the blood became fit for sprinkling, i.e., immediately subsequent to the slaughter.

[499] The Gemara elaborates: What is the case in which the meat remained overnight before the blood became fit for sprinkling? Since the blood is fit for sprinkling almost immediately after the animal's slaughter, how is it possible for the meat to become notar before that stage? The Gemara answers: This is referring to a case where there was not enough time in the day to sprinkle the blood, as he slaughtered the offering immediately prior to sunset. The blood was never fit for sprinkling, as the act of sprinkling must be performed before sunset. And in this case the meat is not susceptible to contracting ritual impurity of food, as there was never a time when it was permitted for consumption.

[500] What is the case where the meat remained overnight after the blood became fit for sprinkling? It was when there was enough time remaining in the day after the slaughter to sprinkle the blood, and therefore the meat is susceptible to contracting ritual impurity of food. The Gemara states its conclusion: Evidently, Rabbi Shimon maintains that any blood that is ready to be sprinkled is considered as though it had already been sprinkled.

[501] And Rabbi Shimon holds that any animal that is ready to be redeemed is considered as though it is already redeemed, as it is taught in a baraita that Rabbi Shimon says:

[502] The meat of the red heifer is susceptible to contracting ritual impurity of food, despite the fact that it is prohibited to derive benefit from such meat, since it had a time when it was fit for consumption.

[503] And Reish Lakish says, in explanation of Rabbi Shimon's statement: Rabbi Shimon would say that the red heifer can be redeemed with money even when it has already been slaughtered upon its pyre, i.e., for the sake of purification. For this reason Rabbi Shimon claimed that the meat had a time when it was fit for consumption, as it can be rendered permitted for consumption through redemption. The Gemara states its conclusion: Evidently, Rabbi Shimon holds that any animal that is ready to be redeemed is considered as though it has already been redeemed.

[504] The Gemara discusses the relative merits of the answers provided by Rabbi Yoḥanan and Reish Lakish: Granted, Rabbi Yoḥanan did not state an answer in accordance with that of Rabbi Shimon ben Lakish, i.e., Reish Lakish, that the mishna is referring to a blemished animal, because he wants to interpret the mishna as dealing with all kinds of sacrificial animals, even with unblemished ones. But what is the reason that Reish Lakish did not state an answer in accordance with that of Rabbi Yoḥanan?

[505] Reish Lakish could have said to you that the verse states: “If a man steals an ox or a sheep, and slaughters it or sells it” (Exodus 21:37). This verse compares slaughtering to selling, thereby indicating that anywhere that the fourfold or fivefold payment is applicable for the sale of a particular animal it is likewise applicable for its slaughter, and anywhere that the fourfold or fivefold payment is not applicable for the sale of an animal it is not applicable for its slaughter either. And with regard to this case of sacrificial animals, since when one sells sacrificial animals it is not a valid sale, and no fourfold or fivefold payment is incurred, so too, there is no fourfold or fivefold payment for their slaughter.

[506] And these two Sages follow their own lines of reasoning. As it was stated: According to the statement of Rabbi Shimon that an act of slaughter that is not fit for accomplishing its full ritual purpose is not considered an act of slaughter at all and does not entail liability to pay the fourfold or fivefold payment, in the case of a thief who sells a stolen animal with a wound that will cause it to die within twelve months [tereifa], Rabbi Yoḥanan says: The thief is liable to pay the fourfold or fivefold payment if he sells the animal rather than slaughters it. And Reish Lakish says: He is exempt.

[507] The Gemara elaborates: Rabbi Yoḥanan says that he is liable, as even though the fourfold or fivefold payment is not applicable for the slaughter of a tereifa according to the opinion of Rabbi Shimon, as its meat may not be eaten, nevertheless, it is applicable for its sale. And Reish Lakish says that the thief is exempt, as, since the fourfold or fivefold payment is not applicable for the slaughter of a tereifa according to Rabbi Shimon, it is not applicable for its sale either.

[508] Rabbi Yoḥanan raised an objection to the opinion of Rabbi Shimon ben Lakish from the following baraita: If one stole an animal of diverse kinds, e.g., a sheep-goat hybrid, and slaughtered it, or if he stole a tereifa and sold it, he pays the fourfold or fivefold payment. What, is it not correct to say that this baraita, which mentions the case of selling a stolen tereifa but not slaughtering it, is in accordance with the opinion of Rabbi Shimon? Apparently, according to Rabbi Shimon, even though the fourfold or fivefold payment is not applicable for the slaughter of a tereifa, it is nevertheless applicable for its sale.

[509] Reish Lakish said to Rabbi Yoḥanan in response: No; this baraita is not taught in accordance with the opinion of Rabbi Shimon. Rather, it follows the opinion of the Rabbis, who disagree with Rabbi Shimon and maintain that a thief is liable for the fourfold or fivefold payment for slaughtering an animal even if the act of slaughter does not render its meat fit for consumption, as in the case of a tereifa.

[510] The Gemara asks: If the baraita reflects the opinion of the Rabbis, why does it mention the sale of a tereifa but not its slaughter? According to the opinion of the Rabbis, is the fourfold or fivefold payment applicable for the sale of a tereifa while it is not applicable for its slaughter? This is certainly not the case.

[511] The Gemara responds with a counter-question: Rather, what would you say, that the baraita reflects the opinion of Rabbi Shimon? The same difficulty could be raised in the case of diverse kinds, as the baraita mentions the animal's slaughter but not its sale: Is the fourfold or fivefold payment applicable for the slaughter of an animal of diverse kinds, while it is not applicable for its sale? There is certainly no difference between slaughtering and selling in this case.

[512] Rather, one cannot make such inferences from the baraita, as it teaches liability with regard to the slaughter of diverse kinds, and the same is true with regard to its sale. If so, one can say the same for the opinion of the Rabbis as well: The baraita teaches liability with regard to the sale of a tereifa, and the same is true with regard to its slaughter. Once the baraita is interpreted in accordance with the opinion of the Rabbis and not that of Rabbi Shimon, it has no bearing on the dispute between Rabbi Yoḥanan and Reish Lakish.

[513] And Rabbi Yoḥanan could say to you: What is this comparison? Granted, if you say that the baraita reflects the opinion of Rabbi Shimon, and that is why it referred specifically to the sale of a tereifa, the baraita can be explained: Since it necessarily taught the case of tereifa in only one manner, that of selling, it maintained the same style of presentation and taught the case of diverse kinds in only one manner, that of slaughtering.

[514] But if you say that the baraita is in accordance with the opinion of the Rabbis, there is no reason for it to present just one scenario in either case. Rather, let the baraita combine them and teach them in a single sentence: If one stole an animal of diverse kinds or a tereifa and then slaughtered or sold either one of them, he pays the fourfold or fivefold payment. The Gemara concludes: This is difficult according to the opinion of Reish Lakish.

[515] § The baraita teaches that a thief is liable to pay the fourfold or fivefold payment in the case of an animal of diverse kinds. The Gemara asks: It is written in the Torah: "If a man steals an ox or a sheep [seh]" (Exodus 21:37), and Rava says, concerning the verse: "These are the animals that you may eat: The ox, the seh of a sheep, and the seh of a goat" (Deuteronomy 14:4), that this verse establishes a paradigm for other cases: Wherever the word seh is stated in the Torah, it serves to exclude only an animal of diverse kinds. The Hebrew word seh denotes either a sheep or a goat. A hybrid, which is neither a sheep nor a goat, does not qualify as a seh. Why, then, is the fourfold or fivefold payment applicable to one who stole this kind of animal?

[516] The Gemara answers: It is different here, in the case of the fourfold or fivefold payment, as the verse states "or" (Exodus 21:37), a term that could have been avoided, as explained earlier (67b). This extra word serves to include an animal of diverse kinds, i.e., the sheep-goat hybrid.

[517] The Gemara asks: And does every instance of the word "or" serve to include diverse kinds? But isn't it taught in a baraita: It is written: "When a bull or a sheep or a goat is born, it shall be seven days under its mother and from the eighth day onward it may be accepted as a fire-offering to the Lord" (Leviticus 22:27). The phrase "a bull or a sheep" serves to exclude diverse kinds, i.e., an animal of diverse kinds may not be brought as an offering. The phrase "or a goat" serves to exclude an animal that resembles another, i.e., a sheep that is the offspring of two sheep but that looks like a goat, or vice versa.

[518] Rava said in response: The derivation from the word "or" depends on the verse in question. Here, it is interpreted based on the context of the verse, and there, it is also interpreted based on the context of the verse. Here, with regard to theft, the reason the word "or" serves as an inclusion is that it is

written: “An ox or a sheep,” which are two animals from which you cannot produce diverse kinds, as they cannot procreate together, and therefore the word “or” serves to include an animal of diverse kinds. By contrast, with regard to sacrificial animals, the reason the word “or” serves as an exclusion is that it is written “sheep” and “goat,” which are two animals from which you can produce diverse kinds. Consequently, the word “or” serves to exclude diverse kinds.

519 The Gemara asks: But with regard to sacrificial animals it is also stated in the first part of the verse: “A bull or a sheep” (Leviticus 22:27), which are two animals from which you cannot produce diverse kinds. And accordingly, let us include an animal of diverse kinds as being fit for sacrifice on the altar on that account. The Gemara answers: From the fact that the latter clause of the verse: “Or a goat,” serves to exclude a type of animal from being fit for sacrifice on the altar, it may be inferred that the first clause: “A bull or a sheep,” also serves to exclude a type of animal from being fit for sacrifice on the altar. The Gemara asks: On the contrary, one could equally argue that from the fact that the first clause of the verse serves to include a type of animal as being fit for sacrifice on the altar, the latter clause also serves to include a type of animal as being fit for sacrifice on the altar.

520 The Gemara rejects this argument: What is this comparison? Granted, if you say that both expressions serve to exclude types of animals from being fit for sacrifice on the altar, this is why two exclusions were necessary: One exclusion is referring to diverse kinds and the other is referring to an animal that resembles another species, as even though an animal of diverse kinds is excluded, it was still necessary to exclude an animal that resembles another. But if you say that both phrases serve to include types of animals as being fit for sacrifice on the altar, why are two inclusions required? Now that an animal of diverse kinds has been included, in the first inclusion, is it necessary to say that an animal that resembles another is also included? There is more justification for including an animal that resembles another, whose parentage is entirely of one species, than for including an animal of diverse kinds.

521 The Gemara has established that when the Torah uses the word seh (Exodus 21:37) in the context of theft it does not serve to exclude animals of diverse kinds. The Gemara asks: If so, what is meant by this statement that Rava says with regard to the verse: “The ox, the seh of a sheep, and the seh of a goat” (Deuteronomy 14:4), that this establishes a paradigm for other cases, teaching that wherever the word seh is stated in the Torah, it serves to exclude only an animal of diverse kinds. With regard to what halakha did Rava state this principle? If this principle is referring to the halakha concerning sacrificial animals, it is written explicitly with regard to them: “A bull or a sheep” (Leviticus 22:27), which, as taught in the aforementioned baraita, serves to exclude diverse kinds.

522 If this principle is referring to the halakha concerning animal tithe, concerning which it is written: “And all the tithe of the herd or the flock [tzon], any one that passes under the rod, the tenth shall be sacred unto the Lord” (Leviticus 27:32), this principle is not necessary either. The reason is that the exclusion of diverse kinds can be derived by means of a verbal analogy from the term “under” in this verse, and the word “under” in a verse that deals with sacrificial animals: “When a bull, or a sheep, or a goat is born, it shall be seven days under its mother” (Leviticus 22:27). This verbal analogy, from which many halakhot of animal tithe are derived, indicates that diverse kinds are not subject to animal tithe, just as they cannot be used for an offering.

523 If this principle is referring to firstborn animals, concerning which it is written: “However, the firstborn among animals, which is born as a firstling to the Lord, no man shall sanctify it; whether it

be ox or seh, it is the Lord’s” (Leviticus 27:26), it is not necessary in that context either. The reason is that this can be derived by a verbal analogy between the term passing, in the verse: “And you shall cause to pass to the Lord all that open the womb” (Exodus 13:12), and the same term passing, from a verse concerning animal tithe: “And all the tithe of the herd or the flock, any one that passes under the rod, the tenth shall be sacred unto the Lord” (Leviticus 27:32). This verbal analogy teaches that if the firstborn of a ewe or a she-goat is an animal of diverse kinds it is not considered a firstborn with regard to the halakhot of firstborn animals, which means that Rava’s principle is not necessary here.

[524] Alternatively, you must say that an animal that resembles another is not subject to the halakhot of a firstborn, as it is written: “But the firstborn of a bull, or the firstborn of a sheep, or the firstborn of a goat, you shall not redeem; they are holy” (Numbers 18:17). This indicates that the halakhot of the firstborn are not applicable unless the fathering animal is a bull and its firstborn is also a bull. This excludes an animal that resembles another species, rather than its father. Once it is established that an animal that resembles another is not subject to the halakhot of a firstborn, is it necessary for the Torah to state the same with regard to diverse kinds? Since it is evident that firstborn status does not apply to diverse kinds, Rava’s principle is not required here either.

[525] Rather, Rava’s principle was stated with regard to the redemption of a firstborn donkey, concerning which it is written: “And every firstborn of a donkey you shall redeem with a seh” (Exodus 13:13), as we learned in a mishna (Bekhorot 12a): One may not redeem a firstborn donkey neither with a calf, nor with a non-domesticated animal, nor with a slaughtered animal, nor with a tereifa animal, nor with diverse kinds, i.e., a sheep-goat hybrid, nor with a koy. Rava’s principle is referring to the source for the prohibition against using an animal of diverse kinds for the redemption of a firstborn donkey.

[526] The Gemara asks: But what about according to the opinion of Rabbi Elazar, who disagrees with this ruling and permits the use of an animal of diverse kinds for the redemption of a firstborn donkey? As we learned in the same mishna: Rabbi Elazar permits diverse kinds for use in the redemption of a firstborn donkey because it is considered a seh. Accordingly, with regard to what halakha is Rava’s principle relevant?

[527] Rabbi Elazar could have said to you: Rava’s principle was stated with regard to a non-kosher animal that was born from a kosher mother, whose impregnation was from a non-kosher animal. Rava is saying that this animal is not kosher. And this is not in accordance with the opinion of Rabbi Yehoshua, as, if it were in accordance with the opinion of Rabbi Yehoshua, although he would agree with this halakha, he derives this halakha (see Bekhorot 7a) from the phrase: “The seh of sheep [kevasim], and the seh of goats [izzim]” (Deuteronomy 14:4). The plural forms “kevasim” and “izzim” indicate that a lamb is not kosher unless both its father is a sheep and its mother is a ewe, and the same halakha applies to a kid.

[528] The Gemara asks with regard to the case under discussion: But can a kosher animal become impregnated by a non-kosher animal in the first place? Is it even possible for this to occur? Why did Rabbi Yehoshua and Rava have to find a biblical source to deem this offspring as non-kosher? The Gemara answers: Yes, it is possible. As we maintain elsewhere (Bekhorot 7a)

[529] that the mother animal became impregnated from an animal with non-cloven hooves that was born from a kosher mother and father. This is in accordance with the opinion of Rabbi Shimon, who maintains that the offspring resulting from this, which does not have cloven hooves, is not kosher.

Since the animal’s father is not kosher according to the opinion of Rabbi Shimon, the offspring is also not kosher, in accordance with Rava’s principle.

530 Rava raises a dilemma: With regard to one who says: It is incumbent upon me to bring a burnt-offering, and he subsequently set aside a bull for this purpose, and another person came and stole the bull, can the thief exempt himself from liability by repaying the owner with a sheep, according to the opinion of the Rabbis, or by repaying him with a bird to be used as a bird burnt-offering, according to the opinion of Rabbi Elazar ben Azarya? This is as we learned in a mishna (Menaḥot 107a): If one says: It is incumbent upon me to bring a burnt-offering, he must bring a bull or a sheep as a burnt-offering to fulfill his vow. Rabbi Elazar ben Azarya says: He may even bring a turtledove or a young pigeon as a burnt-offering.

531 Rava elaborates: What is the halakha in this case? Do we say that he accepted upon himself to sacrifice an animal with the status of a burnt-offering, in which case any animal that fulfills this requirement will suffice? If so, the thief may compensate the owner with a sheep or bird, as the owner can sacrifice that animal as a burnt-offering. Or perhaps the owner can say to the thief: I want to perform the mitzva in the optimal manner, which is by sacrificing a bull. Therefore, you must pay me back with a bull.

532 After he raised the dilemma, Rava himself subsequently resolved it: The thief can exempt himself from liability by repaying the owner with a sheep, according to the opinion of the Rabbis, or by repaying him with a bird to be used as a bird burnt-offering, according to the opinion of Rabbi Elazar ben Azarya.

533 Rav Aḥa, son of Rav Ika, teaches this halakha explicitly, i.e., without the question-and-answer format: Rava says: With regard to one who says: It is incumbent upon me to bring a burnt-offering, and he subsequently set aside a bull for this purpose, and another person came and stole the bull, the thief can exempt himself from liability by repaying the owner with a sheep, according to the opinion of the Rabbis, or by repaying him with a bird to be used as a bird burnt-offering, according to the opinion of Rabbi Elazar ben Azarya.

534 MISHNA: If a thief sold a stolen animal in a partial fashion, e.g., except for one one-hundredth of it, which he kept for himself; or if he had a partnership in owning the animal before stealing it; or in the case of a thief who slaughtered the stolen animal and it became non-kosher meat in his hand because he slaughtered it improperly; or in the case of a thief who ripped open the animal rather than slaughtering it halakhically; or in the case of a thief who tore loose the gullet or windpipe of the animal as he slaughtered it, rendering the slaughter invalid, in all these cases he pays the double payment but does not pay the fourfold or fivefold payment. The fourfold or fivefold payment applies only if the animal is entirely sold or if it is slaughtered in accordance with the halakhic definition of animal slaughter.

535 GEMARA: What does the mishna mean when it states that the thief sold the animal except for one one-hundredth of it? Which part of the animal must the thief keep for himself for him to be exempt from the fourfold or fivefold payment? Rav says: The mishna means that he sold it except for some part of the animal that becomes permitted through its slaughter. This does not apply to horns or a sheep’s fleece, which do not require slaughter in order to be used. And Levi says: The mishna’s statement applies even if the thief sold the entire animal except for its fleece. And it is likewise taught in a baraita: The thief is exempt even if he sells the whole animal except for its fleece.

[536] The Gemara raises an objection to the opinion of Rav from a baraita: If the thief sold the whole animal except for its foreleg, or except for its hind leg, or except for its horn, or except for its fleece, he does not pay the fourfold or fivefold payment. Rabbi Yehuda HaNasi says: If the thief sells the animal except for some part of it whose absence invalidates its slaughter, he does not pay the fourfold or fivefold payment.

[537] Rabbi Yehuda HaNasi continues: But if he leaves out from the sale a part of the animal whose absence does not invalidate the slaughter, he pays the fourfold or fivefold payment. If an animal is missing one of its vital organs, e.g., its liver, one of its intestines, its gullet, or its windpipe, it is considered already dead and its slaughter at this stage would be invalid. For the thief to be exempt from the fourfold or fivefold payment on the grounds of an incomplete sale, he must retain one of these organs for himself.

[538] The baraita continues: Rabbi Shimon ben Elazar says: If the thief sells the whole animal except for its horn, he does not pay the fourfold or fivefold payment. If he sells the whole animal except for its fleece, he does pay the fourfold or fivefold payment.

[539] The Gemara explains the objection from this baraita: Granted, according to the opinion of Levi this baraita does not present a difficulty, as his ruling is exactly like that of the first tanna. But according to the opinion of Rav it does present a difficulty, as in accordance with whose opinion does his ruling accord? None of the three opinions expressed in the baraita correlate with that of Rav.

[540] The Sages say in response: Rav says his opinion in accordance with the opinion of this tanna, as it is taught in another baraita: Rabbi Shimon ben Elazar says: If the thief sold the entire animal except for its foreleg or except for its hind leg, he does not pay the fourfold or fivefold payment. If he sold the entire animal except for its horn or except for its fleece, he does pay the fourfold or fivefold payment.

[541] The Gemara analyzes the four opinions of the tanna'im presented in these baraitot. With regard to what principle do they disagree? The first tanna holds that when the Torah states: "If a man steals an ox or a sheep, and slaughters it or sells it, he shall pay five oxen for an ox and four sheep for a sheep" (Exodus 21:37), the term "and slaughters it" indicates that we require him to slaughter all of it for him to incur liability to pay the fourfold or fivefold payment. Likewise, the term "or sells it" teaches that we require him to sell all of it, not leaving any portion at all for himself, even the fleece.

[542] And Rabbi Yehuda HaNasi holds that the term "and slaughters it" is referring to parts of the animal that are affected by its slaughter, which serves to exclude parts of the animal that are not affected by its slaughter. When the Torah immediately adds the term "or sells it," this indicates that selling is similar to slaughter. Consequently, if the sale excludes the animal's fleece or horns, i.e., those parts that are not affected by slaughter, there is still fourfold or fivefold payment.

[543] And Rabbi Shimon ben Elazar holds, according to the first version of his opinion, that the animal's horn, which is not meant to be cut off in the animal's lifetime, is considered a significant withholding if the thief keeps that part for himself, and he does not pay the fourfold or fivefold payment. By contrast, fleece, which is meant to be cut off in the animal's lifetime, is not considered a significant withholding if the thief keeps it for himself, and therefore he must pay the fourfold or fivefold payment.

[544] And the other tanna of the school of Rabbi Shimon ben Elazar holds that the animal's forelegs and hind legs, which require slaughter for them to be put to their usual use, i.e., for eating, are considered a significant withholding if the thief keeps one of them for himself, and consequently he does not pay the fourfold or fivefold payment. By contrast, its horns and its fleece, which do not require slaughter in order to be used, are not considered a significant withholding if the thief keeps them for himself.

[545] The Gemara asks: This presents a difficulty, as there is a contradiction between one statement of Rabbi Shimon ben Elazar and another opinion presented in the name of Rabbi Shimon ben Elazar. The Gemara answers: The two rulings represent the reports of two tanna'im, and they disagree with regard to the opinion of Rabbi Shimon ben Elazar.

[546] The Sages taught in a baraita: One who steals an animal that is missing a limb, or that is lame, or that is blind, and he subsequently sold it, and similarly, one who steals an animal belonging to several partners and he subsequently sold it, is liable to pay the fourfold or fivefold payment. But several partners who stole an animal together and sell it are exempt from the fourfold or fivefold payment. The Gemara asks: But isn't it taught in another baraita to the contrary, that several partners who stole an animal together and sell it are liable to pay the fourfold or fivefold payment?

[547] The Gemara resolves the contradiction: Rav Naḥman said that this is not difficult. Here, where the baraita states that he is exempt, it is referring to one partner who stole an animal from another partner. There, where the baraita states that he is liable, it is dealing with a partner, who, together with other thieves, stole an animal from someone else outside their group.

[548] Rava raised an objection to Rav Naḥman from another baraita: One might have thought that a partner who stole an animal from another partner and slaughtered it, and likewise partners who jointly stole an animal and one of them slaughtered it, should be liable to pay the fourfold or fivefold payment. To counter this, the verse states: "And slaughters it," which indicates that we require liability for slaughtering all of it, and in these cases it is not so. One who steals an animal that he partly owns is not liable for slaughtering his own portion. Likewise, when several partners steal an animal, the one who slaughters it is not liable for slaughtering the portions of his fellow thieves.

[549] Rather, Rav Naḥman said a different resolution of the contradiction: This is not difficult. Both baraitot are speaking of partners who together stole an animal from someone else. Here, where the baraita states that the thief is liable, it is referring to a partner who slaughtered the animal with the knowledge and consent of another partner. In such a case the one slaughtering is acting as the agent of the partner as well and is fully liable for the slaughter. There, where the baraita states that the thief is exempt, it is speaking of a partner who slaughtered the animal without the knowledge of another partner in the theft. Consequently, the one slaughtering is acting solely on his own and is not liable for the slaughter of his partner's share, which is why he is exempt from any payment.

[550] § Rabbi Yirmeya raises several dilemmas: If the thief sold the animal except for thirty days, i.e., the thief reserved the right to use the animal himself for thirty days before the sale takes effect, what is the halakha? If he sold it except for its work, i.e., he stipulated with the buyer that any work the animal performs would be for the thief's own benefit and profit, what is the halakha? If he stole a pregnant animal and sold it except for its fetus, what is the halakha?

[551] The Gemara elaborates on the last dilemma: According to the one who says that a fetus is considered as its mother's thigh, i.e., a part of its mother, you should not raise the dilemma, as it is

clear that the thief, by retaining the fetus, has withheld part of the animal. When you should raise the dilemma, it is according to the opinion of the one who says that a fetus is not considered as its mother's thigh, i.e., it has the status of an independent being. What is the halakha in this case? Do we say that since it is in fact attached to the mother, if the thief keeps the fetus for himself it is considered a significant withholding? Or perhaps, since it stands to become detached from the mother it is not considered a significant withholding?

552 There are those who state a different analysis of this dilemma: Since a fetus is not considered as its mother's thigh, it is not considered a significant withholding, or perhaps, since it needs its mother to be rendered permitted for consumption through the mother's slaughter, it is considered as though the thief has withheld a part of the mother's body. The Gemara concludes: All these dilemmas shall stand unresolved.

553 Rav Pappa raises a dilemma: If one stole an animal, severed one of its limbs, and then sold it, what is the halakha? Do we say that the essential factor is that part of what he stole he has not sold, as the missing limb was not sold, and therefore he is exempt from the fourfold or fivefold payment? Or perhaps the essential factor is that with regard to that which he sold he has not withheld any part for himself. Once again, the Gemara states that this dilemma shall stand unresolved.

554 § The Sages taught in a baraita: If one stole an animal and gave it to another and that person slaughtered it for him, or if he stole an animal and gave it to another and that person sold it for him, the thief is liable to pay the fourfold or fivefold payment, as performing these actions through an agent is equivalent to performing them by oneself.

555 The baraita continues: If he stole an animal and consecrated it, or if he stole an animal and sold it on credit, i.e., without receiving any money for it at the time, or if he stole an animal and exchanged it for another item, or if he stole an animal and gave it to another as a gift, or if he stole an animal and used it to repay his debt, or if he stole an animal and used it to pay for an item he purchased on credit, or if he stole an animal and sent it in the form of presents to his betrothed in his father-in-law's house, in all of these cases he pays the fourfold or fivefold payment, as these acts are all considered forms of selling. This concludes the baraita.

556 The Gemara asks: What is this baraita teaching us? All of the halakhot it states are obvious. The Gemara answers: The first clause teaches us, through the case of one who stole an animal and gave it to another and that person slaughtered or sold it on his behalf, that in this case there is agency for transgression. Even though in the entire Torah there is a principle that there is no agency for transgression, here there is agency for transgression. The Torah's principle is that a transgression committed by an agent who was appointed by another person is not considered the act of the one who appointed the agent, but the independent act of the agent himself. The case discussed by this baraita is an exception to the rule, as here, the agent's slaughter or sale of the animal is legally considered the action of the thief.

557 What is the reason that this case is an exception to the principle? It is because the verse states: "And slaughters it or sells it" (Exodus 21:37), which juxtaposes the two acts of slaughtering and selling. This teaches that just as one becomes liable for selling, which by definition is impossible without another party, i.e., the buyer, so too one becomes liable for slaughtering even when it is by means of another party, i.e., when the thief instructs another person to slaughter the animal on his behalf.

[558] And the latter clause of the baraita teaches us a novelty in the case of one who stole an animal and consecrated it. The novelty is that this is considered a sale despite the fact that there is no purchaser. This is due to the following argument: What difference is it to me if he sold the animal to an ordinary person, and what difference is it to me if he sold it to Heaven by consecrating it? If the animal changes ownership, it is considered a sale, and it does not matter if the new owner is an ordinary person or the Temple treasury.

[559] MISHNA: If one stole an animal in its owner's domain, i.e., he took hold of it or established control over it but had not yet removed it from the owner's premises, and then he slaughtered it or sold it outside of the owner's domain; or if he stole an animal outside of the owner's domain and slaughtered it or sold it in the owner's domain; or if he stole an animal and slaughtered it or sold it, and all of this occurred outside the owner's domain, in all of these cases, he must pay the fourfold or fivefold payment. But if he stole it and slaughtered or sold it, and all of this occurred in the owner's domain, he is exempt from any of the fines for theft, as it is not considered theft until the stolen object is actually removed from the owner's premises.

[560] If the thief was in the process of leading the animal and leaving the owner's premises, and it died while it was still in the owner's domain, the thief is exempt from all fines. If he lifted it up or led it out of the owner's domain and then the animal died, he is liable for his theft. For an act to be considered theft, the thief must acquire the item by pulling it or moving it, which are ineffective forms of acquisition on the owner's premises; or by lifting it up, which is effective even when performed in the owner's domain.

[561] If the thief gave the animal as payment for the redemption of his firstborn son, or as payment to a creditor, or conveyed it for safeguarding to an unpaid bailee, or lent it to a borrower, or conveyed it for safeguarding to a paid bailee, or leased it to a renter, and he was leading out the animal and it died in the owner's domain, the thief is exempt from all fines. If that individual, following the thief's instructions, lifted up the animal or led it out of the owner's domain, and it subsequently died, the thief is liable for the theft. The thief is liable for instructing another to remove the animal for the purposes of payment of a debt, safekeeping, borrowing, or rental, as this is tantamount to the thief taking it with his own hands.

[562] GEMARA: Ameimar raises a dilemma: Did the Sages institute the requirement of pulling or leading an animal with regard to bailees, or not? When an animal or other item is purchased, the parties to the sale are not bound by the deal until the purchaser performs an act of acquisition, one of which is pulling the animal or leading it along. Did the Sages institute an ordinance that the same applies to bailees? In other words, does the bailee's obligation to safeguard the animal or item begin as soon as he consents to watch it, or only after he has taken the animal and moved it even minimally?

[563] Rav Yeimar said: Come and hear a proof from the mishna: If the thief gave the animal as payment for the redemption of his firstborn son, or as payment to a creditor, or conveyed it for safeguarding to an unpaid bailee, or lent it to a borrower, or conveyed it for safeguarding to a paid bailee, or rented it to a renter, and he was leading out the animal and it died in the owner's domain, the thief is exempt from payment. What, is it not talking about the bailee leading out the animal, when it states that the thief is exempt? And if so, conclude from this mishna that the Sages instituted the requirement of pulling with regard to bailees. If the bailee's obligation begins immediately upon

his consent to watch over the item, it would be considered stolen by the thief at that stage, even before the bailee moves it.

564 Ameimar said to Rav Yeimar: No, this is not necessarily the correct interpretation of the mishna. The mishna may mean that the owner gave the animal to his creditor or to a bailee, and subsequently a thief came to steal it from the house of the creditor or the bailee, and it was the thief who was leading the animal out of those premises when it died.

565 Rav Yeimar asked: How can that clause of the mishna refer to an animal that died as the thief was leading it out? The mishna already taught this halakha in the first clause. Ameimar answered: Nevertheless, it is possible that the mishna taught this halakha concerning a thief who stole an animal from its owner's house, and then taught it again with regard to a thief who stole an animal from a bailee's house.

566 Rav Ashi said to Ameimar: Do not reject Rav Yeimar's argument by means of this alternative interpretation of the mishna. It is not reasonable to assert that the mishna taught this halakha twice, as what difference is it to me if the thief stole it from the bailee's house and what difference is it to me if the thief stole it from the owner's house? There is no halakhic distinction between these two cases. Therefore, the mishna would not have discussed both of them.

567 Rather, is it not more reasonable to say that the mishna should be interpreted as meaning that the bailee was leading the animal out of the owner's house at the behest of the thief, as Rav Yeimar claimed? And therefore, one should conclude from the mishna that the Sages instituted the requirement of pulling with regard to bailees. The Gemara affirms: Conclude from the mishna that they did. It was also stated explicitly that Rabbi Elazar says: Just as the Sages instituted the requirement of pulling with regard to purchasers, so too they instituted the requirement of pulling with regard to bailees.

568 This is also taught in a baraita: Just as the Sages instituted the requirement of pulling with regard to purchasers, so too they instituted the requirement of pulling with regard to bailees. And just as land is acquired by the payment of money, by the writing of a deed of sale, or by the purchaser taking possession of the land through working it, so too a rental deal is finalized by the payment of money, by the writing of a deed of rent, or by the renter taking possession of the land. This concludes the baraita.

569 The Gemara asks: When the baraita speaks of rental, it is referring to rental of what kind of property? If we say

570 it is speaking of the rental of movable property, is movable property subject to the writing of a deed? Rather, Rav Ḥisda said: It is referring to the rental of land.

571 § Rabbi Elazar says: If people saw a thief who was hiding in the woods near a herd of grazing animals, and that individual emerged and slaughtered or sold one of the animals from the herd, he pays the fourfold or fivefold payment. The Gemara asks: Why is the thief liable to the fourfold or fivefold payment? But he did not pull the animal. Rabbi Elazar is apparently describing a case where the thief emerged from the forest and slaughtered one of the animals without first moving it, and there is no fourfold or fivefold payment unless the thief first steals the animal. Rav Ḥisda says: This is referring to a case where he hit the animal with a stick, causing it to move.

572 With regard to Rabbi Elazar’s statement, the Sages say: But since people saw him doing all this, he is a robber, not a thief, and the fourfold or fivefold payment applies only to thieves. A thief is one who sneaks into a house or other private property; one who commits his act brazenly, in public, is classified as a robber. The Gemara answers: Since he was hiding from them, he is considered a thief, despite the fact that they saw him.

573 The Gemara asks: But if so, what are the circumstances of a robber? Rabbi Abbahu said: Robbers are like the case of Benaiah ben Jehoiada, as it is stated concerning him: “He slew an Egyptian, a goodly man; and the Egyptian had a spear in his hand; but he went down to him with a staff, and he robbed the spear out of the Egyptian’s hand, and slew him with his own spear” (II Samuel 23:21).

574 Rabbi Yoḥanan said: A different example of a robber is a case like that of the men of Shechem, as it is stated: “And the men of Shechem set ambushers for him on the tops of the mountains, and they robbed all that came along that way by them” (Judges 9:25).

575 The Gemara asks: And what is the reason that Rabbi Abbahu did not say the example from this verse, which discusses the men of Shechem? He could have said to you: Since the men of Shechem were hiding in ambush, they are not considered robbers but thieves. And how would Rabbi Yoḥanan respond to this claim? This fact that they were hiding was not because they were hesitant to steal in view of the public. Rather, they acted in this manner so that the travelers should not see them in advance and flee from them.

576 § The Gemara concludes its discussion of theft with several aggadic statements. His students asked Rabban Yoḥanan ben Zakkai: For what reason was the Torah stricter with a thief than with a robber? Only a thief is required to pay the double, fourfold, or fivefold payment, not a robber. Rabban Yoḥanan ben Zakkai said to them in response: This one, the robber, equated the honor of the servant to the honor of his Master, and that one, the thief, did not equate the honor of the servant to the honor of his Master. The robber fears neither God nor people, as he is not afraid to rob in public. The thief does not fear God but he does fear other people, which demonstrates that he is more concerned about humans than God.

577 As it were, the thief establishes the eye below, i.e., God’s eye, as though it does not see, and the ear below, i.e., God’s ear, as though it does not hear. The Gemara cites verses that describe people who imagine that God does not see their actions, as it is stated: “Woe to them who seek deeply to hide their counsel from the Lord, and their works are in the dark, and they say: Who sees us, and who knows us?” (Isaiah 29:15). And it is written: “And they say: The Lord will not see, neither will the God of Jacob give heed” (Psalms 94:7). And it is written: “For they say: The Lord has forsaken the land, and the Lord does not see” (Ezekiel 9:9).

578 It is taught in a baraita that Rabbi Meir said: To illustrate the severity of a thief over a robber, as per Rabban Yoḥanan ben Zakkai’s explanation, they stated a parable in the name of Rabban Gamliel. To what is this matter comparable? To two people who were living in the same city, and both of them prepared a feast. One of them invited the people of the city to his feast but he did not invite the king’s sons. And the other did not invite the people of the city and also did not invite the king’s sons. Which of them deserves a greater punishment? You must say that it is this one who invited the people of the city but did not invite the king’s sons. Likewise, both the thief and the robber show disdain for God, but the robber does not display more respect for people.

[579] The Gemara discusses why there is a fourfold payment for a sheep but a fivefold payment for an ox. Rabbi Meir said: Come and see how great the power of labor is. The theft of an ox, which was forced by the thief to cease its labor, leads to a fivefold payment; whereas the theft of a sheep, which was not forced by the thief to cease its labor, as a sheep performs no labor, leads to only a fourfold payment.

[580] Rabban Yoḥanan ben Zakkai said: Come and see how great human dignity is. The theft of an ox, which walked on its own legs as the thief stole it, leads to a fivefold payment, whereas the theft of a sheep, which the thief carried on his shoulder as he walked, thereby causing himself embarrassment, leads to only a fourfold payment.

[581] MISHNA: One may not raise small domesticated animals, i.e., sheep and goats, in settled areas of Eretz Yisrael, as they graze on people's crops. But one may raise them in Syria, despite the fact that with regard to many other halakhot Syria is treated like Eretz Yisrael, and in the wilderness of Eretz Yisrael.

[582] One may not raise chickens in Jerusalem, due to the sacrificial meat that is common there. There is a concern that chickens will pick up garbage that imparts ritual impurity and bring it into contact with sacrificial meat, thereby rendering it ritually impure. And priests may not raise chickens anywhere in Eretz Yisrael, because of the many foods in a priest's possession that must be kept ritually pure, e.g., teruma.

[583] Furthermore, one may not raise pigs anywhere, and a person may not raise a dog unless it is tied with chains. One may spread out traps [nishovim] for pigeons only if this was performed at a distance of at least thirty ris, which is 8,000 cubits, from any settled area, to ensure that privately owned pigeons are not caught in the traps.

[584] GEMARA: The Sages taught in a baraita: One may not raise small domesticated animals, i.e., sheep and goats, in settled areas of Eretz Yisrael. But one may raise them in the forests of Eretz Yisrael. In Syria, it is permitted to do so even in a settled area. And, needless to say, it is permitted to do so outside of Eretz Yisrael.

[585] It is taught in another baraita: One may not raise small domesticated animals in settled areas of Eretz Yisrael. But one may raise them in the wilderness that is in Judea and in the wilderness that is on the border near Akko. And even though the Sages said that one may not raise small domesticated animals, nevertheless, one may raise large, domesticated animals, i.e., cattle, because the Sages issue a decree upon the public only if a majority of the public is able to abide by it.

[586] This difference is that it is possible for someone to bring small domesticated animals from outside of Eretz Yisrael in the event that they are needed. But it is not possible for someone to bring large, domesticated animals from outside of Eretz Yisrael whenever he needs one, since there is a constant need for them as beasts of burden. Therefore, the Sages did not issue a decree with regard to these types of animals.

[587] The baraita continues: And even though they said that one may not raise small domesticated animals, however, one may keep these animals on his premises for thirty days before a pilgrimage Festival, and thirty days before the wedding feast of one's son, when many animals are needed for food, provided that he does not leave the last one, i.e., the animal which he purchased immediately before the Festival, for thirty days.

588 The Gemara clarifies the final line of the baraita: The baraita needs to state this ruling as it might enter your mind to say that if the pilgrimage Festival has passed and thirty days have not yet elapsed from the time when he bought the animal until now, he may keep the animal until thirty days have elapsed. To counter this, the baraita teaches that we do not say: It is permitted to keep it for a total of thirty days. Rather, once the pilgrimage Festival has passed, he should not keep it any longer.

589 The baraita continues: And a butcher may buy small domesticated animals and slaughter them, and again buy small domesticated animals and keep them for a while, provided that he does not keep the last one of them that he bought beyond thirty days.

590 His students asked Rabban Gamliel: What is the halakha with regard to raising small domesticated animals in Eretz Yisrael? Rabban Gamliel said to them: It is permitted. The Gemara interrupts its citation of the baraita to pose a question: How could Rabban Gamliel say this? But didn't we learn in the mishna: One may not raise small domesticated animals in Eretz Yisrael?

591 Rather, the text of the baraita must be emended, and they actually raised this dilemma before him: What is the halakha with regard to keeping them for a while? The Gemara resumes the quotation of the baraita: Rabban Gamliel said to them: It is permitted, provided that the animal does not go out and graze among the flock. Rather, one should tie it to the legs of the bed in his house.

592 The Sages taught in a baraita: There was an incident involving a certain pious man who was groaning, i.e., suffering, due to a pain in his heart. Those caring for the man asked the physicians what to do for him, and they said: There is no other remedy for him but that he should suckle warm milk every morning. And they brought him a she-goat and tied it to the leg of the bed for him, and he would suckle milk from it every morning.

593 Days later, his friends came in to visit him. When they saw that she-goat tied to the legs of the bed, they turned back, saying: There is an armed bandit in this man's house, and we are going in to visit him? They referred to the goat in this manner because small animals habitually graze on the vegetation of others, thereby stealing their crops.

594 His friends sat down and investigated this pious man's behavior, and they could not find any sin attributable to him except that sin of keeping that she-goat in his house. That man himself also said at the time of his death: I know for a fact that I have no sin attributable to me except the sin of keeping that she-goat in my house, as I transgressed the statement of my colleagues, the Sages.

595 Rabbi Yishmael said: The members of my father's family were among the wealthy property holders in the upper Galilee. And for what reason were they destroyed? It was due to the fact that they would graze flocks in the forests, and also because they would judge cases of monetary law by means of a single judge. And even though there were forests close to their houses, and therefore there should have been no problem for them to take their animals to graze in these forests, there was a small, private field and they would convey the animals on a path through it.

596 § The Sages taught in a baraita: If there is a shepherd of small domesticated animals who repented, the court does not obligate him to sell all his animals immediately. Rather, he may sell them gradually. And likewise, in the case of a convert who came into possession of dogs and pigs (see 83a) as part of his inheritance, the court does not obligate him to sell all of them immediately. Rather, he may sell them gradually.

[597] And similarly, with regard to one who vowed to purchase a house or to marry a woman in Eretz Yisrael, the court does not obligate him to acquire the first house or marry the first woman he sees immediately upon his arrival in Eretz Yisrael. Instead, he may wait until he finds the house or wife appropriate for him.

[598] And there was an incident involving a certain unmarried woman who had a son who was distressing her, and she jumped up and took an oath impulsively: Any man who comes to marry me and will discipline my son, I will not turn him away. And unworthy men jumped at the opportunity to marry her. And when the matter came before the Sages, they said: She need not marry one of these men, as this woman's intention in her oath was certainly to marry only a man who is appropriate for her.

[599] The baraita continues: Just as the Sages said that one may not raise small domesticated animals, i.e., sheep and goats, so too they said that one may not raise small undomesticated animals. Rabbi Yishmael says: One may raise village dogs, cats, monkeys, and genets, because they serve to clean the house of mice and other vermin.

[600] The Gemara asks: What are these genets? Rav Yehuda said: These are known in Aramaic as shartza ḥartza. And there are those who say that in Aramaic this animal is called ḥarza. This creature has short thighs and it grazes among the thorn bushes. And what is the reason that they are called shartza, a term that generally refers to creeping creatures that slither [shoretz] rather than walk? It is because its thighs are so short that it appears to slither instead of walking on legs.

[601] § Rav Yehuda says that Rav says: We in Babylonia have rendered ourselves like the residents of Eretz Yisrael with regard to the prohibition of the Sages against raising small domesticated animals. Rav Adda bar Ahava said to Rav Huna: What of your sheep and goats? How can you raise these animals in Babylonia?

[602] Rav Huna said to him: Ḥova, my wife, watches the animals to ensure that they do not graze on land belonging to others. Rav Adda bar Ahava cursed Rav Huna and said to him: May Ḥova bury her son! In all the years of Rav Adda bar Ahava, no children of Rav Huna from Ḥova survived, due to this curse. There are those who say a different version of the above statement: Rav Huna says that Rav says: We in Babylonia rendered ourselves like those of Eretz Yisrael with regard to raising small domesticated animals, from the time when Rav came to Babylonia.

[603] § Rav and Shmuel and Rav Asi once happened to be present at a house where a celebration was being held marking the passage of a week of a newborn son, i.e., a circumcision. And some say it was a house where a celebration was being held marking the redemption of a firstborn son. Rav would not enter before Shmuel, for reasons the Gemara will explain;

[604] Shmuel would not enter before Rav Asi, as he considered Rav Asi to be greater than he; and Rav Asi would not enter before Rav, as Rav was his teacher. They said: Which of us should stay behind and let the other two come in before him? They decided: Let Shmuel stay behind, and let Rav and Rav Asi come inside in that order. Afterward, Shmuel himself would enter.

[605] The Gemara asks: And why didn't they decide to let Rav or Rav Asi stay behind? The Gemara explains: It was a mere gesture that Rav performed for Shmuel in initially stating that Shmuel should precede him, as Rav did not really feel that Shmuel was superior to him. Rather, on account of that

incident in which he inadvertently cursed Shmuel, Rav took upon himself to treat Shmuel with deference.

606 In the meantime, while all this was going on, a cat [shunara] came and severed the hand of the baby. Rav emerged from the house and taught: With regard to a cat, it is permitted to kill it even if it is privately owned; and it is prohibited to maintain it in one's possession; and it is not subject to the prohibition against theft if one takes it from its owner; and, in the case of a lost cat, it is not subject to the obligation of returning a lost item to its owner.

607 The Gemara asks a question with regard to Rav's statement: And since you said that it is permitted to kill it, what is the need to state further that it is prohibited to maintain it in one's possession? If a cat is considered such a dangerous animal that it is permitted to kill it, of course one cannot keep it in his possession. The Gemara answers: Lest you say that although Rav ruled that it is permitted to kill it, he concedes that there is no prohibition in keeping it, Rav therefore teaches us that it is also prohibited to keep it in one's possession.

608 The Sages say, further questioning Rav's statement: And since you said that it is not subject to the prohibition against theft if one takes it from its owner, what is the need to state further that it is not subject to the obligation of returning a lost item to its owner in the case of a lost cat? If one may actively steal a cat, certainly there is no obligation to return it when found. Ravina said in response: Rav was referring to its hide.

609 The Gemara raises an objection from a baraita against Rav's ruling that it is prohibited to keep a cat. Rabbi Shimon ben Elazar says: One may raise village dogs, cats, monkeys, and genets, because they serve to clean the house of mice and other vermin. The Gemara resolves the apparent contradiction: It is not difficult. This ruling in the baraita is stated with regard to a black cat, which is harmless, whereas that ruling of Rav is stated with regard to a white cat, which is dangerous.

610 The Gemara raises a difficulty against this answer: But in the incident of Rav it was a black cat. Since this cat severed the baby's hand, it was obviously a vicious, dangerous animal. The Gemara answers: There it was a black cat, but it was the offspring of a white one. The offspring of a white cat is dangerous, even if it itself is black. The Gemara further objects: But didn't Ravina raise this very issue as a dilemma?

611 As Ravina raised a dilemma: What is the halakha with regard to a black cat that is the offspring of a white one? Is it also dangerous like its parent? The Gemara answers: When Ravina raised the dilemma, it was with regard to a black cat that is the offspring of a white cat that itself is the offspring of a black cat. By contrast, in the incident with Rav it was a black cat that was the offspring of a white one, which was itself the offspring of a white cat. That animal is definitely dangerous.

612 § The Gemara provides a mnemonic device for the distinguishing letters in the various names of the sons of Rav Pappa in the ensuing list: Ḥet beit dalet, beit yod ḥet, beit ḥet nun. Rabbi Aḥa bar Pappa says the following three statements in the name of Rabbi Abba bar Pappa, who said them in the name of Rabbi Adda bar Pappa. And some say Rabbi Abba bar Pappa says them in the name of Rabbi Ḥiyya bar Pappa, who said them in the name of Rabbi Aḥa bar Pappa. And some say Rabbi Abba bar Pappa says them in the name of Rabbi Aḥa bar Pappa, who said them in the name of Rabbi Ḥanina bar Pappa.

613 The three statements are as follows: The court sounds the alarm on Shabbat over a breakout of sores; and a door that is locked will not be opened quickly; and with regard to one who purchases a house in Eretz Yisrael, one writes a bill of sale for this transaction even on Shabbat.

614 The Gemara raises an objection from a baraita: After explaining how the public engages in prayer when there is a drought, the baraita teaches: And with regard to all other types of calamities that break out upon the community, other than drought, such as sores, a plague of locusts, flies, hornets, or mosquitoes, or infestations of snakes or scorpions, the court would not sound the alarm on Shabbat, but the people would cry out. This indicates that it is not proper to sound the alarm on Shabbat for an epidemic of sores.

615 The Gemara answers: This is not difficult. Here it is referring to moist sores; whereas there it is referring to dry sores, which are more dangerous than moist ones. As Rabbi Yehoshua ben Levi says: The boils that the Holy One, Blessed be He, brought upon the Egyptians were moist on the outside and dry on the inside, as it is stated: “And it became a boil breaking out with oozing upon man and upon beast” (Exodus 9:10). The phrase “breaking out” is referring to the exterior of the wound. Since the verse specifies that the outside was oozing with secretions, it can be inferred that the inside was dry. This indicates that the sores can be of either type.

616 The Gemara analyzes the second of the three statements: And a door that is locked will not be opened quickly. This is clearly a metaphor, but to what is it referring? Mar Zutra said: It is a metaphor for rabbinic ordination. If one meets with resistance in his quest to receive ordination, he should take it as a sign that this opportunity will not soon open up for him again. Rav Ashi said: It means that anyone who is treated poorly will not soon be treated well. Rav Aḥa of Difti said: He will never be treated well. The Gemara comments: But that is not so; Rav Aḥa of Difti was saying only a matter that reflected what had occurred to him.

617 The Gemara turns its attention to the third statement: And with regard to one who purchases a house in Eretz Yisrael, one writes a bill of sale for this transaction even on Shabbat. The Gemara asks: Can it enter your mind that one may write this bill of sale on Shabbat? Writing on Shabbat is a prohibited labor for which one is liable to receive the death penalty.

618 The Gemara explains: Rather, this is as Rava said there, with regard to a similar issue, that one tells a gentile to do it, and he does so. Here, too, it is referring to a situation where he tells a gentile to write a bill of sale for the house, and he does it. And even though telling a gentile to perform an action that is prohibited for a Jew on Shabbat is generally a violation of a rabbinic decree, as the Sages prohibited telling a gentile to perform prohibited labor on behalf of a Jew on Shabbat, here the Sages did not impose this decree, due to the mitzva of settling Eretz Yisrael.

619 Rabbi Shmuel bar Naḥmani says that Rabbi Yonatan says: With regard to one who purchases a city in Eretz Yisrael, the court forces him to purchase a path to the city from all four of its sides, due to the importance of settling Eretz Yisrael.

620 § The Sages taught in a baraita: Joshua stipulated ten conditions when he apportioned Eretz Yisrael among the tribes:

621 The conditions are that people shall have the right to graze their animals in forests, even on private property; and that they shall have the right to gather wood from each other’s fields, to be used as animal fodder; and that they shall have the right to gather wild vegetation for animal fodder in any

place except for a field of fenugreek; and that they shall have the right to pluck off a shoot anywhere for propagation and planting, except for olive shoots; and that the people of the city shall have the right to take supplies of water from a spring on private property, even from a spring that emerges for the first time; and that they shall have the right to fish in the Sea of Tiberias, i.e., the Sea of Galilee, provided that the fisherman does not build an underwater fence to catch fish, thereby causing an impediment to boats.

[622] The baraita continues the list of Joshua's ten conditions: And people shall have the right to relieve themselves outdoors behind a fence, even in a field that is full of saffron [karkom]; and they shall have the right to walk in permitted paths, i.e., those paths that cut through a private field, throughout the summer until the second rainfall, when crops begin to sprout; and they shall have the right to veer off to the sides of the roads onto private property because of hard protrusions [yeteidot] of the road; and one who becomes lost among the vineyards shall have the right to cut down branches and enter an area of the vineyard, or cut down branches and exit an area of the vineyard, until he finds his way back to the road; and that a corpse with no one to bury it [met mitzva] acquires its place and is buried where it was found.

[623] The first condition mentioned in the baraita is that people shall have the right to graze their animals in forests. Rav Pappa said: We said this only with regard to small domesticated animals, i.e., sheep or goats, that graze in a forest of large trees. Small animals grazing in a forest of this kind would not destroy it. But in the case of small animals grazing in a forest with small growth, or large animals, e.g., oxen, grazing in a forest of large trees, these practices are not permitted, as in either of these scenarios the practice would destroy the forest. And, all the more so, it is understood that large animals grazing in a forest with small growth is not permitted.

[624] The Gemara discusses the next condition mentioned in the baraita: And that they shall have the right to gather wood from each other's fields, to be used as animal fodder. The Gemara comments: We said this only with regard to twigs of thorns and shrubs, as the field's owner does not care about these. But with regard to other types of wood, it is not permitted. And even with regard to twigs of thorns and shrubs, we said this only when they are attached to the ground. But when they have been detached by the owner it is not permitted, as he has already claimed them for himself.

[625] And even when they are attached we said this only when the twigs are still moist, but when they are completely dry it is not permitted, as the owner requires these for firewood. Moreover, it is permitted only provided that one does not uproot the thorn bush or shrub from the ground, but it is prohibited to pull them out with their roots.

[626] The Gemara further discusses Joshua's conditions: And that they shall have the right to gather wild vegetation for animal fodder in any place except for a field of fenugreek. The Gemara asks: Is this to say that wild vegetation is good for fenugreek, and therefore the owner wants it to be left in his field? The Gemara raises a contradiction from a mishna that deals with diverse kinds (Kilayim 2:5): With regard to fenugreek that sprouted alongside various types of wild vegetation, one is not required to uproot the vegetation. Although it is generally prohibited to grow different species of vegetables together in one patch, if the species have a negative impact on each other's growth, it is not prohibited. In this case the wild vegetation may be left alongside the fenugreek because it is harmful to it, and the halakhot of diverse kinds do not apply in a case of this kind.

[627] Rav Yirmeya said: This is not difficult. Here, the mishna is referring to a case where the fenugreek was planted for its seeds; there, the baraita that lists Joshua's conditions is referring to fenugreek planted for its stalks. When it is planted for its seeds, wild vegetation is bad for it, as it weakens the fenugreek and lowers its yield. But when it is planted for its stalks, wild vegetation is good for it, as when it is situated among vegetation it climbs on it and thereby grows to a larger size.

[628] If you wish, say instead another answer: Here, the mishna is referring to a case where the fenugreek was planted for human consumption; and there, the baraita is referring to fenugreek planted for animal consumption. Since the owner sowed the fenugreek for animal consumption, the wild vegetation is also required by him, as this too can be used for animal fodder. And how can we know if a particular fenugreek field was planted for human or animal consumption, and thereby know whether the vegetation may be picked and taken? Rav Pappa said: If he planted it in rows [mesharei], it is for human consumption; if he did not plant in rows but planted haphazardly, it is for animal consumption.

[629] The baraita teaches: And that they shall have the right to pluck off a shoot anywhere for propagation and planting, except for olive shoots, as this would cause damage to the olive tree. Rabbi Tanḥum and Rabbi Berayes explained this in the name of a certain elder: With regard to olive trees, one must leave a shoot the size of an egg on the trunk when detaching it from the trunk; in the case of reeds and grape vines, he may take shoots only from the place of the first knot and above. And with regard to all other trees, shoots may be taken only from the thick part of the tree, where there are many branches growing, but not from the thin part of the tree.

[630] Furthermore, one may take from a new branch, which does not yet produce fruit, but not from old branches, which do produce fruit; and one may take from a place that does not face the sun,

[631] but not from a place that faces the sun, where the fruits grow copiously, as it is stated: "And for the precious things of the fruits of the sun" (Deuteronomy 33:14).

[632] The baraita further states: And the people of the city shall have the right to take supplies of water from a spring on private property, even from a spring that emerges for the first time. Rabba bar Rav Huna says: And although one may draw water from that spring, he must give money to reimburse the owner of the property. The Gemara concludes: But the halakha is not in accordance with his opinion, as the water may be taken without payment.

[633] The next of Joshua's conditions is: And that they shall have the right to fish in the Sea of Tiberias, provided that the fisherman does not build an underwater fence to catch fish, thereby causing an impediment to boats. The Gemara comments: But one may fish with nets and with traps. The Sages taught in a baraita: Initially, the tribes stipulated with each other that one may not build an underwater fence to catch fish, thereby causing an impediment to boats, but one may fish with nets and with traps.

[634] The Sages taught in a baraita: The Sea of Tiberias was located in the portion of the tribe of Naphtali. Moreover, the tribe of Naphtali received in addition a small stretch of land equal to the full length of the rope of a fish trap. This stretch of land was located to the south of the sea, where the members of this tribe could spread out their fishing nets, to fulfill that which is stated: "And of Naphtali he said: O Naphtali, satisfied with favor, and full with the blessing of the Lord; possess the sea and the south" (Deuteronomy 33:23).

635 It is taught in a baraita: Rabbi Shimon ben Elazar says: Detached items that are found in the mountains at the time of conquest are considered to be in the possession of all the tribes equally, as spoils of war; but that which is attached, e.g., trees, are considered to be in the sole possession of that tribe that would receive the land where the tree was found.

636 The baraita adds: And you do not have a single tribe of Israel that did not have in its portion at least some land in the mountains, and some in the lowland, and some in the countryside, and some in the valley, as it is stated: “Turn and take your journey, and go to the hill-country of the Amorites and to all their neighbors, in the Arabah, in the hill-country, and in the lowland, and in the countryside, and by the seashore” (Deuteronomy 1:7). And you find similarly with regard to the Canaanites and Perizzites and Amorites who inhabited the land before the Jews, as it stated in the above verse: “The Amorites and to all their neighbors.” Apparently, the Amorites and their neighbors all had this variety of types of land in their respective territories.

637 § The Gemara discusses the next of Joshua’s conditions: And people shall have the right to relieve themselves outdoors behind a fence, even in a field that is full of saffron. Rav Aḥa bar Ya’akov said: It goes without saying that one may relieve himself when necessary; this stipulation is necessary only to permit the one relieving himself to take a stone out of a wall in the field with which to clean himself. Rav Ḥisda said: And it is permitted to remove a stone from a wall for this purpose even on Shabbat. Mar Zutra the Pious would take a stone in this manner on Shabbat and replace it in the wall, and say to his attendant after Shabbat: Go and plaster it over, so that it would fit securely back in the wall.

638 The baraita further states: And they shall have the right to walk in permitted paths, i.e., those paths that cut through a private field, throughout the summer until the second rainfall, when crops begin to sprout. Rav Pappa said: And with regard to these fields that we have in Babylonia, even dew that settled the previous night is bad for them. Even after a night of dew, the field is sufficiently moistened that trampling on it will cause damage, and therefore this condition does not apply if there was dew the previous night.

639 The next item on the list of conditions is: And they shall have the right to veer off to the sides of the roads onto private property because of hard protrusions of the road. The Gemara relates: Shmuel and Rav Yehuda, who lived in Babylonia, were once walking along the road, and Shmuel veered off to the sides of the road onto private property. Rav Yehuda said to him: Do the conditions that Joshua stipulated apply even in Babylonia? Shmuel said to him: Indeed so, as I say that they apply even outside of Eretz Yisrael.

640 Rabbi Yehuda HaNasi and Rabbi Ḥiyya were once walking along the road, and they veered off to the sides of the road. Rabbi Yehuda ben Kanosa was taking broad steps on the road, to avoid the protrusions without going off to the side of the road, while walking in front of them. Rabbi Yehuda HaNasi said to Rabbi Ḥiyya: Who is this man who is showing off his supposed greatness in our presence? By acting more stringently than required by halakha, he is displaying insolence.

641 Rabbi Ḥiyya said to Rabbi Yehuda HaNasi: Perhaps it is my student Rabbi Yehuda ben Kanosa. And if so, all of his actions are undertaken for the sake of Heaven; he is not acting out of haughtiness. When they reached him and Rabbi Yehuda HaNasi saw him, he said to him: If you were not Yehuda ben Kanosa I would have cut off your legs with iron shears, i.e., I would have excommunicated you for your impudence.

642 The baraita further teaches: And one who becomes lost among the vineyards shall have the right to cut down [mefaseig] branches and enter an area of the vineyard, or cut down branches and exit an area of the vineyard, until he finds his way back to the road. The Sages taught in a baraita that this stipulation extends further: With regard to one who sees another person lost among the vineyards, he may cut down branches and enter an area of the vineyard, or cut down branches and exit an area of the vineyard until he reaches him and brings him back up to the city or to the road. And similarly, if he himself is the one who is lost among the vineyards, he may cut down branches and enter an area of the vineyard, or cut down branches and exit an area of the vineyard until he comes back up to the city or to the road.

643 The Gemara asks a question with regard to this baraita: What is the point of the clause that begins with: And similarly? It is obvious that a lost individual himself has the same right to cut down branches as one who assists him to find his way out. The Gemara answers: That is taught lest you say that it is only another person who is permitted to cut down branches, as, having seen the lost party, he knows exactly where he is going to rescue the other and help him leave the vineyard, and that is why he may cut down branches; but with regard to the lost person himself, who does not know where he is going, one might have said that he may not cut down branches but must go all the way back to the boundary of the vineyard. The baraita therefore teaches us that one who is lost may cut down branches in his quest to find his own way to the nearby town or road.

644 The Gemara asks a further question: Why was it necessary for Joshua to stipulate that one may find his way out in this manner? After all, this halakha applies by Torah law. When one is lost, whoever can assist in helping him find his way must do so by Torah law, as it is taught in a baraita: There is a mitzva to return lost items to their owner. From where is it derived that the requirement applies even to returning his body, i.e., helping a lost person find his way? The verse states: “And you shall restore it to him” (Deuteronomy 22:2), which can also be translated as: And you shall restore himself to him. If this is required by Torah law, why did Joshua stipulate a condition to this effect?

645 The Gemara answers: By Torah law one is required only to walk in a roundabout path along the boundaries, without damaging another’s vines by cutting off branches. Joshua came and instituted the stipulation that one may go even further and cut off branches and ascend or cut off branches and descend, thereby leaving through the most direct route.

646 The Gemara addresses the last stipulation in the baraita: And that a corpse with no one to bury it [met mitzva] acquires its place and is buried where it was found. The Gemara raises a contradiction from a baraita: One who finds a corpse laid out on a main street [isratya] evacuates it for burial either to the right of the street or to the left of the street, but it may not be buried under the main street itself. If one can move the corpse either to a fallow field or to a plowed field, he evacuates it to the fallow field.

647 If the choice is between a plowed field and a sown field, he evacuates it to the plowed field. If both fields were fallow, or if both were plowed, or if both were sown, he evacuates it to any side where he wishes to move it. According to this baraita, a met mitzva is not necessarily buried where it is found. It may be moved elsewhere.

648 Rav Beivai said: The ruling of this baraita is stated with regard to a corpse laid out on the pathway. Were the corpse buried there, it would prohibit passage by priests. Since permission was

already granted to evacuate it from there, one may evacuate it to any place he wishes. If, however, the corpse was in a field, it would be prohibited to move it.

649 § The Gemara returns to the opening statement of the baraita, that Joshua stipulated ten conditions. The Gemara says: Are there really only ten? These conditions enumerated in the baraita are actually eleven. The Gemara answers: The condition that one may walk in permitted paths that cut through a private field in the summer was not instituted by Joshua; rather, King Solomon said it.

650 As it is taught in a baraita: If one's produce was completely harvested from the field, but he does not allow people to enter into his field to shorten their route, what do people say about him? They say: What benefit does so-and-so have by denying entry into his field? And what harm are people causing him by traversing his field? Concerning him, the verse says: Do not be called wicked by refraining from being good. The Gemara asks: Is it really written: Do not be called wicked by refraining from being good? There is no such verse in the Bible. The Gemara answers: Yes, an idea like this is found in the Bible, albeit in a slightly different form, as it is written like this: "Withhold not good from him to whom it is due, when it is in the power of your hand to do it" (Proverbs 3:27).

651 The Gemara further questions the statement of the baraita that Joshua instituted ten stipulations: And is there nothing more that Joshua instituted? But there is also the stipulation mentioned by Rabbi Yehuda. As it is taught in a baraita: Rabbi Yehuda says: During the time of manure removal, a person may remove his manure from his property into the public thoroughfare and pile it up there for a full thirty days, so that it should be trodden by the feet of people and by the feet of animals, thereby improving its quality, as it was on this condition that Joshua apportioned Eretz Yisrael to the Jewish people.

652 The Gemara continues this line of questioning: And furthermore, there are the stipulations mentioned by Rabbi Yishmael, son of Rabbi Yoḥanan ben Beroka, as it is taught in a baraita: Rabbi Yishmael, son of Rabbi Yoḥanan ben Beroka, says: It is a stipulation of the court, i.e., it is an automatic right even when not explicitly granted, that this owner of a bee colony may enter the field of another and chop off the other's branch in order to save his bee colony, and afterward he gives him the value of the other's severed branch. That is, if a beekeeper finds that one of his colonies has relocated to a tree in a neighboring field, he may bring it back to his own property together with the branch, provided that he later reimburses the owner of the tree.

653 The baraita continues: And it is also a stipulation of the court that this bearer of wine pours out his wine from his barrel and uses the barrel to save another's spilling honey, which is more valuable than the wine, and then he takes the value of his wine from the saved honey of the other, as reimbursement. And it is likewise a stipulation of the court that this owner of wood unloads his wood from his donkey and loads another's flax, which is more valuable than wood, if the load of flax is stranded on the road due to a mishap, and later he takes the value of his wood from the saved flax of that other individual. Once again, the reason is that it was on this condition that Joshua apportioned Eretz Yisrael to the Jewish people.

654 The Gemara explains why the stipulations mentioned by Rabbi Yehuda and Rabbi Yishmael are omitted by the earlier baraita: In the baraita, we are not speaking of individual opinions, but only of those that are accepted by all the Sages.

655 The Gemara further questions the number of Joshua's stipulations: But when Rabbi Avin came from Eretz Yisrael he said that Rabbi Yoḥanan says: With regard to both a tree that leans into the

field of another and a tree that is close to a boundary with another field, the owner of the tree brings the first fruits of the tree and recites the accompanying declaration, as described in Deuteronomy 26:5–10, as it was on this condition that Joshua apportioned Eretz Yisrael to the Jewish people. This is an additional stipulation by Joshua, which means that there are more than ten.

656 The Gemara answers: Rather, who is the one who taught the baraita that deals with the ten conditions that Joshua stipulated? It is Rabbi Yehoshua ben Levi, an amora. Therefore, Rabbi Yoḥanan, another amora, can disagree with it. Rav Geviha from Bei Katil teaches this explicitly in his version of the baraita: Rabbi Tanḥum and Rabbi Berayes say in the name of a certain elder, and who is that elder? It is Rabbi Yehoshua ben Levi: Joshua stipulated ten conditions.

657 § The Sages taught that Ezra the Scribe instituted ten ordinances: He instituted that communities read the Torah on Shabbat in the afternoon; and they also read the Torah on every Monday and Thursday; and the courts convene and judge every Monday and Thursday; and one does laundry on Thursday; and one eats garlic on Shabbat eve. And Ezra further instituted that a woman should rise early and bake bread on those days when she wants to bake; and that a woman should don a breechcloth; and that a woman should first comb her hair and only then immerse in a ritual bath after being ritually impure; and that peddlers of cosmetics and perfumes should travel around through all the towns. And Ezra further instituted the requirement of immersion for those who experienced a seminal emission.

658 The Gemara analyzes these ordinances, the first of which is that communities shall read the Torah on Shabbat afternoon. This Gemara explains that this ordinance was instituted due to those who sit idly on street corners, who do not attend the synagogue during the week.

659 The Gemara discusses the second of Ezra's ordinances: And that they should read the Torah on every Monday and Thursday. The Gemara asks: Did Ezra institute this practice? But it was instituted from the beginning, i.e., long before his time. As it is taught in a baraita with regard to the verse: "And Moses led Israel onward from the Red Sea, and they went out into the wilderness of Shur; and they went three days in the wilderness, and found no water" (Exodus 15:22). Those who interpret verses metaphorically said that water here is referring to nothing other than Torah, as it is stated metaphorically, concerning those who desire wisdom: "Ho, everyone who thirsts, come for water" (Isaiah 55:1).

660 The baraita continues: The verse means that since the Jews traveled for three days without hearing any Torah they became weary, and therefore the prophets among them arose and instituted for them that they should read from the Torah each Shabbat, and pause on Sunday, and read again on Monday, and pause on Tuesday and Wednesday, and read again on Thursday, and pause on Shabbat eve, so they would not tarry three days without hearing the Torah. Evidently this practice predates Ezra.

661 The Gemara answers: Initially they instituted that one man read three verses; or alternatively, that three men read three verses. Either way, the number three corresponds to the three types of Jews: Priests, Levites, and Israelites. Ezra later came and instituted that three men always read, and that ten verses altogether be read by them, corresponding to the ten idlers in a city, i.e., the ten men who are paid to spend their time dealing with synagogue and communal matters.

662 The next ordinance of Ezra is: And the courts convene and judge every Monday and Thursday. The Gemara explains that the reason for this ordinance is that many people are found in a city on

these days, as they come from the countryside for the reading of the holy book, the Torah, which is performed on Mondays and Thursdays, as stated above.

663 The baraita teaches: And that one should do laundry on Thursday. This was instituted due to the need to have clean garments in deference to Shabbat.

664 The Gemara explains the next listed ordinance: And that one should eat garlic Shabbat eve. This is due to the fact that garlic enhances sexual potency, and Friday night is an appropriate time for conjugal relations. As it is written concerning the righteous: “And he shall be like a tree planted by streams of water, who brings forth his fruit in his season” (Psalms 1:3); and Rabbi Yehuda says, and some say it was Rav Naḥman, and some say it was Rav Kahana, and some say it was Rabbi Yoḥanan who said: This is referring to one who engages in sexual intercourse every Shabbat eve.

665 The Sages taught in a baraita that five matters were stated with regard to garlic: It satisfies; it warms the body; it causes one’s countenance to shine; it increases one’s sperm, and it kills lice that are in the intestines. And some say that it also instills love into those who eat it and removes jealousy from them.

666 The next ordinance is: And that a woman should rise early and bake bread on those days when she bakes. This Gemara explains that this was instituted so that bread should be available for poor people, who go begging for bread in the mornings.

667 The baraita further teaches: And that a woman should don a breechcloth [sinar]. This ordinance was instituted due to reasons of modesty.

668 The baraita adds: And that a woman should first comb her hair and only then immerse in a ritual bath. This is to ensure that there is no dirt or other substance in the hair that would invalidate the immersion. The Gemara questions this: This is required by Torah law, Ezra did not institute this.

669 As it is taught in a baraita, concerning a verse that discusses one who must undergo ritual immersion: “And he shall bathe his flesh [et besaro] in water” (Leviticus 14:9). This verse teaches that no substance should interpose between his flesh and the water. When the verse states this in the expanded form of “et his flesh,” using the term “et,” this teaches that the water must come into contact even with that which is subordinate to his flesh. And what is that? It is one’s hair. Accordingly, the Torah itself states that there may not be any interposing substance in the hair at the time of immersion. What, then, did Ezra add?

670 The Sages say in response: By Torah law one is required to inspect his or her hair before immersion, as perhaps some hairs are knotted together, preventing contact with water at that spot, or perhaps there is some repulsive substance in his hair. One must perform this inspection because these would constitute an interposition.

671 And Ezra came and added to the Torah’s minimal obligation. He instituted the requirement of combing the hair even when it is known that it is not knotted and contains no repulsive substance.

672 The Gemara discusses the next of Ezra’s ordinances: And that peddlers should circulate through all the towns. This Gemara explains that this is because peddlers supply women’s cosmetics, and therefore Ezra instituted this practice so that women should not become unattractive to their husbands.

673 The Gemara analyzes the last of the ten ordinances: And he instituted the requirement of immersion for those who experienced a seminal emission. The Gemara asks: But this is required by

Torah law, as it is written: “And if the flow of seed go out from a man, then he shall bathe all his flesh in water” (Leviticus 15:16). The Gemara answers: By Torah law immersion is required only if one wishes to partake of teruma or sacrificial meat. Ezra came and further instituted that immersion is necessary even for reciting or studying matters of Torah.

674 § The mishna teaches that one may not raise chickens in Jerusalem. The Gemara cites a baraita that contains a list of other halakhot that are unique to Jerusalem. Ten matters were stated with regard to Jerusalem: A house situated in Jerusalem does not become irredeemable one year after its sale. Those who sell houses in other walled cities have the right to buy back their property for one year after the transaction. If they fail to do so, the house becomes the permanent possession of the buyer (see Leviticus 25:29–30). This halakha does not apply to houses in Jerusalem. And its Elders do not bring a heifer whose neck is broken as required when a murder victim is found near a city and the murderer is unknown (see Deuteronomy 21:1–9); and it cannot become an idolatrous city (see Deuteronomy 13:13–19).

675 The baraita continues its list: And a house in Jerusalem cannot become ritually impure with the impurity of leprous sores; and one may not build out projections or balconies [gezuztraot] from houses that are in it; and one may not establish garbage dumps in Jerusalem; and one may not build kilns in it; and one may not plant gardens and orchards [pardesot] in it, except for the rose gardens that were already there from the times of the early prophets; and one may not raise chickens in it; and finally, one may not leave a corpse overnight in Jerusalem.

676 The Gemara discusses these ten halakhot pertaining to Jerusalem, one by one: A house situated in it does not become irredeemable one year after its sale. The reason is that it is written: “And if it is not redeemed within the space of a full year, then the house that is in the walled city shall be made sure in perpetuity to him who bought it, throughout his generations” (Leviticus 25:30). And the tanna who taught this baraita maintains that Jerusalem was not apportioned to any single one of the tribes of Israel; rather, it is considered common property. Since no one has ancestral ownership of any house in Jerusalem, its houses cannot be sold permanently.

677 The Gemara analyzes the next halakha: And its inhabitants do not bring a heifer whose neck is broken. The reason is that it is written: “If one is found slain in the land that the Lord your God gives you to possess it” (Deuteronomy 21:1). And, again, the tanna who taught this baraita maintains that Jerusalem was not apportioned to any one of the tribes of Israel. Therefore, it is not included in the description: “The land that the Lord your God gives you to possess it.”

678 The baraita states: And it cannot become an idolatrous city. The reason is that it is written, in the introduction of the passage dealing with the halakha of an idolatrous city: “If you shall hear tell concerning one of your cities, which the Lord your God gives you to dwell there” (Deuteronomy 13:13). And the tanna who taught this baraita maintains that Jerusalem was not apportioned to any one of the tribes of Israel. It is therefore not included in the description “one of your cities, which the Lord your God gives you to dwell there.”

679 The baraita further teaches: And a house in Jerusalem does not become ritually impure with the impurity of leprous sores. The reason is that it is written: “And I put the plague of leprosy in a house of the land of your possession” (Leviticus 14:34). And the tanna who taught this baraita maintains that Jerusalem was not apportioned to any one of the tribes of Israel. It is therefore not included in the description “a house of the land of your possession.”

680 The Gemara discusses the next halakha: And one may not build out projections or balconies from houses that are in Jerusalem. The Gemara provides two reasons for this prohibition. First, it is due to the danger of contracting ritual impurity by being in the same tent as a corpse, i.e., under the same roof, in which case the impurity spreads to all items under the roof. If even a small part of a corpse is under a balcony, everyone who passes under that balcony is rendered impure. Many people come to Jerusalem to sacrifice offerings, and they must maintain a state of ritual purity. The other reason is so that those great crowds of pilgrims not be injured by colliding with the projections.

681 The next halakha pertaining to Jerusalem is: And one may not establish garbage dumps in it. The Gemara explains that the reason is due to the repugnant creatures that are attracted to such heaps and impart ritual impurity upon their death.

682 The baraita states: And one may not build kilns in Jerusalem. The reason is due to the unsightly smoke produced by kilns. The Sages sought to preserve the beauty of Jerusalem and the Temple.

683 The baraita teaches: And one may not plant gardens and orchards in it. This is due to the odor emitted by these places, either from discarded weeds or from fertilizer.

684 The next halakha on the list is: And one may not raise chickens in Jerusalem. The Gemara explains that this is due to the sacrificial meat that is consumed in Jerusalem. Since chickens peck in the garbage, they are likely to pick up items that impart ritual impurity and bring them into contact with the consecrated food, which may not be eaten in an impure state.

685 The Gemara discusses the last halakha: And one may not leave a corpse overnight in it. The Gemara notes that this prohibition is a tradition; there is no known explanation for it.

686 § The mishna teaches that one may not raise pigs anywhere. The Sages taught in a baraita the background for this halakha: When the members of the house of Hasmonean monarchy were at war with each other, Hyrcanus, one of the parties to this war, was inside the besieged Jerusalem, while his brother Aristobulus, the other contender to the throne, was on the outside. And every day the people inside would lower down money in a box from the Temple walls, to purchase sheep to sacrifice, and those on other side would take the money and send up sheep to them over the wall for the daily offerings.

687 There was a certain elder there who was familiar with Greek wisdom, and he said to those besieging Jerusalem: As long as they occupy themselves with the Temple service, they will not be delivered into your hands. The next day they lowered down money in a box as usual, but this time they sent up to them a pig. When the pig reached to the midpoint of the Temple wall it stuck its hooves into the wall, and Eretz Yisrael quaked over an area of four hundred parasangs by four hundred parasangs.

688 At that time the Sages said: Cursed be the man who raises pigs, and cursed be the man who teaches his son Greek wisdom. And it was concerning that time of siege that we learned in a mishna: There was an incident in which the barley for the omer offering came from the gardens of Tzerifin, far from Jerusalem, and the wheat for the two loaves of Shavuot was brought from the valley of Ein Sokher. Barley and wheat could not be brought from any nearer because the besiegers had destroyed all the produce around Jerusalem. This concludes the baraita.

689 The Gemara asks a question with regard to this baraita: And is it really prohibited to study Greek wisdom? But isn’t it taught in a baraita: Rabbi Yehuda HaNasi said: In Eretz Yisrael,

690 why would one speak the Syriac [Sursi] language? One should speak either the sacred tongue, Hebrew, or the Greek language. And Rabbi Yosei said similarly: In Babylonia, why would one speak the Aramaic language? One should speak either the sacred tongue or the Persian language. At any rate, Rabbi Yehuda HaNasi's statement indicates that there is nothing wrong with learning and speaking Greek. The Sages say in response: The Greek language is discrete, and Greek wisdom is discrete. In other words, these are two separate issues; only Greek wisdom is prohibited, not the Greek language.

691 The Gemara further pursues this line of inquiry: And is Greek wisdom itself actually prohibited? But doesn't Rav Yehuda say that Shmuel says in the name of Rabban Shimon ben Gamliel: It is written: "My eye affected my soul, because of all the daughters of my city" (Lamentations 3:51). Rabban Shimon ben Gamliel applied this verse to a personal tragedy: There were a thousand children in the household of my father, Rabban Gamliel; five hundred of them studied the Torah, and five hundred of them studied Greek wisdom. All of them were killed by the Romans; and the only ones that remain of them are I, who is here, and the son of my father's brother, who is in Asia Minor [Asya]. Rabban Shimon ben Gamliel's statement indicates that it is permitted to study Greek wisdom.

692 The Sages say in response: The household of Rabban Gamliel is different, as they held close ties with the government. Since knowledge of Greek wisdom was crucial for the members of this family, the Sages exempted them from the general decree, as it is taught in a baraita: With regard to one who cuts his hair in the fashion of komi, a certain haircut favored by the Romans, this is considered one of the ways of the Amorites, i.e., a gentile practice prohibited by the Torah (Leviticus 18:3). Despite this, the Sages permitted Avtolmos bar Reuven to cut his hair in the fashion of komi, because he had close ties with the government. Likewise, they permitted the members of the household of Rabban Gamliel to discuss matters of Greek wisdom, because they had close ties with the government.

693 § The mishna teaches: A person may not raise a dog unless it is tied with chains. The Sages taught in a baraita: A person may not raise a dog unless it is tied with a chain. But he may raise a dog in a city that is close to the border of the country, and in that case he should tie it during the day but may release it at night.

694 It is taught in a baraita that Rabbi Eliezer the Great says: One who raises dogs is like one who raises pigs. The Gemara asks: What is the practical significance of this statement? Since both are prohibited, what is the point of this comparison? The Gemara answers: The significance is with regard to determining when one is liable to be cursed for it. Rabbi Eliezer is saying that the same curse meted out to one who raises pigs also applies to one who raises dogs.

695 Rav Yosef bar Minyumi says that Rav Naḥman says: Babylonia is considered like a city close to the border, and therefore it is permitted to raise dogs there. The Gemara qualifies this statement, and in this context, Babylonia is interpreted as referring only to Neharde'a, a city that was close to the border.

696 With regard to raising dogs, Rabbi Dostai from Biri expounded: It is written in connection to the Ark of the Covenant: "And when it rested, he said: Return, O Lord, to the myriads of the thousands of Israel" (Numbers 10:36). This verse serves to teach you that the Divine Presence does not rest upon the Jewish people if they number fewer than two thousand and two myriads, where one myriad is equal to ten thousand. The plural form of "myriads" and "thousands" indicates at least two of each.

If they are lacking one individual from this total, and there was a pregnant woman among them, who was fit to complete the number by giving birth, and a dog barked at her and she miscarried as a result of the fright, this owner of the dog is found to have caused the Divine Presence to depart from the Jewish people.

697 There was a certain woman who entered a certain building to bake. A dog barked at her. Its owner said to her: Do not be afraid of it; its canine teeth have been removed. She said to him: It is too late for your reassurances. Take your favors and throw them on the thorns! I have felt that the baby has already moved from its place in the womb and will not be born alive.

698 § The mishna teaches: One may spread out traps for pigeons only if this was performed at a distance of at least thirty ris, which is eight thousand cubits, from any settled area, to ensure that privately owned pigeons are not caught in the traps. The Gemara asks: And do pigeons really travel that far from their established places? But didn't we learn in a mishna (Bava Batra 23a): One must distance a dovecote fifty cubits from the city, so that the pigeons that settle in the cotes do not eat the crops that grow in the gardens of the city. This shows that the range of a pigeon is only fifty cubits, whereas four mil is eight thousand cubits. Abaye said: Pigeons fly much more than fifty cubits away from their cotes, but their stomachs become full from the food they find within fifty cubits, and therefore they do not eat any more beyond that range.

699 The Gemara asks: And with regard to flying, is their range only thirty ris and no more? But isn't it taught in a baraita: In a settled area, one may not spread out a trap for pigeons even at a distance of one hundred mil from the settlement? This indicates that a privately owned pigeon might be trapped even one hundred mil away from a settled area. Why, then, does the mishna permit trapping beyond four mil? Rav Yosef said: The baraita is not talking about an ordinary city but about a settled area where vineyards are grown. Since the pigeons rest in the vineyards as they travel, they are able to traverse great distances. Rabba stated a different answer: The baraita is dealing with a settled area where there are many dovecotes in which they can rest from their flight.

700 The Gemara asks: If there are many dovecotes along the way, let the tanna derive the prohibition against setting pigeon traps due to the dovecotes themselves. Since the mishna teaches that it is prohibited to trap pigeons within four mil of privately owned dovecotes, it should be irrelevant that there is a city one hundred mil away. The Gemara answers: If you wish, say that the baraita is dealing with dovecotes that belong to a gentile, and the prohibition against trapping pigeons from private dovecotes applies only to birds owned by Jews. Or if you wish, say that the baraita is dealing with abandoned dovecotes that are ownerless. Or if you wish, say that it is referring to dovecotes that are his, i.e., they belong to the same individual who is setting the pigeon trap.

## Chapter 8

1 MISHNA: One who injures another is liable to pay compensation for that injury due to five types of indemnity: He must pay for damage, for pain, for medical costs, for loss of livelihood, and for humiliation.

2 How is payment for damage assessed? If one blinded another's eye, severed his hand, broke his leg, or caused any other injury, the court views the injured party as though he were a slave being sold

in the slave market, and the court appraises how much he was worth before the injury and how much he is worth after the injury. The difference between these two sums is the amount that one must pay for causing damage.

[3] How is payment for pain assessed? If one burned another with a skewer [beshapud] or with a hot nail, or even if one burned another on his fingernail, which is a place where he does not cause a bruise that would affect the victim's value on the slave market, the court evaluates how much money a person with a similar threshold for pain as the victim is willing to take in order to be made to suffer in this way. The one who burned the victim must then pay this amount.

[4] How is payment for medical costs assessed? If one struck another, then he is liable to heal him by paying for his medical costs. In a case where growths, e.g., blisters or rashes, appeared on the injured party, if the growths are due to the blow, the one who struck him is liable; if the growths are not due to the blow, the one who struck him is exempt. In a case where the wound healed, and then reopened, and again healed, and then reopened, the one who struck him remains liable to heal the injured party by paying for his medical costs, as it is apparent that the current wound resulted from the original injury. If the injury healed fully, the one who struck him is not liable to heal him by paying for any subsequent medical costs.

[5] How is payment for loss of livelihood assessed? The court views the injured party as though he were a watchman of cucumbers, and the one who caused him injury must compensate him based on that pay scale for the income that he lost during his convalescence. This indemnity does not take into account the value of the standard wages of the injured party because the one who caused him injury already gave him compensation for his hand or compensation for his leg, and that compensation took into account his professional skills.

[6] How is payment for humiliation assessed? It all depends on the stature of the one who humiliates the other and the one who is humiliated.

[7] GEMARA: The Gemara asks: Why does the mishna take for granted the fact that one who caused injury is liable to pay compensation to the injured party? The Merciful One states in the Torah: "An eye for an eye" (Exodus 21:24). You might say that this means that the one who caused injury shall lose an actual eye rather than pay money.

[8] The Gemara responds: That interpretation should not enter your mind. The principle implicit in the mishna is derived from a verbal analogy in the Torah, as it is taught in a baraita: Based on the verse: "An eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot" (Exodus 21:24), one might have thought that if one blinded the eye of another, the court blinds his eye as punishment; or if one severed the hand of another, the court severs his hand; or if one broke the leg of another, the court breaks his leg. Therefore, the verse states: "One who strikes a person," and the verse also states: "And one who strikes an animal," to teach that just as one who strikes an animal is liable to pay monetary compensation, so too, one who strikes a person is liable to pay monetary compensation.

[9] And if it is your wish to say that there is an objection to this derivation, there is an alternative derivation: The verse states: "And you shall not take ransom for the life of a murderer, who is guilty of death, for he shall die" (Numbers 35:31). This indicates that it is only for the life of a murderer that you shall not take ransom; but you shall take ransom for one who severed another's extremities, which is analogous to the death of a limb, as severed limbs do not regenerate.

[10] The Gemara asks: To which verse is the baraita referring when it quotes: “One who strikes a person” and: “One who strikes an animal”? If we say that the baraita is referring to the verse: “One who strikes an animal shall pay its compensation, and one who strikes a person shall be put to death” (Leviticus 24:21), this cannot be, as that verse is written with regard to killing, not injury, and there is no monetary compensation for killing.

[11] Rather, the baraita references the verse from here: “One who strikes an animal mortally shall pay its compensation, a life for a life” (Leviticus 24:18); and juxtaposed to that is the verse: “And if a man maims his neighbor, as he has done, so shall it be done to him” (Leviticus 24:19). The Gemara challenges: But this latter verse does not use the expression: “One who strikes,” which is the basis for the comparison in the baraita. The Gemara responds: We are stating an analogy from striking to striking that is based not upon the exact phrasing of the verse but upon the details of the halakha, as follows: Just as the act of striking that is stated with regard to an animal renders one liable to pay monetary compensation, so too, the act of striking that is stated with regard to a person renders one liable to pay monetary compensation.

[12] The Gemara challenges: But isn’t it written in the verses discussing one who injures another: “And a man who strikes any person mortally shall be put to death” (Leviticus 24:17), which presumably means that in the case of one who severs another’s extremity the same injury, i.e., death of a limb, is done to the one who caused the injury, and he does not pay monetary compensation? The Gemara answers: The verse does not mean that his limb shall be put to death, i.e., removed, but rather, that he should pay compensation with money. The Gemara asks: From where do you say that the verse is referring to paying compensation with money? Why not say that he is punished with actual death i.e., loss of a limb?

[13] The Gemara answers: That interpretation should not enter your mind for two reasons. One reason is that this verse is juxtaposed to the following verse: “One who strikes an animal mortally shall pay its compensation” (Leviticus 24:18). And furthermore, it is written after it: “A fracture for a fracture, an eye for an eye, a tooth for a tooth; as he has given a blemish to a person, so shall it be given unto him” (Leviticus 24:20); and learn from the use of the word “given” that the verse is referring to money.

[14] The Gemara asks: And what potential difficulty with the first derivation did the baraita refer to when it prefaced its second derivation with the phrase: If it is your wish to say? The Gemara explains: The baraita means that a further difficulty was troubling to the tanna: What did you see that led you to derive the principle of monetary payment from the phrase “one who strikes an animal”? Why not derive the halakha from the verse: “One who strikes a person shall be put to death” (Leviticus 24:21), and learn that causing an injury renders one liable to receive physical retribution, which is analogous to death, and not monetary payment?

[15] The Sages say in response: The halakhot of damages are derived from a verse concerning damages, and the halakhot of damages are not derived from a verse concerning death. The Gemara questions this statement: On the contrary, why not say that the halakhot concerning a person are derived from a verse concerning a person, and the halakhot concerning a person are not derived from a verse concerning animals?

[16] To deflect this question, this is consistent with that which the second derivation of the baraita teaches: If it is your wish to say that there is an objection to this derivation, there is an alternative

derivation, as the verse states: “And you shall not take ransom for the life of a murderer, who is guilty of death, for he shall die” (Numbers 35:31). This indicates that it is only for the life of a murderer that you shall not take ransom; but you shall take ransom for one who severed another’s extremities, which is analogous to the death of a limb, as severed limbs do not regenerate.

17 The Gemara challenges this claim: But is this verse: “You shall not take ransom for the life of a murderer,” coming to exclude the case of one who severs another’s extremities from the prohibition against taking ransom? Isn’t this verse necessary to teach that which the Merciful One states: You shall not mete out two punishments to him; i.e., do not take money from him as ransom and also kill him? The Gemara answers: That halakha is derived from the verse: “Then it shall be, if the guilty deserves to be lashed, that the judge shall lie him down and flog him before him, according to the measure of his evildoing” (Deuteronomy 25:2). From the fact that “evildoing” is singular, the Gemara homiletically infers: For one evildoing, you can render him liable, but you cannot render him liable for two evildoings, i.e., one cannot receive two punishments for the same act.

18 The Gemara challenges this explanation: But the verse: “You shall not take ransom for the life of a murderer, for one who is guilty of death” is still necessary to teach the primary halakha taught in that verse, in which the Merciful One states: You shall not take money and thereby exempt the guilty from being put to death. The verse does not serve to exclude liability to pay damages from the prohibition against paying restitution. The Gemara answers: If so, i.e., if the Torah desires to teach only that the court cannot take ransom to spare the murderer from being put to death, let the Merciful One write in the Torah: “You shall not take ransom” and follow it immediately with the phrase “for one who is guilty of death.” Why do I need the Torah to also state: “For the life of a murderer”? Learn from the addition of that phrase that it is only for a murderer that you shall not take ransom; but you shall take ransom for one who severed another’s extremities, which do not regenerate once severed.

19 The Gemara asks: And once it is written: “You shall not take ransom,” why do I need the first derivation of the baraita, which juxtaposes: “One who strikes a person” to: “One who strikes an animal”? The Sages say in response: If the halakha were to be derived only from that verse which states: “You shall not take ransom” (Numbers 35:31), I would say: If the one who caused the damage desires, he may choose to give his eye, and if he desires, he may choose to give the monetary value of his eye. Therefore, the Torah teaches us to derive this halakha from that of an animal: Just as one who strikes an animal is liable to pay monetary compensation and does not receive corporal punishment, so too, one who strikes a person is liable to pay monetary compensation and does not receive corporal punishment.

20 § The Gemara presents a series of derivations for the principle that one who injures another is liable to pay monetary compensation. It is taught in a baraita: Rabbi Dostai ben Yehuda says: The phrase: “An eye for an eye” (Leviticus 24:20), means monetary restitution. Do you say that he must pay the victim monetary restitution, or is it only teaching that the one who caused the injury must lose an actual eye? You say: There may be a case where the eye of the one who caused the injury is large and the eye of the injured party is small. How can I read and literally apply the phrase “an eye for an eye” in this case?

21 The Gemara continues the derivation: And if you would say that in all cases like this, where their eyes are different sizes, the injured party takes monetary restitution from the one who caused him

injury, but in a case where their eyes are the same size, the one who caused injury is punished by actually having his eye removed, this cannot be, as the Torah said: “You shall have one manner of law” (Leviticus 24:22), teaching that the law shall be equal for all of you.

[22] The Sages object to this derivation and say: What is the difficulty in saying that his eye should be blinded? Perhaps, as the one who caused the injury took the sight from the injured party’s eye, the Merciful One states that the court should take the sight from his eye as well, no matter the size of the eye. Since, if you do not say so, then by the same logic,

[23] in the case of a small person who killed a large person, or a large person who killed a small person, how do we kill the murderer? If one suggests that in such a case a monetary penalty will be imposed, the Torah stated: “You shall have one manner of law” (Leviticus 24:22), teaching that the law shall be equal for all of you, so the punishment must be the same for all murderers. Rather, explain that since the murderer took the life of the victim, the Merciful One states that the court should likewise take the life from him. So too, since the one who caused the injury took the sight from the eye of the injured party, the Merciful One states that the court should likewise take the sight from his eye. Therefore, the Gemara does not accept the derivation of Rabbi Dostai ben Yehuda, in accordance with the objection of the Sages.

[24] The Gemara presents another derivation: It is taught in another baraita that Rabbi Shimon ben Yoḥai says: “An eye for an eye” (Leviticus 24:20), is referring to monetary restitution. Do you say that this is referring to monetary restitution, or is it only teaching that the one who caused the injury must lose an actual eye? There may be a case where there was a blind person and he blinded another, or there was one with a severed limb and he severed the limb of another, or there was a lame person and he caused another to be lame. In this case, how can I fulfill “an eye for an eye” literally, when he is already lacking the limb that must be injured? If one will suggest that in that case, a monetary penalty will be imposed, that can be refuted: But the Torah stated: “You shall have one manner of law” (Leviticus 24:22), which teaches that the law shall be equal for all of you.

[25] The Sages object to this derivation and say: And what is the difficulty? Perhaps in a case where it is possible to render the guilty party liable according to the punishment listed in the Torah, it is possible and the court does so; but in a case where it is not possible to enact such a punishment, it is not possible, and we exempt him. As if you do not say so, that punishing one and exempting another is not counter to the principle of: “One manner of law,” then by the same logic, in the case of one who has a wound that will cause him to die within twelve months [tereifa] and who killed a healthy person, what do we do to him?

[26] Rather, one must say that in a case where it is possible to render the guilty party liable according to the punishment listed in the Torah, it is possible and the court does so; but in a case where it is not possible to do so, it is not possible, and we exempt him. Therefore, the Gemara does not accept the derivation of Rabbi Shimon ben Yoḥai, in accordance with the objection of the Sages.

[27] The Gemara presents another derivation: The school of Rabbi Yishmael taught that the verse states: “A fracture for a fracture, an eye for an eye, a tooth for a tooth; as he has given a blemish to a person, so shall it be given unto him” (Leviticus 24:20), and giving can refer only to a payment of money. The Gemara challenges: But if that is so, then when the same verse states: “As he has given [yitten] a blemish to a person,” does this word, “yitten,” also refer to money? The word “yitten” means that he caused an actual injury, even though it employs a term whose literal meaning is give.

[28] The Sages say in response: The rabbis of the school of Rabbi Yishmael are interpreting a superfluous verse. Now, it is written: “And if a man gives a blemish to his neighbor; as he has done, so shall it be done to him” (Leviticus 24:19), so why do I need the verse: “So shall it be given unto him” (Leviticus 24:20)? Learn from the repetition that the verse is referring to monetary restitution. The Gemara asks: But if this is so, why do I need the verse: “As he has given [yitten] a blemish to a person” (Leviticus 24:20)? What does the usage of the term “yitten” teach? The Gemara answers: In fact, it does not teach anything, but rather, since the Merciful One needs to write at the end of that verse: “So shall it be given unto him,” where the employment of a term of giving is accurate, the Merciful One also wrote earlier in the verse: “As he has given [yitten] a blemish to a person.”

[29] The Gemara presents another derivation: The school of Rabbi Ḥiyya taught that the verse states with regard to conspiring witnesses: “And your eye shall not pity; a life for a life, an eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot” (Deuteronomy 19:21). This teaches that the witnesses pay compensation with that which is given from hand to hand. And what type of compensation is that? Monetary restitution. The Gemara challenges: But if that is so, is the phrase: “A foot for a foot” (Deuteronomy 19:21), also like that, i.e., is it teaching that the witnesses pay compensation with an item passed from foot to foot?

[30] The Sages say: The rabbis of the school of Rabbi Ḥiyya are interpreting a superfluous phrase in the verse. Now, it is written: “And you shall do to him as he purposed to do to his brother” (Deuteronomy 19:19). If it enters your mind to say that the verse means this literally, why do I need the Torah to specify: “A hand for a hand” (Deuteronomy 19:21)? The punishment will be whatever he purported to do to his brother. Learn from the extra phrase that the punishment is monetary restitution. If so, why do I need the phrase: “A foot for a foot” (Deuteronomy 19:21)? Since it is written: “A hand for a hand,” the Merciful One also wrote in the Torah: “A foot for a foot.”

[31] The Gemara presents another derivation: Abaye says that this principle is derived from that which was taught by the school of Ḥizkiyya, as the school of Ḥizkiyya taught that the Torah states: “An eye for an eye” (Exodus 21:24), and: “A life for a life” (Exodus 21:23), but not an eye and a life for an eye. And if it enters your mind to say that the verse means this literally, there could be times when you find a case where both an eye and a life are taken for an eye, i.e., when the one who caused the damage is so weak that as the court blinds his eye, his soul departs from his body.

[32] The Gemara objects: And what is the difficulty? Perhaps we evaluate the physical condition of the guilty party; if he can withstand this punishment, then we do blind his eye; if he cannot withstand this punishment, then we do not do so and he goes unpunished. And if we evaluate him and determine that he can withstand this punishment, and we do so to him and blind his eye, and yet his soul departs his body as a result, if he dies, he will die. Didn’t we learn in a mishna with regard to lashes (Makkot 22b): If one was sentenced to be flogged, and the court evaluated him and determined that he could withstand a certain number of lashes, and he dies at the hand of the officer tasked with administering the lashes, then the officer is exempt, even though the one who was flogged was not sentenced to the death penalty? Therefore, the Gemara does not accept the derivation of Abaye.

[33] The Gemara presents another derivation: Rav Zevid said in the name of Rabba that the verse states: “A wound for a wound” (Exodus 21:25), to teach that one who injures another must pay compensation for pain, even in a case where he pays compensation for damage. And if it enters your

mind that the phrase: “An eye for an eye” (Exodus 21:24), refers to the removal of an actual eye from the one who injured the other, then just as it is so that the injured party has pain from the loss of his eye, the one who caused him injury also has pain when the court removes his eye; why then does the Torah require that he pay compensation for pain as well?

34 The Gemara objects: And what is the difficulty? Perhaps there is a person who is delicate, so he has more pain, and there is a person who is not delicate, so he does not have the same amount of pain. Therefore, even if the court actually removes an eye for an eye, the one who caused the injury might still need to compensate the injured party for pain. What is the practical difference when the Torah states: “A wound for a wound” (Exodus 21:25)? It renders the one who caused the injury liable to give the injured party compensation for the difference between them in pain tolerance. Therefore, the Gemara does not accept the derivation of Rav Zevid.

35 The Gemara presents another derivation: Rav Pappa said in the name of Rava that concerning one who was injured by another, who must pay for damage, the verse states: “If he rises again, and walks outside upon his staff, then he that struck him shall be absolved; only he shall pay for his loss of livelihood, and shall cause him to be thoroughly healed” (Exodus 21:19), which teaches that one who injures another must pay compensation for medical costs even in a case where he pays compensation for damage. And if it enters your mind that the phrase: “An eye for an eye” (Exodus 21:24), is referring to an actual eye, then just as it is so that the injured party needs healing, the one who caused him the injury also needs healing after the court removes his eye; why, then, does the Torah require that he pay compensation for medical costs as well?

36 The Gemara objects: What is the difficulty? Perhaps there is one whose flesh heals quickly, and there is another whose flesh does not heal quickly. Therefore, even if the court actually removes an eye for an eye, the one who caused the injury might still need to compensate the injured party for medical costs. What is the practical difference when the Torah states: “And shall cause him to be thoroughly healed” (Exodus 21:19)? It renders the one who caused the injury liable to give the injured party compensation for the difference between their respective medical costs.

37 The Gemara presents another derivation: Rav Ashi said that the fact that one who injures another pays monetary restitution is derived from a verbal analogy of the word “for,” as written with regard to injuries caused to people from the word “for,” as written with regard to an ox that gored another ox. It is written here: “An eye for an eye” (Exodus 21:24), and it is written there, with regard to a forewarned ox that gored the ox of another: “He shall pay an ox for an ox” (Exodus 21:36). Just as there, the verse does not mean that the owner pays compensation with an actual ox, but rather pays monetary restitution, so too here, one who injures another pays monetary restitution.

38 The Gemara asks: What did you see that led you to derive the halakha from a verbal analogy of the word “for” as stated in the verse with regard to injuries to a person from the word “for” as stated with regard to an ox? Let us learn a verbal analogy of the word “for” as stated in the verse with regard to injuries to a person from the word “for” as stated with regard to a person, as it is written about one who kills another: “You shall give a life for a life” (Exodus 21:23). Just as there, the court punishes the guilty party by taking his actual life, so too here, why not say that the court should take his actual eye?

39 The Sages say in response: The halakha concerning damages is derived from a verse concerning damages, and the halakha concerning damages is not derived from a verse concerning death. The

Gemara objects: On the contrary, say that the halakha concerning a person is derived from a verse concerning a person, and the halakha concerning a person is not derived from a verse concerning animals.

40 Rather, Rav Ashi retracted his original statement and said a different derivation: The halakha is derived from a verbal analogy of the word “for” as written with regard to injuries from the word “for” as written with regard to a man who rapes a woman, who must pay monetary compensation. The verse states: “Then the man that lay with her shall give to the girl’s father fifty shekels of silver, and she shall be his wife, for he has afflicted her; he may not send her away all his days” (Deuteronomy 22:29). Based on this verbal analogy, the halakha concerning a person is derived from a verse concerning a person, and the halakha concerning damages is derived from a verse concerning damages.

41 § It is taught in a baraita that Rabbi Eliezer says: The verse that states: “An eye for an eye” (Exodus 21:24), is referring to an actual eye. The Gemara asks: Can it enter your mind that the verse is referring to an actual eye? Doesn’t Rabbi Eliezer understand the verse like all these tanna’im, who explained that this verse is referring to monetary payment?

42 Rabba said in response: Rabbi Eliezer means to say that the court does not appraise the injured party as a slave to assess the compensation for the injury. Abaye said to Rabba: Rather, like whom does the court appraise the injured party? If you say that the court appraises him like a freeman, does a freeman have monetary value? Rather, Rav Ashi said: Rabbi Eliezer means to say that the court does not appraise the injured party as if he were going to be sold as a slave, but rather, they appraise the one who caused him damage. The court appraises how much the latter’s value would be reduced were he to sustain the same injury he caused to the injured party, and he pays this amount as indemnity.

43 § The Gemara relates: There was a certain donkey that severed the hand of a child. The case came before Rav Pappa bar Shmuel. He said to the officers of the court: Go appraise the four types of indemnity for the child. Rava said to him: But didn’t we learn in the mishna that there are five types of indemnity? Rav Pappa bar Shmuel said to him: I was saying to include the indemnities the responsible party is liable to pay other than damage. Abaye said to him: But was this not a donkey that caused this injury, and the owner of a donkey that causes injury pays only for the damage? Rav Pappa bar Shmuel said to the officers of the court: Go appraise for the child the value of his damage. They said to him: But doesn’t the child need to be appraised as a slave? He said to them: Go appraise him as a slave.

44 The father of the child said to them: I do not want my child to be appraised as a slave, because this matter would demean him. They said to the father: But you are acting to the detriment of the child, as he will not receive compensation for his injury. He said to them: When he matures, I will appease him with my own money, rather than see him demeaned now.

45 The Gemara relates another incident: There was a certain ox that chewed [da’alas] the hand of a child, injuring him. The case came before Rava. He said to the officers of the court: Go appraise him as a slave. They said to Rava: But wasn’t it you, Master, who said: With regard to anyone who is appraised as a slave in order to determine the amount of a monetary penalty, that penalty is not collected by courts in Babylonia? Rava said to them: It is not necessary to appraise his value in order to force the guilty party to pay restitution, but it is nevertheless necessary to determine his value.

This is because if the injured party seizes property from the one who caused him injury, and that property is equal in value to what the payment should be, the court will not compel him to return it.

[46] The Gemara notes: Rava conforms to his standard line of reasoning, as Rava says: Compensation for damage to an ox caused by an ox and for damage to an ox caused by a person is collected by courts in Babylonia, but compensation for damage to a person caused by a person and for damage to a person caused by an ox is not collected by courts in Babylonia.

[47] The Gemara clarifies: What is different about compensation for damage to a person caused by a person and for damage to a person caused by an ox, that it is not collected in Babylonia? If you say that we require ordained judges to collect damages, and there are not any ordained judges in Babylonia, then so too, in a case of damage caused by an ox to an ox, and damage caused by a person to an ox,

[48] say that we require ordained judges [elohim] and there are not any ordained judges in Babylonia.

[49] Rather, what is different about damage to an ox caused by an ox and damage to an ox caused by a man, so that Babylonian judges can rule in these cases even though they are not ordained? The difference is that we, the judges of Babylonia, perform the agency of the judges of Eretz Yisrael, just as we do with regard to the halakhot of admissions and loans, as we are permitted to rule in those cases as agents of the ordained judges in Eretz Yisrael. If so, then in cases of damage caused to a person by a person and cases of damage caused to a person by an ox as well, why not say that the judges of Babylonia perform the agency of the judges of Eretz Yisrael, just as it is with regard to the halakhot of admissions and loans?

[50] The Sages state, with regard to the distinction: When we, the judges of Babylonia, perform the agency of the judges of Eretz Yisrael, we do so in matters where the ruling is clear to us; but in matters where the ruling is not clear to us, such as in the case of an injury to a person, which requires an appraisal, we do not perform the agency of the judges of Eretz Yisrael.

[51] The Sages state an objection: In cases of damage caused to an ox by an ox, and damage caused to an ox by a man, cases that we do judge in Babylonia, the ruling is also not clear to us, as the damage must be appraised. Rather, how is the judgment assessed in those cases? We say: Go out and see how much an ox is sold for in the marketplace, and thereby assess the value of the damages, without a detailed appraisal. If so, in the case of damage caused to a person by a person, and damage caused to a person by an ox, say too: Go out and see how a slave is sold in the slave market. Why, then, are these latter cases not judged in Babylonia?

[52] And furthermore, in the case of payment of double the principal incurred by a thief, and in the case of the fourfold or fivefold payment incurred by a thief who stole a sheep or ox and then slaughtered or sold the animal, where the payments are fixed and there is no need for an appraisal, we should perform the agency of the judges of Eretz Yisrael.

[53] The Sages state, with regard to the distinction: When we perform the agency of the judges of Eretz Yisrael, we do so only in cases where the guilty party pays monetary restitution for a loss he caused. But in cases of a penalty, such as the double, fourfold, or fivefold payments of a thief, we do not perform the agency of the judges of Eretz Yisrael.

[54] The Gemara asks: In cases of damage caused to a person by a person, where the liable party pays monetary restitution, should we perform the agency of the judges of Eretz Yisrael? The Gemara

answers: When we perform the agency of the judges of Eretz Yisrael, we do so only in cases that are common. Therefore, in cases of damage caused to a person by a person, cases that are uncommon, we do not perform the agency of the judges of Eretz Yisrael.

[55] The Gemara challenges: But accordingly, for indemnities paid to a woman for humiliation and degradation after being raped or seduced, a case that is common, we should perform the agency of the judges of Eretz Yisrael. The Sages say in response: Indeed, we do collect compensation for humiliation and degradation in Babylonia, as Rav Pappa collected four hundred dinars as compensation for humiliation when he judged these cases. The Gemara questions this explanation: But the other Sages do not agree with that ruling of Rav Pappa, as Rav Ḥisda sent this question to Rav Naḥman, asking if he should collect compensation for humiliation and degradation, and Rav Naḥman sent him the following reply: Ḥisda, Ḥisda, do you collect a penalty in Babylonia?

[56] Rather, explain the distinction this way: When we perform the agency of the judges of Eretz Yisrael, we do so only in a matter that is common and involves, i.e., the payment is for, a monetary loss. But in a matter that is common but does not involve a monetary loss, or in an uncommon matter which does involve a monetary loss, we do not perform the agency of the judges of Eretz Yisrael. Therefore, in a case of an injury caused to a person by a person, even though it involves a monetary loss, since it is uncommon, we do not perform the agency of the judges of Eretz Yisrael. In a case of humiliation, even though it is common, since it does not involve a monetary loss, we do not perform the agency of the judges of Eretz Yisrael.

[57] The Gemara challenges the halakha itself: But is it in fact the case that the courts in Babylonia collect restitution for damage caused to an ox by an ox? But doesn't Rava say: If an ox caused damage, the courts in Babylonia do not collect the compensation. The Gemara clarifies: To whom did the ox cause damage? If we say that it damaged a person, why did Rava specifically state his halakha in a case where there is an ox that damaged a person? Even in a case of a person who damaged a person, which is more common, the court does not collect the compensation in Babylonia. Rather, it is obvious that Rava meant that the ox damaged an ox. And Rava teaches: The court does not collect the compensation in Babylonia.

[58] The Sages say in response: There, Rava stated his ruling with regard to an innocuous ox, i.e., an ox that was not forewarned, whose owner pays for the damage as a penalty; and penalties are not collected in Babylonia. Here, Rava states his ruling with regard to a forewarned ox, and payment for damage it causes is not a penalty, but rather serves as compensation. The Gemara challenges: But doesn't Rava say: There are no forewarned oxen in Babylonia, as an ox can be forewarned only by ordained judges? The Sages say in response: This is a case where an ox was forewarned there, in Eretz Yisrael, and then its owners brought it here, to Babylonia.

[59] The Gemara objects: But this is an uncommon matter, as forewarned oxen are not frequently transported from Eretz Yisrael to Babylonia. And with regard to an uncommon matter, did you not say that we do not perform the agency of the judges of Eretz Yisrael? The Gemara answers: This is a case where the Rabbis from there, i.e., Eretz Yisrael, who are ordained, came and declared this ox forewarned, here, i.e., in Babylonia. The Gemara challenges this interpretation: Ultimately, this is an uncommon matter, and you say that with regard to an uncommon matter that we do not perform the agency of the judges of Eretz Yisrael.

[60] Rather, explain that when Rava says that courts in Babylonia collect restitution for damage caused by an ox, he means with regard to damage in the categories of Eating and Trampling, which are forewarned from the outset. All agree that since these are common forms of damage and involve monetary loss, the judges of Babylonia perform the agency of the judges of Eretz Yisrael and collect compensation for the damage.

[61] § The Gemara returns to its discussion of the mishna, which states: How is payment for pain assessed? If one burned another with a skewer or with a hot nail, or even if he burned him on his fingernail, where he would not cause a bruise that would affect the victim's value on the slave market, the court evaluates how much money a person with a similar threshold for pain as the victim is willing to take in order to be made to suffer in this way. The Gemara comments: This teaches that even when the pain is not in a place that causes damage to the injured party, the one who caused the injury must pay compensation. The Gemara asks: Who is the tanna who taught this statement? Rava said: This is the opinion of ben Azzai, as it is taught in a baraita: With regard to the verse: "Keviyya for keviyya, a wound for a wound, ḥabura for ḥabura" (Exodus 21:25), Rabbi Yehuda HaNasi says: A burn [keviyya] is the first term stated in the verse, and ben Azzai says: A bruise [ḥabura] is the first term stated in the verse.

[62] The Gemara explains the baraita: Ben Azzai certainly agrees that the first term in the verse, "keviyya," means a burn. With regard to what do they disagree? Rabbi Yehuda HaNasi holds that "keviyya" indicates an injury with no bruise, and that one would be liable to pay for injuring another even in that manner; therefore, when the Merciful One writes in the Torah: "Ḥabura," it is to reveal about the meaning of "keviyya" that if the burn also has a bruise, then yes, the one who caused the injury must pay compensation for pain; but if the burn has no bruise, then no, the one who caused the injury does not pay compensation for pain alone.

[63] And ben Azzai holds that "keviyya" indicates a burn that also has a bruise, and that one would be liable to pay for injuring another only in that manner; therefore, when the Merciful One writes in the Torah: "Ḥabura," it is to reveal about the meaning of "keviyya" that even if it is a burn with no bruise, the one who caused the injury must pay compensation for pain alone, even though there is no damage.

[64] Rav Pappa objects to Rava's explanation of the baraita: On the contrary, the opposite stands to reason, as Rabbi Yehuda HaNasi says: A burn [keviyya] is the first term stated in the verse, since he holds that "keviyya" indicates a burn that also has a bruise, and one would be liable to pay for injuring another only in that manner. Therefore, when the Merciful One writes in the Torah: "Ḥabura," it is to reveal about the meaning of "keviyya" that even if it is a burn with no bruise, the one who caused the injury must pay compensation for pain alone, even though there is no damage.

[65] Rav Pappa continues: And ben Azzai says that a bruise [ḥabura] is the first term stated in the verse, as he holds that "keviyya" indicates an injury with no bruise, and that one would be liable to pay for injuring another even in that manner. Therefore, when the Merciful One writes in the Torah: "Ḥabura," it is to reveal about the meaning of "keviyya" that if the burn also has a bruise, then yes, the one who caused the injury must pay compensation for pain; but if the burn has no bruise, then no, the one who caused the injury does not pay compensation for pain alone. And according to this explanation, the statements of Rabbi Yehuda HaNasi and ben Azzai with regard to the meaning of the terms in the verse are based on their final understanding of the verse. The term: The first term stated,

is referring to the understanding of the first term after the second term has been written, not what the understanding of the first term would have been if not for the addition of the second term. According to the explanation of Rav Pappa, the mishna here is in accordance with the opinion of Rabbi Yehuda HaNasi.

66 The Gemara offers another explanation of the dispute between Rabbi Yehuda HaNasi and ben Azzai: Alternatively, everyone agrees that “keviyya” indicates an injury whether there is a bruise or whether there is not a bruise. And here,

67 Rabbi Yehuda HaNasi and ben Azzai disagree over whether the hermeneutical principle of a generalization and a detail is applied with regard to a generalization and a detail that are distant from each other. When a generalization is followed by a detail, the halakha applies only in the case specified in the detail. The verse states: “Keviyya for keviyya, a wound for a wound, ḥabura for ḥabura” (Exodus 21:25). The word “keviyya,” as stated in the beginning of the verse, is a generalization that includes burns not accompanied by bruises as well as burns accompanied by bruises. “Ḥabura,” as stated at the end of the verse, is a detail of a burn that is accompanied by a bruise. The Torah distances the detail, “ḥabura,” from the generalization, “keviyya,” by stating the halakha of: “A wound for a wound” between them.

68 Rabbi Yehuda HaNasi holds that since there is an intervening phrase between the generalization and the detail, one does not derive the halakha from the verse concerning burns and bruises by employing the principle of a generalization and a detail. Therefore, the one who caused the injury is liable to pay compensation for pain in all cases of burns, even those that are not accompanied by bruises. And ben Azzai holds that one does derive the halakha from the verse concerning burns and bruises by employing the principle of a generalization and a detail, and therefore the one who caused the injury is liable to pay compensation for pain only if the burn is accompanied by a bruise. And if you would say: According to the opinion of Rabbi Yehuda HaNasi, why do I need the Torah to state the halakha of “ḥabura for ḥabura,” as that is included as a subset of “keviyya”? The phrase mentioning “ḥabura” is necessary to teach the halakha of additional money, i.e., in a case where someone caused a burn with a bruise, he pays additional compensation for the bruise beyond that for the burn.

69 § The mishna teaches: How is the payment for pain assessed? The court evaluates how much money a person with a similar threshold for pain as the victim is willing to take in order to be made to suffer in this way. The one who burned the victim must then pay this amount. The Gemara asks: How do we appraise pain in a case where the injured party also suffered personal injury?

70 Shmuel’s father says: The court evaluates how much money a person is willing to take to allow someone to sever his hand. The Gemara objects: Do you really mean to sever his hand? Wouldn’t this evaluation be not just for pain, but to include all five types of indemnity? Moreover, are we dealing with fools, who would accept money to have their hands severed? The Gemara answers: Rather, the court evaluates how much money a person would accept to allow someone to sever his already severed hand, which is of no use. The Gemara objects: In the case of his severed hand also, there is not pain alone, but there is both pain and humiliation, because it is an embarrassing matter for him if someone were to take a part of his flesh to throw it to dogs.

71 The Gemara answers: Rather, the court evaluates how much a person is willing to take to allow someone to sever his hand, which is already condemned by a written decree from the government to

be severed, changing the decree from having it severed by means of a drug, which is not accompanied by pain, to having it severed by means of a sword, which is accompanied by pain. The amount of money he would accept to have his hand severed by a sword instead of by the drug is his compensation. The Sages say in objection: Here too, one would not take money and cause himself pain in this way, so there is no indemnity to evaluate.

[72] The Gemara answers: Rather, the court evaluates how much a person would give to have someone sever his hand, which is already condemned by a written decree from the government to be severed, changing the decree from having it be severed by means of a sword, which is accompanied by pain, to having it be severed by means of a drug, which is not accompanied by pain.

[73] The Gemara objects: If this is the case, then this wording of the mishna: To take, is imprecise; it should have said: To give. Rav Huna, son of Rav Yehoshua, said: The mishna means that the court evaluates how much this one, the injured party, will take from that one, i.e., the one who caused the injury, based on what this man, the injured party, would have given to the government to have his hand severed by a drug rather than with a sword.

[74] § The mishna teaches: How is payment for medical costs assessed? If one struck another, then he is liable to heal him by paying for his medical costs. The Sages taught in a baraita (Tosefta 9:4): If growths appeared on the injured area due to the injury, and the wound reopened, then the one who caused the injury is again liable to heal him by covering his medical costs, and is liable to give him the value of his loss of livelihood while he recovers from the reopened wound. But if the growths that appeared are not due to the injury, he is not liable to heal him by covering his medical costs, and he is not liable to give him the value of his loss of livelihood.

[75] The baraita continues: Rabbi Yehuda says that even if the growths appeared due to the injury, he is liable to heal him by covering his medical costs, but he is not liable to give him the value of his loss of livelihood. And the Rabbis say: The one who caused the injury is not liable at all, because the Torah states the halakhot of compensation for his loss of livelihood and his medical costs together. This teaches that anyone who is liable to pay compensation for loss of livelihood is also liable to pay compensation for medical costs, and anyone who is not liable to pay compensation for loss of livelihood is also not liable to pay compensation for medical costs.

[76] The Gemara asks: With regard to what do they disagree? Rabba said: I found the Sages in the study hall of Rav when they were sitting and were stating an explanation: Here, Rabbi Yehuda and the Rabbis disagree about whether a wound may be wrapped in a bandage, i.e., whether one is permitted to bandage his wound to lessen the pain, at the risk of causing damaging side effects.

[77] Rabba explains: The Rabbis, i.e., the first tanna in the baraita, hold that a wound may be wrapped in a bandage. Consequently, if the bandage causes side effects which lead the injured party to incur additional medical expenses, those expenses are considered to have resulted from the original injury. And Rabbi Yehuda holds that a wound may not be wrapped in a bandage. Therefore, with regard to medical costs, about which the verse repeated the obligation to pay them, by stating: “And shall cause him to be thoroughly healed [verappo yerappe]” (Exodus 21:19), the one who caused the injury is liable to pay compensation. But for loss of livelihood, about which the verse did not repeat the obligation to pay it, the one who caused the injury is not liable to pay compensation.

[78] Rabba continues: And I said to them that if Rabbi Yehuda were to hold that a wound may not be wrapped in a bandage, then the one who caused the injury should also not be liable to pay

compensation for medical costs, as he is not liable to compensate the injured party for damage resulting from his own irresponsible behavior. Rather, the disagreement is as follows: Everyone agrees that a wound may be wrapped in a bandage, but may not be wrapped in an excessive bandage.

79 He explains the dispute: Rabbi Yehuda holds that since a wound may not be wrapped in an excessive bandage, then with regard to medical costs, about which the verse repeated the obligation to pay them, by stating: “Verappo yerappe” (Exodus 21:19), the one who caused the injury is liable to pay compensation. But for loss of livelihood, about which the verse did not repeat the obligation to pay, the one who caused the injury is not liable to pay compensation. And the Rabbis, i.e., the first tanna in the baraita, hold: Since the verse repeated the obligation to pay compensation for medical costs, one is also liable to pay compensation for loss of livelihood, which is juxtaposed to the obligation to pay for medical costs, as the verse states: “Only he shall pay for the loss of his time, and shall cause him to be thoroughly healed.”

80 The Gemara comments: And Rabbi Yehuda holds that even though medical costs and loss of livelihood are juxtaposed, the one who caused the injury is not liable to pay compensation for loss of livelihood in this case, because the Merciful One restricted it in the Torah, as the verse states: “Only he shall pay for his loss of livelihood, and shall cause him to be thoroughly healed” (Exodus 21:19). “Only” is a restricting term. And the Rabbis, who hold that one must pay for loss of livelihood in this case as well, hold that the word “only” is coming to exclude growths that were not due to the injury, with regard to which the one who caused the injury is exempt from liability.

81 The Gemara asks: And according to the opinion of the latter Rabbis in the baraita, who say: Anyone who is liable to pay compensation for loss of livelihood is liable to pay compensation for medical costs, and anyone who is not liable to pay compensation for loss of livelihood is not liable to pay compensation for medical costs, why do I need, i.e., how do I account for, the fact that the verse repeated the obligation to pay medical costs? The Gemara answers: It is necessary for that which the school of Rabbi Yishmael taught. As it is taught in a baraita that the school of Rabbi Yishmael says: When the verse states: “And shall cause him to be thoroughly healed [verappo yerappe]” (Exodus 21:19), it is derived from here that permission is granted to a doctor to heal, and it is not considered to be an intervention counter to the will of God.

82 § The Sages taught in a baraita: From where is it derived that if growths appeared due to the injury, and the wound reopened, then the one who caused the injury is again liable to heal him by covering his medical costs, and is liable to give him the value of his loss of livelihood while he recovers from the reopened wound? The verse states: “And he shall cause him to be thoroughly healed” (Exodus 21:19). One might have thought that this is the halakha even if the growths were not due to the injury. Therefore, the verse states: “Only he shall pay for his loss of livelihood,” in order to exclude this case. This is in accordance with the opinion of the first tanna in the previous baraita. Rabbi Yosei bar Yehuda says: Even if the growths appeared due to the injury, the one who caused the injury is exempt, as it is stated: “Only.”

83 There are those who say that Rabbi Yosei bar Yehuda says: Even if the growths appeared due to the injury, the one who caused the injury is completely exempt from paying compensation, both for medical costs and loss of livelihood. And this is in accordance with the opinion of the latter Rabbis in the previous baraita. And there are those who say that Rabbi Yosei bar Yehuda says: Even if the growths appeared due to the injury, the one who caused the injury is exempt from paying

compensation for loss of livelihood, but is liable to pay compensation for medical costs. In accordance with whose opinion is this statement? It is in accordance with the opinion of his father, Rabbi Yehuda.

84 The Gemara analyzes the statement of the baraita: The Master said: One might have thought that this is the halakha even if the growths were not due to the injury. Therefore, the verse states: “Only he shall pay for his loss of livelihood,” to teach that he is exempt in this case. The Gemara asks: Is there a need for the verse to teach that he is exempt in the case of growths that were not due to the injury?

85 The Sages say: What did the baraita mean when it said that the growths were not due to the injury? As it is taught in a baraita: In the case of one who violated his doctor’s instructions and ate honey or any type of sweet food, which the doctor had instructed him not to eat because of the fact that honey or any type of sweet foods are detrimental to the recovery from the injury; and his injury developed garguteni; one might have thought that the one who caused the injury should be liable to heal him by covering his medical costs. Therefore, the verse states: “Only,” to teach that he is exempt in this case. The Gemara asks: What is the meaning of garguteni? Abaye said: Necrosis. What is its remedy? Crystalline ice plant, and wax, and wine dregs.

86 § The Gemara presents several halakhot concerning compensation for medical costs: And if the one who caused the injury says to the injured party: I will heal you myself, as I am a doctor; the injured party may say to him: You are to me as a predatory lion, in that I fear you and do not trust you to heal me. And if the one who caused the injury says to the injured party: I will bring a doctor who heals for no cost, so that I will not need to pay for your medical costs; the injured party may say to him: A doctor who heals for no cost is worth nothing.

87 And if the one who caused the injury says to the injured party: I will bring you a doctor from a distant place, the injured party may say to him: A doctor from a distant place blinds the eye. A local doctor has an incentive to ensure that the patient fully heals, while a doctor from a distant place has no incentive to monitor the patient once he has received his fee.

88 And if that one, the injured party, says to the one who caused him injury: Give the money to me and I will take responsibility for healing myself; the one who caused him the injury may say to him: You will be negligent with yourself and you will take more from me than was originally necessary. And if the injured party says to the one who caused him injury: Settle a fixed sum for me to cover my medical costs, and I will take care of my own recovery; the one who caused him the injury may say to him: All the more so with this proposal is there a concern that you will be negligent with yourself, as you will wish to profit and you will not spend the money on your recovery, and people will call me: An ox that causes damage, because I caused an injury from which you did not recover.

89 § With regard to compensation for pain, medical costs, loss of livelihood, and humiliation, the Sages taught in a baraita: And all of these types of indemnity are paid in a case where the one who caused injury must also pay compensation for damage. The Gemara asks: From where are these matters derived? Rav Zevid said in the name of Rava: The verse states: “A wound for a wound” (Exodus 21:25), to teach that the one who caused injury is liable to give compensation for pain in a case of damage.

90 The Gemara asks: But isn’t this verse necessary to teach an additional halakha:

[91] This serves to include in the category of those liable to pay compensation one who causes injury unwittingly just as one who causes injury intentionally is liable, and one who causes injury due to circumstances beyond his control just as one who causes injury willingly. The Gemara answers: If so, and the verse teaches only this, let the verse write the more succinct phrase: A wound [petza] for a wound [befatza]; what is taught by the expanded phrase: "A wound [petza] for a wound [taḥat patza]"? Conclude two conclusions from the verse, that the one who caused the injury is liable to pay compensation regardless of how he caused the injury, and that he must pay compensation for pain in addition to compensation for damage.

[92] With regard to compensation for medical costs in a case where one pays compensation for damage, Rav Pappa said in the name of Rava that the verse states: "He shall cause him to be thoroughly healed [verappo yerappe]" (Exodus 21:19), and the doubled term teaches that the one who caused the injury is liable to give monetary compensation for medical costs in a case of compensation for damage.

[93] The Gemara challenges: This verse is necessary for teaching a different halakha, that which the school of Rabbi Yishmael taught. As the school of Rabbi Yishmael taught: When the verse states: "Verappo yerappe," from here it is derived that permission is granted to a doctor to heal. The Gemara answers: If so, let the verse write: Verofeh yerappe, meaning: And a doctor shall heal. Learn from the phrase employed that the one who caused the injury is liable to give monetary compensation for medical costs in a case of damage.

[94] The Gemara challenges: But it is still necessary for the halakhot that we stated previously, i.e., it was necessary for the verse to repeat the language of healing, as the Gemara explained. The Gemara answers: If so, let the verse say one of the two words twice, either: Rappo rappo, or: Yerappe yerappe. What is taught by repeating the language with a change: "Verappo yerappe"? Learn from this wording that the one who caused the injury is liable to give monetary compensation for medical costs in a case of damage.

[95] The baraita stated that compensation for pain, medical costs, loss of livelihood, and humiliation are paid even where the one who caused the injury pays compensation for damage. The Gemara notes: By inference, it must be that you find these examples of cases where the one who caused an injury must pay compensation for these indemnities that are not in a case of damage. The Gemara asks: How would you find examples of these cases that are not in a case of damage?

[96] The Gemara answers: An example of a case where one must pay compensation for pain alone is as that which the mishna teaches explicitly: How is payment for pain assessed? If he burned another with a skewer or with a hot nail, or even if he burned him on his fingernail, which is a place where he does not cause a bruise, i.e., there was no personal injury, only pain, the court evaluates the monetary value of the pain. An example of a case where one must pay compensation for medical costs alone is where some body part was hurting and another came and brought him a strong drug, and it whitened his flesh; the halakha is that the second person must give him another drug to restore the color to his flesh, even though he caused no damage, i.e., loss of function.

[97] An example of a case where one must pay compensation for loss of livelihood alone is a case of one who locked another in a room [be'inderona] and forced him to be idle, but did not cause him any personal injury. An example of a case where one must pay compensation for humiliation alone is a case of one who spit in the face of another, without causing any personal injury.

98 § The mishna teaches: How is payment for loss of livelihood assessed? The court views the injured party as though he were a watchman of cucumbers. The Sages taught in a baraita (Tosefta 9:2): How is payment for loss of livelihood assessed? The court views the injured party as though he were a watchman of cucumbers. And if you say: But the standard of justice was compromised. The Gemara interjects to clarify this statement of the baraita: It appears to be compromised, as when this man will recover, he will not collect the wage of a watchman of cucumbers, but rather he will carry buckets and collect a higher wage, or he will travel as an agent and collect an even higher wage. The assessment of loss of livelihood should also account for one of these types of labor.

99 The Gemara returns to quoting the baraita: The standard of justice was not compromised, because the one who caused him injury already gave him the value of his hand or the value of his leg, and that compensation took into account the professional opportunities he lost due to the injury.

100 Rava says: If one severed the hand of another, he gives him the value of his hand as compensation for damage, and for loss of livelihood the court views the injured party as though he were a watchman of cucumbers. If one broke the leg of another, he gives him the value of his leg as compensation for damage. And for loss of livelihood the court views the injured party as though he were a watchman at the opening to a courtyard, because he cannot work even as a watchman of cucumbers, as that requires walking around the cucumber field.

101 Rava continues: If one blinded the eye of another, he gives him the value of his eye as compensation for damage; and as for loss of livelihood, the court views the injured party as though the one who caused the injury caused him to grind with a mill, as even a blind person can do this. If one deafened another, he gives him his entire value as compensation for damage, because one lacking the ability to hear is not fit for any form of employment.

102 § Rava raises a dilemma: If one severed the hand of another, and the court did not yet evaluate him to determine the compensation, and then he broke his leg, and the court did not yet evaluate him for this additional injury, and then he blinded his eye, and the court did not yet evaluate him for this further injury; and ultimately he deafened him, what is the halakha? Do we say: Since the court did not evaluate him each time, one evaluation is sufficient for the court to determine his compensation, and the one who caused him injury must give him his entire value at once, as that is the compensation for deafening him? Or perhaps we say: We evaluate each injury one by one, and we obligate the one who caused him injury to give him compensation for each.

103 Rava explains the dilemma: The difference is with regard to whether the one who caused the injury must give him monetary compensation for pain and humiliation for each and every one of the injuries. Although he does not give him monetary compensation for damage, medical costs, and loss of livelihood for each and every one of the injuries, since, ultimately, he is giving him his entire value after deafening him, he is like someone who killed him, and therefore he gives him his entire value and no more; in any event, must he give compensation for pain and humiliation for each and every one of the injuries, as the injured party had pain and humiliation each time?

104 Rava continues: And if you say as a resolution to this dilemma that since the fact is that the court had not evaluated him after each injury, the one who caused him injury pays him his entire value all together, then there is another dilemma: If the court had evaluated him after each injury but the one who caused the injury had not paid the compensation before he deafened him, what is the halakha? Do we say: Since it is so that the court evaluated him, the one who caused him injury is required to

give him the compensation for each and every one of the injuries? Or perhaps, since the one who caused him injury had not yet paid those compensations before deafening him, he must give him his entire value. The dilemma shall stand unresolved.

[105] Rabba raises a dilemma: If one injured another, causing him loss of livelihood that diminishes his monetary value, what is the halakha? The Gemara explains: What are the circumstances of this case? For example, in a case where he struck him on his hand and his hand became weakened so that he could not work, but his hand will ultimately return to its original health, what is the halakha? Should one say: Since his hand will ultimately return to its original health, he does not need to give him any compensation whatsoever for the damage? Or perhaps, in any event, he has diminished his value for now.

[106] Come and hear a resolution to this dilemma from a mishna (87a): One who strikes his father or his mother and did not cause them to have a bruise, and who therefore is not liable to receive court-imposed capital punishment, which is the penalty for one who causes his parent a bruise, and one who injures another on Yom Kippur, and therefore is liable for excision from the World-to-Come [karet] and not liable to receive court-imposed capital punishment,

[107] is liable to pay all of the five types of indemnity.

[108] The Gemara explains: In this case of one who injured his parent but did not bruise him, what are the circumstances? Is it not a case where he struck him on his hand, and it will eventually return to its original health? And with regard to this case that mishna teaches: He is liable to pay all of the five types of indemnity. If so, this resolves Rabba's dilemma.

[109] The Sages object and say: Here we are dealing with a case where he deafened his parent by striking him, but did not bruise him. Since his father's hearing loss is permanent, he is liable to pay all five types of indemnity, and this is not relevant to Rabba's dilemma. The Gemara objects: But doesn't Rabba himself say: One who deafens his father is executed, even though no bruise is visible, because it is impossible for deafening to occur without a bruise? It is certain that a drop of blood fell into his ear from the blow, even if it is not visible from the outside.

[110] Rather, it must be that here we are dealing with a case where he shaved his father's hair without causing a bruise. In a case where he shaved him, his hair will return, and this is an example of our dilemma, i.e., of an injury to a limb that will return to its original health. If so, this resolves Rabba's dilemma.

[111] The Sages object and say: It is possible that here we are dealing with a case where he smeared his father with a depilatory agent [nasha] that caused his hair to fall out, so that his hair will not return.

[112] The Gemara explains how one could be liable for each of the five types of indemnity by smearing a depilatory agent: The father experiences pain in a case where he has fissures on his head and has pain from those fissures. He incurs medical costs because he requires healing for the fissures. He incurs loss of livelihood in a case where he would dance in taverns to earn money, which requires him to make various gestures with his head and his hair while dancing; and now he cannot gesture because of those fissures on his head. He experiences humiliation, because there is no humiliation greater than losing one's hair.

[113] The Gemara comments: And the matter that is a dilemma for Rabba is obvious to Abaye on this side of the dilemma, and to Rava on that side of the dilemma; they each resolved the dilemma but

with opposing conclusions. As it was stated: If one struck another on his hand and the hand was weakened, but it will ultimately return to its original health, Abaye says: He gives him compensation for his major loss of livelihood, i.e., the decrease in his value, due to his temporary paralysis, as measured by his price on the slave market; and his minor loss of livelihood, i.e., the money he would have earned while idle during his recovery. And Rava says: He gives him only the value of his loss of livelihood for each and every day, and he does not give him the full value of his hand.

[114] § The Gemara presents another dispute between Abaye and Rava. It was stated: With regard to one who severs the hand of a Hebrew slave who belongs to another, Abaye says: He gives compensation for the major loss of livelihood to the slave, and compensation for the minor loss of livelihood to the master. Rava says: All the compensation shall be given to the slave, and land shall be purchased with the money; and the master garners the profits from the land for the duration of the slave's term of slavery.

[115] The Gemara comments: It is obvious that if one injured a slave and thereby reduced the slave's value for the slave himself, but he did not reduce the slave's value for his master; the Gemara interjects: What are the circumstances where this is possible? This is possible in a case where he split the tip of his ear or the tip of his nostril, which does not impact the slave's ability to perform labor. The Gemara returns to continue the statement: In such a case, all of the compensation goes to the slave himself. If the injury reduced the slave's value for his master, then this is the case of the dispute of Abaye and Rava.

[116] § The mishna teaches: How is payment for humiliation assessed? It all depends on the stature of the one who humiliates the other and the one who is humiliated. The Gemara asks: Whose opinion is expressed in the mishna? It is not the opinion of Rabbi Meir, and it is not the opinion of Rabbi Yehuda. Rather, it is the opinion of Rabbi Shimon.

[117] These opinions are as we learned in a baraita: And in all of those cases of Jews who were humiliated, regardless of their individual stature, they are viewed as though they were freemen who lost their property and were impoverished, and their humiliation is calculated according to this status, as they are the sons of Abraham, Isaac, and Jacob, and are all of prominent lineage. Humiliation is assessed according to a standard formula, regardless of who was humiliated. This is the statement of Rabbi Meir. Rabbi Yehuda says: The court views each person according to his stature, the great person according to his greatness, and the small person according to his smallness. Rabbi Shimon says: In a case of wealthy people, the court views them as though they were freemen who lost their property; in a case of poor people, the court views them as the least among the poor. This lessens the payment of compensation for the one who caused humiliation.

[118] The Gemara explains: Whose opinion is expressed in the mishna? Now, if it is the opinion of Rabbi Meir, the mishna teaches: It all depends on the stature of the one who humiliates the other and the one who is humiliated, and Rabbi Meir holds in the baraita that all of those who were humiliated are considered alike to one another. And if it is the opinion of Rabbi Yehuda, a mishna teaches (86b): One who humiliates a blind person is liable, whereas Rabbi Yehuda says in a baraita: A blind person does not have humiliation. Rather, is the opinion expressed in the mishna not that of Rabbi Shimon?

[119] The Gemara rejects this conclusion: You can even say that the mishna expresses the opinion of Rabbi Yehuda. When Rabbi Yehuda said that a blind person does not have humiliation, he meant with regard to another taking compensation for humiliation from him. A blind person is not fully aware of

what he does, and one can be rendered liable for causing humiliation only if he intended to humiliate the other. But with regard to giving him compensation for humiliation, he is given compensation.

120 The Gemara challenges this explanation of the opinion of Rabbi Yehuda: But from the fact that the latter clause of that mishna teaches that one who humiliates a sleeping person is liable but a sleeping person who humiliates another is exempt, and does not teach that a blind person who humiliates another is exempt, by inference, the mishna teaches that there is no difference this way, and no difference that way; whether a blind person humiliates another or is humiliated, the one who causes humiliation is liable to pay compensation. Rather, it is clear that the mishna is in accordance with the opinion of Rabbi Shimon.

121 § The Gemara analyzes a related baraita in light of the three opinions cited earlier. Who is the tanna who taught this baraita, as the Sages taught: If one intended to humiliate a small man [katan] and instead humiliated a great man [gadol], he gives the money he would have owed for the small man's humiliation to the great man. If one intended to humiliate a slave and instead humiliated a freeman, he gives the money he would have owed for the slave's humiliation to the freeman. Whose opinion is this? It is not the opinion of Rabbi Meir, and not the opinion of Rabbi Yehuda, and not the opinion of Rabbi Shimon.

122 The Gemara explains why this is not in accordance with the opinion of any of these tanna'im: It enters your mind to say that when the baraita is referring to a katan, it means that he is small in terms of his property, i.e., he is poor; and when the baraita is referring to a gadol, it means that he is great in terms of his property, i.e., he is wealthy. If this baraita is stating the opinion of Rabbi Meir, doesn't he say in the baraita that all of those who were humiliated are considered similar to one another? And if it is stating the opinion of Rabbi Yehuda, doesn't he say: Slaves have no humiliation; whereas the baraita discusses the compensation owed to a slave. And if it is stating the opinion of Rabbi Shimon, doesn't he say: If one intended to humiliate this one, and instead humiliated that one, he is exempt?

123 The Gemara explains Rabbi Shimon's statement: What is the reason for exempting one who humiliated a person whom he did not intend to humiliate? The halakha of humiliation is like the halakha of killing. Just as in a case of killing, the murderer is not executed unless he intended to kill the victim specifically, as it is written: "And he lies in wait for him, and rises up against him" (Deuteronomy 19:11), which means he is not liable unless he intended to kill him specifically, so too, in a case of humiliation, the one who humiliated is not liable unless he intended to humiliate him specifically, as it is written: "And she put forth her hand, and took him by his genitals" (Deuteronomy 25:11); this teaches that one is not liable for humiliation unless he intended to humiliate him specifically.

124 The Gemara returns to analyzing the baraita: Actually, the baraita is in accordance with the opinion of Rabbi Yehuda, and when Rabbi Yehuda said: Slaves have no humiliation, he meant that one would not be liable to give them compensation for humiliation; but if the court needs to appraise compensation for the humiliation of others according to their humiliation, and thereby determine the compensation one owes to a freeman when he intended to humiliate a slave, then we do appraise according to their humiliation.

125 The Gemara presents an alternative explanation of the baraita: And if you wish, say instead: You can even say that the baraita is in accordance with the opinion of Rabbi Meir. Do you maintain that when the baraita is referring to a gadol, it means he is great in terms of his property, and when the

baraita is referring to a katan, it means he is small in terms of his property? No, rather, when the baraita is referring to a gadol, it means an actual adult [gadol]; and when the baraita is referring to a katan, it means an actual minor [katan].

126 The Gemara asks: But is a minor subject to humiliation? The Gemara answers: Yes, as Rav Pappa said with regard to another halakha: The case involves a minor who has reached a stage in which when others humiliate him he feels humiliation; here, too,

127 say that the baraita discusses a case involving a minor who has reached a stage in which when others humiliate him he feels humiliation.

128 MISHNA: One who humiliates a naked person, or one who humiliates a blind person, or one who humiliates a sleeping person is liable, but a sleeping person who humiliates another is exempt. If one fell from the roof onto another person, and thereby caused him damage and humiliated him, then the one who fell is liable for the indemnity of damage, since a person is always considered forewarned, and exempt from the indemnity of humiliation, since a person is not liable for humiliation unless he intends to humiliate the other person.

129 GEMARA: The Sages taught in a baraita (Tosefta 9:12): If one humiliated another who was naked, he is liable, but the magnitude of humiliation felt when he humiliated him while naked is not comparable to the magnitude of humiliation felt had he humiliated him while clothed, since one who chooses to be naked is less sensitive to humiliation. Similarly, if one humiliated another in a bathhouse, he is liable, but the magnitude of humiliation felt when he humiliated him in a bathhouse is not comparable to the magnitude of humiliation felt had he humiliated him in the marketplace.

130 The Gemara clarifies the baraita: The Master says: If one humiliated another who was naked, the one who humiliated him is liable. The Gemara asks: Is a naked person subject to humiliation? Is it possible to humiliate him in this state? Rav Pappa said: What does the baraita mean when it says: Naked? It means a case where a gust of wind came and lifted his clothes, and then this one came and raised them higher and humiliated him.

131 The baraita also teaches: If one humiliated another in a bathhouse, he is liable. The Gemara asks: Is one in a bathhouse subject to humiliation? In a place where people stand naked, can a person be humiliated by having his clothes removed? Rav Pappa said: This is a case where he humiliated him not in an actual bathhouse, but on the bank of the river, which is a place where people behave more discreetly when they undress.

132 § Rabbi Abba bar Memel raises a dilemma: If one humiliated another who was asleep, and he died before he awoke, so he never knew of his humiliation, what is the halakha? The Gemara asks: What is his dilemma? Rav Zevid said that this is his dilemma: Is the compensation for humiliation due to embarrassment, i.e., that his feelings suffer because of what he experienced, and this one died and does not have that feeling of embarrassment? Or perhaps the compensation for humiliation is due to disgrace, i.e., lessening of his honor in front of other people, and he disgraced him.

133 The Gemara suggests: Come and hear a resolution to the dilemma from a baraita: Rabbi Meir says: A deaf-mute and a minor have the right to receive compensation for humiliation; an imbecile does not have the right to receive compensation for humiliation. The Gemara explains: Granted, if you say that the compensation is due to disgrace, this explanation is consistent with that which the

baraita teaches concerning a minor, who can be disgraced; but if you say that the compensation is due to embarrassment, is a minor subject to humiliation?

[134] The Gemara rejects this suggestion: Rather, what do you mean by stating that the compensation is due to disgrace? If compensation is granted due to disgrace, then an imbecile should receive compensation as well. The Sages say in response: With regard to an imbecile, you can have no greater humiliation than this. It is impossible to degrade him further.

[135] The Gemara returns to the original suggestion: In any case, resolve from this baraita that the compensation is due to disgrace, as, if it is due to embarrassment, is a minor subject to embarrassment? The Gemara rejects this proof: This is as Rav Pappa said with regard to a different halakha, cited later by the Gemara: The case involves a minor who has reached an age in which when others humiliate him he feels humiliation; here, too, say that this baraita discusses a case involving a minor who has reached an age in which when others humiliate him he feels humiliation. This is how Rav Zevid understands the dilemma of Rabbi Abba bar Memel.

[136] Rav Pappa explains Rabbi Abba bar Memel's dilemma differently: Rav Pappa said that this is his dilemma: Is the compensation for humiliation due to his own embarrassment, and this one died and was not embarrassed? Or perhaps the compensation for humiliation is due to his family's humiliation, and therefore the one who humiliated him must pay compensation to his family?

[137] The Gemara suggests: Come and hear a resolution from the same baraita: A deaf-mute and a minor have the right to receive compensation for humiliation; an imbecile does not have the right to receive compensation for humiliation. The Gemara explains: Granted, if you say that the compensation is due to his family's humiliation, this explanation is consistent with that which the baraita teaches concerning a minor, whose family can experience humiliation based on what was done to their relative; but if you say that the compensation is due to his own embarrassment, is a minor subject to humiliation?

[138] The Gemara rejects this suggestion: Rather, what do you mean by stating that the compensation is due to the humiliation of members of his family? If this is the case, an imbecile should receive compensation as well. The Sages say in response: If one is an imbecile, you can have no greater humiliation than this.

[139] The Gemara returns to the original suggestion: In any case, resolve from this that the compensation is due to his family's humiliation, as, if it is due to embarrassment, is a minor subject to embarrassment? Rav Pappa said: Yes, he is subject to embarrassment, as the baraita discusses a case involving a minor who has reached an age in which when others humiliate him he feels humiliation.

[140] The Gemara adds: And this distinction is taught in a baraita, as Rabbi Yehuda HaNasi says: A deaf-mute has the right to receive compensation for humiliation; an imbecile does not have the right to receive compensation for humiliation. With regard to a minor, sometimes he has the right to receive compensation for humiliation, and sometimes he does not have the right. Why is this so? This case where he has the right to receive compensation for humiliation is one involving a minor who has reached the stage in which when others humiliate him he feels humiliation; that case where he does not have the right to receive compensation for humiliation is one involving a minor who has not reached the stage in which when others humiliate him he feels humiliation.

141 § The mishna teaches: One who humiliates a blind person is liable to pay compensation. The Gemara comments: The mishna is not in accordance with the opinion of Rabbi Yehuda, as it is taught in a baraita that Rabbi Yehuda says: A blind person who humiliated another does not have liability for humiliation. And in this way Rabbi Yehuda deemed a blind person exempt from being among those liable to be exiled for killing unintentionally, and from being among those liable to receive lashes, and from being among those liable to receive court-imposed capital punishment, if he transgresses a prohibition for which the Torah mandates one of these punishments.

142 The Gemara asks: What is the reasoning of Rabbi Yehuda? He derives a verbal analogy to: “Your eye shall not pity” (Deuteronomy 25:12), stated with regard to humiliation, from: “Your eye shall not pity” (Deuteronomy 19:21), stated with regard to conspiring witnesses. The analogy teaches that just as there, with regard to the halakha of conspiring witnesses, blind people are not included, as blind people cannot see events occur in order to testify, so too here, with regard to the halakha of compensation for humiliation, blind people are not included.

143 The Gemara continues its explanation: Why did Rabbi Yehuda deem a blind person exempt from being among those liable to be exiled for killing unintentionally? As it is taught in a baraita that the verse states with regard to an unintentional killing: “Or with any stone, whereby one may die, seeing him not” (Numbers 35:23), this formulation serves to exclude a blind person; this is the statement of Rabbi Yehuda. Rabbi Meir says: The verse serves to include a blind person.

144 The Gemara explains the dispute: What is the reasoning of Rabbi Yehuda? He would say to you: The verse states with regard to an unintentional killing, without any further limiting clause: “As when one goes into the forest with his neighbor to hew wood” (Deuteronomy 19:5), and this includes even a blind person; therefore, the Merciful One wrote in the Torah: “Seeing him not” (Numbers 35:23), to exclude a blind person.

145 And what is the reasoning of Rabbi Meir? The Merciful One wrote in the Torah: “Seeing him not” (Numbers 35:23), apparently to exclude one who happened to not see the one he killed; and the Merciful One wrote in the Torah: “Who kills his neighbor unawares” (Deuteronomy 19:4), apparently to exclude a blind person, who is not aware of where others are standing. This is a restriction following a restriction, and there is a hermeneutical principle that a restriction following a restriction serves only to amplify the halakha and include additional cases. Therefore, a blind person is included in the halakha of those liable to be exiled for unintentional killing.

146 The Gemara asks: And what would Rabbi Yehuda respond to this reasoning? The Gemara explains: That verse: “Who kills his neighbor unawares,” does not exclude one who could not see, but rather, it comes to exclude one who was intending to kill a particular person and unintentionally killed someone else. That killer is not exiled.

147 The Gemara continues to explain the opinion of Rabbi Yehuda. Why did he deem a blind person exempt from being among those liable to receive court-imposed capital punishment? That halakha is derived by means of a verbal analogy to: “But if he smote him with an instrument of iron so that he died, he is a killer; the killer shall be put to death” (Numbers 35:16), written with regard to capital punishment, from: “You shall appoint for yourselves cities, to be cities of refuge for you, that a killer who killed any person unintentionally may flee there” (Numbers 35:11), written with regard to those liable to be exiled.

[148] Why did Rabbi Yehuda deem a blind person exempt from being among those liable to receive lashes? That halakha is derived by means of a verbal analogy to: “Then it shall be, if the guilty one deserves to be beaten” (Deuteronomy 25:2), written with regard to lashes, from: “Moreover you shall take no ransom for the life of a murderer, that is guilty of death” (Numbers 35:31), written with regard to those liable to receive court-imposed capital punishment.

[149] The Gemara presents another statement of Rabbi Yehuda: It is taught in another baraita that Rabbi Yehuda says: A blind person does not have humiliation,

[150] and so did Rabbi Yehuda exempt a blind person from all judgments of civil law that are in the Torah. The Gemara explains: What is the reasoning of Rabbi Yehuda? The verse states with regard to an unintentional killing: “Then the congregation shall judge between the smiter and the avenger of blood, according to these laws” (Numbers 35:24), to teach that anyone who is subject to the halakha of a smiter and to the halakha of an avenger of blood is subject to civil laws, and anyone who is not subject to the halakha of a smiter or to the halakha of an avenger of blood, including a blind person, is not subject to civil laws.

[151] The Gemara presents another statement of Rabbi Yehuda. It is taught in another baraita that Rabbi Yehuda says: A blind person does not have, i.e., receive, compensation for humiliation, and so did Rabbi Yehuda exempt a blind person from all mitzvot that are stated in the Torah. Rav Sheisha, son of Rav Idi, said: What is the reasoning of Rabbi Yehuda? The verse states: “And this is the commandment, statutes, and laws” (Deuteronomy 6:1), to teach that anyone who is subject to civil laws is also subject to the commandments and statutes, and anyone who is not subject to civil laws, including a blind person, is also not subject to the commandments and statutes.

[152] Rav Yosef, who was blind, said: At first, I would say: If I hear one who says that the halakha is in accordance with the opinion of Rabbi Yehuda, who says: A blind person is exempt from the mitzvot, then I will host a festive day for the Sages. What is the reason? It is that I am not commanded and nevertheless I perform mitzvot.

[153] Rav Yosef continues. But now that I heard this statement of Rabbi Ḥanina, as Rabbi Ḥanina says: One who is commanded and performs a mitzva is greater than one who is not commanded and performs it, I say: If I hear one who says to me that the halakha is not in accordance with the opinion of Rabbi Yehuda, then I will host a festive day for the Sages. What is the reason? It is that as I am commanded, I have more reward.

[154] MISHNA: This halakha is a stringency with regard to a person who caused injury, compared to the halakha with regard to an ox that caused injury: The halakha is that the person pays compensation for damage, pain, medical costs, loss of livelihood, and humiliation; and if he caused a woman to miscarry he also pays compensation for miscarried offspring, as the verse states (see Exodus 21:22). But in the case of an ox that caused injury, the owner pays only compensation for damage, and he is exempt from paying compensation for miscarried offspring.

[155] The mishna continues: One who strikes his father or his mother but did not cause them to have a bruise, and therefore is not liable to receive court-imposed capital punishment, and one who injures another on Yom Kippur, the punishment for which is not court-imposed capital punishment, is liable to pay for all of the five types of indemnity.

156 One who injures a Hebrew slave is liable to pay for all of the five types of indemnity. This is except for compensation for loss of livelihood suffered during the time that the injured slave belongs to the one that injured him. Since the right to the slave's labor belongs to his master, his inability to work is his master's loss. One who injures a Canaanite slave belonging to others is liable to pay for all of the five types of indemnity. Rabbi Yehuda says: Canaanite slaves do not have humiliation, so the one who injures the slave pays only the other four types of indemnity.

157 The mishna continues: With regard to a deaf-mute, an imbecile, or a minor, an encounter with them is disadvantageous. In other words, no favorable outcome is possible for someone involved in an incident with one of these people, since one who injures them is liable. But if they were the ones who injured others, they are exempt. This is because they lack awareness and are not responsible for their actions.

158 Similarly, with regard to a slave and a married woman, an encounter with them is disadvantageous, since one who injures them is liable. But if they were the ones who injured others, they are exempt, because they do not have money with which to pay compensation. But they pay compensation at a later time. The exemption is only temporary, as, if the woman becomes divorced or the slave becomes emancipated, and they then have their own money, they are liable to pay compensation.

159 The mishna continues: One who strikes his father or his mother and causes them to have a bruise, or one who injures another on Shabbat, is exempt from paying all of the five types of indemnity, because he is judged with losing his life. The court imposes capital punishment for these acts, so there is no additional monetary punishment.

160 And one who injures his own Canaanite slave is exempt from paying all of the five types of indemnity, because his slave is his property.

161 GEMARA: The Gemara discusses a case of compensation for injury. Rabbi Elazar raised a dilemma before Rav: In a case of one who injures the minor daughter of others, to whom does he pay compensation for the injury?

162 Rabbi Elazar explains the dilemma: Do we say that since the Merciful One granted the profits of her youth to the father, as he receives her betrothal money, compensation for injury also belongs to her father? What is the reason that he should receive it? The reason is that the one who injured her lowered her monetary value, resulting in her father receiving gifts of lesser value when she is betrothed. Or perhaps it is only the profits of her youth that the Merciful One granted to her father, because if he desires to give her in marriage to a man afflicted with boils, he can give her to him, but with regard to injury, since if he desires to injure her he may not injure her, just as he may not injure any other person, the Merciful One did not grant him the right to receive the compensation when she is injured.

163 Rav said to Rabbi Elazar in response: The Torah granted the father only the profits of her youth and nothing else. Therefore, compensation for the injury goes to the daughter. Rabbi Elazar raised an objection to Rav's statement based on the mishna: One who injures a Hebrew slave is liable for all of the five types of indemnity. This is except for compensation for loss of livelihood occurring during the time that the injured slave belongs to the one that injured him. This should be the halakha with regard to a minor daughter as well, that since the father has the right to the earnings of his minor daughter, he should receive the compensation for her loss of livelihood. Abaye said in response: Rav

concedes with regard to compensation for her loss of livelihood that it is paid to the father, since her earnings belong to her father until the time of her adulthood, and therefore her inability to work is her father’s loss.

164 Rabbi Elazar raised an objection to Rav’s statement based on a baraita: One who injures his adult son must give him his compensation immediately. If one injured his minor son he must make a safe investment [segulla] for him with the compensation money. One who injures his minor daughter is exempt, and moreover, if there were others who injured her, they are liable to give compensation to her father. The Gemara answers: So too here, the baraita is speaking with regard to the daughter’s loss of livelihood alone, which is paid to the father. The other types of indemnity are paid to the daughter.

165 The Gemara questions the first ruling of the baraita: And is it so that if a father injured his adult son he must give him his compensation immediately? And the Gemara raises a contradiction from that which is taught in another baraita: In a case of one who injures the sons or daughters of others, if they are adults he must give them their compensation immediately; if they are minors he must make a safe investment for them. If one injures his own sons or daughters, he is exempt from paying them compensation.

166 The Sages say in response: This is not difficult. Here, where the baraita states that the father is exempt, it is dealing with a case where the children are dependent on their father’s table for support. There, where the baraita states that the father is liable, it is dealing with a case where the children are not dependent on his table.

167 The Gemara challenges this resolution of the two baraitot: In what manner did you interpret the first baraita? You interpreted it as dealing with a case where the children are not dependent on his table? If so, say the latter clause of that baraita: One who injures his minor daughter is exempt, and moreover, if there were others who injured her, they are liable to give compensation to her father. If this is a case where the daughter is not dependent upon her father for support, then the one who injured her would be required to give the compensation to her, because she needs to provide her own sustenance.

168 The Gemara continues its challenge. And even according to the one who says that a master can say to his slave: Work for me but I will not feed you, i.e., a master is not legally obligated to provide sustenance for his slave, this matter applies only to a Canaanite slave, as the master can say to him: Work for me the entire day, and at night go around, beg, and eat. But in the case of a Hebrew slave, as it is written with regard to him: “Because he fares well with you” (Deuteronomy 15:16), indicating that the Hebrew slave must be “with you” in food and “with you” in drink, i.e., the Hebrew slave is entitled to live with his master as an equal, the master may not compel the slave to serve him unless he feeds him. All the more so is it not the case with regard to his daughter, that she is not required to beg for her sustenance and should receive the compensation herself?

169 The Gemara answers: This is as Rava, son of Rav Ulla, said concerning a similar matter (Ketubot 43a): This halakha is necessary only for the surplus, i.e., money that a woman earns beyond what she needs for her essential sustenance. Here too, this halakha is necessary only for the surplus. If the compensation for injury is more than the daughter requires for her sustenance, the additional sum is paid to her father.

[170] The Gemara again challenges the resolution of the two baraitot: In what manner did you interpret the latter baraita discussing one who injures the children of another? You interpreted it as dealing with a case where the sons are dependent on their father's table. But the baraita also stated: If they are adults, he must give them their compensation immediately; if they are minors, he must make a safe investment for them. Why does he make a safe investment for them? Shouldn't he be required to give the compensation to their father?

[171] The Sages say in response: Where the father is particular about receiving money that would go to his child is specifically in a matter that causes him a loss, as in a case where the father himself injured his child and would need to pay compensation. But in a matter that comes from elsewhere, as in a case where someone else injured his child, he is not particular about receiving the money, and it is paid to the child.

[172] The Gemara challenges that response: But isn't a found item a matter that comes to the children from elsewhere, and the father is particular about receiving it? The Sages say in response: With regard to profit that comes to the children from elsewhere, and they do not suffer physical pain in obtaining it, the father is particular about receiving the money, as he does not feel that the children deserve it. But in the case of an injury, where they suffer physical pain and it comes to them from elsewhere, the father is not particular about receiving the compensation paid to his child.

[173] The Gemara challenges: But there, in the first baraita, isn't it discussing a case where the daughter suffers physical pain, and it is a matter that comes to her from elsewhere, and the father is particular about receiving the money, as it teaches: And moreover, if there were others who injured her, they are liable to give compensation to her father?

[174] The Sages say in response: There, the baraita discusses a case where the father is a captious man, which is evident from the case of the baraita itself, as his children are not dependent on his table. A man like this is particular even about matters that come to them from elsewhere. By contrast, here, in the latter baraita, it discusses a case where the father is not a captious man, which is evident from the case of the baraita itself, as his children are dependent on his table. When he is particular about receiving the money, it is in a matter that causes him a loss, but in a matter that comes to them from elsewhere, he is not particular.

[175] The two baraitot stated that the father makes a safe investment for his minor children with the compensation paid to them. The Gemara asks: What is meant by a safe investment? Rav Ḥisda says: The father should purchase a Torah scroll for his child. Rabba bar Rav Huna, says: The father should purchase a date palm, from which the child will consume dates.

[176] The Gemara comments that the amora'im of Eretz Yisrael discussed the same issue as did those in Babylonia. And so says Reish Lakish: The Torah granted the father only the profits of her youth, and nothing else. And Rabbi Yoḥanan says: The father receives even the compensation for his daughter's wound.

[177] The Gemara objects: Does it enter your mind that the father receives compensation for his daughter's wound, which, unlike an injury, does not diminish his daughter's value? Even Rabbi Elazar raised his dilemma only with regard to an injury,

[178] by which he lowered her monetary value, diminishing the amount of money that her father will receive for her betrothal. But with regard to a wound, by which he did not lower her monetary value, Rabbi Elazar did not even raise a dilemma.

[179] Rabbi Yosei bar Ḥanina said: Rabbi Yoḥanan is discussing a case where someone wounded her on her face, and he thereby lowered her monetary value, as this affects the amount of money that her father will receive for her betrothal.

[180] § The mishna teaches: One who injures a Canaanite slave belonging to others is liable for all of the five types of indemnity. Rabbi Yehuda says: Canaanite slaves do not have humiliation, so one who injures a slave pays only the other four types of indemnity. What is the reasoning of Rabbi Yehuda? The Gemara explains: The verse states with regard to the indemnity of humiliation: “When men strive together, a man and his brother” (Deuteronomy 25:11). The formulation “and his brother” teaches that the payment of compensation for humiliation is applicable with regard to someone who has a relationship of brotherhood with a Jew. This is excluding a Canaanite slave, who does not have a relationship of brotherhood with Jews. And the Sages, who hold that a Canaanite slave is included in the halakhot of compensation for humiliation, maintain that he is the Jews’ brother with regard to the observance of mitzvot, as a Canaanite slave is obligated to observe most mitzvot.

[181] The Gemara challenges: If that is so, then according to Rabbi Yehuda, who holds that slaves are not in the category of brothers, conspiring witnesses who testify that a Canaanite slave committed a sin punishable by capital punishment should not be put to death by the court, as it is written: “You shall do unto him as he conspired to do unto his brother” (Deuteronomy 19:19), and the slave is not considered a brother. Rava said that Rav Sheshet said: The same verse states with regard to conspiring witnesses: “And you shall put away the evil from your midst,” indicating that the punishment for conspiring witnesses should be applied in any case, including when they testified about a slave.

[182] The Gemara raises another challenge: If that is so, then according to the Sages, who hold that slaves are in the category of brothers, a Canaanite slave should be fit for kingship, as it is written: “One from among your brothers shall you set a king over you” (Deuteronomy 17:15). The Sages say in response: But according to your reasoning, the halakha disqualifying a convert from being king should pose a difficulty for you according to all opinions, both according to the opinion of the Sages and of Rabbi Yehuda: Why is a convert not fit to be a king, as he is certainly in the category of brother? The Gemara answers: Rather, the verse states: “One from among your brothers shall you set a king over you,” which indicates that the king must be from the choicest among your brothers, which disqualifies both converts and slaves.

[183] The Gemara challenges further: If that is so, then according to the Sages, who hold that slaves are in the category of brothers, a Canaanite slave should be fit to bear witness, as it is written: “And behold, the witness is a false witness, and has testified falsely against his brother” (Deuteronomy 19:18). If a slave is considered a brother, why is he not eligible to testify in court?

[184] Ulla said: You cannot say that a slave is fit to bear witness, because the halakha concerning the testimony of a slave is derived by an a fortiori inference from the halakha concerning the testimony of a woman: And just as a woman, who is fit to enter into the congregation, i.e., to marry a Jew of fit lineage, is nevertheless disqualified from bearing witness, so too, with regard to a slave, who is not fit to enter the congregation, is it not logical that he is disqualified from bearing witness?

[185] The Gemara counters this derivation: What is notable about a woman? She is notable in that she is not fit to undergo the mitzva of circumcision. Would you say that from the fact that a woman is disqualified from bearing witness one can derive that the same is true for a slave, who is fit to undergo circumcision? The Gemara responds: The halakha of a minor shall prove that one's fitness to undergo circumcision is not germane to one's qualification to bear witness, as a minor is included in the mitzva to undergo circumcision, and yet he is disqualified from bearing witness.

[186] This is countered: What is notable about a minor? He is notable in that he is not obligated in the performance of mitzvot. Would you say that from the fact that a minor is disqualified from bearing witness one can derive that the same is true for a slave, who is obligated in the performance of mitzvot? The Gemara responds: The halakha of a woman shall prove the matter, as she is obligated in the performance of mitzvot and is disqualified from bearing witness.

[187] And the derivation has reverted to its starting point. The aspect of this case is not like the aspect of that case, and the aspect of that case is not like the aspect of this case, as each case has its own unique halakha. Their common denominator is that both a woman and a minor are not obligated in the performance of all the mitzvot and are disqualified from bearing witness. I will also bring the case of the slave for inclusion in this halakha, as he is also not obligated in the performance of all the mitzvot and is disqualified from bearing witness.

[188] This derivation is rejected: What is notable about their common denominator? It is notable in that a woman or a minor is not a man, and this is why they are disqualified from bearing witness. Would you say that from the fact that they are disqualified from bearing witness one can derive that the same is true for a slave, who is a man?

[189] The Gemara offers a different derivation: Rather, derive the halakha that a slave is disqualified from bearing witness from that of a robber, who is disqualified from bearing witness. The Gemara objects: What is notable about a robber? He is notable in that his actions caused him to be disqualified. Would you say that from the fact that a robber is disqualified from bearing witness one can derive that the same is true for a slave, whose actions did not cause him to be unfit?

[190] The Gemara answers: Rather, derive the halakha from a robber and from one of these other two, either a woman or a minor. Their common denominator is that they do not observe all the mitzvot and are disqualified from bearing witness. So too, a slave does not observe all the mitzvot and is disqualified from bearing witness.

[191] Mar, son of Ravina, said another derivation. The verse states: "Fathers shall not be put to death for children" (Deuteronomy 24:16), meaning that people shall not be put to death based on the testimony of fathers who do not have common lineage [ḥayis] with their children. This is referring to Canaanite slaves, whose children are not considered to be related to them. For if it enters your mind to interpret the verse according to its straightforward meaning, as we say: "Fathers shall not be put to death for children," meaning by the testimony of their children, then let the Merciful One write: Fathers shall not be put to death for their children. What does the verse teach by stating only: "Children," without the word their? Learn from this formulation that people shall not be put to death based on the testimony of fathers who do not have common lineage with their children.

[192] The Gemara challenges this: If that is so, when the end of the verse states: "Nor shall children be put to death for fathers" (Deuteronomy 24:16), does this also mean that people shall not be put to death based on the testimony of children who do not have common lineage with their fathers? But if

that were the case, it would also be the case that a convert would be disqualified from bearing witness, as one who converts no longer shares common lineage with his parents.

193 The Sages say in response: How can these cases be compared? With regard to a convert, although he has no common lineage with those above him, i.e., his parents, he does have common lineage with those below him, i.e., his children. This serves to exclude a slave, who has no common lineage either with those above him or with those below him.

194 The Sages prove that a convert is fit to bear witness: As, if it enters your mind that a convert is disqualified from bearing witness, then let the Merciful One write: Fathers shall not be put to death for their children, according to the interpretation that we say: Fathers shall not be put to death based on the testimony of their children; and let the Merciful One also write: "Nor shall children be put to death for fathers," from which you learn two halakhot: One, that children shall not be put to death by the testimony of their fathers, and another, that people shall not be put to death based on the testimony of children who do not have common lineage with their fathers, i.e., converts.

195 The Gemara continues the statement: And the halakha with regard to a slave being disqualified from bearing witness is derived by an a fortiori inference from the halakha of a convert: And just as with regard to a convert, that it is the case concerning those above him that he has no common lineage, but with those below him he does have common lineage, and he is disqualified from bearing witness, then with regard to a slave, who has no common lineage with those above him or those below him, all the more so is it not logical that he is disqualified from bearing witness?

196 The Gemara continues the statement: Rather, due to the fact that the Merciful One did not write the verse that way, but instead wrote: "Fathers shall not be put to death for children," which indicates that people shall not be put to death based on the testimony of fathers who do not have common lineage with their children, learn from this formulation that with regard to a slave, who has no common lineage with those above him or those below him, he is the one who is disqualified from bearing witness. But with regard to a convert, since he has common lineage with those below him, he is fit to bear witness.

197 And if you would say: Let the Merciful One write: Nor shall children be put to death for their fathers, why do I need that which the Merciful One wrote: "Nor shall children be put to death for fathers," which indicates that people shall not be put to death based on the testimony of children who do not have common lineage with their fathers? The Gemara answers: Since the Merciful One wrote: "Fathers shall not be put to death for children," He also wrote in the same manner: "Nor shall children be put to death for fathers."

198 § The mishna (87a) teaches: With regard to a deaf-mute, an imbecile, or a minor, an encounter with them is disadvantageous, since one who injures them is liable. But if they were the ones who injured, they are exempt. The Gemara relates an incident: The mother of Rav Shmuel bar Abba from the city of Hagroneya was married to Rabbi Abba. She wrote, i.e., signed over, her property to Rav Shmuel bar Abba, her son. After she died,

199 Rav Shmuel bar Abba went before Rabbi Yirmeya bar Abba to claim his mother's property. Rabbi Yirmeya established him as the owner of the property, in accordance with what was written in the document. Rabbi Abba, the mother's husband, went and said a report of the matter before Rav Hoshaya. Rav Hoshaya went and said a report of the matter before Rav Yehuda. Rav Yehuda said to Rav Hoshaya: This is what Shmuel says: In a case of a woman who sold her usufruct property, which

belongs to her but whose profits her husband garners, in her husband’s lifetime, and then she died, the husband repossesses the property from the purchasers. The granting of her property by means of the document is analogous to a sale, and Rabbi Abba can repossess the property from Rav Shmuel bar Abba.

200 The Sages said that halakha before Rabbi Yirmeya bar Abba, who had ruled that the property belongs to Rav Shmuel bar Abba. He said to them: I know the mishna that supports my opinion, as we learned in a mishna (Bava Batra 136a): In the case of one who writes a document transferring ownership of his property to his son, stating that the transfer should take effect immediately but the son will have use of it only after the father’s death, the son cannot sell the property due to the fact that it is still in the father’s possession. And the father, even though he retained the right to use the property, cannot sell the property due to the fact that it is written as belonging to the son. If the father sold the property, then it is sold to the extent that the purchaser may use it until the father dies. If the son sold the property during his father’s lifetime, the purchaser does not have the right to use the property until the father dies.

201 Rabbi Yirmeya bar Abba infers: In any event, if the son sold the property during his father’s lifetime, when the father dies the purchaser has rights to the property. And this would be so even though it is a case where the son died in the father’s lifetime, where the property never came into the son’s possession.

202 Rabbi Yirmeya bar Abba’s analysis is in accordance with the opinion of Rabbi Shimon ben Lakish, who says: There is no difference if the son died in the father’s lifetime, where the property never came into the son’s possession, and there is no difference if the father died in the son’s lifetime, where the property came into the son’s possession. In any event, the purchaser acquired the property.

203 The Gemara records a dispute between the amora’im with regard to this point. As was stated: In a case where the son sold the property in the father’s lifetime, and the son died in the father’s lifetime, Rabbi Yoḥanan says: The purchaser did not acquire the property. Reish Lakish says: The purchaser acquired the property.

204 The Gemara explains the opinion of Rabbi Yoḥanan. Rabbi Yoḥanan says: The purchaser did not acquire the property, because he could have said to you: When the mishna teaches that if the son sold the property during his father’s lifetime the purchaser does not acquire any rights to use the property until the father dies, and one could infer that when the father dies the purchaser has rights to the property, the mishna is discussing a case where the son did not die during the father’s lifetime, so that the property came into the son’s possession upon the father’s death, before the purchaser acquired it. But if the son died in the father’s lifetime, so that the property did not come into the son’s possession, then even when the father dies the purchaser does not have rights to the property.

205 The Gemara comments: Apparently, Rabbi Yoḥanan holds that ownership of the rights to use an item and to its produce 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, when the son sold the property, he sold property that did not belong to him.

206 The Gemara explains the opinion of Rabbi Shimon ben Lakish: Rabbi Shimon ben Lakish says that the purchaser acquired the property based on this claim: When the mishna teaches that if the son sold the property during his father’s lifetime the purchaser does not have any right to use the property

until the father dies, and one could infer that in any event, when the father dies the purchaser has rights to the property, the mishna means that there is no difference if the son did not die in the father's lifetime, where the property came into the son's possession, and there is no difference if the son died in the father's lifetime, where the property did not come into the son's possession. In either case, the purchaser acquired the property.

207 The Gemara comments: Apparently, Rabbi Shimon ben Lakish holds that ownership of the rights to use an item and to its produce is not considered to be like ownership of the item itself. And therefore when the son sold the property, he sold property that belonged to him.

208 The Gemara returns to the discussion of the opinion of Rabbi Yirmeya bar Abba. And now for us, whether if one discusses the opinion of Rabbi Yirmeya bar Abba and whether one discusses the opinion of Rav Yehuda, they both hold in accordance with the opinion of Rabbi Shimon ben Lakish, that ownership of the rights to use an item and to its produce is not considered to be like ownership of the item itself. And Rabbi Yirmeya bar Abba says: If it enters your mind that ownership of the rights to use an item and to its produce is considered to be like ownership of the item itself, then when the father dies and the son had died in the father's lifetime, why does the purchaser have rights to the property? When the son sold it, didn't he sell property that did not belong to him?

209 Rather, isn't it correct to conclude from the mishna that ownership of the rights to use an item and to its produce is not considered to be like ownership of the item itself? Therefore, Rav Shmuel bar Abba should receive the property transferred to him by his mother, as the fact that the husband owned the rights to its produce does not limit her ability to transfer her property to her son.

210 The Sages brought back Rabbi Yirmeya bar Abba's reply before Rav Yehuda. Rav Yehuda said to them: This is what Shmuel said: This halakha, that a husband can repossess the property that his wife sold before she died, is not similar to the halakha of our mishna concerning a father who transfers his property to his son while retaining the right to garner the profits.

211 The Gemara asks: What is the reasoning for distinguishing between the two cases? Rav Yosef said: Granted, if the mishna had taught the opposite and stated that in the case of one who writes a document transferring ownership of his property to his father after his death, with the son retaining the right to garner the profits until then, and the father sold the property during his son's lifetime, the purchaser has rights to the property after the son dies, then it is possible to resolve from the mishna that ownership of the rights to use an item and to its produce is not considered to be like ownership of the item itself.

212 Rav Yosef continues: But now that the mishna teaches specifically: One who writes a document transferring ownership of his property to his son, the ability of the son to sell the property is due to the fact that the son is fit to inherit from him and already has a right to the property, and not just due to the existence of the document. In the case of Rav Shmuel bar Abba as well, the woman's property is inherited by her husband, not her son, so she cannot transfer it to Rav Shmuel bar Abba.

213 Abaye said to Rav Yosef: Is this to say that a son inherits from a father, but a father does not inherit from a son? There is no difference between their rights to inherit from one another. Rather, even if the mishna taught a halakha concerning a son transferring his property to his father, the son's reason for doing so could have been that he comes to hide his property from his own son and wants his father to inherit from him instead. Here too, when a father transfers his property to his son, he comes to hide his property from the son's brothers, as the father has other sons but does not want

them to inherit from him. Therefore, the mishna’s choice of case cannot serve as a basis for inference.

[214] Abaye continues: Rather, what was Shmuel’s reason for saying that the right of a husband to the property that his wife sold before she died is not similar to our mishna that states that a father does not have rights to property sold by his son? The difference is due to the rabbinic ordinance of Usha, an ordinance instituted with regard to a husband’s rights to his wife’s property. As Rabbi Yosei bar Ḥanina says: In the town of Usha the Sages 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 purchasers. This ordinance was instituted only for the benefit of a husband, but not for the benefit of a father or son.

[215] Rav Idi bar Avin said: We too learn of the ordinance of Usha in the baraita: If witnesses said: We testify about so-and-so that he divorced his wife and gave her the full value of the obligations recorded in her marriage contract,

[216] and she is under him and serves him, i.e., she was in fact still married to him, and then these witnesses were found to be conspiring witnesses who were attempting to deny this woman the ability to ever collect payment of her marriage contract, then the court does not say that the witnesses shall pay the entire value of her marriage contract. Rather, the court says that they shall pay the financial advantage of her marriage contract. The Gemara explains: What is the financial advantage of her marriage contract? The court evaluates how much a person would want to give to purchase the rights of this woman’s marriage contract, taking into account the halakha that if she becomes widowed or divorced the purchaser will receive its full value, but if she dies during her husband’s lifetime, her husband will inherit her property and the purchaser will receive nothing.

[217] Rav Idi bar Avin continues: And if it enters your mind that there is no ordinance of Usha, why would her husband inherit from her? Let the woman sell her marriage contract entirely.

[218] Abaye said: This is not a proof for the existence of the ordinance of Usha, because even if there is no ordinance, and the Sages said that the woman retains the right to sell with regard to the usufruct property, would they also say that the woman retains the right to sell with regard to guaranteed property, which is listed among the possessions she brought into the marriage but is entirely under her husband’s authority? In any event, there is property that she does not have the right to sell and that the husband would inherit if she dies, regardless of whether or not there is an ordinance of Usha, so the marriage contract could not be sold for its full value.

[219] § Abaye said: With regard to financial advantage, since discussion of this matter came to us, let us say something about it. The money received for selling the financial advantage is given only to the wife. For if it enters your mind to say that it is given to the husband, then let the conspiring witnesses, who have been rendered liable to pay a penalty to the wife, say to her: What loss have we caused you by testifying that you had received payment of your marriage contract? Even if you were to sell it for the financial advantage, your husband would have taken it from you. Rav Shalman said in response: She still would incur a loss, because there is a gain to the household. Even if the husband were to be the one to receive the payment from the sale, the financial situation of the household would be improved, leading to a concrete benefit for the wife as well. This offsets the wife’s potential loss.

220 Rava said: The halakha is that the money received for selling the financial advantage of the marriage contract is given only to the wife, and the husband does not even garner the profits from that money or from property the wife would purchase with that money. What is the reason? The Sages instituted that the profits of her property are for the husband, but the Sages did not institute that the profits of the profits are for him.

221 § When Rav Pappa and Rav Huna, son of Rav Yehoshua, came from the study hall of Rav they said: We learned a source for the ordinance of Usha in the mishna (87a): With regard to a slave or a married woman, an encounter with them is disadvantageous, since one who injures them is liable. But if they were the ones who injured others they are exempt, because they do not have money with which to pay. And if it enters your mind to say that there is no ordinance of Usha, there would be a method by which a married woman can obtain money with which to pay, as the court can have her sell her usufruct property and give the money received to the one she injured. It can therefore be inferred from the mishna that a woman cannot sell her usufruct property, in accordance with the ordinance of Usha.

222 The Gemara responds: And according to your reasoning, though indeed there is an ordinance of Usha, and she cannot fully sell her usufruct property, she should nevertheless be able to sell her usufruct property for the financial advantage, i.e., the purchaser will pay her for the future rights to the property in the event that she gets divorced or is widowed, and she will give that money to the one she injured. Rather, it must be that the mishna is discussing a case where she does not have usufruct property of which she can sell the future rights. So too, there is no source from the mishna for the ordinance of Usha, as the mishna is discussing a case where she does not have usufruct property to sell.

223 The Gemara questions the ruling of the mishna: Why does the mishna assert that a married woman will not have money with which to pay, but she should sell the financial advantage of her marriage contract and give the money received to the one she injured? The Gemara answers: In accordance with whose opinion is this ruling of the mishna? It is in accordance with the opinion of Rabbi Meir, who says that it is prohibited for a man to remain living together with his wife for even one hour without her having a marriage contract. Therefore, the woman cannot sell the financial advantage of her marriage contract.

224 The Gemara asks: And what is the reason for the ruling of Rabbi Meir? It is so that she will not be demeaned in his eyes such that he will easily divorce her, as he would not suffer any adverse financial consequences by divorcing her. The Gemara asks: If that is the reason, then here, when she sold her marriage contract to others, the husband will not easily divorce her, as, if he would divorce her, those who purchased her marriage contract will come and collect payment of her marriage contract from the husband. It makes no difference to the husband whether he will have to pay the marriage contract to her or to the purchasers. Therefore, the reason for the ruling of the mishna cannot be based upon the statement of Rabbi Meir.

225 Rather, the reason she is not required to sell the financial advantage of her marriage contract to pay the one she injured is that the financial advantage of her marriage contract is mere words, i.e., not a specific possession, but a legal entity that simply creates the possibility to collect its value at a later date. And mere words are not mortgaged for the payment of debts, in this case her debt to the injured party.

[226] The Gemara questions this assertion: Why not? Why is financial advantage not mortgaged? They are words that are sold for dinars. Since the financial advantage of her marriage contract has a market value, it is mortgaged to pay the debt to the injured party. Rather, she is not required to sell the financial advantage of her marriage contract because of the statement of Shmuel, as Shmuel says: With regard to one who sells a promissory note to another, and the seller went back and forgave the debtor his debt, it is forgiven, and the promissory note is left valueless, since the debtor essentially had a non-transferable obligation to the creditor alone, and even the seller's heir can forgive the debt. Since there is a concern that the woman will forgive the debt of her marriage contract after having sold it, causing a loss to the purchaser, she is not required to sell it.

[227] The Sages say: Let her sell the financial advantage of the marriage contract and give the money to the one she injured, and if she happens to forgive the debt of her marriage contract to her husband, she will forgive it. Just as it is generally permitted for one to sell a promissory note despite the fact that he could then forgive the debt, the same should hold true in this case as well.

[228] The Sages say: In any matter that will engender a benefit to her husband, she will certainly forgive the debt to him so that he will not have to pay the marriage contract. And with regard to causing a definite loss to that purchaser through direct action by having the woman sell the financial advantage of her marriage contract in a case where she will certainly forgive the debt, the Sages will not be willing to cause a definite loss to the purchaser.

[229] The Gemara offers another suggestion: And if you would say that she should sell her marriage contract to that one whom she injured in order to receive the money for the financial advantage,

[230] so that even if she were to forgive the debt of her marriage contract with regard to her husband, the one she injured would not lose anything, as now as well she is not giving him any payment, one could respond that ultimately, in any matter that will engender a benefit to her husband, she will certainly forgive the debt with regard to him. And we do not trouble the courts to supervise the sale of the financial advantage without cause.

[231] The Gemara asks: But if the reason she does not sell the financial advantage of her marriage contract to obtain money with which to pay the injured party is that she would then forgive the debt of the marriage contract, then with regard to that which is taught in a baraita (Tosefta 9:22): And similarly, in a case where she was the one who injured her husband she has not lost her marriage contract as a result, as he does not collect compensation from the properties she brought into the marriage that are enumerated in the marriage contract, why does she not lose it? Let her sell the financial advantage of her marriage contract to her husband in order to obtain the money to compensate him for that injury that she caused him, as, if she will forgive the debt of her marriage contract with regard to her husband there will be no loss for the purchaser, i.e., her husband.

[232] The Gemara answers: This baraita is certainly in accordance with the opinion of Rabbi Meir, who says that it is prohibited for a man to remain living together with his wife for even one hour without her having a marriage contract. Therefore, the woman cannot sell the financial advantage of her marriage contract to her husband.

[233] The Gemara asks: And what is the reason for the ruling of Rabbi Meir? It is so that she will not be demeaned in his eyes such that he will easily divorce her, and here, if she were to sell the marriage contract to him, he would then divorce her and collect the properties listed in the marriage contract as payment for his injuries from her. If that is so, even now, where she does not sell her marriage

contract to him, he will divorce her, and once she is divorced, he will collect the properties listed in the marriage contract as payment for his injuries from her. Preventing her from selling the marriage contract to him will not serve as an impediment to his divorcing her.

234 The Gemara answers: The baraita is discussing a case where there is a large sum recorded in her marriage contract, so that because of that slight sum due him as compensation for his injuries, he would not be willing to lose the large sum that he would have to pay were he to divorce her. Therefore, the marriage contract does serve as an impediment to his divorcing her.

235 The Gemara suggests: But if in fact the baraita is discussing a case where the sum recorded in her marriage contract is larger than the sum recorded in a marriage contract required by Torah law, let them establish her marriage contract at the sum of a marriage contract required by Torah law, and with regard to the other, additional, sum, let her sell it to her husband as payment for his injuries. Since she will be left with a marriage contract of standard value, they would be allowed to remain living together.

236 The Gemara answers: The baraita is discussing a case where the sum recorded in her marriage contract is not larger than the sum recorded in a marriage contract required by Torah law, that payment for his injury was assessed to be four dinars, and because of a gain of four dinars, the husband would not be willing to lose twenty-five dinars, which is the value of a marriage contract required by Torah law.

237 The Gemara asks: But with regard to that which is taught in the latter case of the baraita: Just as she does not sell her marriage contract to obtain money to pay damages while she is under him, i.e., married to her husband, so too, she does not lose the value of her marriage contract to pay damages while she is under him. But there are times when she will be found to have lost the value of her marriage contract, and what are the circumstances? It would be a case where the sum recorded in her marriage contract is larger than the sum recorded in a marriage contract required by Torah law. In that case she would be obligated to sell the portion of the marriage contract representing the additional amount in order to obtain money with which to compensate the one she injured.

238 Rava said in response: In the latter clause of that baraita, we arrive at the stipulation in the marriage contract that the male offspring inherit payment of their mother’s marriage contract, and it is not discussing the sale of a marriage contract in general.

239 And this is what the baraita is teaching: Just as the halakha stipulates that a woman who sells her marriage contract to others does not lose the future implementation of the stipulation in the marriage contract that the male offspring inherit payment of their mother’s marriage contract, and Rava clarifies: What is the reason for this? The need for money is what caused her to sell it under duress, and she did not intend to abrogate her sons’ rights to inherit the property in the future. Rava continues his explanation of the baraita: So too, a woman who sells her marriage contract to her husband does not lose the future implementation of the stipulation in the marriage contract that the male offspring inherit payment of their mother’s marriage contract, and Rava clarifies: What is the reason for this? The need for money is what caused her to sell it under duress.

240 § The Gemara returns to the earlier discussion and suggests: Shall we say that the issue whether or not there was an ordinance of Usha instituting that the wife cannot sell her usufruct property is a dispute between tanna’im? As it is taught in one baraita: Canaanite slaves that the woman brought into the marriage as usufruct property are emancipated by having a tooth knocked out or an eye

blinded by the woman, i.e., the wife, as is the halakha when the owner of a slave knocks out the slave’s tooth or blinds his eye, but they are not emancipated by having a tooth knocked out or an eye blinded by the man, i.e., the husband, as he is not their owner. And it is taught in another baraita: The slave is not emancipated if his tooth was knocked out or his eye was blinded, nor by the man nor by the woman.

241 The Gemara continues its analysis: They assumed that everyone holds that ownership of the rights to use an item and to its produce, which the husband has with regard to usufruct property, is not like ownership of the item itself, which is why the husband is not considered the owner of the slaves. What, is it not so that the two baraitot disagree with regard to this: That the one who says that the slave is emancipated if he was struck by the woman holds that there is no ordinance of Usha? Since she retains the right to sell her usufruct property, she is considered the full owner of the slaves with regard to the halakha of their being emancipated. And the one who says that the slave is not emancipated if he was struck by the man and not if he was struck by the woman holds that there is an ordinance of Usha. Since she cannot sell her usufruct property, she is not considered to be the full owner of the slaves with regard to the halakha of their being emancipated.

242 The Gemara offers an alternative explanation: No; perhaps it is the case that everyone holds that there is an ordinance of Usha. But here, in the first baraita, it is referring to the time before the ordinance was instituted, and since the wife had the right to sell her usufruct property, she is considered the full owner of the slaves with regard to the halakha of their being emancipated, while there, in the second baraita, it is referring to the time after the ordinance was instituted, and since she could no longer sell her usufruct property, she is not considered to be the full owner of the slaves with regard to the halakha of their being emancipated.

243 The Gemara offers an alternative explanation: And if you wish, say instead that both this baraita and that baraita are referring to the time after the ordinance was instituted, and the tanna in each baraita holds that there is an ordinance of Usha. Rather, according to the one who says that the slave is emancipated if he is struck by the woman but not if he is struck by the man, what is the reason? It is in accordance with the statement of Rava, as Rava said:

244 Consecration of an item to the Temple, the advent of the prohibition of leavened bread taking effect upon a leavened food, and the emancipation of a slave abrogate any lien that exists upon them. Therefore, the emancipation of a slave resulting from the knocking out of his tooth or the blinding of his eye abrogates the lien that the husband has on the slave as usufruct property, leaving the woman as the solitary owner.

245 The Gemara questions this explanation: Shall we say that this statement of Rava is a dispute between tanna’im? According to this explanation, the baraita that states that the slave is not emancipated when he is struck by the woman holds that the lien of the husband is not abrogated, which would run counter to the statement of Rava. The Gemara responds: No; it is the case that everyone agrees with the statement of Rava that a lien is abrogated, and here the reason why the baraita holds that the husband’s lien on the slave is not abrogated is that the Sages strengthened the lien of a husband on his wife’s property, and it is only this type of lien that is not abrogated by emancipation.

246 And if you wish, say instead that everyone agrees that these tanna’im of the two baraitot hold that there is no ordinance of Usha, and here, they disagree with regard to the question whether ownership

of the rights to use an item and to its produce is like ownership of the item itself. In this case, the husband enjoys the usage of the slave while the wife owns the slave himself. The baraita that rules that the slave is not emancipated when struck by the woman holds that the husband is also considered to be an owner, and the baraita that rules that the slave is emancipated when struck by the woman holds that the husband is not considered to be an owner.

[247] And the dispute with regard to the question whether ownership of the rights to use an item and to its produce is like ownership of the item itself is with regard to the issue that is the subject of the dispute between these tanna'im, as it is taught in a baraita: In the case of one who sells his Canaanite slave to another, and he contracted with him that the sale is effected on the condition that the slave will serve the seller for thirty days before he is transferred to the purchaser, the outcome of this sale is that during those thirty days, the original master enjoys the usage of the slave and the purchaser is the owner of the slave.

[248] 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 liable to receive court-imposed capital punishment. This ruling does not apply in the case where a master strikes his Canaanite slave and the slave lingers with his injuries for more than a day or two and then dies, in which case the master is exempt from court-imposed capital punishment. The baraita addresses who is considered the owner of the slave with regard to this latter halakha. Rabbi Meir says that during those thirty days, only the first owner is included in the halakha of: A day or two days. Rabbi Meir holds that in this case, the first owner is included in this exemption, because the slave is under his authority, as he enjoys the usage of the slave, and he holds that ownership of the rights to use an item and to its produce is like ownership of the item itself. The status of the first owner as the owner also negates the possibility that the second owner would be regarded as the owner with regard to this halakha, and he would not be included in the exemption.

[249] The baraita continues. Rabbi Yehuda says that only the second owner is included in the halakha of: A day or two days, because the slave is his money, i.e., property, but the first owner is not included in the halakha of: A day or two days, as he holds that ownership of the rights to use an item and to its produce is not like ownership of the item itself. Therefore, the first owner does not have the status of an owner with regard to this halakha.

[250] The baraita continues. Rabbi Yosei says that both of them are included in the halakha of: A day or two days. This one, the first owner, is included because the slave is under his authority, and that one, the second owner, is included because the slave is his money. The Gemara explains the reasoning of Rabbi Yosei: He is uncertain, with regard to ownership of the rights to use an item and to its produce, if it is like ownership of the item itself, in which case only the first owner would be exempt, or if it is not like ownership of the item itself, in which case only the second owner 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.

[251] The baraita continues. Rabbi Eliezer 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 one, the second owner, would be liable to receive it because the slave is not under his authority, and that one, the first owner, would receive it because the slave is not his money. Rabbi Eliezer holds that one is required both to own the slave himself and enjoy the usage of the slave to be included in the exemption.

252 The Gemara notes that Rava said: What is the reason for the opinion of Rabbi Eliezer? The verse states: “Notwithstanding if he continue a day or two, he shall not be punished; for he is his money” (Exodus 21:21), and Rabbi Eliezer understands this to be referring to a slave that is his money alone, a slave that is unique to him, and therefore this exemption does not apply to one who does not have total ownership of the slave.

253 The Gemara asks: In accordance with whose opinion is that which Ameimar says: If there was a man or a woman, i.e., a husband or a wife, who sold the wife’s usufruct property, which is owned by the wife but used by the husband, they did not accomplish anything, as the sale does not take effect? In accordance with whose opinion is his statement? It is in accordance with the opinion of Rabbi Eliezer, who holds that one is considered to be an owner only if he both owns the item itself and enjoys the usage of that item.

254 The Gemara asks: Who is the tanna who taught that which the Sages taught: One who is a half-slave half-freeman, and similarly, a slave belonging to two partners, are not emancipated when injured by one of their owners in one of their extremities that do not regenerate, i.e., the twenty-four extremities whose injury by an owner emancipates a slave? Rav Mordekhai said to Rav Ashi: This is what the Sages say in the name of Rava: It is in accordance with the opinion of Rabbi Eliezer.

255 He explains: Didn’t Rabbi Eliezer say that the term “his money” indicates a slave that is unique to him? Here too, since the verse states with regard to the emancipation of a slave resulting from his master striking him: “And if a man smite the eye of his slave” (Exodus 21:26), this is referring to his slave that is unique to him. Therefore, this halakha of emancipation would not apply to a slave not fully owned by one master.

256 MISHNA: One who strikes another must give him a sela. Rabbi Yehuda says in the name of Rabbi Yosei HaGelili that he must give him one hundred dinars. If he slapped another on the cheek, he must give him two hundred dinars. If he slapped him on the cheek with the back of his hand, which is more degrading than a slap with the palm, he must give him four hundred dinars.

257 If he pulled his ear, or pulled out his hair, or spat at him and his spittle reached him, or if he removed the other’s cloak from him, or if he uncovered the head of a woman in the marketplace, in all of these cases, he must give the injured party four hundred dinars.

258 This is the principle of assessing payment for humiliation caused to another: It is all evaluated in accordance with the honor of the one who was humiliated, as the Gemara will explain. Rabbi Akiva said: Even with regard to the poor among the Jewish people, they are viewed as though they were freemen who lost their property and were impoverished. And their humiliation is calculated according to this status, as they are the children of Abraham, Isaac, and Jacob, and are all of prominent lineage.

259 The mishna relates: And an incident occurred involving one who uncovered the head of a woman in the marketplace, and the woman came before Rabbi Akiva to request that he render the assailant liable to pay for the humiliation that she suffered, and Rabbi Akiva rendered the assailant liable to give her four hundred dinars. The man said to Rabbi Akiva: My teacher, give me time to pay the penalty, and Rabbi Akiva gave him time.

260 The man then waited for her until she was standing by the opening of her courtyard, and he broke a jug in front of her, and there was the value of about an issar of oil inside the jug. The woman then

exposed her own head and she was wetting [metapaḥat] her hand in the oil, and placing her hand on her head to make use of the oil.

261 The man set up witnesses to observe her actions, and he came before Rabbi Akiva, and he said to him: Will I give four hundred dinars to this woman for having uncovered her head? By uncovering her head for a minimal benefit, she has demonstrated that this does not cause her humiliation.

262 Rabbi Akiva said to him: You did not say anything, i.e., this claim will not exempt you. One who injures himself, although it is not permitted for him to do so, is nevertheless exempt from any sort of penalty, but others who injured him are liable to pay him. In this case as well, the man was liable to compensate the woman for shaming her, despite the fact that she did the same to herself. Similarly, one who cuts down his own saplings, although it is not permitted for him to do so, as this violates the prohibition of: "You shall not destroy" (see Deuteronomy 20:19), is exempt from any penalty, but others who cut down his saplings are liable to pay him.

263 GEMARA: The mishna teaches that according to the opinion of Rabbi Yosei HaGelili, one who strikes another must pay him one hundred dinars. The Gemara clarifies this opinion. A dilemma was raised before the Sages: Did we learn in the mishna that he must pay one hundred dinars of Tyrian coinage, or did we learn in the mishna that he must pay one hundred dinars of state coinage, which is worth one-eighth of Tyrian coinage, i.e., twelve and a half dinars of Tyrian coinage?

264 The Gemara answers: Come and hear a proof: It happened that there was a certain man who struck another man, and the latter came before Rabbi Yehuda Nesia to request an assessment for the humiliation he suffered. Rabbi Yehuda Nesia said to the assailant: This is I, and this is Rabbi Yosei HaGelili. Give him one hundred dinars of Tyrian coinage. The Gemara suggests: Conclude from the incident that we learned in the mishna he must pay one hundred dinars of Tyrian coinage. The Gemara affirms: Conclude from it that it is so.

265 The Gemara clarifies: What did Rabbi Yehuda Nesia mean when he stated: This is I, and this is Rabbi Yosei HaGelili? If we say that this is what Rabbi Yehuda Nesia said to the assailant: This is I, who saw you strike the man, and this is the opinion of Rabbi Yosei HaGelili, who says that the penalty for this act is one hundred dinars of Tyrian coinage; therefore, go and give him one hundred dinars of Tyrian coinage, is this to say that a witness can become a judge, i.e., that one who witnessed an event can himself serve as a judge concerning the matter, and consequently Rabbi Yehuda Nesia was able to act as both witness and judge in the same case?

266 But isn't it taught in a baraita that if there was a Sanhedrin that saw one kill another person, some of them have become witnesses and testify before the others, and some of them have become judges to issue a verdict; this is the statement of Rabbi Tarfon. Rabbi Akiva says: They are all witnesses to the act, and a witness cannot become a judge.

267 The Gemara infers from this baraita that even Rabbi Tarfon says his opinion only in a case where some of the members of the Sanhedrin have become witnesses and some of them have become judges, but he did not say that a witness becomes a judge without anyone else testifying. All the more so according to the opinion of Rabbi Akiva would it not be permitted for Rabbi Yehuda Nesia to act as a judge as well as serving as a witness.

268 The Gemara rejects this: One could say that when that baraita is taught, it is taught in a case where the Sanhedrin saw the murder at night, at which time it is not permitted for them to practice

judgment, since cases of capital law may be judged only during the daytime. They were therefore not functioning as judges at that time. On the following day, testimony must be heard from some, now acting as witnesses, in front of the others, now acting as judges. By contrast, in the case of Rabbi Yehuda Nesia, he was able to serve as both the witness and the judge, as he witnessed the event while functioning as a judge.

269 The Gemara offers an alternative explanation: And if you wish, say instead that Rabbi Yehuda Nesia did not witness the incident, and this is what he said to the assailant: This is I, that I hold in accordance with the opinion of Rabbi Yosei HaGelili, who says that one hundred dinars of Tyrian coinage must be paid; and these are witnesses who testify concerning you that you struck the other. Therefore, go and give him one hundred dinars of Tyrian coinage.

270 § The Gemara discusses the previously mentioned opinion of Rabbi Akiva: But does Rabbi Akiva hold that a witness cannot become a judge?

271 But isn't it taught in a baraita (Tosefta, Sanhedrin 12:3) with regard to what is stated in the Torah concerning injuries: "And if men contend, and one smite the other with a stone, or with his fist" (Exodus 21:18), that Shimon HaTimni says: Just as a fist is unique in that it is submitted to the assembly of judges to assess its ability to injure and to the witnesses who attest that it was the fist used to strike, as a fist remains attached to the assailant, so too, a ruling can be issued in the case of any item that is submitted to the assembly of judges to assess its ability to injure and to the witnesses who attest that this was the item used to strike? This serves to exclude a case where the stone that injured left the possession of the witnesses and is not available to be inspected by the court to assess if it is capable of causing the purported injury.

272 Rabbi Akiva said to him: But is it the case that in all incidents of injury the assailant struck him in the presence of the court, so that they know exactly how hard he struck him and on what part of the body he struck him, e.g., if he struck him on his thigh or if he struck him on the lobe of his heart? Rather, the court relies on witnesses to testify about the injury. Therefore, the witnesses should be able to testify about the item used as well.

273 And furthermore, if there was one who pushed another from the top of the roof or from the top of a building, and the one who was pushed died as a result of the fall, do the members of the court go to the building to inspect how high it is, or does the building go to the court? Obviously neither, and the court relies upon the testimony of witnesses who state how tall the building is. And furthermore, if the building collapsed, must the court rebuild it in order to assess its height? The witnesses should then be able to testify about the item used as well.

274 Rather, Rabbi Akiva interprets the verse differently: Just as a fist is unique in that it is submitted to the witnesses for them to testify about it, so too, a ruling can be issued in the case of any item that is submitted to the witnesses to testify about, despite the item's not being available for the court to assess.

275 This serves to exclude a case where the stone that injured left the possession of the assailant and cannot be found, and even the witnesses were unable to see it. In such a case the assailant is exempt from payment, since even the witnesses cannot testify about whether the stone was capable of inflicting the purported injuries.

276 The Gemara states its question: In any event, it teaches that Rabbi Akiva said to Shimon HaTimni: Are all cases of injury such that the assailant struck him in the presence of the court so that they know exactly how hard he struck him? It can be inferred from this that if he did in fact strike him in front of them, Rabbi Akiva would agree that a witness can become a judge. This contradicts the opinion of Rabbi Akiva in the baraita, that a witness cannot become a judge.

277 The Gemara answers that there is no proof as to the opinion of Rabbi Akiva, since it may be that he stated his refutation in accordance with the statement of Shimon HaTimni, but he himself does not hold accordingly. Perhaps Rabbi Akiva himself holds that if the court had witnessed the act, they would not be able to render judgment concerning it.

278 The Gemara quotes a related halakha. The Sages taught: In the case of an innocuous ox that killed a person and subsequently went and caused damage, the court judges it as a case of capital law and the ox is killed, and the court does not judge it as a case of monetary law, despite the damage that it caused.

279 By contrast, in the case of a forewarned ox that killed a person and subsequently went and caused damage, the court judges it as a case of monetary law, and the owner is liable to pay for the damage it caused, and then the court goes back and judges it again as a case of capital law, and the ox is killed. But if the court proceeded and judged it first as a case of capital law, the court does not go back and judge it again as a case of monetary law, since it has already been sentenced to be killed.

280 The Gemara asks: And if they proceeded and judged it first as a case of capital law, what of it? Let them go back and judge it again also as a case of monetary law.

281 Rava said: I found the Sages of the school of Rav who were sitting and saying to explain this: In accordance with whose opinion is this? It is in accordance with the opinion of Rabbi Shimon HaTimni, who says that just as a fist is unique in that it is submitted to the assembly of judges to assess its ability to injure and to the witnesses to attest that this was the fist used to strike, so too, a ruling can be issued in the case of any item that is submitted to the assembly of judges to assess its ability to injure and to the witnesses to attest that this was the item used to strike.

282 Rava continues the report in their name: Apparently, we require the evaluation of the court in order to render him liable to pay for the damage. And with regard to this ox that killed, once the verdict was given that it to be put to death, we do not delay the implementation of the verdict in order to wait for the evaluation of the court, and we do not delay its judgment. Therefore, the monetary case is not judged.

283 And I, Rava, said to the Sages of the school of Rav: Even if you say that this halakha is in accordance with the opinion of Rabbi Akiva, who does not require assessment by the court, one could explain that here we are dealing with a case where the owner of the ox fled, and the court cannot judge his case in his absence and cannot render him liable to pay for the damage caused by his ox.

284 The Gemara asks: If the baraita is discussing a case where the owner fled, then in the case where they did not yet judge it as a case of capital law, how does the court judge it as a case of monetary law without the owner of the ox being present? The Gemara answers: The baraita is discussing a case where the court accepted the testimony of the witnesses in the presence of the owner, and he subsequently fled.

[285] The Gemara asks: Ultimately, from where are the damages paid in a situation where the owner fled, as he is not here to pay the damages? The Gemara answers: They are paid from plowing. The ox is rented out to plow fields, and the fees generated are used to pay the damages. Afterward, the ox is judged for the killing as a case of capital law. The Gemara asks: If so, with regard to an innocuous ox, why did the baraita rule that the court does not judge it as a case of monetary law? The court should judge it as a case of monetary law first, and the damages will be paid from fees generated from renting out the animal for plowing, and then the court should judge it as a case of capital law.

[286] Rav Mari, son of Rav Kahana, said in answer to this last question: That is to say that the money gained from plowing is considered like the superior-quality property of its owner. In other words, that money is like the rest of the owner's estate, and is not considered to be part of the value of the ox itself. Since payment for damage caused by an innocuous ox is taken only from the value of the ox itself, it follows that money received from renting out the ox to plow cannot be used to pay damages.

[287] § In connection with the ruling of the baraita that the court must assess whether the death can be attributed directly to the action of the assailant, the Gemara notes: A dilemma was raised before the Sages: Is there an evaluation performed with regard to damage as well, to determine whether the act was sufficient to inflict that damage, or is there no evaluation performed with regard to damage?

[288] Do we say that specifically in a case of killing is where we perform an evaluation? The assessment is to determine whether a soul departs with this assault and the assailant will be held liable or whether a soul doesn't depart with this assault and the death is attributed to other factors. But in a case of damage, perhaps we say that he is liable for whatever caused the damage. Or perhaps there is no difference between the two, and with regard to damage as well, the court evaluates whether the act was sufficient to inflict that damage, and if it was not, he will be exempt.

[289] The Gemara says: Come and hear a proof from what was taught in a mishna (50b) concerning the halakhot of a pit: Just as a pit that has sufficient depth to cause death when falling into it is at least ten handbreadths deep, so too, any other excavations that have sufficient depth to cause death may be no less than ten handbreadths. If any of the types of excavations were less than ten handbreadths deep, and an ox or a donkey fell into one of them and died, the digger of the excavation is exempt. But if it was injured in it but did not die he is liable to pay damages.

[290] What, is it not the case that the mishna is counting the handbreadths from below to above, and this is what it is saying: From one handbreadth deep until ten handbreadths deep, there is no liability for death but there is liability for damage? Apparently, with regard to damage he is liable for whatever caused the damage, even a fall into an excavation having the depth of one handbreadth. Learn from the mishna that the court does not perform an evaluation with regard to damage.

[291] The Gemara rejects this: No, the mishna is counting from above to below, and this is what it is saying: If the excavation is ten handbreadths deep then there is liability for death. If the excavation is slightly less than ten, there is liability for damage but there is no liability for death. And actually, I will say to you that there is an evaluation performed for damage, and for each and every circumstance, we require that there be conditions whereby the injured party could reasonably be damaged by whatever caused the damage.

[292] The Gemara suggests another proof: Come and hear a proof from what was taught in a baraita (Tosefta 9:26): If a slave owner struck his Canaanite slave on his eye and blinded him, or on his ear and deafened him, the slave is emancipated by means of these wounds. If he struck near his eye and

as a result he does not see, or near his ear and he does not hear, the slave is not emancipated by means of these wounds. What is the reason that the slave is not emancipated? Isn’t it due to the fact that we require an evaluation of the damage, and in such a case the assumption is that the owner’s action did not suffice to cause the injury? And learn from the baraita that there is an evaluation performed with regard to damage.

293 The Gemara rejects this: No; the slave is not emancipated, because we say that it is possible that it was the slave who frightened himself, resulting in his blindness or deafness, but it was not the actual strike that caused it. An injury can result from being frightened, as it is taught in a baraita (Tosefta 6:16): One who frightens another and thereby causes him injury is exempt according to human laws but liable according to the laws of Heaven. How so? If one shouted into another’s ear and deafened him, he is exempt according to human laws but liable according to the laws of Heaven. But if he held him and shouted into his ear and deafened him, he is liable according to human laws as well, as he physically took hold of him.

294 The Gemara suggests another proof: Come and hear a proof from what was taught in a baraita (Tosefta 9:3): With regard to the five types of indemnity that one who injures another must pay, the court evaluates the victim as to the value of the damage that he suffered, and the assailant gives this payment to him immediately. Payment for medical costs and loss of livelihood is evaluated from the moment of injury until he is healed. If the court evaluated that a certain sum would be needed to pay for his medical costs and loss of livelihood, and subsequently the victim’s condition began progressively deteriorating and the sum proved to be inadequate, they give him payment only as they had evaluated him.

295 The baraita continues: If they evaluated him as requiring a certain sum for medical costs and loss of livelihood and he healed sooner than expected, they nevertheless give him the entire sum as they had evaluated him. Learn from the baraita that there is an evaluation performed with regard to damage. The Gemara clarifies: With regard to evaluating an injured man to determine how long he will suffer from this injury and how long he will not suffer, we do not raise a dilemma, since it is obvious that we certainly evaluate this element. When we raise the dilemma of whether the court performs an evaluation or not, it is with regard to evaluating an item, i.e., determining if it is capable of causing this damage or if it is not capable of causing this damage. With regard to this issue, what is the halakha?

296 The Gemara suggests: Come and hear a proof from what was taught in a baraita (Tosefta, Sanhedrin 12:3): Shimon HaTimni says: Just as a fist is unique in that it is submitted to the assembly of judges to assess its ability to injure and to the witnesses who attest that this was the fist used to strike, so too, a ruling can be issued in the case of any item that is submitted to the assembly of judges to identify its ability to injure and to the witnesses who attest that this was the item used to strike. Learn from the baraita that there is an evaluation performed with regard to damage. The Gemara affirms: Learn from the baraita that this is so.

297 The Master said above: If they evaluated him as requiring a certain sum for medical costs and loss of livelihood and he healed sooner than expected, they nevertheless give him the entire sum as they had evaluated him. This supports the opinion of Rava, as Rava said: With regard to this man whom they evaluated, concluding that he would not be able to perform labor for the entire day, and his wounds healed [ve’itpaḥ] at midday and he was performing labor, we give him compensation for

the entire day. The injury was one that would generally cause a man to not be able to perform labor for an entire day, and it was from Heaven that they had compassion on him and healed him sooner. This does not affect the liability of the one who caused the damage.

298 § The mishna teaches (90a): If he spat at him and his spittle reached him, or if he removed another's cloak, he must give the injured party four hundred dinars. Rav Pappa says: They taught this halakha only in a case where the spittle reached him. But if the spittle landed on his clothing without touching him, he is not required to pay him. The Gemara asks: Why not? Let it be like one who humiliated another with words.

299 The Gemara answers: In the West, Eretz Yisrael, they say in the name of Rabbi Yosei bar Avin: That is to say that if he humiliated another with words alone, he is exempt from paying anything, although he will be held accountable by Heaven for his sin.

300 The mishna teaches with regard to the assessment of payment for humiliation: It is all assessed in accordance with the honor of the one who was humiliated. A dilemma was raised before the Sages: Does the first tanna in the mishna say his opinion as a leniency, or does he say his opinion as a stringency? The Gemara explains the two possibilities: He says his opinion as a leniency, teaching that there is a poor person, who doesn't need to take so much payment for humiliation, as detailed in the fixed sums of the mishna. Or perhaps he says his opinion as a stringency, teaching that there is a rich person whom the assailant needs to give him more than those fixed sums.

301 The Gemara suggests: Come and hear a proof from that which Rabbi Akiva says in the mishna: Even with regard to the poor of the Jewish people, they are viewed as though they were freemen who lost their property and were impoverished, and their humiliation is calculated according to this status, as they are the sons of Abraham, Isaac, and Jacob, and are all of prominent lineage. Conclude from Rabbi Akiva's statement that the first tanna says his opinion as a leniency, meaning that while the first tanna states the principle that payment for humiliation is in accordance with the honor of the one who was humiliated, and therefore a poor person will receive less than the fixed sums listed in the mishna, Rabbi Akiva responds that even a poor man is deserving of those fixed sums by virtue of his esteemed lineage. The Gemara affirms: Conclude from the mishna that this is so.

302 § The mishna relates: And an incident occurred involving one who uncovered the head of a woman in the marketplace. The woman came before Rabbi Akiva to request that he assess payment for the humiliation that she suffered, and Rabbi Akiva obligated the assailant to give her four hundred dinars. The man said to Rabbi Akiva: My teacher, give me time to pay the penalty, and Rabbi Akiva gave him time. The Gemara asks: But do we give time for an assailant to pay compensation? But doesn't Rabbi Ḥanina say: The court does not give one time to provide payment for injuries, and he must pay compensation immediately.

303 The Gemara answers: When we do not give him time to pay compensation it is specifically with regard to injury, as he caused a monetary loss by inflicting physical damage on the victim. But with regard to humiliation, where he did not cause him a monetary loss, we do give him time to pay compensation.

304 The mishna relates that the man then waited for her until she was standing by the opening of her courtyard, and caused her to uncover her own head. Rabbi Akiva said that although she caused injury to herself, which is not permitted, this does not negate the man's requirement to pay her compensation. The Gemara asks: But isn't it taught in a baraita that Rabbi Akiva said to him: You

plunged into mighty waters and you raised nothing more than worthless earthenware in your hand, since it is permitted for a person to injure himself. This contradicts the mishna's account of Rabbi Akiva's opinion.

[305] The Gemara answers: Rava said: It is not difficult. Here, in the mishna, where it states that one may not injure himself, it is stated with regard to inflicting actual physical injury, while there, in the baraita, where it states that it is permitted for one to injure himself, it is stated with regard to causing humiliation to oneself. The Gemara asks: But the ruling of Rabbi Akiva in the mishna is stated with regard to causing humiliation,

[306] and it teaches: With regard to one who injures himself, although it is not permitted for him to do so, he is nevertheless exempt from any sort of penalty, indicating that the prohibition is in effect even with regard to humiliation. The Gemara answers: This is what Rabbi Akiva said to the man: It is not necessary to say with regard to humiliation, where it is permitted for a person to humiliate himself, that someone else who humiliated him is liable. But even with regard to injury, where it is not permitted for a person to injure himself, others who injured him are liable.

[307] § The Gemara discusses whether it is permitted to injure oneself. And is a person not permitted to injure himself? But isn't it taught in a baraita: One might have thought that if one takes an oath to do evil to himself and did not do evil he will be exempt from bringing an offering for having transgressed this oath. Therefore, the verse states: "Or if anyone swear clearly with his lips to do evil or to do good" (Leviticus 5:4), which teaches that just as taking an oath to do good for which one is liable is referring to an optional activity, as opposed to taking an oath to perform a mitzva, so too, taking an oath to do evil is referring to an optional activity, as opposed to taking an oath to transgress. I can therefore include within the category of one who is liable if he transgressed his oath the person who takes an oath to do evil to himself and did not do evil. It is clear from this baraita that doing evil to oneself is permitted.

[308] The Gemara answers: Shmuel says: The ruling of the baraita is not referring to one who takes an oath to injure himself but is stated with regard to one who takes an oath stating: I will sit in observance of a fast, which it is permitted to do.

[309] Earlier in this same baraita, it states that one who takes an oath to do evil to others is not liable for violating his oath if he does not do evil, as it is prohibited to do evil to others. If the baraita is referring to one who takes an oath to fast, then in the corresponding situation in the context of doing evil to others, the baraita must also then be referring to one who takes an oath to have others sit in observance of a fast. The Gemara asks: Can one compel others to sit in observance of a fast?

[310] The Gemara answers: Yes; it is possible, as by preventing others from accessing food he can impose a fast on them, e.g., in a situation where he confined them in a room.

[311] The Gemara questions the assertion that this is the case of the baraita: But isn't it taught in a baraita: What is considered taking an oath to do evil to others? It is considered such if one takes an oath stating: I will strike so-and-so and I will injure his brain. Accordingly, in the corresponding situation of doing evil to oneself it is necessary to explain that the baraita is referring to causing injury as well, and the inference that this is permitted remains.

[312] Rather, it must be that this is a dispute between tanna’im, as there is a tanna who says that it is not permitted for a person to injure himself, and there is a tanna who says that it is permitted for a person to injure himself.

[313] The Gemara asks: Who is the tanna that you heard that says: It is not permitted for a person to injure himself? If we say that it is this tanna, as it is taught in a baraita: The verse states: “And surely your blood of your souls will I require” (Genesis 9:5), and Rabbi Elazar says: From the hand of your souls, i.e., from yourself, will I require your blood, meaning one is liable even for taking his own life, that is not a correct inference.

[314] But perhaps killing is different. While Rabbi Elazar holds that it is prohibited to take one’s own life, it cannot be inferred from here that he holds that one is liable for injuring himself.

[315] The Gemara suggests: Rather, it is the opinion of this tanna, as it is taught in a baraita: One may rend garments in anguish over one who died, and it is not considered of the ways of the Amorites, but a Jewish custom. Rabbi Elazar says: I heard that one who rends his garments excessively over one who died is flogged for having transgressed the prohibition of: Do not destroy (see Deuteronomy 20:19). The Gemara suggests: And all the more so it is the case that according to Rabbi Elazar one who injures his body in anguish transgresses this prohibition.

[316] The Gemara rejects this suggestion: But perhaps garments are different, in that tearing them is a loss that is irreversible, like that practice of Rabbi Yoḥanan, who would refer to his garments as: My honor, and like that practice of Rav Ḥisda, who, when he would walk among thorns and shrubs, would raise his clothing despite the fact that his skin would get scratched by the thorns. He said in explanation of his actions: This flesh will heal if scratched, but that garment will not heal if torn. Similarly, perhaps it is prohibited to rend one’s garments, but it is permitted to injure oneself.

[317] Rather, it is this tanna, as it is taught in a baraita: Rabbi Elazar HaKappar the Distinguished said: What is the meaning when the verse states with regard to a nazirite: “And he shall atone for him for sinning by the soul” (Numbers 6:11)? And with which soul did this person sin by becoming a nazirite? Rather, in that he afflicted himself by abstaining from wine he is considered to have sinned with his own soul, and he must bring a sin-offering for the naziriteship itself, for causing his body to suffer. And are these matters not inferred a fortiori: And just as this person who afflicted himself by abstaining only from wine is nevertheless called a sinner, one who afflicts himself by abstaining from everything, through fasting or other acts of mortification, all the more so is he described as a sinner? Consequently, Rabbi Elazar HaKappar holds that one may not harm himself in any manner.

[318] § The mishna teaches: One who cuts down his own saplings, although it is not permitted for him to do so, is exempt from payment. Nevertheless, others who cut down his saplings are liable. Rabba bar bar Ḥana taught the following baraita before Rav: If one charged another: You killed my ox, or: You cut down my saplings, and you are liable to pay for them, and the other responds: You told me to kill the ox, or: You told me to cut down the saplings, he is exempt from paying. Rav said to him: If that is so, you let no creature exist. Is it in his power to assert that because the other instructed him to cause damage he is exempt? With this claim, anyone who causes damage can exempt himself.

[319] Rabba bar bar Ḥana said to Rav: Shall I erase this baraita from the baraitot that I teach? Rav said to him: No, just interpret that your baraita is stated with regard to an ox that is ready to be killed, e.g., it had gored, and the owner decided to have it killed, and it is stated with regard to a tree that is ready to be cut down for whatever reason, e.g., it was worshipped as part of an idolatrous rite or it is

situated in a manner that poses a danger to the public. In such a case there is reason to believe that he was in fact instructed to cut it down.

[320] The Gemara asks: If that is so, that the owner of the ox or tree acknowledges that it would be killed or cut down in any event, what claim is he stating to him, as there was no loss resulting from the action of the other? The Gemara answers: The case is where he said to him: I desire to perform this mitzva of removing a danger or destroying idolatry by myself, and therefore I am demanding payment from you for having prevented me from doing so.

[321] This is as it is taught in a baraita: The verse states with regard to one who slaughters an undomesticated animal or a bird: "He shall pour out the blood thereof, and he shall cover it with dust" (Leviticus 17:13). This teaches that the one who poured the blood, i.e., the one who slaughtered, shall cover the blood. An incident occurred involving one who slaughtered an undomesticated animal or bird, and another preempted him and covered the blood, and Rabban Gamliel deemed him liable to give ten golden coins to the one who slaughtered the animal, as he prevented him from performing the mitzva.

[322] § In connection with the prohibition against cutting down trees the Gemara notes: Rav said with regard to a palm tree that still produces fruit in the amount of a kav, that it is prohibited to cut it down due to the prohibition of: "When you shall besiege a city…you shall not destroy the trees" (Deuteronomy 20:19).

[323] The Gemara raises an objection to the statement of Rav from what was taught in a mishna (Shevi'it 4:10): How much fruit must be on an olive tree so that one may not cut it down? A quarter-kav. Why did Rav say that it must produce a full kav? The Gemara answers: Olive trees are different, since they are significant. Therefore, even a quarter-kav is valuable.

[324] Rabbi Ḥanina said: My son Shivḥat did not die for any reason other than that he cut down a fig tree before its time. Ravina says: But if the lumber was greater in monetary value than its fruits, it is permitted to chop it down, and this does not violate the prohibition against destroying a tree.

[325] This halakha is also taught in a baraita. The verse states: "Only the trees of which you know that they are not trees for food, them you may destroy and cut down" (Deuteronomy 20:20). "Only the trees of which you know"; this is referring to a tree that bears fruit used for food, and it is permitted to cut down this type of tree under certain circumstances. "That they are not trees for food"; this is referring to a barren tree.

[326] The Gemara asks: And since the baraita will ultimately include all types of trees, so that even a tree that produces fruit may be cut down, what, then, is the meaning when the verse states: "That they are not trees for food," which indicates that it is permitted to cut down only a barren tree? The Gemara answers: It is to give precedence to cutting down a barren tree over a tree whose fruit is used for food.

[327] One might have thought that he must give precedence to the cutting down of a barren tree even if the barren tree is greater in monetary value than the fruit-bearing tree. The verse states: "Only," which teaches that there is an exception to the rule. Similarly, if the fruit-bearing tree itself would be worth more as lumber than for its fruits, it would be permitted for one to cut it down.

[328] The Gemara relates: The sharecropper of Shmuel brought him dates. Shmuel ate them, and tasted the taste of wine in them. He said to his sharecropper: What is this? The sharecropper said to him:

The date palms stand among the grapevines and therefore contain a taste of wine from the grapes. Shmuel said: Do they weaken the wine, i.e., the grapevines, so much that it is possible to taste the wine in the dates? Tomorrow, cut down the date palms and bring me from their marrow to eat.

329 The Gemara relates a similar incident: Rav Ḥisda saw date palms growing among grapevines on his estate. He said to his sharecropper: Uproot the date palms, since one can purchase date palms with grapevines, as grapevines are more valuable, while one cannot purchase grapevines with date palms.

330 MISHNA: Despite the fact that the assailant who caused damage gives to the victim all of the required payments for the injury, his transgression is not forgiven for him in the heavenly court until he requests forgiveness from the victim, as it is stated that God told Abimelech after he had taken Sarah from Abraham: “Now therefore restore the wife of the man; for he is a prophet, and he shall pray for you, and you shall live” (Genesis 20:7). And from where is it derived that if the victim does not forgive him that he is cruel? As it is stated: “And Abraham prayed to God; and God healed Abimelech, and his wife, and his maidservants; and they bore children” (Genesis 20:17).

331 The mishna continues: With regard to one who says to another: Blind my eye, or: cut off my hand, or: break my leg, and he does so, the one who performed these actions is liable to pay for the damage, despite having been instructed to do so. Even if he explicitly instructed him: Do so on the condition that you will be exempt from payment, he is nevertheless liable.

332 With regard to one who says to another: Tear my garment, or: break my jug, and he does so, he is liable to pay for the damage. But if he instructed him explicitly: Do so on the condition that you will be exempt from payment, he is exempt from payment. If one says to another: Do so, i.e., cause damage, to so-and-so on the condition that you will be exempt from payment, and he did so, he is liable, whether the instructions were with regard to the victim himself, or whether the instructions were with regard to his property.

333 GEMARA: The Sages taught: All these sums that in the previous mishna they said one is liable to pay for humiliating another are the compensation for his humiliation, for which there is a set amount. But for the victim’s pain caused by the assailant, even if the assailant brings as offerings all the rams of Nebaioth (see Isaiah 60:7) that are in the world, which are of the best quality, his transgression is not forgiven for him in the heavenly court until he requests forgiveness from the victim, as it is stated: “Restore the wife of the man; for he is a prophet, and he shall pray for you” (Genesis 20:7).

334 Having quoted the verse, the Gemara asks: Shall one infer from here that the wife of a prophet needs to be returned, but the wife of another individual need not be returned?

335 The Gemara answers. Rabbi Shmuel bar Naḥmani says that Rabbi Yonatan says: This is how the verse should be understood: “Restore the wife of the man” in any case, since she is his wife. And with regard to that which you, Abimelech, said: “Will you slay even a righteous nation? Did he not say himself to me: She is my sister, and she, even she herself, said: He is my brother?” (Genesis 20:4–5), the answer is that you, Abimelech, are not so righteous, since the reason Abraham said that Sarah was his sister is that he is a prophet, and he already learned how to conduct himself based on your behavior. As with regard to a guest [akhsenai] who comes to town, does one ask him about matters concerning eating and drinking, or does one ask him about matters concerning his wife? Does one ask a guest: Is she your wife? Is she your sister? Abimelech was to be blamed, since Abraham thought that he intended to steal his wife.

[336] The Gemara remarks: From here it can be derived that a gentile is executed for having transgressed a prohibition without awareness that the act was prohibited, since he should have learned and he did not learn.

[337] Having mentioned the verses concerning the incident of Abraham and Abimelech, the Gemara explains other related verses. “For the Lord had obstructed [atzor atzar] all the wombs of the house of Abimelech” (Genesis 20:18). Rabbi Elazar says: Why are these two obstructions [atzor atzar] both stated? One is stated with regard to a man, that semen will not be discharged, and two are stated with regard to a woman, that semen will not be discharged from her, and that she will not give birth.

[338] It was taught in a baraita: Two are stated with regard to a man: Semen and urine, i.e., that the men were unable to both urinate and discharge semen; three are stated with regard to a woman: Semen, and urine, and birth.

[339] Ravina says: Three are stated with regard to a man: Semen, and urine, and the anal sphincter, i.e., that they were unable to discharge stool as well. Consequently, they would be unable to relieve themselves at all. Four are stated with regard to a woman: Semen, and birth, and urine, and the anal sphincter.

[340] The verse states: “For the Lord had obstructed all the wombs of the house of Abimelech.” The Sages of the school of Rabbi Yannai say: Even a hen of the house of Abimelech did not lay her egg during that time.

[341] § The Gemara cites a series of questions that Rava asked Rabba bar Mari, the first one being related to the previous topic of discussion. Rava said to Rabba bar Mari: From where is this matter derived whereby the Sages stated: Anyone who asks for compassion from Heaven on behalf of another, and he requires compassion from Heaven concerning that same matter, he is answered first? Rabba bar Mari said to him that the source for this is as it is written: “And the Lord changed the fortune of Job, when he prayed for his friends” (Job 42:10).

[342] Rava said to him: You said the proof from there, from a verse in the Writings, and I say the proof from here, from a verse in the Torah. As it is written: “And Abraham prayed to God; and God healed Abimelech, and his wife, and his maidservants, and they bore children” (Genesis 20:17), and it is written immediately following that: “And the Lord remembered Sarah, as He had said” (Genesis 21:1), with the pronoun interpreted homiletically: As Abraham said with regard to Abimelech. Because Abraham prayed for Abimelech that the women of his household should give birth, Abraham himself was answered concerning that matter.

[343] Rava said to Rabba bar Mari: From where is this matter derived whereby people say: The cabbage is damaged together with the thorn, since the cabbage is sometimes harmed when the thorn is removed? Rabba bar Mari said to him that the source is as it is written: “Why will you contend with Me? You all have transgressed against Me, says the Lord” (Jeremiah 2:29). The term “you all” includes even those who have not sinned.

[344] Rava said to him: You said the proof from there, from a verse in the Prophets, and I say the proof from here, from a verse in the Torah. The Lord said to Moses after some of the people collected the manna on Shabbat: “How long do you refuse [me’antem] to keep My commandments and My laws?” (Exodus 16:28). The term “you refuse [me’antem]” is written in the plural, indicating that even Moses was included, although he did not sin.

345 Rava said to Rabba bar Mari: It is written with regard to Joseph: “And from among his brothers he took five men, and presented them to Pharaoh” (Genesis 47:2). Who are these five men? Rabba bar Mari said to him: This is what Rabbi Yoḥanan says: Those whose names were repeated in the blessings with which Moses later blessed the twelve tribes. They are Dan, Zebulun, Gad, Asher, and Naftali (see Deuteronomy 35). Since they were weak, Joseph brought them before Pharaoh.

346 Rava said: Judah also had his name repeated in the blessings, and he was strong.

347 Rabba bar Mari said to him: His name was repeated for his own matter, as Rabbi Shmuel bar Naḥmani says that Rabbi Yonatan said: What is the meaning of that which is written concerning Reuben and Judah in Moses’ blessing of the tribes at the end of his life: “Let Reuben live and not die in that his men become few” (Deuteronomy 33:6), and immediately afterward in the following verse it states: “And this for Judah, and he said: Hear Lord, the voice of Judah, and bring him in unto his people; may his hands fight on his behalf, and You shall be a help against his adversaries” (Deuteronomy 33:7)? What is the connection between the blessing of Reuben and that of Judah, juxtaposed with the conjunction “and”?

348 Rabbi Yoḥanan said: All those forty years that the Jewish people were in the desert, the bones of Judah, which the Jewish people took with them from Egypt along with the bones of his brothers, were rolling around in the coffin, until Moses came and asked for mercy on Judah’s behalf. Moses said before God: Master of the Universe, who served as the impetus for Reuben that he should confess his sin, through which he merited a blessing and was not excluded from the count of the twelve sons of Jacob (see Genesis 35:22)? It was Judah, as Reuben saw him confess his sin, and thereby did the same.

349 Immediately after Moses prayed, the verse states: “Hear, Lord, the voice of Judah” (Deuteronomy 33:7). His bones then entered their sockets [leshafa], and his skeleton became attached. The angels still did not elevate him into the heavenly study hall. Moses then prayed: “And bring him in unto his people” (Deuteronomy 33:7), i.e., bring him to those in the heavenly study hall. This prayer was accepted, but he still did not know what the sages were saying, and he was unable to deliberate in Torah matters with the sages. Moses then prayed: “May his hands fight on his behalf” (Deuteronomy 33:7), meaning that he should have the ability to contend with them in study. But still he was unable to draw conclusions from his discussion in accordance with the halakha. Moses then prayed: “And You shall be a help against his adversaries” (Deuteronomy 33:7).

350 Rava said to Rabba bar Mari: From where is this matter derived whereby people say: Poverty follows the poor? Rabba bar Mari said to him: As we learned in a mishna (Bikkurim 3:8): Rich people would bring first fruits in baskets of gold and of silver, and poor people would bring first fruits in wicker baskets made of peeled willow, and they would give the baskets and the first fruits to the priests. The rich would have their baskets returned to them, while the poor would not. Rava said to him: You said the proof from there, from a mishna, and I say the proof from here, from a verse in the Torah:

351 The verse states with regard to one diagnosed with leprosy: “And the leper in whom the plague is, his clothes shall be rent, and the hair of his head shall go loose, and he shall cover his upper lip, and he shall cry: Unclean, unclean” (Leviticus 13:45). Not only must the leper suffer from the leprosy itself; he must undergo further embarrassment by publicizing his condition. This is akin to the aphorism that poverty follows the poor.

352 Rava said to Rabba bar Mari: From where is this matter derived whereby the Sages stated: Awaken early and eat, in the summer due to the heat and in the winter due to the cold. And similarly, people say: Sixty runners run and do not reach the man who ate in the morning. Rabba bar Mari said to him that the source is as it is written: “They shall not hunger nor thirst, neither shall the heat nor the sun smite them” (Isaiah 49:10), indicating that one who is not hungry or thirsty will not be affected by the weather.

353 Rava said to him: You said the proof from there, from a verse in the Prophets, and I say the proof from here, from a verse in the Torah. The verse states: “And you shall serve the Lord your God, and He will bless your bread and your water; and I will take sickness away from the midst of you” (Exodus 23:25). Rava explicates: “And you shall serve the Lord your God”; this is referring to the recitation of Shema and prayer. “And He will bless your bread and your water”; this is referring to bread dipped in salt, and a flask of water drunk after the bread, in the mornings. From this point forward the remainder of the verse applies: “And I will take sickness away from the midst of you.”

354 And it is taught in a baraita: “Sickness”; this is referring to bile. And why is its name called sickness [maḥala]? It is called this since there are eighty-three sicknesses in bile. The letters spelling the word maḥala, i.e., mem, ḥet, lamed, heh, have that numerical value of eighty-three. And with regard to all of those sicknesses, eating bread dipped in salt in the morning and drinking a flask of water afterward negates them.

355 Rava said to Rabba bar Mari: From where is this matter derived whereby the Sages stated: If your friend calls you a donkey, prepare a saddle for your back, i.e., do not contest his statement? Rabba bar Mari said to him that the source is as it is written in the conversation between the angel and Hagar: “And he said: Hagar, maidservant of Sarai, from where did you come and to where are you going? And she said: I am fleeing from the face of my mistress Sarai” (Genesis 16:8). Though Hagar was no longer the maidservant of Sarai, since the angel referred to her as such, she responded in kind.

356 Rava said to Rabba bar Mari: From where is this matter derived whereby people say: If you are aware of a derogatory matter that is found in you, say it first before others say it about you? Rabba bar Mari said to him that the source is as it is written with regard to Eliezer: “And he said: I am Abraham’s servant” (Genesis 24:34), immediately proclaiming that he is a servant.

357 Rava said to Rabba bar Mari: From where is this matter derived whereby people say: The goose stoops its head as it goes along, but its eyes look afar to find food for itself? Rabba bar Mari said to him that the source is as it is written with regard to Abigail’s statement to David: “And when the Lord shall have dealt well with my lord, then remember your maidservant” (I Samuel 25:31). Although Abigail spoke with humility in her request that David spare her husband’s life, she made reference to deriving future benefit from David.

358 Rava said to Rabba bar Mari: From where is this matter derived whereby people say: Sixty discomforts come to the teeth [lekhakha] of one who hears the sound of another eating and does not eat? Rabba bar Mari said to him that the source is as it is written with regard to what Nathan the prophet said concerning the coronation banquet of Adonijah, to which he was not invited: “For he is gone down this day, and has slain oxen and fatlings and sheep in abundance, and has called all the king’s sons…But me, even me your servant, and Zadok the priest, and Benaiah the son of Jehoiada, and your servant Solomon he has not called” (I Kings 1:25–26).

359 Rava said to him: You said the proof from there, from a verse in the Prophets, and I say the proof from here, from a verse in the Torah. As it is written: “And Isaac brought her into his mother Sarah’s tent, and took Rebekah, and she became his wife; and he loved her, and Isaac was comforted for his mother” (Genesis 24:67). And it is written immediately afterward: “And Abraham took another wife, and her name was Keturah” (Genesis 25:1). After seeing his son marry, Abraham was disquieted by the fact he was not married. This is akin to one who sees another eating and does not eat.

360 Rava said to Rabba bar Mari: From where is this matter derived whereby people say: While the wine belongs to its owner, the gratitude is given to the one who pours it? Rabba bar Mari said to him that the source is as it is written with regard to God commanding Moses to transfer his authority to Joshua: “And the Lord said unto Moses: Take you Joshua the son of Nun, a man in whom is spirit, and lay your hand upon him…that all the congregation of the children of Israel may hearken” (Numbers 27:18–20). And it is written: “And Joshua the son of Nun was full of the spirit of wisdom; for Moses had laid his hands upon him; and the children of Israel hearkened unto him, and did as the Lord commanded Moses” (Deuteronomy 34:9). Although the spirit of God was not given to Joshua by Moses, as Moses was only a conduit, he was given credit for it.

361 Rava said to Rabba bar Mari: From where is this matter derived whereby people say: A dog, in its hunger, swallows even dung? Rabba bar Mari said to him that the source is as it is written: “The full soul loathes a honeycomb; but to the hungry soul every bitter thing is sweet” (Proverbs 27:7).

362 Rava said to Rabba bar Mari: From where is this matter derived whereby people say: A bad palm tree strolls and goes to be among a grove of barren trees, i.e., bad people seek out other bad people? Rabba bar Mari said to him: This matter is written in the Torah, repeated in the Prophets, and triplicated in the Writings, and we learned it in a mishna, and we learned it in a baraita.

363 Rabba bar Mari explains each of the sources. It is written in the Torah, as it is written: “And so Esau went to Ishmael” (Genesis 28:9). It is repeated in the Prophets, as it is written: “And there were gathered vain fellows to Yiftah, and they went out with him” (Judges 11:3). And it is triplicated in the Writings, as it is written: All fowl will live with its kind, and men with those like him (Book of Ben Sira 13:17). We learned it in a mishna (Kelim 12:2): All that is attached to that which is ritually impure is ritually impure; all that is attached to that which is ritually pure is ritually pure. And we learned it in a baraita: Rabbi Eliezer says: Not for naught did the starling go to the raven but because it is its kind, as it too is a non-kosher bird.

364 Rava said to Rabba bar Mari: From where is this matter derived whereby people say: If you called to your friend and he did not answer you, throw a large wall and cast it at him, i.e., do not attempt to help him anymore? Rabba bar Mari said to him that the source is as it is written: “Because I have purged you and you were not purged, you shall not be purged from your impurity anymore, until I have satisfied My fury upon you” (Ezekiel 24:13).

365 Rava said to Rabba bar Mari: From where is this matter derived whereby people say: If there is a well that you drank from, do not throw a stone into it? Rabba bar Mari said to him that the source is as it is written: “You shall not abhor an Edomite, for he is your brother; you shall not abhor an Egyptian, because you were a stranger in his land” (Deuteronomy 23:8). Since you dwelled in their lands, you may not cause them harm.

366 Rava said to Rabba bar Mari: From where is this matter derived whereby people say: If you lift the load with me I will lift it, and if you will not lift it with me I won’t lift it? Rabba bar Mari said to

him that the source is as it is written with regard to Barak and Deborah concerning the war of Sisera: “And Barak said to her: If you will go with me, then I will go; but if you will not go with me, I will not go” (Judges 4:8).

367 Rava said to Rabba bar Mari: From where is this matter derived whereby people say: When we were small, we were considered to be men; now that we are old, we are considered to be children [ledardekei]? Rabba bar Mari said to him that the source is that initially, it is written with regard to the Jewish people traveling in the wilderness: “And the Lord went before them by day in a pillar of cloud, to lead them the way; and by night in a pillar of fire, to give them light” (Exodus 13:21). God Himself guarded over the Jewish people. But at the end, after some time passed and it would be expected that the Jewish people were considered more important, it is written:

368 “Behold, I send an angel before you, to keep you by the way” (Exodus 23:20), indicating that an angel was sent in place of God to guard the Jewish people.

369 Rava said to Rabba bar Mari: From where is this matter derived whereby people say: Drag wood after a property owner. In other words, help out a wealthy man even in a small way, as this may lead to your benefiting from him. Rabba bar Mari said to him that the source is as it is written: “And Lot also, who went with Abram, had flocks, and herds, and tents” (Genesis 13:5).

370 § In connection with the incident of Abraham and Abimelech mentioned in the mishna, the Gemara quotes a related statement. Rabbi Ḥanan says: One who passes the judgment of another to Heaven is punished first, as it is stated: “And Sarai said to Abram: My wrong be upon you, I gave my handmaid into your bosom; and when she saw that she had conceived, I was despised in her eyes: The Lord judge between me and you” (Genesis 16:5). Sarai stated that God should judge Abram for his actions. And it is written: “And Abraham came to mourn for Sarah, and to weep for her” (Genesis 23:2), as Sarah died first. The Gemara comments: And this matter applies only in a situation where he has someone to do judgment for him on earth and has no need to appeal to the heavenly court.

371 Concerning this, Rabbi Yitzḥak says: Woe to he who cries out to Heaven more than the one about whom he is crying out. The Gemara comments: This concept is also taught in a baraita: Both the one who cries out and the one about whom he is crying out are included in the verse discussing the cries of an orphan who is mistreated: “If you afflict them, for if they cry at all to Me, I will surely hear their cry. My wrath shall wax hot, and I will kill you with the sword” (Exodus 22:22–23). But they are quicker to punish the one who cries out than the one about whom he is crying out, as in the incident with Sarai.

372 The Gemara provides another lesson from the story of Abraham and Abimelech. And Rabbi Yitzḥak says: The curse of an ordinary person should never be regarded as light in your eyes, for Abimelech cursed Sarah and it was fulfilled in her descendant. The curse on Sarah is as it is stated: “Behold, it is to you a covering of the eyes” (Genesis 20:16), meaning that he said to her: Since you concealed your status from me and you did not reveal that Abraham is your husband, and you caused me this suffering, may it be God’s will that you should have children with covered eyes. And this curse was fulfilled in her descendant, as it is written: “And it came to pass, that when Isaac was old, and his eyes were dim, so that he could not see” (Genesis 27:1).

373 Rabbi Abbahu says: A person should always be among those who are pursued and not among the pursuers. One can prove that this is so, as none among birds are pursued more than doves and

pigeons, as all predators hunt them, and from all birds the verse deemed them fit to be sacrificed on the altar.

374 § The mishna teaches: With regard to one who says to another: Blind my eye, or: Cut off my hand, or: Break my leg, and he does so, the latter is liable to pay for the damage, even if the injured party explicitly instructed him to do so on the condition that he will be exempt from payment. But if one instructs another to damage his property on the condition that he will be exempt from payment, he is exempt. Rav Asi bar Ḥama said to Rava: What is different in the first clause and what is different in the latter clause?

375 Rava said to him: In the case of the first clause he is liable, despite the fact that he was instructed to carry out the injury on the condition that he would be exempt, because a person does not forgo compensation for damage to his extremities such as his eyes, hands, and feet, mentioned in the mishna (92a). Consequently, when he told the assailant that he would be exempt, the presumption is that he was not sincere.

376 Rav Asi bar Ḥama said to him: But does a person forgo compensation for his pain when he doesn’t lose a limb? As it is taught in a baraita: With regard to one who said to another: Strike me, or wound me, on the condition that you will be exempt from payment, he is exempt. According to Rava’s reasoning, he should be liable in this case as well, as the presumption should be that he was not sincere. Rava was silent, as he did not have a response.

377 Rava said to him: Have you heard anything with regard to this matter? Rav Asi bar Ḥama said to him that this is what Rav Sheshet said: It is because loss of a limb may result in a family flaw, i.e., it may cause harm to the family name. One who loses a limb not only suffers pain; his family suffers as well. He is not in a position to forgive the assailant for the harm caused to his family, but he may forgo compensation for his own pain. Consequently, if he instructed another merely to injure him, without causing loss of limb, on condition that the assailant will be exempt from payment, the assailant will be exempt.

378 It was stated that the amora’im disagreed concerning the explanation for the ruling of the first clause of the mishna. Rabbi Oshaya says: It is because loss of a limb may result in a family flaw. Rava says: It is because a person does not forgo compensation for damage to his extremities.

379 Rabbi Yoḥanan says: There is a yes that, based on other factors, is like a no and is not viewed as giving consent. And conversely, there is a no that, based on other factors, is like a yes, and although one said no it is as though he gave consent. In this case as well, where he said: On condition to be exempt, he was not sincere.

380 The Gemara comments that this is also taught in a baraita. With regard to one who said to another: Strike me, or wound me; and the other asks: Is this on the condition that I will be exempt from payment? And the first one said to him, in the tone of a question: Yes, this is an example of the principle: There is a yes that is like a no. It is as if the victim asked: Even if I give you permission to do it, do you think that I would forgo the compensation? By contrast, if one said: Tear my garment, and the other asks: Is this on the condition that I will be exempt from payment? And he said to him, in the tone of a question: No, this is an example of a no that is like a yes, since he meant to say that if he did not want to exempt him from payment he would not ask him to do it.

381 § The mishna teaches that if one instructed another: Break my jug, or: Tear my garment, and the other did so, he is liable to pay for the damage. And the Gemara raises a contradiction from a baraita: The verses state with regard to bailees: “If a man delivers to his neighbor money or vessels to safeguard” (Exodus 22:6), and: “If a man delivers to his neighbor an ass, or an ox, or a sheep, or any beast, to safeguard” (Exodus 22:9). The Sages derived from these verses that the bailee is liable if the item was given to him to safeguard, but not where it was given to him to destroy; if it was given to him to safeguard, but not where it was given to him to tear; if it was given to him to safeguard, but not where it was given to him to distribute to the poor. This indicates that a bailee is not liable for damage to an item if he was told to tear it, even if the owner did not state that it is on condition to be exempt.

382 Rav Huna said: This is not difficult, as this mishna that obligates him to pay for the damage is dealing with a case where it came into his possession, and he was responsible for it before the owner instructed him to tear it. Therefore, even if he was instructed to tear it, he is liable. And that baraita, which exempts him from paying, is discussing a case where it did not come into his possession, but he simply tore it.

383 Rabba said to Rav Huna: But the phrase in the verse “to safeguard,” which obligates a bailee, indicates that it came into his possession already, and this is the case of the baraita that rules he is exempt.

384 Rather, Rabba said: This and that are discussing a case where it came into his possession, and it is not difficult. This mishna is discussing a case where it came into his possession as an item given for safeguarding, and he is exempt if the owner stated explicitly that this will be the case, and that baraita is discussing a case where it came into his possession as an item given for tearing.

385 The Gemara relates: There was a certain purse full of charity money that came to the city of Pumbedita. Rav Yosef deposited it with a certain man. That man was negligent in safeguarding it and thieves came and stole it. Rav Yosef deemed the bailee liable to pay compensation. Abaye said to Rav Yosef: But isn’t it taught in a baraita: To safeguard, but not where it was given to him to distribute to the poor? This seems to teach that with regard to money that is distributed to the poor, there is no halakha of safeguarding.

386 Rav Yosef said to him: The poor of Pumbedita have an amount that is set for them to receive. Each poor person already had a specific sum designated for him, and accordingly is in the category of: To safeguard. Therefore, he is liable.

## Chapter 9

1 MISHNA: In the case of one who robs another of wood and fashions it into vessels, or one who robs another of wool and fashions it into garments, he pays the robbery victim according to the value of the goods at the time of the robbery, but he need not return the vessels or garments. He has acquired the stolen items because they had undergone a change.

2 If one robbed another of a pregnant cow and it then gave birth while in his possession, or if one robbed another of a ewe that was laden with wool and the robber then sheared it, the robber pays the

value of a cow that is ready to give birth or the value of a ewe that is ready to be shorn. He pays the value of the animal at the time of the robbery, and the calf or the wool remains his.

[3] If one robbed another of a cow, and it became pregnant in his possession, and it then gave birth; or if one robbed another of a ewe, and it became laden with wool in his possession, and he then sheared it, then the robber pays according to the value of the animal at the time of the robbery. This is the principle: All robbers pay according to the value of the stolen item at the time of the robbery.

[4] GEMARA: The Sages say: It can be inferred from the mishna that if one robbed another of wood and fashioned it into vessels, yes, the robber acquires the wood due to the change. If he merely sanded it, no, the robber does not acquire it, as this is not a significant change. Similarly, if one robbed another of wool and fashioned it into garments, yes, he has acquired the wool due to the change. If he merely washed it, no, he has not acquired it.

[5] And the Gemara raises a contradiction from a baraita: If one robbed another of wood and sanded it, or stones and smoothed them, or wool and washed it, or flax and cleaned it, he pays according to the value of the stolen item at the time of the robbery. This baraita teaches that even a change such as sanding wood is regarded as a significant change.

[6] Abaye said: This does not contradict the mishna. The tanna of our mishna teaches the halakha with regard to a change deemed significant by rabbinic law, which is not deemed significant by Torah law, as it is reversible. And all the more so, if the robber effects a change deemed significant by Torah law, i.e., an irreversible change, he acquires the stolen item due to the change.

[7] The Gemara explains: Accordingly, it must be that the case in the mishna, where the change is reversible, where one robbed another of wood and fashioned it into vessels, is stated with regard to one who robbed another of sanded wood. And what are they? Boards that the robber used to construct a vessel, which is a change in which the item can revert to its original state, as, if the robber desires, he can disassemble them. Similarly, the case of one who robbed another of wool and fashioned it into garments refers to wool that was already spun, as fashioning them into garments is a change in which the item can revert to its original state, as, if the robber desires, he can unravel them. The mishna teaches that the robber acquires the stolen item by making these changes, and all the more so the robber acquires the stolen item through a change deemed significant by Torah law.

[8] Abaye continues his explanation: And the tanna of the baraita teaches the halakha with regard to a change deemed significant by Torah law, but he does not teach the halakha with regard to a change deemed significant by rabbinic law. It is possible that he maintains that the robber does not acquire the stolen item due to such a change.

[9] Rav Ashi stated another answer: The tanna of our mishna is also teaching the halakha with regard to a change deemed significant by Torah law. The case in the mishna of one who robbed another of wood and fashioned it into vessels is referring to one who constructed pestles [bukhanei], which is analogous to the case mentioned in the baraita where one sanded them, since a pestle is formed by trimming the wood in an irreversible manner. Similarly, the case in the mishna of one who robbed another of wool and fashioned it into garments is referring to one who fashioned the wool into pieces of felt [namtei], which is an irreversible change.

[10] The Gemara asks a question with regard to the baraita: But does washing effect a significant change, so that one who robs another of wool and washes it acquires the wool and pays its value at

the time of robbery? And the Gemara raises a contradiction from a mishna that discusses the halakhot of the first of the sheared wool, which one must give to a priest (Ḥullin 135a): If the owner of the sheep did not manage to give the sheared wool to the priest before he dyed it, he is exempt from giving it to the priest, as the obligation is in effect only with regard to wool remaining in its original state. By contrast, if he washed it but did not dye it, he is obligated to give it to the priest. This indicates that washing does not effect a significant change.

[11] Abaye said: It is not difficult. This baraita is in accordance with the opinion of Rabbi Shimon, whereas that mishna is in accordance with the opinion of the Rabbis, as it is taught in a baraita with regard to the first of the sheared wool: If one sheared it, spun it, and wove it, the sheared wool does not combine with the wool from other sheep to constitute the minimum quantity of wool for which one is obligated to give the first of the sheared wool to the priest. If one washed it, then Rabbi Shimon says that it does not combine with the wool of other sheep, as washing effects a significant change, and the Rabbis say that it combines with the wool of other sheep, as washing does not effect a significant change. Their opinions correspond to the opinions in the baraita and mishna previously quoted.

[12] Rava stated another answer: This and that, i.e., both the mishna and the baraita, are in accordance with the opinion of Rabbi Shimon, and it is not difficult. This mishna is referring to a case where one untangled the strands of wool by hand before washing it. In this case, the washing is not fully effective, and does not effect a significant change. That baraita is referring to a case where one combed it before washing it. The washing is more effective and consequently effects a significant change.

[13] Rabbi Ḥiyya bar Avin stated another answer: This mishna is referring to a case where one merely whitened it, which is not a significant change. That baraita is referring to a case where one bleached it with sulfur, which is a significant change.

[14] Having demonstrated that, according to Rabbi Shimon, washing effects a significant change, the Gemara asks: Now that it can be said that, according to Rabbi Shimon, dye does not effect a significant change, as the Gemara will prove, can it be said that washing effects a significant change? As it is taught in a baraita: If he sheared sheep one by one and dyed the wool of each sheep before shearing the next sheep, or sheared them one by one and spun the wool, or sheared them one by one and wove the wool, then the wool sheared from the different sheep does not combine to constitute the minimum quantity of wool for which one is obligated to give the first of the sheared wool to the priest. Rabbi Shimon ben Yehuda says in the name of Rabbi Shimon: Even if he dyed it, it combines with the other wool. This indicates that, according to Rabbi Shimon, even dyeing the wool is not a significant change, so how could he maintain that washing it is?

[15] Abaye said: This is not difficult. This statement, that washed wool does not combine with other wool, is the opinion of the Rabbis in accordance with the opinion of Rabbi Shimon, while that statement, that even dyed wool combines with other wool, is the opinion of Rabbi Shimon ben Yehuda in accordance with the opinion of Rabbi Shimon. There is a dispute as to what Rabbi Shimon rules with regard to this issue.

[16] Rava said: Actually, the Rabbis do not disagree with Rabbi Shimon ben Yehuda, and they are also of the opinion that Rabbi Shimon holds that washing effects a significant change. And as for the apparent contradiction, dye is different and it does not effect a significant change, since one is able to

remove it with soap [tzafon] and return the wool to its previous state. And when it is taught there, in the mishna cited above, that if one did not manage to give the sheared wool to the priest before he dyed it he is exempt, and this ruling was established in accordance with all opinions, it was not stated with regard to ordinary dye but with regard to indigo, which cannot be removed with soap and therefore effects a permanent and therefore significant change.

[17] § Abaye said: Rabbi Shimon ben Yehuda, and Beit Shammai, and Rabbi Eliezer ben Ya'akov, and Rabbi Shimon ben Elazar, and Rabbi Yishmael all hold that despite a change, the changed item remains in its place, i.e., the changed item is still considered to have the status it had before the change. The Gemara proceeds to prove that each of these tanna'im holds this way: The opinion of Rabbi Shimon ben Yehuda is that which we just said. He says that, according to Rabbi Shimon, even if the wool is dyed it still combines with the wool of other animals to constitute the minimum quantity of wool for which one is obligated to give the first of the sheared wool to the priest.

[18] What is the source that indicates that Beit Shammai maintain that an item that undergoes a change is considered to have the same status that it had before the change? As it is taught in a baraita: If one gave a prostitute wheat as her payment, and she ground it and converted it into flour; or if he gave her olives, and she squeezed them and converted them into oil; or if he gave her grapes, and she squeezed them and converted them into wine; and if, in any of these cases, she subsequently consecrated the final product, it is taught in one baraita that it is prohibited to sacrifice them upon the altar as a meal-offering or libation, as the Torah states: "You shall not bring the hire of a harlot or the price of a dog into the House of the Lord your God" (Deuteronomy 23:19). And it is taught in another baraita that it is permitted, as the Gemara will explain. And Rav Yosef says: It was taught by Guryon

[19] of Asporak: Beit Shammai prohibit sacrificing these items and Beit Hillel permit doing so. The Gemara clarifies: What is the reason of Beit Shammai? The Gemara answers: The verse states: "You shall not bring the hire of a harlot or the price of a dog into the House of the Lord your God for any vow; for even both of these are an abomination unto the Lord your God" (Deuteronomy 23:19). The word "even" is an amplification, which serves to include in the prohibition these items in their changed form. And what is the reason of Beit Hillel? The verse states "these" to emphasize that the prohibition applies only to these items in their initial form, but not in their changed form.

[20] The Gemara asks: And according to Beit Shammai, isn't the word "these" written in the verse, indicating an exclusion? The Gemara responds: Beit Shammai requires that word to indicate that "these" items are forbidden, but not the offspring of animals given as payment to the prostitute. The Gemara asks: And according to Beit Hillel, what is the source of that halakha? The Gemara answers: According to Beit Hillel, you learn two halakhot from this word, as follows: "These" items are forbidden in their initial form but not in their changed form, and "these" items are forbidden but not their offspring.

[21] The Gemara asks: And according to Beit Hillel as well, isn't the word "even" written in the verse, indicating an amplification? The Gemara answers: Indeed, the word "even" is difficult for Beit Hillel. It is not clear how they would interpret that word.

[22] The Gemara continues: What is the source that indicates that Rabbi Eliezer ben Ya'akov holds that an item that undergoes a change is still considered to have the same status that it had before the change?

[23] The Gemara answers: As it is taught in a baraita that Rabbi Eliezer ben Ya’akov says: In the case of one who robbed another of a se’a of wheat, then ground it, kneaded it, and baked it, and he then separated ḥalla from it, i.e., he separated the portion of the dough that one is required to separate and then give to a priest, how can he recite the blessing over the separation of ḥalla? This individual is not reciting a blessing, but rather he is blaspheming. And with regard to this it is stated: “The robber who recites a blessing blasphemes the Lord” (Psalms 10:3), which is referring to a robber who recites a blessing upon performing a mitzva with an item he stole. According to Rabbi Eliezer ben Ya’akov, although this wheat has been significantly changed, it is still considered a stolen item.

[24] The Gemara continues: What is the source that indicates that Rabbi Shimon ben Elazar holds that an item that undergoes a change is still considered to have the same status that it had before the change? As it is taught in a baraita (Tosefta 10:2) that Rabbi Shimon ben Elazar stated this principle: With regard to any enhancement to the stolen animal in that it was enhanced by the actions of the robber, he has the advantage when repaying the owner. If he desires, he takes his enhancement, i.e., when he returns the animal, the robbery victim must pay the difference between its value at the time of the robbery and its current value, and if he desires he can return it to the owner and say to him: That which is yours is before you.

[25] The Gemara expresses surprise: What is he saying? If the robber has a right to demand compensation for the enhancement to the animal, why would he ever return it without stating this demand? Rav Sheshet said that this is what he is saying: If the robber enhanced it, he takes his enhancement. If the animal was weakened, the robber says to him: That which is yours is before you, and no further compensation is required. This is because despite a change, the changed item remains in its place. Since the robber has not acquired it, he simply returns the item to the robbery victim.

[26] The Gemara asks: If so, i.e., if the robber has not acquired it, then even if he enhanced it that should be the halakha as well. The item should still belong to the robbery victim and the robber should not be entitled to compensation. The Sages say in response: The fact that the robber has a right to demand compensation for the enhancement is due to an ordinance instituted for the penitent. In order to ease the burden of one who desires to repent, the Sages instituted that the robber be reimbursed for the increase in the value of the animal. Otherwise, a robber might refrain from returning a stolen item.

[27] The Gemara continues: What is the source that indicates that Rabbi Yishmael holds that an item that undergoes a change is still considered to have the same status that it had before the change? The Gemara answers: As it is taught in a baraita: The ideal way to fulfill the mitzva of produce in the corner of the field, which is given to the poor [pe’a], is to separate it from the standing grain, i.e., grain that has not been harvested. If one did not separate it from the standing grain, he separates it from the sheaves of grain that have already been harvested. If he did not separate it from the sheaves, he separates it from the pile of grain, as long as he has not yet smoothed the pile.

[28] If he smoothed the pile of grain, activating the obligation to tithe the produce, he first tithes the grain and then gives a portion of the tithed produce to the poor as pe’a, so that the poor will not have to tithe what they receive. Additionally, they said in the name of Rabbi Yishmael: If he did not separate pe’a during any of the aforementioned stages and he made a dough from the grain, he separates pe’a even from the dough and gives it to the poor. This indicates that even if the grain was changed, one is not exempt from the obligation of pe’a. The Gemara has now clarified the sources

Abaye alluded to when he listed all the tanna’im who hold that despite a change, the changed item remains in its place.

[29] Rav Pappa said to Abaye: Did all these tanna’im go to so much trouble in an effort [ikhpal] to teach us a halakha in accordance with the opinion of Beit Shammai, which is presumably not accepted as normative? Abaye said to Rav Pappa: This is what they are saying: Beit Shammai and Beit Hillel did not engage in a dispute with regard to this matter. All of the aforementioned tanna’im hold that even Beit Hillel agree that a change in the form of an item does not impact its status.

[30] Rava said: From where can it be proven that all of the aforementioned tanna’im hold that an item that undergoes a change is still considered to have the same status that it had before the change? One can say that the reasons for their statements are due to other factors. Perhaps Rabbi Shimon ben Yehuda states his opinion, that it is not a significant change, there, in the case of the first of the sheared wool, only with regard to dye, which is a reversible change, since one is able to remove it with soap.

[31] And perhaps Beit Shammai state their opinion there, in the case of a harlot, only with regard to an offering to the Most High, because of the fact that the item has become repugnant, in being used as payment for the services of a prostitute, and therefore it cannot be used for an offering even if its form has changed.

[32] And perhaps Rabbi Eliezer ben Ya’akov states his opinion there, where one robbed another of wheat, only with regard to a blessing, because this is a mitzva that is performed through commission of a transgression, but this does not indicate that a change is insignificant with regard to other matters.

[33] And perhaps Rabbi Shimon ben Elazar states his opinion there, where the condition of the animal changed, only with regard to weakening of the animal that is reversible. Since the animal’s value can be restored by fattening it, the weakening is not deemed a significant change.

[34] And perhaps Rabbi Yishmael states his opinion there, where one separated pe’a at a late stage, only with regard to pe’a, because it is written: “You shall leave them for the poor” an additional time. It is mentioned twice, in Leviticus 19:10 and Leviticus 23:22. One of these terms is superfluous, indicating that pe’a must be given to the poor under all circumstances, even if the grain was changed and made into dough. And if you would say: Let us derive from pe’a that in other halakhic domains the status of an item is not affected by its undergoing a change, pe’a cannot function as a source because gifts to the poor are different from other halakhot.

[35] The Gemara notes: Rava’s claim that no definitive conclusion with regard to the opinion of Rabbi Yishmael concerning a changed item is supported by the statement of another amora is like the dilemma raised by Rabbi Yonatan, as Rabbi Yonatan raises a dilemma: What is the reason for the ruling of Rabbi Yishmael? Is it because he holds that change does not cause one to acquire an item? Or perhaps he generally holds that change does cause one to acquire an item, but here, in the case of pe’a, it is different because the term “You shall leave” is written an additional time.

[36] Having quoted Rabbi Yonatan’s dilemma, the Gemara asks: And if you say that the reason for the ruling of Rabbi Yishmael is that he holds that change does not cause one to acquire an item, why do I need the additional term “You shall leave,” which the Merciful One writes in the Torah? And

furthermore, according to the opinion of the Rabbis, who hold that pe’a may not be taken from dough, why do I need the additional term “You shall leave” that the Merciful One writes?

37 The Gemara responds: This additional term is necessary for that which is taught in a baraita: One who renounced ownership of his vineyard and arose early in the morning before anyone else took possession of it and harvested it is obligated in the mitzva of individual fallen grapes left for the poor [peret], and in the mitzva of incompletely formed clusters of grapes left for the poor [olelot], and in the mitzva of forgotten clusters of grapes left for the poor and in the mitzva of pe’a. These are the four gifts to the poor that the Torah requires one to give from a vineyard. But he is exempt from the mitzva to tithe his produce, because this requirement does not apply to an ownerless field. The obligation to give gifts to the poor in this case is derived from the additional mention of the term “You shall leave.”

38 § The Gemara returns to the discussion of a stolen item that underwent a change. Rav Yehuda says that Shmuel says: The halakha is in accordance with the opinion of Rabbi Shimon ben Elazar, who says that even if the stolen animal deteriorated, it is returned to the owner in its current state.

39 The Gemara expresses surprise: But did Shmuel actually say this? But doesn’t Shmuel say: One does not appraise the change in value, neither for a thief nor for a robber. Rather, they keep the stolen animal and pay back the victim with their own money; one appraises the change only for one obligated to pay for damage?

40 Granted, according to the opinion of Rava, who said earlier in response to Abaye: When Rabbi Shimon ben Elazar states his opinion there, he stated it only with regard to weakening of the animal that is reversible, this is not difficult: When Shmuel says that the halakha is in accordance with the opinion of Rabbi Shimon ben Elazar, who holds that despite a change, the changed item remains in its place, he stated this with regard to weakening of the animal which is reversible, in which case the change is insignificant. And when Shmuel says there: One does not appraise the change in value, neither for a thief nor for a robber, but rather one appraises the change only for one obligated to pay for damage, he stated this with regard to weakening of the animal that is irreversible.

41 But according to Abaye, who said that when Rabbi Shimon ben Elazar states his opinion, he states it even with regard to weakening of the animal which is irreversible, what can be said?

42 The Gemara responds: Abaye taught the statement of Shmuel like this: Rav Yehuda says that Shmuel says:

43 Some said that the halakha is in accordance with the opinion of Rabbi Shimon ben Elazar, but Shmuel himself does not hold accordingly.

44 The Gemara continues the discussion of acquisition of a stolen item due to a change it underwent. Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: By Torah law, a stolen item that has changed is returned as is, as it is stated: “And he shall restore that which he took by robbery” (Leviticus 5:23). This indicates that he shall return it in any case, even if it has been changed. And if you say: In our mishna it is stated that if the stolen item is changed the robber gives monetary compensation rather than returning the item, that policy was instituted by the Sages due to the ordinance instituted for the penitent.

45 The Gemara asks: But did Rabbi Yoḥanan actually say that? But doesn’t Rabbi Yoḥanan say: The halakha is in accordance with an unattributed mishna, and we learned in a mishna with regard to first

of the sheared wool (Ḥullin 135a): If the owner of the sheep did not manage to give the sheared wool to the priest before he dyed it, he is exempt from giving it to the priest. This indicates that dyeing the wool is a significant change.

[46] One of the Rabbis, whose name was Rabbi Ya'akov, said to them: It was explained to me directly by Rabbi Yoḥanan that he was referring to a case where he robbed another of sanded wood and fashioned it into vessels, which is a change in which the item can revert to its original state. Consequently, the robber does not acquire the item by Torah law, but rather due to the ordinance instituted for the penitent.

[47] § Having mentioned the ordinance instituted for the penitent, the Gemara discusses other details of this ordinance. The Sages taught in a baraita (Tosefta, Shevi'it 8:11): With regard to robbers or usurers that returned either the stolen item or the interest to the one from whom they took it, one should not accept it from them. And with regard to one who does accept it from them, the Sages are displeased with him, since by doing so he discourages those who wish to repent.

[48] Rabbi Yoḥanan says: This mishna, i.e., the statement of the Tosefta, was taught in the days of Rabbi Yehuda HaNasi, as it is taught in a baraita: There was an incident with regard to one man who desired to repent after having been a thief for many years. His wife said to him: Empty one [reika], if you repent you will have to return all the stolen items to their rightful owners, and even the belt that you are wearing is not yours, and he refrained and did not repent. At that time, the Sages said: With regard to robbers or usurers that returned either the stolen item or the interest to the one from whom they took it, one should not accept it from them. And concerning one who does accept it from them, the Sages are displeased with him.

[49] The Gemara raises an objection from a baraita: With regard to children whose deceased father left them money paid as interest, although they know that it is interest, they are not obligated to return it. The Gemara infers: They, the children, are the ones that are not obligated to return it, but their father would have been obligated to return it, and his victims may accept his money.

[50] The Gemara responds: By right, the baraita should have taught that their father also would not have been obligated to return it. And the fact that the baraita teaches this halakha with regard to the children is because of the fact that the baraita wants to teach a halakha in the latter clause: If their deceased father left them a cow, or a garment, or any other specific item he had stolen or taken as interest, they are obligated to return it due to the honor of their father, so that the item not serve as a reminder to all that their father transgressed. Since this halakha needs to be stated specifically with regard to the children, the first clause of the baraita is also taught with regard to them.

[51] The Gemara asks: But is it true that due to the honor of their father they are obligated to return the item or money? I will read here the verse: "You shall not revile God, nor curse a ruler of your people" (Exodus 22:27), from which the Sages inferred that the prohibition against cursing a ruler is in effect only with regard to a ruler that acts as a member of your people, i.e., in accordance with Torah law. One who curses a wicked ruler does not violate this prohibition. Similarly, if one's father is wicked, the mitzva to honor him should not apply. Why would his children have to return items that he stole due to his honor?

[52] The Gemara responds: It is like that which Rav Pineḥas said concerning a different case: This is a case where he repented. Here too, it is a case where the father repented, and since he is no longer wicked, his children are obligated to honor him. The Gemara asks: If he repented, what was the

stolen item or interest doing with him? He should have returned it while he was still alive. The Gemara responds: It is a case where he did not manage to return it before he died. Consequently, the children must return the items in order to uphold their father’s honor.

[53] The Gemara raises another contradiction: Come and hear the statement of another baraita: With regard to robbers and usurers, although they collected the stolen item or interest, they return it.

[54] The Gemara first clarifies the meaning of the baraita: In the case of robbers, what collection is there, i.e., why did the baraita use the term: Collected, in this context? If they robbed, they robbed and did not collect anything; and if they did not rob, they did not rob and cannot be called robbers at all. Rather, emend the text of the baraita to say: With regard to robbers, and who are they, i.e., what is meant by the term: Robbers? It is referring to usurers. The Gemara resumes its citation of the baraita: Although they collected the interest, they must return it. This is contrary to the ruling of the Tosefta that if robbers and usurers return what they have taken, it is not accepted. The Gemara explains: Say that this baraita means that they return it, but one does not accept it from them.

[55] The Gemara asks: But why do they return it if it will not be accepted? The Gemara responds: In order to fulfill their obligation to Heaven. In order to fully repent, they must at least offer to return to the debtors the interest they took unlawfully.

[56] The Gemara raises a contradiction from another source. Come and hear the statement of another baraita: With regard to shepherds who allow their animals to graze in other people’s fields, thereby stealing from the owners; or tax collectors who are hired to collect taxes on behalf of the government and collect excessive sums; or tax collectors who purchase the right to collect taxes themselves and collect unlawfully, their repentance is difficult, since they steal from the public. It is difficult for them to find every one of their victims in order to pay them restitution, and they must return what they have stolen to whomever they recognize as victims of their theft. This baraita indicates that thieves do return what they have stolen.

[57] The Gemara answers: Say that they return it, but one does not accept it from them. The Gemara asks: But why do they return it if it will not be accepted? The Gemara responds: In order to fulfill their obligation to Heaven. The Gemara asks: If so, if they are not actually obligated to return what they have stolen, why is their repentance difficult?

[58] And furthermore, say the latter clause of the baraita: And as for the money belonging to those that they do not recognize as their victims, they should use that money for community needs. And Rav Ḥisda says: This means providing pits, ditches, and caves, which benefit the general public. This indicates that a thief actually does pay back what he has stolen. Rather, this contradiction must be resolved differently. It is not difficult: Here, where the baraita states that he must actually return what he has stolen, it is referring to a time before the ordinance for the penitent was instituted. There, where the baraita states that one does not accept the repayment from a robber, it is referring to a time after the ordinance was instituted.

[59] The Gemara adds: And now that Rav Naḥman says that when the Sages say that he does not return what he has stolen, they refer only to a case where the stolen item does not exist in its initial form, and you can even say that this and that, both baraitot, are referring to a time after the ordinance was instituted, and it is not difficult.

[60] Here, the baraita that rules that one may accept the stolen item is referring to a case where the stolen item still exists. There, the baraita that rules not to accept it even if the robber seeks only to fulfill his obligation to Heaven is referring to a case where the stolen item does not still exist. The Gemara asks: But the incident in which the robber's wife told him that he would have to return even the belt, which was the impetus for instituting the ordinance for the penitents, was a case where the stolen item still exists, in which case the robber would be obligated to return it even after the ordinance was instituted. The Gemara answers: What is meant by: Even the belt? The value of the belt, but the actual belt was no longer in his possession.

[61] The Gemara asks: And is it so that the Sages did not institute an ordinance for the penitent anywhere that the stolen item still exists? But there is the case of a beam, which is a stolen item that still exists, and we learned in a mishna (Gittin 55a): With regard to a stolen beam that the robber built into a building, the Sages instituted that the robbery victim should take its monetary value and not the actual beam because of the ordinance instituted for the penitent, i.e., so that the penitent not be required to destroy his house. This indicates that the ordinance instituted for the penitent is in effect even when the stolen item still exists. The Gemara answers: There it is different. Since in that case there is the loss of the entire building, the Sages treat the beam as though it were not in existence.

[62] § The mishna teaches: If one robbed another of a pregnant cow, and it then gave birth while in the robber's possession, or if one robbed another of a ewe that was laden with wool and the robber then sheared it, he pays the owner the value of a cow that is ready to give birth, or the value of a ewe that is ready to be shorn. In connection with this, the Sages taught in a baraita: One who robs another of a ewe and sheared it, and similarly, one who robs another of a cow and it gave birth, must pay it and its sheared wool or it and its offspring; this is the statement of Rabbi Meir. Rabbi Yehuda says: A stolen item is returned as is. Rabbi Shimon says: A stolen item is viewed as though it had been monetarily appraised at the time of the robbery, and the robber pays only that amount.

[63] The Gemara clarifies the different opinions in this baraita. A dilemma was raised before the Sages: What is the reasoning of Rabbi Meir, who holds that the robber returns the animal and its sheared wool or the animal and its offspring? Is it due to the fact that he holds that despite a change, the changed item remains in its place? Despite its changes, the animal always remained in the possession of the robbery victims, and consequently any increase in value belongs to them. Or, perhaps Rabbi Meir generally holds that one acquires an item due to a change in it, and therefore the wool or offspring should belong to the robber by right, but here it is a penalty that he imposes, which forces the robber to return items that are technically his.

[64] The Gemara explains: In what case does the reasoning of Rabbi Meir make a practical difference? In a case where the stolen item was devalued since the time of the robbery. If Rabbi Meir's reason is that despite a change, the changed item remains in its place, it is returned as is, even if its current value is less than what its value had been at the time of the robbery. But if he requires the robber to return the item itself because of a penalty, and by right the robber acquired the animal due to the change, then in this case, where the value decreased, the robber would be required to return what its value had been at the time of the robbery.

[65] The Gemara attempts to find a solution to this question: Come and hear what was taught in the mishna (96b): If one robbed another of an animal and it aged while in his possession, consequently diminishing its value, or if one robbed another of slaves and they aged, he pays according to the

value of the stolen item at the time of the robbery. Rabbi Meir says: With regard to slaves, the robber says to the owner: That which is yours is before you. The Gemara comments: But this indicates that with regard to an animal that aged while in the possession of the robber Rabbi Meir concedes to the first tanna, and he too holds that he pays according to what its value had been at the time of the robbery.

66 The Gemara continues: And if it enters your mind to say that Rabbi Meir holds that despite a change, the changed item remains in its place, then the animal should be returned as it is in the case of the animal that aged, as well. Rather, must one not conclude from the mishna that Rabbi Meir holds that one acquires an item due to a change in the item, but here, in the case of a stolen animal that subsequently was shorn or gave birth, the payment of wool or offspring is a penalty with which he penalizes the robber, so that the robber will not benefit from the increased value of the stolen item?

67 The Sages say in response: Rabbi Meir's reasoning cannot be proven from the mishna, since it is possible to say that Rabbi Meir is speaking to the Rabbis in accordance with the Rabbis' own statement. His statement should be understood as follows: According to my own opinion, one does not acquire an item due to a change in the item, and an animal that was stolen and then aged should be returned as it is now, as well. But according to you, who say that one acquires an item due to a change in it, agree with me in any event that with regard to a slave, he is returned as is. This is because his legal status is like that of real estate, and real estate cannot be stolen. And the Rabbis say to him in response: No, for the purpose of robbery, the legal status of a slave is like that of movable property.

68 The Gemara again attempts to find a solution to the question: Come and hear what was taught in the mishna (100b): If one gave wool to a dyer to dye it red for him and he dyed it black, or to dye it black and he dyed it red, Rabbi Meir says: The dyer gives the owner of the wool the value of his wool, since the dyer violated the owner's wishes. It can be inferred from this mishna: The value of his wool, yes, he must give it; but the value of his wool and its enhancement, i.e., the amount by which the value of the wool increased because it was dyed, no, he need not give it. And if it enters your mind to say that Rabbi Meir holds that one does not acquire an item due to a change in the item, the dyer should be required to return the value of his wool and its enhancement to the owner, as it never left the owner's possession.

69 Rather, isn't it correct to conclude from the mishna that Rabbi Meir holds that one acquires an item due to a change in the item, but here, in the case of a stolen animal that was subsequently shorn or gave birth, the payment of wool or offspring is a penalty with which he penalizes the robber, so that the robber will not benefit from the increased value of the stolen item? The Gemara affirms this: Learn from the mishna that this is indeed the reasoning of Rabbi Meir.

70 There are those who say: This, i.e., Rabbi Meir's reasoning, was never in question for us. Why not? From the fact that Rav reversed the opinions in the mishna on 96b and taught it as follows: If one robbed another of an animal and it aged, or if one robbed another of slaves and they aged, he pays according to what their value had been at the time of the robbery; this is the statement of Rabbi Meir. And the Rabbis say: With regard to slaves, the robber says to the owner: That which is yours is before you. Certainly, then, according to the opinion of Rabbi Meir, one acquires an item due to a change in the item, which is why the robber pays according to what its value had been at the time of

the robbery. But here, in the case of the cow that gave birth or the ewe that was shorn, the payment of offspring or wool is a penalty with which he penalizes the robber.

[71] The Gemara continues the alternative explanation. When we asked the question, this is how we asked it: When Rabbi Meir penalizes the robber, is it only for one who robbed intentionally, but if one took an item from its owner unintentionally, Rabbi Meir does not penalize the robber? Or perhaps he penalizes even one who took an item from its owner unintentionally.

[72] The Gemara tries to resolve this question: Come and hear a proof from a baraita: Five types of monetary claims are collected only from unsold [meḥorarin] property, i.e., property that is still in possession of its owner and has not been sold in the meantime.

[73] And these are they: Produce, and the enhanced value of produce. Even if one has the right to the produce of a particular property, or the gain accrued from that produce, he cannot claim this payment from liened property. The Gemara continues with the list of monetary claims collected from unsold property: And one who accepts upon himself at the time of his betrothal the obligation to provide sustenance for his wife's son or his wife's daughter from a previous marriage; and a promissory note that has no property guarantee, i.e., a document that does not explicitly state that all of the properties of the debtor will serve to guarantee payment of the debt; and similarly, a woman's marriage contract that has no property guarantee.

[74] The Gemara clarifies: Whom did you hear that says that omission of the guarantee of the sale from the document is not a scribal error? It is Rabbi Meir. There is a dispute between Rabbi Meir and the Rabbis with regard to a promissory note that does not contain a property guarantee. According to the Rabbis, it was omitted in error and is always considered as having been written in the document. Rabbi Meir holds that a promissory note that does not contain a property guarantee cannot be used to collect property that has been liened or sold; it can be used to collect only unsold property. This baraita is therefore in accordance with Rabbi Meir's opinion. And the baraita teaches that produce and the enhanced value of produce are collected only from unsold property.

[75] The Gemara clarifies: What are the circumstances in which he collects the enhanced value of produce? It is a case where one robbed another of a field, and then sold it to another, and the purchaser enhanced it, and it is now leaving the possession of the purchaser because the robbery victim has proved in court that this field is his. When the purchaser collects from the robber who sold him this field, in order to recoup what he had paid,

[76] he can collect the principal, i.e., what he paid for the field, from the robber's liened property that has been sold. But he can collect the enhanced value, i.e., the value of the improvements made to the field, only from unsold property. Why are both of these collected from the robber? Because the owner of the field came and took both his land and its enhanced value.

[77] The Gemara clarifies: What, is it not speaking of a purchaser who is an ignoramus, who does not know whether property can be stolen or cannot be stolen, and when he purchased stolen land from the robber, he did so unintentionally, since he was under the mistaken impression that this land belonged to the robber who sold it? And even so, the owner of the land can come and take the land and its enhanced value. And if so, one may learn from the baraita that Rabbi Meir penalizes even one who acquires stolen items unintentionally. The Sages say in response: No, it is speaking of a purchaser who is a Torah scholar, and he knew that the robber had no right to sell this land. The purchaser is therefore penalized and is required to return the enhanced value of the land as well.

[78] The Gemara again tries to determine the scope of the penalty: Come and hear what was taught in a mishna (100b): If one gave wool to a dyer to dye it red for him and he dyed it black, or to dye it black and he dyed it red, Rabbi Meir says: The dyer gives the owner of the wool the value of his wool, since the dyer violated the owner's instructions. It can be inferred from the mishna: The value of his wool, yes, he must give; but the value of his wool and its enhanced value, i.e., the amount by which the value of the wool increased because it was dyed, no, he is not required to give.

[79] And if it enters your mind to say that Rabbi Meir penalizes one who acquires a stolen item unintentionally as well, the dyer should be required to return the value of his wool and its enhancement to him. Rather, must one not conclude from the mishna that if it was done intentionally, Rabbi Meir penalizes the robber, but if it was done unintentionally he does not penalize him? The Gemara affirms: Learn from the mishna that this indeed is the reasoning of Rabbi Meir.

[80] § The Gemara continues its discussion of the baraita. Rabbi Yehuda says: A stolen item is returned as is. Rabbi Shimon says: The stolen item is viewed as though it had been monetarily appraised at the time of the robbery. The Gemara asks: What is the difference between them, since ostensibly they agree that the robber does not return the value of the enhancement to the robbery victim?

[81] Rav Zevid says: They disagree with regard to enhancement that is still upon the stolen item. The disagreement concerns a case where the enhancement occurred while the stolen item was in the possession of the robber, and when he returned the item it was still enhanced. Therefore, he did not keep any of the enhancement. Rabbi Yehuda holds that the enhancement belongs to the one who was robbed, and Rabbi Shimon holds that it belongs to the robber.

[82] Rav Pappa said that the disagreement between Rabbi Yehuda and Rabbi Shimon can be explained differently: Everyone agrees that the enhancement that is still upon the stolen item belongs to the robber, and here they disagree with regard to whether the robber can keep one-half, or one-third, or one-fourth of the value of the enhancement, and the remainder is kept by the owner of the animal. Rabbi Yehuda holds that the enhancement that is still upon the stolen item belongs entirely to the robber, and Rabbi Shimon holds that the robber takes one-half, or one-third, or one-fourth of the value of the enhancement. In other words, he is treated as a shepherd or rancher and receives the share of the enhancement that local custom dictates be paid to that type of laborer.

[83] The Gemara cites a proof for Rav Zevid's explanation: We learned in the mishna (93b): If one robbed another of a cow, and it became pregnant in his possession, and it then gave birth; or if one robbed another of a ewe, and it became laden with wool in his possession, and he then sheared it, the robber pays according to the value of the animal at the time of the robbery. The Gemara infers from the mishna: If the cow gave birth, yes, he pays the value of the animal at the time of the theft, but if the cow did not give birth and is still pregnant, it is returned as is.

[84] Granted, according to the explanation of Rav Zevid, who says that according to the opinion of Rabbi Yehuda, enhancement that is still upon the stolen item belongs to the one who was robbed, in accordance with whose opinion is this mishna? It is in accordance with the opinion of Rabbi Yehuda, as the pregnant cow is returned as is. But according to the explanation of Rav Pappa, who says that everyone agrees that the enhancement belongs to the robber, in accordance with whose opinion is this mishna? It is not in accordance with the opinion of Rabbi Yehuda, nor is it in accordance with the opinion of Rabbi Shimon, as the robber does not retain any of the enhanced value.

[85] The Gemara responds: Rav Pappa could have said to you that the inference is incorrect: The same is true that even if it did not give birth, the robber pays according to the value of the animal at the time of the robbery, and the enhanced value due to the pregnancy is returned to him. And that which the mishna teaches: It then gave birth, cannot serve as the basis for an inference pertaining to this discussion. As the tanna needs to cite that it gave birth in the first clause of the mishna, since in that case he acquires the animal due to the change in its condition, therefore he cites that it gave birth in the latter clause as well, but it need not have given birth. It cannot be inferred from this mishna that an animal that has not given birth is returned as is.

[86] The Gemara notes: It is taught in a baraita in accordance with the explanation of Rav Pappa. The baraita states: Rabbi Shimon says: The stolen item is viewed as though it had been monetarily appraised at the time of the theft, for the purpose of keeping one-half, or one-third, or one-fourth of the value of the enhancement.

[87] Rav Ashi said: When we were studying in the study hall of Rav Kahana, we were asked a question: According to the opinion of Rabbi Shimon, who says that the robber takes one-half, or one-third, or one-fourth of the value of the enhancement; when we remove the robber, taking the stolen animal from him and paying him a portion of the enhanced value, do we remove him by paying him his share with money? Or, perhaps he takes his portion from the meat of the animal.

[88] And we resolved the dilemma from that which Rav Naḥman says that Shmuel says: In three cases, the court appraises the enhanced value for the parties involved in enhancing a field, and they are paid in money rather than by being given a portion of the property, and these are they: A firstborn son who makes payment to a regular son. This is a case where two sons, one firstborn and the other not, inherit a field from their father. Before it is divided, they both work and enhance the field. When the time comes to divide the field, the firstborn son, who receives a double portion, must pay his brother for the enhancement that the latter contributed to the former's portion. This payment is given in money rather than land.

[89] And the second case is that of a creditor who is obligated to a purchaser, i.e., a creditor who collects the debt from lands that were sold by the debtor. He pays money to the purchaser for the enhancements generated by the purchaser but does not pay him in land. And the third case is that of a creditor who is obligated to orphans, i.e., a creditor who collects land from the orphans of his debtor. He must pay them for any enhancements done by the orphans after their father's death. This payment is also given in money rather than land.

[90] The Gemara discusses Shmuel's statement. Ravina said to Rav Ashi: Did Shmuel actually say that a creditor gives the purchaser any of the enhanced value at all? But doesn't Shmuel say: A creditor collects all of the enhanced value? Rav Ashi said to him: This is not difficult. Here, where Shmuel stated that a creditor does not collect the enhanced value, it was with regard to a case where there was enhancement that reaches shoulders [shevaḥ hammaggia likhtefayim], i.e., the produce that grew due to the improvements made by the purchaser is fully grown and ripened and can now be harvested and carried upon one's shoulders. But there, where Shmuel stated that a creditor does collect the enhanced value, it was with regard to a case where there was enhancement that does not reach shoulders, i.e., its growth is not complete.

[91] Ravina said to him: But there were daily incidents of this type, and Shmuel would collect from purchasers even enhancement that reached shoulders. Rav Ashi said to him: This is not difficult.

[92] This ruling, that Shmuel would collect the enhanced value, is for a case where the creditor is owed by the debtor the amount of the value of the land and the enhanced value. That ruling, that Shmuel would not collect the value of the enhancement, is for a case where the creditor is owed by the debtor only the amount of the value of the land.

[93] Ravina said to him: This works out well according to the one who says: If the purchaser of the field has money, he still cannot remove the creditor from the land, i.e., the creditor has the right to collect the land. This is well. But according to the one who says: If the purchaser of the field has money, he can remove the creditor from the land, i.e., the purchaser can choose to pay him money instead, let the purchaser say: If I had money, I would remove you from all of the land; now that I do not have sufficient money to pay what you are owed, give me at least a se'a [griva] of land, which is the amount of my enhancement.

[94] Rav Ashi said to him: With what are we dealing here? We are dealing with a case where the debtor set aside this field as designated repayment for him, as he said to him: You shall not be repaid from anything but this, in which case he clearly has a lien on this field and nothing else.

[95] § The Gemara continues the discussion of a stolen item that has been enhanced. Rava says: If one robbed another of an item and enhanced it and sold it to another, and similarly, if one robbed another of an item and enhanced it and then died and bequeathed it, he sold that which he enhanced and bequeathed that which he enhanced. And the robbery victim, should he wish to recover the stolen item, must pay the purchaser or heir for the enhanced value.

[96] Rava raises a dilemma related to the aforementioned halakha: What is the halakha if a purchaser enhanced the stolen item? Must the robbery victim pay the purchaser for the enhanced value or not? After Rava raised the dilemma, he then resolved it: What has the first person sold to the second in any sale? He has sold any rights that will come into his possession. Since the robber had the rights to the value of his enhancements to the stolen item, he sold those rights to the purchaser as well.

[97] Rava raises a dilemma: What is the halakha if a gentile robber enhanced the value of a stolen item? Rav Aḥa of Difti said to Ravina: Shall we arise and institute an ordinance for the benefit of a gentile? Ravina said to him: This question is not necessary except where it was the case that a gentile sold it to a Jew. Rava was asking if the Jew needs to return the enhanced value. The Gemara comments: Ultimately, one who comes to possess an item due to purchasing it from a gentile is like a gentile himself because, as stated previously, in any sale the purchaser's rights are identical to the seller's. Since the Sages did not institute ordinances for the benefit of gentiles, the Jewish purchaser does not have those rights either.

[98] The Gemara explains: This question is not necessary except where it was the case that a Jew robbed another of the item and sold it to a gentile, and the gentile enhanced it, and then the gentile went back and sold it to another Jew. What is the halakha in this case? Do we say: Since it was initially stolen by a Jew and was then acquired by a Jew, the Sages did institute an ordinance? Or, perhaps since there is the ownership of a gentile intervening, the Sages did not institute an ordinance. The Gemara comments: The dilemma shall stand unresolved.

[99] § The mishna teaches that if one robbed another of wood and fashioned it into vessels, he acquired the wood due to the change. The Gemara discusses what qualifies as a change. Rav Pappa said: With regard to this one who robbed another of a palm tree and cut it down, although he threw it from the land of the robbery victim to his own land, he did not acquire it. What is the reason for this? The tree

was initially called a palm tree, and now, although it has been cut down, it is also called a palm tree, so the change to the item is not sufficiently significant for the robber to acquire it. Moreover, if one robbed another of a palm tree and made it into logs, he did not acquire it, since now, in any event, they are called palm tree logs.

[100] By contrast, if one robbed another of logs and fashioned them into beams, he has acquired them, since this change is significant. If one robbed another of large beams and fashioned them into small beams, he did not acquire them, since they are still called beams. If he fashioned them into boards, he did acquire them.

[101] Rava said: This one who robbed another of a palm frond and fashioned it into leaves [hutzei], i.e., he removed the leaves from the spine, has acquired it, since initially it was called a palm frond and now it is called leaves. One who robbed another of leaves and fashioned them into a broom has acquired them, since initially they were called leaves, and now they are called a broom. One who robbed another of a broom and fashioned it into a rope has not acquired it. What is the reason for this? The reason is that he can go back and unravel it, and it will once again be a broom.

[102] Rav Pappa raises a dilemma: What is the halakha if the central twin-leaf became split, i.e., is this considered a change through which a stolen lulav would be acquired? The Gemara cites a proof: Come and hear that which Rabbi Matun says that Rabbi Yehoshua ben Levi says: If the central twin-leaf was removed, the lulav is unfit.

[103] What, is it not that the same is true for a case where the central twin-leaf became split, i.e., that this lulav has been rendered unfit to be used for the mitzva, and the robber has acquired the lulav as a result of this change? The Gemara answers: No, the case where it was removed is different, as the result is that it is lacking, and an incomplete lulav is certainly unfit. But if the leaf remains in place, albeit split, it does not necessarily render the lulav unfit. The lulav has not been changed and therefore the robber does not acquire it.

[104] There are those who say that the question was resolved as follows: Come and hear that which Rabbi Matun says that Rabbi Yehoshua ben Levi says: If the central twin-leaf became split, it becomes like a lulav whose central twin-leaf was completely removed, and it is unfit. If so, learn from his statement that if the central twin-leaf became split, the robber has acquired the lulav as a result of the change.

[105] § Rav Pappa said: This one who robbed another of earth and fashioned it into a brick has not acquired it due to the change. What is the reason for this? It is that he can return it and convert it back into earth. By contrast, if he robbed another of a brick, and by crushing it turned it into earth, he has acquired it due to the change. If you say: Perhaps he will return it and fashion it into a brick? This is a different brick, and a new entity has arrived, i.e., entered into existence, here.

[106] And Rav Pappa also said: This one who robbed another of a bar of silver [naskha] and fashioned it into coins has not acquired it due to the change. What is the reason for this? He can return it and by melting the coins turn them into a bar of silver. By contrast, if he robbed another of coins and fashioned them into a bar of silver, he has acquired them due to the change. What do you say in response to this, that perhaps he will return and fashion them into coins? These are new coins, and a new entity has arrived here.

[107] Rav Pappa continues: If the stolen coins were black [sheḥimei], i.e., old and used, and he made them as new by cleaning them thoroughly, he has not acquired them. By contrast, if however, they were new, and he made them black, he has acquired them. What do you say in response to this, that perhaps he will return and make them new by cleaning them? Their blackness is already known, and therefore the coins have been changed irreversibly.

[108] § The mishna teaches: This is the principle: All robbers pay according to the value of the stolen item at the time of the robbery. The Gemara asks: What is added by the phrase: This is the principle? The Gemara replies: It serves to add that which Rabbi Ela says: If one stole a lamb and during the time that it was in the thief's possession it became a ram, or if one stole a calf and it became an ox, then a change occurred while the animal was in his possession, and he has acquired it due to the change. If he then slaughtered or sold the animal, he slaughters his own animal and he sells his own animal, and he does not become liable to pay the penalty of four or five times the value of the animal.

[109] The Gemara relates: There was a certain man who robbed another of a pair [padna] of oxen. He then went and plowed his field with them, and sowed seeds with them, and eventually returned them to their owner. The robbery victim came before Rav Naḥman to claim payment from the robber. Rav Naḥman said to the robbery victim and the robber: Go estimate the amount by which the value of the land was enhanced during the time that the pair of oxen was in the possession of the robber, and the robber must pay that amount.

[110] Rava said to Rav Naḥman: Did the oxen alone enhance the value of the land? Did the land not become enhanced in and of itself? Perhaps not all of the enhanced value of the land was due to the labor performed by the oxen. Rav Naḥman said: Did I say that they should estimate and give him all of the enhanced value? I said only half. Rava said to him: Ultimately, it is a stolen item and is returned as it was at the time of the robbery, as we learned in a mishna: All robbers pay according to the value of the stolen item at the time of the robbery. Why should the robber also pay the owner half the value of the enhancement?

[111] Rav Naḥman said to Rava: Didn't I tell you that when I am sitting in judgment, do not say anything to me, i.e., do not question or comment upon my rulings. An indication that my rulings should not be questioned is as our friend Huna has said about me, that King Shapur and I are brothers with regard to monetary laws, i.e., with regard to monetary laws, my opinion is equal to that of Shmuel. This man is an experienced robber, and I wish to penalize him. Therefore, I compelled him to pay the enhanced value, although by right he is not obligated to do so.

[112] MISHNA: If one robbed another of an animal and it aged while in his possession, consequently diminishing its value, or if one robbed another of Canaanite slaves and they aged while in his possession, they have been changed. The robber therefore pays according to the value of the stolen item at the time of the robbery. Rabbi Meir says: With regard to Canaanite slaves, he says to the robbery victim: That which is yours is before you.

[113] If one robbed another of a coin and it cracked, thereby reducing its value; or if one robbed another of produce and it rotted; or if one robbed another of wine and it fermented, then he pays according to the value of the stolen item at the time of the robbery.

[114] If he robbed another of a coin and it was invalidated by the government; or if he robbed another of teruma and it became ritually impure; or if he robbed another of leavened bread and Passover elapsed over it, and therefore it is prohibited to derive benefit from it; or if he robbed another of an

animal and a sin was performed with it, thereby disqualifying it for use as an offering; or if the animal was disqualified from being sacrificed upon the altar for some other reason; or if the animal was going out to be stoned because it gored and killed a person at some point after the robbery, the robber says to the robbery victim: That which is yours is before you. In all of these cases, although the value of the stolen item has been diminished or altogether lost, since the change is not externally discernible, the robber returns the item in its current state.

[115] GEMARA: With regard to the mishna's statement that one who robbed another of an animal that aged pays what its value was at the time of the robbery, Rav Pappa says: It is not so that aged means that it actually aged. But even if the animal was weakened, which is a less significant change, it is still considered changed, and the robber has acquired the animal. The Gemara asks: But didn't we learn in the mishna that it aged, indicating that a lesser change, e.g., weakening, is not significant? The Gemara responds: Rav Pappa was speaking of weakening that is like aging, i.e., the animal became so weak that it will not return to its former health.

[116] Mar Kashisha, son of Rav Ḥisda, said to Rav Ashi: This is what they say in the name of Rabbi Yoḥanan: Even if one stole a lamb and it became a ram, or a calf and it became an ox, it is considered that a change occurred while the animal was in the robber's possession, and he has acquired it due to this change. If he then slaughtered or sold the animal, he slaughters his own animal and he sells his own animal, and he does not become liable to pay the penalty of four or five times the value of the animal. Rav Ashi said to him: Didn't I say to you: Do not exchange the names of the men in whose name you are transmitting words of Torah? That statement was stated in the name of Rabbi Ela, not in the name of Rabbi Yoḥanan.

[117] § The mishna teaches that Rabbi Meir says: With regard to Canaanite slaves, he says to the robbery victim: That which is yours is before you. The Gemara comments: Rav Ḥanina bar Avdimi says that Rav says: The halakha is in accordance with the opinion of Rabbi Meir. The Gemara asks: And would Rav set aside the opinion of the Rabbis, who are the majority, and practice the halakha in accordance with the opinion of Rabbi Meir? The Sages say: It is because it is taught in a baraita in the opposite manner, i.e., with the opinions reversed, so that the Rabbis, rather than Rabbi Meir, hold that with regard to slaves the robber says: That which is yours is before you. The Gemara asks: And would Rav set aside the mishna and practice the halakha in accordance with the statement of the baraita? The Gemara responds: Rav also teaches the mishna in the opposite manner.

[118] And what is the reasoning of Rav, who reversed the opinions in the mishna in light of the baraita? On the contrary, let him reverse the opinions in the baraita in light of the mishna. The Sages say in response: Rav also learned the mishna in the opposite manner. Rav did not decide to reverse the opinions in the mishna. In the text of the mishna that he utilized, the opinions were the same as in the baraita.

[119] And if you wish, say instead that Rav did in fact decide to reverse the opinions in the mishna, based upon the principle: When he does not reverse a mishna due to a baraita, it is when there is one mishna that he will not reverse in light of one baraita. But he would reverse one mishna in light of two baraitot, and in this case there is a second baraita in which the opinions are the reverse of those found in the mishna.

[120] The second baraita is as it is taught in the Tosefta (Bava Metzia 8:23–24): In the case of one who exchanges a cow for a donkey, and in the meantime the cow gave birth; and similarly, in the case of

one who sells his Canaanite maidservant, and in the meantime she gave birth, if in either of these cases the purchaser and seller have a dispute as to when the birth took place, where this one says: She gave birth at the time that she was in my possession and therefore the offspring is mine, and the other is silent, then the one who stated definitively that she gave birth while in his possession has acquired the offspring. If this one says: I do not know, and that one says: I do not know, then they shall divide the value of the offspring.

121 The baraita continues: If this one says: She gave birth while in my possession, and that one says: She gave birth while in my possession, then the seller must take an oath that she gave birth while in his possession, as anyone who is obligated to take an oath that is enumerated in the Torah takes an oath and does not pay; this is the statement of Rabbi Meir. In this case, since the seller initially had possession of the animal or the maidservant, he is considered the defendant, and therefore it is sufficient for him to take an oath to exempt himself from payment and maintain possession of the offspring.

122 The baraita continues: And the Rabbis say that one does not take an oath concerning either Canaanite slaves or concerning land. This indicates that according to the opinion of the Rabbis, Canaanite slaves have the legal status of land, whereas according to the opinion of Rabbi Meir, they do not. It follows, then, that in the mishna here as well, it is the Rabbis, and not Rabbi Meir, who maintain that, with regard to slaves, one says: That which is yours is before you, as one does with regard to land.

123 The Gemara asks: If it is true that the opinion that the mishna attributed to Rabbi Meir was attributed by Rav to the Rabbis, then this phrase: The halakha is in accordance with the opinion of Rabbi Meir, is imprecise. Rav should have said that the halakha is in accordance with the opinion of the Rabbis. The Gemara responds: This is what Rav is saying: According to the way that you have reversed the opinions in the mishna, and you taught that Rabbi Meir says that the robber says to the robbery victim: That which is yours is before you, then the halakha is in accordance with the opinion of Rabbi Meir, despite the fact that according to Rav, this is the opinion of the Rabbis.

124 And did Rav actually say that the legal status of a Canaanite slave is like that of real estate? But doesn’t Rav Daniel bar Rav Ketina say that Rav says: One who seizes another’s Canaanite slave and performs labor with him is exempt from paying the master for the labor of the slave? And if it enters your mind to say that, in Rav’s opinion, the legal status of a slave is like that of real estate, why is he exempt from paying? A slave, like real estate, is always in the possession of his owner, wherever he might be. Therefore, the one who seized him did not steal the slave, in which case he could simply return him. Rather, he made use of a slave belonging to another and should be liable to pay for the master’s loss of the slave’s labor.

125 The Gemara answers: With what are we dealing here? We are dealing with a case where the one who seized the slave forced him to perform labor when it was not during regular working hours. Consequently, he did not prevent the slave from performing labor for his master. Since the owner did not incur any loss, the one who seized the slave is not obligated to pay for the benefit that he derived from the slave. This is like that message that Rabbi Abba sent to Mari bar Mar: Ask Rav Huna concerning one who resides in another’s courtyard without the owner’s knowledge: Does he need to pay him rent, or does he not need to pay him rent? And they sent to him in response: He does not need to pay him rent, since the owner of the property did not incur any monetary loss.

[126] The Gemara rejects this comparison: How can these cases be compared? Granted, there, in the case of a courtyard, whether the reasoning for that halakha is according to the one who says: An inhabited house remains habitable, and it is therefore satisfactory for the owner of the property to have someone residing in his courtyard, or whether the reasoning is according to the one who says that since the verse states: “In the city is left desolation, and the gate is smitten unto ruin” (Isaiah 24:12), which indicates that a desolate house will fall into ruin but an inhabited house will be maintained, either way it is satisfactory for the owner that one stay in his courtyard. Consequently, the one who resides there need not pay rent.

[127] But here, in the case of a slave, is it satisfactory for him that his slave be weakened by performing labor for another? The Sages say: Indeed, it is satisfactory for him that the work habits of his slave not be undone.

[128] The Gemara records a related incident. Members of the house of Rav Yosef bar Ḥama would, with his approval, seize the slaves of people who owed him money, and they would work them against the will of the owners. Rabba, son of Rav Yosef bar Ḥama, said to him: What is the reason that the Master does this, i.e., seizes and uses these slaves? Rav Yosef bar Ḥama said to him: As Rav Naḥman says: A slave is not worth even the bread in his stomach. When the slaves work for me and eat in my home, I am not causing the owners any monetary loss. Rav Yosef bar Ḥama’s son said to him: I will say that Rav Naḥman said this with regard to specific slaves, such as his slave Daru, who only dances among the wine barrels [kuvei] and does not perform any labor. All other slaves perform labor, and their labor is worth more than their board.

[129] Rav Yosef bar Ḥama said to him: I hold in accordance with the opinion of Rav Daniel, as Rav Daniel bar Rav Ketina says that Rav says: One who seizes another’s slave and performs labor with him is exempt from paying the master for the labor of the slave. Apparently, it is satisfactory for the master that the work habits of his slave not be undone.

[130] Rabba said to him: This statement of Rav Daniel applies when the one who seizes the slave is not owed money by the owner of the slave. But since the Master is owed money by the owner of the slave, this has the appearance of interest, as Rav Yosef bar Minyumi says that Rav Naḥman says: Although the Sages said that one who resides in another’s courtyard without his knowledge does not need to pay him rent, if one lent money to another, and then resided in the courtyard of another, i.e., that of his creditor, he needs to pay him rent, to avoid the appearance of interest. Rav Yosef bar Ḥama said to him: I retract my opinion, and will no longer seize the slaves of my debtors.

[131] It was stated: In the case of one who seizes another’s ship and performs labor with it, what payment can the ship’s owner claim? Rav says that he may choose: If he wishes, he can take the cost of the ship’s rent, and if he wishes, he can take the amount by which the value of the ship was diminished by being used for this labor, whichever amount is larger. And Shmuel says: He can take only the amount by which the value of the ship was diminished.

[132] Rav Pappa said: They do not disagree. They were addressing different cases: This, i.e., Rav’s statement, is referring to a ship that is commonly available for rental. That, i.e., Shmuel’s statement, is referring to a ship that is not commonly available for rental. And if you wish, say instead: This and that statement are both referring to a ship that is commonly available for rental. This, Rav’s statement, is referring to a case where the one who seized the ship descended, i.e., took possession, with the intention of renting the ship. He pays for the rental. That, Shmuel’s statement, is referring to

a case where the one who seized the ship descended with the intention of robbery, to use it without paying. He is regarded as a robber and pays only the amount by which its value was diminished.

133 § The mishna teaches: If one robbed another of a coin and it cracked, he pays the value of the coin at the time of the robbery, as he has acquired it due to its change. But if the coin was invalidated, he says: That which is yours is before you. Since this is not a significant change, he has not acquired it. The Sages disagree with regard to the explanation of this halakha. Rav Huna says: When the mishna states that the coin cracked, it means that it actually cracked; when it says that the coin was invalidated, it means that it was invalidated by the government and is therefore unfit for use.

134 And Rav Yehuda says: A coin invalidated by the government is the same as a coin that is cracked, because its complete loss of value is a significant change. But what are the circumstances of the mishna, in which a coin that was invalidated is not considered changed? It is a case where a coin was invalidated by the government in this province, and the residents there can no longer use it, but the coin still circulates and is in use in another province.

135 The Gemara clarifies Rav Huna's opinion. Rav Ḥisda said to Rav Huna: According to your opinion, that you said that the term invalidated means that the coin was invalidated by the government, and the mishna rules that in that case the robber can return it as is, there is a difficulty. But what of the cases in the mishna of one who robbed another of produce and it rotted or one who robbed another of wine and it fermented, which are similar to a coin that was invalidated by the government, since none of these items are fit for use, and the mishna teaches that the robber pays according to their value at the time of the robbery because they underwent a change? Why would the halakha be different in the case of a coin that was invalidated by the government?

136 Rav Huna said to him: There, in the cases of produce and wine, its taste and its smell changed. Here, in the case of the coin that was invalidated, the coin itself did not change.

137 The Gemara clarifies Rav Yehuda's opinion. Rava said to Rav Yehuda: According to your opinion, that you said that a coin that was invalidated by the government is the same as one that cracked, and the mishna rules that in that case the robber pays according to its value at the time of the robbery, there is a difficulty. But what of the case in the mishna of one who robbed another of teruma and it became impure, which is similar to a coin that was invalidated by the government, and the mishna teaches that the robber says to the robbery victim: That which is yours is before you.

138 Rav Yehuda said to him: There, in the case of teruma, the damage is not evident, since it is impossible to tell the difference between pure and impure items. Here, in the case of the coin, the damage is evident, since one can tell by looking at it that it is the type of coin that was invalidated.

139 § With regard to a coin that was invalidated, it was stated that there was a dispute concerning the question: In the case of one who lends money to another on the condition that he repay the loan using a particular kind of coin, and that coin becomes invalidated, Rav says:

140 The debtor gives him a coin that is in circulation at that time with which he repays the loan. And Shmuel says that the debtor can say to the creditor: I am giving you a coin like the one you gave me, although you cannot utilize it here. Go spend it in Meishan, i.e., a distant place where this coin is still in circulation. Rav Naḥman said: Shmuel's statement is reasonable when the creditor has a way to go to Meishan, i.e., he intends to travel there, and therefore the debtor can tell him to spend the coin when he arrives at his destination. But if he has no way to go to Meishan, i.e., he does not intend to

go there, the debtor may not give him these coins. Rather, he must give him coins that are in circulation in their current location.

[141] Rava raised an objection to Rav Naḥman from a baraita (Tosefta, Ma’aser Sheni 1:6): One cannot desacralize second-tithe produce by transferring its sanctity onto coins that are not in circulation. How so? If one had coins of bar Kokheva [Kozeviyyot], coins of Jerusalem, or coins of earlier kings, all of which are no longer in use, one cannot desacralize second-tithe produce by transferring its sanctity onto them. Rava infers: But if one had coins of later, i.e., current, kings, that are similar to the coins of the earlier kings in that they have been invalidated in his location, since they are still valid elsewhere, one can desacralize the second-tithe produce by transferring its sanctity onto them. The baraita does not make a distinction as to whether the owner of the produce intends to travel to the location where those coins are in use or not.

[142] Rav Naḥman said to him: With what are we dealing here in the baraita? We are dealing with a case where the kingdoms are not particular with one another. They allow a coin that has been invalidated in their province to be taken out of their borders and spent in a province where it is valid. Since these coins can be given to those planning to travel to the location where it is valid, it is considered to be a valid coin even in the location of the one desacralizing the second-tithe produce.

[143] The Gemara asks: But, according to this explanation, when Shmuel said that the debtor can repay his debt with invalidated coins only if the creditor intends to travel to a location where they are valid, he is speaking of a case where the kingdoms are particular with each other. If so, how can he bring these coins to Meishan without the authorities confiscating them? The Gemara responds: Shmuel is discussing a case where the creditor can bring them with difficulty, as in a case where the authorities do not search, but if they find any invalid coins they are particular to confiscate them. It is therefore possible to bring these coins into the other kingdom. Nevertheless, since the authorities are particular, one who does not plan to travel there will not be able to exchange these coins with anyone in his location.

[144] The Gemara questions Shmuel’s opinion: Come and hear what was taught in a baraita (Tosefta, Ma’aser Sheni 1:6): One cannot desacralize second-tithe produce by transferring its sanctity onto money of Eretz Yisrael, i.e., here, when they, the coins and their owner, are in Babylonia. And one cannot do so onto money of Babylonia when they, the coins and their owner, are here in Eretz Yisrael. If one uses money of Babylonia and they are in Babylonia, one can desacralize the second-tithe produce. In any event, the baraita teaches: One cannot desacralize second-tithe produce by transferring its sanctity onto money of Eretz Yisrael, here, when they are in Babylonia. And this is stated even though they will ultimately ascend to there, Eretz Yisrael, as the very purpose of transferring the sanctity to the coins is to spend them in Jerusalem.

[145] The Gemara answers: With what are we dealing here? We are dealing with a case where the kingdoms are especially particular with one another, and it is impossible to transport coins from one location to the other. The Gemara asks: If so, if the kingdoms are especially particular with one another, then with regard to the case in the baraita, in which sanctity is transferred onto money of Babylonia and they are in Babylonia, for what are these coins fit? In any case they cannot be brought to Jerusalem. The Gemara responds: They are fit for purchasing an animal with them in Babylonia that will be brought up to Jerusalem.

[146] With regard to the statement of the baraita, that one cannot desacralize second-tithe produce by transferring its sanctity onto Babylonian money when in Eretz Yisrael, the Gemara asks: But isn't it taught in a baraita: The Sages instituted that all money shall circulate in Jerusalem because of this reason, i.e., so that Jews from all locations will be able to use their local currencies? Rabbi Zeira said: This is not difficult. Here, the baraita that states that all money is valid in Jerusalem is referring to a time when the authority of the Jewish people is dominant over the nations of the world and could enforce the rabbinic enactments. There, the baraita that states that sanctity may not be transferred onto Babylonian money when in Eretz Yisrael, is referring to a time when the authority of the nations of the world is dominant over them, i.e., the Jews, at which time foreign currency was not usable in Jerusalem.

[147] Having mentioned the coins of Jerusalem, the Gemara notes: The Sages taught: What is the coin of ancient Jerusalem? The names David and Solomon were inscribed on one side, and Jerusalem the Holy City was on the other side. And what is the coin of Abraham our forefather? An old man and an old woman, representing Abraham and Sarah, were inscribed on one side, and a young man and a young woman, representing Isaac and Rebecca, were on the other side.

[148] § Rava inquired of Rav Ḥisda: What is the halakha in the case of one who lends money to another on the condition that he repay the loan in coin, i.e., with the specific denomination of a currency, and the government added to the size of the coin, so that a coin of the same denomination now weighs more? Is the debtor obligated to return the newly adjusted coin, or can he repay the debt according to the prior weight of the coin that he borrowed? Rav Ḥisda said to him: He gives him the coin that is in circulation at the time of the payment. Rava said to him: And is this the halakha even if the new coin is as large as a sieve? Rav Ḥisda said to him: Yes. Rava said to him: And is this the halakha even if it is as large as a quarter-kav [tartiya]? Rav Ḥisda said to him: Yes.

[149] Rava challenged: But by increasing the weight of this coin, the produce has decreased in price, and since more produce can be purchased with this coin, giving it to the creditor as repayment is a form of interest. Rav Ashi said: We examine the situation: If the produce decreased in price due to the change in the weight of the coin, the debt is reduced for the debtor and the creditor is repaid with coins that equal the prior value of the loan.

[150] And if the produce decreased in price due to the market value, the debt is not reduced for him.

[151] The Gemara challenges: But the value of the coin has been enhanced for the purpose of melting it down into a bar of metal. Since this coin now contains a larger quantity of metal, if it were to be melted it would be worth more than an earlier coin of the same type, so it should be considered interest. Rather, in this case one must act in accordance with how Rav Pappa and Rav Huna, son of Rav Yehoshua, acted when they performed an action with the dinars of Agardamis the Arab merchant [tayya'a]: They considered up to ten old coins to be the equivalent of eight new coins. Since ten old coins were equivalent in value to eight new coins, they paid eight new coins in exchange for ten old ones.

[152] § Rabba says: One who throws another's coin into the Great Sea is exempt from liability. What is the reason for this? He can say: The coin is resting before you; if you wish, take it. The Gemara comments: And this statement applies only if the coin is in translucent water, where the owner of the coin can see the coin, but in turbid water, where he cannot see the coin, it does not apply, and the one that threw it will be liable to compensate the owner. And this statement applies only when he rolled

the coin into the sea without picking it up, but if he took the coin with his hands and threw it into the sea, he has robbed the owner of it, and the robber is required to perform the mitzva of returning the coin to its owner.

153 Rava raises an objection to the statement of Rabba from a baraita (Tosefta, Ma’aser Sheni 1:6): One cannot desacralize second tithe by transferring its sanctity onto money that is not in his possession. How so? If he had money in a fortress [kastera], or in the King’s Mountain [Har HaMelekh], or if his purse fell into the Great Sea, one may not desacralize second tithe by transferring its sanctity onto that money. This indicates that money that fell into the Great Sea is considered lost. Rabba said: This is not difficult; it is different with regard to second tithe, since it is necessary that the money be found in the hand of the one who wishes to desacralize the tithe, as the Merciful One states in the Torah: “Then you shall turn it into money, and bind up the money in your hand, and shall go to the place that the Lord your God shall choose” (Deuteronomy 14:25), and if it is in the Great Sea, it is not in his hand, but nevertheless it is not considered lost.

154 And Rabba also says: One who effaces the image of another’s coin is exempt from paying damages, even though he caused the coin to lose value. What is the reason for this? As he did not do anything, the coin remains the same size as before. The Gemara comments: And this statement applies only in a case where he struck it with a hammer [kurnesa] and flattened it; but if he filed it with a file [shofina] he must pay the amount of the reduction in value, since he caused it to diminish in size.

155 Rava raises an objection to the statement of Rabba from a baraita (Tosefta 9:26): If a master struck his slave on his eye and blinded it, or on his ear and deafened it, the slave is emancipated by means of these injuries. If he struck the slave near his eye and as a result he does not see, or near his ear and he does not hear, the slave is not emancipated by means of these injuries. The first clause indicates that one is liable for damage caused even if it is not visible damage.

156 The Gemara responds: Rabba conforms to his standard line of reasoning, as Rabba says: One who deafens his father is put to death, even though no bruise is visible, because it is impossible for deafening to occur without a bruise, as it is certain that a drop of blood fell into his ear from the blow, even if it is not visible from the outside. Striking someone in the ear in a manner that causes deafness results in a significant physical change, while striking a coin with a hammer does not detract from the actual size of the coin.

157 And Rabba also says: One who slits the ear of another’s cow is exempt from paying damages, even though this cow is no longer fit to be sacrificed as an offering due to the injury. What is the reason for this? As the cow was available for many uses until now, so it is still available for those uses now, since the one who slit its ear did not do anything to damage the cow in a substantial way. And concerning the fact that it is rendered disqualified from being sacrificed as an offering, not all oxen stand near the altar, i.e., most animals are not sacrificed as offerings anyway, so it is not considered a loss.

158 Rava raises an objection from a baraita: One who performs a task with the water of purification, i.e., the water that is mixed with the ashes of the red heifer and sprinkled upon one who has become impure as part of the purification ritual, or with the red heifer of purification, whose ashes are mixed with springwater and sprinkled on those who have contracted impurity imparted by a corpse on the third and seventh days of their impurity, is exempt according to human laws, since he has not caused

any discernible damage, but is liable according to the laws of Heaven. It may be inferred from here that one is exempt from liability according to human laws only if he performed a task with those items, since the damage that he caused is not evident, but in the case of one who slits the ear, where the damage is evident, he is indeed liable according to human laws.

159 The Sages say in response: The same is true that even one who slits the ear is exempt according to human laws, and the baraita that specified cases where the damage is not evident teaches us this: That even one who performs a task with the water of purification or the red heifer, where the damage is not evident, is liable according to the laws of Heaven.

160 And Rabba also says: One who burns another's promissory note is exempt, as the one who burned it can say to him: I have burned only your paper, and he is not held liable for the fact that the creditor will no longer be able to prove that he had provided the loan. Rami bar Ḥama objects to this: What are the circumstances?

161 If there are witnesses who know what was written in the promissory note, they should write a new, proper, promissory note for him, and there will not be any loss. And if there are no witnesses, how do we know what was written in the promissory note in order to assess liability? Rava says: Let it refer to a case where the one who burned the promissory note trusts the creditor with regard to the details of the promissory note. Despite the concession of the one who burned the promissory note with regard to the amount of the debt, Rabba holds that he is exempt, since the value of the debt is not inherent in the actual paper.

162 Rav Dimi bar Ḥanina said: This statement of Rabba is the subject of a dispute between Rabbi Shimon and the Rabbis. According to the opinion of Rabbi Shimon, who says that an item that causes financial loss is considered to have monetary value, the one who burned the promissory note is liable. According to the opinion of the Rabbis, who say that an item that causes financial loss is not considered to have monetary value, he is not liable. Rabba holds in accordance with the Rabbis, and therefore rules that one who burns a promissory note is exempt from liability.

163 Rav Huna, son of Rav Yehoshua, objects to this: Say that you heard the opinion of Rabbi Shimon, that an item that causes financial loss is considered to have monetary value, with regard to a case where he damaged an item that has intrinsic monetary value, in accordance with the statement of Rabba. As Rabba says: If one robbed another of leavened bread before Passover, and another came and burned it during the festival of Passover, when the leavened bread had already become forbidden, the one who burned it is exempt from paying the robber, as all are commanded to destroy the leavened bread, and he therefore performed a mitzva. If he burned it after Passover, that is the matter of dispute between Rabbi Shimon and the Rabbis.

164 Rav Huna, son of Rav Yehoshua, explains: According to the opinion of Rabbi Shimon, who says that an item that causes financial loss is considered to have monetary value, the one who burned it is liable, and he must pay the robber. Although it is prohibited to derive benefit from leavened bread, the robber could have returned it to the victim and been exempt from liability. Now that it has been burned, the robber will have to pay the monetary value of the leavened bread at the time of the theft. According to the opinion of the Rabbis, who say that an item that causes financial loss is not considered to have monetary value, he is exempt. But with regard to an item such as a promissory note, which has no intrinsic monetary value, do we say that in Rabbi Shimon's opinion it too is considered to have monetary value?

[165] The Gemara cites a ruling for the case where one burns the promissory note of another. Ameimar said: The one who rules that there is liability for damage caused by indirect action collects, in this case, the value of a proper promissory note, i.e., the amount of the debt, from the one who burned the promissory note. The one who rules that there is no liability for damage caused by indirect action collects, in this case, merely the value of the paper. The Gemara relates that there was an incident like this one, and Rafram forced Rav Ashi, who had burned a document in his youth, to pay damages, and he collected payment, in this case, as if he had damaged a beam used for crafting a sculpture, i.e., he paid him the value of the debt listed in the promissory note.

[166] § The mishna teaches that if one robbed another of leavened bread, and Passover elapsed over it, and it is therefore prohibited to derive benefit from it, the robber says to his victim: That which is yours is before you. The Gemara asks: Who is the tanna who taught that with regard to items from which benefit is forbidden one says: That which is yours is before you? Rav Ḥisda said: It is the opinion of Rabbi Ya'akov, as it is taught in a baraita (Tosefta 5:4): If there was an ox that killed a person and is consequently liable to be stoned, and before the court sentenced it the owner sold the ox, the sale is valid; if he consecrated it, the consecration is valid; if he slaughtered it, its flesh is permitted; if a bailee returned it to its owner, it is returned.

[167] The baraita continues: By contrast, from when it was sentenced to be stoned it is prohibited to derive benefit from it, and if the owner sold it, the sale is not valid; if he consecrated it, the consecration is not valid; if he slaughtered it, its flesh is forbidden; if a bailee returned it to its owner, it is not returned, as once it is prohibited to derive benefit from it, the ox is worthless. Rabbi Ya'akov says: Even after it was sentenced, if a bailee returned it to its owner, it is returned.

[168] Rav Ḥisda completes his analysis: What, is it not that they disagree about this issue, that Rabbi Ya'akov holds that with regard to items from which benefit is forbidden one can say: That which is yours is before you, and the Rabbis hold that with regard to items from which benefit is forbidden one cannot say: That which is yours is before you?

[169] Rabba said to him in response: No. It may be that everyone agrees that with regard to items from which benefit is forbidden one can say: That which is yours is before you, and the ruling of the mishna is also in accordance with the opinion of the Rabbis. As if so, i.e., if it were true that the dispute in the baraita between the Rabbis and Rabbi Ya'akov concerns the general question of returning an item from which benefit is forbidden, they should disagree with regard to the case of leavened bread on Passover and whether it can be returned as is, since this is a clear case of an item from which benefit is forbidden. Rather, Rabba said: Here, in the baraita, they disagree with regard to a different issue: Can an ox be sentenced in its absence?

[170] Rabba explains the dispute: The Rabbis hold that an ox may not be sentenced in its absence, and therefore the bailee is liable to pay. The reason is that when the ox is returned after its sentencing, the owner may say to the bailee: Had you brought the ox to me before sentencing, I would have chased it away into the marsh, preventing the sentencing from taking place. Now, since you did not return it to me before it was given to the court, you have given it to one with whom I cannot litigate, as the court was sure to sentence it. Therefore you must pay me and not return the ox. And Rabbi Ya'akov holds that an ox may be sentenced even in its absence, and the claim of the owner of the ox is not accepted. The reason is that the bailee may say to the owner in response: What did I do to the ox? Ultimately it would have been sentenced in its absence and rendered forbidden.

171 The Gemara relates an incident: Rav Ḥisda, who stated that the mishna is in accordance with the opinion of Rabbi Ya’akov and not the Rabbis, found Rabba bar Shmuel and said to him: Did you learn anything with regard to the halakhot of returning stolen items from which benefit is forbidden? Rabba bar Shmuel said to him: Yes, we learned a baraita: The verse states: “Then it shall be, if he has sinned, and is guilty, that he shall restore the item that he robbed” (Leviticus 5:23). What is the meaning when the verse states: “That he robbed”? It means that the robber must return the same item that he robbed.

172 The baraita continues: From here the Sages stated that if one robbed another of a coin and it was invalidated, or of produce and it rotted, or of wine and it fermented, or of teruma and it became ritually impure, or of leavened bread and Passover elapsed over it, or of an animal and a sin was performed with it, or of an ox that had not been sentenced, he can say to the robbery victim: That which is yours is before you.

173 The Gemara notes: Who did you hear say that before the ox was sentenced it can be returned, but after it was sentenced it cannot? It is the Rabbis, who disagree with Rabbi Ya’akov in the baraita; and this baraita teaches that if one robbed another of leavened bread and Passover elapsed over it, he can say to the robbery victim: That which is yours is before you. This disproves the analysis of Rav Ḥisda, as even the Rabbis agree that an item from which benefit is forbidden is returned as is. Rav Ḥisda said to Rabba bar Shmuel: If you find the Sages, do not say anything to them, i.e., do not publicize that I erred.

174 § The Gemara discusses the baraita, which states that if one robbed another of produce and it rotted, he can say to the robbery victim: That which is yours is before you. The Gemara asks: But didn’t we learn in the mishna (96b): If one robbed another of produce and it rotted, he pays compensation according to the value of the stolen item at the time of the robbery? Rav Pappa said: Here, the mishna is referring to a case where the stolen produce all rotted, which constitutes a significant change. The robber acquires the produce and must pay what its value was at the time of the robbery. There, the baraita is referring to a case where part of the stolen produce rotted. In such a case the robber may return it and say: That which is yours is before you.

175 MISHNA: If one gave items to craftsmen to fix and they damaged them, the craftsmen are liable to pay for the damage. For example, if one gave a chest, a box, or a cabinet to a carpenter to fix, and he damaged it, he is liable to pay. And a builder who committed to demolish a wall and while demolishing it he broke the stones, or who damaged them, is liable to pay. If he was demolishing on this side of the wall, and the wall fell from another side and caused damage, he is exempt from liability. But if a stone fell and caused damage due to the force of the blow, he is liable.

176 GEMARA: The mishna teaches that if one gave a carpenter a chest, a box, or a cabinet to fix, and he damaged it, the carpenter is liable to pay for the damage. Rav Asi says: The Sages taught that a carpenter is liable to pay damages only in a case where one gave the carpenter a chest, a box, or a cabinet to drive a nail into them, i.e., he gave the carpenter complete vessels to repair, and he drove the nail into them and broke them. But if one gave wood to a carpenter to build a chest, a box, or a cabinet, and he built a chest, a box, or a cabinet from the wood, and before giving it to the owner the carpenter broke them, he is exempt from paying for the damage caused to these vessels, and must pay only for the damage caused to the wood.

[177] What is the reason for this? It is because a craftsman acquires ownership rights through the enhancement of the vessel. The craftsman is considered to have acquired the vessel through his work, which enhances its value, and it remains in his possession until he returns it to the owners. Consequently, if he damages the vessel in any way, he is damaging his own item, and must return only the value of the raw materials to the owners.

[178] The Gemara attempts to contradict Rav Asi's statement: We learned in the mishna that if one gave items to craftsmen to fix and they damaged them, they are liable to pay for the damage. What, is it not referring to a case where he gave them wood, and they nevertheless pay the owner the value of a vessel? The Gemara responds: No, it is referring to a case where he gave them a chest, a box, or a cabinet to repair.

[179] The Gemara asks: But from the fact that the latter clause of the mishna teaches about a chest, a box, or a cabinet, it may be inferred that the first clause of the mishna is referring to wood. The Sages say in response: The latter clause is explaining the first clause. After stating that the craftsmen are liable to pay damages, the mishna explains: In what case is it so that if one gave items to craftsmen to fix, and they damaged them, they are liable to pay? It is with regard to a case where one gave a carpenter a chest, a box, or a cabinet.

[180] The Gemara notes: And so too, it is reasonable to say that the latter clause of the mishna teaches in what case the first clause deems them liable, as, if it enters your mind to think that the first clause is referring to a case where he gave wood, one could ask: Now that the mishna told us that if one gave wood, the craftsman is liable to pay the value of a vessel, and we do not say that a craftsman acquires ownership rights through the enhancement of vessels, is it necessary to tell us that if one gave a chest, a box, or a cabinet, the craftsman is liable to pay damages?

[181] The Gemara dismisses this proof: If it is due to that reason, i.e., if that is the manner in which the explanation of the mishna is refuted, there is no conclusive argument, because that claim can be refuted by saying that the tanna taught the latter clause to shed light on the first clause, so that you would not say that the first clause is referring to a case where one gave the carpenter a chest, a box, or a cabinet, but had he given wood, the carpenter would not be liable. Therefore, the mishna teaches the case of one who gave a carpenter a chest, a box, or a cabinet in the latter clause, and it follows by inference that the first clause discusses one who gave the carpenter wood, and even so the carpenter is liable to pay damages. It is therefore impossible to prove Rav Asi's statement from the mishna.

[182] The Gemara suggests: Let us say that a mishna (100b) supports the opinion of Rav Asi: With regard to one who gives wool to a dyer

[183] and it was burned in the cauldron in which it was dyed, the dyer gives the owner the value of his wool. The Gemara infers: The value of his wool, yes, the dyer must pay that amount, but the value of the wool and its enhanced value, no, he need not pay. The Gemara suggests: Is this not referring to a case where the wool was burned after falling into the cauldron and the dye had taken hold, so that there is enhanced value, and one can learn from the mishna that a craftsman acquires ownership rights through the enhancement of the vessel, and therefore the dyer need not pay the enhanced value?

[184] Shmuel said: This is not a proof. With what are we dealing here? We are dealing with a case where the wool was burned at the moment of falling into the cauldron, before the dye had taken hold, so that there is no enhancement. The Gemara asks: But according to this opinion, what would the

halakha be if it was burned after falling into the cauldron, when the dye had taken hold? Would the dyer give the owner the value of his wool and its enhancement? Shall we say that Shmuel does not accept the statement of Rav Asi, and holds that a craftsman does not acquire ownership rights through the enhancement of the vessel?

185 The Gemara rejects this statement. Shmuel could have said to you: With what are we dealing here in the mishna? We are dealing with a case where the wool and herbs used in the dye both belong to the homeowner, and the dyer is taking only the payment of his hand, i.e., the wages for his labor, and nothing else. In this case, the craftsman does not acquire ownership rights through the enhancement of the vessel, but in a case where the craftsman provides the materials, he does acquire such rights.

186 The Gemara asks: If so, i.e., if the homeowner's herbs were also ruined by the dyer, the mishna should have said that the dyer gives the owner the value of his wool and herbs, not just the value of his wool. Rather, Shmuel is merely dismissing the Gemara's proof with regard to the statement of Rav Asi that a craftsman acquires a vessel through its enhancement, by saying that the mishna could be understood otherwise. He does not, however, state his own opinion on this matter.

187 The Gemara offers another suggestion: Come and hear a proof from a baraita: With regard to one who gave his garment to a craftsman, and the craftsman concluded the work and notified the owner that the work was complete, even if the owner delays paying the craftsman from now until ten days henceforth, he does not violate, for this delay, the prohibition of: "You shall not oppress your neighbor, nor rob him; the wages of a hired worker shall not abide with you all night until the morning" (Leviticus 19:13). If the craftsman gave the garment to him at midday, then once the sun has set and the owner has not paid him, the owner does violate, for this delay, the prohibition against delaying the payment of wages.

188 The Gemara concludes: And if it enters your mind to say that a craftsman acquires ownership rights through the enhancement of the vessel, why does the owner violate the prohibition against delaying the payment of wages? It is as if the craftsman acquired the garment, and the payment is considered to be a purchase of the garment by the owner, rather than a wage.

189 The Gemara responds: Rav Mari, son of Rav Kahana, said: The baraita is stating the halakha with regard to the laundering of a thick garment, where there is no enhancement of the garment. Therefore, the craftsman does not acquire it.

190 The Gemara asks: Ultimately, to what end did the owner of the garment give it to the craftsman? He gave it to him in order to soften it. Once he has softened it, that is its enhancement, and the craftsman has therefore acquired it. The Gemara responds: No; it is necessary to teach this halakha in a case where the owner hired the craftsman for treading, i.e., to forcefully tread on the garment in water until it softens, with the owner paying the craftsman a ma'a coin for each tread. The difference is that this is considered hired labor, where the craftsman is paid based on the amount of times he performed an action, and not contractual labor, where he is paid based on the outcome, in this case, a softened garment.

191 The Gemara comments: And with regard to what entered our minds initially, that the owner did not hire the worker for treading but rather he hired him like a craftsman based on the assumption that the garment would be returned laundered, this supports the opinion of Rav Sheshet. As they asked Rav Sheshet: If one hires a contractor, who is not paid an hourly wage but is paid upon the completion of his task, and the one who hired him does not pay him on the day that he completes the

work, does he violate, for this delay, the prohibition against delaying the payment of wages, or does he not violate the prohibition? And Rav Sheshet said to them: He does violate the prohibition.

192 The Gemara asks: Shall we say based on this statement that Rav Sheshet disagrees with the statement of Rav Asi, who holds that a craftsman acquires ownership rights through the enhancement of the vessel, and his payment is not considered to be a wage? Shmuel bar Aḥa said: Rav Sheshet is discussing a specific type of contractor, and he stated his ruling with regard to an agent tasked with the delivery of a letter, in which case, since the contractor's only task is to deliver the letter, there is no enhancement through which he might acquire ownership rights. Consequently the prohibition against delaying the payment of wages applies.

193 The Gemara suggests: Let us say that the statement of Rav Asi, that a craftsman acquires ownership rights through the enhancement of the vessel, is the subject of a dispute between tanna'im. As it is taught in a baraita: If a woman gave gold to a goldsmith, instructing him: Fashion bracelets, earrings, or rings for me, and I will be betrothed to you as payment for your work, then once he has fashioned them she is betrothed; this is the statement of Rabbi Meir. And the Rabbis say: She is not betrothed until money enters her possession.

194 The Gemara asks: What is this money mentioned by the Rabbis? If we say it means that very money, i.e., the rings she ordered, then by inference Rabbi Meir holds that even that very money is not required in order for the betrothal to take effect. But with what does he betroth her? He has given her nothing but the jewelry. Rather, it is obvious. To what money are the Rabbis referring? They must be referring to when he betroths her via other money, i.e., the payment she owes him for his service. According to the opinion of the Rabbis, in order for the betrothal to take effect he must give her additional money, while according to Rabbi Meir the betrothal takes effect when he gives her the jewelry.

195 The Gemara prefaces its explanation of the connection to the issue at hand by delineating two assumptions: And those who say that Rabbi Meir and the Rabbis are engaging in a dispute with regard to the issue of a craftsman acquiring ownership rights through the enhancement of a vessel assumed that everyone agrees that the obligation to pay a wage is incurred continuously from the beginning of the period he was hired to its end, i.e., the obligation to pay for a service begins when the hired party commences work, and the sum owed increases as he proceeds. The fact that he is not paid from the time he commences work establishes the wages as a debt. Consequently, the wages now have the status of a loan. And they also assumed that everyone agrees that with regard to one who betroths a woman with a loan that she is not betrothed. She therefore cannot be betrothed to him by not having to pay the wages for his work.

196 Based on these assumptions, the Gemara asks: What, is it not that they disagree with regard to whether a craftsman acquires ownership rights through the enhancement of the vessel? As Rabbi Meir holds that a craftsman acquires ownership rights through the enhancement of the vessel, and since he owns the enhanced value of the vessel, when he gives the jewelry to her he is giving her something valuable of his own, and she is betrothed. And the Rabbis hold that a craftsman does not acquire ownership rights through the enhancement of the vessel, and since a craftsman, in this case, the goldsmith, does not own the jewelry, he cannot betroth a woman with it.

197 The Gemara rejects this explanation of the dispute: No, it is possible that everyone agrees that a craftsman does not acquire ownership rights through the enhancement of the vessel, but here they

disagree with regard to the issue of whether the obligation to pay a wage is incurred continuously from the beginning of the period he was hired to its end.

198 Rabbi Meir holds that the obligation to pay a wage is incurred only at the end of the period for which he was hired, i.e., the owner is obligated to pay only when the work is complete, and therefore the goldsmith's wages do not have the status of a loan, but of a sum of money that she becomes obligated to give him at that time. If he gives her the jewelry without asking for that money, it is as though he gave the money from his wages to her, and she may be betrothed with it. And the Rabbis hold that the obligation to pay a wage is incurred continuously from the beginning of the period he was hired to its end, and therefore his wages have the status of a loan, and she cannot be betrothed with them and must be given additional money.

199 And if you wish, say instead that everyone agrees that the obligation to pay a wage is incurred continuously from the beginning of the period he was hired to its end, and here they disagree with regard to one who betroths a woman with a loan. As Rabbi Meir holds that with regard to one who betroths a woman with a loan, she is betrothed. And the Rabbis hold that with regard to one who betroths a woman with a loan, she is not betrothed.

200 Rava said another interpretation: Everyone agrees that the obligation to pay a wage is incurred continuously from the beginning of the period a craftsman is hired to its end; and everyone agrees that with regard to one who betroths a woman with a loan, she is not betrothed; and everyone agrees that a craftsman does not acquire ownership rights through the enhancement of the vessel.

201 But with what are we dealing here? We are dealing with a case where he added a jewel [nofekh] of his own for her. Rabbi Meir holds that if a man betroths a woman with a loan and one peruta, her mind is focused on the peruta. Therefore, in this case the jewel serves as the betrothal money. And the Rabbis hold that if a man betroths a woman with a loan and one peruta her mind is focused on the loan, so the loan serves as the betrothal money, and if one betroths a woman with a loan, she is not betrothed.

202 And Rabbi Meir and the Rabbis disagree in the dispute between these tanna'im. As it is taught in the Tosefta (Kiddushin 3:4): If one says to a woman: Be betrothed to me with the payment for which I have worked for you, she is not betrothed, as the payment is a loan, since she already owes him this money. But if he says: Be betrothed to me with the payment for which I will work for you, she is betrothed, as from the moment he is entitled to the money, he gives it to her for her betrothal. Rabbi Natan says: If he says: Be betrothed to me with the payment for which I will work for you, she is not betrothed, as Rabbi Natan holds that the obligation to pay a wage is incurred continuously from the beginning of the period he was hired to its end, which means that upon the completion of the labor it is a loan, and all the more so if he says: Be betrothed to me with the payment for which I have worked for you.

203 The baraita cites a third opinion: And Rabbi Yehuda HaNasi says: Actually they said that the halakha is that regardless of whether he said: With the payment for which I have worked for you, or whether he said: With the payment for which I will work for you, she is not betrothed. But if he added a jewel of his own for her, she is betrothed.

204 The Gemara clarifies the dispute: What difference is there between the first tanna and Rabbi Natan? The difference between them is with regard to a wage: Is the obligation incurred continuously or only upon the completion of the work? The difference between Rabbi Natan and Rabbi Yehuda

HaNasi is the issue of a loan and one peruta. Rabbi Natan holds that if a man betroths a woman with a loan and one peruta her mind is focused on the loan, and in this case his jewel is disregarded; and Rabbi Yehuda HaNasi holds that her mind is focused on the peruta, in this case the jewel, and she is betrothed with the jewel.

[205] § The Gemara now returns to the topic of a craftsman who damages the item with which he is working. Shmuel says: An expert butcher who damaged an animal by slaughtering it incorrectly, thereby rendering it non-kosher, is liable to pay the owner of the animal for the damage. Why? He is one who causes damage; he is negligent; he is like one who is told by the animal's owner to slaughter it from here, i.e., the area of the throat where ritual slaughter is performed, and he slaughtered it from there, i.e., a different area of the throat, in violation of the owner's wishes.

[206] The Gemara asks: Why must he say both that the butcher is one who causes damage and that he is negligent? The Gemara explains: If Shmuel had said only that he is one who causes damage, I would say that this statement applies only in a case where the butcher slaughtered the animal for pay, in which case, due to the extra responsibility that he bears, he is considered to be one who caused damage and is liable to pay even in a case where the damage was unintentional; but in a case where he does the work for free, I would say no, he is exempt from liability in a case where the damage was unintentional. Shmuel therefore teaches us that the butcher is negligent, and one who works without pay is analogous to an unpaid bailee, who is liable to pay for damage caused by negligence.

[207] Rav Ḥama bar Gurya raised an objection to Shmuel from the Tosefta (10:10): With regard to one who gives an animal to a butcher, and the butcher killed it in a way that rendered it an animal carcass, if the butcher is an expert, then he is exempt from liability; if he is an ordinary person, without particular expertise in the act of ritual slaughter, he is liable. And if the owner of the animal paid the butcher, then regardless of whether he is an ordinary person or whether he is an expert, the butcher is liable to pay for the damage. This indicates that an expert butcher who slaughtered the animal improperly is exempt if he slaughtered it without pay. Shmuel said to him: May your mind be muddled for raising a ridiculous objection.

[208] One of the Sages came and raised the same objection to Shmuel. Shmuel said to him: Now you shall receive what your friend received from me, since I say to you my statement in accordance with the opinion of Rabbi Meir, and you say to me, i.e., you raise an objection, based upon the opinion of the Rabbis. Why were you not precise in your consideration of my choice of words? As I say: He is one who causes damage; he is negligent; he is like one who is told by the animal's owner to slaughter it from here, and he slaughtered it from there. Who accepts this reasoning? It is Rabbi Meir, who says: He should have taken upon himself the responsibility to perform his task properly, and if he did not, he is liable to pay for the damage that he caused. The other baraita is in accordance with the opinion of the Rabbis, who exempt him from liability.

[209] The Gemara asks: Which statement of Rabbi Meir is Shmuel referring to? If we say it is this statement of Rabbi Meir, that is difficult. Parenthetically, the Gemara states that the letters kuf, lamed, nun serve as a mnemonic device for the three statements of Rabbi Meir that will be cited. It stands for: He tied it [kesharo], to dye [litzboa], and broke [nishbera].

[210] The Gemara returns to the matter at hand: As we learned in a mishna (45b): If the ox's owner tied it with reins to a fence or locked the gate before it in an appropriate manner, but nevertheless the ox emerged and caused damage, whether the ox is innocuous or forewarned the owner is liable, since

this is not considered sufficient precaution to prevent damage; this is the statement of Rabbi Meir. As the Gemara explains on 45b, Rabbi Meir holds that a forewarned ox requires a heightened level of safeguarding, and since the owner did not safeguard it, he is liable. The same would apply here, that one who agrees to perform a task must exercise care in executing it. Otherwise, he will be held liable to pay for damage.

[211] The Gemara explains why this cannot be the statement of Rabbi Meir that Shmuel was referring to: There, in that mishna, the Sages disagree with regard to the interpretation of biblical verses, not logical reasoning, as the Gemara explains there, and conclusions cannot be drawn from that halakha to this one.

[212] Rather, it is this statement of Rabbi Meir that Shmuel is referring to, as we learned in a mishna (100b): If one gave wool to a dyer to dye it red for him, and he dyed it black, or to dye it black, and he dyed it red, Rabbi Meir says: The dyer gives the owner the value of his wool, indicating that he is liable to pay for the damage. The Gemara rejects this opinion: This statement also does not prove that according to Rabbi Meir a worker is liable to pay for a job performed improperly, since there, the dyer burned the wool, thereby removing it from the owner by direct action.

[213] Rather, it is this statement of Rabbi Meir that Shmuel is referring to, as we learned in a baraita: If one's jug broke on the road and he did not remove it, or if his camel fell on the road and he did not stand it up, Rabbi Meir says: He is liable for the damage that they cause, and the Rabbis say: He is exempt according to human laws but liable according to the laws of Heaven. The Gemara notes: And we maintain that they disagree with regard to the question of whether one who stumbles is considered negligent. According to the opinion of Rabbi Meir, one who stumbles is considered negligent, since he should have paid attention while walking. He is therefore liable for whatever damage he causes. In the case of an expert butcher as well, Rabbi Meir holds that he is considered negligent when damaging the animal he slaughtered, and the Rabbis hold that he is not negligent and therefore exempt from liability.

[214] The Gemara discusses Rabbi Yoḥanan's opinion concerning the case of an expert butcher. Rabba bar bar Ḥana says that Rabbi Yoḥanan says: An expert butcher who damaged an animal by slaughtering it incorrectly, thereby rendering it non-kosher, is liable to pay the owner of the animal, and even if he is as expert as the butchers of Tzippori, it is not considered an accident, and he is considered to be at fault. The Gemara asks: And did Rabbi Yoḥanan actually say this? But didn't Rabba bar bar Ḥana say that there was an incident in which a butcher who damaged an animal was brought to court before Rabbi Yoḥanan in the synagogue of the town Maon, and Rabbi Yoḥanan said to the butcher: Go bring proof that you are an expert at slaughtering chickens, and I will exempt you from payment.

[215] The Gemara responds: This is not difficult. Here, in the aforementioned incident, the butcher slaughtered the animal for free, and he is therefore exempt, while there, in Rabba bar bar Ḥana's previous statement, he slaughtered the animal for pay, and is therefore liable to pay for the damage. This is in accordance with that which Rabbi Zeira says: One who wants a butcher to be liable to pay him in the event that he damages the animal during slaughter should advance him a dinar, so that he is paid for his services, and he is consequently liable to pay damages.

[216] The Gemara raises an objection from the Tosefta (10:9): One who brought wheat to another to grind for him, 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; or if one gave flour to the baker and he made 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, the worker is liable, because he is like a paid bailee. This indicates that even if the work was done for free, the worker has the legal status of one who is paid, and he is liable to pay for the damage. The Gemara answers by emending the baraita: Say instead: Because he is a paid bailee and actually receives payment.

[217] The Gemara relates: There was a certain animal that was slaughtered with an incision not in the neck that was brought before Rav. He declared it non-kosher, and exempted the butcher from paying its value. Rav Kahana and Rav Asi encountered that man, i.e., the owner of the animal, and they said to him: Rav did two for you.

[218] The Gemara asks: What are the two? If we say there were two unfavorable rulings, what are they? One is that he should have declared the animal kosher, in accordance with the opinion of Rabbi Yosei, son of Rabbi Yehuda, who says that an animal that has been slaughtered in this manner is kosher, and instead he declared it non-kosher, in accordance with the opinion of the Rabbis, who hold that it is not kosher. And the second is that even if he holds in accordance with the opinion of the Rabbis, he should have ruled that the butcher is liable to pay for the damage. The Gemara challenges this explanation: But if these are the two that Rav Kahana and Rav Asi are referring to, is it permitted for them to say this type of statement to the owner of the animal?

[219] But isn’t it taught in a baraita that when a judge leaves the courthouse, he should not say to the litigant: I found you innocent and my colleagues found you liable, but what can I do, since my colleagues outnumber me? And it is concerning a circumstance such as this that it is stated: “He that goes about as a talebearer reveals secrets; but he that is of a faithful spirit conceals a matter” (Proverbs 11:13).

[220] Rather, the intention is that they told him that there were two favorable rulings: First, that by declaring the animal to be non-kosher, he did not allow you to eat an item about which there is uncertainty as to whether it is forbidden, and second, by exempting the butcher from paying you, he prevented you from being in a situation where there is uncertainty as to whether receiving payment from the butcher constitutes robbery, since you would have been given the butcher’s money when he may be exempt, as the animal may in fact be kosher.

[221] § The Gemara continues the discussion of an expert who erred, thereby causing a loss. It was stated: With regard to one who presents a dinar to a money changer to assess its value or authenticity and the money changer declares it valid, and it is found to be bad, i.e., invalid, causing its owner a monetary loss, it is taught in one baraita that if the money changer is an expert, he is exempt, while if he is an ordinary person he is liable. And it is taught in another baraita that irrespective of whether he is an expert or whether he is an ordinary person, he is liable to pay for the owner’s loss.

[222] To reconcile the baraitot, Rav Pappa said: When the baraita teaches that an expert is exempt from liability, it is referring to renowned experts such as the money changers Dankhu and Issur, whose expertise is so great that they do not need to learn about assessing currency at all. The Gemara asks: But if they are so proficient, in what did they err? The Gemara answers: They erred with regard to a coin from a new press, which at that time was leaving the press, and they did not know its value.

[223] The Gemara relates: There was a certain woman who presented a dinar to Rabbi Ḥiyya to assess its authenticity. He said to her: It is a proper coin. The next day she came before him and said to him: I presented it to others, and they told me that it is a bad dinar, and I am not able to spend it. Rabbi Ḥiyya said to Rav: Go exchange it for her, and write on my tablet [apinkasi]: This was a bad transaction, as I should not have assessed the coin.

[224] The Gemara asks: But what is different about Dankhu and Issur, who are exempt due to the fact that they do not need to learn about assessing currency? Rabbi Ḥiyya too did not need to learn, as he was also an expert. The Gemara responds: Rabbi Ḥiyya was not actually required to return a dinar to this woman, but when he did so he acted beyond the letter of the law. This is as that which Rav Yosef taught concerning the verse: "And you shall show them the way wherein they must walk, and the work that they must do" (Exodus 18:20): "And you shall show them"; this is referring to

[225] the core of their existence, i.e., Torah study, which is the source of life. "The way"; this is referring to acts of kindness. "They must walk"; this is referring to visiting the sick. "Wherein"; this is referring to the burial of the dead. "The work"; this is referring to conducting oneself in accordance with the law. "That they must do"; this is referring to conducting oneself beyond the letter of the law. This indicates that the Torah mandates that people conduct themselves beyond the letter of the law.

[226] The Gemara relates: Reish Lakish presented a dinar to Rabbi Elazar so that the latter would assess it. Rabbi Elazar said: It is a proper coin. Reish Lakish said to him: Realize that I am relying on you. Rabbi Elazar said to him: What is the purpose of stating that you are relying on me? Is it so that if this dinar is later found to be bad, I will be required to exchange it for you with a good dinar? But it is you who said that it is Rabbi Meir who is of the opinion that there is liability for damage caused by indirect action, even if he did not directly cause damage to the property. What, is it not that you intended to say: This is the opinion of Rabbi Meir, but we do not hold in accordance with his opinion?

[227] Reish Lakish said to him: No, I intended to say that this is the opinion of Rabbi Meir, and we do hold in accordance with his opinion.

[228] The Gemara asks: Which statement of Rabbi Meir is Rabbi Elazar referring to? If we say it is this statement of Rabbi Meir, that is difficult. Parenthetically, the Gemara states that the letters dalet, lamed, mem, peh serve as a mnemonic device for the four statements of Rabbi Meir that will be cited. It stands for: Judged [dan], to dye [litzboa], covers [mesakekh], and broke open [pirtza].

[229] The Gemara returns to the matter at hand. As we learned in a mishna (Bekhorot 28b): If a judge issued a judgment and erred, and he acquitted one who was in fact liable, or deemed liable one who should have in fact been acquitted, or if he ruled that a pure item is impure, or ruled that an impure item is pure, and by doing so he caused a litigant a monetary loss, what he did is done, i.e., the judgment stands, and the judge must pay damages from his home, i.e., from his personal funds. He is therefore liable to pay the damages even though he caused the loss indirectly.

[230] The Gemara explains why this cannot be the statement of Rabbi Meir that Shmuel was referring to: But wasn't it stated with regard to that mishna that Rabbi Ile'a says that Rav says: And this mishna is discussing a case where the judge not only issued a ruling, but actively took the money from the one whom he found liable, and gave it to the other party by his own hand. This is not a case of causation but of direct action.

231 Rather, Rabbi Elazar must be referring to this statement of Rabbi Meir, as we learned in a mishna (100b): If one gave wool to a dyer to dye it red for him, and he dyed it black, or to dye it black, and he dyed it red, Rabbi Meir says: The dyer gives the owner the value of his wool. The Gemara responds: This too does not prove that according to the opinion of Rabbi Meir one is liable even if the loss was brought about by causation, since there he does cause damage through direct action.

232 Rather, Rabbi Elazar must be referring to this statement of Rabbi Meir, as we learned in a mishna (Kilayim 7:4): One who drapes his grapevine atop another's grain has rendered them forbidden due to the prohibition against growing diverse kinds in a vineyard, and he is liable to pay the owner of the grain for the damage. The Gemara responds: This too does not prove that according to the opinion of Rabbi Meir one is liable even if the loss was brought about by causation, since there too he does cause damage by direct action.

233 Rather, it must be referring to this statement of Rabbi Meir, as it is taught in the Tosefta (Kilayim 3:4): If there was a partition of a vineyard that is adjacent to a wheat field, and that partition broke open,

234 the owner of the wheat field may tell the owner of the vineyard to repair the breach before the vines intermingle with the grain and cause it to become forbidden. If the partition broke open again, he may again tell him to repair it. If the owner of the vineyard abandoned the partition and did not repair it, he has rendered the grain forbidden, and is obligated to pay restitution for it. This demonstrates that one is liable to pay damages even if he did not perform any action at all, and consequently proves that Rabbi Meir rules there is liability for damage caused by indirect action.

235 MISHNA: In the case of one who gives wool to a dyer and it was burned in the cauldron during the dyeing process, thereby completely ruining the wool so that there is no enhancement, only loss, the dyer gives the owner the value of his wool. If he dyed it unattractively [ka'ur] so that the dye is not absorbed well by the wool, if the enhancement, i.e., the amount that the value of the wool has increased by being dyed, exceeds the dyer's expenses, the owner of the wool gives the dyer the expenses. And if the expenses exceed the enhancement, he gives him the value of the enhancement.

236 If the owner gave wool to a dyer to dye it red for him and instead he dyed it black, or to dye it black and he dyed it red, Rabbi Meir says: The dyer gives the owner of the wool the value of his wool. Rabbi Yehuda says: Here too, if the value of the enhancement exceeds the dyer's expenses, the owner of the wool gives the dyer the expenses. And if the expenses exceed the enhancement, he gives him the value of the enhancement.

237 GEMARA: The Gemara clarifies: What does the mishna mean by unattractively? Rav Naḥman said that Rabba bar bar Ḥana said: Kelabus. The Gemara asks: What does kelabus mean? Rabba bar Shmuel said:

238 The sediments of dye in the cauldrons, that is, the dyer took the dye remaining in the cauldron from previous use, and used that dye for this garment, leading to an inferior result.

239 § The Sages taught (Tosefta 10:8): With regard to one who gives wood to a carpenter to fashion a chair from it and he fashioned a bench from it instead, or one who gives him wood to fashion a bench and he fashioned a chair from it instead, Rabbi Meir says: The carpenter gives him the value of his wood and keeps the chair or bench, as he has acquired it due to the change. Rabbi Yehuda says: He does not acquire the item. Rather, if the value of the wood's enhancement exceeds the carpenter's

expenses the owner gives the carpenter the expenses, and if the expenses exceed the enhancement of the wood he gives him the value of the enhancement. Since the carpenter deviated from the customer’s order, he is entitled to either his expenses or the enhancement, the smaller amount of the two.

240 The baraita continues: And Rabbi Meir concedes that if he gave wood to a carpenter to fashion a beautiful chair from it and he fashioned an ugly chair from it, or to fashion a beautiful bench from it and he fashioned an ugly bench from it, then if the value of the wood’s enhancement exceeds the carpenter’s expenses the owner gives the carpenter the value of the expenses, and if the expenses exceed the enhancement he gives him the value of the enhancement. Since the carpenter did not deviate significantly from the customer’s instructions, Rabbi Meir concedes that the carpenter does not acquire the item due to the change.

241 § In connection with the discussion of the halakhic implications of the enhancement of a garment quoted above, the Gemara records that a dilemma was raised before the Sages: What is the halakha? That the enhancement which dye provides to the wool is substantive, i.e., the dye is considered a separate entity from the wool it dyed? Or is the halakha that the enhancement which dye provides to the wool is not substantive, i.e., the dye does not remain an independent entity, and it is viewed as if there is only colored wool?

242 The Gemara asks: What are the circumstances in which this dilemma is relevant? If we say that the dilemma arises where one robbed another of pigments, and ground them up and soaked them in water, converting them into dye, and then dyed wool with them, then the dilemma would be concerning how the robber returns the pigments. In this case, derive the halakha due to the fact that the robber acquired the pigments due to a change of form, which occurred when he ground the pigments, and in any event will be obligated to return the value of the pigments at the time of the robbery.

243 The Gemara answers: No, it is necessary to resolve the dilemma in a case where one robbed another of pigments that had already been soaked in water, and then dyed wool with them. What is the halakha here? Is the enhancement which dye provides to the wool substantive, i.e., a separate entity, so that the owner can say to the robber: Give me my dyes that you took? Or perhaps the enhancement which dye provides to the wool is not substantive, but becomes one with the wool, so that the robber can say to the owner: I have nothing at all of yours, since the dyes are no longer considered extant.

244 The Gemara rejects this understanding of the application of the dilemma. The Sages say: And even if the enhancement which dye provides to the wool is not substantive, can the robber really say to him: I have nothing at all of yours? Let the owner say to him: Give me my dyes that you have caused to be lost. Even if the dyes are no longer considered extant, the owner is still entitled to monetary compensation for the robbery.

245 Rather, the dilemma is relevant to that other side of the question: Is the halakha that the enhancement which dye provides to the wool is not substantive, and therefore the robber needs to pay him? Or perhaps the enhancement which dye provides to the wool is substantive, and the robber can say to him: The dyes absorbed into the wool lie before you; take them. The Gemara rejects this as well: Take them? With what should he take the dyes, with soap? While soap does remove dye from the wool, it does not return the dye to the robbery victim, as the dye cannot be recovered.

246 The Gemara suggests another scenario: Rather, with what are we dealing here? We are dealing with a case where he robbed one person of wool and dyes, and dyed that wool with those dyes, and he is returning the dyed wool to him. The dilemma is: Is the halakha that enhancement which dye provides to the wool is substantive, and he is therefore returning both the dye and the wool to him? Or perhaps enhancement which dye provides to the wool is not substantive, and it is only the wool that he is returning to him, but he is not returning the dye to him, since it is no longer extant.

247 The Gemara rejects this understanding of the application of the dilemma as well. The Sages say: Derive the halakha in this case based on the fact that he increased the value of the wool for him, as dyed wool is more expensive than undyed wool. Consequently, even if the robber has not returned the dye, he reimburses the owner for it when he returns the appreciated wool. The Gemara suggests: No, it is necessary to resolve the dilemma in a case where the cost of the dye has depreciated. If the dye is viewed as an independent entity the robber is returning both the wool and the dye. If it is not, he must reimburse the robbery victim for the value of the dye at the time of the robbery. And if you wish, say instead: The dilemma is relevant in a case where he robbed another of dye and a basket, and dyed the basket with the dye, in which case the dye does not increase the value of the dyed item.

248 The Gemara presents an alternative understanding of the case where the dilemma applies. Ravina said: With what are we dealing here? We are dealing with a case where there was wool that belonged to one person and dyes that belonged to one other person, and a monkey came and dyed that wool with those dyes. The dilemma is as follows: Is the halakha that enhancement which dye provides to the wool is substantive, so that the owner of the dye can say to the owner of the wool: Give me my dyes that are with you? Or perhaps enhancement which dye provides to the wool is not substantive and the owner of the wool can say to the owner of the dye: There is nothing of yours with me, and he is exempt from liability because the dyes are no longer extant.

249 Having determined the scenario in which the dilemma is relevant, the Gemara proceeds to resolve the dilemma. Come and hear a solution from a mishna (Orla 3:1): A garment that one dyed with dye extracted from peels of orla, i.e., fruit that grows on a tree during its first three years, must be burned, as it is prohibited to derive benefit from orla. Apparently, the enhancement of an item’s appearance is considered a significant matter, and the dye therefore remains an independent substance even after having been absorbed by the wool.

250 The Gemara rejects this resolution. Rava said: The reason the garment must be burned is not because the dye remains an independent substance. Rather, it is because the Torah prohibited benefit that is visible to the eye, as it is taught in a baraita: The verse states: “And shall have planted all manner of trees for food, then you shall count the fruit thereof as forbidden; three years shall it be as forbidden [areilim] to you; it shall not be eaten” (Leviticus 19:23). From this verse I have derived only a prohibition against eating it; from where is it derived that one may not even derive benefit from it, and that one may not dye with dyes extracted from the fruit, and that one may not light a lamp with oil extracted from the fruit?

251 The baraita answers: The verse states: “Then you shall count the fruit thereof [orlato] as forbidden [araltem]. Three years shall it be as forbidden [areilim] to you; it shall not be eaten” (Leviticus 19:23), to include all these types of benefit in the prohibition. Consequently, there is an explicit derivation that an item dyed with orla dye is forbidden.

[252] The Gemara attempts another resolution of the dilemma. Come and hear a resolution from that which was taught in a baraita: A garment that one dyed with dye extracted from the peels of produce from the Sabbatical Year must be burned when the time for the elimination of Sabbatical Year produce arrives. This indicates that the dye evidently remains an independent substance. The Gemara rejects this proof: It is different there, as the verse states: “Shall all the increase thereof be” (Leviticus 25:7), and the phrase: “Shall be,” teaches that it will always remain as it is, i.e., it retains its status as Sabbatical Year produce despite any change to its form.

[253] The Gemara states that Rava raises a contradiction: We learned in a mishna (Orla 3:1): A garment that one dyed with dye extracted from peels of orla must be burned. Apparently, the change in appearance precipitated by the orla peels is considered a significant matter, and the dye retains its status as orla. And raise a contradiction from another mishna (Oholot 3:2): With regard to a quarter-log of blood from a corpse that was absorbed in the floor of a house, every vessel in the house is ritually impure by virtue of being under the same roof as the blood. And some say that any vessel in the house is ritually pure. And these two statements do not disagree, as this first statement was in reference to vessels that were in the house at the outset, before the blood was absorbed; and this second statement was in reference to vessels that came into the house at the end, after the blood had already been absorbed.

[254] The mishna continues: If the blood was absorbed in a garment, it is examined, and if the garment is washed and a quarter-log of blood emerges from it, it is ritually impure, and the garment imparts ritual impurity to the vessels in the house as well. But if not, i.e., if less than a quarter-log of blood emerges, then it is pure, and it does not impart impurity. Apparently, only the blood that can be removed from the garment is considered blood, while the blood absorbed in the garment is insignificant. If this is the case, the change in appearance precipitated by the blood is not considered a significant matter, and the blood absorbed in the garment does not remain an independent substance.

[255] The Gemara presents an answer. Rav Kahana said: A halakha from among the leniencies applied to the measurements of a quarter-log was taught here, as the mishna is written in reference to the blood of submission that is discharged from a body at the time of death, and such blood is ritually impure by rabbinic law, but in general, a change in appearance precipitated by blood is significant.

[256] § Having cited a contradiction raised by Rava, the Gemara proceeds to cite another. Rava raises another contradiction. We learned in a mishna (Shevi’it 7:1): Concerning plants from among the species that are used as dyes, for example the sefiḥin, i.e., produce that grew without being intentionally planted, of woad and safflower; they have sanctity of the Sabbatical Year and money exchanged for them has sanctity of the Sabbatical Year. Additionally, they are subject to the halakha of eradication, and money exchanged for them is subject to the halakha of eradication. Apparently, wood, a type of inedible growth, is subject to the sanctity of the Sabbatical Year despite the fact that it is not edible.

[257] And raise a contradiction from a baraita: With regard to reed leaves and vine leaves that one piled for storage upon the field, if he gathered them for eating, they are subject to the sanctity of the Sabbatical Year; if he gathered them for use as wood, e.g., for kindling a fire, they are not subject to the sanctity of the Sabbatical Year. Apparently, wood or any other non-food product is not subject to the sanctity of the Sabbatical Year.

[258] And Rava answers the contradiction, as the verse states: “And the Sabbath produce of the land shall be for food for you” (Leviticus 25:6), indicating that the sanctity of the Sabbatical Year takes effect only with regard to those items whose benefit and whose consumption coincide, as is the case with regard to food. Wood is excluded, as its benefit follows its consumption. The primary purpose of kindling wood is not accomplished with the burning of the wood; rather, it is with the charcoal that heats the oven. Therefore, wood is not subject to the sanctity of the Sabbatical Year.

[259] The Gemara objects: But isn’t there wood that is used to provide heat, whose benefit coincides with its consumption, as one enjoys the warmth provided by the fire while the wood is burned?

[260] Rava said:

[261] Unspecified wood exists for fuel, i.e., charcoal, so its benefit follows its consumption.

[262] Rav Kahana says: And the matter of whether kindling wood, whose benefit follows its consumption, is subject to the sanctity of the Sabbatical Year is a dispute among the tanna’im, as it is taught in the Tosefta (Shevi’it 6:25): One may not transfer Sabbatical Year produce, e.g., wine, to another person; neither for soaking flax to prepare it for spinning, as the benefit derived from the flax follows its soaking, when the soaked and spun thread is woven into a garment; nor for laundering with it, as the benefit derived follows the laundering when one wears the clean clothes. Soaking the flax or laundering the garment in wine is considered the consumption of the wine, as it is no longer potable. And Rabbi Yosei says: One may transfer to another Sabbatical Year produce for soaking and for laundering.

[263] The Gemara asks: What is the reasoning for the statement of the Rabbis? The verse states with regard to Sabbatical Year produce: “For food” (Leviticus 25:6), from which it is inferred: But not for soaking; “for food,” but not for laundering. And Rabbi Yosei says that it is permitted, as the verse also states: “For you,” from which it is inferred: For you, for all your needs, even for soaking and for laundering.

[264] The Gemara asks: And according to the Rabbis as well, isn’t it written: “For you”? How do they explain that term? The Gemara answers: From that term “for you” it is derived: “For you,” similar to “for food,” i.e., the sanctity of the Sabbatical Year takes effect with regard to those items whose benefit and whose consumption coincide, which excludes soaking and laundering, where the items’ benefit follows their consumption.

[265] The Gemara asks: And according to Rabbi Yosei as well, isn’t it written: “For food”? Rabbi Yosei could have said to you: That term is necessary for that which is taught in a baraita, as it is taught: The verse states: “For food,” but not for a poultice [melogema]. The baraita continues: Do you say “for food” but not for a poultice, or perhaps it is only “for food” but not for laundering? When the verse says: “For you,” laundering is already stated as permitted since it includes all of one’s bodily needs. How do I realize the meaning of that which the verse states: “For food”? It is “for food” but not for a poultice.

[266] The baraita continues. Should one ask: And what did you see that led you to include the use of Sabbatical Year produce for laundering and to exclude the use of Sabbatical Year produce as a poultice? Perhaps the opposite should be said. The baraita answers: I include the use for laundering, which applies equally to every person, as everyone needs clean clothes, and I exclude the use as a poultice, which does not apply equally to every person; it is only for the ill or wounded.

[267] In accordance with whose opinion is that which is taught in a baraita with regard to Sabbatical Year produce: “For food,” but not for a poultice; “for food,” but not for sprinkling wine in one’s house to provide a pleasant fragrance; “for food,” but not to make an emetic [apiktevizin] from it to induce vomiting? In accordance with whose opinion is this baraita? It is in accordance with the opinion of Rabbi Yosei, as, if it were in accordance with the opinion of the Rabbis, is there not also soaking and laundering that should have been excluded from the baraita, as in the Rabbis’ opinion the use of Sabbatical Year produce for those purposes is forbidden?

[268] § The mishna (100b) teaches that if the owner gave wool to a dyer to dye it red and instead he dyed it black, Rabbi Meir says: The dyer gives the owner of the wool the value of his wool. Rabbi Yehuda says: If the value of the enhancement exceeds the dyer’s expenses, the owner of the wool gives the dyer the expenses. If the expenses exceed the enhancement, he gives him the value of the enhancement. The Gemara provides a mnemonic device, the acrostic saban, for the names of the Sages involved in the following incident; each letter in the acrostic represents the middle letter of one of the names: Samekh, Rav Yosef; beit, Rabbi Abba; nun, Rav Huna.

[269] The Gemara relates: Rav Yosef was sitting behind Rabbi Abba, and they were both sitting before Rav Huna. And Rav Huna was sitting and saying: The halakha is in accordance with the opinion of Rabbi Yehoshua ben Korḥa and the halakha is in accordance with the opinion of Rabbi Yehuda.

[270] Rav Yosef turned his face in disdain of Rav Huna’s statement. He said: Granted, stating that the halakha is in accordance with the opinion of Rabbi Yehoshua ben Korḥa is necessary, as it would enter your mind to say that there is a principle that when there is a dispute between an individual and the many, the halakha is in accordance with the opinion of the many. Rav Huna therefore teaches us that in this case the halakha is in accordance with the opinion of Rabbi Yehoshua ben Korḥa, despite the fact that he is an individual.

[271] The Gemara interrupts Rav Yosef’s remark and asks: What is the ruling of Rabbi Yehoshua ben Korḥa to which Rav Huna is referring? It is as it is taught in a baraita: Rabbi Yehoshua ben Korḥa says that with regard to a loan with a promissory note, one may not collect the loan from gentiles near the time of their holidays, but with regard to a loan by oral agreement, one may collect from gentiles even near the time of their holidays, because the creditor is considered as one who salvages money from their possession.

[272] But with regard to the statement that the halakha is in accordance with the opinion of Rabbi Yehuda, why do I need it? This is an example of the Mishna recording a dispute, and afterward recording only one side of that dispute as an unattributed opinion. And the principle is that when the Mishna records a dispute, and afterward records only one side of that dispute as an unattributed opinion, then the halakha is in accordance with the unattributed opinion.

[273] The Gemara identifies the dispute and the unattributed mishna. The dispute is found in tractate Bava Kamma: If one gave wool to a dyer to dye it red for him and instead he dyed it black, or to dye it black and he dyed it red, Rabbi Meir says: The dyer gives the owner of the wool the value of his wool. Rabbi Yehuda says: If the value of the enhancement exceeds the expenses, the owner of the wool gives the expenses to the dyer. And if the expenses exceed the enhancement, he gives him the value of the enhancement. And the unattributed mishna appears in tractate Bava Metzia, as we learned in a mishna there (76a): Whoever changes from the terms of an agreement is at a disadvantage, and whoever reneges from an agreement is at a disadvantage. This unattributed mishna

accords with the opinion of Rabbi Yehuda, who holds that a craftsman who deviates from his assignment receives either the expenses or the enhancement, whichever is of lesser value.

274 The Gemara asks: And being that this is a dispute and afterward an unattributed opinion, why did Rav Huna find it necessary to state that the halakha follows the opinion of Rabbi Yehuda? It is necessary, as it would enter your mind to say that the Mishna is not sequential and, in fact, this is a case of an unattributed ruling followed by a dispute. And why does Rav Yosef disagree? He disagrees because if that is so, then with regard to every case where a dispute is recorded and afterward an unattributed opinion is recorded, let us say: The Mishna is not sequential, and this is a case of an unattributed ruling followed by a dispute.

275 And Rav Huna would respond: The situation where we do not say that the Mishna is not sequential, i.e., where we say that the Mishna is sequential, is only when both mishnayot appear in one tractate, but when they appear in two different tractates we say that the Mishna is not sequential. Since these mishnayot are found in two different tractates, Bava Kamma and Bava Metzia, the assumption is that the Mishna is not sequential. And Rav Yosef would respond: All of Nezikin, i.e., Bava Kamma, Bava Metzia, and Bava Batra, is one tractate.

276 And if you wish, say that even if Bava Kamma and Bava Metzia are to be considered two separate tractates, Rav Yosef would still hold that Rav Huna's statement was unnecessary because it is taught as one of a pair of established halakhot: Whoever changes from the terms of an agreement is at a disadvantage, and whoever reneges on an agreement is at a disadvantage. Since this ruling was taught with another, established halakha, it is apparent that this is also an established halakha.

277 § The Gemara notes another dispute concerning one who deviates from the terms of an agreement. The Sages taught in the Tosefta (Bava Metzia 4:20): One who gives money to his agent

278 to purchase wheat for him, which he plans to sell at a profit, and instead the agent purchased barley with the money, or if he gave his agent money to purchase barley and instead he purchased wheat with the money, two baraitot issue discordant rulings with regard to the halakha. It is taught in one baraita that if there was a loss, the loss is for the agent, and if there was a profit, the profit is for the agent as well, as he is considered to have abrogated his status as an agent by deviating from the instructions. And it is taught in one baraita (Tosefta, Bava Metzia 4:20) that if there was an agreement that both parties would split the profits from the transaction, if there was a loss, the loss is for the agent, and if there was a profit, the profit goes to the middle, i.e., the agent and the investor split the profit.

279 To reconcile the baraitot, Rabbi Yoḥanan said: This is not difficult. This first baraita is in accordance with the opinion of Rabbi Meir, and this second baraita is in accordance with the opinion of Rabbi Yehuda.

280 Rabbi Yoḥanan explains his rationale: This first baraita is in accordance with the opinion of Rabbi Meir, who says that a change by an agent that deviates from the terms of his assignment means that the agent acquires the item in question for himself, as in the case of one who was paid to dye wool red but dyed it black. In this case as well, when the agent purchases wheat instead of barley, or vice versa, he acquires the grain for himself. And this second baraita is in accordance with the opinion of Rabbi Yehuda, who says that a change by an agent which deviates from the terms of his assignment does not mean that the agent acquires the item in question for himself. It is acquired by

the one who appointed the agent, and they split the profits as agreed. But the agent is held responsible for any loss incurred, due to his deviation from the instructions.

281 Rabbi Elazar objects to this explanation: From where do you say that the dispute between Rabbi Meir and Rabbi Yehuda extends to the case of these baraitot? Perhaps Rabbi Meir says that a change by an agent from the terms of his assignment results in the acquisition of the item by the agent only with regard to an item that is fit for use by the one who appointed the agent himself, such as wool dyed the wrong color, which is now not usable for its intended purpose. But Rabbi Meir does not say his ruling with regard to an item purchased for subsequent sale as merchandise, since it is intended to be sold for a profit in any event, and the transaction would take effect as agreed upon initially, with the agent held responsible for any loss incurred.

282 Rather, Rabbi Elazar said: Both this baraita and that baraita are written in accordance with the opinion of Rabbi Meir, and it is not difficult. Here, in the first baraita, it is discussing grain purchased for eating, and since the one who appointed the agent desired wheat, he does not acquire the barley. There, in the second baraita, it is discussing grain purchased for subsequent sale as merchandise, and the transaction takes effect as agreed upon initially, with the agent held responsible for any loss incurred.

283 The Gemara notes that they laughed at it in the West, Eretz Yisrael, at the explanation of Rabbi Yoḥanan, who said that according to the opinion of Rabbi Yehuda, a deviation by an agent from the terms of his assignment does not result in the acquisition of the item for the agent himself: And who informed the owner of the wheat, i.e., the seller, that he should transfer the wheat to the owner of the money? If the seller was unaware that the agent was acting on someone else’s behalf, how would the one who appointed the agent acquire the wheat? Rav Shmuel bar Sasrati objects to this rationale: If so, then even in a case where the agent was sent to purchase wheat and he purchased wheat, the one who appointed the agent should not acquire the wheat, since the seller was unaware that the agent was acting on someone else’s behalf.

284 Rabbi Abbahu said: The case of an agent who was assigned to purchase wheat and purchased wheat is different, as the agent is performing his assignment and, as such, he is like the customer, i.e., the one who appointed him, and it is as though the latter has purchased the grain himself.

285 Rabbi Abbahu further explains: Know that the agent is viewed as an extension of the one who appointed him, as we learned in a mishna (Arakhin 24a): Concerning both one who consecrates his property and one who valuates himself by donating his fixed value to the Temple, the Temple treasury does not have any rights with regard to the donor’s wife’s clothing; and not with regard to his children’s clothing; and not with regard to new clothes colored with dye that the donor dyed for his wife or children; and not with regard to new sandals that the donor purchased for his wife or children. Presumably, the treasurer has no right to these items because they are for the personal use of the donor’s wife and children, and are considered as if owned by them.

286 Rabbi Abbahu continues: And why is it so, i.e., why is it that the wife is considered the owner of the dyed clothing for which the husband paid? Here also, let us say: Who informed the dyer that he should transfer his dye to the wife? Rather, is it not because we say that the husband is performing his assignment and, as such, he is like an extension of his wife’s hand? Here also, in the case of one who purchases grain for another, the agent is performing his assignment, and is like an extension of the customer’s hand.

[287] The Gemara rejects this explanation. Rabbi Abba said: No, the reason for the ruling of the mishna is that the intention of anyone who consecrates his property is not upon the clothing of his wife and his children, i.e., he does not intend to consecrate those items.

[288] Rabbi Zeira objects to Rabbi Abba's explanation: And is it the intention of a person who consecrates his property to do so upon his phylacteries? Presumably not. And we learned in a mishna (Arakhin 23b) that with regard to one who consecrates all of his property, his phylacteries are evaluated for him and consecrated. Apparently, lack of intent to consecrate a particular item does not prevent its consecration. Abaye said to Rabbi Zeira: Yes, the intention of a person who consecrates his property is upon his phylacteries, because one who consecrates his property thinks to himself: I am performing a mitzva, and he therefore intends to include his phylacteries; but the intention of a person is not upon the clothing of his wife and his children, due to the enmity that would be engendered if he consecrated their clothing.

[289] Rav Oshaya also objects to Rabbi Abba's explanation: But is it not so that the matter of those who are obligated in valuations was taught here in the mishna, and we learned in a mishna (Arakhin 21a): Concerning those who are obligated in valuations, the Temple treasury seizes collateral from them to force them to fulfill their vow.

[290] And is the intention of a person upon himself to allow the treasurer to seize collateral from him? Presumably not. Nevertheless, collateral is seized from him, proving that one's intention does not prevent consecration. Accordingly, even if it is assumed that he does not intend to consecrate the clothing of his wife or children, the clothing should nevertheless be consecrated. Why, then, is the clothing of his wife or children not consecrated?

[291] Rather, Rabbi Abba also holds that the reason the clothing is not consecrated is not due to his intent, and he said a different explanation: Anyone who consecrates his property becomes as one who transferred his wife's and his children's clothing to them at the outset. Therefore, the clothing did not belong to him at the time that he consecrated his property.

[292] § The Gemara presents another situation in which one makes a purchase involving a third party. The Sages taught: In the case of one who purchases a field in the name of another, he is not compelled to sell it. But if he said to him at the time of the sale: I will purchase the field on the condition that he will sell it to me, he is compelled to sell it.

[293] Noting the ambiguity of this statement, the Gemara asks: What is it saying? Rav Sheshet said that this is what it is saying: With regard to one who purchases a field from another, claiming that he is acting in the name of the Exilarch or another dominant figure, so that others will be discouraged from contesting the sale, the Exilarch is not compelled to sell it to him, i.e., the Exilarch is not required to provide the purchaser with documentation that the field belongs to the purchaser. But if the purchaser said to the seller: I will purchase the field on the condition that the Exilarch will provide me with that documentation, the Exilarch is compelled to sell it to him, i.e., to provide him with the documentation.

[294] The Gemara questions Rav Sheshet's interpretation. The Master said: With regard to one who purchases a field in the name of the Exilarch, the Exilarch is not compelled to sell it to him. Since the baraita teaches only that the Exilarch is not required to provide the purchaser with documentation that the field is his, it can be understood by inference that the purchaser has nevertheless acquired the field for himself. Let us say that this interpretation of the baraita disagrees with the statement of the

residents of the West, Eretz Yisrael, who say: And who informed the owner of the wheat that he should transfer the wheat to the customer? Since the seller assumed he was selling the field to the Exilarch, the Sages of Eretz Yisrael would hold that the sale does not take effect.

[295] The Gemara rejects this: If it is due to this inference that it is surmised that the baraita is in conflict with the opinion of the Sages of Eretz Yisrael, it is not difficult, as it can be said that the baraita is discussing a case where the purchaser informed the owner of the field and informed the witnesses that he intends to purchase the field for himself.

[296] The Gemara rejects Rav Sheshet's interpretation for a different reason. Rather, say that the latter clause is difficult, as it states that if the purchaser said to the seller: I will purchase the field on the condition that the Exilarch will sell it to me, the Exilarch is compelled to sell it to him. Why should the Exilarch be compelled to provide the purchaser with documentation? But let the Exilarch say: I do not desire your esteem nor do I desire your disgrace, i.e., I am not involved in your affairs. Since the Exilarch had not been party to the negotiations, how can a stipulation stated by the purchaser render him obligated?

[297] Rather, Abaye said: This is what the baraita is saying: With regard to one who purchases a field in the name of his friend, the Exilarch,

[298] the seller is not compelled to sell the field another time, i.e., to provide the purchaser with a document denoting him as the owner of the field. But if he said to him: I will purchase the field on the condition that you will provide a deed in my name, the seller is compelled to sell the field again, i.e., to provide the purchaser with a document denoting him as the owner.

[299] The Gemara clarifies the baraita: The Master said: In the case of one who purchases a field in the name of another, the seller is not compelled to sell the field another time. The Gemara asks: Isn't this obvious? The Gemara answers: Lest you say that the purchaser can say to the seller: You knew that I took, i.e., purchased, the field for myself, and it was merely for protection [ufanaḥya] that I desired to obtain ownership by claiming to purchase it in the name of the other person, and I do not throw out money for naught. Rather, it was with the intention that you will write another document for him, i.e., the seller, stating that I purchased the field. The baraita therefore teaches us that the seller can say to him: I have performed a matter for you together with the one in whose name you purchased the field, and let him write you another document.

[300] The Gemara discusses Abaye's interpretation of the latter clause of the baraita, which states: But if he said to him: I will purchase the field on the condition that you will provide a deed in my name, the seller is compelled to sell the field again. Isn't that obvious? No, it is necessary to state this halakha in a case where the purchaser said to the witnesses in front of the seller: You can see that I require another document. Lest you say that the seller can say to him: I thought that it was a document from the one in whose name you purchased the field that you were saying you required, and not from me. Therefore, the baraita teaches us that the purchaser can say to him: It was for this that I took the trouble and said to the witnesses, in front of you, that I require another document, as it is from you that I require the document.

[301] § The Gemara mentions a related incident: Rav Kahana gave money to a salesman in exchange for flax, and temporarily left the flax in the possession of the seller. Ultimately, the flax appreciated in value and the owner of the flax sold it for a greater profit on behalf of Rav Kahana, intending to give him all of the money. Rav Kahana then came before Rav, and said to him: What should I do?

Should I go and take my money, or would doing so have the appearance of collecting interest for a loan? Rav said to Rav Kahana: If, when they sold the flax, they said: This flax is Kahana's, go take the money, as in such a case it is as though the flax was purchased directly from you. But if they did not say this, do not take the money, since you would be receiving a greater sum of money than you provided, and this would appear to be a loan repaid with interest.

302 The Gemara asks: In accordance with whose opinion was Rav's ruling? Was it only in accordance with the opinion of the people of the West, Eretz Yisrael, who say: Who informed the owner of the wheat that he should transfer the wheat to the owner of the money? As the Gemara taught earlier, the Sages of Eretz Yisrael hold that the sale can be performed on another's behalf only if such an arrangement is explicitly stated at the time of the transaction. In this case as well, if the seller did not explicitly state that the money would belong to Rav Kahana, all the money from the sale would be acquired by the seller, who would then be prohibited to give it to Rav Kahana due to the appearance of paying interest.

303 The Gemara rejects this: Is that to say that Rav Kahana gave four dinars and took eight in return? He did not lend money to the seller. Rather, the flax appreciated in value by itself, and when the seller sold it he robbed Rav Kahana of his flax, and we learned in a mishna (93b) that all robbers pay compensation according to the value of the stolen item at the time of the robbery. Therefore, according to all opinions the seller owes Rav Kahana the value of the flax at the time the seller sold it for its appreciated value, and Rav Kahana's accepting the money would not constitute collecting interest for a loan.

304 Having rejected the previous explanation of Rav's ruling, the Gemara presents an alternative understanding of the case. The Sages say: There, it was a matter of trust, as the seller was paid in advance and Rav Kahana did not pull the flax as an act of acquisition, or perform any other formal act of acquisition. Consequently, at the time of the second sale the flax belonged to the seller. And Rav conforms to his standard line of reasoning, as Rav says: One may make an arrangement of trust with regard to the delivery of items such as produce, i.e., one may pay the money in advance with the agreement that he will receive the produce at a later date, but one may not make an arrangement of trust with regard to money, i.e., one may not pay the money in advance with the agreement that he will receive the value of the produce at a later date, as this has the appearance of collecting interest.

305 MISHNA: One who robs another of an item having the value of at least one peruta and takes a false oath to the robbery victim claiming his innocence, and then later wishes to repent, must bring the money, which includes the principal together with an additional one-fifth payment, to the robbery victim, even if this necessitates following after him to a distant place like Media. The robber may not give the payment to the robbery victim's son to return it to the robbery victim, and neither may he give it to his agent, but he may give the payment to an agent of the court. And if the robbery victim dies, he returns it to his heirs.

306 If he gave the robbery victim the principal value of the stolen item but did not give him the additional one-fifth payment, or if the owner forgave him concerning the principal but did not forgive him concerning the additional one-fifth payment, or if he forgave him concerning this and concerning that, with the exception of the value of less than one peruta of the principal, he need not pursue him to repay the remaining debt. By contrast, if he gave the robbery victim the additional one-fifth payment but did not give him the principal, or if the robbery victim forgave him concerning the

additional one-fifth payment but did not forgive him concerning the principal, or if he forgave him concerning this and concerning that, with the exception of the value of one peruta of the principal, he must pursue him to repay the remaining debt.

307 If the robber gave the robbery victim the principal and took a false oath to him concerning the additional one-fifth payment, asserting that he had already paid it,

308 then the additional one-fifth is considered a new principal obligation. The robber pays an additional one-fifth payment apart from the additional one-fifth payment about which he had taken a false oath. If he then takes a false oath concerning the second one-fifth payment, he is assessed an additional one-fifth payment for that oath, until the principal, i.e., the additional one-fifth payment about which he has most recently taken the false oath, is reduced to less than the value of one peruta.

309 And such is the halakha with regard to a deposit, as it is stated: “If anyone sins, and commits a trespass against the Lord, and he defrauds his counterpart with regard to a deposit, or with regard to a pledge, or with regard to a robbery, or if he exploited his counterpart; or he has found that which was lost, and deals falsely with it, and swears to a lie…he shall restore it in full, and shall add the fifth part more to it” (Leviticus 5:21–24). This one must pay the principal and an additional one-fifth payment, and bring a guilt-offering.

310 GEMARA: The mishna teaches that if a robber took a false oath that he did not rob, he must travel even as far as Media in order to repay the robbery victim. This indicates that if he takes an oath to the robbery victim, yes, he is required to go to any length to repay his obligation, but if he did not take an oath to him, no, he does not have to do so. Whose opinion is this? It is not the opinion of Rabbi Tarfon and not the opinion of Rabbi Akiva, as it is taught in a mishna (Yevamot 118b): If one robbed one of five people and he does not know which of them he robbed, and each one of the five says: He robbed me, the robber places the stolen item between them and withdraws from them; this is the statement of Rabbi Tarfon. Rabbi Akiva says: This is not the way to spare him from transgression. He is not considered to have returned the stolen item until he pays the value of the stolen item to each and every one of the five.

311 The Gemara clarifies: In accordance with whose opinion is the mishna written? If one suggests that it is in accordance with the opinion of Rabbi Tarfon, it is not so, because even though the robber took a false oath that he did not rob, Rabbi Tarfon says: He places the stolen item between them and withdraws; it is not his responsibility to ensure that it reaches the robbery victim. If one suggests that it is in accordance with the opinion of Rabbi Akiva, it is also not so, because even though the robber did not necessarily take a false oath, Rabbi Akiva says: He is not considered to have returned the stolen item until he pays the value of the stolen item to each and every one of the five, while the mishna rules that his obligation is contingent upon his having taken the false oath.

312 The Gemara answers: Actually, it is in accordance with the opinion of Rabbi Akiva, and when Rabbi Akiva says that the robber is not considered to have returned the stolen item until he pays the value of the stolen item to each and every one of the five, it is only in a case where the robber took a false oath that Rabbi Akiva says this. What is the reason? As the verse states with regard to one who takes a false oath concerning a financial obligation: “Unto him to whom it appertains shall he give it, on the day of his being guilty” (Leviticus 5:24). The halakha that the guilty party must make a rigorous effort to return what he owes is stated in the case of one who took a false oath, and Rabbi Akiva would state his ruling only in that case.

313 The Gemara asks: And how does Rabbi Tarfon rule that a robber who took a false oath is not required to pay all claimants, being that the verse indicates otherwise? The Gemara answers: Even though he took a false oath and by Torah law is obligated to return the stolen item to the robbery victim, the Sages instituted an ordinance allowing him to place it between the five possible victims, as it is taught in a baraita that Rabbi Elazar, son of Rabbi Tzadok, says: The Sages instituted a great ordinance stating that if the expense required to return a stolen item to the victim is greater than the principal, the robber may pay the principal and the additional one-fifth payment to the court, and he then brings his guilt-offering and achieves atonement for himself. This ordinance would apply here as well, as the expense required to pay all five claimants is greater than the principal.

314 The Gemara asks: And doesn't Rabbi Akiva agree that the Sages instituted this ordinance? The Gemara answers: Rabbi Akiva holds that when the Sages instituted the ordinance, they did so only for cases where the robber knows whom he robbed, as in such cases he is definitely returning the money to its owner by depositing it with the court, who will convey it to the robbery victim. But in the case of one who robbed one of five people, where he does not know whom he robbed, and where, by merely placing the stolen item between the five of them the money is not returned to its owner, the Sages did not institute an ordinance.

315 Rav Huna bar Yehuda raises an objection to the explanation that Rabbi Akiva stated his opinion specifically in a case where the robber took an oath. The baraita in the Tosefta (Yevamot 14:2) states that Rabbi Shimon ben Elazar says: Rabbi Tarfon and Rabbi Akiva did not disagree with regard to one who purchased an item from one of five people and does not know from which of them he purchased it, as both agree that in this case he places the money of the purchase between them and withdraws. Since the purchaser has not transgressed, he is not penalized by being required to suffer the loss of paying each of them. With regard to what did they disagree? They disagree with regard to one who robbed one of five people, and he does not know from which of them he robbed the item, as Rabbi Tarfon says: He places the stolen item between them and withdraws, and Rabbi Akiva says: He has no remedy, i.e., he has not fulfilled his obligation to return the stolen item, until he pays the value of the stolen item to each and every one of them.

316 Rav Huna bar Yehuda states his objection: And if it enters your mind that Rabbi Akiva stated his ruling specifically with regard to one who took a false oath, what is the difference to me if he purchased an item from another, and what is the difference to me if he robbed him? In either case he has transgressed the prohibition against taking a false oath denying his obligation, and he should be penalized by being required to ensure that the one to whom he owes the money receives it.

317 And Rava raises another objection to the explanation that Rabbi Akiva stated his opinion specifically in a case where the robber took an oath. There was an incident involving a certain pious man who purchased an item from one of two people, and he did not know from which of them he purchased the item, and he came before Rabbi Tarfon for a ruling. Rabbi Tarfon said to him: Place the money of your purchase between them and withdraw. He then came before Rabbi Akiva, who said to him: You have no remedy until you pay each and every one, i.e., both of them. And if it enters your mind that Rabbi Akiva stated his ruling specifically where the purchaser took a false oath, does a pious man take a false oath? It seems from this incident that Rabbi Akiva rules he must pay all potential owners regardless of whether or not he took a false oath.

[318] And if you would say that perhaps he took a false oath and later became a pious man, but isn’t there a tradition that anywhere that we say: There was an incident involving a certain pious man, the pious man is either Rabbi Yehuda ben Bava or Rabbi Yehuda, son of Rabbi Elai, and Rabbi Yehuda ben Bava and Rabbi Yehuda, son of Rabbi Elai, were both pious men from the beginning.

[319] Due to these objections, the Gemara offers an alternative explanation. Rather, the mishna here is actually in accordance with the opinion of Rabbi Tarfon, and Rabbi Tarfon concedes that a robber must pay every potential owner in a case where he took a false oath, as is the case in the mishna here. What is the reason? As the verse states: “Unto him to whom it appertains shall he give it, in the day of his being guilty” (Leviticus 5:24). This verse, which requires one to go to any length to return money owed, is referring specifically to one who takes a false oath concerning his financial obligation. And Rabbi Akiva, who said in the mishna in tractate Yevamot that a robber must pay all potential owners even though he did not take a false oath, agrees that the verse is referring specifically to one who takes a false oath, but holds that the Sages penalize the robber by obligating him to pay them all in any event.

[320] The Gemara questions this explanation of the mishna: But if the mishna is in accordance with the opinion of Rabbi Tarfon, after all, the mere fact that it is a case where he took a false oath is not sufficient to obligate him to pay the additional one-fifth and to bring a guilt-offering if it is a case where he did not also admit that he took a false oath and owes the money. Therefore, why would the mishna here specifically state: And he took a false oath? Even without taking the false oath, the robber should also be obligated to pursue the owner as a result of his having admitted his obligation. As it is taught in a baraita: Rabbi Tarfon concedes that in a case where a robber says to two people: I robbed one of you of one hundred dinars and I do not know which of you it was, he gives one hundred dinars to this person and one hundred dinars to that person,

[321] as he has already admitted his obligation on his own. Rabbi Tarfon concedes that a robber who wishes to repent must go to any length to return the stolen item to its owner. If the mishna here is in accordance with his opinion, it should not have stated its ruling specifically in a case where the robber took a false oath.

[322] Rather, Rava said: The case of the mishna is different, and the halakha stated here could be in accordance with the opinions of both Rabbi Tarfon and Rabbi Akiva. For as the robber knows whom he robbed and admitted to him that he robbed him, since it is possible to return the money to its owner, the robbery victim is as the one who says to the robber: The money you owe me will be kept in your possession as a deposit for me. Therefore, in a case where the robber took a false oath, even though the owner is considered to have said to him: The money you owe me will be kept in your possession as a deposit for me, since the robber requires atonement for his false oath, it is not possible for him to achieve atonement until the money reaches the possession of the robbery victim. But in a case where the robber did not take a false oath, the money is considered as a deposit given to the robber until the owner comes and takes it.

[323] § The mishna teaches that if the robber wishes to return the stolen item, he may not give the payment to the robbery victim’s son to return it to the robbery victim, nor to his agent. The Gemara comments: It was stated with regard to an agent who was appointed in the presence of witnesses to collect a debt from another: Rav Ḥisda said: Such an agent is a legally recognized agent, so that the debtor is considered to have repaid his debt as soon as he transfers the money to the agent, and the

debtor will not be held responsible if an accident occurs causing the loss of the money before the agent gives it to the creditor. Rabba said: Such an agent is not a legally recognized agent, and the debtor remains responsible until the money reaches the creditor’s possession.

[324] The Gemara explains their respective opinions: Rav Ḥisda said that he is an agent because it was for this reason that the creditor took the trouble and appointed the agent in the presence of witnesses, in order to place the matter under the agent’s domain. Rabba said that he is not an agent because this is what the creditor is assumed to be saying to the debtor: This individual is a trustworthy person. If you are willing to rely on him, then rely on him to convey the payment to me. Similarly: If you wish to send the debt in his possession, then send it in his possession.

[325] The Gemara cites a mishna that poses a difficulty to the opinion of Rav Ḥisda. We learned in a mishna (Bava Metzia 98b): With regard to one who enters into an agreement to borrow a cow from another, and the owner sent it to the borrower in the possession of his own son, or in the possession of his own slave, or in the possession of his own agent, or if he sent it in the possession of the borrower’s son, or in the possession of the borrower’s slave, or in the possession of the borrower’s agent, and the cow died, the borrower is exempt from paying for the cow, as it never entered his possession.

[326] The Gemara explains the case of the mishna: With regard to this agent of the borrower, what are the circumstances surrounding his appointment? If the mishna is discussing a case where he did not appoint him as his agent in the presence of witnesses, how do we know that he was appointed as an agent? Rather, it must be that it is a case where he appointed him as his agent in the presence of witnesses, and yet the mishna teaches that the borrower is exempt. This poses a difficulty to the opinion of Rav Ḥisda, who holds that one acquires property through his agent. According to his reasoning, the borrower should be held responsible for the cow once it reaches the possession of the agent.

[327] The Gemara answers: It is as that which Rav Ḥisda said concerning a different mishna: This is stated with regard to his hired hand or his regular harvester; here also the mishna in Bava Metzia is with regard to his hired hand or his regular harvester. The mishna discusses a case where there were no witnesses to the appointment of the agent, and therefore it does not pose a difficulty to the opinion of Rav Ḥisda. Yet, since it is well known that this person is constantly in the owner’s service, he is assumed to be acting as his agent.

[328] The Gemara poses a difficulty to the opinion of Rav Ḥisda from the mishna here. We learned in the mishna: If the robber wishes to return the stolen item, he may not give the payment to the robbery victim’s son to return it to the robbery victim, nor to his agent. With regard to this agent of the robbery victim, what are the circumstances surrounding his appointment? If the mishna is discussing a case where the robbery victim did not appoint him as his agent in the presence of witnesses, how do we know that he was appointed as an agent? Rather, is it not discussing a case where the robbery victim appointed him as his agent in the presence of witnesses, and the robber nevertheless does not fulfill his obligation to return the stolen item by giving it to this agent? The Gemara answers: Rav Ḥisda interpreted the ruling of the mishna with regard to his hired hand or his regular harvester, who do not require witnesses to validate their appointment as his agent.

[329] The Gemara asks: But with regard to an agent who the robbery victim appointed in the presence of witnesses, what is the halakha? Would one say that indeed, one appointed before witnesses is a

legally recognized agent? If that is the case, instead of teaching in the latter clause: But he may give the payment to an agent of the court, which indicates that this is the only agent to whom he may give it, let the mishna make a distinction within the case of an agent appointed by the robbery victim itself and teach: An agent who the robbery victim appointed in the presence of witnesses is indeed a legally recognized agent. If an agent appointed in the presence of witnesses is a legally recognized agent, why does the mishna shift to discuss an agent of the court?

[330] The Sages say in response: Although the tanna of the mishna could have stated the case of an agent appointed by the robbery victim in the presence of witnesses, he could not have stated this halakha definitively, as with regard to an agent of the court, there is no difference whether the robbery victim appointed him as an agent, i.e., the court appointed him at the behest of the robbery victim, and there is no difference whether the robber appointed him as an agent, i.e., the court appointed him at the behest of the robber. In both cases he is a legally recognized agent. Therefore, he could state the halakha concerning an agent of the court definitively. By contrast, with regard to an agent who was appointed in the presence of witnesses, that only when the robbery victim appointed him as an agent he is an agent, but when the robber appointed him as an agent, he is not an agent, as the robber cannot appoint an agent to receive payment on behalf of the robbery victim, he could not have stated this halakha definitively.

[331] The Gemara comments: And this mishna, which rules that an agent of the court is an agent even if appointed only by the robber, serves to exclude the opinion of this following tanna, as it is taught in the Tosefta (10:11) that Rabbi Shimon ben Elazar says: If there was an agent of the court who was appointed by the robbery victim but not appointed by the robber, or an agent who was appointed by the robber, and subsequently the other, i.e., the robbery victim, sent for and took his payment from the agent's possession, the robber is exempt from paying for any accidental damage to the payment during the delivery. Rabbi Shimon ben Elazar states that the robber is exempt from paying for any accidental damage when he gave the payment to a court agent he appointed only if the robbery victim sent for and took possession of the payment. This is in opposition to the ruling of the mishna that the robber is exempt whenever he gives the payment to an agent of the court.

[332] The Gemara cites the opinion of two other amora'im with regard to the status of an agent appointed in the presence of witnesses. Rabbi Yoḥanan and Rabbi Elazar both say: An agent who was appointed in the presence of witnesses is a legally recognized agent. And if you say: Our mishna contradicts this assertion, as it rules that the stolen item is not considered returned if given to an agent of the robbery victim, this is of no concern.

[333] The Gemara explains: The mishna does not mean to disqualify an agent appointed by the robbery victim in the presence of witnesses, but rather is referring to a case where the robbery victim provides the robber with an agent without appointing him in the presence of witnesses, in that he says to someone: I have money owed to me that is currently with so-and-so, and he is not sending it. Present yourself to him, as perhaps he wishes to return it but cannot find a person with whom to send it.

[334] The Gemara offers a second explanation: Alternatively, it is in accordance with the statement of Rav Ḥisda, that the mishna is not discussing a case where he appointed the agent in the presence of witnesses, but it is still known that the agent acts on behalf of the robbery victim, as the ruling of the

mishna is stated with regard to the victim’s hired hand or his regular harvester. That is why the robber is still liable after having given the payment to the agent.

335 § The Gemara discusses another matter relating to the appointment of an agent. Rav Yehuda says that Shmuel says:

336 One who owes a debt may not send money with another to the creditor on the basis of a figure [deyokani] or sign used in place of a signature that is associated with the creditor. The possession of this sign on the part of the other is not sufficient proof that he has been appointed as an agent. And this is the halakha even if witnesses verifying that this is the creditor’s sign are signed on it. And Rabbi Yoḥanan says: If there are witnesses signed on it, one may send the money with the other.

337 The Sages say: According to Shmuel, what is the rectification, i.e., what recourse is available to one who wishes to collect a debt without traveling to the debtor’s location? The Gemara answers: One may act like that course of action of Rabbi Abba, who was owed money by Rav Yosef bar Ḥama. Rabbi Abba said to Rav Safra: When you come back from Rabbi Yosef bar Ḥama’s locale, bring my money to me. When Rav Safra went there, Rava, Rav Yosef bar Ḥama’s son, said to him: Did Rabbi Abba write you a document stating: I have received payment, so that my father will have proof that he has absolved himself of the debt? Rav Safra said to him: No. Rava responded: If so, first go to him and let him write you a document stating: I have received payment, and then my father will pay you.

338 Ultimately, Rava said to him: Even if he writes you a document stating: I have received payment, it is nothing, since perhaps by the time you arrive back here, Rabbi Abba will have died and the money will fall before his orphans as an inheritance, and the document stating: I have received payment, that was written by Rabbi Abba, will be nothing, as the debt is no longer owed to him, but rather, to his heirs. Rav Safra said to him: Rather, what is the rectification? Rava replied: Go, and Rabbi Abba will transfer to you the rights to the money owed to him by means of acquisition of land from him, and then you should come and write for us a document stating: I have received payment. Then, we will pay you.

339 The Gemara notes: And this is like that course of action of Rav Pappa, who was owed twelve thousand dinars by a resident of Bei Ḥozai, and he transferred his claim to the money to Rav Shmuel bar Abba by means of the acquisition of the threshold of his house. When Rav Shmuel bar Abba came from Bei Ḥozai with the money in hand, Rav Pappa went out as far as Tavakh toward him in his excitement to receive the money.

340 § The mishna teaches that if the robber gave the robbery victim the principal value of the stolen item, but did not give him the additional one-fifth payment required of a robber, he is not required to pursue the robbery victim in order to return the additional one-fifth payment. The Gemara comments: Apparently, the additional one-fifth payment is considered monetary restitution rather than a fine. And accordingly, if the robber died, the heirs of the robber must pay it to the robbery victim.

341 And we also learned in the mishna that if the robber gave the robbery victim the principal and takes a false oath to him concerning the additional one-fifth payment, asserting that he had already paid it, the robber adds an additional one-fifth payment apart from the additional one-fifth payment about which he had taken a false oath. Apparently, the additional one-fifth payment is monetary

restitution, as one is obligated to pay an additional one-fifth for taking a false oath only with regard to monetary restitution, not with regard to fines.

[342] And this is also taught in a baraita: With regard to one who robs another and takes a false oath to him that he did not rob him, and then dies, his heirs pay the principal and additional one-fifth payments to the robbery victim, but are exempt from the obligation to bring the guilt-offering.

[343] The Gemara asks: But are heirs obligated to pay the additional one-fifth payment of their father, indicating that apparently the additional one-fifth payment is monetary restitution, and therefore the heirs must pay it? But one could raise a contradiction from a baraita. After having stated that one is required to add the additional one-fifth payment only for a robbery he commits himself, and not for a robbery committed by his father, the baraita states: I would still say that when does an heir not pay the additional one-fifth payment for his father's robbery? It is only when neither he nor his father took a false oath.

[344] But if he took a false oath, but not his father; or if his father took a false oath, but not he; or if he and his father both took false oaths; from where is the heir's exemption derived? The verse states: "He shall restore the item that he robbed," and "the item that he has acquired through exploitation" (Leviticus 5:23), and in this case the heir did not rob and did not exploit. Since the verse states the obligation to pay the additional one-fifth payment when discussing one who robbed or exploited another, and the heir has done neither, he is exempt from payment. This baraita states that heirs are not obligated to pay the additional one-fifth payment.

[345] The Gemara answers: Rav Naḥman said that it is not difficult. Here, in the mishna and the first baraita, they discuss a case where the robber admitted his obligation and therefore was required to pay the additional one-fifth payment, and this obligation is transferred to his heir; there, in the latter baraita, it discusses a case where he did not admit his obligation and was never required to pay the additional one-fifth payment.

[346] The Gemara rejects this answer: If the latter baraita discusses a case where he did not admit his obligation, then the halakha would be that the heir would not pay even the principal, as the obligation is not known by anyone. And if you would say that indeed it is so that he does not pay the principal, but isn't it understood from the fact that the tanna searches for a source to teach the heir's exemption from only the additional one-fifth payment, that it means to say that he does pay the principal.

[347] The Gemara also proves that the heir must pay the principal from the continuation of the same baraita. And further, it is taught in that baraita: And I would still say: When does the heir pay the principal for his father's robbery? It is only when he and his father both took false oaths. But if his father took a false oath, and not he; or if he took a false oath, but not his father; or if neither he nor his father took false oaths; from where is the heir's obligation to pay the principal derived? The verse states the following terms: "Robbery," and "exploitation," "lost item," and "deposit" (Leviticus 5:23); and there is a derivation [yesh talmud] here to derive that the heir is obligated to pay the principal in all of these cases.

[348] The Gemara clarifies: And Rav Huna sat and stated this halakha, and Rabba, his son, said to him: Was the Master saying that there is a derivation [yesh talmud], or was the Master saying that they will be paid [yishtalmu]? Rav Huna said to him: I am saying: There is a derivation, and it is from the additional expressions in the verses that I say it can be derived. It is apparent that an heir is obligated to pay the principal, and this refutes Rav Naḥman's attempted resolution.

[349] Rather, what did Rav Naḥman mean when he suggested that the second baraita is referring to a case where he did not admit his obligation and exempts his heir from paying the additional one-fifth but obligates him to pay the principal? The baraita is referring to a case where the father did not admit, but his son did admit, and therefore he is obligated to pay the principal.

[350] The Gemara asks: And let his son be liable to pay the additional one-fifth payment for his own false oath. The Sages say: In the case of the baraita, it is where the stolen item is no longer extant. Although the false oath was taken, it is not the type of obligation for which one must pay an additional one-fifth payment. The Gemara asks: If in the case of the baraita it is where the stolen item is no longer extant, the halakha should be that the heir does not pay even the principal, as the halakha is that while heirs must return an item stolen by their father, they are not obligated to compensate the owner if the item is no longer extant. The Gemara answers: No, the ruling is necessary in a case where there is guaranteed property, i.e., land, which the heirs inherited from the robber. Heirs are obligated to compensate the owner of a stolen item with inherited land, even if the stolen item itself is no longer extant.

[351] The Gemara asks: And even when there is guaranteed property, i.e., land, what of it? After all, such a debt is legally considered a loan by oral agreement, and the creditor of a loan by oral agreement cannot collect from the heirs of the debtor, nor can he collect from those who purchased land from the debtor.

[352] The Sages say in response:

[353] The reference here is to a case in which the father had already stood trial and was obligated to pay. In such a case, the debt is considered like a loan with a promissory note, which a creditor may collect from the debtor’s heirs. The Gemara rejects this: If it is a case in which the father had already stood trial and was obligated to pay, then the heir, who took a false oath and later confessed, would have to pay even the additional one-fifth payment as well, as this would be akin to any monetary obligation; but the baraita rules that he is obligated to pay only the principal. Rav Huna, son of Rav Yehoshua, said: The heir is exempt because one does not pay the additional one-fifth payment for the denial of a debt that is secured by a lien on land.

[354] Rava said a different explanation: With what are we dealing here? We are dealing with a case where the stolen item is still extant, yet the heir is exempt because his father’s sack [disakaya] containing the stolen item was deposited in the possession of others. Accordingly, the heir pays the principal, since the stolen item is extant, but he does not pay the additional one-fifth payment because when he took an oath that it was not in his possession, he took an oath truthfully, as he did not know that his father had stolen the item.

[355] § The mishna teaches that if the robbery victim forgave the robber concerning both payments, excepting less than the value of one peruta of the principal, he need not pursue him in order to return the remaining debt. Rav Pappa says: They taught that the robber is not obligated to pursue the robbery victim only when the stolen item is not extant, but if the stolen item is still extant, he must pursue him to return it, as we are concerned that perhaps the stolen item will appreciate in value, and the debt he owes will exceed the value of one peruta.

[356] There are those who say that Rav Pappa said: The halakha is not different when the stolen item is extant, and it is not different when the stolen item is not extant. In either case he does not need to pursue him because we are not concerned that perhaps it will appreciate in value.

[357] The Gemara cites another ruling with regard to a stolen item worth less than one peruta. Rava says: If one robbed another of three bundles of goods that were worth three perutot in total, and they depreciated in value and their value stood at two perutot, even if he returned two bundles to the robbery victim he is obligated to return the other bundle. And the tanna of the mishna also taught (96b): If one robbed another of leavened bread, and Passover elapsed over it, and it is therefore prohibited to derive benefit from it, the robber says to the victim: That which is yours is before you, and he is not required to pay compensation, despite the fact that the robbery victim has suffered a monetary loss.

[358] The Gemara explains the proof from the mishna: It may be inferred that the reason that he is not required to pay compensation is that the bread is still there in its unadulterated form; but if it is not there in its unadulterated form, even though now it is not worth money, since it was worth money initially, at the time of the robbery, he is required to pay. Here too, even though the third bundle is not worth one peruta now, since initially it was worth one peruta, he is required to pay.

[359] Rava raises a dilemma: If one robbed another of two bundles of goods that were worth one peruta in total, and he returned one of them to the robbery victim, what is the halakha? Do we say that now there is no longer a stolen item in the possession of the robber, as the remaining bundle is worth less than one peruta, and he has therefore fulfilled his obligation to return the stolen item; or perhaps we say that since the robber did not return the stolen item that was in his possession in its entirety, he is obligated to return the second bundle?

[360] Rava himself then resolves the dilemma: There is no stolen item here, as the remaining bundle is worth less than one peruta; there is no returning of a stolen item here. The Gemara expresses surprise at this expression: If there is no stolen item here, as what remains is insignificant, it follows that there is fulfillment of the mitzva of returning the stolen item here, and the robber ought to be exempt, as he is no longer considered to be in possession of a stolen item. The Gemara explains that this is what Rava is saying: Even though the robber is exempt from returning the second bundle, as there is no stolen item here, there is nevertheless no fulfillment of the mitzva of returning a stolen item here, since the returned bundle was worth less than one peruta as well.

[361] § Following Rava’s previous dilemma, the Gemara cites a similar dilemma raised by Rava. And Rava says: The Sages said that a nazirite who shaved his head as required but left two hairs uncut has done nothing, and his obligation to shave his head has not been fulfilled. Rava raises a dilemma: If a nazirite shaved and left two hairs, and afterward he shaved one of them, and the other one fell out of its own accord, what is the halakha? Is this considered shaving one’s entire head or not? Rav Aḥa of Difti said to Ravina: Is Rava raising a dilemma as to whether one can shave his head one hair by one hair? How does this case differ from that of one who shaves his entire head one hair at a time, which is a fulfillment of his obligation?

[362] Ravina said to him: No, a resolution to Rava’s dilemma is necessary in a case where one of the hairs fell out first, and then he shaved the other one. Do we say that now, in any event, there is no measure of hair left on his head that requires shaving, as one remaining hair is not significant, and he has therefore fulfilled his obligation; or perhaps we say that this is not considered shaving, as initially he left the significant amount of two hairs uncut, and now when he shaves a second time, there are not two hairs left for him to shave, and this does not qualify as shaving?

[363] Rava himself then resolves the dilemma: There is no hair here; there is no shaving here. The Gemara expresses surprise at this expression: If there is no hair here, then there is shaving here, as no hair remains. The Gemara explains that this is what Rava is saying: Even though there is no hair here, as only one hair remains, nevertheless there is no mitzva of shaving here, as he failed to shave it all on the first attempt, and the second time he shaved less than the required amount.

[364] § The Gemara cites another dilemma raised by Rava. And Rava says: The Sages said (Kelim 10:6) that with regard to a sealed earthenware barrel that was punctured and was then sealed by sediments from its contents, the sediments have effectively saved the contents of the barrel from contracting ritual impurity if the barrel were to come into contact with an impure item, as it is once again considered a sealed barrel. Rava raises a dilemma: If one sealed half of the hole, what is the halakha? Do we say that since the hole is not currently large enough to allow ritual impurity to penetrate, the barrel is considered sealed; or perhaps we say that since the hole was initially large enough to allow impurity to penetrate, and it has not yet been sealed completely, the barrel retains its status and is not considered sealed?

[365] The Gemara notes that Rav Yeimar said to Rav Ashi: Isn't this halakha stated explicitly in our mishna, quoted by Rava above? As we learned in the continuation of that mishna: With regard to an earthenware barrel that was punctured and was then sealed by sediments, the sediments have effectively saved the contents of the barrel from contracting ritual impurity. If it was not sealed by sediments and instead one plugged the hole with a vine, its contents remain susceptible to contracting ritual impurity until he smears clay around the uncovered parts of the hole. If there were two vines placed in the hole in order to plug it, its contents remain susceptible to contracting ritual impurity until he smears clay from the sides of the hole inward, and between one vine and the other.

[366] Rav Yeimar explains: The reason its contents become impervious to contracting ritual impurity is that he smeared clay over the uncovered sections of the hole, but if he did not smear clay over the uncovered sections, the contents would not be impervious to contracting ritual impurity. Why should this not be like the case in Rava's dilemma? But let it be considered, when one plugs the hole with the vine, as though one had sealed half of the hole, since there is no apparent difference between a hole that is half-sealed and a hole that is partially plugged with a vine. Accordingly, Rava should not have stated his dilemma, as it is clear from the mishna that if the hole is only partially covered, the contents of the barrel are susceptible to contracting ritual impurity.

[367] The Sages say in response: How can these cases be compared? There, if he does not smear clay around the vines, the vine will not remain in place. By contrast, in a case where he sealed half of it with a substance that remains in place, as in Rava's dilemma, the seal remains in place and could be considered a seal. Rava's dilemma remains unresolved.

[368] § The Gemara cites another dilemma raised by Rava. And Rava says: The Sages said that if one robbed another of leavened bread, and Passover elapsed over it, and it is therefore prohibited to derive benefit from it, the robber may say to the victim: That which is yours is before you. Rava raises a dilemma:

[369] If the robber took a false oath concerning the robbery of the leavened bread, what is the halakha? Do we say that since, if it were to be stolen from the robber, the robber would need to pay the initial value of the bread to the robbery victim, as he can no longer say: That which is yours is before you, and therefore he has denied a claim of a monetary matter to the robbery victim and must

consequently pay the additional one-fifth payment and bring a guilt-offering? Or perhaps we say that now, in any event, it is resting in the robber's possession and it is considered as mere dust, since it is prohibited to derive benefit from it, and as such he has not denied a claim of a monetary matter, and the halakhot concerning a false oath do not apply.

370 The Gemara comments: The matter that was a dilemma for Rava is obvious to Rabba, as Rabba says that in a scenario where one says to another: You stole my ox, and the other says: I did not steal it.

371 The first asks: What is the nature of its presence in your possession? The second responds: I am an unpaid bailee over it. If the defendant then takes a false oath to that effect, after which he confesses that he stole the ox, he is liable to bring a guilt-offering for denying a claim of a monetary matter, as he exempted himself from liability in cases of theft and loss.

372 If he responds instead: I am a paid bailee over it, and takes a false oath to that effect, after which he confesses that he stole the ox, he is liable to bring a guilt-offering for denying a claim of a monetary matter, as he exempted himself from liability in cases of breakage and death.

373 If he responds instead: I am a borrower of it, and takes a false oath to that effect, after which he confesses that he stole the ox, he is liable to bring a guilt-offering for denying a claim of a monetary matter, as he exempted himself from liability in cases where the ox died due to ordinary labor.

374 In all of these cases, the ox is in the possession of the one who took the false oath, and he admits that it belongs to the other. The Gemara analyzes Rabba's statement: Apparently, Rabba holds that even though the ox is now extant and can be returned to its owner, since, if it were to be stolen, the robber would be found to be denying a claim of a monetary matter, as according to his claim he would then be exempt from paying, he is now considered to be denying a claim of a monetary matter as well. Here, in the case of the bread also, even though it is considered mere dust, since, if it were to be stolen, he would be required to pay the robbery victim full-fledged monetary restitution, he is now considered to be denying a claim of a monetary matter as well.

375 Rava sat and said this halakha, that one who protected himself from potential liability for payment by taking a false oath that he is a bailee is liable to pay the additional one-fifth payment and bring a guilt-offering. Rav Amram raised an objection to Rava from a baraita: The verse states concerning one who is liable for taking a false oath concerning a monetary matter: "And deals falsely with it" (Leviticus 5:22); this serves to exclude one who admits to the primary feature of a claim.

376 The baraita continues: How is this so? In a scenario where one says to another: You stole my ox, and the latter says: I did not steal it.

377 The first asks: What is the nature of its presence in your possession? The second responds with any of the following replies: You sold it to me; you gave it to me as a gift; your father sold it to me; your father gave it to me as a gift; it chased after my cow and entered my domain; it came to me on its own; I found it straying on the road and I brought it home; I am an unpaid bailee over it; I am a paid bailee over it; or I am a borrower of it; and the second takes a false oath to that effect, and then admits that he had done so; one might have thought that he should be liable. The verse states: "And deals falsely with it," which serves to exclude one who admits to the primary feature of a claim. The baraita states explicitly that one who takes a false oath that he is a bailee is not liable; how can Rava state otherwise?

[378] Rava said to him: Fool, when that baraita is taught, it is referring to a case where the robber said to the owner: Here you are, and presented the ox to him immediately, so that he did not profit by claiming that he was a bailee. When I spoke, I was referring to a case where the ox was standing in a different place, such as a swamp, and was not returned to the owner.

[379] Several examples of an oath in which the robber admits to the primary feature of a claim were cited in the baraita above. The Gemara analyzes some of these examples. When the robber says: You sold the ox to me, he has asserted that it belongs to him, so what admission to the primary feature of the claim is there? The Gemara explains: No, it is necessary to teach this in a case where he said to him: You sold the animal to me, but I did not give you the money, take your ox and go.

[380] When the robber says: You gave it to me, or: Your father gave it to me, he has asserted that it belongs to him, so what admission to the primary feature of the claim is there? The Gemara explains: It is a case where he said to him: It was given to me on the condition that I will afford you satisfaction, and I did not do anything for you; take your ox and go.

[381] When the robber says: I found it straying on the road and I brought it home, let the owner say to him: You should have returned it to me. Shmuel's father said: The baraita is referring to a case in which he says: I take an oath that I found the ox as a lost item, and I did not know that it was yours so that I could return it to you.

[382] § After discussing a false oath taken by a robber in which he admits to the primary feature of a claim, the Gemara discusses a false oath taken by witnesses. It is taught in a baraita: When a witness takes an oath that he has no knowledge of the status of a lost item, ben Azzai says that there are three possible false oaths, i.e., the oath may be false for one of three reasons: The witness may have recognized the lost item but did not recognize its finder, or he may have recognized its finder but did not recognize the item, or he may have recognized neither the item nor its finder. In each of these cases, the witness took a false oath that he had no knowledge of the lost item, when in fact he had limited knowledge of it.

[383] The Gemara asks: In the third case cited above, where the witnesses recognized neither the item nor its finder, he took his oath in truth when he claimed that he did not have knowledge of the lost item. Why is this cited as an example of a false oath? The Gemara emends the baraita: Say that the reference here is to a case where he recognized both the item and its finder.

[384] The Gemara asks: For which halakha did ben Azzai cite these examples? Rav Ami says that Rabbi Ḥanina says: They were cited to teach that there is exemption in these cases from bringing an offering for taking a false oath of testimony. And Shmuel says that these examples were cited to teach that the witness incurs liability to bring an offering in these cases.

[385] The Gemara comments: And Rav Ami and Shmuel disagree with regard to the issue that is the subject of the dispute between these tanna'im, as it is taught in a baraita: With regard to one who administers an oath to a single witness and the witness takes a false oath that he has no awareness of the monetary matter at hand, the witness is exempt from bringing a sin-offering; and Rabbi Elazar, son of Rabbi Shimon, deems the witness liable to bring a sin-offering.

[386] The Gemara asks: With regard to what do they disagree? One Sage, Rabbi Elazar, son of Rabbi Shimon, holds that an item that causes financial loss is considered to have monetary value. Similarly, the potential monetary benefit that the witness can generate by causing the defendant to admit to the

debt and pay the owner is considered to have monetary value. Therefore, the witness is considered to have taken a false oath with regard to a monetary matter. And one Sage, the first tanna, holds that an item that causes financial loss is not considered to have monetary value. Similarly, the potential monetary benefit that the witness can generate by causing the defendant to admit to the debt and pay the owner is not considered to have monetary value. Therefore, the witness is not considered to have taken a false oath with regard to a monetary matter.

387 § The Gemara discusses the halakha concerning a bailee who denies having a deposit in his possession. Rav Sheshet says: A bailee who falsely denies a claim concerning a deposit becomes as a robber with regard to it, and he is therefore liable to pay even for damage that is the result of accidents. The Gemara notes that the tanna also taught this halakha in a baraita. The verse states: "And deals falsely with it" (Leviticus 5:22–24), and we learned from this verse the punishment for one who denies having a deposit. From where is the prohibition itself derived? The verse states: "Neither shall you deal falsely" (Leviticus 19:11). The Gemara explains: What, is the baraita not referring to the punishment of having to pay money due to his denial even for accidental damage, in accordance with the statement of Rav Sheshet?

388 The Gemara rejects this: No, the baraita is referring to the punishment for taking a false oath, i.e., the additional one-fifth payment and the bringing of the offering. The Gemara challenges: From the fact that the latter clause of the baraita teaches a case where he took an oath, it may be inferred that the first clause teaches a case where he did not take an oath, and the punishment referred to by the baraita is the imposition of liability for accidental damage. As the latter clause teaches that the verse states: "And swear to a lie" (Leviticus 5:22), and we learned from this that there is a punishment for taking a false oath. From where is the prohibition itself derived? The verse states: "Nor lie" (Leviticus 19:11). And from the fact that the latter clause teaches the halakha where he took an oath, the first clause must be teaching the halakha in a case where he did not take an oath.

389 The Gemara answers: The Sages say in response that both this clause and that clause are referring to a case where he took an oath, but here, in the latter clause, it is where the bailee admitted his false oath, while there, in the first clause, it is where witnesses came and testified that the deposit is in his possession. Where witnesses came, he is liable only for damage that is a result of accidents, and where he admitted his false oath, he is obligated to pay for the principal and an additional one-fifth payment, and to bring a guilt-offering. Since the baraita is referring in both clauses to a case where the bailee took an oath, it offers no support for Rav Sheshet's statement.

390 After dismissing the attempted proof for Rav Sheshet's statement that a bailee who denies possession of a deposit is considered a robber even without having taken a false oath, the Gemara now attempts to disprove the statement itself. Rami bar Ḥama raises an objection to Rav Sheshet's statement: Though it is usually the defendant who is required to take an oath in order to avoid having to pay a claim, there are cases in which the plaintiff takes an oath to receive payment. The mishna in Shevuot (44b) lists these cases: And one such case is where the plaintiff's opponent, i.e., the defendant, is suspect with regard to an oath, i.e., there is reason for the court to believe that he would take a false oath. How would the defendant have become suspect? It would be by having taken a false oath with regard to either an oath of testimony or an oath on a deposit, or even for an oath taken in vain.

391 The Gemara comments: Since the mishna states that he becomes suspect only as a result of having taken a false oath, it can be inferred that he does not become suspect by virtue of denial of a claim alone. And if it is so that a bailee who denies having taken the deposit is considered a robber even without having taken an oath, then it is with his denial that he ought to be disqualified, as a robber does not have the credibility to take an oath.

392 The Sages say in defense of Rav Sheshet's opinion: With what are we dealing here, in the case of the mishna in Shevuot? We are dealing with a case where the deposit stands in a place not in the bailee's possession, e.g., a swamp, as in this case his statement is not considered a complete denial, because he thinks to himself: I will evade the owner by claiming that I never took the deposit until I go and bring it to him. Therefore, he is not considered to be a robber. By contrast, Rav Sheshet is referring to a case where the bailee denied responsibility for the item while it was in his possession, as he intended to keep it for himself.

393 The Gemara adds: Know that one who denies possession of an item only so that he may later return it is not considered a robber, as Rav Idi bar Avin says: One who denies a claim concerning having taken a loan is fit to bear witness,

394 but one who denies a claim concerning having taken a deposit is disqualified from bearing witness, because if it is clear that the deposit is in his possession, yet he denies it, he must be lying.

395 The Gemara raises a further difficulty with regard to Rav Sheshet's opinion: But didn't Ilfa say that an oath effects acquisition, meaning that once he testified falsely that he did not become a bailee, the item in question becomes his property, rendering him liable as a robber even for damage or loss resulting from accidents? The Gemara infers: It is the taking of an oath that effects acquisition, but mere denial of having become a bailee does not effect acquisition. The Gemara rejects this distinction: Here too, Ilfa must be referring to a case where the deposit stands in a place not in the bailee's possession, e.g., a swamp, and as long as he does not take an oath, it can be assumed that his intention is simply to be evasive. But if the animal was standing in his house, then he acquires it as soon as he denies the claim.

396 And if you wish, say instead: What is the meaning of Ilfa's statement that an oath effects acquisition? It is in accordance with the statement of Rav Huna, as Rav Huna says that Rav said that if one party says: I have one hundred dinars in your possession, and the other party says: You do not have any money in my possession, and the latter took an oath to that effect, and later, witnesses came and testified that his oath was false, he is exempt, as it is stated: "The oath of the Lord shall be between them both, to see whether he has not put his hand unto his neighbor's goods; and the owner thereof shall accept it, and he shall not make restitution" (Exodus 22:10); teaching that once the owner received an oath, the one who took the oath no longer pays monetary restitution. Ilfa's statement that an oath effects acquisition means that the bailee will no longer have to pay monetary restitution, and it does not relate to Rav Sheshet's statement that the bailee becomes responsible for damage resulting from accidents as soon as he denies the claim.

397 § Having mentioned Rav's ruling, the Gemara addresses the matter itself: Rav Huna says that Rav says that if one party says: I have one hundred dinars in your possession, and the other party says: You do not have any money in my possession, and the latter takes an oath to that effect, and later, witnesses came and testified that his oath was false, he is exempt, as it is stated: "And the

owner thereof shall accept it, and he shall not make restitution” (Exodus 22:10); teaching that once the owner received an oath, the one who took the oath no longer pays monetary restitution.

398 Rava said: Rav’s statement is reasonable in the case of one who denies having taken a loan, which is intended for expenditure. Since the money is no longer in his possession, the Torah exempts him from monetary restitution once he takes an oath. But in the case of one who denies having accepted a deposit, it remains in the owner’s possession and must be returned intact, and it is not considered to be monetary restitution. Rava continues: But, by God, Rav said his statement even in the case of one who denies having accepted a deposit, as when this verse exempting him from payment is written, it is written in the case of one who denies having accepted a deposit.

399 § The Gemara relates that Rav Naḥman was sitting and saying this halakha. Rav Aḥa bar Minyumi raised an objection to Rav Naḥman from that which was taught in a mishna (108b): If the owner asked the bailee: Where is my deposit, and the bailee said to him: It is lost, and the owner said: I administer an oath to you, and the bailee said: Amen, thereby accepting the oath, and the witnesses testify about the bailee that he consumed the deposit, then he must pay the principal. If he admitted of his own accord that he had taken a false oath, then he must pay the principal and the additional one-fifth payment, and bring a guilt-offering. This indicates that one is required to pay monetary restitution for a deposit even after taking an oath.

400 Rav Naḥman said to him: With what are we dealing here? We are dealing with a case where one takes an oath outside of court, which does not exempt him from paying restitution. Rav Aḥa bar Minyumi said to him: If so, say the latter clause of the mishna: If the owner asked the bailee: Where is my deposit, and the bailee said to him: It was stolen, and the owner said: I administer an oath to you, and the bailee said: Amen, thereby accepting the oath; and the witnesses testify about the bailee that he stole it, he must pay the payment of double the principal. If he admitted of his own accord that he had taken a false oath, then he must pay the principal and the additional one-fifth payment, and bring a guilt-offering. And if it enters your mind that this oath was taken outside of court, is there an obligation of double payment in such a circumstance?

401 Rav Naḥman said to him: I am able to answer you by saying that the first clause of the mishna is referring to one who took an oath outside of court, and the latter clause of the mishna is referring to one who took an oath in court, but we will not answer you with a forced answer. Instead, I will explain it in this manner: Both this clause and that clause are referring to an oath taken in court, and it is not difficult. Here, the ruling of the first clause is with regard to one who leaped to take an oath as soon as the other litigant stated his claim, even though the court had not yet required him to do so, which is not considered a full-fledged oath. There, the ruling of the latter clause is with regard to one who did not leap but took an oath only when required by the court.

402 Rami bar Ḥama said to Rav Naḥman: After all, you do not hold in accordance with the statement of Rav; why are you pledging yourself to explain the statement of Rav so that it not be contradicted by the mishna? Rav Naḥman said to him: I said this not to justify Rav’s ruling but to clarify the statement of Rav, as Rav would explain the mishna in this manner, as I did.

403 The Gemara asks: But Rav quoted a verse, so how could Rav Naḥman not agree with his statement? The Sages said in response: This verse was not written to teach the ruling of Rav; rather, it comes to teach the halakha that all those discussed in the Torah who are required to take oaths, take oaths and do not pay; as the verse should be interpreted as follows: “And the owner thereof shall

accept it, and he shall not make restitution” (Exodus 22:10), teaching that one who has the obligation to pay is the one who takes an oath, and not the one demanding payment.

[404] Rav Hamnuna raises an objection to Rav’s statement from a different mishna (Shevuot 36b), which states: If an owner requested the return of his deposit and the purported bailee denied having received it, and the owner administered an oath to the bailee about the deposit five times, whether before the court or not before the court, and the bailee denied the claim each time, he is liable for each and every one of the oaths and must pay the additional one-fifth payment and bring a guilt-offering for each one. And Rabbi Shimon says: What is the reason? Since he is able to retract and admit after each oath, at which point he would be liable to pay, therefore each subsequent false oath is a denial of that liability. It can be seen from this mishna that one who admits liability after having taken a false oath is liable to pay, counter to the statement of Rav.

[405] And here, you cannot say that the mishna in Shevuot is referring to a case where the bailee leaped to volunteer his oath, because it teaches explicitly that the owner administered an oath to the bailee about the deposit. And you cannot say that the mishna in Shevuot is referring to a case where the bailee took his oath outside of court, because it teaches explicitly that the halakha applies whether the oath was taken before the court or not before the court.

[406] The Gemara explains: He, Rav Hamnuna, raised the objection and he resolved it: The tanna teaches it disjunctively, i.e., the rulings of the mishna are stated with regard to different circumstances. Where it teaches that the owner administered an oath to the bailee about the deposit, that is referring to outside of court, and when it discusses an oath taken before the court, it is referring to a case where the bailee leaped and volunteered his oath. Therefore, the mishna does not discuss the case with regard to which Rav issued his ruling, where the bailee was forced to take an oath before the court.

[407] Rava raises an objection to Rav’s statement from a baraita: In the case of a homeowner acting as a bailee who falsely claimed, with regard to a deposit, that a thief stole it, and he took an oath to that effect and subsequently admitted that he was lying and that in fact he took the item himself, and witnesses came and testified that the bailee himself indeed took the item, then if he admitted his guilt before the witnesses came and testified, he pays the principal value of the item and the additional one-fifth payment, and he must also bring a guilt-offering. But if he admitted his guilt after the witnesses came and testified, he pays the double payment and brings a guilt-offering. This baraita rules that one who takes an oath is not exempt from payment, counter to the statement of Rav.

[408] And here, in this baraita, you cannot say that it is referring to an oath taken outside of court or that he leaped and volunteered his oath, because double payment is taught in the baraita, and one is obligated to pay double payment only when the accused has an oath administered to him before the court.

[409] Rather, Rava said: In any case where one admits to having taken a false oath, there is no difference whether one falsely states the claim that the deposit was lost, and there is no difference whether one falsely states the claim that a thief stole the deposit as well; in these cases, Rav did not say that taking an oath exempts the bailee from restitution, because it is written in the Torah portion discussing a false oath taken with regard to a deposit: “And they shall confess the sin that they performed, and he shall return the principal for his guilt, and he shall add to it one-fifth, and he gives

it to the one with regard to whom he is guilty” (Numbers 5:7), teaching that anyone who admits to a false oath concerning a deposit is required to pay the principal and the additional one-fifth payment.

410 The Gemara continues Rava's statement: Additionally, in a case where one falsely states the claim that a thief stole the deposit and takes an oath to that effect and witnesses come and say that he had stolen it, as well, Rav did not say that taking an oath exempts the bailee from restitution, because double payment is written in the Torah (see Exodus 22:8). When he says that taking an oath exempts the bailee from restitution, it is in a case where one falsely states the claim that the deposit was lost and takes an oath to that effect, and did not admit it, and witnesses come and testify that he had stolen it.

411 The Gemara relates that Rav Gamda went and said that halakha before Rav Ashi. Rav Ashi said to him: Now consider: And even Rav Hamnuna, who was Rav’s student and knew that Rav says that one who takes a false oath is exempt from paying restitution even in a case where he admitted it; and Rav Hamnuna therefore challenged him from a mishna that teaches that one is not exempt in a case where he admitted it. And you say that Rav did not say his halakha in a case where one admitted that he took a false oath? Presumably, Rav Hamnuna, as Rav’s student, was aware of the scope of his teacher’s ruling. How, then, can you limit it as being narrower than Rav Hamnuna’s interpretation?

412 Rav Aḥa the Elder said to Rav Ashi: Rav Hamnuna did not raise a difficulty against Rav with regard to the case of one admitting to having taken a false oath, rather, with regard to the case where witnesses came after he took the oath, and this is what is difficult for him:

413 Granted, if you say that when one takes a false oath and then witnesses come, he is liable to pay, that is why we hold him liable for a guilt-offering for the final oath, since he can still retract and admit his liability and incur an obligation to pay. Consequently, the fact that he took another false oath constitutes an additional false denial of his monetary liability.

414 But if you say, as Rav did, that even when witnesses come he is exempt from paying, then the mishna’s ruling is difficult, as is there any similar case where if witnesses come and testify with regard to it, he would be exempt, and yet we would stand and obligate him to bring a guilt-offering for a later oath, for no reason other than since he can still retract and admit his liability? As of now, in any event, he has not admitted to any liability and has no extant debt, and any further oaths that he takes are not denials of monetary liability. It follows, then, that Rava’s explanation of Rav’s opinion cannot be undermined by Rav Hamnuna’s challenge.

415 § The Gemara cites another ruling concerning the topic of a bailee who claims that a deposit in his possession was stolen. Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: One who falsely states the claim, with regard to a deposit, that a thief stole it, and it becomes clear that he stole it himself, pays double payment. If he slaughtered or sold it, he must pay fourfold or fivefold payment.

416 He explains his ruling by means of a comparison: Since a thief pays double payment, and one who falsely states the claim that a thief stole the deposit also pays double payment, it follows that just as a thief, who ordinarily pays double payment, and if he slaughtered or sold an animal he stole pays fourfold or fivefold payment, so too, one who falsely states the claim that a thief stole a deposit, who ordinarily pays double payment, if he slaughtered or sold the animal he received as a deposit pays fourfold or fivefold payment.

[417] The Gemara asks: What is notable about the halakha of a thief? It is notable in that he pays double payment even without having taken a false oath; will you say that this stringency should apply with regard to one who falsely states the claim that a thief stole the deposit, who pays double payment only upon taking a false oath? Therefore, one cannot derive from the obligation of a thief to pay fourfold or fivefold payment to the case of one who falsely states the claim that the deposit was stolen.

[418] The Sages say in response: Rabbi Yoḥanan did not base his ruling on a logical inference; rather, it is a derivation based upon a juxtaposition, as the verses discussing a thief and one who falsely states the claim that a deposit was stolen are juxtaposed, and one cannot refute through analysis a derivation based upon juxtaposition.

[419] The Gemara asks: This works out well according to the one who says that one verse is stated with regard to a thief and one verse is stated with regard to one who falsely states the claim that a thief stole the deposit. According to him, there is a juxtaposition, and one can well derive one from the other. But according to the one who says that both this verse: "If the thief shall be found, he shall pay double" (Exodus 22:6), and: "If the thief shall not be found" (Exodus 22:7), are referring to one who falsely states the claim that a thief stole the deposit, and neither verse is referring to a thief, what is there to say?

[420] The Sages say in response: Rabbi Yoḥanan's ruling is derived from an amplification indicated by the verse not employing the term "thief [gannav]," and instead employing the expanded term "the thief [hagannav]." This teaches that the halakha of the fourfold and fivefold payment applies to one who falsely states the claim that the deposit was stolen, as well.

[421] Rabbi Ḥiyya bar Abba raised an objection to the statement of Rabbi Yoḥanan from a baraita: In a scenario where one said to an unpaid bailee: Where is my ox? Then the bailee responded: It was stolen. And the owner said: I administer an oath to you, and the bailee said: Amen. And the witnesses testify about the bailee that he ate it, he pays double payment. But here, the halakha is that it is impossible to eat even an olive-bulk of meat without slaughtering the animal first, indicating that it must have been slaughtered, and nevertheless it teaches that he pays double payment. It can be inferred that double payment, yes, he pays; but fourfold or fivefold payment, no, he does not pay.

[422] Rabbi Yoḥanan answers: With what are we dealing here? We are dealing with a case where he ate it as an unslaughtered animal carcass. Since it was not killed according to the halakhot of ritual slaughter, the thief does not pay the fourfold or fivefold payment.

[423] The Gemara asks: And let Rabbi Yoḥanan answer Rabbi Ḥiyya bar Abba by saying that it is a case such as where he ate it as an animal with a wound that will cause it to die within twelve months [tereifa], in accordance with Rabbi Shimon's opinion that the legal status of an act of slaughter that is not fit for accomplishing its full ritual purpose is not considered an act of slaughter for which the thief must pay the fourfold or fivefold payment. The Gemara responds that Rabbi Yoḥanan holds in accordance with the opinion of Rabbi Meir, who says that the legal status of an act of slaughter that is not fit for accomplishing its full ritual purpose is considered an act of slaughter, and the thief would pay the fourfold or fivefold payment.

[424] The Gemara further asks: And let Rabbi Yoḥanan answer Rabbi Ḥiyya bar Abba by saying that the ruling of the baraita is stated with regard to an animal removed from its mother's womb after the mother was ritually slaughtered [ben pekua], which is permitted for consumption without slaughter,

so that there is a possibility that the thief ate it without first slaughtering it. The Gemara responds that Rabbi Yoḥanan holds in accordance with the opinion of Rabbi Meir, who says that a ben pekua requires slaughter.

425 The Gemara further asks: And let Rabbi Yoḥanan answer Rabbi Ḥiyya bar Abba by saying that it is a case where the bailee stood in judgment in court, and the judges said to him: Go out and give him the stolen animal, and he did not do so, and subsequently slaughtered or sold it? In this case he would not pay the fourfold or fivefold payment, as doesn't Rava say that if the judges instruct a thief: Go out and give him the stolen animal, and he instead slaughtered or sold it, he is exempt from paying the fourfold or fivefold payment. What is the reason for this? Once the court ruled on his matter, requiring him to give the animal to the owner, and he did not heed the court's ruling but slaughtered or sold the animal, he is considered a robber, and not a thief; and a robber does not pay fourfold or fivefold payment.

426 Rava continues: But if the judges say only: You are obligated to give the animal to him, and he did not heed the court's statement but slaughtered or sold the animal, then he is obligated to pay the fourfold or fivefold payment. What is the reason for this? Since the court has not issued a definitive ruling in this matter, he is still considered a thief rather than a robber.

427 The Sages say in response: And according to your reasoning, let Rabbi Yoḥanan answer Rabbi Ḥiyya bar Abba by saying that the ruling of the baraita is stated with regard to a partner who slaughtered an animal stolen by him and his partner without the other partner's knowledge, as the halakha is that in such a case, the thief, i.e., the partner who slaughtered the animal, does not pay fourfold or fivefold payment. Rather, Rabbi Yoḥanan selected one of two or three possible answers but did not mean to say that it was the only possible answer.

428 § The Gemara cites a related ruling: And Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: With regard to one who falsely states the claim, with regard to a lost item, that a thief stole it, i.e., he found a lost item, and when the owner requested its return, he claimed that it had been stolen from him, and it became known that he lied and had taken the item himself, he pays double payment. What is the reason for this? As it is written in the verse concerning double payment for a thief: "For any matter of trespass, from an ox, for a donkey, for a sheep, for a garment, or for any lost item about which one shall say: This is it, the claims of both of them shall come before the judges; the one whom the judges convict shall pay double to his neighbor" (Exodus 22:8). It can be seen from here that double payment applies to a false claim of theft even with regard to a lost item.

429 Rabbi Abba bar Memel raised an objection to Rabbi Ḥiyya bar Abba from a baraita: The verse states: "If a man gives his neighbor money or vessels to safeguard, and it was stolen from the house of the man, if the thief shall be found, he shall pay double" (Exodus 22:6). The use of the word "man" indicates that the giving of a deposit by a minor is nothing. And I have derived only a case where he gives the deposit when he is a minor and lodges the claim concerning it against the bailee when he is still a minor. From where is it derived that the halakha would be the same in a case where he gives the deposit when he is a minor and lodges the claim concerning it against the bailee when he is an adult? The verse states: "The claims of both of them shall come before the judges" (Exodus 22:8), i.e., the claim is valid only when the giving of the deposit and the claim are equal, both done when he is an adult.

430 Based on the ruling of this baraita, Rabbi Abba bar Memel raises his objection: And if it is so that even one who finds a lost item pays double payment for claiming falsely that it was stolen, indicating that the giving of the item as a deposit by the owner is not an essential condition to render the thief liable for double payment, then the claim of a minor should be like a lost item as well, and one who received a deposit from a minor should be liable for double payment. Rabbi Ḥiyya bar Abba said to him: With what are we dealing here? We are dealing with a case where the bailee consumed the deposit when the owner was still a minor, so that at the time it was consumed, the owner had no legal standing. Therefore, the bailee is not obligated to pay.

431 Rabbi Abba bar Memel questions this answer: But had the bailee consumed it when the owner was already an adult, what is the halakha; indeed, would the halakha be that the bailee pays? If so, rather than teaching: The claim is valid only when the giving of the deposit and the claim are equal, let the baraita teach: The claim is valid only when the consumption of the deposit and the claim are equal, which would be a more precise ruling. Rabbi Ḥiyya bar Abba said to him: Emend the baraita and teach: The claim is valid only when the consumption of the deposit and the claim are equal.

432 Rav Ashi said a different answer to Rabbi Abba bar Memel's objection: The two cases are not comparable, so an objection to Rabbi Ḥiyya bar Abba's statement concerning a lost item cannot be derived from the case of a minor giving a deposit, because the lost item came into the possession of the finder by the power of one who is mentally competent, as the one who lost it is presumed to be an adult, though he did not personally give it to the finder; but this deposit given by a minor did not come into his possession by the power of one who is mentally competent, as from a halakhic perspective, a minor is not considered mentally competent. Therefore, he has no grounds for a claim.

433 § The Gemara quotes a related ruling: And Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: With regard to one who falsely states the claim, with regard to a deposit, that a thief stole it, he is not obligated to take an oath, nor to pay double payment, until he denies part of the claim and admits to part of the claim. What is the reason for this? As the verse states: "About which one shall say: This is it" (Exodus 22:8), indicating an admittance of only this part, but no more. The Gemara notes: And this disagrees with the ruling of Rabbi Ḥiyya bar Yosef, as Rabbi Ḥiyya bar Yosef says:

434 A merging of Torah portions is written here, and the halakha written in this passage is in fact meant to be applied to a different passage. And when it is written: "This is it," from which the halakha of a partial admission is derived, it is written concerning a loan, not a deposit. The Gemara asks: And what is different about a loan that this halakha would apply only there?

435 The Gemara answers: It is in accordance with the statement of Rabba, as Rabba says: For what reason did the Torah say that one who admits to a part of the claim must take an oath? It is because there is a presumption that a person does not exhibit insolence by lying in the presence of his creditor, who had done him a favor by lending money to him. And this person who denies part of the claim actually wants to deny all of the debt, so as to be exempt, and this fact that he does not deny all of it is because a person does not exhibit insolence.

436 Rabba continues: And in order not to exhibit insolence, he wants to admit to the creditor with regard to all of the debt, and this fact that he denies owing him in part is because he reasons: If I admit to him with regard to all of the debt, he will lodge a claim against me with regard to all of it, and right now I do not have the money to pay. I will evade him at least for now until I have money, and then I will pay him all of it. This rationalization enables one to falsely deny part of a claim.

Therefore, the Merciful One imposes an oath on him, in order to ensure that he will admit to him with regard to all of the debt.

437 The Gemara completes its answer: And it is with regard to a loan that this can be said, as the basis for this explanation is that one will not exhibit insolence before his creditor, who did him a favor by lending him money; but with regard to a deposit, one will certainly exhibit insolence, as the claimant did him no favor. Therefore, there is no reason to say that one who completely denies a claim concerning a deposit is deemed credible any more than one who admitted to part of it, and he is obligated to take an oath in either case.

438 § Rami bar Ḥama teaches this baraita: All four types of bailees

439 require denial of a part of the claim and admittance of a part of the claim in order to be obligated to take an oath when someone claims to have given them an item as a deposit, and these are they: An unpaid bailee, and a borrower, a paid bailee, and a renter.

440 The Gemara quotes the source for this statement. Rava said: What is the reasoning for the statement of Rami bar Ḥama? Concerning an unpaid bailee, it is explicitly written with regard to him: “This is it,” as explained earlier. Concerning a paid bailee, Rami bar Ḥama learns by means of a verbal analogy to the term giving used with regard to a paid bailee from the term giving used with regard to an unpaid bailee, since the verses about both a paid and an unpaid bailee begin: “If a man gives his neighbor” (Exodus 22:6, 9).

441 Rava continues: Rami bar Ḥama learns the halakha concerning a borrower from the verse: “And if [vekhi] a man borrow” (Exodus 22:13). There is a principle that the conjunction “and,” represented by the letter vav, adds to the previous topic. Based on this principle, the halakhot of a borrower are connected to those of the subject of the previous verse, the bailee. Concerning a renter, if Rami bar Ḥama is stating his ruling according to the one who says that a renter is like a paid bailee, this is the same as a paid bailee; if he is stating his ruling according to the one who says that a renter is like an unpaid bailee, this is the same as an unpaid bailee.

442 § And Rabbi Ḥiyya bar Yosef says: With regard to an unpaid bailee who falsely states the claim, with regard to a deposit, that a thief stole it, and is discovered to have lied, he is not liable to pay double payment unless he misappropriates it, i.e., uses it for his own needs, before taking his oath. What is the reason for this? The verse states: “If the thief shall not be found, the owner of the house shall approach the judges to determine if he misappropriated his neighbor’s goods” (Exodus 22:7), and the following verse concludes: “The one whom the judges convict shall pay double to his neighbor.” By inference, one can learn that if he misappropriated it, he is liable for double payment; that is to say that we are dealing only with a case where he misappropriates it.

443 Rabbi Ḥiyya bar Abba said to his students: This is what Rabbi Yoḥanan says: They taught this halakha that one who falsely claims that the deposit was stolen is liable for double payment with regard to an animal still standing over its feeding trough, i.e., the bailee is still safeguarding it for its owner. Rabbi Zeira said to Rabbi Ḥiyya bar Abba: Is he stating his ruling specifically with regard to an animal standing over its feeding trough, but if the bailee misappropriated it before taking an oath, he has acquired it, and an oath is not effective for him at all, not even to cause him to be liable to pay double payment? Or perhaps he is stating his ruling even with regard to an animal standing over its feeding trough, in addition to an animal that the bailee misappropriated?

[444] Rabbi Ḥiyya bar Abba said to him: I did not hear this ruling, so I cannot transmit Rabbi Yoḥanan's opinion, but I did hear something similar to it, as Rabbi Asi says that Rabbi Yoḥanan says: With regard to an unpaid bailee who falsely states the claim that the deposit was lost and takes an oath to that effect, and retracted and falsely states the claim that a thief stole the deposit and takes an oath to that effect, and witnesses came and testified that he lied, he is exempt from double payment for the second claim. What is the reason; is it not due to the fact that he already acquired the item with the first oath, and therefore the second oath is disregarded, which is why he is not liable for double payment for a false claim of theft? So too, one who misappropriates the deposit thereby acquires it and is no longer obligated to take an oath.

[445] Rabbi Zeira said to him: No, there is no proof from there, because one could argue that the reason is not because he acquired the item with the first oath; rather, since it left the owner's possession with the bailee taking the first oath, he is exempt from taking an additional oath with regard to the same claim, but his oath will be significant even after having misappropriated the item.

[446] It was also stated: Rabbi Avin says that Rabbi Ile'a says that Rabbi Yoḥanan says: With regard to one who falsely states the claim, with regard to a deposit, that it is now lost, and takes an oath to that effect, and retracts and falsely states the claim that the deposit was taken through theft and takes an oath to that effect, and witnesses come and testify that he lied with regard to the claim of theft, he is exempt from double payment for the second claim, since it left the owner's possession with the bailee taking the first oath.

[447] The Gemara cites an amora who disputes the ruling of Rabbi Ḥiyya bar Yosef. Rav Sheshet says: With regard to an unpaid bailee who falsely states the claim, with regard to a deposit, that a thief stole it, and is discovered to have lied, once he misappropriated it before he took an oath he is exempt. What is the reason for this? This is what the Merciful One is saying, i.e., this is how the verse is to be understood: "If the thief shall not be found, the owner of the house shall approach the judges if he has not misappropriated his neighbor's goods" (Exodus 22:7), indicating that this verse speaks specifically with regard to a case where he did not misappropriate the deposit; consequently, if he misappropriated it, he is exempt from double payment.

[448] Rav Naḥman said to Rav Sheshet: But aren't three oaths administered by the court to any unpaid bailee who claims that the deposit was stolen from him? The first is: An oath that I was not negligent in safeguarding it, thereby enabling it to be stolen; the second is: An oath that I did not misappropriate it; the third is: An oath that it is not in my possession. What, is it not so that: An oath that I did not misappropriate it, is similar to: An oath that it is not in my possession, in the following manner: Just as with regard to: An oath that it is not in my possession, when the matter becomes revealed that it is in his possession, he is liable, so too, with regard to: An oath that I did not misappropriate it, when the matter becomes revealed that he did misappropriate it, he should be liable?

[449] Rav Sheshet said to him: No, there is no proof from there, because one could say that the halakha of: An oath that I did not misappropriate it, is similar to the halakha of: An oath that I was not negligent in safeguarding it, in the following manner: Just as with regard to: An oath that I was not negligent in safeguarding it, when the matter becomes revealed that he was negligent in safeguarding it, he is exempt from double payment, so too, with regard to: An oath that I did not misappropriate it, when the matter becomes revealed that he did misappropriate it, he is exempt from double payment.

Since the comparison can be made between different pairings of the oaths to suggest opposite conclusions, none of these comparisons are definitive.

450 § The baraita quoted earlier (65b) teaches that a bailee who would be liable for double payment if witnesses were to testify that he had in fact stolen a deposit about which he had taken an oath attesting to its theft does not pay the additional one-fifth payment normally imposed upon one who takes a false oath with regard to a monetary claim. The Gemara explores the reason for this halakha. Rami bar Ḥama raises a dilemma: Is it the monetary obligation that renders him liable for double payment which exempts him from the additional one-fifth payment, or perhaps is it the taking of the oath that renders him liable for double payment which exempts him from the additional one-fifth payment?

451 The Gemara explains: What are the circumstances in which there is a practical difference between these possibilities? It is in a case where he falsely states the claim that a thief stole the deposit and takes an oath to that effect, and retracts and falsely states the claim that it was lost and takes an oath to that effect,

452 and witnesses come and testify with regard to his first claim that at the time he took an oath that the deposit had been stolen, it was actually in his possession; and he admits with regard to his second claim that it had been a lie and that it had not actually been lost, what is the halakha: Is he obligated to pay the additional one-fifth payment?

453 The Gemara explains the two possibilities: Is it being obligated in a monetary obligation that renders him liable for double payment which exempts him from the additional one-fifth payment, and in this case he is liable for the double payment for the deposit due to the witness testimony and would therefore be exempt from the additional one-fifth payment? Or perhaps is it admitting to a false oath that renders him liable for double payment which exempts him from the additional one-fifth payment, and with regard to this latter oath that the item was lost, since it does not render him liable for the double payment, as he took an oath that it had been lost, not stolen, will it render him liable for the additional one-fifth payment?

454 Rava said: Come and hear a solution to this dilemma from a mishna (Shevuot 49b): In a scenario where one said to someone from the marketplace: Where is my ox that you stole? And the accused says in response: I did not steal it; whereupon the owner of the ox said: I administer an oath to you, and the accused said: Amen, accepting the oath; and the witnesses testify about the accused that he stole it, he must pay double payment. And if he admitted of his own accord that he stole it, then he must pay the principal and the additional one-fifth payment, and bring a guilt-offering.

455 Rava explains the proof: But here, it is witnesses who render him liable for the double payment, as since the accused was not a bailee, the oath does not render him liable, and yet the mishna teaches that if he admitted of his own accord that he stole it, then yes, he must pay the additional one-fifth payment, but if he admitted after witnesses testified, then no, he is not required to pay the additional one-fifth.

456 Rava continues: And if it enters your mind to say that it is an oath that renders him liable for double payment which exempts him from the additional one-fifth payment, why does he not pay the additional one-fifth payment if he admitted that it was a false oath after witnesses testified? After all, this oath does not render him liable to pay the double payment, as the halakha that one who falsely takes an oath that the item was stolen pays double payment applies only in the case of a bailee;

therefore, the oath should render him liable to pay the additional one-fifth payment, as does any false oath taken with regard to a monetary claim.

457 Rava completes the proof: Rather, must one not conclude from this mishna that it is the monetary obligation that renders him liable to pay the double payment which exempts him from the additional one-fifth payment? The Gemara affirms: Conclude from the mishna that the additional one-fifth payment is dependent upon the type of monetary obligation, and not an oath, resolving Rami bar Ḥama's dilemma.

458 § Concerning the additional one-fifth payment, Ravina raises a dilemma: If the additional one-fifth payment and the double payment are split among two men, what is the halakha? The Gemara explains the dilemma: What are the circumstances? This is referring to a case where one transferred his ox to two people to safeguard, and they stated the claim that a thief stole it from them; one of them took an oath that it had been stolen and subsequently admitted of his own accord that he had lied, and one of them took an oath that it had been stolen and subsequently witnesses came and testified that he had lied. What is the halakha in this case?

459 Ravina clarifies the possibilities: Do we say that the Merciful One is particular with regard to one man that he does not pay both the additional one-fifth payment and the double payment, whereas in this case, this one about whom the witnesses testified will pay the double payment and that one who admitted of his own accord will pay the additional one-fifth payment? Or perhaps the Merciful One is particular that the additional one-fifth payment and the double payment will not be paid for one monetary obligation, and here too, it is one monetary obligation? The Gemara comments: The dilemma shall stand unresolved.

460 § Concerning the additional one-fifth payment, Rav Pappa raises a dilemma: In a case of two additional one-fifth payments or two double payments with regard to one man, what is the halakha; must he pay twice for the same monetary obligation? The Gemara explains: What are the circumstances? This is referring to a case where one stated the claim that the deposit was lost and took an oath and then admitted that it was not lost, and returned and again stated the claim that the same deposit was lost, and took another oath supporting this claim and again admitted that it was not lost. Alternatively, this is referring to a case where one stated the claim that a thief stole the deposit and took an oath and then witnesses came and testified that he had taken it, and he returned and again stated the claim that a thief stole the same deposit and again took an oath and then witnesses came and again testified that he had taken it; what is the halakha?

461 Rav Pappa clarifies the possibilities: Do we say that the Merciful One states concerning two types of monetary restitution, e.g., double payment and the additional one-fifth payment, that they will not be paid for one monetary obligation, but here, it is only one type, merely doubled; or perhaps the Merciful One states concerning two payments of monetary restitution that they will not be paid for one monetary obligation, and here too, they are two payments of monetary restitution, whether in the case of two additional one-fifth payments or two double payments?

462 The Gemara suggests a resolution to Rav Pappa's dilemma. Come and hear, as Rava says: The verse states: "Or anything about which he has sworn falsely, he shall restore it in full, and shall add the fifth part [ḥamishitav] more thereto" (Leviticus 5:24). By employing a plural term, ḥamishitav, and not the singular ḥamishito, the Torah added many additional one-fifths for one principal,

meaning that one can become obligated in multiple one-fifth payments for the same principal. The Gemara affirms: Conclude from Rava's statement that this is the halakha.

463 § The Gemara discusses an amoraic dispute concerning a similar case: If an owner demanded of an unpaid bailee that he return a deposit, and he claimed that it had been stolen from him and took an oath to that effect, and despite being exempt from payment, he paid of his own volition, and subsequently the thief was identified, to whom is double payment paid, the owner or the bailee? Abaye says: To the owner of the deposit. Rava says: To the one in whose possession the deposit was when it was stolen, i.e., the bailee.

464 The Gemara explains their opinions: Abaye says that the double payment is paid to the owner of the deposit; since the bailee troubled him by taking an oath instead of paying immediately, the owner is not willing to grant acquisition of the double payment to the bailee, so it is paid to the owner. Rava says that the double payment is paid to the one in whose possession the deposit was when it was stolen; once he paid, the owner grants acquisition of the double payment to the bailee.

465 The Gemara explains: And they disagree with regard to the deductive inference to be drawn from the wording of the mishna, as we learned in a mishna (Bava Metzia 33b): In the case of one who deposits with another, i.e., an unpaid bailee, an animal or vessels, and they were stolen or lost, and the bailee paid the owner and did not wish to take an oath, which he may decide to do, as the Sages said that an unpaid bailee takes an oath that he is exempt and is released from the obligation to pay the owner, but may also opt to pay; in such a case the halakha is that if the thief was found he pays double payment, or if the deposited item was a sheep or an ox and the thief slaughtered or sold it he pays the fourfold or fivefold payment. To whom does the thief pay those payments? He pays them to the one in whose possession the deposit was when it was stolen or lost. When the bailee paid the owner for the stolen item, he acquired it and therefore is entitled to any payment of principal or fine paid by the thief.

466 The mishna continues: If the bailee took an oath and did not wish to pay, and the thief was later found and was required to pay double payment, or he slaughtered or sold the sheep or ox and was required to pay the fourfold or fivefold payment, to whom does the thief pay the money? He pays it to the owner of the deposit, not to the bailee.

467 The Gemara explains the dispute: Abaye inferred the halakha from the wording of the first clause, and Rava inferred the halakha from the wording of the latter clause. Abaye inferred it from the wording of the first clause, as it teaches: If the bailee paid the owner and did not wish to take an oath, the thief pays the double, fourfold, or fivefold payment to the bailee. Abaye infers from here that the reason the thief pays the bailee is specifically that he did not wish to take an oath,

468 but if he took an oath, even though he subsequently paid, to whom does the thief pay double payment? To the owner of the deposit.

469 Rava inferred the halakha from the wording of the latter clause. It teaches: If the bailee took an oath and did not want to pay, the thief must pay the penalty to the owner of the deposit. Rava infers from here that the reason the thief pays the owner is specifically that he did not want to pay, but if he did pay, even though he took an oath previously, to whom does the thief pay double payment? To the one in whose possession the deposit was when it was lost.

[470] The Gemara notes: The inference from the latter clause is difficult for the opinion of Abaye. The Gemara explains. Abaye could have said to you: This is what the latter clause of the mishna is teaching: If the bailee took an oath and did not want to pay initially before taking the oath, but rather wanted to pay only after having taken the oath, in this case to whom does the thief pay double payment? To the owner of the deposit. Similarly, the Gemara notes: The inference from the first clause is difficult for the opinion of Rava. The Gemara explains. Rava could have said to you: This is what the first clause of the mishna is teaching: If he paid, meaning he had taken an oath and did not want to stand by his oath, but instead paid in order to nullify the oath he had taken, to whom does the thief pay double payment? To the one in whose possession the deposit was when it was lost.

[471] § The Gemara relates another dilemma concerning the status of a bailee and stolen deposits. If the owner of a deposit demanded from a bailee that he return their deposit, and he claimed that it had been stolen from him and took an oath to that effect; and then the thief was recognized, and the bailee demanded of the thief to pay and he admitted to having stolen it; and then the owner demanded of the thief to pay and he denied the claim, and the owner brought witnesses that he had stolen it, did the thief become exempt from double payment through his admission to the bailee, as is the halakha when one admits liability to a penalty? Does the bailee have standing vis-à-vis the thief despite having exempted himself by taking an oath to the owner, or did the thief not become exempt through his admission to the bailee?

[472] Rava says: If he took an oath truthfully, i.e., if it now becomes clear through the testimony of witnesses that the bailee's oath was true, he is assumed to be someone the owner would rely on to collect the stolen item for him, and he remains a bailee. Therefore, the thief became exempt through his admission to the bailee. If his oath was taken falsely, e.g., he took an oath that the animal given as a deposit died naturally and it is now clear that his oath was false, he is assumed to be someone whom the owner would not rely on to collect the stolen item for them, and he is no longer a bailee. In this case, the thief did not become exempt through his admission to the bailee.

[473] Rava raises a dilemma concerning the previous ruling: If a bailee rose to take a false oath but the owner did not let him, what is the halakha? Should he be considered as one who had taken a false oath, as that was his intention, and he is no longer a bailee; or, since he never actually took the false oath, he is still a bailee? The Gemara comments: The question shall stand unresolved. The Gemara notes that Rav Kahana would teach Rava's question like this, as quoted above. Rav Tavyumei would teach Rava's question differently: Rava raises a dilemma: If he actually took a false oath, what is the halakha? Is he still a bailee or not? The Gemara comments: The question shall stand unresolved.

[474] The Gemara relates another dilemma concerning the status of a bailee and stolen deposits: If the owners of a deposit demanded from a bailee that he return their deposit and he paid them instead of taking an oath, and then the thief was recognized, and the owners demanded of the thief to pay and he admitted to having stolen it; and then the bailee demanded of the thief to pay and he denied the claim, and the bailee brought witnesses that he had stolen it, did the thief become exempt from double payment through his admission to the owners, as is the halakha when one admits liability to a penalty, or not?

[475] The Gemara explains: Do we say that the bailee can say to the owners: Once you took your money from me you removed yourselves from here and have no further connection to this deposit. Therefore, I am now considered the owner of the stolen item and the right to the double payment is

mine, and the thief’s admission to you is meaningless. Or perhaps the owners can say to him: Just as you performed a service for us by paying us when you were not obligated, we performed a service for you as well. Instead of granting acquisition of the double payment to you, to enable you to be repaid we took the trouble to search after the thief. We will take what is ours, i.e., the stolen item, and you take what is yours, the money you paid us. The Gemara comments: The question shall stand unresolved.

476 § It was stated: If an animal given as a deposit was stolen in circumstances beyond the control of the bailee, who is therefore exempt from liability regardless of whether he was paid, and the thief was recognized, Abaye says: If he is an unpaid bailee, then if he so desires he can choose to enter into judgment with the thief, i.e., the bailee will pay the owner and then get reimbursed by the thief; and if he so desires he can take an oath that he was not responsible and the owner can demand his money from the thief. If he is a paid bailee he enters into judgment with the thief and does not have the option to take an oath to become exempt, as the responsibility to collect payment from the thief is part of his duty as a paid bailee. Rava says: Whether this unpaid bailee or that paid bailee enters into judgment with the thief, he does not have the option to take an oath.

477 The Gemara suggests: Shall we say that Rava disagrees with the ruling of Rav Huna bar Avin? As Rav Huna bar Avin sent this ruling: If an animal given as a deposit was stolen in circumstances beyond the control of the bailee and the thief was recognized, if he is an unpaid bailee, then if he so desires he can choose to enter into judgment with the thief; and if he so desires he can take an oath that he was not responsible, and the owner can demand his money from the thief. And if he is a paid bailee, then he enters into judgment with the thief and does not have the option to take an oath.

478 The Gemara responds: Rava could have said to you: With what are we dealing here? We are dealing with a case where it happened that first the bailee took an oath, before the thief was recognized. The Gemara questions this explanation: But Rav Huna bar Avin says: If he so desires he can choose to enter into judgment with the thief; and if he so desires he can take an oath that he was not responsible, indicating that the bailee had not yet taken an oath. The Gemara answers: Rather, this is what Rav Huna bar Avin is saying: Having first taken an oath before the thief was recognized, if an unpaid bailee so desires he can remain with his oath and not pay the owner, and if he so desires he can choose to enter into judgment with the thief.

479 Rabba Zuti raises the dilemma like this: If an animal given as a deposit was stolen in circumstances beyond the control of the bailee, and the thief returned the animal to the place from where he had stolen it, and it is now in the house of the bailee, and it then died through the bailee’s negligence, what is the halakha? Do we say that once it was stolen in circumstances beyond the bailee’s control his guardianship is completed and he has no more responsibility for the animal, even for subsequent negligence? Or perhaps once it was returned, it returned to his guardianship, and an unpaid bailee is liable for loss resulting from negligence? The Gemara comments: The question shall stand unresolved.

480 MISHNA: If the owner asked the bailee: Where is my deposit? And the bailee said to him: It was lost. And the owner said: I administer an oath to you, and the bailee said: Amen, therefore accepting the oath; and the witnesses testify about the bailee that he consumed it, then he must pay the principal. If the bailee admitted on his own that he had taken a false oath, then he must pay the principal and the additional one-fifth payment, and bring a guilt-offering.

481 If the owner asked the bailee: Where is my deposit, and the bailee said to him: It was stolen; and the owner said: I administer an oath to you, and the bailee said: Amen, therefore accepting the oath; and the witnesses testify about the bailee that he stole it, he must pay the payment of double the principal. If the bailee admitted on his own that he had taken a false oath, then he must pay the principal, the additional one-fifth payment, and bring a guilt-offering.

482 The mishna continues: In the case of one who robs his father and the father demands that he return the stolen item, and he takes an oath to his father that he did not rob him; and then the father dies; and then the son admits that he robbed him and took a false oath, necessitating the return of the principal and the giving of the additional one-fifth payment to his father's heirs, of which he is either one of several or the only one; what should he do? This son pays the principal and the additional one-fifth payment to his father's sons or brothers, and brings a guilt-offering and does not keep his own share. And if he does not want to forfeit his share or where he does not have sufficient funds to pay the other heirs while forfeiting his share, he borrows money in the amount of the value of the stolen item and the creditors come and are repaid in part from his share in the stolen item.

483 In the case of one who says to his son in a vow: It is forbidden like an offering [konam], and for that reason you may not derive benefit from my property, if the father then dies the son inherits from him, because it is no longer the father's property once he dies.

484 The mishna continues: If the father stated in his vow that his son may not derive benefit from his property in his life and in his death, then even if the father then dies the son does not inherit from him, as the prohibition is still in effect. And instead of taking his inheritance, he returns his portion in the estate to his sons or to his brothers. And if he does not have sufficient funds to subsist without his inheritance, he borrows money in the amount of the value of his share in the inheritance and the creditors come and are repaid from his share.

485 GEMARA: With regard to the halakha written in the mishna that one who robs his father pays the principal and the additional one-fifth payment to the father's heirs, Rav Yosef says: One may even put this money in a charity purse if he so chooses. Rav Pappa says: And when giving the money he must say: This is what was robbed from my father.

486 § The Gemara questions the mishna's ruling that one who robs his father must return the stolen item to others even if he is the sole heir. Why must he do this? Let him forgive the debt to himself; as the heir, to whom payment is due, he should be able to forgive it. Didn't we learn in a mishna (103a) that in the case of a robber who took a false oath claiming to be innocent and later admitted his liability: If the owner forgave him concerning the principal, but did not forgive him concerning the additional one-fifth payment, he need not pursue him to repay the remaining debt. Apparently, even the principal is subject to forgiveness, so why doesn't he forgive the obligation to himself?

487 Rabbi Yoḥanan said: This is not difficult. That mishna is in accordance with the opinion of Rabbi Yosei HaGelili, who says that this obligation can be forgiven, while this mishna, ruling that a son who robbed his father and is his sole heir cannot forgive the obligation to himself, is in accordance with the opinion of Rabbi Akiva, who holds that this obligation cannot be forgiven.

488 Rabbi Yoḥanan explains: As it is taught in a baraita (Tosefta 10:16) that the verse states with regard to one who steals from one who then died: "But if the man has no kinsman to whom restitution may be made for the guilt, the restitution for guilt that is made shall be the Lord's, even the priest's" (Numbers 5:8). The baraita asks: But is there any Jewish person who has no kinsmen?

Since every Jew descends from Jacob our forefather, all Jews have relatives to inherit from them. Rather, it must be that the verse is speaking of robbery of a convert who never married or had children as a Jew, and in any case is no longer legally related to his gentile family; he has no heirs. In this situation the Torah instructs one who robbed from a now-deceased convert to return the stolen item to a priest.

[489] The baraita continues: In the case of one who robbed a convert and took a false oath to him saying that he did not rob him, and then heard that the convert died; and he was bringing his money, for the principal and the additional one-fifth payment, and his guilt-offering up to Jerusalem to pay his debt to the priests and sacrifice his offering, and he encountered that same convert, who in fact had not died; and, instead of having the robber pay the money right away the convert established it as a loan for the robber, and then the convert died, leaving his property ownerless, as he had no heirs; this robber acquires all that is in his possession, as it is now a loan, not money to pay back the theft; this is the statement of Rabbi Yosei HaGelili. Rabbi Akiva says: The robber has no remedy until he will remove his stolen item from his possession.

[490] Rabbi Yoḥanan explains their respective opinions. According to the opinion of Rabbi Yosei HaGelili, there is no difference if the one to whom payment is due forgives the return of a stolen item to himself, such as in this case of a convert who died or in the case of the mishna where a son robbed his father who then died, and there is no difference if he forgives the return of a stolen item to others. In either case, he can forgive payment. And according to the opinion of Rabbi Akiva, there is no difference if the one to whom payment is due forgives the return of a stolen item to others and there is no difference if he forgives the return of a stolen item to himself. In either case, he cannot forgive payment.

[491] Rabbi Yoḥanan continues his analysis: And according to the opinion of Rabbi Yosei HaGelili, the same is true, i.e., the halakha would also be, that no liability would remain in the case of the convert even had he not established the robbery debt as a loan, as the robber could forgive the obligation to himself once the convert died. And the fact that the baraita teaches its halakha in a case where he established it as a loan for the robber is to convey to you the far-reaching nature of the opinion of Rabbi Akiva: That even if he established it as a loan for him, in which case it could be considered as though the robber had returned the stolen item and now has a standard loan debt, nevertheless, the robber has no remedy until he will remove his stolen item from his possession, so as to not benefit from his act of robbery.

[492] Rav Sheshet objects to this interpretation of the baraita: If so, then according to the opinion of Rabbi Yosei HaGelili, let the mishna on 103a, which indicates that one can forgive the principal payment of a robbery, teach us instead that the robbery victim can forgive the obligation to himself, and it would be understood that all the more so one can forgive the obligation to others. And according to the opinion of Rabbi Akiva, which Rabbi Yoḥanan explains to be the opinion stated in the mishna here, let it teach us that one cannot forgive the obligation to others, and it would be understood all the more so with regard to the robber, that he cannot forgive the obligation to himself.

[493] Rather, Rav Sheshet said: That mishna and this mishna are both in accordance with the opinion of Rabbi Yosei HaGelili. When Rabbi Yosei HaGelili is saying that one can forgive the return of a stolen item, he meant specifically forgiving the obligation to others, but he cannot forgive the obligation to himself. The Gemara asks: But if that is the halakha, why did this one who robbed a

convert who subsequently died acquire all that is in his possession? Because the convert established it as a loan for him, and henceforth it is no longer considered stolen property, but a standard loan debt.

494 The Gemara offers a different explanation. Rava said: That mishna and this mishna are both in accordance with the opinion of Rabbi Akiva. When Rabbi Akiva says that he cannot forgive the return of a stolen item he meant specifically forgiving the obligation to himself, as in the case of the convert, but he can forgive the obligation to others.

495 The Gemara questions Rava's explanation: By inference does it follow that Rabbi Yosei HaGelili holds that he can forgive the return of the stolen item even to himself? But if so, payment for robbery of a convert who dies without heirs, about which the Merciful One says that it requires giving repayment to the priests, how can you find these circumstances if in every case where one robs a convert and the convert dies the robber can forgive the return of the item to himself?

496 Rava said: With what are we dealing here? With a case where one robbed the convert and took an oath to him that he did not rob him, and then the convert died, and the robber admitted his false oath after the convert's death, such that at the time that he admitted to it, the Name, i.e., God, acquired the principal and the additional one-fifth payment and gave it to the priests. Once the right to the payment is transferred to the priests the robber can no longer forgive it. By contrast, if he admitted his false oath while the convert was still alive and then the convert dies, the convert can forgive the obligation to himself, since he already took ownership of it.

497 § Ravina raises a dilemma: With regard to payment for robbery of a female convert, what is the halakha? The Merciful One states in the Torah: "But if the man has no kinsman" (Numbers 5:8), indicating that the halakha applies to a male convert, but not to a woman, i.e., a female convert; if she dies after being robbed, payment is not given to the priests. Or perhaps it is the manner of the verse to employ masculine wording, but the halakha applies in the case of a female convert as well?

498 Rav Aharon said to Ravina: Come and hear a solution to your dilemma, as it is taught in a baraita that the verse states in its entirety: "But if the man has no kinsman to whom restitution may be made for the guilt, the restitution for guilt that is made shall be the Lord's, even the priest's; besides the ram of the atonement, whereby atonement shall be made for him." I have derived only that it is referring to a man; from where is it derived that this applies equally to a woman? When it states: "The restitution for guilt that is made," there are two instances of the phrase "that is made" here, as the verse mentions making restitution twice, to include a female convert in this halakha.

499 The baraita continues: If so, what is the meaning when the verse states specifically "man"? The baraita explains: To pay a convert who is a man, you need to investigate concerning him to determine if he has a kinsman or not, but to pay a convert who is a minor you do not need to investigate concerning him. It is known that he has no kinsman, since as a convert he has no kin among his birth family, and as a minor he does not have children.

500 § With regard to the payment to priests in the case of one who robbed a convert who then died without heirs, the Sages taught: The verse states: "Restitution for guilt that is made shall be the Lord's, even the priest's" (Numbers 5:8), teaching that the Name, i.e., God, acquired it and gave it to the priest who is in that priestly watch. Do you say that it is given only to the priest who is on that priestly watch? Or perhaps that is not the case, and rather he may give it to any priest that he wishes? When it says in that verse: "Besides the ram of the atonement, whereby atonement shall be made for

him,” this teaches that the verse speaks of giving it to the priest who is on that priestly watch. Just as the ram that the robber brings is given only to the priest on duty who sacrifices it, so too, the money is also given only to the priest on duty.

501 Concerning this payment, the Sages taught: In a case where the one who robs the convert was a priest, from where is it derived that he shall not say: Since the payment usually is removed from the robber and given to the priests and it is now in my possession, it should be mine. And there is a logical derivation to support this reasoning, as follows: If a priest has the right to acquire the payment belonging to others who stole from a convert, then with regard to payment belonging to himself, which is already in his possession, is it not all the more so that he should keep it?

502 The baraita continues: Rabbi Natan states this logical inference with different wording: And just as with regard to a matter in which a priest has no portion until it enters his possession, e.g., teruma, which can be given to any priest, once it enters his possession another priest cannot remove it from his possession; so too, with regard to a matter in which a priest has a portion even before it enters his possession, e.g., an item stolen from a convert, in which he has a portion as one of the priests on the priestly watch, isn’t it logical that another priest cannot remove it from his possession once it is in his possession?

503 The baraita continues, countering that this logical inference is not correct: No, if you said this concerning a matter in which a priest has no portion, where the reason why once it enters his possession another priest cannot remove it from his possession is that just as he has no portion in it, so too, others have no portion in it; would you say the same concerning an item robbed from a convert? As there it could be said that just as the priest who robbed him has a portion in it as one of the priests on the priestly watch, so too, other priests on that watch have a portion in it. Rather, the halakha is that the item he stole is removed from his possession and is distributed to all of his brethren, the priests.

504 The Gemara raises an objection: But isn’t it written: “And every man’s hallowed things shall be his; whatsoever any man gives to the priest, it shall be his” (Numbers 5:10), indicating that a priest is not required to give to the other priests the offerings he sacrifices? Therefore, just as he has the right to the flesh of the guilt-offering that he brings to atone for robbing the convert, shouldn’t he also have the right to the payment? The Gemara answers: With what are we dealing here, in this case? We are dealing with a ritually impure priest, who is unfit to sacrifice the guilt-offering and therefore does not have rights to the flesh of the offering. In this case, he will not be able to keep the payment for himself.

505 The Gemara asks: If the baraita states its ruling specifically with regard to an impure priest, how can it describe the payment as a matter in which the priest has a portion? Does he have a portion in it? Therefore, the baraita must not be referring to an impure priest. Rather, there is another reason why he has no right to the payment. This halakha is derived through a verbal analogy between the phrase “even the priest’s [lakohen]” (Numbers 5:8) written in this context, and the phrase “to the priest [lakohen]” (Leviticus 27:21) from the verse stated concerning an ancestral field, which, if consecrated and then redeemed by another does not revert to its original owner in the Jubilee Year, but is given to the priests, as the baraita will now explain.

506 As it is taught in a baraita that the verse states: “But the field, when it goes out in the Jubilee, shall be holy unto the Lord, as a field dedicated; the possession thereof shall be to the priest”

(Leviticus 27:21). The baraita asks: What is the meaning when the verse states the term: “The possession thereof”? From where is it derived that with regard to a field that goes out to the priests in the Jubilee Year and one of the priests redeemed it before the Jubilee Year, from where is it derived that a priest shall not say: Since a field that is redeemed by another goes out to the priests in the Jubilee Year, and the field that I redeemed is now in my possession, it should be mine, and not be given to the priests in general?

507 The baraita continues: And there is a logical derivation to support this reasoning, as follows: If I acquire the field belonging to others, who consecrated it and it was then redeemed, then with regard to a field belonging to me, which is already in my possession, is it not all the more so that I should keep it?

508 The baraita continues, countering that this logical inference is not correct. The verse states: “As a field dedicated; the possession thereof shall be to the priest” (Leviticus 27:21), indicating that a field of which the priest has possession from his ancestors is his, but this field that he redeemed is not his. How so? It is removed from his possession and is distributed to all of his brethren, the priests.

509 § The Gemara records another baraita concerning the rights of a priest to offerings he sacrifices. The Sages taught (Tosefta, Menaḥot 13:17): From where is it derived that a priest may come and sacrifice his offerings at any time and at any hour that he wishes and does not have to wait for his priestly watch to serve in the Temple? The verse states: “And if a Levite comes from any of your gates out of all Israel, where he sojourns, and comes with all the desire of his soul unto the place that the Lord shall choose; then he shall minister in the name of the Lord his God” (Deuteronomy 18:6–7).

510 The baraita continues: And from where is it derived that the performance of the offering’s service, i.e., eating the meat of the animal he sacrifices, and the offering’s hide, belong to him? The verse states: “And every man’s hallowed things shall be his” (Numbers 5:10). How so? If this priest was blemished, he gives his offering to another priest that is on the same priestly watch as him to sacrifice it, but the performance of its service and its hide belong to him.

511 The baraita continues: And if he was old or sick, so that he cannot perform the Temple service or eat from the offering, he gives it to any priest he wishes to sacrifice it, even to one not on his priestly watch, and performance of its service and its hide are given to the members of the priestly watch.

512 The Gemara clarifies: What are the circumstances of this old or sick priest? If he is in a condition that he is able to perform the Temple service, then performance of its service and its hide should be his as well, as the priest that sacrificed it was acting as his agent. And if he is in a condition that he is not able to perform the Temple service, how can he appoint an agent? The baraita stated that he may give it to any priest he wishes, indicating that he chooses which priest he will appoint as his agent.

513 Rav Pappa said: The baraita is referring to a case where he is able to do it with difficulty. With regard to the Temple service, where the halakha is that if he performs it with difficulty it is still considered performance of the Temple service, he is therefore able to appoint an agent to do it for him. With regard to eating the offering, where the halakha says that if he eats it with difficulty it is excessive eating, and excessive eating is nothing, i.e., he does not thereby fulfill the mitzva to eat the sacrificial portion, he is not able to appoint an agent to eat it for him. Due to that reason, performance of its service and its hide are given to the members of the priestly watch.

514 Rav Sheshet says: If a priest of the priestly watch was ritually impure, then with regard to a communal offering he gives it to any priest he wishes, and performance of its service and its hide are given to the members of the priestly watch. The Gemara asks: What are the circumstances where this halakha applies? If there are ritually pure priests available, then can impure ones perform the Temple service, and by extension appoint an agent to perform it in their stead? And if there are no ritually pure priests there, as all members of the priestly watch are impure, is the performance of its service and its hide given to the members of the priestly watch? Even though communal offerings are sacrificed in such a circumstance, the priests are impure and are not able to eat the offering, even though they may sacrifice it.

515 Rava said in explanation: Say that they are given to blemished but ritually pure priests who are on that priestly watch. Even though blemished priests are disqualified from performing the Temple service and therefore the offering must be sacrificed by impure priests, the blemished priests are permitted to eat the sacrifice, as they are ritually pure.

516 Rav Ashi says: If a High Priest was an acute mourner, i.e., one whose immediate relative died on that day but had yet to be buried, and he had an offering to sacrifice on his own behalf, he gives the offering to any priest that he wishes to sacrifice it, and performance of its service and its hide are given to the members of the priestly watch. The Gemara asks: What is Rav Ashi's statement teaching us? We already learned in a baraita (Tosefta, Zevaḥim 11:3): A High Priest may sacrifice an offering even when he is an acute mourner, but he does not eat it during that day while he is an acute mourner and does not receive a portion of the sacrifice to eat at night after his acute mourning is finished. It follows from this baraita that since he sacrifices it by himself he is able to appoint another priest in his stead, and since he may not eat it, it is given to the priestly watch to eat. What, then, was the novelty of Rav Ashi's statement?

517 The Gemara answers: It might enter your mind to say that when the Merciful One had compassion on the High Priest, permitting him to continue serving in the Temple even while in a state of acute mourning, it was for him to sacrifice; but with regard to appointing an agent, he is not able to appoint one. Therefore, Rav Ashi teaches us that he is able to appoint an agent, since he himself is permitted to perform the Temple service.

518 MISHNA: With regard to one who robs a convert and takes a false oath denying having done so, and then the convert dies, the robber, in order to achieve repentance, pays the principal, i.e., the stolen item or, if it is no longer extant, its monetary value, and an additional one-fifth of its value to the priests, and presents a guilt-offering to the altar, as it is stated: "But if the man has no kinsman to whom restitution may be made for the guilt, the restitution for guilt that is made shall be the Lord's, even the priest's; besides the ram of the atonement, whereby atonement shall be made for him" (Numbers 5:8).

519 The mishna continues: If the robber was bringing the money and the guilt-offering up to Jerusalem and he died before paying the priests and bringing his offering, the money shall be given to the robber's children, and the animal designated for the guilt-offering shall graze until it becomes blemished and consequently disqualified from being sacrificed. And the animal shall then be sold and the money received for it shall be allocated for communal gift offerings. If the robber gave the money to the members of the priestly watch and then died before they sacrificed his guilt-offering,

the heirs cannot remove the money from the priests' possession, as it is stated: "And every man's hallowed things shall be his; whatsoever any man gives to the priest, it shall be his" (Numbers 5:10).

[520] The mishna continues: If the robber gave the money to the priestly watch of Joiarib and then gave the guilt-offering to the priestly watch of Jedaiah, the following priestly watch, to sacrifice on his behalf, he has fulfilled his obligation. By contrast, if he first gave the guilt-offering to the priestly watch of Joiarib and then gave the money to the priestly watch of Jedaiah, if the animal designated for the guilt-offering is extant, then members of the priestly watch of Jedaiah, who received the money, should sacrifice it. But if it is no longer extant because the priestly watch of Joiarib had already sacrificed it, he should return and bring another guilt-offering; for one who brings his stolen item to the priests before he brings his guilt-offering has fulfilled his obligation, but one who brings his guilt-offering before he brings his stolen item has not fulfilled his obligation.

[521] Although he cannot sacrifice the offering before paying the principal, if he gave the principal but did not yet give the additional one-fifth payment, the lack of having given the additional one-fifth payment does not preclude sacrificing the offering.

[522] GEMARA: The Sages taught in explanation of the verse cited in the mishna: "But if the man has no kinsman…the restitution for guilt that is made shall be the Lord's, even the priest's" (Numbers 5:8): With regard to the word "guilt," this is referring to the principal, i.e., the stolen item itself or its equivalent value; "the restitution…that is made," this is referring to the additional one-fifth payment. Or perhaps this is not the proper interpretation of the verse. Rather, it should be interpreted: "Guilt," this is referring to the ram of the guilt-offering.

[523] Before continuing the baraita the Gemara interrupts to clarify: And for what purpose does the baraita distinguish between the two interpretations of guilt, as in any event, both the principal and the guilt-offering must be brought? The Gemara explains: To exclude that which Rava holds, as Rava says: With regard to the stolen item of a convert that the robber returned at night, the robber did not fulfill his obligation. And similarly, if he returned it to him in halves, he did not fulfill his obligation. What is the reason? The Merciful One labeled the stolen item with the term "guilt," teaching that just as a guilt-offering cannot be offered at night or in halves, so too, the stolen item cannot be returned at night or in halves.

[524] The baraita continues: When it says in that verse: "Besides the ram of the atonement" (Numbers 5:8), referring to the offering, you must say concerning the word "guilt" written earlier in the verse that this is referring to the principal.

[525] It is taught in another baraita: With regard to the word "guilt," this is referring to the principal; "the restitution…that is made," this is referring to the additional one-fifth payment. Or perhaps this is not the proper interpretation of the verse. Rather, it should be interpreted: "Guilt," this is referring to the additional one-fifth payment. Before continuing the baraita, the Gemara interrupts to clarify: For what purpose does the baraita distinguish between the two interpretations? The Gemara explains: To exclude that which the mishna teaches, as we learned in the mishna: If he gave him the principal but did not yet give him the additional one-fifth payment, the lack of having given the additional one-fifth payment does not preclude sacrificing the offering. If "guilt" is referring to the additional one-fifth payment, then, on the contrary, it would follow that the lack of having given the additional one-fifth payment precludes sacrificing the offering.

[526] The baraita continues: When it says in the previous verse: “And he shall make restitution for his guilt in full, and add unto it the fifth part thereof” (Numbers 5:7), you must say concerning the word “guilt” that this is referring to the principal.

[527] It is taught in another baraita: With regard to the word “guilt,” this is referring to the principal; “the restitution…that is made,” this is referring to the additional one-fifth payment, and the verse is speaking of robbery of a convert. Or perhaps this is not the proper interpretation of the verse. Rather, it should be interpreted: “The restitution…that is made,” this is referring to double payment that a thief must pay, and the verse is speaking of theft from a convert. When it says in the previous verse: “And he shall make restitution for his guilt in full, and add unto it the fifth part thereof” (Numbers 5:7), the verse is speaking of money that is paid exactly according to the principal, and not double payment.

[528] § Having quoted Rava’s statement, the Gemara returns to discuss the matter itself. Rava says: With regard to the stolen item of a convert that the robber returned at night, the robber did not fulfill his obligation. And similarly, if he returned it to him in halves, he did not fulfill his obligation. What is the reason? The Merciful One labeled the stolen item with the term “guilt,” teaching that just as a guilt-offering cannot be offered at night or in halves, so too, the stolen item cannot be returned at night or in halves.

[529] And Rava says: With regard to the stolen item of a convert that does not have the value of one peruta for each and every priest on the priestly watch, the robber did not fulfill his obligation by giving it to the priestly watch. What is the reason? As it is written: “The restitution for guilt that is made,” meaning that the robber has not fulfilled his obligation to return the stolen item until there will be halakhically significant restitution made to each and every priest, minimally one peruta. If the stolen item was of less value than can be distributed with each priest in the watch receiving at least one peruta, the robber must add to the payment so that each priest receives one peruta.

[530] Based on this halakha, Rava raises a dilemma: If the stolen item does not have the value of one peruta for each priest on the priestly watch of Joiarib, which had many priests, but it has

[531] the value of one peruta for each priest on the priestly watch of Jedaiah, which had fewer priests, what is the halakha?

[532] The Gemara asks: What are the circumstances with regard to which Rava raised his dilemma? If we say that the dilemma is raised in a case where he gave the money to the priestly watch of Jedaiah, during the time of the Temple service of the priestly watch of Jedaiah, there would be no dilemma. There is in this payment enough value for each priest to receive one peruta.

[533] The Gemara explains: No, it is necessary to raise the dilemma in a case where he gave it to the Jedaiah priestly watch during the time of the Temple service of the priestly watch of Joiarib; in that case, what is the halakha? The Gemara explains the two possibilities: Do we say that since it is not during Jedaiah’s priestly watch, it is nothing, i.e., it is not a fulfillment of the mitzva to return the stolen item? Or perhaps we say that since it was not fit for the Joiarib priestly watch, as it was of insufficient value, from the outset it stands ready for the Jedaiah priestly watch, and by giving it to them he fulfilled the mitzva? The Gemara comments: The question shall stand unresolved.

[534] Rava raises another dilemma: With regard to priests, what is the halakha concerning whether they may divide among themselves the restitution for robbery of a convert, with some priests taking a

larger share in exchange for taking a smaller share in the restitution for another robbery of a convert? In other words, can the priests arrange that one priest or several priests will receive the restitution for one robbery and another priest or several priests will receive the restitution for a different robbery another time?

[535] He explains the two possibilities: Do we say that the Merciful One labeled the stolen item with the term “guilt,” and therefore, just as with a guilt-offering the priests may not divide portions of a guilt-offering, with some priests taking a larger share in exchange for taking a smaller share in other portions of a guilt-offering, but rather all priests of the watch share in the sacrificial flesh, so too with the restitution for robbery: The priests may not divide the restitution for robbery of a convert, with some priests taking a larger share in exchange for taking a smaller share in the restitution for another robbery of a convert? Or perhaps the restitution for robbery of a convert paid to priests is not in fact an offering, but it is monetary restitution, and monetary restitution may be divided in this manner among the priests?

[536] Rava then resolves it himself: The Merciful One labeled the stolen item with the term “guilt,” so it may not be divided in this manner. Rav Aḥa, son of Rava, teaches it explicitly as a ruling, and not as a dilemma and solution, that Rava says: Priests may not divide the restitution for robbery of a convert with some priests taking a larger share in exchange for taking a smaller share in the restitution for another robbery of a convert. What is the reason? The Merciful One labeled the stolen item with the term “guilt.”

[537] § Rava raises a dilemma: What is the status of priests with regard to the restitution for robbery of a convert? Are they considered heirs of the convert or are they recipients of gifts?

[538] The Gemara asks: What is the practical difference? The Gemara answers: The difference would be in a case where one robbed a convert of leavened bread, and then Passover elapsed over it, rendering it an item from which one is prohibited to derive benefit and therefore valueless. If you say that the priests are heirs, this is what they inherit: Only that which the robber bequeaths to them, and the priests receive the valueless leavened bread as is. And if you say that they are recipients of gifts, it is a gift that the Merciful One is saying that the robber should give to them, and this robber is not giving them anything, for it is merely dust. Therefore, the robber should have to pay the priests what the value of the bread had been at the time of the robbery.

[539] Rav Zeira raises the dilemma like this: Even if you say that they are recipients of gifts, this question, i.e., whether a robber of leavened bread over which Passover then elapsed fulfills the mitzva to return the stolen item even in this devalued state, is not our dilemma, as this is certainly a fulfillment of the obligation. For this stolen item is the gift with regard to which the Merciful One states in the Torah that the robber should give it to the priests.

[540] Rav Zeira continues: Rather, when we have a dilemma whether the priests are considered as heirs or as recipients of gifts, the practical difference arises in a case where ten animals came into the priest’s possession for payment of robbery of a convert. The dilemma is: Are they obligated to separate tithe from them, or not?

[541] The Gemara explains the two possibilities: Perhaps they are heirs, in which case they will be obligated, for the Master said in a mishna (Bekhorot 56b) that if heirs acquired animals in the jointly held property of the estate, i.e., the heirs jointly owned the animals as the inheritance had yet to be divided, they are obligated to separate tithes from animals born to those animals, and the same will

apply to the priests. Or perhaps they are recipients of gifts, and we learned in a mishna (Bekhorot 55b): One who purchases an animal or one who has an animal given to him as a gift is exempt from the obligation to separate the animal tithe, and the same will apply to the priests. What is the halakha in this case?

[542] The Gemara answers: Come and hear a resolution to this dilemma from a baraita (Tosefta, Ḥalla 2:7–10): Twenty-four priestly gifts were given to Aaron and to his sons, and all of them were given with a derivation from a generalization, and a detail, and a generalization; and with a covenant of salt. The verses in the book of Numbers, chapter 18, detail the gifts of the priesthood. The first verse (18:8) is written in general terms, followed by verses listing the actual gifts (9–18), followed by a final verse written in general terms. The method of interpreting verses written in this manner is one of the thirteen hermeneutical principles. Additionally, the phrase: "Covenant of salt," is written in the final verse (18:19), and is referring to all of the gifts of the priesthood.

[543] This serves to teach that anyone who fulfills the mitzva of giving the gifts of the priesthood is considered as if he fulfills the entire Torah, which is interpreted using the principle of a generalization, and a detail, and a generalization; and as if he has brought all of the offerings, concerning which there is a covenant of salt. And anyone who violates the mitzva of giving the gifts of the priesthood is considered as if he violates the entire Torah, which is interpreted using the principle of a generalization, and a detail, and a generalization; and as if he has not brought all of the offerings, concerning which there is a covenant of salt.

[544] The baraita continues: And these are the twenty-four gifts: There are ten in the Temple, and four in Jerusalem, and ten in the boundaries of Eretz Yisrael. The ten gifts that the priests consume only in the Temple are an animal sin-offering; and a bird sin-offering; and a definite guilt-offering; and a provisional guilt-offering; and communal peace-offerings, i.e., lambs offered on Shavuot; and a log of oil that accompanies the guilt-offering of a recovered leper; and the surplus of the omer, i.e., what remains of the measure of barley brought as a communal offering on the sixteenth of Nisan; and the two loaves, i.e., the public offering of two loaves from the new wheat offered on Shavuot; and the shewbread; and the leftovers of grain-offerings, after the priests have offered the required handful.

[545] The baraita continues: And the four gifts that the priests consume anywhere in Jerusalem: The firstborn of kosher animals; and the first fruits; and the portions separated for the priests from the thanks-offering and the nazirite's ram; and hides of consecrated animals.

[546] The baraita continues: And ten gifts that the priests consume anywhere in the boundaries of Eretz Yisrael: Teruma, i.e., the portion of the produce designated for the priest; and teruma of the tithe, which the Levite separates from the tithe he receives and gives to a priest; and ḥalla, i.e., the portion of dough of the five main grains designated for the priest; and the first of the sheared wool; and the gifts of non-sacrificial, slaughtered animals, namely, the right foreleg, the cheeks, and the maw; and money given for the redemption of the firstborn son; and a sheep or goat given as redemption of the firstborn donkey; and a consecrated ancestral field the priests receive in the Jubilee Year; and a dedicated field; and payment for robbery of a convert who died without heirs.

[547] The Gemara infers from the wording of the baraita: And this baraita, in any event, labels the payment for robbery of a convert a gift. The Gemara suggests: Conclude from this baraita that the priests who receive it are considered recipients of gifts, and not heirs. The Gemara affirms: Conclude from it that this is so.

[548] § The mishna teaches: If he gave the money to the members of the priestly watch and then died before they sacrificed his guilt-offering, the heirs cannot remove the money from the priests' possession. Abaye said: Learn from this mishna that monetary restitution for the robbery atones for half of the sin, for if it does not atone at all, and atonement is not achieved until the guilt-offering is sacrificed, I would say that in the case of robbery of a convert, if the guilt-offering is not brought the priest returns the money to the robber's heirs. What is the reason I would say this? Because he did not give the money to the priests with this intention of giving the money and not achieving atonement at all, and it would be a mistaken transaction.

[549] The Gemara asks: If that is so, it would follow that a sin-offering whose owners have died, leaving no one to bring the offering, should be transferred to non-sacred status, as the robber did not separate the animal as an offering with this intention of its not being sacrificed to atone for his sin. The Sages say in response: In the case of a sin-offering whose owners have died, the Sages learned this halakha through tradition that the animal is left to die.

[550] The Gemara asks: If that is so, a guilt-offering whose owner has died should be transferred to non-sacred status, as the owner did not separate the animal as an offering with this intention of it not being sacrificed to atone for his sin. The Gemara answers: With regard to a guilt-offering, the Sages also learned this halakha through tradition: Any occurrence that, if it occurs with regard to a sin-offering the animal is placed in isolation for it to die, if it occurs with regard to a guilt-offering the animal is left to graze until it develops a blemish precluding its use as an offering, at which point it can be redeemed.

[551] The Gemara asks: If that is so, then in the case of a woman whose husband died childless [yevama], who happened before her late husband's brother who was afflicted with boils to enter levirate marriage with him, should go out free to marry without being required to perform the ritual through which the yavam frees the yevama of her levirate bonds [ḥalitza]. For she did not betroth herself to this man's deceased brother with this intention of having a levirate bond with a man afflicted with boils. The Gemara answers: There, it is clear to us

[552] that it is satisfactory for her to have any kind of marital arrangement, and even had she taken into consideration the possibility of entering a levirate bond with this yavam who is afflicted with boils she still would have accepted betrothal to her husband. This is in accordance with the statement of Reish Lakish, as Reish Lakish says that women have a saying: It is better to sit as two bodies [tan du], i.e., to be married, than to sit lonely like a widow.

[553] § The mishna teaches: If the robber gave the money to the priestly watch of Joiarib and then gave the guilt-offering to the priestly watch of Jedaiah, the following priestly watch, to sacrifice on his behalf, he has fulfilled his obligation. By contrast, if he first gave the guilt-offering to the priestly watch of Joiarib and then gave the money to the priestly watch of Jedaiah, if the guilt-offering is extant, then members of the priestly watch of Jedaiah, who received the money, should sacrifice it. The Gemara quotes a baraita that records a dispute between tanna'im concerning this case. The Sages taught (Tosefta 10:18): If the robber gave the guilt-offering to the priestly watch of Joiarib and then gave the money to the priestly watch of Jedaiah, they should return the money to be with the guilt-offering, i.e., with the priestly watch of Joiarib; this is the statement of Rabbi Yehuda. And the Rabbis say the opposite: They should return the guilt-offering to be with the money, and the priestly watch of Jedaiah will sacrifice it.

[554] The Gemara asks: What are the circumstances of this dispute? If we say that he gave the guilt-offering to the priestly watch of Joiarib during the priestly watch of Joiarib and the money to the priestly watch of Jedaiah during the priestly watch of Jedaiah, then this one acquired that which belongs to it and that one acquired that which belongs to it. Why would the court remove what was given lawfully to the priestly watch?

[555] Rava said: With what are we dealing here? We are dealing with a case where he gave the guilt-offering to the priestly watch of Joiarib during the priestly watch of Joiarib and the money to the priestly watch of Jedaiah also during the priestly watch of Joiarib, and the dispute is as follows: Rabbi Yehuda holds that since this is not the priestly watch of Jedaiah, we penalize Jedaiah; therefore, the priestly watch of Jedaiah must return the money in their possession to be with the guilt-offering held by the Joiarib watch. And the Rabbis hold that the members of the priestly watch of Joiarib acted unlawfully when they accepted the guilt-offering before the robber paid the money, since payment for the robbery must be given before the guilt-offering can be offered. Therefore, we penalize them, and the guilt-offering in their possession returns to be with the money held by the Jedaiah watch.

[556] It is taught in a baraita on this topic (Tosefta 10:18): Rabbi Yehuda HaNasi says: According to the statement of Rabbi Yehuda, that if during the Joiarib watch the robber gave the guilt-offering to the Joiarib watch and the money to the Jedaiah watch, the money should return to the priestly watch of Joiarib, if the members of the priestly watch of Joiarib went first and sacrificed the guilt-offering before receiving the money from the priestly watch of Jedaiah, then the robber should go back and bring another guilt-offering, and the members of the priestly watch of Jedaiah, who are already in possession of the money, should offer it, and those members of the priestly watch of Joiarib acquired that offering that is in their possession.

[557] The Sages say: For what purpose is that offering useful? It is a disqualified guilt-offering, since it was sacrificed before the payment for the robbery was given, and had to be entirely burned on the altar. Rava said: The baraita is referring to acquiring its hide, which the members of the priestly watch of Joiarib keep.

[558] It is taught in a baraita that Rabbi Yehuda HaNasi says: According to the statement of Rabbi Yehuda, if the guilt-offering is still extant, i.e., if the priestly watch of Joiarib did not already sacrifice it, then the priestly watch of Joiarib should return the guilt-offering to be with the money, and the priestly watch of Jedaiah will sacrifice it.

[559] The Gemara questions this: But Rabbi Yehuda holds that they should return the money to be with the guilt-offering. The Gemara explains: With what are we dealing here? With a case where it happened that the priestly watch of Joiarib exited at the close of their Temple service and they did not demand the money from the priestly watch of Jedaiah. And this statement of Rabbi Yehuda HaNasi teaches us this: That by doing so, the members of the priestly watch of Joiarib waived their rights to the money in favor of the priestly watch of Jedaiah. Consequently, they are required to give the guilt-offering to the priestly watch of Jedaiah to sacrifice.

[560] It is taught in another baraita that Rabbi Yehuda HaNasi says: According to the statement of Rabbi Yehuda, if the guilt-offering is still extant, i.e., if the priestly watch of Joiarib did not already sacrifice it, the money must return to be with the guilt-offering. The Gemara asks: Isn’t that obvious? This is what Rabbi Yehuda holds explicitly; what novelty did Rabbi Yehuda HaNasi teach?

561 The Gemara explains: With what are we dealing here? With a case where it happened that the priestly watch of these and of those, i.e., both Joiarib and Jedaiah, exited at the end of their Temple service, and they did not demand of the other the item in possession of the other watch. Lest you say that they waived their rights in favor of each other, so that the money stays in possession of the Jedaiah watch, Rabbi Yehuda HaNasi teaches us that we say: Since the Jedaiah watch did not demand the guilt-offering from the Joiarib watch after the latter exited, let them go back to the first, standard scenario, returning the money to Joiarib to be with the guilt-offering.

562 § The mishna teaches: For one who brings his stolen item to the priests before he brings his guilt-offering has fulfilled his obligation, but one who brings his guilt-offering before he brings his stolen item has not fulfilled his obligation. The Gemara asks: From where are these matters derived? Rava said: This is as the verse states: “But if the man has no kinsman to whom restitution may be made for the guilt, the restitution for guilt that is made shall be the Lord’s, even the priest’s; besides the ram of the atonement, whereby atonement shall be made for him” (Numbers 5:8). Learn by inference that the money must be returned first, before the guilt-offering is brought.

563 Having understood that the inference is that the wording “besides the ram of the atonement” indicates that the ram must be brought after the money is given, one of the Sages said to Rava: If that is so, then in a different verse, which states concerning the additional offerings sacrificed on the first day of Passover: “You shall offer these besides the burnt-offering of the morning, which is for a continual burnt-offering” (Numbers 28:23), so too should one learn by inference that the additional offerings are brought first, before the morning burnt-offering?

564 But isn’t it taught in a baraita: From where is it derived that no sacrifice shall precede the daily morning offering? The verse states: “And the fire on the altar shall be kept burning on it, it shall not be extinguished; and the priest shall kindle wood upon it every morning, and he shall prepare the burnt-offering upon it and shall cause the fats of the peace-offerings to go up in smoke upon it” (Leviticus 6:5). And Rava says: “The burnt-offering,” with the definite article, is referring to the first burnt-offering, i.e., the daily morning offering, which is first both chronologically and in terms of importance.

565 Rava said to him: I do not hold that the tanna derives this halakha from the wording of: “Besides the ram of the atonement,” but I hold that the tanna derives it from the phrase in the same verse: “Whereby atonement shall be made for him” (Numbers 5:8), which is written in the future tense, indicating that he will achieve atonement in the future by bringing the ram of atonement, but as of now, when he is giving payment for the robbery, the offering did not yet atone for his sin.

566 § The mishna teaches: If he gave the principal to him but did not yet give the additional one-fifth payment, his not giving it does not preclude sacrificing the offering. The Gemara now clarifies the source of this halakha. The Sages taught in a baraita on the topic of the guilt-offering brought by one who misuses consecrated property, which is accompanied by repayment of the value of the item and an additional fifth of its value: From where is it derived that if he brought his payment for his benefit from misuse of consecrated property but did not bring his guilt-offering, or if he brought his guilt-offering but did not bring his payment for his benefit from misuse of consecrated property, that he did not fulfill his obligation?

567 The baraita continues: The verse states: “With the ram of the guilt-offering [ha’asham], and he shall be forgiven” (Leviticus 5:16). The baraita interprets the phrase: “The ram of the guilt-offering,”

to be referring to two entities: The ram, i.e., the offering, and the payment, represented by the words “the guilt-offering”; this teaches that forgiveness and atonement are achieved only after both the ram of the guilt-offering is sacrificed and the restitution of the monetary payment is given.

568 The baraita continues: And from where is it derived that if he brought his guilt-offering before bringing his payment for his benefit from misuse of consecrated property that he did not fulfill his obligation? The verse states: “With the ram of the guilt-offering,” indicating that the guilt-offering was already brought.

569 The baraita continues: One might have thought that just as the ram and guilt-offering, i.e., payment, preclude his achieving atonement, so too, payment of the additional one-fifth of the value precludes his achieving it. Therefore, the verse states: “With the ram of the guilt-offering, and he shall be forgiven,” which teaches that the ram and guilt-offering, i.e., payment, preclude his achieving atonement with regard to consecrated property, but the payment of the additional one-fifth does not preclude his achieving it.

570 The Gemara clarifies: And let the halakha of misuse of consecrated property be learned from the halakha of common money, i.e., payment for robbery of a convert who died without heirs, and let the halakha of common money be learned from the halakha of misuse of consecrated property.

571 In what manner? The halakha of misuse of consecrated property can be learned from the halakha of common money as follows: Just as the word “guilt” that is written there, in the context of robbery of a convert, is referring to the principal, i.e., the payment itself, so too, the word “guilt” that is written here, in the context of misuse of consecrated property, is referring to the principal. And the halakha of common money can be learned from the halakha of misuse of consecrated property as follows: Just as with regard to the halakha of misuse of consecrated property the additional one-fifth payment does not preclude his achieving atonement, so too, with regard to the halakha of common money as well, the additional one-fifth payment does not preclude his achieving atonement.

## Chapter 10

1 MISHNA: In the case of one who robs another of food and feeds it to his children, or who left a stolen item to them and then died, the children are exempt from paying the victim of the robbery after their father’s death. But if the stolen item was something that serves as a legal guarantee of a loan, the heirs are obligated to pay.

2 GEMARA: Rav Ḥisda says: If one robbed another, and the owners of the stolen item have not yet despaired of retrieving it, and another person came, took it from the robber and ate it, if the owner wishes he may collect from this one, i.e., the first robber, and if he wishes he may collect from that one, i.e., the second robber. What is the reason that he may collect from whomever he chooses? It is because as long as the owners did not despair of retrieving it, it remains the possession of its owner, so that when the second robber stole it from the first, he was in fact stealing from the original owner. Nevertheless, since the first robber was already obligated to return the item, his obligation remains in force and the owner may demand payment from him if he wishes.

3 The Gemara questions this opinion based on what we learned in the mishna: In the case of one who robs another of food and feeds it to his children, or one 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. This appears to be a conclusive refutation of the opinion of Rav Ḥisda, who holds that one who steals from a thief is obligated to pay the owner. The Gemara answers: Rav Ḥisda could have said to you: When that mishna is taught, it is addressing a case where it is after the owners had already despaired of retrieving the item, whereas Rav Ḥisda was referring to a case where the owners had not yet despaired.

[4] § The mishna stated that if one left a stolen item to his children as an inheritance, the children are exempt from paying the owner. Rami bar Ḥama said: That is to say that the domain of an heir is comparable to the domain of a purchaser. Just as an item that is purchased leaves the domain of the seller, an item that is inherited leaves the domain of the deceased and is considered the property of the heir. Since the owner has despaired of retrieving the item and the item has changed domains, it is entirely the property of the new owner, and he is exempt from payment.

[5] Rava disagreed and said that the domain of an heir is not comparable to the domain of a purchaser. Consequently, the item has not undergone a complete change of ownership and the heir would be required to return it. And as for the explanation of the mishna, here we are dealing with a case where they had already consumed the stolen goods, so there is nothing to return to the owner.

[6] The Gemara questions the opinion of Rava: From the fact that the latter clause teaches: If it was something that serves as a legal guarantee, and is, therefore, an existing commodity, the heirs are obligated to pay, it may be inferred that in the first clause we are also dealing with a stolen item that is extant. This is contrary to Rava’s statement that the mishna is discussing stolen goods that have been consumed. The Gemara answers: Rava could have said to you that this is what the mishna is saying: If their father left them guaranteed property, i.e., land, they are obligated to pay from that property, even if the stolen item is not extant.

[7] The Gemara asks: But didn’t Rabbi Yehuda HaNasi teach Rabbi Shimon, his son, that this mishna is not referring only to something that may actually serve as a legal guarantee, i.e., land? Rather, it is referring even to a cow that he plows with, or a donkey that he drives by directing it from behind, which the heirs are obligated to return because of the honor of their father. This indicates that the mishna is referring to stolen property that is extant, and not to land.

[8] Rather, Rava said: When I die, Rabbi Oshaya will come toward me from his place in heaven in order to greet me, as I explain the mishna in accordance with his opinion and thereby honor him. As Rabbi Oshaya taught in a baraita: In a case of one who robs another and feeds the stolen goods to his children, the latter are exempt from paying the owner. If he left a stolen item to them as an inheritance, if the stolen item is extant, the heirs are obligated to return it to the owner; if it is not extant, they are exempt. If their father left them guaranteed property, i.e., land, they are obligated to pay the owner. Rava explains the mishna as being consistent with the baraita of Rabbi Oshaya, although this explanation is not consistent with Rabbi Yehuda HaNasi’s interpretation.

[9] The Gemara analyzes the baraita of Rabbi Oshaya. The Master said in the baraita that if the stolen item is not extant, the heirs are exempt from payment. Let us say that this baraita is a conclusive refutation of the opinion of Rav Ḥisda, who says that heirs are obligated to pay for stolen goods that they consumed. The Gemara answers: Rav Ḥisda could have said to you that when that baraita is taught, it is referring to a case where it is after the owners had already despaired of retrieving the item, whereas Rav Ḥisda was referring to a case in which the owners had not yet despaired.

[10] The Gemara continues: The Master said in the baraita that if the stolen item is extant, the heirs are obligated to pay. Let us say that this baraita is a conclusive refutation of the opinion of Rami bar Ḥama, since according to his understanding, the heirs should be exempt from payment because the stolen item is considered to have changed ownership when they inherited it. The Gemara answers: Rami bar Ḥama could have said to you that when that baraita is taught,

[11] it is referring to a case where it is before the owners have despaired of retrieving their property. Consequently, the heirs have not acquired the stolen property, and it must be returned.

[12] Rav Adda bar Ahava teaches that statement of Rami bar Ḥama cited above with regard to this baraita: If their father left them money that he obtained by taking interest, which is prohibited, even if they are aware that the money is from interest, they are not obligated to return the money to the debtor who paid it. Rami bar Ḥama said: That is to say that the domain of an heir is comparable to the domain of a purchaser, and because the money has changed domains, the heirs have acquired it.

[13] Rava said: Actually, I will say to you that the domain of an heir is not comparable to the domain of a purchaser. And the reason they do not have to return the money is because it is different here, as the verse states: “Take no interest of him or increase, but fear your God, that your brother may live with you” (Leviticus 25:36), which teaches that you must return the interest to him so that he may live with you. Since the interest is returned for this reason and not because it is considered stolen goods, it is apparent that the Merciful One is cautioning him, the lender, to return it, but the Merciful One is not cautioning his son to return it.

[14] The Gemara points out: The one who teaches Rami bar Ḥama’s statement with regard to the baraita, i.e., Rav Adda bar Ahava, all the more so would apply it to the mishna, since there is no other explanation for why the heirs are exempt from payment. Conversely, according to the one who teaches Rami bar Ḥama’s statement with regard to the mishna, it is limited to that case. But with regard to the baraita, he holds that Rami bar Ḥama teaches it as explained by Rava, that the heirs are not exempt from payment because the domain of an heir is comparable to the domain of a purchaser, but rather because heirs are never required to return interest.

[15] § The Sages taught in a baraita (Tosefta 10:21): With regard to one who robs another of food and feeds it to his children, the children are exempt from paying the owner. In a case where he left the stolen items to them as an inheritance, if the heirs are adults they are obligated to pay, and if they are minors they are exempt from paying. If the adult heirs said: We do not know what calculations our father made with you and whether he paid you for the stolen goods, they are exempt.

[16] The Gemara expresses surprise: Because they say: We do not know, they are exempt? Since it is clear that they are in possession of stolen property, how can they be exempt due to the uncertain claim that perhaps their father repaid the owner after the theft? Rava said that the heirs are certain about their claim and that the baraita should be formulated differently, and this is what the baraita is saying: In the case of adult heirs who said to the claimant: We know the calculations our father made with you and there is nothing of yours left with him, as he paid his debt to you, they are exempt.

[17] It is taught in another baraita: With regard to one who robs another of food and feeds it to his children, the children are exempt from paying. If he left stolen items to them as an inheritance and they consumed them, whether they are adults or minors, they are obligated to pay the owner. The Gemara asks: Are minors obligated to pay? Let it be only like a case where one caused damage, and a minor who causes damage is exempt. Rav Pappa said that the baraita should be formulated

differently, and this is what the baraita is saying: If he left the stolen items to them as an inheritance and they did not yet consume them, whether they are adults or minors, they are obligated to return the stolen items, since the items are still extant.

[18] Rava says: In the case of children whose father died and left them a cow that he had borrowed, they may use it for the entire duration of its loan. Nevertheless, if it died, they are not liable to pay if its death was caused by an unavoidable accident, despite the fact that a borrower is liable for damage caused by an unavoidable accident. This is because liability for accidental damage pertains only to the actual borrower, i.e., the deceased father. If the children thought that it actually belonged to their father and they slaughtered it and ate it, they are liable to pay the owner the value of inexpensive meat. Rava adds: If their father left them guaranteed property, i.e., land, they are liable to pay.

[19] The Gemara comments: Some teach this final statement of Rava with regard to the first clause, which states that the heirs are exempt from payment for accidental damage. According to this interpretation, if the father left them land, they are obligated to pay for the cow if it dies due to unavoidable accident. And some teach it with regard to the latter clause, which states that heirs who slaughter and consume a cow must pay the owner the value of inexpensive meat. According to this interpretation, if the father left them land, they must pay for the full value of the cow.

[20] The one who teaches it with regard to the first clause holds it to be true all the more so with regard to the latter clause, where the heirs actually consumed the meat themselves. And, accordingly, this understanding differs with the forthcoming opinion of Rav Pappa. By contrast, the one who teaches it with regard to the latter clause holds it to be true in that clause exclusively, but with regard to the first clause, it is not true. And this is consistent with the forthcoming opinion of Rav Pappa.

[21] As Rav Pappa says: If he had a stolen cow in his possession, and he slaughtered it on Shabbat, he is liable to pay because he was already rendered liable for the theft before he came to transgress the Shabbat prohibition of slaughtering an animal on Shabbat. But if he had a borrowed cow in his possession and he slaughtered it on Shabbat, he is exempt from payment, as the transgression of the Shabbat prohibition of slaughtering an animal on Shabbat and the prohibition against theft occur as one, as the act of slaughter is tantamount to the theft of the animal. This indicates that according to Rav Pappa, a borrower’s liability to pay for accidental damage is initiated only when the damage is inflicted. Accordingly, in the case discussed by Rava, since the damage was not inflicted during the father’s lifetime, the deceased’s property was never liened to the cow’s owner, and consequently the heirs are not obligated to pay for any accidental damage.

[22] After having cited two baraitot that express different opinions with regard to the obligation of heirs to pay for property stolen by their deceased father, the Gemara cites a third baraita that presents both opinions. The Sages taught with regard to the verse: “Then it shall be, if he has sinned, and is guilty, that he shall restore the item that he robbed” (Leviticus 5:23); what is the meaning when the verse states “that he robbed”? It means that the robber must return the same item that he robbed.

[23] From here, based on this exposition, the Sages stated: In a case of one who robs another of food and feeds it to his children, the children are exempt from paying the owner. If he left stolen goods to them as an inheritance, whether they are adults or minors, they are obligated to return the stolen goods. They said in the name of Sumakhos: If the heirs are adults they are obligated, but if they are minors they are exempt.

[24] The Gemara recounts a related incident: The son of Rabbi Yirmeya's father-in-law, i.e., his wife's brother, who was a minor, shut the doors of his father's house before Rabbi Yirmeya in order to prevent Rabbi Yirmeya from establishing legal possession of the house or a chamber that he claimed belonged to him. Rabbi Yirmeya came before Rabbi Avin to file a legal claim against his brother-in-law.

[25] Rabbi Avin said to Rabbi Yirmeya: Your brother-in-law is claiming ownership of that which is his, since he retains the presumptive ownership of his father's house upon his father's death. Rabbi Yirmeya said to him: But I can bring witnesses who can testify that I took possession of it during his father's lifetime. Rabbi Avin said to him: But does the court accept witnesses

[26] who testify in the absence of a litigant? Since the defendant is a minor his presence is not legally recognized, and the court does not accept testimony against him. Rabbi Yirmeya questioned this assertion: And is it so that the court does not accept such testimony? But isn't it taught that if a robber leaves stolen goods to his children, whether they are adults or minors, they are obligated to pay the owner? If the court obligates minors to pay, it must accept testimony about them. Rabbi Avin said to Rabbi Yirmeya: Sumakhos's dispute is at your side, i.e., Sumakhos disagrees with this ruling and holds that the minors are exempt from paying. Rabbi Yirmeya said to him: Did the whole world go to the effort to hold in accordance with the opinion of Sumakhos in order to seize what is mine?

[27] In the meantime, the matter circulated and eventually came before Rabbi Abbahu, who said: Did you not hear that which Rav Yosef bar Ḥama says that Rabbi Oshaya says? As Rav Yosef bar Ḥama says that Rabbi Oshaya says: With regard to a child who took his slaves and descended into the field of another and said: It is mine, the court does not say: Let us wait until he matures before we assess his claims. Rather, the court removes it from his possession immediately, and when he matures he may bring witnesses to attest to his claim and we will see how to judge the case. Similarly, Rabbi Yirmeya should be awarded the disputed property until his minor brother-in-law may litigate in court.

[28] The Gemara rejects Rabbi Abbahu's assertion: Is the case that Rav Yosef bar Ḥama discusses comparable to the case of Rabbi Yirmeya? It is there, in Rav Yosef bar Ḥama's case, that we seize the property from him, because there is no presumption of ownership from his father; but where he does have a presumption of ownership from his father, no, we do not seize his property. Since Rabbi Yirmeya's brother-in-law has a presumption of ownership due to the fact that the property belonged to his father, he retains control of the property.

[29] § Having mentioned the issue of testimony in the absence of a litigant, the Gemara discusses this matter in greater detail. Rav Ashi said that Rabbi Shabbtai says: The court accepts witnesses even in the absence of a litigant. Rabbi Yoḥanan wondered at this statement of Rav Ashi, and said: Does the court in fact accept witnesses in the absence of a litigant?

[30] Rabbi Yosei bar Ḥanina received the following guideline from Rabbi Yoḥanan: The court accepts testimony in the absence of the defendant only in a case where the plaintiff was ill, or his witnesses were ill, or his witnesses wished to travel overseas and the judges sent for the defendant and he did not come. Since there is a concern that the plaintiff will not be able to present his claims at a later date, the testimony is accepted even in the absence of the defendant.

[31] Rav Yehuda says that Shmuel says: The court accepts witnesses in the absence of a litigant. Mar Ukva said: This statement was explained to me personally by Shmuel himself, and he said that it

applies in a case where the court opened his case and sent for him, but he did not appear. But if it did not yet open the case for him, he may say to the plaintiff: I am going to the High Court to resolve this case and will not appear in the local court.

[32] The Gemara asks: If so, then even when the court already opened the case for him, he should also be able to say to them: I am going to the High Court to resolve this case. The Gemara answers that Ravina said: The defendant may not defer an opened case to the High Court if, for example, the local court obtained a license from the High Court authorizing it to adjudicate the case.

[33] § Having discussed testimony in the absence of a litigant, the Gemara addresses a similar matter. Rav says: The court ratifies a document in the absence of a litigant. And Rabbi Yoḥanan says: The court does not ratify a document in the absence of a litigant. Rav Sheshet said to Rabbi Yosei bar Abbahu: I will explain Rabbi Yoḥanan's reasoning to you. The verse states with regard to an ox that gored: "And warning has been given to its owner and he has not secured it" (Exodus 21:29). The Torah means to say: Let the owner of the ox come and stand by his ox when the testimony about the ox is provided. Similarly, a document may be ratified only in the presence of the individual it implicates.

[34] Rava said: The halakha is that the court ratifies a document in the absence of a litigant, and this is the case even if the other litigant stands and screams in protest that the document is a forgery. And if he said: Give me time until I bring witnesses and disqualify the document, we give him time before forcing him to pay. If he has come with witnesses within the time allotted to him, he has come, and the court reviews the case accordingly. If he does not come within the time allotted to him, we give him an additional three days on which to bring witnesses, when the court is in session: Monday, Thursday, and Monday.

[35] If he still has not come, we write a document of ostracism against him for ninety days. During the first thirty days we do not descend to his property to collect his debt, as the court says: Perhaps he is occupied with borrowing money to pay his debt. During the middle period of thirty days as well, we do not descend to his property, as the court says: Perhaps he did not find someone to borrow from and he is now occupied with selling his property in order to pay his debt. During the final thirty days as well, we do not descend to his property, as the court says: Perhaps the debtor has found a purchaser and the purchaser himself is occupied with obtaining the money so that he can pay the debtor for the sale, and the debtor will then pay his debt.

[36] If the debtor still did not come to pay his debt after ninety days, we write a document of authorization [adrakhta] allowing the creditor to collect his due from any property belonging to the debtor. And this statement applies only in a case where the debtor said: I am coming to pay and then he does not actually make an appearance. But if he said: I am not coming, we immediately write a document of authorization without waiting for ninety days to pass.

[37] Furthermore, this matter of a ninety-day waiting period applies only with regard to a loan, as the debtor requires time in order to obtain the money to pay it back. But with regard to a deposit that the owner demands back from a bailee, we write a document of authorization immediately. Since a bailee should have immediate access to the deposit, there is no reason to grant him an extension.

[38] The Gemara adds: When we write a document of authorization, the document applies only to the borrower's land, but with regard to movable property, the court does not draft such a document. The reason for this is that perhaps the creditor will seize and consume the borrower's movable property,

and when the borrower later comes and brings witnesses and thereby invalidates the creditor’s document, he will not find anything to collect in order to retrieve his money.

[39] And if the creditor owns land, we write a document authorizing the creditor to collect from any property that belongs to the borrower, including movable property. Since the creditor owns land, there is no concern that if the borrower manages to overturn the ruling he will have nothing from which to collect. The Gemara comments: And that is not so. The court does not draft a document of authorization with regard to movable property even if the creditor has land. This is because we are concerned lest the creditor’s land depreciate in value and the borrower will be unable to retrieve his money.

[40] The Gemara teaches another halakha with regard to this matter: When we write the document of authorization, we inform the party that is liable to pay, as a final warning before authorizing a creditor to locate and take possession of his property in repayment of the debt. And this matter applies only when he is nearby, but if he is distant, the court does not notify him before authorizing the creditor.

[41] And if he is distant but there are relatives of his nearby, or if there are caravans that go to the borrower’s current location and return, we delay issuing his document of authorization for the twelve months of the year, until the caravan goes and returns, so that if he wishes to make a claim, he can do so. This is like that incident where Ravina delayed for the twelve months of the year before issuing a document of authorization for Mar Aḥa, until a caravan went to and returned from Bei Ḥozai.

[42] The Gemara comments: And that is not so. There, Ravina delayed issuing the document because the creditor was a violent man, and if a document of authorization would come into his possession, it would not be possible to take it from him if the borrower would prove that the original document was invalid. But here, i.e., in general, we wait for the defendant to be informed only if he is close enough to be informed within a day. Consequently, if the court decided the issue on Monday, a messenger would go inform the defendant on Tuesday, and he could come from his location to the court on Wednesday and stand trial on Thursday. If a debtor is more than a day’s travel away, however, the court does not trouble itself to notify him.

[43] § Apropos the Gemara’s discussion of summoning an individual to court by means of a messenger, the Gemara discusses this issue in a more general manner. Ravina said: We deem the agent of the Rabbis, who was sent to summon an individual to court, as credible as two witnesses if he says that the defendant refuses to come to court. And this matter applies only with regard to excommunication, but with regard to issuing a document of ostracism, since it causes the defendant loss of money, as he must give money to the scribe for drafting the document, no, the agent is not deemed credible.

[44] Additionally, Ravina said: We may give a defendant a particular time to appear in court by informing him of the trial by word of mouth from a woman or from his neighbors, as these people are trusted to notify the defendant of the court’s summons. The Gemara comments: And we said this only when the defendant is not in the city.

[45] But if the defendant is in the city, the court does not ostracize him for failing to respond to a summons conveyed through a woman or a neighbor, as we say: Perhaps they did not tell him of the court’s summons, as they said to themselves: Since the defendant is in the city, a court agent has

already found him and told him. As a result, these unofficial messengers will not deliver the court's summons to the defendant at all.

[46] And similarly, we said that the court will ostracize one who does not respond to a summons conveyed through a woman or a neighbor only in a case where he does not pass by the court's entrance on his way home, but if he does pass by the court's entrance, the court does not ostracize him. This is because it is possible that the unofficial messengers will say to themselves: Since he passes by the courthouse, the court has already found him and told him.

[47] And furthermore, we said that the court will ostracize one who does not respond to a summons only in a case where he comes home on the same day that the woman or neighbor is sent to deliver the court summons. But if he does not come home on the same day, he is not ostracized, because it is possible to say that they forgot to notify him.

[48] Rava said: With regard to one who had a document of ostracism written about him due to the fact that he did not come to court, we do not tear up the document for him until he actually comes to court, and it is not enough for him to simply commit to appearing. Similarly, if the document of ostracism was written due to the fact that he did not obey the ruling of the court, we do not tear it up for him until he actually obeys the ruling. The Gemara comments: This second statement is not so. Rather, once he has acquiesced and said: I will obey, we immediately tear up the document for him.

[49] Rav Ḥisda said: The court sets a date for an individual to appear in court on the upcoming Monday. And if he does not appear, they set a date for that Thursday, and if he does not appear, they set a date for the following Monday, so that he has a second date and then a third date after the first date. And if he does not appear in court by the third date, then on the next day we write a document of ostracism.

[50] The Gemara relates that Rav Asi happened to come to the house of Rav Kahana. He saw that there was a certain woman whom Rav Kahana had summoned to appear in court in the evening, but she did not appear, and in the morning Rav Kahana wrote a document of ostracism concerning her. Rav Asi said to him: Does the Master not hold in accordance with that which Rav Ḥisda says, that the court sets a date for the coming Monday, and then Thursday, and then the following Monday before it issues a document of ostracism?

[51] Rav Kahana said to him: That matter applies only with regard to a man, as he is a victim of circumstance and is not always in the city due to his vocational activities. But in the case of a woman, since she is always in the city, when she does not come to court the first time she is immediately considered rebellious, and the court may issue a document of ostracism right away.

[52] Continuing the discussion of court dates, Rav Yehuda says: The court does not set a date for legal proceedings during the days of Nisan, nor during the days of Tishrei, and also not on the eve of a Festival nor the eve of Shabbat because these are busy times. But during Nisan we may set a court date to take place after Nisan, and likewise, during Tishrei we may set a court date to take place after Tishrei. By contrast, on the eve of Shabbat we do not set a court date to take place after the eve of Shabbat. What is the reason for this? It is because one is preoccupied with his work in preparation for Shabbat and it is possible that he will forget about the court summons.

[53] Rav Naḥman says: We do not set a court date for participants in the kalla, the gatherings for Torah study during Elul and Adar, during the months of the kalla, nor for participants in the public

discourses prior to the Festival during the period leading up to the Festival. The Gemara relates: When people would come before Rav Naḥman during the kalla period in order to make legal claims against others, he would say to them: Did I gather you here for your own needs? No, I gathered you to participate in Torah study. The Gemara adds: But now that there are scoundrels, who do not come to study Torah but rather to avoid trial, we are concerned that they will continue to evade prosecution, and therefore we summon them to court even during these time periods.

[54] § The mishna teaches, with regard to one who left a stolen item to his children, if the item was something that may serve as a legal guarantee of a loan, the heirs are obligated to pay the owner. The Gemara states that Rabbi Yehuda HaNasi would teach this mishna to Rabbi Shimon, his son, and explain that it does not refer only to something that can actually serve as a guarantee for a loan, i.e., land. Rather, it refers even to a cow that he plows with, or a donkey that he drives by directing it from behind, which the heirs are obligated to return because of the honor of their father, so that people will not continually point out that the inheritance was stolen and thereby disgrace their deceased parent.

[55] Rav Kahana raises a dilemma before Rav: If the robber left his heirs a stolen item that is used in relative privacy, such as a bed that he lies on or a table upon which he eats, rather than something as conspicuous as a large animal, what is the halakha? Are the heirs obligated to return it to its owner? Rav said to him: “Give to a wise man, and he will be yet wiser” (Proverbs 9:9), meaning that from the fact that the heirs must return a cow and a donkey, one can infer that they must also return a bed and a table.

[56] MISHNA: One may not exchange larger coins for smaller ones from the trunk of customs collectors nor from the purse of tax collectors, and one may not take charity from them, as they are assumed to have obtained their funds illegally. But one may take money from the collector’s house or from money he has with him in the market that he did not take from his collection trunk or purse.

[57] GEMARA: It was taught in a baraita with regard to the prohibition against exchanging money from the trunk of a customs collector: But one may give the customs collector a dinar as payment for a debt that amounts to less than a dinar, and when the collector gives him change, he may accept it.

[58] It was taught in the mishna that one may not exchange money from the trunks of customs collectors, which are assumed to include stolen funds. The Gemara questions this ruling: But doesn’t Shmuel say that the law of the kingdom is the law, i.e., halakha requires Jews to obey the laws of the state in which they live. Accordingly, the customs are collected legally and it should be permitted to make use of the funds.

[59] The Gemara answers: Rabbi Ḥanina bar Kahana said that Shmuel says: The mishna is discussing a customs collector who does not have a limitation placed by the governor on the amount he may collect, and he collects as he pleases. Alternatively, the Sages of the school of Rabbi Yannai said: The mishna is discussing a customs collector who stands on his own, i.e., he was not appointed by the government but, on his own, he forces people to give him money.

[60] The Gemara notes: There are those who teach the statements of Rabbi Ḥanina bar Kahana and the Sages of the school of Rabbi Yannai with regard to this following mishna (Kilayim 9:2) and its attendant discussion. The customs collectors would not levy a duty for the garments one was wearing. In light of this, the mishna teaches: A person may not wear a garment made of diverse kinds, i.e., a combination of wool and linen, even if he wears it on top of ten garments, in order to

avoid paying customs. It was noted that this mishna is not in accordance with the opinion of Rabbi Akiva, as it is taught in a baraita: It is prohibited to avoid paying customs by wearing a garment of diverse kinds. Rabbi Shimon says in the name of Rabbi Akiva: It is permitted to avoid paying customs in this manner.

[61] The Gemara comments: Granted, with regard to the prohibition of diverse kinds, they disagree about this: One Sage, i.e., Rabbi Akiva, holds that an unintentional act is permitted. In this case, the prohibition is to benefit from wearing the garment, and that is not his intent, as his intention is merely to avoid paying the customs duties. Therefore, it is permitted. And one Sage, i.e., the first tanna in the baraita, holds that an unintentional act is prohibited. But is it ever permitted to avoid customs? Doesn't Shmuel say: The law of the kingdom is the law?

[62] In answer to this question, Rabbi Ḥanina bar Kahana said that Shmuel says: The dispute in the baraita is with regard to a customs collector who does not have a limitation placed on the amount he may collect. Alternatively, Sages of the school of Rabbi Yannai said: The dispute is with regard to a customs collector who stands on his own, i.e., who is self-appointed.

[63] The Gemara notes: And there are those who teach the statements of Rabbi Ḥanina bar Kahana and the Sages of the school of Rabbi Yannai with regard to this mishna (Nedarim 27b): One may vow before murderers, plunderers, and customs collectors in order to reinforce the claim that a certain item that is being commandeered is teruma, or that it belongs to the king's house, and thereby avoid its seizure, despite the fact that it is not teruma or that it does not belong to the king's house. It was asked: Can it be that it is permitted to pronounce such a vow before customs collectors? But doesn't Shmuel say: The law of the kingdom is the law? It should therefore be prohibited to state such a vow before the customs collectors.

[64] Rabbi Ḥanina bar Kahana said that Shmuel says: The mishna in Nedarim issues its ruling with regard to a customs collector who does not have a limitation placed on the amount he may collect. Alternatively, the Sages of the school of Rabbi Yannai say: The mishna issues its ruling with regard to a customs collector who stands on his own.

[65] Rav Ashi said: The mishna issues its ruling with regard to a gentile customs collector, whom one may deceive, as it is taught in a baraita: In the case of a Jew and a gentile who approach the court for judgment in a legal dispute, if you can vindicate the Jew under Jewish law, vindicate him, and say to the gentile: This is our law. If he can be vindicated under gentile law, vindicate him, and say to the gentile: This is your law. And if it is not possible to vindicate him under either system of law, one approaches the case circuitously, seeking a justification to vindicate the Jew. This is the statement of Rabbi Yishmael. Rabbi Akiva disagrees and says: One does not approach the case circuitously in order to vindicate the Jew due to the sanctification of God's name, as God's name will be desecrated if the Jewish judge employs dishonest means.

[66] The Gemara infers from this baraita: And even according to Rabbi Akiva, the reason that the court does not employ trickery in order to vindicate the Jew is only because there is the consideration of the sanctification of God's name. Consequently, if there is no consideration of the sanctification of God's name, the court does approach the case circuitously. Apparently, it is permitted to deceive a gentile.

[67] The Gemara challenges this assertion: But is robbery from a gentile permitted? Isn't it taught in a baraita: Rabbi Shimon said that Rabbi Akiva taught this matter when he came from Zephirin: From

where is it derived that it is prohibited to rob a gentile? It is from the fact that the verse states with regard to a Jew who has been sold as a slave to a gentile: “After he is sold he may be redeemed” (Leviticus 25:48),

[68] indicating that one should not take a Hebrew slave by force and thereby allow him to leave the gentile’s jurisdiction. Rather, the Jew must be freed by legal means. One might have thought that it is permitted to deceive him in order to free the Jew. Therefore, the verse states: “And he shall reckon with him that bought him” (Leviticus 25:50), in order to teach that one must be precise in the financial dealings with the purchaser of a Hebrew slave, and one must pay him the appropriate sum without employing any form of deception. This indicates that it is prohibited to steal from a gentile.

[69] The Gemara answers that Rav Yosef said: It is not difficult, as this ruling that permits the court to deceive a gentile is issued with regard to a regular gentile, whereas that verse, which teaches that it is prohibited to deceive a gentile, is stated with regard to a gentile who resides in Eretz Yisrael and observes the seven Noahide mitzvot [ger toshav].

[70] Abaye said to Rav Yosef: How is it possible to differentiate between a gentile and a ger toshav? Aren’t both of them written next to each other, indicating that the same halakha pertains to both? As it is taught in a baraita: One who violates the prohibitions of the Sabbatical Year will be punished by having to resort to selling himself as a slave. And he will sell himself not to you, but to a stranger, as it is stated: “And sell himself unto the stranger” (Leviticus 25:47), and not to a stranger who is a convert, but to a ger toshav, as it is stated: “And sell himself unto the stranger who is a settler [ger toshav] with you” (Leviticus 25:47).

[71] The verse continues and states: “Or to the offshoot of a stranger’s family.” When it says “a stranger’s family,” this is referring to the gentile family members of a ger toshav, who are idolaters. When it says “or to the offshoot,” this is referring to a Jew who is sold to idol worship, i.e., to work in a temple dedicated to idolatry. Since it is subsequently stated: “He shall reckon with him that bought him” (Leviticus 25:50), it is apparent that this reckoning applies equally to each of the above, including the gentile. This contradicts Rav Yosef’s answer.

[72] Rather, Rava said: It is not difficult because here, in the case of the slave, the halakha is stated with regard to an actual act of robbery committed against a gentile, but there, in the case of the baraita, where it would be permitted to employ deception if not for the desecration of God’s name, the halakha is stated with regard to abrogating his loan. Abrogating a loan owed to a gentile is permitted because it does not entail actually taking money.

[73] Abaye said to Rava: The release of a Hebrew slave from his gentile master is akin to the abrogation of his loan. The purchase price paid by the master is considered as a loan that the slave pays back over the years of his servitude until he goes free at the Jubilee. Consequently, deceptively bringing about his early release is akin to abrogating a loan, yet Rabbi Akiva derives from the verse that it is prohibited to do so. The Gemara answers that Rava conforms to his standard line of reasoning, as Rava says: The body of a Hebrew slave is owned by his master, and retaking him from the gentile by deceptive means would therefore constitute actual robbery.

[74] The Gemara cites another statement related to stealing from a gentile. Rav Beivai bar Giddel says that Rabbi Shimon Ḥasida says: It is prohibited to rob a gentile, but it is permitted to retain his lost item, i.e., one is not required to return it to him. The Gemara examines the basis for each of these rulings: It is prohibited to rob a gentile, as Rav Huna says: From where is it derived that it is

prohibited to rob a gentile? It is derived from a verse, as it is stated: “And you shall consume all the peoples that the Lord your God shall deliver unto you” (Deuteronomy 7:16), indicating that it is permitted to consume the other nations’ property only when they are delivered into your hand, i.e., in times of war, but not when they are not delivered into your hand.

75 It is permitted to retain his lost item, as Rav Ḥama bar Gurya says that Rav says: From where is it derived that it is permitted to retain the lost item of a gentile? It is derived from a verse, as it is stated with regard to the mitzva of returning a lost item: “With every lost thing of your brother’s” (Deuteronomy 22:3), indicating that it is only to your brother that you return a lost item, but you do not return a lost item to a gentile.

76 The Gemara questions this derivation: But say that this applies only where the item has not yet come into the Jew’s hand, as he is not obligated to pursue it in an effort to find the lost item and return it. But in a case where the item had already come into his hand, say that he must return it to the gentile. The Gemara answers that Ravina said: It is understood from the verse itself, as it states: “And so shall you do with every lost thing of your brother’s, which he has lost, and you have found” (Deuteronomy 22:3), which indicates that the verse refers even to an item that has already come into one’s hand. It is taught in a baraita that Rabbi Pineḥas ben Ya’ir says: In a case where there is a concern that retention of an article lost by a gentile will result in the desecration of God’s name, it is prohibited even to retain a gentile’s lost item.

77 The Gemara adds: Shmuel says that it is permitted to financially benefit from a business error of a gentile, i.e., it need not be returned. The Gemara notes that this is like that incident where Shmuel purchased a golden bowl [lakna] from a gentile in exchange [bemar] for the price of an iron bowl, which was four dinars, and Shmuel included one additional dinar in the payment so that the gentile would not realize his mistake.

78 The Gemara relates another incident: Rav Kahana purchased one hundred and twenty barrels from a gentile for the price of one hundred barrels, and he included one additional dinar in the payment. Rav Kahana said to him: Take note that I am relying upon you to check that the transaction has been carried out properly. The Gemara records a third episode: Ravina and a gentile purchased a palm tree together in order to chop it up and split the wood between them. Ravina said to his attendant: Hurry and precede the gentile so that you can bring my share of the wood from the trunk of the tree, which is thicker than the upper part of the tree, as the gentile knows only the number of logs that he is due to receive and will not realize that you are taking thicker pieces.

79 The Gemara relates a final anecdote: Rav Ashi was traveling on the road and he saw a branch of a grapevine in an orchard, and there were clusters of grapes hanging on it. He said to his attendant: Go see to whom these clusters belong. If they are owned by a gentile, bring some to me, but if they are owned by a Jew, do not bring me any. A certain gentile who was sitting in the orchard overheard Rav Ashi’s instructions. The gentile said to him: Is it permitted to steal the property of a gentile? Rav Ashi said to him: A gentile takes money for his grapes, and I intended to pay for them, but a Jew does not take money for his grapes and I did not want to take them without paying for them.

80 § The Gemara relates to the matter of civil law itself. Shmuel says: The law of the kingdom is the law, and the halakhic principle is that Jews must obey the laws of the state in which they reside. Rava said: Know that this principle is true from the fact that the municipal authorities cut down palm trees without the consent of their owners and construct bridges from them, and yet we cross over them.

Evidently, the wood is not considered stolen property, which one is prohibited from using, because the law of the kingdom is the law.

[81] Abaye said to Rava: Perhaps the reason the bridges may be used is because their owners despaired of retrieving them and not because the law of the kingdom is the law. Rava said to Abaye: If not for the fact that the law of the kingdom is the law, how would the despair of the owners of the trees allow us to use the bridges? The fact that the owners have despaired of retrieving their wood does not effect a transfer of property, and it therefore still belongs to them.

[82] The Gemara questions Rava's understanding: But the municipal authorities do not act as the king said. The king said: Go and cut down a bit of wood from all the valleys in the area so that each individual loses only a small amount of wood. They, however, disobey the king and go and cut down all the wood needed for the bridge from one valley. Therefore, even if the law of the kingdom is the law, this cannot be the reason that the halakha permits Jews to cross over such bridges, as the authorities are not enforcing the law of the kingdom, but rather their own unlawful inclinations.

[83] The Gemara answers: An agent of a king is like the king himself, and he is not expected to trouble himself to collect wood proportionally from each valley. They, the owners of the land where the wood is cut, cause themselves a loss, as they should collect compensation from all the other residents of the valleys and take money from them for this purpose. Since the land owners whose wood was used have permission to collect compensation from all the residents in the area, the authorities are acting within their rights by confiscating wood from a single location.

[84] Similarly, Rava says: When the king's agents come to collect the king's share of the grain from a field owned by several partners, the one who is found in the granary must pay the king's share for the entire property, as the agents are not expected to locate and exact payment from each individual proprietor separately. The partner who paid may later claim reimbursement from the other owners for covering their share of the tax. And this statement applies only to partners who share ownership of the field. But a sharecropper collects his portion from the crop but does not own a share of the land. Consequently, the tax may not be collected from his produce, and doing so would constitute robbery.

[85] And Rava also says: Property that belongs to a town dweller may be taken as security for the tax owed by another town dweller. And this statement applies only to the property tax and head tax of that year, but with regard to taxes from the previous year, since the king has already been appeased, the ability to take property belonging to someone else has passed. The tax collector has already paid the entire amount he must pay the king for the previous year, and everything else he collects is his own profit. Although he has the right to collect this extra amount, he may not take property for one person as security for the taxes of someone else.

[86] And Rava says: With regard to those gentiles who construct pens for their animals inside the city limits and charge a fee to bring their animals through the fields around the city to fertilize the fields, it is prohibited to purchase animals from them. What is the reason? It is because the livestock of the Jewish residents of the town become intermingled with their livestock, and it is possible that the animal one would buy is actually stolen property.

[87] Rava adds: If the pens were outside the city limits, it is permitted to purchase livestock from them, as it is unlikely that a Jew's livestock became intermingled with the seller's livestock. Ravina said: If the owners of the livestock were pursuing the animals, then even if the pens were outside the city limits, it is prohibited to purchase livestock from the owners of the pens.

[88] § Apropos the discussion of legal dealings between Jews and gentiles, the Gemara relates: Rava declared, and some say that it was Rav Huna who declared: All who ascend upward to Eretz Yisrael and all who descend downward to Babylonia agree that in the case of a Jew who knows of evidence concerning the legal claim of a gentile, and the gentile did not demand from him that he testify, and the Jew nevertheless went and testified for him in a gentile court, against his fellow Jew, we excommunicate him. What is the reason that we excommunicate him? It is because they, the gentile courts, expropriate money

[89] based on the word of one witness, which is insufficient evidence according to Jewish law. And we said that this is so only when one individual testifies alone against his fellow Jew, but when two witnesses testify against a Jew, we do not excommunicate them, as their testimony is sufficient evidence according to Jewish law as well, and they have not caused the defendant any unjustified financial loss even according to halakha. And in a case of a single witness also, we said that we excommunicate him only if he testified in a court of villagers [demagista], but if he testified in the official government courthouse [bei davar], he is not excommunicated. This is because they also prescribe an oath to the defendant based on the testimony of a single witness, but they do not expropriate money, in accordance with Jewish law.

[90] The Gemara relates that Rav Ashi said: When I was in the academy of Rav Huna, the following dilemma was raised before us: What is the halakha with regard to an important person, whose testimony is relied upon by the gentile courts as if it were the testimony of two witnesses? Since the gentile court will expropriate money based on his word, should the halakha be that he should not testify? Or perhaps, since he is an important person, he cannot escape the authorities who demand his testimony, and he may therefore testify. The Gemara concludes: The dilemma shall stand unresolved.

[91] § The Gemara cites another situation where a Jew is excommunicated for causing harm to another Jew. Rav Ashi said: In the case of a Jewish man who sells a gentile a plot of land that is on the border of the property of his fellow Jew, we excommunicate him. What is the reason? If we say it is because he has ignored the right of one whose field borders the field of his neighbor to be the first one offered the purchase of the field, but doesn’t the Master say: With regard to one who purchases land from a gentile, and one who sells land to a gentile, there is no right of one whose field borders the field of his neighbor to be the first one offered the purchase of the field?

[92] Rather, it is because we say to him on behalf of the owner of the adjacent field: You have placed a lion, i.e., a dangerous individual, on my border, as the gentile might now cause me harm. Consequently, we excommunicate him until he accepts upon himself responsibility for all harm that comes upon the neighbor due to the gentile’s activities.

[93] MISHNA: If customs collectors took one’s donkey and gave him a different donkey that was taken from another Jew in its stead, or if bandits took his garment and gave him a different garment that was taken from a Jew in its stead, these items are now his because the owners despaired of retrieving them when they were stolen, and they may therefore be acquired by another. In a case of one who salvages items from a river, or from a troop [hagayis] of soldiers, or from bandits, if the owners of the items despaired of retrieving them, they are his, i.e., they belong to the one who salvaged them. And so too, with regard to a swarm of bees, if the owners despaired of retrieving the bees, they are his, i.e., they belong to the one who found them.

94 Rabbi Yoḥanan ben Beroka said: A woman or a minor, whose testimony is not generally accepted by the court, is deemed credible to say: It was from here that this swarm emerged, and it therefore belongs to a certain individual. And one may walk into another's field in order to salvage his own swarm of bees that has relocated there, and if he damaged some property in the process, he must pay for what he has damaged. But if the bees settled on a branch of a tree, he may not cut off the other's branch in order to take the bees, even on the condition that he will later give him the money for it. Rabbi Yishmael, son of Rabbi Yoḥanan ben Beroka, says: He may even cut off the branch and later give him the money for it as compensation.

95 GEMARA: The mishna teaches that one who is given an item by a customs collector or a bandit may keep the item. It was taught in a baraita: If he took a donkey from the customs collector, he must return it to the original owners. The Gemara explains: The tanna of this baraita holds that despair alone does not effect legal acquisition. Consequently, the customs collector did not acquire the donkey, and it initially came into the possession of the individual to whom the customs collector gave it illegally, and he is therefore required to return it to the original owner.

96 And there are those who say that the baraita means that if he wants to act beyond the letter of the law and comes to return it voluntarily, he should return it to the original owners, but he is not required to return it. What is the reason that he is not required to return it? It is because despair alone effects legal acquisition and the donkey was, therefore, acquired by the Jew when the customs collector gave it to him. Nevertheless, if he said: I do not want to accept money that is not mine, he returns it to the original owners.

97 § The mishna teaches that if customs collectors or bandits replaced one's item with one taken from another Jew, these items are now his because the owners despaired of retrieving them when they were stolen. In this regard, Rav Ashi says: They taught that the owners certainly despaired of recovering their property only when it was stolen by a gentile bandit, but if it was taken by a Jewish bandit, no, the owner did not necessarily despair of recovering it. This is because the victim of the theft might reason: Tomorrow, I will take him to court and force him to return what he stole.

98 Rav Yosef objects to this: On the contrary, the opposite is more reasonable: When dealing with gentiles, who judge a case and impose their verdicts with force, he does not despair because he realizes that the gentile court will enforce the law. By contrast, when dealing with a Jew, since Jewish courts merely pronounce a verbal decision but do not have the authority to enforce it, the victim despairs of recovering his property.

99 Rather, if Rav Ashi's distinction was stated, it was stated with regard to the latter clause of the mishna, which states: In the case of one who salvages an item from gentiles or from bandits, if the owners despaired of retrieving it, the one who finds it may keep it. The Gemara infers: If it is known that the owners despaired of retrieving it, yes, the finder may keep the item; but in an unspecified situation, where it is not known whether the owners despaired, the finder may not keep the item.

100 Concerning this, Rav Ashi said: They taught this only when the item was stolen by a gentile bandit, because the gentile court judges a case and imposes its verdict with force, and therefore it cannot be assumed that the owners despair. But if the robbery was committed by a Jewish bandit, since Jewish courts merely pronounce a verbal decision but do not have the authority to enforce it, the victim despairs of recovering his property.

[101] § Apropos the discussion with regard to an owner’s despair of retrieving a lost or stolen item, the Gemara notes that we learned in a mishna there (Kelim 26:8): With regard to hides that are tanned by the owner himself, thought renders them susceptible to ritual impurity. Hides and leather are susceptible to contracting impurity only if they are in a finished state. If a private individual uses a piece of hide or leather for a certain purpose, e.g., as a cot or a table top, and decides that this will be its fixed purpose, it is considered a finished product and is susceptible to contracting impurity.

[102] But with regard to hides belonging to a leatherworker, thought does not render them susceptible to ritual impurity. Since this individual sells leather to others, when he uses a piece of leather for a household purpose and decides that this will be its fixed purpose, it is not considered a finished state, as he is likely to change his mind and sell the leather to one who will process it further and put it to a different use.

[103] The mishna continues: If they are those of a robber, his thought does not render them susceptible to ritual impurity, because he is not considered the owner of the hide. If the hides are those of a thief, who has stolen them from another, the thief’s thought renders them susceptible to ritual impurity. The difference is that unlike the case of a thief, who steals items stealthily, the identity of a robber, who takes the item openly, is known to the owner, and he harbors hope of finding him and getting the item back. Consequently, he does not despair of recovering his property.

[104] Rabbi Shimon says that the matters are reversed: In the case of a robber, the robber’s thought renders them susceptible to ritual impurity. If the hides are those of a thief, thought does not render them susceptible to ritual impurity, because the owners have not despaired of recovering them and the thief has not acquired the hide. Rabbi Shimon’s reasoning is that a robber, who seizes items brazenly, is a more difficult criminal to apprehend and bring to justice than a thief.

[105] The Gemara analyzes the scope of the dispute between Rabbi Shimon and the first tanna. Ulla says: The dispute is only with regard to an unspecified case, where it is unknown whether or not the owners despaired, but where it is known that the owners despaired, all agree that their despair effects legal acquisition. By contrast, Rabba says: Even in cases where it is known that the owners despaired, there is also a dispute, because although the owner may have expressed despair verbally, he may still hope to retrieve the item.

[106] Abaye said to Rabba: Do not disagree with Ulla, as the formulation of the halakha that we learned in the mishna is in accordance with his opinion. The mishna states that according to Rabbi Shimon, thought does not render the hides of a thief susceptible to ritual impurity because the owners did not despair of retrieving them, and therefore the hides do not belong to the thief. This indicates that the reason the thought of the thief does not render the hides susceptible to ritual impurity is that the owners did not despair of retrieving them. But if the owners had despaired of retrieving them, then these items would be his, and his thoughts would render the hides susceptible to ritual impurity.

[107] Rabba said to him: We learned the mishna as saying: A thief cannot render the hides susceptible to ritual impurity because there is no true despair for owners of stolen goods, even if they state they have despaired.

[108] We learned in the mishna here that if customs collectors took one’s donkey and replaced it with a donkey taken from another Jew, or if bandits took his garment and replaced it with a garment taken from another Jew, he may keep these items because the owners despaired of retrieving them when they were stolen. The Gemara asks: Whose opinion is expressed in this mishna?

[109] If it is in accordance with the Rabbis, who hold that the owner despairs only in the case of a thief who steals secretly, it is difficult, because the mishna indicates that the victim of a robber also despairs of retrieving his property, as in the case of a customs collector. And if it is in accordance with Rabbi Shimon, who holds that the owner despairs only in the case of a robber, it is difficult, because the mishna indicates that the victim of a thief also despairs of retrieving his property, as in the case of bandits.

[110] Granted, according to Ulla, who says that all agree that if it is known that the owners despaired, the individual in possession of the items acquires them, here too it is possible to explain that the mishna is discussing a case where it is known that the owners despaired, and all agree that the recipient of the stolen property may keep it.

[111] But according to Rabba, who says that even in cases where it is known that the owners despaired, there is also a dispute, in accordance with whose opinion is this mishna written? It is not in accordance with the opinion of the Rabbis, and it is not in accordance with the opinion of Rabbi Shimon. The Gemara answers that the mishna is discussing a case of an armed bandit, who is similar to a robber in that he steals using force and aggression. And it is in accordance with the opinion of Rabbi Shimon, who holds that the victim of a robber despairs of recovering his property.

[112] The Gemara asks: If so, this is identical to the case of a robber, i.e., the customs collector, and there is no reason for the mishna to teach the same halakha twice. The Gemara answers that the mishna in fact teaches the halakha with regard to two different types of robbers, the customs collector and the armed bandit.

[113] The Gemara suggests another proof with regard to the dispute between Ulla and Rabba. Come and hear the following baraita: With regard to a thief, a robber, and one who forces another to sell him something, their consecrated items are considered consecrated, and their teruma, the portion of the produce designated for the priest, is considered teruma, and their tithes are considered tithes.

[114] The Gemara asks: Whose opinion is expressed in this baraita? If it is in accordance with the Rabbis, it is difficult because the baraita assumes that even the victim of a robber despairs of retrieving his property, as seen from the halakha that the robber’s act of consecration or separation of teruma or tithes is valid. This contradicts the opinion of the Rabbis, who hold that the thoughts of a robber do not render the hides susceptible to ritual impurity, because he is not considered the owner of the hides. Conversely, if it is in accordance with Rabbi Shimon, it is difficult because the baraita assumes that the victim of a thief despairs of retrieving his property, as seen from the halakha that the thief's act of consecration or separation of teruma or tithes is valid. This contradicts the opinion of Rabbi Shimon, as he holds that the thoughts of a thief do not render the hides susceptible to ritual impurity, because he is not considered the owner of the hides.

[115] Granted, according to Ulla, who says that all agree that if it is known that the owners despaired of recovering their property, the individual in possession of the items acquires them, here too, it is possible to explain that the mishna is discussing a case where it is known that the owners despaired. But according to Rabba, who says that even in cases where it is known that the owners despaired, there is also a dispute, in accordance with whose opinion is this baraita written? It is not written in accordance with the opinion of the Rabbis, and it is not in accordance with the opinion of Rabbi Shimon.

[116] The Gemara answers: Here too, when the baraita mentions a thief it is actually referring to an armed bandit, who is considered a robber because he steals using force and aggression. And it is in accordance with the opinion of Rabbi Shimon, who holds that the victim of a robber despairs of recovering his property. The Gemara asks: If so, this case of a thief is identical to the case of a robber, and there is no reason for the baraita to teach the same halakha twice. The Gemara answers that the baraita wishes to teach the halakha with regard to two different types of robbers.

[117] The Gemara offers an alternative explanation: And if you wish, say instead that this baraita is referring to an actual thief, and it is written in accordance the opinion of Rabbi Yehuda HaNasi. As it is taught in a baraita that Rabbi Yehuda HaNasi said: A thief is like a robber.

[118] And we maintain, as the Gemara concludes below, that Rabbi Yehuda HaNasi means that the halakha that applies to a thief is like the halakha that applies to a robber according to the opinion of Rabbi Shimon, who holds that the owner despairs of recovering his item once it is stolen by a robber.

[119] § The Gemara examines the matter itself. Rabbi Yehuda HaNasi says: I say that the halakha that applies to a thief is like the halakha that applies to a robber. A dilemma was raised before the Sages: Was Rabbi Yehuda HaNasi saying that the halakha that applies to a thief is like the halakha that applies to a robber according to the opinion of the Rabbis, who hold that the owners do not despair of recovering their item, and a thief therefore does not acquire the items he steals? Or perhaps he was saying that the halakha that applies to a thief is like the halakha that applies to a robber according to the opinion of Rabbi Shimon, who holds that the owners despair of recovering their property, and a thief therefore acquires the stolen items.

[120] The Gemara attempts to resolve the dilemma. Come and hear a proof from the mishna: If customs collectors took one’s donkey and gave him a different donkey that was taken from another Jew in its stead, or if bandits took his garment and gave him a different garment that was taken from a Jew in its stead, these items are now his because the owners despaired of retrieving them when they were stolen. It is therefore apparent that despair is assumed both in the case of a robber, i.e., the customs collector, and in the case of a thief, i.e., the bandits.

[121] The Gemara clarifies: Whose opinion is expressed in this mishna? If it is in accordance with the opinion of the Rabbis, who assume that the owners despair only in the case of a thief, it is difficult because the mishna assumes that the victim of a robber also despairs of retrieving his property. And if it is in accordance with the opinion of Rabbi Shimon, who assumes that the owners despair only in the case of a robber, it is difficult because the mishna assumes that the victim of a thief also despairs of retrieving his property.

[122] The Gemara presents the proof: Granted, if you say that Rabbi Yehuda HaNasi was saying that the halakha that applies to a thief is like the halakha that applies to a robber according to the opinion of Rabbi Shimon, who holds that the owners despair of recovering their property, and a thief therefore acquires the stolen items, in accordance with whose opinion is this mishna? It is in accordance with the opinion of Rabbi Yehuda HaNasi, and it is due to that reason that a thief acquires the stolen goods.

[123] But if you say that Rabbi Yehuda HaNasi was saying that the halakha that applies to a thief is like the halakha that applies to a robber according to the opinion of the Rabbis, and a thief therefore does not acquire the stolen goods, in accordance with whose opinion is this mishna? Since the mishna rules that the owners have presumably despaired with regard to both a thief and a robber, it is not in

accordance with the opinion of Rabbi Yehuda HaNasi, and it is not in accordance with the opinion of Rabbi Shimon, and it is not in accordance with the opinion of the Rabbis.

124 The Gemara responds: With what are we dealing here? We are dealing with an armed bandit, who is considered a robber because he steals using force and aggression, and the mishna is in accordance with the opinion of Rabbi Shimon, who holds that despair is assumed in the case of a robber. The Gemara asks: If so, this is identical to the case of a robber, i.e., the mishna's first case of the customs collector, and there is no reason for the mishna to teach the same halakha twice. The Gemara answers: The mishna wishes to teach the halakha with regard to two different types of robbers.

125 Come and hear a different proof based upon the aforementioned baraita: With regard to a thief, a robber, and one who forces another to sell him something, their consecrated items are considered consecrated, and their teruma, the portion of the produce designated for the priest, is considered teruma, and their tithes are considered tithes.

126 Whose opinion is expressed in this baraita? If it is in accordance with the Rabbis, it is difficult because the baraita assumes that the victim of a robber also despairs of retrieving his property, and therefore the robber's act of consecration or separation of teruma or tithes is valid. Conversely, if it is in accordance with Rabbi Shimon, it is difficult because the baraita assumes that the victim of a thief despairs of retrieving his property.

127 Granted, if you say that Rabbi Yehuda HaNasi was saying that the halakha that applies to a thief is like the halakha that applies to a robber according to the opinion of Rabbi Shimon, who holds that the owner despairs of recovering his property, it is due to that reason that a thief therefore acquires the stolen items. But if you say that the halakha that applies to a thief is like the halakha that applies to a robber according to the opinion of the Rabbis, in accordance with whose opinion is this baraita written?

128 The Gemara responds: When the baraita refers to a thief, it is actually referring to an armed bandit, who is legally considered a robber, and it is in accordance with the opinion of Rabbi Shimon, who holds that victims of a robber despair of recovering their property. The Gemara asks: If so, this is identical to the case of a robber that is mentioned in the baraita. The Gemara answers: The baraita wishes to teach the halakha with regard to two different types of robbers.

129 Rav Ashi said to Rabba: Come and hear a proof from Rabbi Yehuda HaNasi's own interpretation of the mishna (111b) that states that children who inherit an item that was stolen by their father are obligated to return it to the owner if it is something that serves as a legal guarantee of a loan, e.g., land. Rabbi Yehuda HaNasi would teach Rabbi Shimon, his son, that the mishna is not referring only to something that may actually serve as a legal guarantee, i.e., land. Rather, it is referring even to a cow that he plows with, or a donkey that he drives by directing it from behind, which the heirs are obligated to return because of the honor of their father.

130 The Gemara infers: The reason that the heirs must return the stolen item is due to the honor of their father. But if it were not for the honor of their father, they would not be required to return it. Conclude from it that Rabbi Yehuda HaNasi was saying that the halakha that applies to a thief is like the halakha that applies to a robber according to the opinion of Rabbi Shimon. The Gemara affirms: Conclude from it that this is so.

131 § The mishna teaches: And so too, with regard to a swarm of bees, if the owners despaired of retrieving the bees, they belong to the one who found them. The Gemara inquires: What is the reason that the mishna includes the case of the bees, which begins with the term: And so too?

132 The Gemara explains: This is what it is saying: The halakha stated by the mishna applies even to a swarm of bees, which is the property of the owners via a rabbinic form of acquisition due to the fact that one cannot effect a legal acquisition of bees by Torah law. It might enter your mind to say that in this case, since one acquires the swarm of bees only by rabbinic law, even where the owners' response is unspecified it can be assumed that they despair of recovering the bees, and the finder may keep them. To counter this, the mishna teaches us that if it is known that the owners of the bees despaired of recovering them, yes, the finder may keep the bees; if they did not despair, no, he may not keep them.

133 § The mishna teaches that Rabbi Yoḥanan ben Beroka said: A woman or a minor is deemed credible to say: It was from here that this swarm emerged, and it therefore belongs to a certain individual.

134 The Gemara asks: Are a woman and a minor eligible for testimony? The halakha is that women and minors cannot present testimony in court, so how can Rabbi Yoḥanan ben Beroka rule that they are deemed credible? The Gemara explains that Rav Yehuda said that Shmuel said: Here, we are dealing with a case where the owners were pursuing the bees, and the woman and the minor were speaking offhandedly and saying: It was from here that this swarm emerged. In this context, it can be assumed that the individual identified as the owner is the real owner of the bees, even in the absence of formal testimony in court.

135 Having mentioned a case of offhand remarks, the Gemara states that Rav Ashi says: Information gleaned from one who speaks offhandedly is valid only with regard to testimony enabling a woman to remarry, as the Sages were lenient and decreed that the incidental remarks of certain individuals who are not eligible to serve as witnesses may be relied upon in such a case.

136 Ravina said to Rav Ashi: And is it so that one does not rely upon offhand remarks in other situations? But the case in the mishna of a swarm of bees is a case of one who speaks offhandedly, and the halakha is that he is deemed credible. Rav Ashi answered: A swarm of bees is different, as it is the property of its owners via a rabbinic form of acquisition. Consequently, the Sages relied on offhand remarks.

137 The Gemara asks: And is there no case where offhand remarks expressed by those who are ineligible to testify in court would be accepted by Torah law? But doesn't Rav Yehuda say that Shmuel says: There was an incident involving a certain person who was speaking offhandedly and saying: I remember when I was a child and I would still ride on father's shoulder. And they took me from school, and removed my tunic, and immersed me in a ritual bath so that I would be able to partake of teruma that evening.

138 And Rabbi Ḥanina would conclude his retelling of the incident as follows: That individual then went on to say: And my friends would separate themselves from me, and they would call me: Yoḥanan, eater of ḥallot, a reference to the portion of dough given to the priests, which has the same status as teruma. And after hearing this anecdote, Rabbi Yehuda HaNasi elevated him to the priesthood and granted him the right to partake of teruma based on his statement. Since it is prohibited for non-priests to consume teruma by Torah law, it is apparent that offhand remarks may

be relied upon even with regard to Torah law, even in cases unrelated to enabling a woman to remarry.

[139] Rav Ashi answers: Rabbi Yehuda HaNasi granted him the right to partake of produce that is teruma only by rabbinic law, as he holds that the requirement to separate teruma after the destruction of the Temple is by rabbinic law. One can still posit that offhand remarks made by individuals who are ineligible to testify in court are not deemed credible with regard to Torah law.

[140] The Gemara asks: And still, is there no other case where offhand remarks made by those who are ineligible to testify in court would be accepted by Torah law? But when Rav Dimi came from Eretz Yisrael, didn't he say that Rav Ḥana of Carthage [Kartigna], and some say that it was Rav Aḥa of Carthage, related: An incident came before Rabbi Yehoshua ben Levi, and some say that this incident came before Rabbi Yehuda HaNasi, with regard to a certain child who was speaking offhandedly and said: My mother and I were captured and held among the gentiles. When I would go out to draw water, my mind was on my mother, and when I would go out to gather wood, my mind was on my mother. Since the child was always conscious of his mother, he was aware that she was not violated by her captors.

[141] The Gemara concludes the statement of Rav Dimi and explains the challenge: And Rabbi Yehuda HaNasi married her to a priest based on his statement. Since it is prohibited by Torah law for a priest to marry a woman who has engaged in sexual intercourse with a man forbidden to her by Torah law and with whom she cannot establish a marital bond, e.g., a gentile, it is clear that Rabbi Yehuda HaNasi relied on an offhand remark even with regard to a prohibition by Torah law.

[142] The Gemara answers: The Sages were lenient with regard to a captured woman. By Torah law, a woman taken captive may be presumed to remain permitted to a priest, and it is the Sages who decreed that she is forbidden due to the concern that she was raped. It is this rabbinic decree that may be disregarded on the basis of offhand remarks.

[143] § The mishna teaches: But if the bees settled on a branch of a tree, he may not cut off the other's branch in order to take the bees, even on the condition that he will later give him the money for it. It is taught in a baraita that Rabbi Yishmael, son of Rabbi Yoḥanan ben Beroka, says: It is a stipulation of the court, which takes effect even without being confirmed by individuals, that one will be permitted to enter another's field and cut off another's branch in order to salvage his own swarm of bees. And the owner of the field then collects the value of his branch from his fellow's swarm.

[144] And it is also a stipulation of the court that one who sees another's honey barrel break should pour out his own wine and then use the empty wine barrel to salvage the other's honey, which is more expensive than wine. And the owner of the wine then collects the value of his wine from the other's honey. And it is also a stipulation of the court that one who sees that another's donkey has fallen should unload his own wood from his own donkey and load the other's flax, which is more expensive than wood, in its place. And the owner of the wood then collects the value of his wood from the other's flax. These stipulations take effect as it was on this condition that Joshua apportioned Eretz Yisrael to the Jewish people.

[145] MISHNA: In a case of one who recognizes his stolen vessels and scrolls in another's possession, and a rumor had spread in the city that the former had been the victim of theft, the purchaser, i.e., the one in possession of these items, must take an oath to the victim as to how much money he spent on the purchase, and he then takes that sum of money in exchange for returning the items. And if no

such rumor had spread, it is not in the purported victim’s power to assert that the items were stolen, and he is not entitled to demand their return, as I could say: The items were never stolen; rather, the purported victim sold them to another, and this individual who currently possesses the item purchased them from that other person.

[146] GEMARA: The Gemara asks: And if a rumor spread in the city that he had been the victim of theft, what of it? Let us suspect that perhaps he sold the items and he himself is spreading the rumor that they were stolen so that he will be able to buy them back.

[147] The Gemara answers that Rav Yehuda said that Rav said: The mishna is discussing a case where people, i.e., guests, came into his house, and he arose at night and shouted [vehifgin], and said: My vessels have been stolen, in which case it seems clear that he was the victim of theft. The Gemara rejects this rationale: On the contrary, the suspicion that he is lying should apply all the more so, as he has found a pretext for claiming that his property was stolen, and it should be suspected that he is taking advantage of the situation dishonestly.

[148] Rav Kahana would conclude this halakha by stating in the name of Rav: The mishna is discussing a case where a group of people spent the night in his house. And there was a tunnel that had been burrowed into his house, and the people that stayed overnight as guests in his house left with bundles of vessels on their shoulders, and everyone says: So-and-so’s vessels were stolen. In such a case, there is clear evidence that the homeowner was the victim of theft.

[149] The Gemara questions this explanation: But perhaps only vessels were stolen but scrolls were not. Why must the purchaser return the scrolls as well as the vessels? The Gemara answers that Rabbi Ḥiyya bar Abba said that Rabbi Yoḥanan said: The mishna is discussing a case where everyone is saying that scrolls were also stolen.

[150] The Gemara asks: But let us suspect that perhaps only small scrolls were taken, while he is claiming that large scrolls were stolen. If this is the case, he is claiming scrolls that do not belong to him. The Gemara answers that Rabbi Yosei bar Ḥanina said: The mishna is discussing a case where people are saying: Such and such a scroll and such and such a scroll were stolen, i.e., it is known which scrolls were taken from the homeowner.

[151] The Gemara questions this as well: But perhaps the scrolls that were stolen were old and had therefore depreciated in value, while he is claiming that new scrolls were taken. If so, he is claiming scrolls that do not belong to him. Rav said: The mishna is discussing a case where people say explicitly: These are so-and-so’s vessels and these are so-and-so’s scrolls. In this case it is known exactly which items were stolen.

[152] The Gemara asks: And did Rav actually say this? But doesn’t Rav himself say that a burglar who came in and took vessels and left is exempt from paying for those items? What is the reason for this exemption? It is because he purchases them with his blood. Since a homeowner is allowed to kill a burglar, a burglar is exempt from returning the stolen items, based on the principle: One receives the greater punishment. Consequently, if the burglar himself is exempt, how can one who purchases an item from the burglar be required to return it?

[153] The Gemara explains: This matter, that one who steals acquires what he stole, applies only to a burglar, as he initially subjected himself to be killed when he broke into the house. But concerning these thieves, who stayed overnight as guests of the homeowner, since they did not break into the

house and thereby subject themselves to being killed, they are not exempt from returning the stolen item.

[154] The Gemara notes that Rava says: We taught that all of these conditions must be met before the purchaser can be forced to return the item only with regard to a homeowner who is wont to sell his vessels, but with regard to a homeowner who is not wont to sell his vessels,

[155] one does not need to pursue the matter in all this detail.

[156] The Gemara questions this ruling: Perhaps he needed money, and he therefore sold the items despite the fact that he does not generally sell his personal belongings. The Gemara answers that Rav Ashi said: A rumor spread in the city that he had been a victim of theft. It is reasonable to assume that he is the rightful owner, as he does not usually sell his belongings and it is common knowledge that he was the victim of theft.

[157] § Having assessed the mishna's ruling with regard to a case where the thief remained unidentified, the Gemara discusses a case where the thief was found. It was stated: In a case where a thief stole an item and sold it, and later the thief was identified, Rav says in the name of Rabbi Ḥiyya: The homeowner's claim can be pursued only with the first one, i.e., the thief, but he has no claim against the purchaser. Rabbi Yoḥanan says in the name of Rabbi Yannai: The homeowner's claim can also be pursued with the second one, i.e., with the purchaser.

[158] Rav Yosef said: Rav and Rabbi Yoḥanan do not disagree. Here, in the case about which Rabbi Yoḥanan issues his ruling, the item was purchased from the thief before the victim of the theft despaired of recovering the stolen item. Consequently, the claim can be pursued even with the second one, i.e., the purchaser. Conversely, there, in the case about which Rav issues his ruling, the item was purchased after the victim despaired, and therefore the claim can be pursued only with the first one, i.e., the thief.

[159] Rav Yosef continues: And both Rav and Rabbi Yoḥanan have accepted as halakha the ruling of Rav Ḥisda (111b), that if the owner had not yet despaired of retrieving his item, he can press his claim against either the thief or the purchaser.

[160] Abaye said to Rav Yosef: And is it so that Rav and Rabbi Yoḥanan do not disagree? Isn't a case involving gifts to which members of the priesthood are entitled comparable to a case of a stolen item that was sold before the onset of the owner's despair, as the priest still hopes to receive the gifts, and yet Rav and Rabbi Yoḥanan disagree with regard to their legal status? This is as we learned in a mishna (Ḥullin 132a): If one said to a butcher: Sell me the innards of a cow, and the gifts of the priesthood were in them, the purchaser must give the gifts to a priest, and he may not deduct the value of the gifts from the money he agreed to pay the butcher. By contrast, if he purchased the innards from the butcher by weight, he must give the gifts to a priest and he may deduct the value of the gifts from the money he agreed to pay the butcher.

[161] And Rav says: They taught this halakha only where the purchaser weighed the innards for himself, but if the butcher weighed the innards for him, the priest's claim may be pursued only with the butcher. The butcher is comparable to a thief when he sells the gifts of the priesthood to a non-priest, and Rav holds that the priest can press his claim only against the butcher. Similarly, in the case of the mishna he would hold that the owner can press his claim only against the thief and not against the purchaser.

[162] The Gemara refutes Abaye’s objection: Say that Rav meant that the priest can even pursue his claim with the butcher, although he is certainly able to claim the gifts from the purchaser. And Rav had to teach this lest you say that gifts of the priesthood are not considered to have been stolen even if the butcher sells them, because wherever they are they remain the legal property of the priests. Rav therefore teaches us that they are considered to have been stolen in this case, and therefore the priest can press his claim against the butcher.

[163] The Gemara asks: And according to Abaye, who said that Rav and Rabbi Yoḥanan disagree, with regard to what do they disagree? The Gemara answers: They disagree with regard to the ruling of Rav Ḥisda. Rav disagrees with Rav Ḥisda and rules that one is entitled to collect only from the thief, while Rabbi Yoḥanan accepts the ruling of Rav Ḥisda and allows one to collect from either the thief or the purchaser.

[164] The Gemara presents another explanation of the dispute between Rav and Rabbi Yoḥanan: Rav Zevid said that both agree that if the owner has not yet despaired of retrieving his item, he can press his claim against either party. They disagree in a case where the owners despaired of retrieving it only after the item was already in the possession of the purchaser, but they did not yet despair when it was in the possession of the thief.

[165] And it is with regard to this that they disagree: One Sage, Rabbi Yoḥanan, holds that if there is despair on the part of the owner and afterward there is a change in possession of a stolen item, e.g., it leaves the possession of the thief and enters the possession of a purchaser, the purchaser acquires the item. By contrast, if there is first a change in possession of a stolen item and afterward there is despair on the part of the owner, then the purchaser does not acquire the item. Since in this case the owner did not despair until after the change of possession from the thief to the purchaser, the purchaser did not legally acquire the item, and the owner can press his claim against him. And one Sage, Rav, holds that there is no difference whether the despair or change of possession came first. As long as the owner has despaired of recovering his item, it becomes the property of the purchaser, and the owner cannot demand that he return it.

[166] The Gemara presents a third explanation of the dispute: Rav Pappa said that with regard to a stolen cloak itself, everyone agrees that it must be returned by the purchaser to its owner. But here, it is with regard to whether the Sages implemented the provision ensuring the integrity of the marketplace in this case that Rav and Rabbi Yoḥanan disagree.

[167] Rav says in the name of Rabbi Ḥiyya that the claim can be pursued only with the first one, i.e., the thief, meaning that the law with regard to the purchaser is that, after returning the item to its owner, he can collect money only from the thief, and the Sages did not implement the provision ensuring the integrity of the marketplace in this case. And Rabbi Yoḥanan says in the name of Rabbi Yannai that the claim of the purchaser can be pursued with the second one, meaning that the law with regard to the purchaser is that he can also collect the money from the owner when he returns the item to him, and the Sages did implement the provision ensuring the integrity of the marketplace in this case.

[168] The Gemara questions this answer: And did Rav hold that the Sages did not implement the provision ensuring the integrity of the marketplace in this case? But wasn’t Rav Huna a student of Rav, and yet when a certain thief known as Ḥanan the Wicked stole a cloak and then sold it, and the case came before Rav Huna, he said to that man from whom the cloak was stolen: Go redeem your

pledge from the purchaser, i.e., reimburse the purchaser for the garment that he returned to you. Evidently, Rav's own student held that the Sages did allow a purchaser to claim reimbursement from the owner.

169 The Gemara answers that Ḥanan the Wicked is different. Since he has no money, there is no way for the purchaser to collect payment from him, and the case is therefore comparable to a case where the thief was not identified, with regard to which case the Sages implemented the provision ensuring the integrity of the marketplace.

170 Rava says: If he is a well-known thief, the Sages did not implement the provision ensuring the integrity of the marketplace in this case. The purchaser should have been aware that the item may be stolen and should not have purchased it. The Gemara asks: But wasn't Ḥanan the Wicked well known, and yet, according to Rav Huna, the Sages implemented the provision ensuring the integrity of the marketplace in this case? The Gemara answers: Although he was well known for villainy, he was not well known for theft.

171 § The Gemara continues to examine the provision ensuring the integrity of the marketplace. It was stated: With regard to one who stole and repaid his debt with the stolen item, or one who stole and repaid his debt from credit that was extended to him with the stolen item, the Sages did not implement the provision ensuring the integrity of the marketplace in this case, as they say to the creditor: It was not with the expectation of receiving these stolen items that you gave the debtor anything.

172 With regard to the integrity of the marketplace, it was also stated that if a thief provided a stolen item worth two hundred dinars as collateral for a loan of one hundred dinars, the Sages implemented the provision ensuring the integrity of the marketplace in this case. Consequently, the creditor is entitled to reimbursement from the owner for returning the collateral. If the collateral and the loan were of equal value, Ameimar said: The Sages did not implement the provision ensuring the integrity of the marketplace in this case, while Mar Zutra said: The Sages did implement the provision ensuring the integrity of the marketplace in this case.

173 The Gemara comments: And the halakha is in accordance with the opinion of Mar Zutra that the Sages did implement the provision ensuring the integrity of the marketplace in this case.

174 The Gemara examines other applications of this provision: In a sale, if the stolen item was purchased for an amount equal to its actual market value, the Sages implemented the provision ensuring the integrity of the marketplace in this case. If a stolen item worth one hundred dinars was purchased at the price of two hundred dinars, Rav Sheshet says: The Sages did not implement the provision ensuring the integrity of the marketplace in this case, while Rava says: The Sages did implement the provision ensuring the integrity of the marketplace in this case.

175 The Gemara states: And the halakha is that in all these cases the Sages implemented the provision ensuring the integrity of the marketplace, except with regard to one who stole and repaid his debt with the stolen item and one who stole and repaid his debt from credit that was extended to him with the stolen item.

176 The Gemara recounts a related incident: Avimi bar Nazi, the father-in-law of Ravina, was owed four dinars by a certain man, who then stole a cloak and brought it to Avimi as repayment for the loan. Avimi then lent him four additional dinars. In the end, the thief was identified as the debtor, and

the case came before Ravina to determine whether or not the owner would have to pay Avimi for returning the cloak.

177 Ravina said to Avimi: With regard to the first four dinars that were lent, the thief is viewed as one who stole and repaid his debt, and the owner is not required to give anything in exchange for the garment's return as the Sages' ordinance ensuring the integrity of the marketplace does not apply in such a case. With regard to those four additional dinars, take your money from the owner of the cloak and return the cloak to him. Since Avimi lent the second set of dinars only because he had received the cloak, Ravina ruled that the Sages' ordinance applied to him.

178 Rav Kohen objects to this: But perhaps the cloak was given to Avimi only in payment for these first four dinars, and it was a case of a thief who stole and repaid his debt or who stole and repaid his debt from credit that was extended to him with the stolen item. And the latter four dinars were loaned because Avimi trusted the debtor, just as he trusted him initially, when he lent the first four dinars. The cloak was not collateral for the second loan, and therefore the Sages' ordinance should not apply. The matter circulated until it came before Rabbi Abbahu, who said: The halakha is in accordance with the opinion of Rav Kohen.

179 The Gemara recounts another incident: A resident of Naresh stole a scroll and sold it to a resident of Pappunya for eighty dinars. The resident of Pappunya then went and sold it to a resident of Meḥoza for one hundred and twenty dinars. In the end, the thief was identified and Abaye said: The original owner of the scroll should go and give the resident of Meḥoza eighty dinars and take his scroll in return. And afterward, the resident of Meḥoza should go and take the remaining forty dinars from the resident of Pappunya.

180 Rava objects to this: Now that it has been established that with regard to one who purchases from a thief, the Sages implemented the provision ensuring the integrity of the marketplace in this case despite the fact that he dealt with the thief directly, is it necessary to teach that the same would apply to one who purchased a stolen item from a purchaser? Accordingly, the final purchaser is entitled to receive from the original owner the full amount that he paid for the item.

181 Rather, Rava said that the original owner of the scroll should go and give the resident of Meḥoza one hundred and twenty dinars and take his scroll in return. And afterward the original owner of the scroll should go and collect forty dinars from the resident of Pappunya and eighty dinars from the resident of Naresh, as each profited from the sale in these amounts, respectively.

182 MISHNA: In a situation where this individual came with his barrel of wine, and that individual came with his jug of honey, if the barrel of honey cracked and this first individual poured out his wine and salvaged the other's honey, which is worth more than the wine, by collecting it into his wine barrel,

183 the owner of the wine has the right to collect only his wage, i.e., compensation for the effort he put into salvaging the honey. He is not, however, entitled to compensation for the wine itself. But if the owner of the wine said: I will salvage your honey and you will pay me the value of my wine, the owner of the honey is obligated to pay him compensation for the wine.

184 Similarly, if a river washed away his donkey and the donkey of another, and his donkey was worth one hundred dinars and the donkey of the other was worth two hundred, and the individual with the less valuable donkey abandoned his donkey and instead salvaged the donkey of the other, he

has the right to collect only his wage, i.e., compensation for the effort he put into salvaging his fellow’s donkey. But if he said to the owner of the more valuable donkey: I will salvage your donkey and you will pay me the monetary value of mine in exchange, the owner of the more valuable donkey is obligated to pay the rescuer compensation for his donkey.

185 GEMARA: And why does one who pours out wine have the right to collect only this wage? Let him say to the owner of the honey: I have acquired your honey from ownerless property. Isn’t it taught in a baraita: One who was laden with jugs of wine and jugs of oil and saw that they were breaking and their contents were leaking out should not say: This is hereby separated as teruma and tithe for the produce that I have in my house. And even if he said this, it is as though he did not say anything. The fact that one cannot separate produce that is about to be lost as teruma or tithe indicates that such property is considered ownerless.

186 The Gemara answers that it is as Rabbi Yirmeya says in a different context, that the ruling discussed there is referring to a case where the basket of the olive press was wrapped around it so that the barrel would not break completely, and some of the contents would remain inside. So too, here, the mishna issued its ruling only when the basket of the olive press was wrapped around the honey barrel so that it would not break completely, and the contents are therefore not rendered ownerless.

187 The Gemara challenges the baraita that stated: And even if he said that the wine or oil is separated as teruma or tithe, it is as though he did not say anything. But isn’t it taught in a different baraita: If one was traveling on the road and had money in his possession, and he saw a ruffian moving toward him, he should not say: The second-tithe produce that I have in my house is hereby desacralized onto these coins, i.e., the sanctity of the produce is hereby transferred to the coins. But if he said so, his statement stands, and the produce is desacralized while the coins attain the sanctity of the second tithe.

188 The Gemara answers: Here we are dealing with a case where he is capable of saving his money from the ruffian and that is why he may transfer the sanctity of the second tithe to the coins. The Gemara asks: If it is a case where he is capable of saving the money, why should he not say that the produce should be desacralized ab initio? The Gemara answers: It is a case where he is capable of saving the money only with difficulty. Consequently, he should not transfer the sanctity of the second tithe to the coins, as it may be lost; but if he does so, the transfer takes effect, as it is not certain that the money will be lost.

189 The Gemara asks: And is it so that wherever there is a potential loss one should not say that the sanctity is transferred to the money ab initio? But isn’t it taught otherwise in the following baraita: If one had ten barrels of ritually impure, untithed wine, i.e., first-tithe wine from which the teruma of the tithe had not yet been separated, and he saw that one of them had broken and that its contents were leaking out, or that it had been exposed and is forbidden for consumption, he may say: This barrel is hereby separated as the teruma of the tithe for the other nine barrels. But with regard to oil, he should not do so due to the priest’s loss.

190 The Gemara answers that Rabbi Yirmeya said: The baraita issued its ruling only when the basket of the olive press was wrapped around the barrel so that some of its contents would remain inside. The Gemara asks: Granted, this rationale applies to a barrel that was broken, as the remaining contents are still fit for use, but with regard to a barrel that was exposed, for what use is it fit?

[191] And if you would say that the exposed wine is fit for sprinkling, in order to spread its pleasant aroma, isn't it taught otherwise in the following baraita? With regard to water that was exposed, one may not pour it out in the public domain, nor mix clay with it, nor settle dust with it by sprinkling it in a house, nor give it to his animal to drink, nor give it to the animal of another. This proves that exposed liquids may not be used even for sprinkling.

[192] The Gemara answers: The wine is fit for use because he passed it through a strainer, and it is in accordance with the opinion of Rabbi Neḥemya, as it is taught in a baraita: A vessel covered with a strainer is subject to the halakha of exposure if the vessel is left unsupervised. Rabbi Neḥemya said: When is this so? It is so when the lower vessel, in which the liquid collects after passing through the strainer, is exposed. But when the lower vessel is covered, even if the upper vessel is exposed, it is not subject to the halakha of exposure, because the venom of a snake is like a sponge in that it floats and stays in place.

[193] The Gemara questions this explanation: Wasn't it stated with regard to Rabbi Neḥemya's ruling that Rabbi Simon says that Rabbi Yehoshua ben Levi says: They taught Rabbi Neḥemya's ruling only where one did not mix it, but if one mixed the wine, any venom found in it becomes capable of penetrating the strainer? Consequently, the wine remains forbidden even if it is passed through a strainer.

[194] The Gemara answers: There, too, it is possible to prevent the venom from mixing with the wine by placing something upon the mouth of a barrel that will filter it slowly so that the venom will not penetrate the strainer, and the wine may therefore be used.

[195] It has now been established that the baraita, which states that if one's barrel of untithed, impure wine is breaking, he may separate it as teruma of the tithe for other barrels of untithed, impure wine, may be explained in accordance with the opinion of Rabbi Neḥemya. The Gemara asks: And according to Rabbi Neḥemya, may we separate teruma from impure produce for other impure produce?

[196] But isn't it taught in another baraita: One may separate teruma from produce that is impure for other produce that is impure, and from produce that is pure for other produce that is pure, and from produce that is pure for produce that is impure, but not from produce that is impure for produce that is pure. Rabbi Neḥemya says: Even with regard to separating from produce that is impure for produce that is impure, the Sages permitted one to separate teruma in this manner only in the case of doubtfully tithed produce [demai]. Consequently, how can the aforementioned baraita unequivocally permit one to separate impure wine as teruma of the tithe for other impure wine? The Gemara answers: Here too, in the baraita, it is discussing a case of demai.

[197] The Gemara discusses the continuation of the baraita cited previously: The Master said in the baraita: But with regard to oil, he should not do so, due to the priest's loss. The Gemara asks: What is different about a leaking barrel of impure oil, which one may not separate as teruma, because if he does so the priest will suffer a loss? That case is different because the impure teruma oil is fit to be used to kindle a fire, and the priest will now not receive that oil. The Gemara challenges: But wine is also fit to be used, as the priest is able to sprinkle it in order to impart a pleasant aroma. Why is there is no concern that the priest will suffer a loss? And if you would say that sprinkling is nothing, i.e., it is insignificant, doesn't Shmuel say in the name of Rabbi Ḥiyya: One drinks from a log of wine

worth one sela, and one sprinkles from a log of wine worth two sela, which indicates that there is greater benefit in sprinkling wine than in drinking it?

198 The Gemara answers: Here we are dealing with new wine that has not yet developed an aroma and is therefore not fit for sprinkling. The Gemara counters: But isn't it fit to allow it to age so that it will become fit for sprinkling? The Gemara responds: If one waits for it to age, he might come to experience a mishap with it, as he will forget that it is impure teruma, which is forbidden for consumption.

199 The Gemara asks: Oil should also be subject to the concern that one might come to experience a mishap with it, as he might forget that it is forbidden and mistakenly drink it. The Gemara explains: The halakha is that the priest must place the oil in a foul vessel, and there is no concern that he will consume it, as such oil is used only for kindling. The Gemara asks: Let the wine also be placed in a foul vessel, in which case there would be no concern that he would drink it. The Gemara responds: Now that he desires to use it for sprinkling, would he place it in a foul vessel? This would ruin its aroma. Consequently, the wine may not be kept due to concern over a possible mishap, while the oil may be kept.

200 The Gemara notes: And the concern with regard to a mishap itself is a dispute between tanna'im. As it is taught in a baraita: With regard to a barrel of teruma wine that became impure and is therefore forbidden for consumption, Beit Shammai say:

201 The wine must all be poured out in order to prevent a possible mishap. And Beit Hillel say: Let the wine be used for sprinkling. Rabbi Yishmael, son of Rabbi Yosei, said: I will decide the halakha by proposing an intermediate opinion: If the wine became impure in a house, it may be used for sprinkling, as it can be used immediately, but if it became impure in the field, it must all be poured out, as it is possible that by the time it is brought to the house and used for sprinkling, someone may drink it.

202 There are those who say that he decided the halakha as follows: With regard to aged wine, it may be used for sprinkling, as it is fit to be sprinkled immediately, but with regard to new wine, which does not yet have a pleasant aroma, it must all be poured out in order to prevent a possible mishap. They said to Rabbi Yishmael, son of Rabbi Yosei: A decision by a third party does not conclusively decide the halakha.

203 § The mishna teaches that if the owner of the wine said to the owner of the honey: I will salvage your honey and you will pay me the value of my wine, the owner of the honey is obligated to give him compensation for the wine. The Gemara asks: Why is the stipulation binding? Let the owner of the honey say to him: I was merely fooling with you when I accepted your condition, and I did not agree to it at all.

204 Isn't it taught in a baraita: In a case where one was fleeing from prison and there was a ferry before him, and he said to the ferryman: Take this entire dinar and take me across the river, the ferryman has the right to collect only his usual wage, but not the entire dinar. Apparently, the prisoner could have said to him: I was merely fooling with you and never intended to pay you a full dinar. Here also, let the owner of the honey say to the owner of the wine: I was merely fooling with you.

205 The Gemara answers: This case in the mishna is not comparable to the case cited above; rather, it is comparable to the latter clause of that same baraita, which states: And if he said to the ferryman:

Take this dinar as your wage and take me across the river, the prisoner must give him his wage in the full amount, i.e., the entire dinar.

[206] What is different in the first clause, which states that the ferryman receives only his regular wage, and what is different in the latter clause, which states that he receives the full dinar? Rami bar Ḥama said: The latter clause deals with a trapper who scoops fish from the sea, i.e., a fisherman, and he can say to the prisoner: You have caused me a loss of fish [kavrei] worth a dinar, which I would have caught had I not taken you across the river. Similarly, in the case in the mishna, the owner of the wine sustains a financial loss in order to save the honey, and therefore he is entitled to the compensation that the owner of the honey agreed to pay.

[207] § The mishna teaches: If a river washed away his donkey and the donkey of the other man, and his donkey is worth one hundred dinars, etc. The Gemara notes: And it is necessary to teach both the case of the barrels of wine and honey and the case of the donkeys, as if it had taught us only the first case, that of the wine and honey, it might be said that it is only there, in that case, that when the owner of the wine states his stipulation, the owner of the honey gives him the value of the entire loss. Why is this? It is because the wine is lost through the direct action of its owner. But here, in the case of the donkeys, since the donkey is lost by itself in the river, let us say: The one who salvages the donkey of his fellow has the right to only his wage, i.e., compensation for his labor.

[208] And if the mishna had taught us only the case of the latter clause, it might be said: It is here, in the case of the donkeys, that if the intention of the one who saved the donkey was unspecified, i.e., he did not stipulate that the owner of the other donkey would compensate him for the loss of his own donkey, he has the right to only his wage, because the donkey is lost by itself. But there, where the barrel of wine is lost through the direct action of its owner, one might say: Even in a case where the intention of the owner of the wine was unspecified, the owner of the honey must give him the value of the entire barrel of wine. The Gemara concludes: Indeed, both cases are necessary.

[209] The Gemara cites a relevant discussion. Rav Kahana raised a dilemma before Rav: If one descended into the river to rescue another’s donkey instead of his own after stipulating that he would be compensated for the loss of his own donkey, and his own donkey emerged from the river by itself, what is the halakha? Is the rescuer still entitled to payment from the owner of the donkey that he saved, despite the fact that he did not suffer a monetary loss? Rav said to him: The rescuer is still compensated because it was from Heaven that mercy was bestowed upon him, and his good fortune does not affect the stipulation.

[210] This is like that case where Rav Safra was traveling in a caravan, and a certain lion followed them, accompanying them along the way. Every night, the travelers would send one of their donkeys to the lion, and the lion would eat it. When Rav Safra’s time arrived to provide the lion with prey, he sent it his donkey but the lion did not eat it. Rav Safra went ahead and acquired it back, as his donkey had become ownerless when he presented it to the lion. Although Rav Safra did not lose his donkey, he had fulfilled his obligation to provide the lion with a donkey, and his good fortune did not affect his obligation vis-à-vis the other travelers.

[211] With regard to this episode, Rav Aḥa of Difti said to Ravina: Why was it necessary for him to acquire the donkey again? Although Rav Safra made it ownerless by sending it to the lion, it was made ownerless only with the intention that the lion would consume it, but it was not made

ownerless with the intention that everyone else could acquire it. Accordingly, no one else could have acquired the donkey. Ravina said to him: Rav Safra did so as an added precaution.

212 Rav raised a dilemma before Rabbi Yehuda HaNasi: If one descended into the river in order to rescue another's donkey instead of his own, but he did not manage to rescue it, what is the halakha? Does the stipulation still apply so that the owner of the donkey he attempted to rescue must compensate him for the loss of his own donkey? Rabbi Yehuda HaNasi said to him: And is this a question? It is clear that he has the right to collect only his wage, but he is not entitled to the value of his own donkey.

213 Rav raised an objection to Rabbi Yehuda HaNasi's ruling from a baraita: In a case of one who hires a laborer

214 to bring cabbage and plums to an ill person, and he went and found that the patient had already died or recovered, the employer nevertheless gives the worker his entire wage. Evidently, one is paid for his efforts even if the desired result is not accomplished. Accordingly, the rescuer's stipulation should apply, and one should be obligated to pay another for attempting to salvage his donkey even if he did not actually succeed in doing so.

215 Rabbi Yehuda HaNasi said to him: Are those two cases comparable? There, in the case of the ill person, the agent performed his assignment, as he procured and delivered the foods to the ill person, but here, in the case of the donkeys, the agent did not perform his assignment, as he was unable to rescue the animal from the river.

216 § Apropos the episode involving Rav Safra, the Gemara discusses the division of expenses among travelers in a caravan. The Sages taught in a baraita: In the case of a caravan that was traveling in the desert and a troop of bandits stood over it in order to attack and pillage it, and the members of the caravan agreed to pay ransom to the bandits, they calculate each traveler's contribution according to the amount of money he is carrying, and they do not calculate according to the number of souls in the caravan, i.e., the expense is not divided equally among the travelers.

217 But if they hired a scout who travels in front of them and leads them safely through the desert, the travelers calculate each one's contribution to paying the scout's wages even according to the number of souls. And they should not differ from the usual custom of donkey drivers, who often have set procedures for such situations.

218 The donkey drivers are permitted to stipulate that with regard to anyone whose donkey becomes lost, the caravan will provide him with a different donkey. If the donkey was lost through negligence, they do not provide him with another donkey, but if it was lost not through negligence, they provide him with another donkey. And if the individual whose donkey became lost said: Give me money instead of the donkey and I will guard the caravan along with everyone else, they do not listen to him.

219 The Gemara asks: Isn't this obvious? No, it is necessary to teach this for a case where he already has another donkey, lest you say that he will guard the caravan for its sake. Since he still owns one donkey, he never lost his incentive to guard the caravan, and the other drivers should therefore give him money if he wishes. The baraita therefore teaches us that guarding one donkey is different from guarding two donkeys, and the driver will be more likely to guard the caravan properly if they supply him with another donkey.

220 § The Gemara cites another baraita that discusses the division of expenses among a group. The Sages taught: In a case of a boat that was traveling on the sea when a gale arose and threatened to sink it, and the sailors lightened its load by throwing some of their belongings overboard, the sailors calculate the amount that each must throw out according to weight, but they do not calculate it according to how much money the items are worth. And they should not differ from the usual custom of sailors.

221 And if a number of boats are traveling together, the sailors are permitted to stipulate that with regard to anyone whose boat was lost, the others will provide him with a different boat. If his boat was lost through negligence, the other sailors do not provide him with another boat, but if it was lost not through negligence, the sailors provide him with another boat. And if the boat sailed to a place where the boats do not travel, the other sailors do not provide him with a different boat.

222 The Gemara asks: Isn't this obvious? The Gemara answers: No, it is necessary because in the month of Nisan, the boats distance themselves from the shore by one rope length, and in the month of Tishrei, they distance themselves by two rope lengths. And in this case, the boat was traveling during Nisan and sailed to the place where boats sail during Tishrei. Lest you say that the sailor is not considered negligent because he is taking his usual route and traveling as he is accustomed to, the baraita teaches us that his actions are considered negligent.

223 The Sages taught in a baraita: In a case of a caravan that was traveling in the desert and a troop of bandits stood over it and pillaged it, and one of the travelers arose and rescued the caravan from the bandits, he has rescued the property for the common good, i.e., each member of the caravan receives back his property. And if he stated: I will rescue the property from the bandits for myself, then he has effectively rescued the items for himself, and he is now the legal owner of all the property.

224 The Gemara asks: What are the circumstances of the case? If each member of the caravan is able to rescue his property, then even in the latter clause, where the rescuer states that he is saving the property for himself, the halakha should also be that the possessions are rescued for the common good, as the other members of the caravan did not despair of retrieving their property. And if each member of the caravan is unable to rescue his property, they despair of retrieving their property and relinquish ownership of it. Consequently, even in the first clause, the halakha should also be that the possessions are saved for himself, so that he is their legal owner. Why is there a discrepancy between the halakha in the first clause and the halakha in the latter clause?

225 The Gemara answers: Rami bar Ḥama said: Here, in the case of the baraita, we are dealing with a caravan whose members are partners and jointly own the confiscated property, and in a case such as this, a partner may divide the property without the other partner's consent. Therefore, if he said that he intends to save the property for himself, he has dissolved the partnership and divided the property so that if he is able to rescue only some of the property, the property he rescues is his share of the joint property. If he did not say that he intends to save the property for himself, he has not divided the property, and whatever he rescues is jointly owned by the partners.

226 Rava stated a different answer: Here, in the baraita, we are dealing with laborers who were hired to protect the caravan, and one of these guards saved the travelers' property. And it is in accordance with the opinion of Rav, as Rav says: A laborer may retract his commitment to his employer even in the middle of the day.

227 The Gemara explains: As long as he did not retract his commitment, he is considered to be under the jurisdiction of the employer, so that anything he saves automatically belongs to the employer. And when he retracts his commitment, it is for a different reason that he is able to do so, as it is written: “For unto Me the children of Israel are servants” (Leviticus 25:55), indicating that Jews are servants of God, but not servants of servants, i.e., of other Jews. Consequently, it is permitted for a laborer to conclude his term of employment whenever he wants. Once he does so, if he saves property that the members of the caravan are unable to rescue, the property belongs to him.

228 Rav Ashi stated another answer: The baraita is discussing a case where the other members of the caravan are able to rescue the property with difficulty. Therefore, if he revealed his intention to rescue the property for himself and the other travelers did not protest, it is clear that they have despaired of recovering their property, and the rescuer has secured the property for himself. If he did not reveal his intention to rescue the property for himself, the status quo remains and the property has been rescued for the common good.

229 MISHNA: In a case of one who robs a field from another and thugs [massikin] subsequently take the field from the robber, the halakha is dependent upon the circumstances: If it is a regional disaster in which the thugs seize all the property in the region, the robber says to the owner of the field: That which is yours is before you, i.e., it is your prerogative to try to reclaim it from the thugs. No compensation is required since the thugs would have seized the property in any event. But if the thugs took that field alone due to the robber, the robber is obligated to provide the owner with a different field.

230 GEMARA: Rav Naḥman bar Yitzḥak said: One who teaches the mishna using the term massikin does not err, and one who teaches the mishna using the term matzikin also does not err, as both terms may be used to refer to thugs. One who teaches the mishna using the term matzikin does not err, as it is written: “In the siege and in the distress [matzok] with which your enemies shall distress you” (Deuteronomy 28:55). Consequently, matzikin are individuals who cause distress to others.

231 And one who teaches the mishna using the term massikin does not err, as it is written: “All your trees and the fruit of your land shall the locust consume” (Deuteronomy 28:42), and, in the standard Aramaic translation, we translate this phrase as: Shall the locust [sakke’a] consume. Consequently, massikin are those who consume the property of others.

232 § The mishna teaches: If the thugs took the field due to the robber, the robber is obligated to provide the owner with a different field. The Gemara asks: What are the circumstances of the case in the latter clause of the mishna? If we say that they seized only his land, i.e., the robber’s land, and did not seize all the other lands in the region, you already learned this from the first clause of the mishna: If it is a regional disaster in which the thugs seize all the property in the region, the robber is not obligated to compensate the owner of the field, which indicates that if it is not a regional disaster, the robber is not exempt from payment. What novelty does the latter clause teach?

233 The Gemara explains: No, it is necessary for a case where the individual did not actually take control of the property before it was seized by the thugs, but rather showed the field to the thugs and thereby facilitated their occupation of the field. A different version of this answer is as follows: With what are we dealing here? A case where gentiles coerced someone and told him to show them his land for them to seize, and he showed them that field belonging to another, along with his own fields, and the thugs then seized all the land he showed them.

234 The Gemara recounts a related incident: There was a certain man who showed piles of wheat, belonging to the Exilarch’s household, to thugs, who seized them. The case came before Rav Naḥman for judgment, and Rav Naḥman deemed that man liable to pay the Exilarch for the stolen wheat. Rav Yosef was sitting behind Rav Huna bar Ḥiyya, and Rav Huna bar Ḥiyya was sitting before Rav Naḥman. Rav Huna bar Ḥiyya said to Rav Naḥman: Did you deem him liable to pay because that is the halakha, or was it a fine?

235 Rav Naḥman said to him: This individual’s liability is written explicitly in the mishna, i.e., it is the halakha, as we learned in the mishna: If thugs took the field due to the robber, he is obligated to provide the owner with a different field. And it was established that the mishna is referring to a case where an individual showed the field to thugs, who later seized it. So too, in this case, the one who showed the Exilarch’s wheat pile to the thugs is obligated to pay for them. After Rav Naḥman left, Rav Yosef said to Rav Huna bar Ḥiyya: What difference does it make to you

236 if it is the halakha or if it is a fine? Rav Huna bar Ḥiyya said to him: If it is the halakha, we learn from it and apply this ruling to other cases, but if it is a fine, we do not learn from it, as it is possible that Rav Naḥman had a specific reason to impose a fine in this case.

237 The Gemara asks: And from where do you say that we do not learn from the imposition of a fine in one case and apply the ruling in other cases? The Gemara answers that the source is as it is taught in a baraita: Initially, the Sages would say that one who renders another’s food ritually impure, thereby rendering it unfit for him to consume, and one who pours another’s wine as a libation for idol worship, thereby rendering it an item from which deriving benefit is prohibited, are liable to pay the owner for the financial loss they caused despite the fact that damage is not evident. Subsequently, they added to this list, to say that even one who intermingles teruma, the portion of the produce designated for the priest, with another’s non-sacred produce, thereby rendering the non-sacred food forbidden to non-priests, is liable to compensate the owner for the loss of value of the produce, as fewer people will be willing to buy it from him.

238 The Gemara comments: It may be inferred from the baraita that it is only because the Sages subsequently added to the list that yes, one who intermingles teruma with another’s non-sacred produce must compensate him. But if they had not subsequently added to the list, he would not be liable. What is the reason that we do not learn that he is liable from the cases of one who renders another’s food impure or pours wine as a libation for idol worship, as this is also a case in which one causes damage that is not evident? Is it not due to the fact that his payment is a fine, and with regard to a fine, we do not learn from one case that it may be imposed in other circumstances?

239 The Gemara answers: No, this is not the reason. Rather, initially the Sages maintained that they were concerned with regard to a large financial loss, e.g., the cases of one who renders another’s food impure or pours his wine as a libation for idol worship, but with regard to a small financial loss, e.g., one who intermingles teruma with another’s non-sacred produce, they were not concerned. And ultimately the Sages maintained that they were concerned with regard to a small loss as well and imposed liability.

240 The Gemara asks: Is that so? But didn’t the father of Rabbi Avin teach the baraita as follows: Initially they would say that one who renders another’s produce impure and one who intermingles teruma with another’s non-sacred produce are both liable to pay for the financial loss that they caused, despite the fact that the damage is not evident. Subsequently, they added to this list, to say

that even one who pours another’s wine as a libation for idol worship is also liable to pay a fine for the loss that he caused. It may be inferred that it is only because the Sages subsequently added to the list, that yes, one who pours the libation is liable. But if they had not subsequently added to the list, he would not be liable.

241 The Gemara comments: Since one who offers libations for idol worship causes a large financial loss, the rationale offered previously cannot apply to this version of the baraita. Accordingly, what is the reason that the liability for pouring another’s wine as a libation could not be extrapolated from the fine imposed for rendering another’s food impure or intermingling it with teruma? Is it not due to the fact that we do not learn from the imposition of a fine in one case that a fine may be imposed in other cases?

242 The Gemara answers: No, this is not the reason. Rather, the reason is that initially the Sages held in accordance with the opinion of Rabbi Avin, and ultimately they held in accordance with the opinion of Rabbi Yirmeya.

243 The Gemara elaborates: Initially they held in accordance with the opinion of Rabbi Avin, as Rabbi Avin says: If one stood in the public domain on Shabbat and shot an arrow from the beginning of an area measuring four cubits to the end of an area measuring four cubits, and the arrow tore another’s silks [shira’in] in the course of its travel through the air, the one who threw it is exempt from paying for the cloth. The reason for this is that lifting an item is a necessity for placing it elsewhere, and therefore the entire process, from when one shoots the arrow until it comes to a rest, is considered to be a single act. The one performing it is liable to receive the death penalty for violating Shabbat. One who performs a single act for which he is liable to receive the death penalty and is also liable to pay money receives only the death penalty. Similarly, one who pours another’s wine as a libation for idol worship incurs the death penalty, and is therefore exempt from paying for the wine.

244 And ultimately they held that the liabilities are not incurred simultaneously, in accordance with the opinion of Rabbi Yirmeya, as Rabbi Yirmeya says: From the time of the lifting, the thief acquires the wine and is therefore immediately liable to pay money to the owner. But he is not liable to receive the death penalty until the time that he pours the libation. Once the Sages concluded that the liabilities are not incurred simultaneously, they ruled that one who pours another’s wine as a libation for idol worship is liable to reimburse him.

245 § The Gemara returns to the matter of one who showed another’s field to thugs. Rav Huna bar Yehuda happened to come to the town of Bei Abiyonei and came before Rava, who said to him: Did any legal incident come to you for judgment recently? Rav Huna bar Yehuda said to him: There was a case of a Jew whom gentiles coerced and, as a result he showed them property belonging to another, which the gentiles later seized. He came to me for judgment, and I deemed him liable to compensate the owner for the loss.

246 Rava said to Rav Huna bar Yehuda: Reverse your decision in this case and return the money to its owner, i.e., the thug, as it is taught in a baraita: In the case of a Jew whom gentiles coerced and, as a result he showed them property belonging to another that the gentiles later seized, he is exempt from reimbursing the owner of the property. But if he actively took the property and gave it to the gentiles by his own hand, he is liable to compensate the owner.

247 The Gemara adds that Rabba says: If he showed the gentiles the property of his own volition, it is as though he actively took the property and gave it to the gentiles by his own hand, and he is liable to compensate the owner.

248 The Gemara recounts another incident: There was a certain man that gentiles had coerced and so he showed them the wine of Rav Mari, son of Rav Pineḥas, son of Rav Ḥisda, and the gentiles said to him: Carry the wine and bring it with us. Complying with the gentiles, he carried and brought it with them. The case came before Rav Ashi, and he exempted the man from compensating Rav Mari for the wine.

249 The Rabbis said to Rav Ashi: But isn't it taught in a baraita: If he took the property and manually transferred it to the gentiles, he is liable to compensate the owner? Rav Ashi said to them: That statement applies only in a case where the Jew did not bring the gentiles to the property at the outset; but if he brought the gentiles to the property at the outset, it is as though he already burned it, as the gentiles then had access to the property. Since the damage inflicted by the Jew was committed by merely showing the wine to the gentiles, he is exempt from payment even though he later actively carried the wine with his hands.

250 Rabbi Abbahu raised an objection to the opinion of Rav Ashi from a baraita: In a case where a ruffian said to a Jew: Pass me this bundle of grain, or this cluster of grapes, and the Jew passed it to him, the Jew is liable to pay the owner of the grain or the grapes. Since the ruffian was already present, it is evident from this baraita that one who hands over another's property to a third party is liable despite the fact that the latter already had access to it. Rav Ashi answered: With what are we dealing here? We are dealing with a case where the Jew and the ruffian were standing on two different sides of a river, so that the ruffian did not have access to the item when the Jew passed it to him.

251 The Gemara points out that the language of the baraita is also precise according to this explanation, as it teaches its ruling using the term: Pass, which indicates that the ruffian could not have reached the item himself, and it did not teach using the term: Give, which would indicate that the ruffian was standing next to the other individual. The Gemara concludes: Learn from the language of the baraita that Rav Ashi's interpretation is correct.

252 The Gemara relates another incident: There was a certain fishing net over which two people were quarreling. This one said: It is mine, and that one said: It is mine. One of them went and gave it to an officer [lefarhagna] of the king. Abaye said: He is exempt from payment because he can say to the court: When I gave it to the official, I gave what is mine. Rava said to Abaye: And is it in his power to do so when the ownership of the net is the subject of dispute? Rather, Rava said: We excommunicate him until he brings the net back and stands in court for adjudication.

253 The Gemara relates another incident: There was a certain man who desired to show another individual's straw to the gentile authorities, who would seize it. He came before Rav, who said to him: Do not show it and do not show it, i.e., you are absolutely prohibited from showing it. The man said to him: I will show it and I will show it, i.e., I will certainly show it. Rav Kahana was sitting before Rav, and, hearing the man's disrespectful response, he dislodged the man's neck from him, i.e., he broke his neck and killed him.

254 Seeing Rav Kahana's action, Rav read the following verse about him: "Your sons have fainted, they lie at the head of all the streets, as an antelope in a net" (Isaiah 51:20). Just as with regard to this

antelope, once it falls into the net, the hunter does not have mercy upon it, so too with regard to the money of a Jew, once it falls into the hand of gentiles, they do not have mercy upon him, i.e., the Jew. Since gentiles who seek a Jew's money will kill him in order to seize the property, Rav Kahana acted appropriately when he broke the miscreant's neck, as he protected the Jew's property and, by extension, the Jew himself.

255 Rav then said to Rav Kahana: Kahana, until now there were Persian rulers who were not particular about bloodshed. But now there are Greeks who are particular about bloodshed, and they will say: Murder [meradin], murder, and they will press charges against you. Therefore, get up and ascend to Eretz Yisrael to study there under Rabbi Yoḥanan, and accept upon yourself that you will not raise any difficulties to the statements of Rabbi Yoḥanan for seven years.

256 Rav Kahana went to Eretz Yisrael and found Reish Lakish, who was sitting and reviewing Rabbi Yoḥanan's daily lecture in the academy for the Rabbis, i.e., the students in the academy. When he finished, Rav Kahana said to the students: Where is Reish Lakish? They said to him: Why do you wish to see him? Rav Kahana said to them: I have this difficulty and that difficulty with his review of Rabbi Yoḥanan's lecture, and this resolution and that resolution to the questions he raised. They told this to Reish Lakish. Reish Lakish then went and said to Rabbi Yoḥanan: A lion has ascended from Babylonia, and the Master ought to examine the discourse he will deliver in the academy tomorrow, as Rav Kahana may raise difficult questions about the material.

257 The next day, they seated Rav Kahana in the first row, in front of Rabbi Yoḥanan. Rabbi Yoḥanan stated a halakha and Rav Kahana did not raise a difficulty, in accordance with Rav's instruction. Rabbi Yoḥanan stated another halakha and again, Rav Kahana did not raise a difficulty. As a result, they placed Rav Kahana further back by one row. This occurred until he had been moved back seven rows, until he was seated in the last row. Rabbi Yoḥanan said to Rabbi Shimon ben Lakish: The lion you mentioned has become a fox, i.e., he is not knowledgeable.

258 Rav Kahana said to himself: May it be God's will that these seven rows I have been moved should replace the seven years that Rav told me to wait before raising difficulties to the statements of Rabbi Yoḥanan. He stood up on his feet and said to Rabbi Yoḥanan: Let the Master go back to the beginning of the discourse and repeat what he said. Rabbi Yoḥanan stated a halakha and Rav Kahana raised a difficulty. Therefore, they placed him in the first row, and again, Rav Yoḥanan stated a halakha, and he raised a difficulty.

259 Rabbi Yoḥanan was sitting upon seven cushions [bistarkei] so that he could be seen by all the students, and since he could not answer Rav Kahana's questions, he removed one cushion from under himself to demonstrate that he was lowering himself out of respect for Rav Kahana. He then stated another halakha and Rav Kahana raised another difficulty. This happened repeatedly until Rabbi Yoḥanan removed all the cushions from underneath himself until he was sitting on the ground. Rabbi Yoḥanan was an old man and his eyebrows drooped over his eyes. He said to his students: Uncover my eyes for me and I will see Rav Kahana, so they uncovered his eyes for him with a silver eye brush.

260 Once his eyes were uncovered, Rabbi Yoḥanan saw that Rav Kahana's lips were split and thought that Rav Kahana was smirking at him. As a result, Rabbi Yoḥanan was offended, and Rav Kahana died as punishment for the fact that he offended Rabbi Yoḥanan. The next day, Rabbi Yoḥanan said to the Rabbis, his students: Did you see how that Babylonian, Rav Kahana, behaved in such a

disrespectful manner? They said to him: His usual manner of appearance is such, and he was not mocking you. Hearing this, Rabbi Yoḥanan went up to Rav Kahana's burial cave and saw that it was

[261] encircled by a serpent [akhna], which had placed its tail in its mouth, completely encircling the cave and blocking the entrance. Rabbi Yoḥanan said to it: Serpent, serpent, open your mouth and allow the teacher to enter and be near the disciple, but the serpent did not open its mouth to allow him entry. He then said: Allow a colleague to enter and be near his colleague, but still the serpent did not open its mouth. Rabbi Yoḥanan said: Allow the disciple to enter and be near the teacher, referring to Rav Kahana as his own teacher. The snake then opened its mouth for him to allow him entry. Rabbi Yoḥanan requested divine mercy from God and raised Rav Kahana from the dead.

[262] Rabbi Yoḥanan said to Rav Kahana: Had I known that this was the Master's manner of appearance, I would not have been offended. Now let the Master come with me to the study hall. Rav Kahana said to him: If you are able to request divine mercy so that I will not die again, I will go with you, and if not, I will not go with you. The Gemara comments: Since the time decreed for his death had passed, it had passed.

[263] Rabbi Yoḥanan then completely awakened him and stood him up. Thereafter, he asked him about every uncertainty that he had, and Rav Kahana resolved each of them for him. And this is the background to that which Rabbi Yoḥanan says to his students on several occasions: What I said was yours is in fact theirs, i.e., I thought that the Torah scholars in Eretz Yisrael were the most advanced, but in fact the scholars of Babylonia are the most advanced, as evidenced by Rav Kahana's knowledge.

[264] § The Gemara relates another incident pertaining to one who informed gentiles of the whereabouts of another Jew's property. There was a certain individual who showed Rabbi Abba's silk [ametakesa] to gentiles, who later seized it. Rabbi Abbahu and Rabbi Ḥanina bar Pappi and Rabbi Yitzḥak Nappaḥa sat together to determine whether Rabbi Abba was entitled to compensation from the informer, and Rabbi Ile'a sat next to them.

[265] The judges thought to deem the informer liable to reimburse Rabbi Abba based upon that which we learned in a mishna (Bekhorot 28b): If a judge issued a judgment and erred, and he acquitted one who was in fact liable, or deemed liable one who should have in fact been acquitted, or if he ruled that a pure item is impure, or ruled that an impure item is pure, and by doing so he caused a litigant a monetary loss, what he did is done, i.e., the judgment stands, and the judge must pay damages from his home, i.e., from his personal funds. This indicates that one is liable to pay for a financial loss that he causes even if his involvement was only through speech.

[266] Rabbi Ile'a said to them: This is what Rav says: And that mishna is discussing a case where the judge not only issued a ruling, but actively took the money from the one whom he found liable, and gave it to the other party by his own hand. Consequently, it cannot serve as a precedent to render the informer liable in this case. The Sages serving as judges said to Rabbi Abba: Go to Rabbi Shimon ben Elyakim and Rabbi Elazar ben Pedat, who rule that there is liability for damage caused by indirect action.

[267] Rabbi Abba went to them, and they deemed the informer liable to reimburse Rabbi Abba, as it is taught in the mishna: If the thugs seized the field due to the robber, he is liable to provide the owner with a different field. And it was established that the mishna is referring to a case where an individual

showed the field to thugs who later seized it. The halakha stated in the mishna would apply to this case as well.

[268] The Gemara relates another incident: There was a certain man with whom a silver cup was deposited. Thieves came upon him in his home and he took the cup and gave it to them. The case came before Rabba, and Rabba exempted him from payment. Abaye said to him: This individual is saving himself with another's property, and he should therefore be liable. Rather, Rav Ashi said, in explanation of Rabba's ruling: We look at his financial status: If the bailee is a wealthy man, the thieves came with the intent to steal his property, and he is therefore liable to pay, as he saved himself from financial loss by handing over another's property. And if he is not wealthy, the thieves presumably came with the intent to steal the silver cup, and he is therefore exempt from liability.

[269] The Gemara relates another incident: There was a certain man with whom the purse containing funds collected for the redemption of captives was deposited. Thieves came upon him and he took the purse and gave it to them. The case came before Rabba, and Rabba exempted him from payment. Abaye said to him: But this individual is saving himself with another's property, and he should therefore be liable to pay. Rabba said to him: You have no greater redemption of captives than this. Since the man used the money to avoid being harmed by the thieves, Rabba considered the money to have been used for its intended purpose.

[270] The Gemara relates another incident: There was a certain man who hastened and brought his donkey onboard a ferry [lemavra] before other people boarded the ferry. The donkey began to move around and was about to cause the boat to sink. A certain other man came and pushed the donkey of that first man into the river, and it drowned. The case came before Rabba, and Rabba exempted him from payment. Abaye said to him: But this individual is saving himself with another's property, and he should therefore be liable to pay. Rabba said to him: This owner of the donkey was considered a pursuer from the outset, as he endangered the other travelers. It is permitted to stop a pursuer by any means necessary, including by destroying his property.

[271] The Gemara notes that Rabba conforms to his standard line of reasoning, as Rabba says: In the case of a pursuer who was chasing after another in order to kill him and the pursuer broke vessels during the chase, whether they belonged to the pursued party or to anyone else, he is exempt from reimbursing the owner of the vessels. This is because he is liable to receive the death penalty for attempted murder and is consequently exempt from any monetary liability he incurs simultaneously.

[272] And a pursued individual who broke the vessels of the pursuer is also exempt from payment, as the pursuer's property shall not be cherished more than his body, i.e., his life. Since it is permitted to kill the pursuer in order to save his intended victim, it is permitted to destroy his property for that purpose. But if he destroyed property belonging to anyone else, he is liable to reimburse them, as it is prohibited for him to save himself with another's property.

[273] And with regard to a pursuer who was chasing after another pursuer in order to save the latter's intended victim, and he broke vessels during the chase, whether they belonged to the pursued individual, i.e., the individual attempting murder, or to anyone else, he is exempt from payment. The Gemara notes: And this is not the halakha by Torah law, but if you do not say so, you will not have any person that saves another from a pursuer. In order to encourage people to attempt to save the lives of others, the Sages instituted that one who damages another's property in the process of saving a life is exempt from payment.

274 MISHNA: If a river flooded a misappropriated field, the robber may say to its owner: That which is yours is before you, and no compensation is required. Since the field would have been flooded in any case, the robber has not caused the damage to the field, and is therefore exempt.

275 GEMARA: The Sages taught: In the case of one who robbed a field from another and a river then flooded it, the robber is liable to provide the field's owner with a different field. This is the statement of Rabbi Elazar. And the Rabbis say: He is exempt from doing so, as he can say to the owner: That which is yours is before you.

276 The Gemara analyzes this dispute: With regard to what do they disagree? The Gemara explains: Rabbi Elazar interpreted the verses: "If any one sin, and commit a trespass against the Lord, and deal falsely with his neighbor in a matter of deposit…or anything about which he has sworn falsely, he shall restore it in full" (Leviticus 5:21–24), according to the hermeneutical principle of amplifications and restrictions. The phrase: "If any one sin, and commit a trespass against the Lord, and deal falsely with his neighbor," is an amplification. When the verse states: "In a matter of deposit," it has restricted the halakha to the case of a deposit. When the verse then states: "Or anything about which he has sworn falsely, he shall restore it in full," it has then amplified the halakha again.

277 Accordingly, as the Torah amplified and then restricted and then amplified again, it has amplified the halakha to include everything, with only a single exception. And what is included due to the fact that the verse has amplified the halakha? The verse has amplified the halakha to include everything that one steals.

278 And what is excluded due to the fact that the verse restricted the halakha? It restricted the halakha in order to exclude financial documents, which are dissimilar to a deposit in that their value is not intrinsic, but rather due to their function. Consequently, according to Rabbi Elazar, land that was stolen is included in the halakhot stated in these verses, and one who steals land must reimburse the field's owner.

279 And the Rabbis interpreted these verses according to the hermeneutical principle of generalizations and details. The phrase: "And deal falsely with his neighbor," is a generalization, while the subsequent phrase: "In a matter of deposit," is a detail. When the verse then states: "Or anything about which he has sworn falsely, he shall restore it in full," it has then generalized again. In a case of a generalization, and a detail, and a generalization, you may deduce that the verse is referring only to items similar to the detail.

280 Accordingly, just as the detail, i.e., a deposit, is movable property and has intrinsic monetary value, so too, the verse includes anything that is movable property and has intrinsic monetary value. Consequently, land has been excluded, as it is not movable property. Slaves have been excluded, as they are compared to land with regard to many areas of halakha. Financial documents have been excluded because, although they are movable property, they do not have intrinsic monetary value.

281 The Gemara asks: And there is that which is taught in a baraita: In the case of one who robbed another of a cow and a river washed it away, the robber is liable to provide the owner with another cow; this is the statement of Rabbi Elazar. And the Rabbis say: The robber can say to the owner: That which is yours is before you, and he would consequently be exempt. The Gemara asks: There, in the baraita, with regard to what do they disagree? The rationale offered previously cannot apply, as a cow is movable property and has intrinsic value, and yet Rabbi Elazar and the Rabbis still disagree.

[282] Rav Pappa said: There, with what are we dealing? We are dealing with a case where he had robbed another of a field, and there was

[283] a prone cow in it, and a river washed it away. Rabbi Elazar conforms to his standard line of reasoning, as he maintains that land is included in the category of items that are not subject to the halakhot of robbery. Consequently, the robber acquires the land and simultaneously becomes liable to return it. Since he acquires the land, he acquires the cow that is on the land as well, and is liable to compensate its owner when it gets washed away by the river. And the Rabbis conform to their standard line of reasoning, as they hold that land was excluded by the verse. Therefore, the robber does not acquire the land and also does not acquire the cow.

[284] MISHNA: With regard to one who robs another or who borrowed money from him, or one with whom another had deposited an item, if any of these interactions took place in a settled area, he may not return the item to him in an unsettled area, where it is of little benefit to the owner and he cannot safeguard it. If the loan or deposit was given on the condition that the recipient may go out and return it to the owner in an unsettled area, he may return it to him in an unsettled area.

[285] GEMARA: The Gemara raises a contradiction to the mishna from a baraita: A loan may be repaid in any location, while a lost item and a deposit are returned only in their location, i.e., the same type of place, settled or unsettled, where they were found or received. Abaye said: This is what the baraita is saying: A loan may be claimed by the creditor in any location. Yet, if the borrower initiates the process of repaying the loan in an unsettled area, the creditor may refuse to accept the repayment until they reach a settled area. Conversely, a lost item and a deposit may be claimed only in their location.

[286] The mishna teaches that if the loan or deposit was given on the condition that the recipient may go out and return it to the owner in an unsettled area, he may do so. The Gemara asks: Isn’t it obvious that an explicit stipulation to this effect is binding? The Gemara answers: No, it is necessary, as the mishna is discussing a case where the depositor said to the bailee: Let this deposit be with you, as I am going out to an unsettled area, and the bailee said to him: I also need to go out to an unsettled area, so if I need to return the deposit to you there, I will return it to you there.

[287] MISHNA: In the case of one who says to another: I robbed you, or: You lent me money, or: You deposited an item with me, and I do not know if I returned your property to you or if I did not return it to you, he is liable to pay the sum or item in question. But if he said to him: I do not know if I robbed you, or: I do not know if you lent me money, or: I do not know if you deposited an item with me, he is exempt from paying the sum or item in question.

[288] GEMARA: The Gemara cites a related dispute: It was stated that if one individual says to another: I have one hundred dinars in your possession, and the other says: I do not know whether or not this is true, Rav Huna and Rav Yehuda say that he is liable to pay the plaintiff, and Rav Naḥman and Rabbi Yoḥanan say that he is exempt from paying.

[289] The Gemara explains the reason for each opinion: Rav Huna and Rav Yehuda say that he is liable to pay, because when there is a certain claim and an uncertain claim, the certain claim is superior. Rav Naḥman and Rabbi Yoḥanan say that he is exempt from paying because of the principle: Establish the money in the possession of its owner, i.e., money is not taken from one’s possession without clear proof that he is liable to pay it.

290 The Gemara attempts to derive a proof: We learned in the mishna: But if he said to him: I do not know if you lent me money, he is exempt from paying. What are the circumstances? If we say that the mishna is discussing a case where the lender did not claim the money from him, the first clause must also discuss a situation where the lender did not claim the money from him. If so, why is the borrower liable to pay in the case discussed in the first clause? Rather, the mishna must be discussing a case where the lender did claim the money from him, and the latter clause nevertheless teaches that the borrower is exempt from paying, even though his claim is uncertain and that of the lender is certain. This supports the opinion of Rav Naḥman and Rabbi Yoḥanan.

291 The Gemara answers: No, actually the mishna is referring to a case where the lender did not claim the money from him, and the first clause is discussing a case where the borrower comes to fulfill his obligation to Heaven.

292 The Gemara adds that it was also stated: Rabbi Ḥiyya bar Abba says that Rabbi Yoḥanan says: In the case of one who says to another: I have one hundred dinars in your possession, and the other individual says: I do not know whether or not this is true, the latter is liable to pay. This applies where he comes to fulfill his obligation to Heaven even though he cannot be forced to pay. This statement is in accordance with the opinion of Rav Huna and Rav Yehuda.

293 MISHNA: In the case of one who stole a lamb from a flock and returned it without informing the owner that he had done so, and then it died or was stolen, the thief is liable to pay restitution for it. If the lamb’s owners did not know about the entire incident, i.e., they did not know that it was stolen and they did not know that it was returned, and they counted the flock of sheep and found it whole, the thief is exempt from paying.

294 GEMARA: The Gemara presents several ways to understand the mishna: Rav says: In a case where the owners had knowledge of the fact that their lamb was stolen, the thief is required to return it with the knowledge of the owners in order to be exempt from liability if the lamb is subsequently harmed. In a case where the owners had no knowledge that the lamb was taken, their count of the flock after the thief returned it exempts the thief from further liability. And when the mishna teaches: And they counted the flock of sheep and found it whole, it is referring specifically to the latter clause, i.e., the case where the owners were unaware that the lamb was stolen, as it is specifically in that case that the count exempts the thief from liability.

295 And Shmuel says: Whether the owners had knowledge of the theft or whether they did not have knowledge of it, their count of the flock exempts the thief from payment. And when the mishna teaches: And they counted the flock of sheep and found it whole, the thief is exempt, it is referring to the entire mishna, as this exempts the thief from liability in both cases mentioned in the mishna.

296 And Rabbi Yoḥanan says: In a case where the owners had knowledge of the theft, their count of the flock exempts the thief, and in a case where the owners had no knowledge of the theft, even counting is not required for the thief to be exempt. And when the mishna teaches: And they counted the flock of sheep and found it whole, it is referring specifically to the first clause of the mishna, as it is particularly in that case that the count is relevant.

297 Rav Ḥisda says: In a case where the owners had knowledge of the theft, their count of the flock exempts the thief. In a case where the owners had no knowledge of the theft, the thief is required to return the lamb with their knowledge in order to become exempt from liability for future damage. And when the mishna teaches: And they counted the flock of sheep and found it whole, it is referring

specifically to the first clause of the mishna, where the owners were aware of the theft, as it is only in that case that counting the flock is sufficient to exempt the thief from further liability.

298 Rava says:

299 What is the reasoning of Rav Ḥisda, who holds that the requirement to return the animal with the owner's knowledge is in the case where the owners did not know about the theft? Since the thief taught the lamb to take steps outside, i.e., to leave the owners' property, it will now require greater supervision, which the owners can provide only if they are aware of the situation.

300 The Gemara assumes that since Rava explained Rav Ḥisda's reasoning, he accepts Rav Ḥisda's ruling. The Gemara asks: But did Rava actually say this? Doesn't Rava say that in the case of this person who saw another lift a lamb from his flock in order to steal it, and the owner then raised his voice at the thief, and the thief discarded it, but the owner did not know if the thief returned the lamb or if he did not return it, and the lamb then died or was stolen, the thief is to pay restitution for it?

301 The Gemara comments: What, is this statement of Rava not applicable even if the owner counted his flock after this incident? Accordingly, Rava rules that if the owner knew about the theft, the thief is rendered exempt from liability only if he returns the lamb with the owner's knowledge, which is not in accordance with the ruling of Rav Ḥisda. The Gemara answers: No, Rava's ruling applies only where the owner did not count the flock.

302 The Gemara examines Rav's ruling. But did Rav actually say this? Doesn't Rav say that if the thief returned the lamb to the owner's flock that is in an unsettled area, he has fulfilled his obligation to return it? This indicates that the thief is exempt from further liability even though the thief did not inform the owner of the lamb's return and the owner did not count the flock. The Gemara answers that Rav Ḥanan bar Abba said: Rav concedes that the thief is exempt in this case only where the lamb was spotted [birkuata]. Since the lamb's spots are distinctive, the owner immediately becomes aware of its return.

303 The Gemara suggests: Let us say that the amoraic dispute cited previously is parallel to a dispute between tanna'im, as it is taught in a baraita: One who steals a lamb from a flock or a sela from a purse must return it to the place from where he stole it; this is the statement of Rabbi Yishmael. Rabbi Akiva says: The thief is required to return it with the knowledge of its owners.

304 The Gemara explains: The Sages discussing the matter assumed that everyone accepts the opinion of Rabbi Yitzḥak, as Rabbi Yitzḥak says: A person is prone to feel his purse constantly, and therefore becomes aware of the theft soon after it takes place. What, is it not a case where a sela was stolen with the owner's knowledge, and the dispute of Rabbi Yishmael and Rabbi Akiva is parallel to the dispute of Rav and Shmuel? According to this explanation, Rav rules in accordance with the opinion of Rabbi Akiva, and Shmuel rules in accordance with the opinion of Rabbi Yishmael.

305 The Gemara responds: No, they disagree in the case of a lamb that was stolen without the knowledge of its owners, i.e., they did not know that it was stolen, and the dispute of Rabbi Yishmael and Rabbi Akiva is parallel to the dispute of Rav Ḥisda and Rabbi Yoḥanan. Rav Ḥisda rules in accordance with the opinion of Rabbi Akiva that the lamb must be returned with the owner's knowledge, and Rabbi Yoḥanan rules in accordance with the opinion of Rabbi Yishmael that the owners do not need to become aware of the lamb's return.

306 Rav Zevid said in the name of Rava: With regard to a bailee who stole a lamb from the owner’s domain, everyone, including Rabbi Yishmael, agrees that the halakha is in accordance with the opinion of Rav Ḥisda, and the owner must be aware of the animal’s return in order for the thief to become exempt from further liability. And here it is with regard to whether a bailee who stole from within his own domain may return what he stole to the place from where he stole it that they disagree. Rabbi Akiva holds: His safeguarding was terminated when he stole the lamb and he must therefore return it with the owner’s knowledge. And Rabbi Yishmael holds: His safeguarding was not terminated and he may return it to his own domain.

307 The Gemara suggests: Let us say that with regard to the dispute over whether the owner’s counting of his flock exempts a thief who returned a stolen lamb without notifying the owner, it is a dispute between tanna’im, as it is taught in a baraita: With regard to one who robbed another and then included the money he owed him for the robbery in the calculation of the payment for a different transaction, i.e., he compensated the owner by overpaying him for a different transaction, it is taught in one baraita: He has fulfilled his obligation to pay, and it is taught in another baraita: He has not fulfilled his obligation to pay.

308 The Sages discussing the matter assumed that everyone accepts the statement of Rabbi Yitzḥak, as Rabbi Yitzḥak says: A person is prone to feel his purse constantly, and therefore becomes aware that he has been compensated soon after the payment is made. What, is it not with regard to this following point that they disagree: The one who says that the robber has fulfilled his obligation holds that the counting of the property exempts a robber from further liability, and the one who says that the robber has not fulfilled his obligation holds that the counting does not exempt a robber from further liability.

309 The Gemara responds: One can say that if we held in accordance with the statement of Rabbi Yitzḥak, it would follow that everyone agrees that the counting of the property exempts a robber from further liability. Rather, it is with regard to the statement of Rabbi Yitzḥak itself that they disagree: One Sage accepts the statement of Rabbi Yitzḥak, and one Sage does not accept the statement of Rabbi Yitzḥak.

310 And if you wish, say instead that everyone accepts the statement of Rabbi Yitzḥak, and it is not difficult: This first baraita, which rules that the robber fulfilled his obligation, is discussing a case where the robber counted the money and placed it directly in the owner’s purse, which the owner will soon open and count. And that other baraita, which rules that the robber did not fulfill his obligation, is discussing a case where he counted the money and placed it in the owner’s hand. Consequently, it is possible that the owner will put the money directly into a container with other coins in it and will never realize that he was compensated for the theft.

311 And if you wish, say instead that both this baraita and that baraita are discussing a case where the robber counted the money and placed it in the owner’s purse. This baraita discusses a case where he has other dinars in his purse, but he did not know how many. Therefore, when he counts the money, he will not realize that the robber inserted an additional sum. Whereas that baraita is discussing a case where he does not have other dinars in his purse, so that when he counts the money he will realize that an additional sum has been included in the payment.

[312] MISHNA: One may not purchase wool, milk, and kids from the shepherds who tend the flocks of others, due to the concern that they have stolen these items from the owners of the flocks. And similarly, one may not purchase wood and produce from produce watchmen.

[313] But one may purchase from women woolen goods in Judea, and linen goods in the Galilee, and calves in the Sharon, as women in these locations often work with those commodities and it can be assumed that they are selling the items with the owner's consent. And with regard to all these items, in a case where the seller told the buyer to conceal the purchase, it is prohibited, as there is good reason to suspect that the items are stolen. And one may purchase eggs and chickens from everywhere, as it is unlikely that one would steal and sell these commodities.

[314] GEMARA: The Sages taught in a baraita (Tosefta 11:9): One may purchase from shepherds neither goats, nor kids, nor fleeces, nor torn pieces of wool, but one may purchase sewn garments from them, because they are presumed to be theirs. And one may purchase milk and cheese from them in an unsettled area, but not in a settled area.

[315] And one may purchase from them four or five sheep or four or five fleeces at a time, because it is unlikely that a shepherd would risk stealing such a significant quantity at once. But one may not purchase two sheep, and similarly, one may not purchase two fleeces at a time, as it is reasonable to assume that the shepherd would attempt to steal this amount from the owner.

[316] The baraita continues: Rabbi Yehuda says: One may purchase domesticated animals from them, as it is unlikely that the shepherds would steal them from their owner, who would notice if they did not return home. Conversely, one may not purchase desert, i.e., non-domesticated, animals from them, as it is more likely that a shepherd would steal these animals. The principle of the matter is that with regard to anything that the shepherd sells and the owner would perceive its absence if it were stolen, one may purchase it from them. But if the owner would not perceive its absence, one may not purchase it from them.

[317] The Gemara examines the baraita: The Master said that one may purchase from them four or five sheep or four or five fleeces at a time. Now that it can be said that we may buy four sheep, as it is unlikely that the shepherd would steal such a large quantity at one time, is it necessary to state that we may buy five? The Gemara answers that Rav Ḥisda said: The meaning of the baraita is that one may purchase four sheep out of a flock consisting of five sheep, as it is reasonable to assume that the shepherd would not attempt to steal four-fifths of the owner's flock. And there are those who say that Rav Ḥisda said as follows: Four sheep may be purchased from the shepherd of a small flock, and five may be purchased from the shepherd of a large flock.

[318] The Gemara asks another question with regard to the baraita: This matter itself is difficult, as you said in the baraita: One may purchase from them four or five sheep or four or five fleeces at a time, which indicates that purchasing four or five, yes, it is permitted, but purchasing three, no, it is prohibited. Say the latter clause: But one may not purchase two sheep. This indicates that we may purchase three sheep at a time.

[319] The Gemara answers that this is not difficult: This clause, which permits the purchase of three sheep, is discussing a case where the sheep are robust, and therefore the owner is more attentive to them and would notice if three were missing. Conversely, that clause, which prohibits the purchase of three sheep, is discussing a case where the sheep are frail. Consequently, the owner does not care about them as much, and it is possible that he would not notice if only three of them went missing.

320 The baraita teaches that Rabbi Yehuda says: One may purchase domesticated animals from them, but one may not purchase desert animals from them. A dilemma was raised before the Sages: Is the statement of Rabbi Yehuda referring to the first clause, and his statement is therefore a stringency? Or perhaps it is referring to the latter clause, and his statement is a leniency?

321 The Gemara elaborates: Is it referring to the first clause, and his statement is therefore a stringency, as he would be saying: One may purchase four or five sheep from them, and this statement applies only to domesticated animals, but with regard to desert animals, even four or five sheep may not be purchased? Or perhaps it is referring to the latter clause and it is a leniency, as he would be saying: But one may not purchase two sheep, and similarly, one may not purchase two fleeces, and this statement applies only to desert animals, but with regard to domesticated animals, one may purchase even two animals.

322 The Gemara presents an answer: Come and hear a resolution to the dilemma, as it is taught in a baraita that Rabbi Yehuda says: One may purchase domesticated animals from them, but one may not purchase desert animals from them. But one may always purchase four or five sheep from them.

323 From the fact that he stated that four or five animals may always be purchased, conclude from it that Rabbi Yehuda's statement is referring to the latter clause, and his statement is a leniency. The Gemara affirms: Conclude from it that Rabbi Yehuda intended his statement as a leniency.

324 § The mishna teaches: And similarly, one may not purchase wood and produce from produce watchmen. The Gemara relates that Rava purchased grapevine branches from a sharecropper. Abaye said to him: But didn't we learn in the mishna: And similarly, one may not purchase wood and produce from produce watchmen? The same halakha should apply with regard to a sharecropper, who, like a watchman, is not the owner of the produce. Rav said to him: This statement applies only with regard to a watchman, as he has no share at all in the land itself. But with regard to a sharecropper, who does have a share in it, say: He is selling merchandise from his own share of the land. Since it is plausible that the sharecropper is selling his own property, it is permitted to buy it from him.

325 The Gemara cites a baraita which discusses purchasing items from watchmen: The Sages taught (Tosefta 11:8): With regard to produce watchmen, one may purchase produce from them when they are sitting and selling the produce, and the baskets are before them and the scales [veturtanei] are before them, as in these circumstances it is reasonable to assume that they are not selling stolen merchandise. But in all cases where they said to the buyer: Conceal your purchase, it is prohibited to purchase from them, as there is good reason to suspect that the merchandise is stolen. The baraita adds: One may purchase from a watchman from the entrance of the garden, but not from the back of the garden, because if the produce is being sold inconspicuously, there is a concern that it might have been stolen.

326 § Having discussed the halakha pertaining to suspected theft, the Gemara proceeds to examine the halakha pertaining to purchasing items from a known robber. It was stated: With regard to a robber, from when is it permitted to purchase items from him? Rav says: It is prohibited until the majority of his possessions are from his own property, i.e., property that he obtained legally. And Shmuel says: It is permitted to purchase items from a known robber even if only a minority of his possessions are from his own property.

[327] The Gemara notes that Rav Yehuda instructed Adda, his attendant, in accordance with the statement of the one who says: It is permitted to purchase items from a known robber even if only a minority of his possessions are from his own property, i.e., in accordance with the opinion of Shmuel.

[328] With regard to the property of an informer, i.e., one who informs gentiles of the whereabouts of another's property, facilitating its theft or misuse, there is a dispute between Rav Huna and Rav Yehuda. One says: It is permitted to physically destroy it, and one says: It is prohibited to physically destroy it.

[329] The Gemara elaborates: The rationale of the one who says that it is permitted to physically destroy it is that an informer's property should not be subject to a more stringent halakha than his body. Since it is permitted to physically harm or even kill an informer, it would be unreasonable to prohibit the destruction of his property. And the rationale of the one who says that it is prohibited to physically destroy it is that perhaps he will have good children, and it is written: The wicked may prepare it, but the just shall put it on (see Job 27:17).

[330] The Gemara relates that Rav Ḥisda had a certain sharecropper who would weigh the field's produce and give Rav Ḥisda his portion, and weigh the produce and take his own portion. Rav Ḥisda dismissed him, and read the following verse about him: "A good man leaves an inheritance to his children's children; and the wealth of the sinner is laid up for the righteous" (Proverbs 13:22).

[331] § The Gemara examines various verses pertaining to robbers. "For what is the hope of the godless, though he profits, when God takes away his soul?" (Job 27:8). This verse is the subject of a dispute between Rav Huna and Rav Ḥisda. One says that the phrase "God takes away his soul" is referring to the soul of the robbed, and one says that it is referring to the soul of the robber.

[332] The Gemara elaborates: The rationale of the one who says that the verse is referring to the soul of the robbed is as it is written: "So are the ways of every one that is greedy for profit; it takes away the life of the owner thereof" (Proverbs 1:19), which teaches that one who robs another of his property is considered as one who robbed him of his soul. And the rationale of the one who says that it is referring to the soul of the robber is as it is written: "Rob not the weak, because he is weak, neither crush the poor in the gate; for the Lord will plead their cause, and despoil of life those that despoil them" (Proverbs 22:22–23).

[333] The Gemara questions each opinion: And according to the other opinion, i.e., the latter one, isn't it also written: "It takes away the life of the owner thereof," which indicates that the soul of the robbed is taken? The Gemara answers: What is the meaning of the phrase "the owner thereof"? It is referring to its current owner, i.e., the robber, who has acquired the stolen item.

[334] And according to the other opinion, who said that the life of the robbed is taken, isn't it also written: "And despoil of life those that despoil them," which indicates that the soul of the robber is taken? The Gemara answers that the verse is saying: What is the reason. The verse teaches: What is the reason that God will despoil the life of those who despoil them? It is because they despoiled the soul of their victims.

[335] Rabbi Yoḥanan says: Anyone who robs another of an item worth one peruta is considered as though he takes his soul from him, as it is stated: "So are the ways of every one that is greedy for profit; it takes away the life of the owner thereof" (Proverbs 1:19). And it states: "And they shall

consume your harvest, and your bread, they shall consume your sons and your daughters” (Jeremiah 5:17). Since they will consume the harvest and bread, it is as though they consume one’s children as well because there will be no food to feed them.

336 And it states: “Egypt shall be a desolation, and Edom shall be a desolate wilderness, for the extortion of the children of Judah, because they have shed innocent blood in their land” (Joel 4:19). The verse here considers extortion like the shedding of innocent blood. And it states with regard to a famine: “And the Lord said: It is for Saul, and for his bloody house, because he put to death the Gibeonites” (II Samuel 21:1).

337 The Gemara asks: Since Rabbi Yoḥanan’s point was proven by the first verse, what was the purpose of adding each subsequent verse by saying: And it states? The Gemara answers: And if you would say that the robber takes only his, i.e., the victim’s, life, but the lives of his sons and daughters are not taken, come and hear the second verse, which mentions the flesh of his sons and daughters.

338 And if you would say: This matter applies only where the robber does not give his victim compensation for the stolen item, but where he gave compensation for the stolen item, it is not comparable to murder, come and hear the verse: “For the extortion of the children of Judah, because they have shed innocent blood in their land.” Extortion is referring to coercing someone to sell an item that he does not want to sell. It is a form of robbery, and the verse equates it with murder.

339 And if you would say: This matter applies only where he committed the robbery by direct action, but if he committed it through indirect action, the transgression is not as severe, come and hear the verse: “It is for Saul, and for his bloody house, because he put to death the Gibeonites.” And where did we ever find that Saul killed the Gibeonites? He did not do so. Rather, due to the fact that he killed the residents of Nob, the city of the priests, who would provide the Gibeonites with water (see I Samuel, chapter 22) and food, the verse ascribes him blame for their death as though he had killed the Gibeonites himself.

340 § The mishna teaches: But one may purchase specific goods from women in certain places. The Sages taught in a baraita (Tosefta 11:5): One may purchase from women woolen goods in Judea, and linen goods in the Galilee, but not wines, oils, and flours, as these are not usually sold by women and there is a concern that perhaps the women stole them from their husbands. And no items may be purchased from slaves, or from children. Abba Shaul says: A woman may sell items for up to four and five dinars in order to make a cap [kippa] for her head, as it is assumed that her husband allows her to sell these items in order to purchase additional articles of clothing. And with regard to all of those cases, where they told the buyer to conceal his purchase, it is prohibited to enter into the transaction.

341 Charity collectors may take something worth a small amount from women, but not something worth a large amount, as it is possible that they do not have permission to give away expensive items.

342 And with regard to olive pressers, one may purchase from them olives in a substantial measure, and oil in a substantial measure, as there is no concern that they would steal such a large amount, but not olives in a small amount, and not oil in a small amount. Rabban Shimon ben Gamliel says: One may purchase olives in small amounts from women in the Upper Galilee, where olives are exceptionally expensive, as at times, a person is embarrassed to sell olives at the entrance of his house, and so he gives some olives to his wife, and she sells them. Since there is a reason to presume that the women have been given the right to sell the olives by their husbands, and it is unlikely that

the women would sell them without permission, as even a small amount missing would be noticed due to their great value, it may be assumed that the olives are being sold with permission.

343 The Gemara relates: When Ravina arrived at Bei Meḥoza, the women of Bei Meḥoza came and tossed chains and bracelets before him so that he could distribute the jewelry as charity, and he accepted it from them. Rabba Tosfa'a said to Ravina: But isn't it taught in the baraita: Charity collectors may accept something worth a small amount from women, but not something worth a large amount? How can you accept jewelry, which is worth a significant sum? Ravina said to him: For the residents of Meḥoza, these chains and bracelets are considered something small, and it is therefore permitted for me to accept them.

344 MISHNA: Strands of wool that the launderer removes from the garment belong to him, as it can be assumed that the customer is uninterested in them, but strands that the carder, i.e., one who prepares wool for use as a textile, removes belong to the customer, as it is assumed that the customer would want them, since the carder often removes a significant number of strands. A launderer takes three threads that were inserted at the edge of a garment, and they are his, but with regard to more threads than this, these additional threads belong to the customer. If these were black threads on a white garment, he takes all of them and they are his. As the removal of the threads improves the appearance of the garment, the customer does not want them.

345 In the case of a tailor who left enough thread attached to the cloth that it could be used in order to sew with it, or if there was a patch of cloth that is three fingerbreadths by three fingerbreadths left from the cloth given to the tailor by the customer, these items belong to the customer. That which a carpenter removes with an adze belongs to him, because an adze removes only small shavings of wood, which the customer is uninterested in; but what he removes with an ax [uvakashil] belongs to the customer. And if he was doing his work in the domain of the customer, then even the sawdust belongs to the customer.

346 GEMARA: The Sages taught in a baraita (Tosefta 11:13): One may purchase strands of wool from a launderer, because they are assumed to be his. A launderer may take the two upper threads of a garment, and they are his.

347 And a carder should not place in a piece of cloth more than three stitches for each loop that he attaches to the cloth in order to stretch it out, as this causes the cloth to overstretch and require trimming. And he should not card the cloth along its warp, i.e., vertically, but along its weft, i.e., horizontally. And he may even out the cloth by cutting it along its length, but not along its width, and if he comes to even out the cloth by removing up to a handbreadth of material, it is permitted for him to do so.

348 The Gemara analyzes the baraita: The Master said in the baraita that the launderer may take two threads. But didn't we learn in the mishna that the launderer may take three threads? The Gemara answers: This is not difficult: The ruling of this baraita, which allows only two threads, is stated with regard to thick threads, and the ruling of that mishna, which allows three threads, is stated with regard to thin ones.

349 It was also stated in the baraita: And he should not card the cloth along its warp but along its weft. The Gemara asks: But isn't it taught in another baraita that the opposite is the halakha? The Gemara answers: This is not difficult: The ruling of this baraita, which prohibits carding along the warp, is stated with regard to an ordinary garment, which is designed for durability, and one should

therefore avoid wearing out the material by carding along the warp. The ruling of that baraita, which allows one to card along the warp, is stated with regard to an elegant cape [besarbela], which is made for aesthetic appearance and is therefore improved by carding in this manner.

350 The Gemara examines the next clause of the baraita: And a carder should not place in a cloth more than three stitches for each loop. Rabbi Yirmeya raised a dilemma with regard to the definition of the term stitch in this context: Does drawing the needle in and out constitute one stitch, or perhaps does drawing the needle in and out constitute two stitches? The Gemara responds: The question shall stand unresolved.

351 It was further stated in the baraita: And he may even out the cloth by cutting it along its length, but not along its width. The Gemara asks: But isn't it taught in another baraita that the opposite is true? The Gemara answers that this is not difficult: The statement of this baraita, which rules that one should even out the cloth along its length, is stated with regard to a garment, where an uneven length would be conspicuous. The statement of that baraita, which rules that one should even it out along its width, is stated with regard to a belt, as the width of a belt is more noticeable than its length while it is being worn.

352 § The Gemara cites a baraita that discusses which items may be purchased from a carder. The Sages taught in a baraita (Tosefta 11:12): One may not purchase strands of thread from a carder, because it is assumed that they are not his. And in a place where the residents were accustomed to allow carders to retain strands, the strands may be presumed to be his and one may purchase them. And in every place, one may purchase from them a cushion full of stuffing made from strands, or a mattress full of stuffing made from strands. What is the reason that it is permitted? The reason is that even if the carder had stolen the strands, once he uses them to make a cushion or mattress, he has acquired them through a change of form.

353 § Apropos the halakhot pertaining to weaving, the Gemara cites a baraita that discusses which items may be purchased from various craftsmen. The Sages taught in a baraita (Tosefta 11:11): One may purchase from a weaver neither woolen wads [irin], which are used to hold the bobbin in place on a shuttle, nor heddles [nirin], nor threads of the bobbin [punkalin], nor remnants of coils of thread that were left on the spool, as there is a concern that these items were taken from the customer without his consent.

354 But one may purchase a spotted garment from them, even though the design indicates that it was made from strands of different colors, which the weaver may have stolen from other garments that he was weaving. It is also permitted to purchase warp threads and weft threads from them, as well as wool that was spun into thread or woven. All of these items may be purchased from the weaver because they have undergone a physical change, and have therefore been acquired by the weaver even if he did steal them.

355 The Gemara asks: Say: Now that the baraita taught that one may purchase spun wool despite the fact that it has undergone only a minor physical change, is it necessary to teach that one may purchase woven wool, which has undergone a greater change of form? The Gemara answers: What does the baraita mean when it mentions woven wool? It is not referring to wool woven into a garment, but to wool that was twisted into chains, which is also a minor physical change.

356 The Gemara examines which items may be bought from a dyer. The Sages taught in a baraita: One may purchase from a dyer neither pieces of wool used for tests, nor pieces used as a color

sample [dugmut], nor detached pieces of wool, as these might have been stolen. But one may purchase from him a colored garment, spun threads, and clothes fashioned from the aforementioned pieces of material. The Gemara asks: Now that the baraita taught that one may purchase spun threads from the dyer, is it necessary to teach that one may purchase clothes? It is obvious that one may purchase clothes, as the clothes themselves are made of spun threads. The Gemara explains: What does the baraita mean when it mentions clothes? It is referring to felt garments, which are not made of spun thread.

357 The Sages taught in a baraita (Tosefta 11:16): In the case of one who gives hides to a tanner, the trimmings of hide and the detached hairs belong to the customer, but the substance that comes up while being washed in water belongs to him, the tanner.

358 § The mishna teaches that if the threads were black on a white garment, the launderer may take all of them. Rav Yehuda said: A launderer is called a katzra in Aramaic, and he takes the short [katzra] shreds of wool for himself. Rav Yehuda also said: All the threads, even those usually removed from the garment, are counted toward the minimum number of thumb-lengths between the hole through which the sky-blue wool is inserted for ritual fringes and the edge of the garment. But Yitzḥak, my son, is particular about these threads, and makes sure that the garment is of the proper measurement even if the threads were to be removed.

359 The mishna teaches: In the case of a tailor who left enough thread attached to the cloth in order to sew with it, this thread belongs to the customer. The Gemara asks: And how much thread is necessary in order to be able to sew? Rav Asi said: The length of a needle outside the needle. A dilemma was raised before the Sages: Did Rav Asi mean that the thread must be the size of the needle and that beyond the needle there must be an additional amount of thread equivalent to the size of the needle? Or perhaps he meant that it must be the size of the needle, and that beyond the needle there must be any minimal amount of additional string. In other words, was Rav Asi saying that the thread must be two needle lengths, or slightly more than one needle length?

360 The Gemara responds: Come and hear a resolution, as it is taught in a baraita: In the case of a tailor who left the thread attached to the cloth, but it was less than the length necessary in order to sew with it, or if there was a patch of cloth that is less than three fingerbreadths by three fingerbreadths left from the cloth given to the tailor by the customer, the halakha is dependent upon the customer’s inclination: When the customer is particular about such items, these items belong to the customer, but if the customer is not particular about them, these items belong to the tailor.

361 The Gemara analyzes the baraita to deduce the answer: Granted, if you say that Rav Asi meant to say that the thread must be the size of the needle and that beyond the needle there must be an additional amount of thread equivalent to the size of the needle, then the ruling in the baraita that a slightly shorter thread belongs to the customer if he wishes to keep it is reasonable, since a thread which is less than that length is still fit for use as the stitching of a loop. But if you say that Rav Asi meant that the thread must be the size of the needle and that beyond the needle there must be any amount of additional string, then with regard to a thread that is even less than that, for what use is it fit that the customer might wish to keep it?

362 Rather, learn from the baraita that Rav Asi meant that the thread must be the size of the needle and that beyond the needle there must be an additional amount of thread equivalent to the size of the

needle, so that the thread must be a total of two needle lengths. The Gemara affirms: Conclude from the baraita that this is so.

363 § The mishna teaches: That which the carpenter removes with an adze belongs to him, but what he removes with an ax belongs to the customer. The Gemara raises a contradiction to this ruling based upon a baraita: That which the carpenter removes with an adze and that which is severed with a saw belong to the customer. But with regard to that which comes out from under a drill or under a plane [rehitni], and that which is scraped by the saw, i.e., sawdust, these belong to the carpenter. Whereas the mishna rules that the carpenter may keep what is removed with an adze, the baraita rules that it belongs to the customer.

364 The Gemara presents an answer: Rava said: In the place of the tanna of our mishna, there are two kinds of blades used by carpenters: The larger blade is called an ax, and the smaller one is called an adze. By contrast, in the place of the tanna of the baraita, there is only one carpenter's blade, and they called it an adze. Consequently, the adze referred to in the baraita is actually an ax and the rulings are therefore congruent.

365 The mishna teaches: And if he was doing his work in the domain of the customer, then even the sawdust belongs to the customer. The Sages taught in a baraita (Tosefta 11:18): Stone chiselers are not in violation of a transgression due to the prohibition against robbery if they take the leftover chips of rock. Furthermore, with regard to those who prune trees, those who prune vines, those who trim shrubs, those who weed plants, and those who hoe vegetables, the halakha is dependent upon the owner's inclination: When the owner is particular about the plant trimmings, the workers are in violation of a transgression due to the prohibition against robbery if they take the trimmings, but if the owner is not particular about them, then these items belong to the workers.

366 Rav Yehuda says: Dodder [keshut] and green grain [veḥaziz], are not subject to the prohibition against robbery, as they grow on their own and no one tends to them. But in a place where people are particular about the ownership of dodder and green grain, they are subject to the prohibition against robbery. Ravina said: And the city of Meḥasya is a city where the residents are particular about dodder and green wheat.